

DISCIPLINARY ISSUES AND DISMISSAL

Key Points

- Draw up disciplinary rules and procedures and communicate these to your employees. See sample at Appendix 18A.
- Establish the facts by carrying out a thorough investigation before taking action.
- Deal with issues as thoroughly and promptly as possible in a consistent manner.
- Maintain confidentiality.
- Follow the statutory 3-step procedure:
 1. **put it in writing;**
 2. **meet and discuss;**
 3. **allow an appeal.**
- In rare cases of gross misconduct that are sufficiently clear-cut and serious for it to be reasonable for an employer to dismiss summarily without an investigation, a **2 stage, modified procedure** may be followed:
 1. **provide written reasons for the dismissal;**
 2. **allow an appeal.**
- Ensure that the timing and location of meetings is reasonable.
- Allow employees to be accompanied at disciplinary and appeal meetings.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Keep written records for future reference.

Why have disciplinary rules and procedures?

Disciplinary rules and procedures help to promote effective employment relations as well as fairness and consistency. Disciplinary rules tell employees what behaviour employers expect from them and the consequences if rules are breached.

It can be beneficial to involve management, employees and their representatives, where appropriate, when devising disciplinary rules and procedures.

It is useful to provide examples of the type of behaviour you will treat as minor, major and gross misconduct.

Procedures

How to determine what action to take when a disciplinary issue arises

When a potential disciplinary matter arises, it is important to conduct a prompt investigation to establish the facts before taking any action.

Having established the facts, you can then decide whether to drop the matter, deal with it informally or arrange for it to be handled formally.

Conduct an investigation

A full and thorough investigation should be carried out promptly to establish the facts, by a person who has not been involved in the issue if this is possible. The aim should be to ensure that this process is as impartial and objective as possible.

The investigation may require interviewing of witnesses and review of documentation and other evidence. Keep a written record of all interviews and any other information which comes to light during an investigation.

It may be necessary to interview the employee who is suspected of misconduct at this time. It should be made clear that this is an **investigatory meeting and not a disciplinary meeting**. If there is a case to answer, then a separate disciplinary meeting should be arranged. The purpose of the investigation is to establish whether there is a disciplinary case to answer. For certain **serious** offences it may be necessary to suspend an employee whilst the matter is investigated. They should continue to receive their full pay.

An employee does not have a right to be accompanied at an investigation meeting by a fellow worker or trade union official but the employer may allow this in certain circumstances such as when the employee is disabled or where English is not the employee's first language and a translator is required.

SECTION 18

Precautionary suspension

In **certain cases**, for example in cases involving gross misconduct, where relationships have broken down or there are risks to the employer's property or responsibilities to other parties, consideration may be given to a brief period of suspension with full pay whilst an unhindered investigation is conducted. Employers should also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension. An alternative to suspension might be the agreeing of a temporary transfer to other duties or another work station without loss of pay.

Any action taken, including suspension on full pay, should be reviewed frequently to ensure it is not unnecessarily protracted.

It should be made clear to the employee that such suspension is a neutral act, is not disciplinary action, and does not involve any pre-judgement.

