



Rhagoriaeth i bawb – Excellence for all

Arolygiaeth Ei Mawrhydi dros Addysg
a Hyfforddiant yng Nghymru

Her Majesty's Inspectorate
for Education and Training in Wales

Discipline Policy and Procedures

Information sheet

Information box

For further advice contact: Human Resources

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Version control

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1.0	Jenny Wagner	April 2014	Original
1.1	Phil Sweeney	July 2014	Clarification of use of formal investigations and sharing of evidence
1.2	Phil Sweeney	31 July 2014	Amendments following feedback from FDA
1.3	Jenny Wagner	September 2014	Agreed version following TUS review

Impact Assessment

- A business rationale assessment has been carried out and this policy contributes to Estyn's strategic objectives and delivery principles.
- An equality impact assessment has been carried out and this policy is not deemed to adversely impact on any people on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Policy agreement

This policy and its associated procedures are agreed by Estyn's management and Trade Unions.

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Discipline Policy

Policy principles

- 1 All employees are responsible for ensuring their behaviour meets the standards expected of them. The Civil Service Code and Estyn's [Staff Handbook](#) and [Employment Guide](#) outline the key principles of behaviour expected from all employees.
- 2 Separate policies and procedures cover attendance, performance management and other capability issues.
- 3 All cases of misconduct should be dealt with promptly, transparently, fairly and consistently.
- 4 Everyone involved in the discipline process is expected to:
 - show respect for others;
 - work together to resolve the issue; and
 - maintain confidentiality.

Scope of the policy

- 5 This policy and its related procedures apply to all employees, including those on probation and fixed term appointments.
- 6 Although this policy does not apply to agency workers or workers on loan or secondment, Estyn expects such workers to act in accordance with the expected standards of conduct and behaviour. Non-compliance with such guidance could result in appointments being terminated in accordance with relevant agreements between Estyn and the employer/agency and disciplinary action being taken by the substantive employer. Any worker may also be asked to participate in a disciplinary procedure within Estyn, as a witness for example.

