

Agreed by the Human Resources Committee 12.04.06 (following a Diversity Audit)

## **DEVON AND CORNWALL POLICE AUTHORITY**

### **DISCIPLINARY and INCAPABILITY PROCEDURE**

#### **Policy**

It is necessary for the proper operation of the Authority's functions and the health and safety of its employees that the Authority operates a procedure for dealing with matters of discipline and lack of capability, other than medical incapability (in which case the Authority's Sickness Management and Ill Health procedure will be used). The underlying purpose of this procedure is to help and encourage all employees to achieve and maintain the standards of conduct and performance required by the Authority.

The procedure will be applied fairly in all instances where formal disciplinary action is regarded as necessary, save to the extent that a minor reprimand may be given for any minor act of misconduct committed by an employee. Subject to the provisions of the section of this procedure relating to 'Performance', this procedural framework will also apply in instances of incapability. Without prejudice to the above, the procedure does not apply to:

- (a) Action taken during or at the end of a probationary period of service (including any extended probationary period of employment);
- (b) Termination of employment by reason of redundancy or the expiration of a temporary or fixed term contract. In such circumstances employees will be advised in writing of any intention to dismiss them and a meeting with the Chief Executive will be arranged to discuss the proposed termination.;
- (c) Termination on grounds of medical incapability, save in so far as the Authority's Sickness Management and Ill Health procedure provides that after a formal warning has been given in a case of frequent sickness absence, the provisions of this procedure should be applied;
- (c) Termination by mutual consent.

The Authority reserves the right to implement this procedure at any stage as set out below taking into account the alleged misconduct by or under performance of an employee. No formal action will be taken without the employee being informed about the nature of the complaint and given the opportunity to make representations at a formal hearing. There will be a right of appeal against all formal disciplinary action.

Employees will not ordinarily be dismissed for a first 'offence', unless the matter amounts to gross misconduct or 'gross incapability'.

Where time limits are referred to in this procedure, they may be varied by consent between the Authority and the employee.

Employees can be accompanied at any formal disciplinary or appeal hearing by a fellow employee or trade union official of their choice. The companion may represent the Employee by putting and summing up the employee's case and responding on the employee's behalf to any view expressed at the hearing. The companion may not answer

questions on behalf of the employee unless agreed by the manager conducting the hearing.

A (non-exhaustive) list of matters amounting to disciplinary offences is set out at Appendix 1.

### **Investigation**

An employee's manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Authority's policies or rules or which may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

Where a matter is potentially serious or complex the matter may be referred to the Police Authority's Human Resource Adviser or other relevant person (e.g. the Authority's Treasurer) to undertake the investigation.

Where it is believed that the matter to be investigated involves serious misconduct or that the continued presence of the employee at work may prejudice or inhibit the investigation or the work of the Authority, the employee may be immediately suspended from work on full pay. If serious misconduct is not initially suspected or believed to have occurred, but, during the course of an investigation, the person conducting it reasonably forms the opinion that a serious breach of discipline may have occurred, the employee who is the subject of the investigation may then be suspended. Any decision to suspend, which will be taken by the Chief Executive (or in his absence the Assistant Chief Executive), will be confirmed in writing within three working days. Such written confirmation will give a general indication of the matter under investigation and state that the nature of the suspension is precautionary, not disciplinary, pending the outcome of the disciplinary investigation and possible proceedings. The Chief Executive will review regularly (normally monthly) the continued need for any suspension to ensure that it is not unnecessarily protracted and advise the Chairman of the Authority accordingly.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. The Authority reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

### **Procedure**

Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a hearing before the Assistant Chief Executive or, if the investigation was undertaken by the Assistant Chief Executive, the Chief Executive. In the event of poor performance by an employee, hearings will usually be undertaken only where counselling of/support to the employee, further training (if appropriate) and oral warnings have failed to produce a satisfactory improvement to performance.

In the event of a disciplinary or 'incapability' hearing taking place the Authority will:

(a) give the employee a minimum of three working days advance notice of the hearing;

- (b) tell the employee the purpose of the hearing and that it will be held under this procedure;
- (c) give the employee written details of the nature of his/her alleged misconduct or poor performance, including, if the allegations may amount to gross misconduct and/or if, in the light of previous warning, dismissal is a potential outcome, that dismissal with or without notice is a possible option.
- (d) provide the employee with the information (which should include statements taken from any fellow employees or other persons) that the Authority intends to rely upon at the hearing not less than three days in advance of the hearing.
- (e) advise the employee that he or she can be accompanied at the hearing by a fellow employee or trade union official of their choice

Where the employee or his/her representative is unable to attend a hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, it will take place in the employee's absence. However, the employee's fellow employee or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

### **The hearing**

A disciplinary or 'incapability' hearing will normally be conducted by the Assistant Chief Executive except in cases where:

- (a) the investigation was undertaken by the Assistant Chief Executive, or
- (b) the matter under consideration may amount to gross misconduct and/or is a hearing to consider dismissal following previous written warnings.