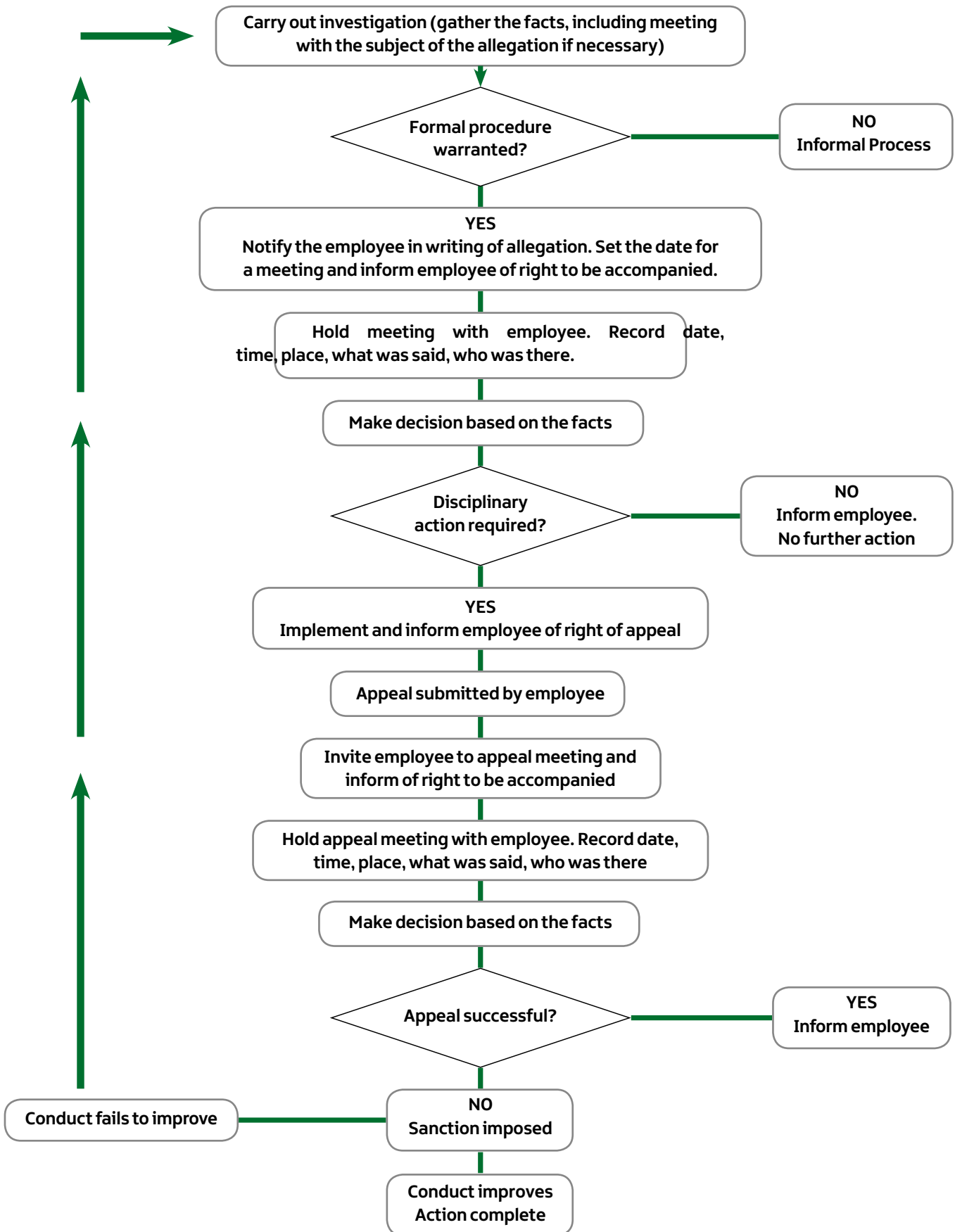
Informal Process

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. The employee's manager should have an informal discussion with the employee as soon as the problem arises to explain the problem and agree actions with them. When dealt with promptly, a quiet word is often all that is required. If this does not bring about an improvement then formal action may be taken.

Cases of more serious misconduct should be dealt with formally from the start.

Please see the following flow chart for a summary of the process.

Summary of Formal Process



SECTION 18

The Formal Process – the details

Put it in writing

Following any relevant investigation, let the employee know in writing what it is they are alleged to have done wrong and the reasons why this is not acceptable. The letter should also invite the employee to a meeting at which the problem can be discussed, and it should inform the employee of their right to be accompanied at the meeting by a fellow worker or trade union official. The employee should be given copies of any documents that will be produced at the meeting. The employee should have enough time to review any documentation provided and to prepare for the meeting. See example letter at Appendix 18B. This letter is suitable for more minor misconduct issues.

However, if the employer is **contemplating dismissing the employee or imposing some other disciplinary penalty that is not suspension on full pay or a warning** the letter at Appendix 18F should be used in order to ensure compliance with the statutory procedure.