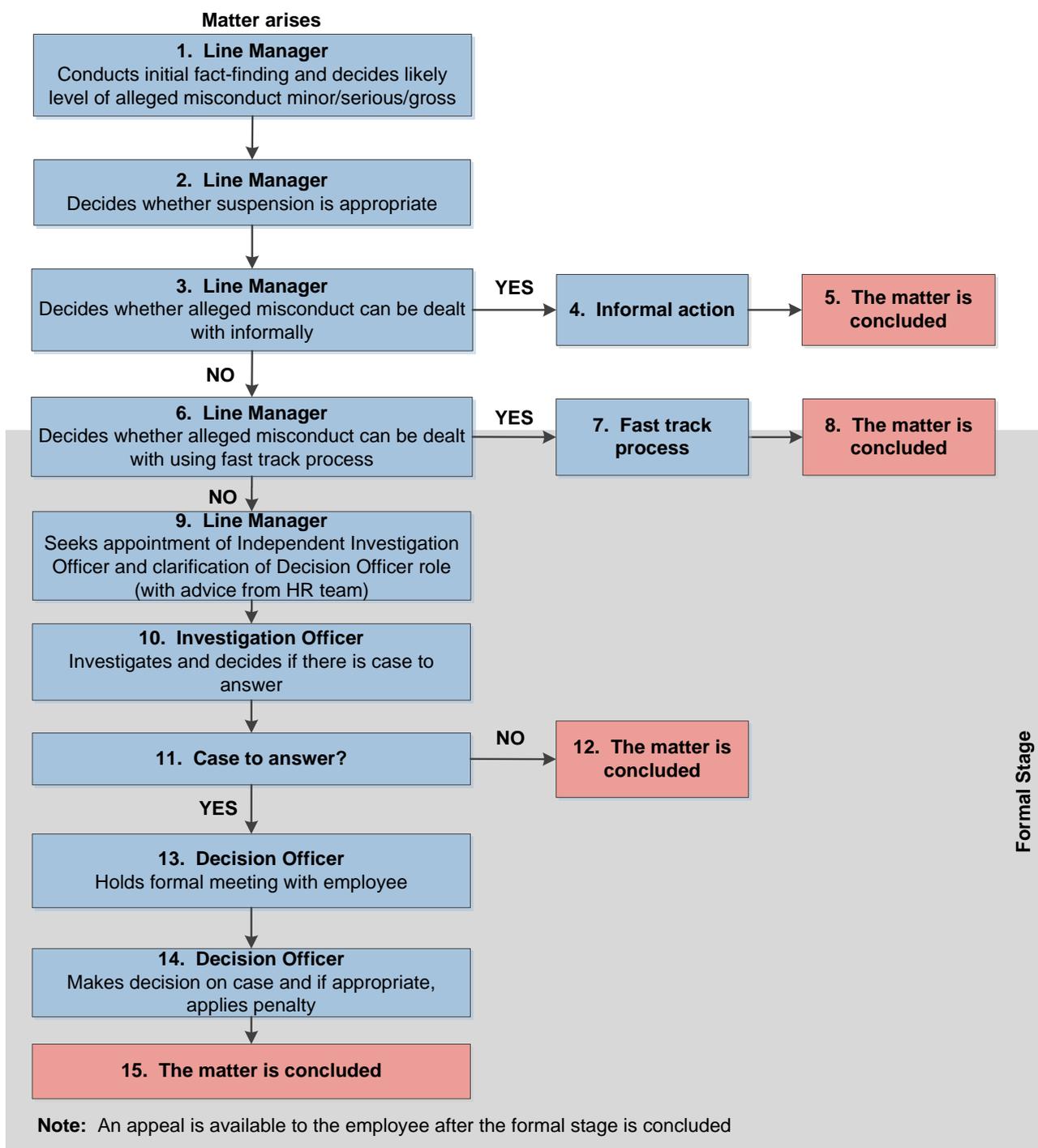
Policy summary

- 7 Misconduct may have occurred where it is suspected or alleged that an employee has failed to meet acceptable standards of behaviour or conduct in any way. Where misconduct is proven, a range of penalties may be imposed, up to and including dismissal.
- 8 Key areas covered by this policy include:
 - initial assessment, including levels of seriousness of misconduct;
 - informal and formal action;
 - investigations and meetings/hearings; and
 - decision-making (including penalties).

Discipline Procedure

Process overview

A text version of this flowchart is available on page 12.



Introduction

- 9 This document sets out the procedure to follow when it is suspected or alleged that an employee has failed to meet acceptable standards of behaviour or conduct in any way. It should be read with the [‘Discipline policy’ \(on Page 1\)](#).
- 10 This procedure must be followed to ensure the statutory code of practice laid down by the Advisory, Conciliation and Arbitration Service (ACAS) is adhered to.
- 11 The [Discipline Advice](#) contains tips and templates for use throughout the process, including a Decision Officer’s checklist. Additional support is also available through the [Discipline Advice for Employees](#) and the following ‘How to’ guides:
 - [How to hold a formal discipline or grievance meeting/hearing](#)
 - [How to investigate discipline and grievance cases](#)
 - [How to assess the level of misconduct](#)
 - [How to decide a discipline penalty](#)
- 12 Managers involved in discipline action at any stage should also read the [ACAS statutory Code of Practice on disciplinary and grievance procedures](#). Where necessary, managers should consult HR for advice.
- 13 All actions in this procedure should normally be taken within the set times. However, it is recognised that this is not always possible due to the complexity of the case or circumstances such as working patterns, annual leave, public holidays and/or employee absence or disability, in which case all actions should be done as soon as reasonably possible. The reasons for any delay should be recorded.
- 14 If any reasonable adjustments are required to enable the employee to attend meetings or hearings, or read correspondence, they should inform the manager accordingly. Managers will need to put these adjustments in place before taking action.
- 15 A summary of the procedure is in the flowchart: [Process overview](#).

Following the procedure

- 16 In simple terms, alleged or suspected misconduct involves line managers, who will usually be the Decision Manager unless there is a conflict of interest but will not be the Investigating Officer, making a series of decisions according to the individual circumstances of the case. The line manager must:

Decide the level of seriousness of misconduct
Decide whether removal from the workplace/suspension is appropriate
Decide whether matters can be dealt with informally or that formal action should proceed (including fast track)
Decide whether it is appropriate to share all of the information with the employee at this stage to ensure a fair and objective investigation.
Notify the individual of the investigation in person or by telephone. Explain the reasons for instigating the investigation, the reasons for not sharing all of the information with the employee at this stage (if applicable) and signpost the employee to sources of advice and support.

Have the matter investigated or gather facts. In cases involving allegations against an employee who is a trade union representative; the matter will be discussed with an official employed by the union, after obtaining the employee's agreement.
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Inform the employee of the decision in writing and meet with the employee to discuss the allegations ensuring:
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- the right to be accompanied; and
- the opportunity to put forward mitigation.