Normally only the Chief Executive has the authority to dismiss an employee, save, in the case of the Chief Executive, the Assistant Chief Executive and the Treasurer, authority to dismiss rests with a panel of Members drawn from the Authority (see below).

The Assistant Chief Executive or Chief Executive or, where appropriate, Panel of Members may be accompanied at any hearing by an Adviser, whose role is to give advice on issues of procedure, conditions of employment and employment legislation. The adviser may take notes of the meeting. He or she is not however part of the decision making process, although he or she may attend that process to give advice. The Adviser should not have previously participated in the investigation.

The employee will be entitled to be given a full explanation of the case against him/her, be informed of the content of any statements provided by witnesses and given the opportunity to ask questions of the Investigating Officer and of any witnesses called before the Hearing. The employee will also be entitled to state his/her case in response to the Authority's case and put forward an explanation of his/her conduct and/or mitigating factors. He/she may also call any relevant witnesses in support of his/her defence.

The hearing may be adjourned if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow employee or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

As soon as possible after the conclusion of the hearing (and in any event normally within five working days), the Assistant Chief Executive or Chief Executive will convey his/her decision to the employee and will also inform the employee, in writing, what disciplinary action, if any, is to be taken. The employee will be notified of his/her right of appeal under this procedure.

### **Disciplinary action**

Where, following a hearing, it is established that the employee has committed an 'offence', the following disciplinary action may be taken:

- (a) Where a minor offence or offences have been committed, a Recorded Oral Warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. The Employee should be informed of the period that the warning will remain 'live'. During this period, the Authority may rely on such a warning in the event of further misconduct on the part of the employee.
- (b) Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a Recorded Oral Warning that remains 'live' or the employee has failed to respond adequately to a Performance Improvement Plan (drawn up in accordance with the provisions in the 'Performance' section below), the employee will receive a First Written Warning. The warning will:
  - (i) set out the nature of the offence committed;
  - (ii) inform the employee that further misconduct or continued failure to meet performance targets/standards is liable to result in further disciplinary action under this procedure;
  - (iii) incorporate, in cases where an employee's performance/capability is the subject of the warning, an updated Performance Improvement Plan confirming the performance targets/standards that must be met and such assistance as the Authority will be giving to the employee;
  - (iv) specify the period for which the warning will remain 'live', after such period the warning will normally automatically lapse, unless circumstances have arisen which are not sufficient to convene a further hearing but which provide reasonable grounds for extending the warning; and
  - (v) state that the employee may appeal against the warning.

- (c) Where a serious disciplinary offence has been committed which does not amount to gross misconduct or, where an employee commits further disciplinary offences or fails to meet performance targets/standards after a First Written Warning has been issued and remains 'live', a Final Written Warning may be given. Such a warning will:
- (i) set out the nature of the offence committed;
  - (ii) inform the employee that further misconduct or continued failure to meet performance targets/standards is likely to result in his/her dismissal;
  - (iii) incorporate, in cases where an employee's performance/capability is the subject of the warning, an updated Performance Improvement Plan confirming the performance targets/standards that must be met and such assistance as the Authority will be giving to the employee;
  - (iii) specify the period for which the warning will remain 'live', after such period the warning will normally automatically lapse, unless circumstances have arisen which are not sufficient to convene a further hearing but which provide reasonable grounds for extending the warning; and
  - (iii) state that the employee may appeal against the warning.
- (d) Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) or fails to meet performance targets/standards following a final written warning given under (c) above, the employee may be dismissed with notice or with pay in lieu of notice.
- (e) Where it is established that an employee has committed an act of gross misconduct or 'gross negligence' the employee will be summarily dismissed.