If the misconduct relates to behaviour towards a colleague see example letters at Appendix 17B and 17C. **Ensure that all letters are tailored to the individual circumstances.**

Hold a meeting with the Employee

Hold a meeting to discuss the problem. The meeting should be held reasonably promptly so that memories of events have not faded, but should also give the employee the opportunity to prepare for the meeting. It should be held in a private location where interruptions can be minimised. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses. It is important that no assumptions are made before the meeting and therefore warnings should not be pre-prepared.

Note: No decisions on disciplinary action should be taken until after the meeting.

The role of the companion at the meeting

The employee is legally entitled to be accompanied at any disciplinary or appeal hearing by a fellow worker or trade union official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).

If the employee is accompanied at the meeting the companion should be allowed to address the hearing in order to:

- put the employee's case;
- sum up the employee's case;
- respond on the employee's behalf to any view expressed at the hearing.

The companion can also confer with the employee during the hearing and may participate as fully as possible in the hearing, including being given the opportunity to raise points about any information provided by witnesses. The companion has no right to answer questions on the employee's behalf or to address the hearing if the employee does not wish it. Additionally, a companion must not act in a manner which would prevent either an employer from explaining his/her case or any other person at the hearing from making his/her contribution to it.

Sickness absence during a disciplinary procedure

If an employee goes off on sick leave during a disciplinary procedure, the employer should continue with all aspects of the investigation that can be completed in the employee's absence. If the absence is likely to be short term, the employer can wait until the employee returns to work before arranging any meetings with them. If the absence is likely to be long term, the employer should seek a medical opinion on the employee's fitness to attend from the employee's GP or a company nominated doctor. If the employee is fit to attend the meeting, then the employer should attempt to facilitate the employee by arranging meetings at a time and a place that would make it easier for the employee to attend. If an initial date and/or time is unsuitable, at least one alternative should be offered.

Employees should be made aware that, where it is reasonable to do so, decisions may be taken in their absence if they fail to attend re-arranged meetings without good reason. If the employee is **disabled**, the employer has an obligation to consider **reasonable adjustments** to ensure the employee does not suffer any detriment for a reason related to their disability.

If all other options have been exhausted, it may be acceptable to hold a disciplinary hearing in the employee's absence.

SECTION 18

Outcome

Following the meeting, and after full consideration of all information, it is necessary to decide whether disciplinary action is justified or not. Any decision taken should be fair and reasonable taking into account all the factors of the case. Where it is decided that no action is justified the employee should be informed in writing.

If disciplinary action is justified consider what form this should take. Before making any decision you should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and whether the intended disciplinary action is reasonable.

Disciplinary action may take the form of a **warning, dismissal, and where allowed for in the contract or mutually agreed, disciplinary suspension without pay, demotion and transfer to other duties.**

Warnings

- Verbal – for cases of minor misconduct;
- First Written – for cases of misconduct or failure to correct following a verbal warning;
- Final Written – for cases of more serious misconduct or failure to correct following a verbal or first written warning.

When issuing warnings employees should be informed:

- that the action is part of the formal disciplinary procedure;
- of the level of the disciplinary action being taken;
- of the change in behaviour required;
- of the consequences of failing to correct behaviour;
- that they might appeal against the disciplinary action taken.

See sample at Appendix 18C. Ensure that warnings are tailored to reflect the individual circumstances.

When deciding what sanction to impose, the employer should take into account the factual circumstances giving rise to any previous warnings. The employer should also take into account how they have treated other employees who have committed similar offences, i.e. the employer should act consistently as this will be relevant when determining the fairness of any dismissal.

If a final disciplinary warning has been validly issued and is still current the employer is entitled to take this into account when considering whether to dismiss for a subsequent act of misconduct, even if the two acts of misconduct are for different matters. However, the employer should have regard to the degree of difference or similarity between the different matters when deciding what sanction to impose.

If an employee has been issued with a final written warning this normally means that any further misconduct within the duration of that warning may result in dismissal. In this respect, when issuing final warnings the employer should make it clear that any further acts of misconduct (of whatever nature) may result in further disciplinary action being taken.

All letters notifying employees of the outcome of disciplinary hearings should be clear and specific in relation to all allegations against the employee. If the employee is to be dismissed, the **reasons for the dismissal** must be clearly stated.

