



Title: **Disciplinary - Group Procedure**

Business functions: **Applicable to all functions across Sanctuary Group**

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Authorised by: **Group Director - Corporate Services**

Sanctuary Group:
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Objective

To outline the process for effective management of conduct related matters, and identify support measures required in order to achieve the expected standards of performance and behaviour.

Document applies to

All members of staff employed or carrying out work for Sanctuary Group (the Group) and all managers with line management responsibility

Review

Date	Details
March 2021	Amendment - Section 3.1 updated to clarify that meetings may be rescheduled within five days should an employee's companion be unable to attend on the original date.
January 2021	Amendment - Amendment to clarify that breach of Personal Protective Equipment (PPE) guidelines may constitute gross misconduct (section 4).
June 2020	Amendment - Addition of covert recording of meetings as an example of behaviour that could constitute gross misconduct (section 4).
April 2020	Formal review. Minor amendments and formatting changes. Removal of the Disciplinary - Group Policy, as this procedure now sits under the HR - Group Policy .

Appendices

Appendix 1 - Informal Caution Template Letter

Appendix 2 - Guidelines on Levels of Authority

Appendix 3 - Police Notice of Intent to Commence Internal Investigation

1. Informal action

1.1 Employee guidance:

- You are responsible for achieving agreed standards and performance levels.
- If there are concerns relating to your conduct, your manager may raise this with you informally and you may receive an informal caution. Any informal caution will be confirmed in a letter, detailing the improvements required.
- You may discuss any support measures which may help with your manager.
- You do not have a right to be accompanied to any informal meetings.

1.2 Manager guidance:

- In many cases, an informal discussion with an individual can often resolve a conduct related matter and this method must be used wherever appropriate.
- Before taking formal action, except in the case of alleged gross misconduct, you must make every effort to resolve the matter by informal discussions with the individual and if appropriate, conduct an informal investigation to ascertain all relevant details.
- An informal discussion must be followed up with a letter to the employee advising that they have been issued with an informal caution, setting out the improvements required, timescale, support offered and the consequences of failing to achieve this.
- The purpose of the informal caution is to advise the employee that if they fail to improve as set out in the informal caution letter, and/or Performance Improvement Plan (PIP), formal action may be considered. Unlike a formal caution which is 'live' for a specified period, there is no 'live' timescale for an informal caution.
- An informal caution is designed to give the employee the opportunity to reach the required improvements. Therefore, appropriate support should always be considered.
- In cases where an informal approach fails to resolve matters, or where the matter is judged to be more serious at the outset, it must be noted that formal action be initiated.
- You should refer to the relevant HR Business Partner (HRBP) for advice.

2. Investigations

2.1 Guidance for the Investigating Officer:

- If an investigation is required and appropriate, this should be carried out fully, without unreasonable delay and all parties must be committed to a quick resolution.
- Where possible, investigations should be concluded within 14 calendar days.

2.2 What is involved in an investigation?

- This may involve interviews with the employee concerned, their line manager and any witnesses or third parties, and a review of policies, procedures and other documentation as appropriate.
- You should collect all relevant information and prepare a thorough and detailed report.
- You should request another neutral party to be present at the investigation meetings to act as an independent witness and note-taker.
- You must be impartial and have no previous involvement in the allegations.
- You should take reasonable actions to ensure confidentiality is maintained for all involved. This may involve reminding employees of their responsibilities regarding confidentiality, ensuring any information made available to the employee does not disclose the identity of other people without their prior consent, ensuring any correspondence regarding the allegations is sent securely and does not include unnecessary information, conducting investigation meetings in a private setting.
- The employee should be kept updated with the progress of the investigation, and any expected delays.

2.3 What happens when the investigation is concluded?

- You will provide your report and findings to the manager who will chair any subsequent disciplinary hearing. If it is not appropriate to provide the employee with a copy of the investigation report, the employee will be advised accordingly.
- It is not your responsibility to decide whether the case should proceed to a disciplinary hearing or what the outcome should be, however a recommendation should be made within the investigation report.
- The appropriate manager will review the investigation report and decide whether a disciplinary hearing is required. If so, they will invite the employee to a formal hearing.
- As the investigation officer, you should not usually be the person who chairs the disciplinary hearing, although in some situations this may be appropriate.
- Where an investigation shows there is no case to answer, the employee(s) must be informed in writing of this and that the matter has been concluded.