Decide whether the case is proven or not (when the line manager is the Decision Officer)
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Decide the appropriate penalty (when the line manager is the Decision Officer)
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- 17 The Decision Officer must always be at least one management level higher than the employee concerned e.g. an Assistant Director could be the Decision Officer for an HMI. In most cases the employee's line manager will take on the role of Decision Officer.

Initial assessment

- 18 There are two key initial decisions for the line manager to make when misconduct is alleged or suspected:

- the likely level of seriousness; and
- whether the action warrants removal or suspension.

Deciding the level of seriousness of misconduct

- 19 The line manager should decide what the seriousness of the alleged misconduct is likely to be, specifically:

- minor misconduct;
- serious misconduct; or
- gross misconduct.

- 20 Examples of each are given in the [How to: Assess the level of the misconduct](#) guide.

- 21 As soon as the line manager is clear about the likely level of the alleged misconduct they should advise the employee of:

- the likely penalty if misconduct is proven;
- the investigation that needs to be carried out;
- the reasons for the investigation; and
- sources of advice and support.

Deciding whether to suspend/remove an employee

- 22 In serious cases of misconduct, suspension may be appropriate whilst the alleged misconduct is investigated. Line managers should not use suspension as a penalty. It should be made clear to the employee the reason for the suspension and that it is not disciplinary action and does not assume any guilt on behalf of the employee being

suspended. The suspension period should be as brief as possible and kept under regular review by the line manager.

- 23 As suspension is a serious decision, HR should be consulted before any suspension action is taken. Circumstances when suspension may be appropriate could include where:
- there has been a serious breakdown in the relationship between the employee and Estyn;
 - there is a risk to other employees, property or customers; or
 - there is a risk that the employee may tamper with evidence required for the investigation and/or influence witnesses.
- 24 Suspension may be appropriate immediately following an incident or later in the process; for example, at a point during or after the fact-gathering or investigation when evidence comes to light.
- 25 Suspension will normally be with full pay.
- 26 Suspension should not be confused with management action to remove the employee from their current place of work; this removal may be required immediately following an incident in order to defuse a conflict situation. An example of this type of management action might be instructing people to work in a separate area of the office or sending the employee(s) home for the rest of the day to allow for a cooling-off period. The line manager must be very clear with the employee that they are not being suspended and will be expected to return to work as normal the next working day. Management action is a means of bringing a situation under control and will not in itself be an indicator of the seriousness of the potential misconduct.

Informal action

- 27 Instances where minor misconduct is identified may not require the line manager to take formal action. The matter can be addressed quickly and informally through, for example, a discussion about expectations and standards of behaviour or through counselling, training, coaching or mentoring.
- 28 During any informal discussion, the line manager should explain the basis for their concerns, provide any evidence which has come to light and give the individual the opportunity to explain their actions or clarify the facts of the case. Knowledge of an underlying cause may help to identify the most appropriate course of remedial action to ensure that the employee's conduct returns to a satisfactory standard. As with formal disciplinary procedures, it is important that any informal warnings or action are based upon facts and evidence and not unsubstantiated complaints or suspicions.
- 29 The line manager should listen carefully to what the employee has to say about the issue, as it may become evident that there is no evidence of misconduct and that actions may have been mis-interpreted. If this is judged to be the case, this conclusion should be clearly communicated to the employee and the matter should not be referred to again.
- 30 If there is evidence of minor misconduct, the line manager should discuss and agree any necessary improvements, how they might best be achieved, by when, and if appropriate what the line manager will do to help the individual to address any identified shortcomings.

A period of monitoring or regular reviews of progress may also be agreed as appropriate to the circumstances.

- 31 Following the informal discussion, the line manager should continue to monitor behaviour and provide advice and support where needed. These discussions and any further actions should be recorded on the individual's Continuous Performance Management (CPM) Form. The CPM form will not form part of an employee's formal disciplinary record but it may help the manager to decide, after consultation with the HR team, whether the employee's subsequent pattern of conduct should lead to the formal disciplinary procedure being initiated. Informal records which have been kept for management purposes outside of personnel files may be referred to subsequently when fresh breaches of discipline become the subject of formal disciplinary proceedings.
- 32 Line managers should advise employees that further misconduct may lead to formal action being taken in future. A note of all line management action should be made on the employee's CPM Form. As this is informal action, the note should not be placed on the employee's personal HR file at this time.
- 33 If line managers are in any doubt about whether an incident of misconduct should be dealt with informally they should discuss the matter with the HR team who will provide advice on the correct course of action.
- 34 If, during an informal discussion, it becomes obvious that the matter is potentially serious the meeting should be adjourned. The employee should be advised that the matter will be investigated under the formal disciplinary procedure and that they will receive written confirmation of the allegations and the arrangements for a formal investigation as soon as possible. If the alleged misconduct may mean that the employee has committed a criminal offence, the line manager must immediately inform the Corporate Services Director.