Warnings that are no longer active/valid should remain on personnel files but **must be disregarded** in deciding the outcome of future disciplinary proceedings.

Employees should be informed of their **right of appeal** against any disciplinary decision. See following page for further information on appeals.

Dismissal

If the employee's conduct still fails to improve, or if the initial offence is very serious, the company may consider dismissal or some other penalty such as demotion, disciplinary transfer, or loss of seniority/ pay (if the employee's contract allows it or it is mutually agreed).

An employee should never be dismissed for a first offence, unless the offence is very serious. The employee is entitled to **written reasons for the dismissal**. See example letter at Appendix 18G.

While it is good practice to always follow the 3-step procedure for all disciplinary action, the law specifies that this procedure must be followed if an employer is considering dismissing an employee or imposing some other disciplinary penalty that is not suspension on full pay or a warning.

To recap, the **3-step procedure** requires the employer to:

1. Write to the employee notifying them of the allegations against them and the basis of the allegations and invite them to a meeting to discuss the matter. See letter at Appendix 18F.
2. Hold a meeting to discuss the allegations at which the employee has the right to be accompanied and notify the employee of the decision. See letter at Appendix 18G.
3. If the employee wishes to appeal, hold an appeal meeting at which the employee has the right to be accompanied and inform the employee of the final decision. See Appendix 18H and 18I.

Notice of dismissal

Unless the dismissal is for gross misconduct, the employee will have the right to a period of notice. The legal minimum is **1 week** for employees who have **at least 1 month's but less than 2 years' service** and 1 week for each year of service for all other employees up to a maximum of 12 weeks. However, the contract may provide for more than this. Employees dismissed for gross misconduct have no right to notice or pay in lieu of notice.

If the contract has a specific clause allowing an employer to pay the employee in lieu of notice, the contract may be terminated immediately provided the employee receives the relevant payment. If an employer is making use of this clause this should be communicated to the employee at the time of dismissal and it should be made clear that the relevant sum is paid in lieu of notice.

Summary dismissal is dismissal without notice or pay in lieu of notice. It is only applicable in cases of gross misconduct. An investigation of the facts should still be carried out before taking the decision to dismiss summarily.

The Right to Appeal

Employees who have had disciplinary action taken against them should be informed of their right to appeal, who they may appeal to and the timescales for appeal. If the employee wishes to appeal, they must inform the designated person.

Where possible, arrange for the appeal to be dealt with by a more senior manager not involved with the earlier decision. If this is not possible, a manager of the same status may hear the appeal. In some small companies this may not be possible and in this case the appeal may be heard by the same manager who should endeavour to remain as neutral and objective as possible. An alternative to this would be to engage a third party from outside the organisation.

The employee should be invited to a meeting to discuss the appeal. See letter at Appendix 18D if the disciplinary action was a warning or 18H if the disciplinary action was dismissal or some other disciplinary action other than a warning.

The employee should be advised of the right to be accompanied at the appeal.

Give the employee the final decision in writing after the meeting. See letter at Appendix 18E if the disciplinary action was a warning or 18I if the disciplinary action was dismissal or some other action.

For full guidance and further detail, read the Labour Relations Agency "Guide to Disciplinary and Grievance Procedures" on the LRA website: www.lra.org.uk

Procedures during the employee's probationary period

In Northern Ireland, employees must have 1 year's service with the employer before they can bring a claim for Unfair Dismissal. However, as there is no service requirement to bring a claim for wrongful dismissal or for discrimination, it is recommended that the statutory 3-step procedure is followed for all dismissals, including those during the probationary period, unless the modified procedure is applicable i.e. 1. put it in writing, 2. arrange a meeting to discuss, 3. allow an appeal.

Modified Procedure

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. This may be when the employer believes it is reasonable in the circumstances to dismiss without notice and without having a meeting with the employee. Specific advice should always be sought.

In this case the modified procedure will apply as follows:

1. Provide the dismissed employee with a written statement of the alleged misconduct which led to the dismissal and written particulars on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, together with a reminder of the employee's right of appeal against dismissal.
2. If the employee wishes to appeal the dismissal, hold an appeal meeting within the specified timeframe.

