



## **Disciplinary Policy**

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<b>Business Area</b>	Human Resources
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<b>Equality impact assessment (EqIA) approval date</b>	An Equality impact assessment was completed during the design of this policy, and we have received feedback from our Staff Networks. It is currently under review of the Equality Management Review Group. The review group may make further equality recommendations to the assessment. This means the policy may be subject to additional equality related changes and if they are adopted this Policy will be revised and republished at that time

## **Why do we need the policy?**

This policy aims to encourage you, as our employee, to achieve and maintain appropriate standards of conduct, in line with SQA's code of conduct and values: trusted, progressive and enabling. The purpose of this disciplinary policy is primarily supportive and is designed to be read in conjunction with the procedure document. It gives examples of the types of behaviour that we, as the organisation, may view as misconduct or gross misconduct and sets out the policy we will follow and the possible outcomes of the disciplinary process.

This policy does not apply to dismissals by reason of redundancy, retirement, or non-renewal of a fixed term contract. In any of these cases SQA will follow a fair and reasonable procedure which will include consultation with you prior to any dismissal taking effect.

This policy (and accompanying procedure) complies with the ACAS Code of Practice and meets all current, relevant legislation.

## **Who is it for?**

This policy applies to members of staff only.

Staff are defined as people who work for us under a contract of employment. Any other worker, for example agency workers and inbound secondees, will be covered by their substantive employer's rules and policies. Contractors will be governed under the terms and conditions of their contract with SQA.

## **What support is available?**

- If appropriate, your line manager (see section 2.0 below).
- HR support can be sought by contacting the People Operations team at [peopleoperations@sqa.org.uk](mailto:peopleoperations@sqa.org.uk) or by calling 6060.
- Trade union representatives can provide members with advice, help and support. Information about Unite and Unison can be found on intranet homepage under [A-Z](#).
- The wellbeing hub offers a broad range of help for social, financial, physical and psychological wellbeing and can be found on the intranet [here](#).

## **Part A – Policy**

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## 1 Introduction

Our aim is to ensure consistent and fair treatment for you and to encourage behaviour in line with that set out in SQA's Code of Conduct and with our stated values to be Trusted, Progressive and Enabling and the principles outlined in our Equality, Diversity and Inclusion policy.

We expect you to adhere to appropriate standards of conduct and behaviour in line with our code of conduct, terms and conditions, policies, procedures and values. This policy (and accompanying procedure) sets out the action we will take when these standards of conduct are breached. We have given examples of behaviour that we will view as misconduct, and which may result in disciplinary action in section 6.1 of the procedure.

Gross misconduct is misconduct which in our opinion is so serious or has such serious consequences, that it is likely to result in your dismissal (even for a first act of misconduct) without notice or pay in lieu of notice. We have given examples of behaviour that we will view as gross misconduct in section 6.2 of the procedure.

Before progressing any further through this policy, you should now read and review both section 6.1 & 6.2. When you have completed this you should recommence reading the policy from the next section.

SQA is committed to equality of opportunity and to a culture that respects difference. We believe that, as an employer and public body, we can play a leading part in promoting equality, diversity and inclusion by making them an integral part of our decision making. This policy has an Equality Impact Assessment completed on it at the development stage to assess how this policy may impact on equality groups and the findings from this are reflected in this policy.

## 2 Responsibilities

Your role and responsibilities, along with those of managers, Human Resources and accompanying persons are shown below.

We will ensure all managers are aware of this policy and their responsibilities under it.

