

Temple Court Chambers Staff, Members and Pupils

DISCIPLINARY PROCEDURES

(as amended on 1st July 2022)

SCOPE

The Disciplinary Procedure will be used only when necessary and as a last resort. Where possible, informal and/or formal counselling or other good management practice will be used to resolve matters prior to any disciplinary action being taken. The procedure is intended to be positive rather than punitive but takes cognisance of the fact that sanctions may have to be applied in some circumstances.

An employee, member or pupil can discuss any part of this policy with their Line Manager, senior member or pupil supervisor. They can help clarify rights as well as give guidance and support where it may be needed. Every individual has the right to representation at any point during the disciplinary process.

SUSPENSION

Suspension is not disciplinary action. The purpose of suspension is manifold and can be used when it is necessary to remove a member of staff, member or pupil from the workplace pending an investigation for example, to allow time for a 'cooling down period' for both parties, for their own or others protection, to prevent them influencing or being influenced by others or to prevent possible interference with evidence. Only the Head of Chambers has the authority to suspend an individual.

An employee, member or pupil suspended will receive written confirmation within three days of:

- the reason for the suspension
- the date and time from which the suspension will operate.
- the timescale of the ongoing investigation.
- the right of appeal to the immediate manager of the suspending manager should the suspension last more than 7 days

COUNSELLING

Counselling is an attempt to correct a situation and prevent it from getting worse without having to use the disciplinary procedure. Where improvement is required, the employee must be given clear guidelines as to:

- what is expected in terms of improving shortcomings in conduct or performance
- the time scales for improvement
- when this will be reviewed
- the employee, member and pupil must also be told, where appropriate, that failure to improve may result in formal disciplinary action.

A record of the counselling should be given to the employee, member and pupil and a copy retained in their personnel/other file. It is imperative that any counselling should be followed up and improvements recognised and recorded. Once the counselling objectives have been met, any record of the counselling will be removed from the employees, member and pupils file.

If during counselling it becomes clear that the matter is more serious, then the discussion should be adjourned, and pursued under the formal disciplinary procedure.

PROCEDURE FOR FORMAL INVESTIGATION

1. Formal investigations should be carried out by the most appropriate member who is not directly involved with the incident being investigated. This member may involve others to assist with the investigation process. All the relevant facts should be gathered promptly as soon as is practicable after the incident. Statements should be taken from witnesses at the earliest opportunity. Any physical evidence should be preserved and/or photographed if reasonable to do so.
2. A report should be prepared which outlines the facts of the case. This should be submitted to the Head of Chambers who will decide whether further action is required. Where appropriate, this report may be made available to the individual and their representative.
3. In most circumstances where misconduct or serious misconduct is suspected, it will be appropriate to set up an investigatory hearing. This would be chaired by the appropriate member, who would be accompanied by another person if possible. The member would be asked to present his/her findings in the presence of the employee, member or pupil who has been investigated. Witnesses should be called at this stage, and the employee, member or pupil (or their representative) allowed to question these witnesses. The employee, member or pupil, has a right of representation at this hearing.
4. Following the full presentation of the facts, and the opportunity afforded to the employee, member or pupil to state his side of the case, the hearing should be adjourned, and everyone would leave the room except the member/s hearing the case. They would discuss the case and decide which of the following option was appropriate:
 - take no further action
 - recommend counselling
 - proceed to a disciplinary hearing
5. All parties should be brought back, and informed as to which option has been chosen. Should the decision be taken to proceed to a disciplinary hearing, then this may follow on immediately from the investigatory hearing if the following criteria have been met:

- the employee, member or pupil has been informed by letter that the investigation may turn into a disciplinary hearing, and that he has the right of representation
 - he has been told in advance what the nature of the complaint is, and had time to consult with a representative
 - all the facts have been produced at the investigatory hearing, and the member is in a position to decide on disciplinary action.
 - the member should inform the employee, member or pupil and their representative that the hearing would now become a formal disciplinary hearing, and invite them to say anything further in relation to the case.
6. It may be appropriate at this point to adjourn proceedings, whilst necessary arrangements are made for a representative to attend the hearing at the request of the employee, member or pupil.
7. Should anyone who is subject to disciplinary action resign during the course of it, the action will cease unless there are extenuating circumstances which require it's continuance. The subject of the discipline may also request that the disciplinary action continue.

WARNINGS

Examples of Minor Misconduct

Below are listed examples of misconduct which may warrant either a Verbal Warning or a First Written Warning. It is stressed however that this list is not exhaustive and that on all occasions a full and proper investigation must take place prior to the issue of a warning.

- Persistent lateness and poor time-keeping.
- Absence from work, including going absent during work, without valid reason, notification or authorisation.
- Smoking within unauthorised areas.
- Failure to work in accordance with prescribed procedures.
- Incompetence.
- Unreasonable standards of dress or personal hygiene.
- Failure to observe Company regulations and procedures.

Verbal Warning

A Verbal Warning is appropriate when it is necessary for the manager, MC or Pupil Supervisor in charge to take action for any minor failing or minor misconduct.