Unfair Dismissal claims

Certain dismissals are automatically unfair. For example, dismissal on the grounds of age, gender, sexual orientation, race, disability, religious or political belief. It is also unlawful to dismiss someone on grounds related to pregnancy and childbirth, requests for flexible working and retirement without considering a person's wish to continue working.

Failure to follow the statutory procedures may also result in a finding of automatic Unfair Dismissal.

An employee who believes s/he has been dismissed has 3 months from the date of termination to present a claim to an industrial tribunal. In certain circumstances this time limit may be extended.

SAMPLE: DISCIPLINARY RULES AND PROCEDURES FOR MISCONDUCT

Objective

The objective of this procedure is to give employees the opportunity to improve their conduct or performance. It identifies who has authority to take disciplinary action and aims to ensure that employees are protected against unjustifiable or inconsistent disciplinary action. It also identifies the type of offence which would result in disciplinary action being taken, what that action would be and what further action would result if there is no improvement or a recurrence takes place.

Informal Action

Cases of minor misconduct or unsatisfactory performance may be dealt with informally. The employer may have a quiet word of caution or advice and encouragement with the employee in order to improve an employee's conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. There will, however be situations where matters are more serious or where this informal approach has been tried but is not working. In these circumstances, the employer will use the formal procedure.

Investigations

The purpose of an investigation is for the employer to establish a fair and balanced view of the facts relating to any disciplinary allegations against the employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents. The employer will usually appoint an investigating officer to carry out the investigation.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. The employee does not normally have the right to bring a companion to an investigative interview. However, the employer may allow the employee to bring a companion if it helps the employee to overcome any disability, or any difficulty in understanding English.

The employee must co-operate fully and promptly in any investigation. This will include informing the employer of the names of any relevant witnesses, disclosing any relevant documents to the employer and attending investigative interviews if required.

If the employee cannot attend the investigation meeting he/she should inform the employer immediately and the employer will arrange an alternative time. The employee must make every effort to attend the meeting, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or is persistently unable to do so (for example for health reasons), the employer may have to reach its conclusions based on the available evidence.

General Principles for the Formal Disciplinary Procedures

The employer expects all its employees to abide by the terms and conditions of their employment and the rules, regulations and standards established by the employer. The procedure for dealing with misconduct, capability and performance comprises a number of levels and the type of disciplinary action taken will depend on the severity and frequency of the misconduct as well as the general circumstances surrounding it. The employer reserves the right at its absolute discretion to invoke any stage of the procedures, depending in the seriousness of the misconduct complained of.

1. No disciplinary action shall be taken until there has been a full investigation into any alleged incident (please see above).
2. The employee has the right to receive, prior to disciplinary hearings:
 - A written statement of the alleged misconduct; and
 - Particulars on the basis for the allegation.
3. The employee has the right to reasonable opportunity, prior to disciplinary hearings, to consider their responses to the information provided on the allegation.