### **Appeal**

An employee may appeal against any sanction imposed against him/her under this procedure, with the exception of Recorded Oral Warning. In the case of written warnings issued by the Assistant Chief Executive, the appeal will be heard by the Chief Executive. In the case of formal written warnings or a decision to dismiss by the Chief Executive, the appeal will be heard by a panel of not less than three Members of the Chairs' Committee of the Authority. In case of formal disciplinary action taken by a panel of Members of the Authority, the appeal will be heard by a panel of not less than three Members of the Authority who were not party to the original decision.

Appeals against written warnings will take the form of a review of the issues before and evidence presented to the person/panel determining the original disciplinary action. This may be presented in writing or orally by the Assistant Chief Executive/Chief Executive and/or the Investigating Officer. Representations may be made to the person(s) hearing the appeal by the employee and by the employee's fellow employee or trade union official on their behalf. Those hearing the appeal must decide whether to uphold the disciplinary sanction on the basis of both sets of representations, together with any subsequent facts that may have come to light and which were not reasonably practicable to have evidenced at the time of the original hearing.

Appeal against dismissal will take the form, unless otherwise agreed by the Authority and the employee (e.g. when the appeal is solely to consider mitigation), of a 'rehearing' of the case.

Those hearing the appeal may be accompanied by an Adviser, whose role is to give advice on issues of procedure, conditions of employment and employment legislation. The Adviser is not part of the decision making process, but may take notes of the meeting. The scale of the Authority is such that the Adviser to the original hearing may also advise the person(s) hearing the appeal. In so doing, the Adviser should not draw on information that he or she may have heard at the original hearing, but, which for some reason, is not relied on by either or both of the parties at the appeal.

When lodging an appeal, the employee should state:

- (a) the grounds of appeal; and
- (b) whether the employee is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

The employee must provide written notice of the appeal within five working days of being informed of the written warning or disciplinary sanction being imposed against him/her.

Appeal hearings will take normally place within 15 working days of receipt of the Employee's written notice of appeal, unless this is not reasonably practicable.

Upon completion of the appeal, the Chief Executive or, where appropriate, the Chairman of Appeals Panel will convey the decision to the employee. The decision at the appeal is final. The decision will be confirmed in writing within five working days.

Where an appeal lies against a decision summarily to dismiss the employee without notice, the Authority will be under no obligation to pay the employee for any period between the date of the original dismissal and the appeal decision. If the appeal is not upheld the original date of termination will stand. If the appeal is upheld and the employee re-instated, the employee will be entitled to appropriate backpay.

### **Gross misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Authority. In the event that an employee commits an act of gross misconduct, the Authority will be entitled summarily to terminate the employee's contract of employment without notice or pay in lieu of notice.

A non-exclusive and non-exhaustive list of matters the Authority views as matters amounting to gross misconduct is set out in Appendix 2.

### **Performance**

The Authority recognises that it has a responsibility for setting realistic and measurable standards of performance and for explaining these standards carefully to employees.

Equally employees have a contractual responsibility to perform to a satisfactory level and should be given every help and encouragement to do so.

Standards of performance can have a qualitative and quantitative element to them. The Authority recognises that its managers have a responsibility to inform and support employees who are experiencing difficulties. This should happen as soon as practicable after a problem is apparent. Where the reason for the sub-standard performance is found to be a lack of the required skills, the employee will, wherever practicable, be assisted through training or coaching and given reasonable time to reach the required standard.

Where it is appropriate because of the significance of the difficulties being experienced by an employee, an agreed Performance Improvement Plan will be drawn up with the employee before any action is taken under this procedure. That Performance Improvement Plan will form the basis against which required improvements to performance are assessed. It will also inform the need for any formal action under this procedure and, if necessary, provide the basis subsequently for monitoring targets/standards set in conjunction with formal warnings under this procedure about the need to reach and maintain the required levels of performance.

Where the sub standard performance is due to negligence or lack of application on the part of the worker then some form of disciplinary action may be appropriate more immediately.

An employee will not normally be dismissed because of a failure to perform to the required standard unless warnings and an opportunity to improve with reasonable targets and timescales have been given in accordance with the framework of this procedure. However, where an employee commits a single error due to negligence and the actual or potential consequences of that error are, or could be, extremely serious, such as to amount to 'gross negligence', warnings may not be appropriate.

## **General**

If an Employee who is an accredited representative of a Trade Union recognised by the Authority for collective bargaining purposes is suspected of having committed a disciplinary offence, the Authority will take no action under this procedure (with the exception, where appropriate, of suspending the employee in accordance with the provisions set out above) until the Chief Executive or Assistant Chief Executive has had a chance to discuss the matter with a full-time official of that Trade Union.