3. Formal action

3.1 Employee guidance:

- If, following an informal approach, you are unable to reach the required improvements within the specified timeframe, your manager will invite you to attend a formal hearing.
- In some circumstances, an informal approach may not be suitable, and the formal procedure may be implemented in the first instance.
- Your manager will inform you in writing of the allegations and you should be given enough time to prepare for a hearing once an invitation has been sent.

- You will have the right to be accompanied to any formal meeting by a current work colleague, staff council representative, or trade union representative.
- If your companion cannot attend on a proposed date, you can suggest an alternative date; so long as it is reasonable, and is not more than five working days after the proposed original date.
- You can also seek advice and guidance from your HRBP.

3.2 Manager guidance:

- You must inform your HRBP before any formal action is taken.
- No formal action should be taken until the case has been fully investigated and a disciplinary meeting is held.
- At every stage of the formal procedure you must advise the employee in writing of the nature of the complaint against them and give them the opportunity to state their case.
- At all stages, the employee has the right to be accompanied by a companion who must be either a staff council representative, a certified trade union official, or a current work colleague (witnesses are not to be brought to the hearing).
- Employees cannot be dismissed for a first disciplinary except for gross misconduct.
- An employee has the right to appeal against any formal disciplinary sanction.
- The disciplinary procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- Should further allegations be made or discovered during the investigation process, the employee must be made aware of these and offered the chance to respond in an investigatory meeting prior to any disciplinary hearing.
- All applicable evidence must be provided to the employee in advance of the hearing.

Stage	Details
Stage One - First Written Caution	<p>If, following a formal disciplinary hearing, the allegations are upheld and deemed misconduct, consideration must be given to issuing a first written caution, detailing the misconduct and the change in behaviour required.</p> <p>The employee must be advised that the caution constitutes the first stage of the disciplinary procedure. The next stage must be considered if there is no sustained improvement or change. They must also be advised of the right of appeal. Consideration should be given to any additional support to help the employee reach the required level of conduct.</p> <p>Managers must forward this formal caution letter to the HRBP assisting with the case to review before issuing to the employee. A written record of the caution must be kept for 12 months but is then considered 'spent' subject to achieving and maintaining satisfactory conduct required.</p>

Stage	Details
Stage Two - Final Written Caution	<p>Where the unsatisfactory conduct is deemed sufficiently serious, or there is a failure to improve under a current caution, consideration must be given to issuing a final written warning. This gives details of the misconduct, the improvement required and any appropriate support.</p> <p>The employee must be advised that the caution constitutes the second stage of the disciplinary procedure. The next stage must be considered if there is no sustained improvement or change, and this may result in dismissal. They must also be advised of the right of appeal.</p> <p>The HRBP must be in attendance at the formal meeting, and must review the formal caution letter before it is issued to the employee.</p> <p>A record of the caution is kept for a period of 12 months, but is then considered 'spent' subject to the employee achieving and maintaining the improvements required.</p>
Stage Three - Dismissal	<p>If there is still a failure to improve, or the conduct issue is severe, the final step in the procedure is dismissal.</p> <p>After the formal disciplinary hearing, the employee must be provided with written reasons for the dismissal, the date that the employment terminates, and be advised of the right to appeal. Contractual notice must be given to the employee in circumstances where the dismissal is not for gross misconduct. This will usually take the form of salary in lieu of notice in accordance with contractual entitlements.</p> <p>In exceptional cases, consideration may be given to action short of dismissal (such as demotion or transfer). Where this is the outcome, a plan should be agreed covering the move, when this will happen and the support the employee will be given. Thought should be given to whether it is necessary to communicate this change to others, any training needs the employee has, and other appropriate support. Such action also includes a final written caution being kept on file for 24 months.</p> <p>The HRBP must be in attendance at the formal meeting, and must review the formal caution letter before it is issued to the employee.</p>

- Guidance on levels of authority for precautionary suspension, formal action and appeals, can be found in the associated appendices relevant to the business unit.