Formal action

- 35 In certain instances of minor misconduct, or where informal action has not stopped further minor misconduct from taking place, it may be necessary for the line manager to proceed to the formal process. In all cases of alleged serious or gross misconduct, including safeguarding allegations, the formal procedure must be followed. To evidence good governance, the formal action will be used when an employee is the subject of a formal complaint received from an external party, however, using the formal process will not, in itself, be an indicator of the seriousness of the potential misconduct or disciplinary penalty.
- 36 Further guidance on deciding the level of alleged misconduct can be found in the [How to: Assess the level of misconduct](#) guide.
- 37 At this stage, the line manager may consider whether using the Fast track process is appropriate.
- 38 Due to the serious nature of any safeguarding or other criminal allegations, Estyn's Safeguarding Officer, the Police and/or local authority social services will need to be informed and may take the lead in any subsequent investigation. For safeguarding or other allegations of criminal behaviour where a criminal investigation is launched, legal advice will be sought on whether to suspend the discipline procedure until the criminal investigation is concluded.

- 39 When the line manager considers that the formal process is appropriate to use they must seek advice from the HR team regarding the appointment of an Investigating Officer and the role of the Decision Officer and also inform the relevant Director that the process is underway. If the disciplinary case is not subsequently resolved within 40 working days the case should be reviewed by either the Corporate Service Director or a person in HR nominated by the Corporate Service Director. The purpose of the review is to ensure that everything is being done to progress the case, that the correct process is being followed and that there are no unnecessary delays.

Fast track process

- 40 A fast track process may be appropriate in straightforward cases where the evidence is readily available and the facts of the case are not likely to be in dispute by any of the relevant parties.
- 41 The line manager should explain the fast track process to the individual subject to the formal action. The fast track process should only be used with the written agreement of the individual following consultation with the individual and HR. Line managers will suggest to the individual that they seek advice from their trade union, Human Resources or other advisor before agreeing to use the fast track process.
- 42 The fast track process should never be used for misconduct cases which could result in dismissal. This is likely to be the case where there is alleged gross misconduct.
- 43 In fast track cases, a simple fact-gathering exercise should take place with only the following discipline procedure steps required:
- the allegations being put to the employee in writing, together with the evidence available;
 - a meeting with the line manager (who will take the role of Decision Officer) where evidence will be presented and the employee will have an opportunity to present their case together with any mitigation (at this meeting the employee has the right to be accompanied by a trade union representative or work colleague); and
 - the line manager will advise the employee of the decision and follow this up in writing, which the individual will have an opportunity to appeal.
- 44 The fast track process should be stopped by the line manager at any time if it is evident that the scope of the misconduct is broader and more complex than initially believed, or if the line manager themselves may have been implicated in the alleged misconduct. The individual subject to the formal action may also request that the fast track process be stopped. In such cases, the line manager should seek HR advice to consider if the appointment of an independent Investigation Officer, under the formal process, is required.
- 45 Further guidance on when it is appropriate for line managers to use the fast track process can be found in the [Discipline Advice](#).

Investigations

- 46 Misconduct cases that are not straightforward will need a formal investigation rather than just the simple fact-gathering exercise that is suitable for the fast track process. The aim of the investigation is to collect and record the facts necessary to decide whether there is a

case to answer or not. Managers may find the [How to: Investigate discipline and grievance cases](#) guide helpful.

- 47 The employee and relevant members of staff may be required to participate in the investigation to establish the facts, including attending an interview. If the employee or a member of staff is required to attend an interview, they will be informed in writing of the nature of the investigation and the employee being investigated will also be provided with a copy of any relevant evidence available, e.g. a letter of complaint. The employee will be given at least five working days' notice of the meeting so that they have time to prepare and may be accompanied by a work colleague or trade union representative. Anyone who is interviewed will be provided with a note of the meeting for a factual accuracy check.
- 48 In investigations such as these, the function of investigating the misconduct should no longer remain with the individual's line manager although they would retain the role of Decision Officer. In such cases, the line manager should seek appointment of an independent Investigation Officer from HR (who will liaise with the relevant Director). If the line manager is unsure whether to seek appointment of an independent Investigation Officer or of their own role, they can seek further advice from HR.
- 49 HR will check to ensure there is enough evidence to support the need for an investigation.
- 50 An Investigation Officer will not decide if a case is proven or whether a penalty should be imposed, but will compile a written report for the Decision Officer indicating whether, they believe there is a case to answer or not.
- 51 The Decision Officer should check the report is comprehensive and that it meets the terms of reference for the investigation. If not, the Decision Officer should specify in writing what they have found unsatisfactory and request any further information they require.