The Authority will take reasonable steps to ensure that there is no disadvantage to employees with disabilities in the application of this procedure, for example, by ensuring that an employee with hearing impairment is supported as necessary at any meetings or hearings so that that employee fully understands the issues to be considered by and outcome of such meetings or hearings and can contribute effectively to such meetings or hearings.

Information relating to any proceedings or action taken in accordance with this procedure will be subject to the relevant provisions of the Data Protection Act 1998

This policy and procedure has been drafted in and will be applied in accordance with the Human Rights Act 1998, the Race Relations Act 1976, the Race Relations (Amendment) Act 2000 and the Disability Discrimination Acts 1995 & 2005.

### **Chief Executive, Assistant Chief Executive and Treasurer**

Action under this procedure against the Chief Executive and the Treasurer of the Authority can only be taken by Members of the Authority. In the event that a matter arises in respect of the conduct or performance of the Chief Executive or Treasurer, the matter will be referred by the Chairman of the Authority to the Police Authority's Human Resource Adviser. Upon the advice of the Adviser, the Chairman will commission either the Adviser or another relevant person to undertake an investigation and make a recommendation as to whether there is a case to answer. In the event that the conclusion of any investigation is that disciplinary action may be warranted, the general provisions of this procedure will apply, save that any hearing will be before a specially constituted panel of three members of the Authority, of whom at least two should be from the Chairs' Committee. Any appeal will also be before a different specially constituted panel of three members of the Authority, of whom at least two should be from the Chairs' Committee.

A decision to suspend the Chief Executive or the Treasurer may be taken by the Chairman of the Authority, subject to confirmation by the Chairs' Committee, normally within five working days of the decision.

If the matter concerns the performance of the Chief Executive or the Treasurer, the Police Authority's Human Resource Adviser will assist the Chairman in relation to the steps outlined in the 'Performance' section above.

Action under this procedure in respect of the Assistant Chief Executive may be taken by the Chief Executive, except that any decision to dismiss the Assistant Chief Executive may only be taken by Members of the Authority. Any panel of members constituted for this potential reason or for any other hearing in respect of the Assistant Chief Executive will be in accordance with the provisions of this section.

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**EXAMPLES OF MISCONDUCT**

The following are indicative examples of misconduct that may lead to disciplinary action being taken:

- Persistent bad timekeeping or attendance
- Unauthorised absence
- Minor damage to the Authority's property
- Failure to observe Authority's procedures
- Discourteous or abusive behaviour towards other employees, Members of the Authority, the public or representatives of other organisations with whom the authority engages
- Bullying or harassment, short of gross misconduct, of another employee or member of the public
- Unreasonable refusal to follow an instruction issued by a manager/supervisor
- Disregard of safety practices, procedures and rules
- Unauthorised use of Authority equipment
- Unauthorised release, destruction, alteration, addition to or erasure of official documents.

The above list is not exhaustive.

**EXAMPLES OF GROSS MISCONDUCT**

The following is a non-exclusive and non-exhaustive list of matters the Authority views as matters that are likely to amount to gross misconduct:

- Stealing from members of the staff or public.
- Other offences of dishonesty.
- Unfair discrimination, against any employee or member of the public on the grounds of age, colour, disability, ethnic origins, marital status, religion, sex or sexual orientation and political beliefs.
- Significant intimidation of another employee or member of the public, including racial or sexual harassment, bullying or victimisation.
- Any act or omission calculated to defraud the employer (e.g. falsification of expenses claims, self-certification forms, qualifications etc) whether or not for personal gain.
- Obscene or indecent behaviour or sexual misconduct.
- Fighting with or physical assault on members of the staff or public.
- Deliberate and/or serious damage to or misuse of the Authority's property.
- Incapacity on duty due to the effects of alcohol or non-prescribed drugs or other substances.
- Possession, custody or control of illegal drugs on the Authority's premises.
- Serious breach of the Authority's procedures and rules, including but not restricted to, those relating to health and safety, computer use, e-mails and mobile telephones.
- Gross negligence or incapability.
- Conviction of a criminal offence that is relevant to the employee's employment.
- Conduct in or outside work that brings or might bring the Authority into disrepute or which undermines the trust and confidence that the Authority as a public body must have in its employees.
- Improper disclosure of confidential information.
- Using the employee's position in the Authority to further his or her private interests to the detriment of Authority, the Constabulary or the services they provide.
- Serious insubordination or refusal to follow a reasonable instruction.