First Written Warning

A First Written Warning is appropriate when :

- * a verbal warning has not been heeded and the misconduct is either

- repeated or performance has not improved as previously agreed.
- * an offence is of a more serious nature for which a written warning is more appropriate.
 - * the recurrence or accumulation of an offence/offences, if left, will lead to more severe disciplinary action.

Examples of Gross – Misconduct

Listed below are examples of misconduct which may be considered to be Gross Misconduct and may warrant a Final Warning, Demotion or Dismissal. It is stressed however that this list is not exhaustive and that on all occasions a full and proper investigation must take place prior to the issuing of a Final Warning, Demotion or Dismissal.

- * Theft, including unauthorised possession of Company property.
- * Breaches of confidentiality, prejudicial to the interest of the Company,
- * Being unfit for duty because of the misuse/consumption of drugs or alcohol.
- * Refusal to carry out a management instruction which is within the individuals capabilities and which would be seen to be in the interests of the Company.
- * Breach of confidentiality / security procedures.
- * Physical assault, breach of the peace or verbal abuse.
- * False declaration of qualifications or professional registration.
- * Failure to observe Company rules, regulations or procedures.
- * Wilful damage of property at work.
- * Incompetence or failure to apply sound professional judgement.
- * Bribing or attempting to bribe another individual, or personally taking or knowingly allowing another person to take a bribe.

Final Written Warning

A Final Written Warning is appropriate when :

- * an employee's, members or pupils offence is of a serious nature falling just short of one justifying dismissal.
- * an employee, member or pupil persists in the misconduct which previously warranted a lesser warning.

Downgrading or Transfer to another Post

This action is appropriate when :

- * previous attempts, via the disciplinary procedure, to rectify a problem have failed and this is a final attempt to solve a problem without having to dismiss an employee, member or pupil.

- * an employee, member or pupil is considered by the Head of Chambers to be incompetent or otherwise unfit to fulfil the duties for which he is in place but where dismissal is not thought to be appropriate.

Dismissal

Dismissal is appropriate when

- * an employee's, members or pupils behaviour is considered to be Gross Misconduct.
- * an employees, members or pupils misconduct has persisted, exhausting all other lines of disciplinary procedure.

Time Scales for the expiry of Warnings

Warnings issued to employees, members or pupils shall be deemed to have expired after the following periods of time.

- * Verbal Warnings: 6 months
- * First Written Warnings: 12 months
- * Final Written Warnings: 18 months (or as agreed and recorded at the hearing)

These time scales remain provided that during that period, no further warnings have been issued in respect of the employee's conduct.

LETTER OF WARNING

All Warnings must contain the following information :

- * The letter must be issued within 7 days of the date of the disciplinary hearing.
- * The nature of the offence and where appropriate, that if further misconduct occurs, more severe disciplinary action will be taken.
- * The period of time given to the employee, member or pupil for improvement.
- * The employees, members, pupils right to appeal to the manager directly above that of the one issuing the warning.
- * A copy of the warning and any supporting documentation must be attached to the individuals personnel file.
- * The employee, member or pupil must also receive a copy of the warning which in the case of any written warning will be sent to their home address by recorded delivery if not handed to them in person.
- * In the case of a final written warning, reference must be made to the fact that any further misconduct will lead to dismissal, and that the employee, member or pupil has the right of appeal, and to who they can make that appeal.

The letter confirming dismissal will contain the following information:

- * The reason for dismissal and any administrative matter arising from the termination of their employment, membership or pupillage.
- * The employees, members, pupils right of appeal and to whom they should make that appeal

APPEALS

Every employee, member or pupil has the right to appeal against the outcome of a disciplinary hearing. The basis of an appeal should normally relate to one of the following areas:

- * that the Company's' Procedure had not been followed correctly.
- * that the resulting disciplinary action was inappropriate.
- * that the need for disciplinary action was not warranted.
- * that new information regarding disciplinary action has arisen

An appeal should be put in writing to the Head of Chambers. The letter of appeal may be constructed by the employee, member or pupils or their representative. The letter should contain the grounds for appeal and should be lodged within 10 days of receipt of the warning / dismissal letter.

An appeal will be arranged within 20 working days of receipt of the appeal letter.

Appeals against Verbal and First Warnings

In the case of verbal and first warnings, the appeal will be heard by a member next in line to the one who issued the warning.

Appeals against Downgrading, Final Warnings and Dismissal

The hearing and determining of appeals against final warnings and dismissal will be heard by a Member of Chambers appointed by the Head of Chambers. They may also involve another individual not previously involved with the case.

When dealing with an appeal against a Final Warning or Dismissal written statements of case may be submitted no later than 2 days prior to the date of Appeal Hearing. No additional written evidence will be admitted by the Appeal Committee on the date of the Hearing.

Witnesses may be required by either party at an appeal hearing, dependent upon the circumstances and nature of the case. However, there is no specific obligation on either party to produce a witness. Either party must give 5 days prior notice that they intend to call specific persons involved or associated with the case under consideration.

It is the responsibility of the management representative and for the appellant to each arrange for the availability and attendance of any witness they wish to call.