You	Your manager
<ul style="list-style-type: none"><li>➤ Take all reasonable steps to attend meetings</li><li>➤ Co-operate fully when requested and not to unreasonably delay meetings</li><li>➤ Bring to the attention of SQA all relevant information including any mitigating circumstances</li><li>➤ If being accompanied, make arrangements for your trade union representative or companion to attend any meeting and be in receipt of all relevant documentation</li><li>➤ Advise of any special requirements e.g., disability, etc</li><li>➤ Provide evidence or witness statements in good time before the</li></ul>	<ul style="list-style-type: none"><li>➤ Where appropriate deal with informal conduct issues promptly and fairly</li><li>➤ Provide the appropriate level of employee support</li><li>➤ Seek advice and guidance from HR where appropriate</li><li>➤ Keep a copy of any notes they take during the informal stage - only for reference purposes to assist with discussions relating to your progress</li></ul>

<p>meeting so that they can be taken into account</p> <ul style="list-style-type: none"> <li>➤ Set out in writing the grounds of any appeal</li> </ul>	
<b>Human Resources</b>	<b>Disciplinary Manager</b>
<ul style="list-style-type: none"> <li>➤ Appoint investigating, hearing and appeal managers</li> <li>➤ Advise on the presentation of an investigation report to ensure it addresses all necessary issues and it achieves clarity</li> <li>➤ Provide appropriate levels of advice, guidance and support to all managers and employees and ensure that a fair and reasonable process is followed and undertaken</li> <li>➤ Provide advice on compliance, legal issues, policies, procedures and process</li> <li>➤ To make the disciplinary manager aware of any previous cases involving other individuals to ensure consistency</li> <li>➤ Attend any appropriate meetings and all formal meetings and hearings and provide advice</li> <li>➤ Send out any relevant correspondence</li> <li>➤ Update personnel records</li> </ul>	<ul style="list-style-type: none"> <li>➤ Send out all relevant correspondence</li> <li>➤ Ensure that all relevant information has been made available to the employee in good time prior to a hearing including full details in written format of the concerns to be considered at the hearing</li> <li>➤ Consider whether any further investigation is required for example issues raised by the employee at a hearing, and carry it out in a timely manner</li> <li>➤ Examine relevant documents and interview staff as is necessary</li> <li>➤ Ensure procedural requirements are satisfied</li> <li>➤ Establish the facts of the case and compile the evidence</li> <li>➤ Retain accurate notes, records of evidence and witness statements where appropriate, throughout the process</li> <li>➤ Remain independent, objective, confidential and professional at all times</li> <li>➤ Under exceptional circumstances, if any witness is deemed to be at risk, make the judgement on whether to withhold their identity</li> <li>➤ Notify HR as to the status of the process and seek HR advice and guidance where appropriate</li> <li>➤ Confirm the decision to the employee in writing after the hearing has taken place. This will include the reasoning behind the decision, the action to be taken, and by whom, and the right of appeal</li> </ul>
<b>Investigating Manager</b>	
<ul style="list-style-type: none"> <li>➤ Carry out as much investigation as is reasonable for the circumstances and in a timely manner</li> </ul>	

<ul style="list-style-type: none"> <li>➤ Conduct the investigatory/fact finding process and send correspondence to employee and witnesses</li> <li>➤ Ensure procedural requirements are satisfied</li> <li>➤ Examine relevant documents and interview staff as is necessary</li> <li>➤ Establish the facts of the case and compile the evidence</li> <li>➤ Retain accurate notes, records of evidence and witness statements where appropriate, throughout the process</li> <li>➤ Remain independent, objective, confidential and professional at all times</li> <li>➤ Provide recommendation to HR when the investigation is complete</li> <li>➤ Under exceptional circumstances, may take advice from Human Resources about anonymising witness statements</li> <li>➤ Notify HR as to the status of the process and seek HR advice and guidance where appropriate</li> <li>➤ <b>Complete mandatory SQA workplace investigations training</b></li> </ul>	
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### 3 Policy

#### 3.1 Trade Union representatives

If a member of staff, who is also an elected trade union representative, is to become subject to an investigation or any form of disciplinary procedure, they will be informed, and their permission will be sought to inform the senior full time official of the recognised trade union of which the individual is a representative. If permission is granted by the individual, before proceeding further with the matter, the full time official of the relevant recognised Trade union will be informed by a representative of HR.