4. The employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or trade union official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).
5. The employee must take all reasonable steps to attend the disciplinary and appeal hearings.
6. The employer will ensure that the disciplinary rules and procedures are applied fairly and consistently.
7. The employer will endeavour to ensure that:
 - All steps under the procedure are taken without unreasonable delay;
 - The timing and location of all hearings are reasonable;
 - Hearings are conducted in a manner which enables employees to explain their cases; and
 - Disciplinary appeal hearings will be conducted, as far as is reasonably practicable, by a more senior manager than the manager who took the disciplinary action being appealed. This does not apply where the most senior manager attended the disciplinary hearing at which the decision was made to take the disciplinary action being appealed.
8. Where a written warning has been issued a copy will be kept on file but disregarded for disciplinary purposes after a specified period, for example 12 months.
9. The employer will keep written records during the disciplinary process. These will include the complaint against the employee, notes taken during the hearings and appeals, findings and actions taken, details of the appeal and any other information relevant to the process.
10. The employer will take all reasonable steps to ensure that confidentiality is maintained throughout the process.
11. All warnings will clearly state the misconduct concerned and clearly indicate what the eventual outcome will be if there is no improvement on the employee's part or a recurrence takes place. Warnings normally relate to the same or similar misconduct and are not generally transferable between different types of misconduct. However, where a number of warnings are called for in respect of different types of misconduct this will entitle management to review the employee's overall suitability for continued employment and if necessary to issue a final general warning irrespective of the offence.
12. If a final disciplinary warning has been validly issued and is still current, the employer is entitled to take this into account when considering whether to dismiss for a subsequent act of misconduct, even if the two acts of misconduct are for different matters. The employer will take into account the degree of difference or similarity between the different matters when deciding what sanction to impose.
13. When deciding what sanction to impose, the employer will take into account the factual circumstances giving rise to any previous warnings.
14. If an employee has been issued with a final written warning this normally means that **any** further misconduct within the duration of that warning may result in dismissal.
15. Precautionary Suspension: In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to the employer's property or responsibilities to other parties, consideration will be given to a brief period of suspension **with full pay** whilst an unhindered investigation is conducted. The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension e.g. agreeing to a temporary transfer to other duties or another work station without loss of pay or the taking of annual holidays to which the employee is entitled. Any action taken will be reviewed to ensure it is not unnecessarily protracted. It will be made clear that any action taken is not considered a disciplinary action.
16. If the employee has difficulty at any stage of the procedure because of a disability, he/she should discuss the situation with their line manager as soon as possible.

Types of misconduct

The following list shows examples of the type of rules/offences which the employer has categorised for each level of misconduct. This is not an exhaustive list and management reserves the right to decide how any other misconduct shall be categorised:

(The following examples are provided for guidance purposes only and should be amended to suit your organisation. You should therefore delete any which are not applicable to your organisation. Employer Guidance - remove before issuing.)

A MINOR MISCONDUCT

- Absenteeism
- Poor timekeeping /lateness
- Failure to comply with Absence Notification and Certification Procedure
- Careless work and poor effort at work
- Minor breach of safety/hygiene/security rules
- Extended tea and meal breaks
- Failure to maintain a tidy and safe working environment
- Misuse of telephone/Misuse of personal mobile phone
- Excessive time away from the job
- Failure to wear any protective clothing/equipment provided
- Failure to wear uniform
- Wearing unacceptable or inappropriate clothing
- Failure to complete time/stock or work sheets as instructed
- Breach of IT Policy

B MAJOR MISCONDUCT

- Excessive absenteeism
- Failure to comply with the Holiday Request Procedure
- Workmanship or performance of duties below an acceptable standard
- Constant misuse of the telephone
- Failure to adhere to Rules and Procedures
- Failure to report any loss or damage to company property
- Serious breach of IT Policy
- Dangerous physical horseplay
- Neglect causing damage to or loss of employer's, customer's or other employee's property/ equipment/tools
- Serious neglect of safety/hygiene/security rules
- Smoking in the workplace
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission
- Entry into any unauthorised areas
- Wilful or excessive wastage of material
- Unsatisfactory attitude to customers
- Use of foul language
- Gambling on the premises
- Insubordination

C GROSS MISCONDUCT

Gross Misconduct by an employee entitles the employer to summarily dismiss without notice or payment in lieu of notice and without entitlement to any accrued holiday pay. The following matters will be deemed by the employer to constitute gross misconduct. Such matters are by way of example only and are not exhaustive.

- Acts of theft, fraud and other dishonesty whether committed in the course of the employee's duties or not
- Unauthorised removal or possession of property belonging to the employer, its clients or any person with whom the employer has dealings
- Breach of professional confidence or disclosure of confidential information
- Violent, wilful or reckless behaviour which does, or could, result in damage to the person or property of the employer, its employees, clients or other persons with whom it has dealings
- Possession of, or being under the influence of, alcohol or drugs on Company premises save for any drugs prescribed by a qualified medical practitioner
- Acts of indecency, sexual harassment or other similar misconduct with or towards another employee, client or person with whom the employer has dealings
- Persistent or unexplained absence from work
- Serious neglect of the employee's duties resulting in actual or likely loss, damage or injury