Informing and meeting with the employee

- 52 If there is **no case to answer**, the Decision Officer must write to the employee to confirm the decision and say that no hearing is necessary. A copy of the report should be enclosed.
- 53 If there is **a case to answer**, the Decision Officer will need to take further formal action and should write to the employee who has been investigated within five working days of receiving the report and instruct them to attend a formal hearing to discuss the findings of the investigation. The report and witness statements should be enclosed.
- 54 The Decision Officer should:
 - Inform the employee of the nature of the allegation which needs to be answered and the level of offence, e.g. minor, serious or gross;
 - give the employee at least five working days' notice of the hearing;
 - tell the employee they have the right to be accompanied by a trade union representative or work colleague. If the employee or their companion cannot reasonably attend the hearing, the employee should propose several new dates to the officer to allow the hearing to take place within five working days of the original hearing date. If the employee fails to engage or cooperate with hearing arrangements and/or fails to attend the scheduled or re-scheduled hearing, consideration of the discipline case will go ahead in their absence based on the available information;

- ask the employee if any specific requirements or adjustments need to be made to enable them to attend the hearing;
 - enclose the investigation report; and
 - refer the employee to sources of advice and support.
- 55 The Decision Officer should then meet with the employee to hear the case with a note-taker from HR in attendance to make a record of proceedings.
- 56 If an investigation shows clearly that the Decision Officer is implicated in the original allegation of misconduct, the case must be referred to the next senior manager in the Decision Officer's line management chain, or to a suitable alternative manager at the same grade, consulting HR as necessary.
- 57 If, at any stage of the discipline process, an individual feels that a bias is being shown by the HR team, the Decision Officer or, where applicable, the Investigation Officer the individual should refer the issue to the Corporate Services Director at the time the issue arises.

Deciding the outcome

- 58 The Decision Officer must decide whether the alleged misconduct is, in their considered opinion:
- proven; or
 - not proven.
- 59 The Decision Officer must notify the Executive Board members for any proven cases involving breaches of security, fraud or criminal matters. Where it is suspected that a criminal offence has been committed, the advice of the Executive Board should be sought in relation to notifying the police.
- 60 If the Decision Officer finds that a case of misconduct is not proven they must notify the employee and confirm that no further action will be taken. This should be confirmed in writing within five working days from the hearing. If suspended, the employee must return to work.
- 61 Estyn has a duty to refer on to the Disclosure and Barring Service the names of any employee (current or dismissed) that is considered to be a risk to children or vulnerable adults. This duty applies whether or not there has been a criminal case brought and regardless of whether the case of misconduct is proven. There could remain strong concerns, even though the evidence is not sufficient to dismiss or remove the individual from working with children or vulnerable adults. The procedure for making a referral to the Disclosure and Barring Service (DBS) is detailed in Annex A – Making a referral to the Disclosure and Barring Service (DBS).

Mitigation

- 62 The Decision Officer should decide whether the case has been proven or not before taking mitigation into account.

63 If the case is proven, penalties should be decided after the employee has been given the opportunity to put forward any mitigating circumstances and supporting evidence and after these have been given proper consideration by the Decision Officer.

Deciding an appropriate penalty

64 The Decision Officer must ensure that penalties are appropriate to the level of seriousness of the offence, whether minor, serious or gross misconduct.

65 Instances of minor misconduct do not necessarily merit a penalty.

66 Informal action is not a discipline penalty.

67 Penalties could be the following:

- **First written warning.** Appropriate in some instances of minor misconduct, or when informal action has not stopped further instances of similar minor misconduct. Valid for 6 months from notification
- **Final written warning.** Usually appropriate when another incident of minor misconduct occurs during the live period of a first written warning or when the misconduct is serious. Valid for 12 months from notification.
- **Dismissal.** For gross misconduct or when another incident of misconduct occurs during the currency of a final written warning.