#### 3.2 Equalities

We will ensure throughout this procedure that we do not unfairly discriminate against anyone because of a protected characteristic ([Equality, Diversity & Inclusion policy](#)).

For example, adapting procedures to accommodate you if require or making reasonable adjustments to procedures to ensure that we do not put anyone with a disability at a substantial disadvantage. This might mean allowing someone else to also attend, for example a support worker or someone with knowledge of your specific needs.

##### 3.2.1 Health and well-being considerations

It may be appropriate for us, with your agreement, to seek guidance from Occupational health or a medical professional as to how the disciplinary process can proceed fairly. If there are clear and repeated signs of distress from you at any stage of the Disciplinary procedure for example, we will encourage you to use our employee assistance programme or consider suggesting that you seek specific advice from your GP. If you have an existing health condition which may be considered a disability, we will make appropriate reasonable adjustments to the process following advice from our Occupational Health provider.

Any reasonable adjustments will never negatively impact on the investigative and/or decision-making process outlined in this policy and procedure.

### **3.3 Right to be accompanied**

You may be accompanied by a trade union representative, a workplace colleague or a companion accompanying you as part of an agreed reasonable adjustment (see 4.1 of the procedure) at any formal stage of the disciplinary procedure.

### **3.4 Informal stage**

We believe cases of minor misconduct are usually best dealt with in this way. A confidential conversation is often all that is required to improve minor concerns. In some cases, additional training, coaching and advice may be what is needed to resolve an issue.

It is important to note that informal action is the outcome of a confidential discussion between you and your line manager only. Any issues around conduct will be discussed constructively and reviewed over an agreed period with the aim of sustained improvement.

There will however be situations where matters are more serious or where an informal approach has been tried but is not working.

If there is no improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, we will consider taking formal action outlined below.

Your line manager will lead any informal action but will be supported by advice from Human Resources where necessary.

Whilst not a statutory right you may ask, clearly stating the reason why, to be accompanied by a trade union representative, a workplace colleague or a companion accompanying you as part of an agreed reasonable adjustment (see 3.3 above and 4.1 of the procedure)

If your request is agreed to be accompanied at an informal meeting your line manager will ask for a workplace colleague, who may be from Human Resources, to also attend and support the meeting.

### **3.5 Formal stage**

#### **3.5.1 Investigation**

We will investigate all disciplinary issues not resolved at an informal stage as quickly as reasonably possible.

There are two possible recommendations of the investigation:

- No formal action. Where no formal action is recommended this ends the process, in cases where informal actions have also been recommended the process will end once they have been applied. A file note of no formal action will be made.
- Formal action. Where formal action is recommended, you will be invited to a formal disciplinary hearing.

#### **3.5.2 Suspension**

We may need to suspend you from work whilst we investigate a potential disciplinary issue or during a disciplinary procedure. Suspension of this kind is not a disciplinary sanction and does not imply that we have made a decision about the allegations. You may be suspended for whatever period we deem reasonable in the circumstances.

During any period of suspension, following a risk assessment, we will usually:

- suspend all access rights including facilities and business systems



- ask you to return all company property during the period of your suspension

During suspension you must not use or discuss any confidential information regarding any investigation or disciplinary matter with any other SQA member of staff other than those you gain express agreement to do so with.

Your contract of employment will continue during your suspension, and you will remain bound by your terms and conditions of employment. Any period of suspension will usually be paid unless unpaid suspension is permitted by the terms of your contract of employment, you have taken unauthorised absence, or you are being detained in custody. If you are absent from work through sickness absence you will be paid sick pay.

We will keep the need to suspend you under regular review and limit any period of suspension to as short a period as possible, depending on the circumstances.