4. Gross misconduct

- The list below, which is **not** exhaustive, provides examples of offences that are normally regarded as gross misconduct. Such incidents totally compromise working relationships and would normally result in dismissal. Examples include:
 - theft;
 - fraud;

- deliberate falsification of records;
- deliberate damage to property and equipment;
- fighting or assaulting (verbally or physically) another person;
- bullying and harassment;
- serious negligence which causes unacceptable loss, damage or injury;
- serious incapability through alcohol or abuse of illegal or prescription drugs;
- possession or custody of illegal drugs on our premises;
- unlawful discrimination or harassment on the grounds of sex, sexual orientation, race, disability, age, religion or belief or gender reassignment;
- refusal to carry out reasonable instructions;
- unauthorised entry to computer records;
- unauthorised use or disclosure of confidential information or personal data;
- any activity likely to bring the group into disrepute;
- breach of professional code of conduct;
- sleeping or being in a position conducive of sleep;
- covert recording of meetings or conversations;
- abuse of client, service user or resident;
- breach of health and safety rules, likely to endanger self or others (including breach of PPE guidelines);
- serious breach of trust; and/or
- unauthorised absence.
- If, after the investigation and hearing, the Group is satisfied that gross misconduct has occurred, the result is summary dismissal without notice or salary in lieu.

5. Suspension

5.1 Manager guidance

5.1.1 Who should be involved in the decision to suspend?

- Prior to any suspension being implemented, you must discuss this with the relevant Director and HRBP.
- The HRBP must seek approval from the HR Business Manager, who will inform the Head of Employee Relations of any decisions to suspend.
- Any agreed decision to suspend must then be communicated to the individual, in line with the authority levels as detailed in the appendices.

5.1.2 What are the alternatives to suspension?

- Where possible, you should discuss with your HRBP any alternative measures other than suspension.

- This could include making temporary adjustments such as moving the employee to a different workplace, allowing them to work from home, changing their working hours, restricting their duties, ensuring that they work under supervision, or moving them temporarily to a different role for the duration of any investigation (this must be of similar status and on the same Terms and Conditions).

5.1.3 Will suspension be paid?

- If an employee is to be suspended from work, this will be on full pay while the investigation is carried out.
- It must be made clear to the employee that the suspension is precautionary, not a disciplinary action, and does not involve any prejudgment.
- The investigation must normally be concluded within 14 calendar days.
- There may be instances where the investigation is restricted, for example:
 - the Group is unable to carry out an investigation or disciplinary hearings due to bail conditions, regulatory/statutory body requirements, or police instructions;
 - the member of staff does not participate in the investigation.
- In these cases, if the restrictions continue beyond 28 days, there is scope to determine that the suspension becomes unpaid.
- Where it is proposed that the period of suspension becomes unpaid, the member of staff must be invited in writing to attend a meeting to discuss. This meeting must normally be held five working days before the period of suspension reaches 29 calendar days. Failure to attend the hearing without notice or good reason is likely to result in the hearing being conducted in the employee's absence.
- After the meeting, the individual must be advised in writing of the outcome.
- In exceptional circumstances where the member of staff refuses to attend investigatory meetings with no good reason, you must discuss with the HRBP and may move the suspension to unpaid with immediate effect. The member of staff must be invited in writing to attend a meeting to discuss.
- Where it is confirmed that suspension becomes unpaid the member of staff has the right to appeal against this decision.
- Once the process is concluded, and it is found that there is no case to answer or dismissal is not appropriate, the employee must be reimbursed for any loss of salary.

5.1.4 Confidentiality:

- The reasons for an employee's suspension must be kept confidential and the details should not be disclosed unnecessarily, as this could impact the investigation.
- It is the responsibility of both the manager and the employee to ensure that the details of the investigation are not discussed with colleagues where it is not essential.