68 For repeated misconduct, penalties will normally follow in the above order. However, the process is not sequential and, depending on the seriousness of the misconduct, a final written warning or dismissal may be an appropriate first penalty. The same type of offence may warrant a different penalty depending on individual circumstances, for instance where an employee has failed to follow Estyn procedure.

69 All penalties are subject to a right of appeal.

70 Further guidance on deciding the appropriate penalty can be found in the [How to: Decide a discipline penalty guide](#).

Informing the employee of the decision

71 The Decision Officer should normally make a decision within five working days of the meeting and immediately communicate this in writing to the employee.

Appeals

72 There is one right of appeal per stage in this procedure. The employee must set out the grounds for appeal in writing and whether they are appealing against:

- procedural errors; and/or
- the decision, including cases where new information/evidence has been raised that may change the outcome of the original decision.

73 Appeals on discipline matters will be heard, where this is possible, by someone senior to the person who made the decision being appealed. If this is not possible due to

operational circumstances, or for some other reason, the appeal for warnings but not dismissals may be heard by a manager at the same level as the Decision Officer or by one of Estyn's Non-executive Directors. The Appeal Officer will be impartial and independent of the original case wherever possible. An appeal cannot result in a sanction being increased.

Employee's actions

- 74 Employees have five working days from the date of receipt of the decision in which to send their written appeal to the Appeal Officer. The employee must:
- make clear whether the appeal is against a procedural error and/or the decision;
 - provide new information or evidence if this is the reason for the appeal; and
 - clearly state their desired outcome.

Appeal Officer's actions

- 75 The Appeal Officer will write to the employee normally within five working days of receiving the appeal to confirm its receipt and to invite them to a meeting. They should write to the employee:
- giving at least five working days' notice of the meeting; and
 - confirming the right to be accompanied by a trade union representative or work colleague.
- 76 At the meeting, the Appeal Officer should examine the decision-making process and the penalty given and decide whether these were reasonable. They should not reconsider the case in detail.
- 77 If new evidence is made available the Appeal Officer should consider any impact this may have on the final decision. The Appeal Officer should consult with HR before making a decision.
- 78 Normally within five working days of the appeal meeting, the Appeal Officer should reach a decision and inform the employee whether their appeal has been upheld or rejected.
- 79 The Appeal Officer's decision is final.

Record keeping

- 80 It is important that a written record is kept at all stages within the discipline process. Following the conclusion of the formal process the Decision Officer should send copies of the documents to HR to be held on the employee's personnel record.
- 81 Records must be protectively marked 'OFFICIAL', kept securely and handled in line with Estyn's *Information Assurance Policy* and *Records Retention Policy*.
- 82 Documentation should be managed in compliance with the requirements of the Data Protection Act 1998 at all stages of the process.

Process overview – text version

Matter arises

Step 1. Line manager conducts initial fact-finding and decides likely level of misconduct [minor/serious/gross]

Step 2. Line manager decides whether suspension appropriate

Step 3. Line manager decides whether alleged misconduct can be dealt with informally

Yes: go to step 4

No: go to step 6

Step 4. Informal action

Step 5. The matter is concluded

Step 6. Line manager decides whether alleged misconduct can be dealt with using fast track process (in consultation with HR and the individual)

Yes: go to step 7

No: go to step 9

Step 7. Fast track process

Step 8. The matter is concluded

Step 9. Line manager seeks appointment of independent Investigation Officer

Step 10. Investigation Officer investigates and decides if there is a case to answer

Step 11. Case to answer?

Yes: go to step 13

No: go to step 12

Step 12. The matter is concluded

Step 13. Decision Officer holds formal meeting with employee

Step 14. Decision Officer makes decision on case and if appropriate, applies penalty

Step 15. The matter is concluded

Note: An appeal is available to the employee after the formal stage is concluded.

Annex A – Making a referral to the Disclosure and Barring Service (DBS)

LEGAL DUTY:

Condition one: Has Estyn withdrawn permission for the person to work in regulated activity with children and/or vulnerable adults (either through dismissal or by moving the person to another area of work that is not regulated activity)? NB This includes where the person would or may have been dismissed or moved to other duties if the person had not resigned, retired or otherwise left their work

Condition two: Does Estyn think the person has (from one of the following):

- been cautioned or convicted of a relevant (automatic barring) offence; or
- engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk or harm]; or
- satisfied the Harm Test in relation to children and/or vulnerable adults [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child of vulnerable adult still exists]?

Duty to refer applies irrespective of whether another body has made a referral in relation to the same person