### **3.5.3 Disciplinary hearing outcomes**

There are five possible outcomes of your disciplinary hearing:

- No Action
- First Formal Written Warning lasting 6 months
- Second Formal Written Warning lasting 9 months
- Final Formal Written Warning lasting 12 months
- Dismissal / gross misconduct dismissal

In addition to a written or final written warning, we may also apply other disciplinary sanctions.

Further details of these can be found under disciplinary sanctions, section 4.3.4 of the accompanying Procedure.

Any active disciplinary warnings may be taken into account in any selection process relating to your employment.

### **3.5.4 Appeal**

You have the right to appeal against any disciplinary action given.

There are three possible outcomes of your appeal:

- Confirmation of the original decision and sanction
- Confirmation of the original decision but substitute with a lesser sanction
- Cancellation of the original decision and sanction

The appeal manager's decision is final and there is no further right of appeal.

## **Part B – Procedure**

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## **4 Procedure**

### **4.1 Right to be accompanied**

If you are to be accompanied, you should inform your manager/the disciplinary hearing manager within a reasonable time before the meeting/hearing and in any event at least 24 hours prior to the meeting/hearing. Your companion can be a work colleague or trade union representative (including full time official attending as a representative). If you have a requirement where additional support would help you as outlined in section 3.2 of this policy, you may be accompanied by a family member or friend if this is a more appropriate way to support you.

Your companion may address the meeting/hearing by explaining and summing up your case and responding on your behalf to any views expressed at the hearing. They may confer with you (privately if you wish) during the hearing but may not answer questions on your behalf. They also may not address the hearing if you do not wish then to do so, nor may they prevent the person chairing the hearing from explaining the case.

We fully encourage you to directly represent your views at the hearing. We recognise there can be exceptional circumstances where emotions and stress may make this difficult. If for this reason it is not going to be practicably possible for you to directly represent your views the person chairing the hearing, following advice from Human Resources, may decide, with your agreement, to allow your companion to support you with communication. Your companion however still cannot answer on your behalf. If a question arises directly about your views, it will of course have to be you that responds to this as it is not appropriate for your companion to relay your views. If the hearing has already started and you feel you cannot directly express yourself, we may adjourn and either take a break or we may decide to postpone the remainder of the hearing and re convene at a later time or day.

It is your responsibility to ensure that your chosen companion is made aware of meeting arrangements and is willing and available to accompany you to the hearing. It is your responsibility to provide your companion with any correspondence or documents relating to the matter. If your chosen companion is unavailable on the first proposed hearing date, you may suggest a reasonable alternative time and date so long as it is not more than five working days after the original date wherever practically possible. If they are not available to attend within a reasonable timeframe, it is your responsibility to arrange an alternative companion.

### **4.2 Informal stage**

Your line manager will usually use the following process to resolve issues in most instances of minor infringements of conduct, behaviour, rules, policies or procedures.

- Hold a confidential, private meeting with you, explaining beforehand that this is an informal meeting.
- Highlight the problem, issue or concern.
- Ask you to provide an explanation.
- Explain the improvement required how your conduct will be reviewed and over what period. This may, for example, include training or coaching.

Following the meeting, you will be provided with a copy of the informal note to review and confirm that they accurately reflect the matter. If you do not agree the accuracy of the notes, you should provide a corrected version. If your manager agrees that your version is accurate, the amendments will be made. If your manager does not agree that your version is accurate, both versions will be kept on record acknowledging that what was said at the meeting is not agreed.

If your line manager has concerns about your performance and is considering discussing a Performance Improvement Plan (PIP) with you, they must use the procedure outlined as part of the Improving Performance Policy.

If your misconduct is deemed more serious, or your conduct does not improve after informal action, formal disciplinary action will be considered.

Your line manager will keep brief notes of any agreed informal action for reference purposes. This is simply to help with any reviews of progress over specified periods.

