Managing Misconduct Policy

**Policy statement**

The Office of the Police and Crime Commissioner (OPCC) is committed to taking robust action against unacceptable behaviour and conduct which is wilful or negligent. This policy defines the OPCC’s approach to the management of such behaviour which falls below the standards required or is in breach of policies or rules.

**Scope**

- All employees of the OPCC

**Policy outcomes**

The aims of this policy are to:

- improve and maintain good conduct and behaviour through early intervention and management action
- help employees to understand the rules and standards required
- address issues of misconduct within a fair and effective framework
- achieve appropriate outcomes for the organisation
- deter misconduct

**Check which policy to use**

Unsatisfactory performance due to a lack of skill, knowledge, experience or appropriate behaviours should be addressed using the Managing Performance Policy.

Poor performance due to health issues should be addressed through the Managing Sickness Absence Policy.

Concerns raised by an employee about a decision or action taken when applying this policy should be addressed through the meetings or appeal process held under this policy. A separate workplace issue (e.g. grievance) should not be raised.
Key definitions

**Misconduct** can be:
- wilful - which includes
  - lapses of conduct (an employee’s approach to their work and the way they perform their duties)
  - unacceptable behaviour (towards others)
  - unacceptable work performance which is deliberate and not simply a lack of competence
- negligent or by omission – which includes
  - careless or reckless behaviour
  - failure to act which has a significant adverse impact on a service or an individual

**Gross misconduct** - is an act of misconduct or indiscipline which is so serious in nature that it fundamentally damages the employment relationship and justifies dismissal without notice.

**Chair of the appeal meeting** – the chair of the appeal meeting for each stage is as follows:
- first written warning – a Senior Manager
- final written warning – two Senior Managers
- dismissal – a Senior Manager and the Chief Executive
- less than 2 years service – two Senior Managers

**Calendar days** - where reference is made to calendar days, these are defined as Monday to Sunday, including Bank Holidays or Public Holidays. This is consistently applied irrespective of an employee’s work pattern.

**OPCC continuous service** - earliest date when an employee began continuous service (no breaks) with the OPCC.

**What the law says**

The **ACAS Statutory Code of Practice** on discipline and grievance 2009, issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992, sets out the principles for managing misconduct in the workplace.

The Code provides the following general principles to deal with misconduct:
- ensure the employer informs the employee of the nature of the issue
- address issues within a reasonable timeframe and do not unreasonably delay meetings, decisions or confirmation
• act consistently
• carry out any necessary investigations to establish the facts of the case
• meet with the employee to discuss the issue
• allow the employee to be accompanied at any formal meeting
• an employer must form a reasonable belief
• a panel to act "in good faith"
• decide on appropriate action
• reason for dismissal to be both genuine and reasonable
• allow the employee to appeal against any formal decision

In order to bring a claim for unfair dismissal, under section 108 of the Employment Rights Act 1996, an employee must have at least two years continuous employment. There is a specific section in this policy that relates to employees with less than two years continuous OPCC employment.

Safeguarding
When applying the Managing Misconduct Policy, local and national safeguarding requirements, including the actions of the Police, must be observed. This may include delaying notifying the employee of the nature of an allegation until the consent of other agencies has been obtained.

Criminal activity
Where the conduct is believed to be criminal, the employee is reported to the Police by the manager.

Suspension or alternative arrangements
Where concerns may amount to gross misconduct, suspension or alternatives to suspension may be necessary.

Both are neutral and precautionary acts that may be put in place at any point during a disciplinary process once the preliminary enquiry or investigation has established that the misconduct concern may amount to gross misconduct. The purpose is to enable the investigation to take place and to protect the OPCC and the employee.

The manager must meet immediately with the employee to inform them that they are being suspended or of the alternative arrangements being put in place. The employee has no statutory right to be accompanied. However a companion (an OPCC work colleague or a trade union representative) is normally accommodated where it does not cause any unnecessary delay. The manager sends the employee a letter to confirm the decision regarding suspension or alternative arrangements and suspends
the employee’s IT account and security pass as appropriate.

During suspension or whilst alternative arrangements are in place, an employee continues to receive full contractual pay and is required to be available for meetings and to follow normal reporting procedures such as sickness absence and annual leave.

**Policy stages**

The first stage is a preliminary enquiry.

There is one further stage when managed informally:
- informal discussion

There are three further possible stages when managed formally:
- investigation
- formal meeting
- appeal meeting

There are some differences in the way a disciplinary concern involving an employee with **less than two years service** is managed.

**Formal action concerning a trade union representative**

Where there are concerns involving an employee who is a trade union representative, advice must sought from HR Operations before taking formal action.

**Preliminary enquiry**

The manager must carry out a brief preliminary enquiry to identify the initial facts as quickly as possible and normally within the same working day / shift.

In exceptional circumstances, where further time is needed to complete the preliminary enquiry to establish whether concerns may amount to gross misconduct (and therefore possible suspension), the employee can be expected to stay away from work for a maximum of up to **5 calendar days** while the preliminary enquiry is completed.

The preliminary enquiry enables the manager to decide whether:
- no apparent substance to the concern and therefore no further action is required
- the misconduct can be managed through an informal discussion or whether
- the misconduct is potentially more serious and justifies progression to a formal disciplinary
On completion of the preliminary enquiry the manager must consider whether suspension or alternative arrangements are necessary.