6. Appeals

6.1 Employee guidance:

- You have the right to appeal against any formal disciplinary sanction.
- If you wish to appeal, you must do so in writing to the relevant manager, within seven days of receipt of the sanction, as detailed in your outcome letter.
- You must state the reasons for your appeal.
- Appeals must be based on one or more of the following grounds:
 - this procedure was not followed correctly;
 - the manager who heard the case was not aware of essential information which could have affected the outcome, (if this information was known to you at the time of the hearing, you must show good reason why this was not presented at the meeting or as part of any investigation); and
 - the sanction was inappropriate or too severe in relation to the area of concern.

6.2 Manager guidance:

- On receipt of the appeal, you must invite the employee to an appeal hearing.
- The hearing should be facilitated by a senior manager who should be of a more senior level than the manager who chaired the capability and performance hearing.
- At the appeal hearing, the level of any capability and performance sanction can be either removed or lowered but not increased.
- The employee must be notified of the outcome in writing within 14 days of the appeal hearing, or as soon as reasonably possible.

Note: Managers must forward the formal outcome letter to the appropriate supporting HRBP/HR Business Manager before issuing to the employee.

7. Other considerations

7.1 Sickness during a disciplinary process:

- If an employee is absent due to sickness when informed of disciplinary action being considered or at any point during the investigation, the investigation continues as far as possible in the absence of the employee. If it becomes apparent that the sickness absence is likely to exceed two weeks, the Group reserves the right to take steps to ascertain the employee's fitness to take part in the disciplinary process and the employee's consent for a medical opinion will be sought.
- If an employee is unfit to attend an investigation or disciplinary meeting for a prolonged period of time, advice must be sought from HR as to whether a written submission can be requested, and the hearing held in the employee's absence.

- Consideration should be given to any reasonable adjustments that could be made to facilitate the employee's participation in the disciplinary process. The HRBP can provide advice when considering a request.
- If in the event that an employee fails to consent to the Group seeking a medical opinion on their fitness to take part in the disciplinary process, the disciplinary process may be conducted in their absence based on the information available. In such cases, advice will be sought from HR and each case will be treated on its own merit.
- Where the employee is absent during the disciplinary process the employee should be reminded of the Employee Assistance Programme (EAP).

7.2 Resignation during the disciplinary process:

- Should the employee concerned tender their resignation during the disciplinary process, the line manager should inform the HRBP immediately and seek guidance as to what steps should be taken with regards to the disciplinary proceedings.

7.3 Safeguarding and referral to external bodies:

- Should the investigation relate to allegations regarding safeguarding, the manager must discuss with their HRBP as to whether there may be a need to refer the individual to an external body. This referral can be made at any point during the investigation and disciplinary process, and will be decided on a case by case basis in conjunction with HR.
- Referral to an external body will be in line with General Data Protection Regulations.
- In cases where allegations of child/adult abuse have been made against an employee and as a consequence a referral has been made to the appropriate local safeguarding team and/or external agency, a discussion or strategy meeting must first take place to determine who will be responsible for investigating the safeguarding issue.
- If the allegation is of a serious nature and involves the police, managers should not proceed to an investigation of the incident, unless permission has been given by the police as this could potentially prejudice their investigation.
- However, should there be no action, outcome or update from the police after a period of four weeks, managers should commence the investigation and notify the police of this, by using **Appendix 3** (Police notice of intent to commence internal investigation).
- In some cases, the Safeguarding team will investigate and in other circumstances, the Group will be given authority to investigate. This process of obtaining authority to investigate must be followed alongside this policy and the Group Safeguarding Policy and associated procedures, which can be found on Solis.
- Where such a serious allegation has been made, staff involved should be supported by their manager. Employee's should be reminded of the Employee Assistance Programme (EAP).

8. Keeping records

- Records of any employment related matters are confidential.
- Records should detail all stages of the informal and formal procedure, including notes of all meetings and discussions, and any subsequent action.
- Once the matter has concluded, all records should be sent to the Corporate Shared Service Centre (CSSC).
- Records are held on the employee's personnel file and OneSanctuary HR in accordance with the Data Protection Act and General Data Protection Regulations.