### **4.3 Formal Stage**

#### **4.3.1 Investigation**

The steps we take in an investigation and the amount of investigation we carry out will depend on the allegations/situation and will vary from case to case. This will be carried out thoroughly and as quickly as possible in all the circumstances.

Confidentiality will be maintained, as far as is reasonably practicable, during the investigation and throughout the disciplinary process, should this be started.

You will be advised of any investigation verbally, where possible, and thereafter in writing, confirming the allegation and details regarding attending an investigatory meeting.

The purpose of our investigation:

- is to investigate the allegations to determine whether there is sufficient evidence to convene a disciplinary hearing; and whether it is appropriate to do so in the circumstances.
- is not to decide whether you are guilty of the alleged misconduct or whether a disciplinary sanction should be given.

Investigations will normally be conducted by a member of staff who is at least the grade above you.

You must co-operate fully and promptly with any disciplinary investigation, and this may include:

- Informing us of the names of relevant witnesses
- Disclosing relevant documents and allowing us to review them and/or
- Attending fact finding meetings at which we will take statements from you

On conclusion of an investigation, the investigating manager will submit a report of their findings and recommendations to HR.

There are two possible recommendations of the investigation:

- No formal action. Where no formal action is recommended this is the end of the process and a file note of no formal action will be made. Informal actions may be recommended.
- Formal action. Where formal action is recommended, you will be invited to a formal disciplinary hearing.

All outcomes will be communicated to you in writing.

Investigations will be managed in as prompt a timeframe as possible, but the nature of the alleged misconduct and key witness/sources of information availability can add to the time needed. The overall aim is to investigate in as much detail as practically possible ensuring fairness and transparency in the process for all involved.

#### **4.3.2 Anonymising witness statements**

We recognise that some members of staff may be reluctant to provide evidence for an investigation. Any investigating manager will explore why they are reluctant to give evidence, provide reassurance and seek to resolve any concerns they have.

We will avoid anonymising witness statements whenever possible. This is because the person under investigation is likely to be disadvantaged when evidence is anonymised as they will not be able to effectively challenge the evidence against them.

Only in exceptional circumstances where a witness has a genuine fear of reprisals and/or is vulnerable as a result would an investigating manager discuss with the Head of Human Resources or their deputy whether a witness statement is anonymised. However, if the matter becomes subject to legal proceedings, and it is necessary in the interests of fairness, we may be required to disclose the names of any anonymous witnesses.

#### **4.3.3 Suspension**

Under certain serious circumstances, including for example, but not limited to allegations of harassment, bullying, theft and violence, serious misconduct, we may decide to suspend you on full pay (unless otherwise stated in your contract of employment) while we investigate the matter. This is not a disciplinary sanction, but a way of ensuring that a full review of the circumstances can take place as effectively as possible. Where a decision to suspend is taken:

- You will be advised of a period of suspension verbally, where possible, and thereafter in writing.
- While suspended you should not visit our premises or contact any of our clients, customers, suppliers, contractors, or staff in relation to the matter, unless you have been authorised to do so by the investigating manager.
- You will be advised in writing when a period of suspension is lifted.

The Head of Human Resources or a delegated deputy in conjunction with your Head of Service or a delegated deputy will approve any period of suspension.

We will keep the need to suspend you under review and limit any period of suspension where practicably possible.

#### **4.3.4 Disciplinary hearing**

Following an investigation, if it is considered that there are grounds for continuing with the disciplinary process, we will arrange a disciplinary hearing within a reasonable timeframe.

Hearings will normally be chaired by a member of staff who is at least the grade above you and, where dismissal is one possible outcome, it will be chaired by at least a Grade 8 manager. HR will coordinate the appointment of the disciplinary manager.

We will inform you in writing of:

- The date, time and place of the hearing
- Your right to be accompanied at the hearing by a workplace colleague or a trade union representative, if you are a member
- The allegations against you and the evidence relating to those allegations
- The possible consequences

We will provide you with supporting evidence gathered during the investigation and copies of any documents which will be referred to at the disciplinary hearing.