**Informal discussion**

Where the misconduct is minor and has only happened on one or two occasions, the manager must hold an informal discussion with the employee. The manager must inform the employee of the conduct or standard expected.

The employee has no statutory right to be accompanied at the informal meeting. However the employee can contact their union, where they are a member, for advice.

**Investigation**

Where the misconduct is potentially more serious or there are repeat occurrences of minor misconduct following an informal discussion, the concern must be managed formally.

The employee must be informed in writing of the nature of the issue/s and the purpose of the investigation before it starts. They do not have a statutory right to be accompanied at an investigation meeting however a companion (an OPCC work colleague or a trade union representative) can normally be accommodated where it does not cause delay in scheduling the investigation meeting.

An investigating officer is nominated to carry out an impartial investigation and write a record of their findings. The length and detail of the investigation and record is proportionate to the nature, complexity and seriousness of the misconduct concern.

The investigation is normally carried out within a maximum of 26 calendar days unless there are exceptional circumstances in which case a reasonable timescale can be agreed between the investigating officer and the employee.

Upon completion of the investigation, the manager decides whether there is a case to answer and if so, the case should progress to a formal meeting. Alternatively the manager may decide that a different form of management action is more appropriate.

**Formal meeting**

Where the manager believes the investigation continues to support a formal disciplinary, the next stage is to hold a formal meeting with the employee.
The manager will write to the employee to invite them to the formal meeting, enclosing any management documents or records.

The employee has a statutory right to be accompanied at the formal meeting by an OPCC work colleague or a trade union representative.

The employee, or their companion, must submit relevant information to arrive at least **4 calendar days** before the meeting.

---

**Outcome of a formal meeting**

The chair of the meeting will decide whether the allegation/s is upheld / proven or unfounded / unproven or unsubstantiated. They will also decide what, if any, formal disciplinary action will be taken.

The employee may receive a first or final written warning that their behaviour or conduct is unacceptable and must improve. The warning will be kept on their personnel file or ePF for a specified number of months as agreed by the chair.

The employee may be dismissed with notice on the grounds of misconduct or summarily dismissed on the grounds of gross misconduct. In such cases the manager must cancel the employee’s IT account and security pass immediately, if they have not already done so.

At the meeting the chair must advise the employee of:

- the outcome
- their right of appeal
- the date by which an appeal must be submitted, which is within **10 calendar days** starting from the day after the meeting.

The details of the meeting and the outcome are confirmed in writing.

---

**Referrals to professional bodies**

Some professions are required to be registered with a professional body in order to practice. During or upon completion of the disciplinary process, where there are concerns about an employee’s fitness to practice, there may be a duty to refer the employee to their professional body.
Right of appeal

The employee has a right to appeal against any formal disciplinary action. They must have specific grounds for making an appeal and identify supporting evidence.

An employee must ensure their written appeal is received by the chair of the panel within **10 calendar days** of the meeting, starting from the day after the meeting.

The full reasons for the appeal must be given along with the supporting evidence.

An appeal against a first warning will be heard by a Senior Manager. An appeal against a final warning will be heard by two Senior Managers.

An appeal against dismissal will be heard by a Senior Manager and the Chief Executive.

Appeal meeting

The employee will receive a written invitation to an appeal meeting, enclosing any management documents.

The employee has the statutory right to be accompanied at an appeal meeting by an OPCC work colleague or a trade union representative.

The employee, or their companion, must submit their information to arrive at least **4 calendar days** before a meeting.

Outcome of an appeal meeting

The chair of the meeting will decide whether the appeal is upheld or not.

The chair of the meeting must advise the employee of the outcome at the meeting, or make an alternative arrangement if the decision is not available within this timescale. The decision will be confirmed in writing.

Less than two years continuous service

The same policy stages and process for managing misconduct are applicable to employees with less than two years continuous service.

The areas of difference are:

- all formal cases will be treated as potential dismissal
- misconduct of a less serious nature may warrant dismissal or receive a warning
- where a warning is issued, this will be a formal written
warning (there is not a distinction between a first or final)

- an employee only has the right to appeal against a dismissal decision, not against a warning. This will be heard by a two Senior Managers.

**Support**

**Employees:**
Queries should be directed to your line manager.

Access to free, confidential and impartial Employee Support is available to all employees. Please visit the webpages for further information [http://www3.hants.gov.uk/occupational-health/employee-support.htm](http://www3.hants.gov.uk/occupational-health/employee-support.htm)

Your trade union or professional association may be able to provide you with additional support.

**Managers:**
Further information is available in the Managers’ How to guide – Managing Misconduct.

Advice on remaining queries can be directed to HR Operations.

**Policy Governance**

<table>
<thead>
<tr>
<th>Hantsfile reference:</th>
<th>11688568</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of publication:</td>
<td>V1 – November 2014</td>
</tr>
<tr>
<td></td>
<td>V1.1 – May 2015</td>
</tr>
<tr>
<td></td>
<td>V1.2 - April 2016</td>
</tr>
<tr>
<td>Planned review date:</td>
<td>2 years or sooner if required</td>
</tr>
<tr>
<td>Owner:</td>
<td>HR Operations</td>
</tr>
</tbody>
</table>

Employees of non Office of the Police and Crime Commissioner bodies are excluded from this policy and should refer to their own employer’s policies and procedures.