This will usually include complete copies of notes, interview transcripts that we consider to be relevant and witness statements unless we consider that there are good reasons for a

witness's identity to remain confidential. In such cases, we will not provide you with a complete copy of the witness's statement but will give you as much information as possible whilst maintaining confidentiality.

We will give you at least five working days' notice of a disciplinary hearing to allow you a reasonable opportunity to consider the information and prepare your case.

At a disciplinary hearing, the manager will:

- explain the allegations against you,
- refer to the evidence that has been gathered,
- explain the expected standards of conduct and how you have allegedly breached these,
- give you an opportunity to respond, set out your case, ask questions and present any evidence of your own.

We may need to adjourn the disciplinary hearing to carry out further investigations. In such cases, we will give you reasonable opportunity to consider any new information before the reconvened disciplinary hearing so you can respond.

On conclusion of the hearing, the disciplinary manager will notify you in writing of their decision and the reasons for it within a reasonable time after the hearing, and usually within ten working days.

If the decision is delayed further for unavoidable reasons such as illness this will be communicated in writing.

The possible outcomes of the disciplinary hearing include:

- No action. Where no action is recommended this is the end of the process and a file note of no action will be made.
- Formal sanction. Where a formal disciplinary sanction is to be applied, this will be in line with Section 1.3.4, below.

#### **4.3.5 Disciplinary sanctions**

There are four formal disciplinary sanctions, a note of which will be recorded on your personnel file for the stated periods

- First formal written warning We may issue a 6-month first formal written warning if your behaviours or conduct don't meet our standards or values, after which it will no longer be considered active.
- Second formal written warning: We may issue a 9-month second formal written warning if your behaviour or conduct hasn't improved, if you carry out a further act of misconduct or if the matter is sufficiently serious, after which it will no longer be considered active.
- Final written warning: We may issue a 12-month final written warning if your behaviour or conduct is still unsatisfactory, if you carry out a further act of misconduct or if the matter is sufficiently serious, after which it will no longer be considered active.
- Dismissal: we may dismiss you if you are found to have committed a further act of misconduct during the active period of a final written warning (whether or not it is related to the original misconduct). We may also dismiss you based on a combination of acts of misconduct if the conduct in its totality merits dismissal. We may dismiss you for a first act of misconduct if this amounts to gross misconduct. If you are dismissed for gross misconduct, you will be dismissed immediately without notice or pay in lieu of notice.

The level of sanction given will depend on the nature and seriousness of the issue.

As an alternative to dismissal, or in addition to a written or final written warning, we may apply the following disciplinary sanctions:

- Demotion (with a consequent reduction in salary and, where appropriate, removal of any benefits associated with your previous level or position).
- Alter your role or responsibilities.
- Loss of future pay increment
- Withdrawal of other specific contractual or non-contractual benefits.

If you are given a disciplinary warning, we will confirm this in writing, setting out:

- The nature of the misconduct.
- The level of the warning i.e., first, second, final written warning.
- How long the warning will remain active.
- How you can improve.
- A reminder that if there is no improvement, or a further breach occurs within the specified period, that further disciplinary action will be taken and in the case of a final written warning, that you may be dismissed.
- The likely consequences of further misconduct in the active period; and
- Your right to appeal against the decision.

If you are dismissed following a disciplinary hearing, we will confirm this in writing, setting out:

- The reasons for your dismissal.
- The date on which your employment contract will end.
- Whether you are being dismissed with or without notice (and if you are being dismissed with notice, the notice period which applies); and
- Your right to appeal against the decision.

#### **4.3.6 Appeal**

If you disagree with a disciplinary decision, you can appeal in writing within five working days of being informed of the decision.

You must send your appeal letter to People Operations either by email to [peopleoperations@sqa.org.uk](mailto:peopleoperations@sqa.org.uk) or by mail to People Operations, Lowden, 24 Wester Shawfair, Dalkeith, Midlothian, EH22 1FD.

Your letter must set out the full grounds for your appeal. You should confirm whether you are appealing against:

- Our decision that you committed the acts of misconduct or gross misconduct.
- The level of disciplinary sanction imposed; and/or
- Procedural failings on following the disciplinary policy

If you appeal against a disciplinary decision, we will arrange an appeal hearing within a reasonable time and we will inform you in writing of:

- The date, time and place of hearing; and
- Your right to be accompanied at the hearing

If you raise any new matters in your appeal letter or at your appeal hearing, we may need to carry out further investigations prior to you being notified of the outcome.

The appeal manager will notify you in writing of their decision within a reasonable time after the appeal hearing, within 10 working days. If there is an unavoidable delay in making this decision this will be communicated to you in writing.

There are three possible outcomes of your appeal:

- Confirmation of the original decision and sanction.
- Confirmation of the original decision but substituted with a lesser sanction.
- Cancellation of the original decision and sanction.



If you appeal against dismissal, the date on which your dismissal takes effect will not be delayed pending the outcome of the appeal.

If an appeal manager revokes a decision to dismiss you, we will reinstate you and pay you for the period between your original dismissal taking effect and your reinstatement (less payments made to you in respect of any outstanding entitlements), and your continuous service will not be affected. The appeal manager may impose a lesser sanction at the time of reinstatement.

The appeal must be heard with impartiality by either a Head of Service or a member of EMT. HR will coordinate the appointment of the appeal manager and ensure, wherever reasonably possible that the person hearing the appeal has not previously been aware of the disciplinary case.

## **4.4 Additional Information**

### **4.4.1 Attendance at meetings**

If you cannot attend a meeting or hearing you must inform us immediately and explain the reason why. If there is good reason for non-attendance, we will re-arrange the meeting on the first occasion. If you fail to attend the rearranged hearing, it will take place in your absence. Your trade union representative or workplace colleague may still attend in their original capacity.

If you are on sick leave, including if you are suspended from work, and it appears that is likely to remain the case for an extended period, we may require you to cooperate in obtaining a medical report to determine whether or not you are sufficiently fit to attend a disciplinary hearing. If it is advised that you cannot attend for medical reasons, we will give you the opportunity to make written representations.

We will consider and assess any Occupational Health advice however we will also reserve the right to carry on with any investigation or disciplinary process even if you are on a period of sick leave.

If you fail to attend without good reason, we will treat this as misconduct in itself. If you are persistently unable or unwilling to attend, we will make a decision on the evidence available to us in your absence.

### **4.4.2 Confidentiality**

You must treat as confidential any information communicated to you in connection with an investigation or disciplinary matter.

### **4.4.3 Criminal allegations**

We will not usually put disciplinary proceedings on hold pending the outcome of criminal proceedings. If you are unable or have been advised not to attend an investigation meeting or disciplinary hearing or to say anything about a pending criminal matter, we will normally make a decision based on the evidence available to us.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

### **4.4.4 Equalities**

If any aspect of this policy causes you difficulty, please inform HR Shared Services.

The disciplinary policy and procedure will be followed without discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

#### **4.4.5 Note taking & recording**

A note taker will be present at investigation meetings and at disciplinary and appeal hearings, to take notes of what is discussed, and any outcomes agreed. We will send you a copy of these notes. The minutes will be recorded and held in your personnel file for the applicable retention period.

Unless we have agreed otherwise, we, you, or anyone accompanying you, must not make electronic recordings of any meetings or hearings conducted under this disciplinary policy.

Following a formal stage meeting or hearing, you will be provided with a copy of the minutes to review and confirm that they accurately reflect the meeting. If you do not agree the accuracy of the notes, you can provide a corrected version. If the investigating/hearing manager agrees that your version is accurate, the amendments will be made. If the investigating/hearing manager does not agree that your version is accurate, both versions will be kept on record acknowledging that what was said at the meeting is not agreed.

#### **4.4.6 Timescales**

In some circumstances it may not be possible for us to meet the timescales in this policy. This may include where a matter is complex, requires detailed or wide-ranging investigation, or if relevant personnel are unavailable. If this is the case, we will tell you the reason for the delay and the revised timescales in writing.

## **5 Compliance**

This policy does not form part of your contract of employment, it does however, impose obligations on you that you must observe and comply with.

## **6 Definitions**

### **6.1 Examples of misconduct**

Misconduct is where inappropriate behaviour or action breaks workplace rules

The following are examples of behaviour that could be viewed as misconduct, and which may result in disciplinary action being taken against you. This list is not exhaustive.

- Excessive personal use of our telephones, internet, or email
- Bullying
- Harassment
- Failure to act in good faith and in the best interests of our business, customers, and staff
- Minor breach of our Code of Conduct [here](#)
- Minor damage to, or unauthorised use of, our property or that of a colleague, contractor, customer or member of the public
- Negligence
- Obscene language or other offensive behaviour
- Persistent poor timekeeping
- Refusal or failure to carry out a reasonable instruction
- Time-wasting
- Unauthorised absence

### **6.2 Examples of gross misconduct**

The following are examples of behaviour that could be viewed as gross misconduct. Gross misconduct is likely to result in your dismissal without notice or pay in lieu of notice. This list is not exhaustive.

- Theft or fraud
- Serious instances of bullying
- Serious instances of harassment
- Physical violence or bullying
- Deliberate and serious damage to property
- Serious misuse of our property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Discrimination, harassment or bullying related to a relevant protected characteristic
- Sexual harassment
- Bringing our organisation into serious disrepute
- Serious incapability at work brought on by illegal drugs or alcohol
- Causing loss, damage or injury through serious negligence
- Serious breach of health and safety rules
- Serious breach of confidence
- Serious breach of our Code of Conduct [here](#)
- Any serious serial or persistent incidents of the matters referred to at 6.1

### **6.3 Misconduct outside of the workplace**

It is important to note that you may face disciplinary action for misconduct or gross misconduct outside of your normal workplace or working time.

For example, if your behaviour in front of external clients at a social occasion reflects badly on us. Any action taken would depend on how serious we see the misconduct and whether it could have a detrimental effect on our reputation/business.

### **6.4 Conducting workplace investigations**

#### **Step 1:**

Organisational preparation;

- Human Resources will appoint an appropriate investigator

#### **Step 2:**

The investigating manager will undertake preparation by;

- drafting the investigation plan
- identifying who might need to be called to an investigation, what evidence might need to be gathered and how to gather it
- contacting parties involved in the matter to invite them to make a statement

#### **Step 3:**

The investigating manager will handle the investigation meeting by;

- planning what questions will be asked
- interviewing the parties involved and any relevant witnesses
- handling reluctant witnesses or refusals to meet appropriately

#### **Step 4:**

The investigating manager will gather evidence by;

- conducting interviews and finalising witness statements
- collecting any relevant written records and documents
- collecting any relevant and appropriate physical evidence

**Step 5:**

The investigating manager will write an internal investigation report by;

- planning the structure of the report
- reporting what is likely to have happened – using the balance of probabilities
- making a recommendation based on their findings
- submit the report to Human Resources

## **7 Related SQA policies and legislation**

Other policies may be invoked where they are deemed more appropriate to the circumstances. The HR policies can be found [here](#):

- Attendance management
- Addressing Financial Irregularity [here](#)
- Code of Conduct
- Dignity at work
- Equality, Diversity and Inclusion
- Gender Identity and Transitioning at Work
- Grievance
- Improving Performance
- Probation
- Social Media for Personal Use
- Whistleblowing

## Flowchart