- Use of threatening, abusive or insulting language to other employees, clients or persons with whom the employer has dealings
- Breach of the employers Equal Opportunities policy
- Breach of any statute, regulation, code of practice or other relevant provision governing the range of services provided by the employer.
- Breach of the Health and Safety At Work (NI) Order 1978 or serious infringement of Health and Safety rules
- Submission of false references
- Failure to disclose any criminal convictions
- Actions likely to result in damage to the employer's image or reputation in the community or to the employee's image or reputation
- Refusal to carry out reasonable work instructions
- Wilful damage to or gross neglect of employer's, client's or other employee's property
- Undertaking work in competition
- Falsification of records
- Leaving the employer's premises or site without consent
- Unauthorised use of employer's vehicle
- Gross misuse of the company's internet/email system
- Serious act of insubordination
- Harassment or bullying

NOTE: Any allegation of bullying in the workplace or any allegation of discrimination, victimisation or harassment linked to anti-discrimination legislation including gender, gender reassignment, sexual orientation, marriage, civil partnership, disability, race, age, religious beliefs or political opinions will be thoroughly investigated and where appropriate will be dealt with under the disciplinary procedure. The disciplinary response will depend upon the nature and seriousness of the incident and may result in summary dismissal.

Formal Procedure

When taking formal disciplinary action, the employer will comply with the Statutory Procedures by ensuring that the following steps are taken at all stages of the formal disciplinary process.

Step 1

Statement of grounds for action and invitation to meeting

The employer will provide to the employee a written statement of the alleged misconduct which has led to the consideration of formal disciplinary action or dismissal. The employer will also inform the employee what the likely range of consequences will be if the employer decides after the hearing that the allegations are true. The employer will invite the employee to a hearing to discuss the issue.

Step 2

Meeting

Prior to the hearing the employee will be informed what the basis was for including in the correspondence under Step 1 the ground or grounds given in it. The employee will be given reasonable opportunity to consider his/her response to that information before any hearing takes place.

An appropriate manager of the employer will be appointed to deal with the disciplinary matter and another member of the employer may also be present to take notes. At the disciplinary hearing the employer will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any evidence of their own. The employer may adjourn the disciplinary hearing if it needs to carry out any further investigations such as re-interviewing witnesses in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

After the meeting the employer will inform the employee in writing of the decision and offer the right to appeal.

Step 3

Appeal

If the employee wishes to appeal the employer's decision he or she will inform the employer within 5 working days of being informed of the disciplinary sanction. Where an appeal is requested, the employee will be invited to an appeal hearing. The appeal hearing will usually be held within 5 working days of the request for an appeal.

If the employee raises any new matters in their appeal, the employer may need to carry out further investigations (as well as adjourning the appeal hearing). If any new information comes to light the employer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

After the appeal hearing the employee will be informed in writing of the employer's final decision usually within 5 working days. There will be no further right of appeal.

Minor Misconduct

If the alleged breach falls within the minor misconduct category the employer will follow the formal procedure outlined above and the following action will be taken if the employer is satisfied that an offence has occurred:

Stage 1

You will be given a **verbal warning**. It will be recorded and retained on your personal file but will not be considered for disciplinary purposes after 6 months, provided your conduct improves.

Stage 2

If there is a repetition of the misconduct or breach or in the case of more serious misconduct or breach within 6 months you will be given a **first written warning**. It will be recorded and retained on your personal file but will not be considered for disciplinary purposes after 12 months, provided your conduct improves.

Stage 3

In the case of continued misconduct or breach, or very serious misconduct or breach, within 12 months you will be given a **final written warning**. This will contain a clear notice that any other offence within 12 months may result in dismissal.

Stage 4

In the event of further misconduct or breach within 12 months you may be **dismissed**.

Major Misconduct

If the alleged breach falls within the major misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred you will receive a final written warning which will contain clear notice that any other offence within 12 months may result in dismissal.

Gross Misconduct

If the alleged breach falls within the gross misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred you may be **dismissed** summarily i.e. without notice and without pay-in-lieu of notice.

Alternatives to dismissal

As an alternative to dismissal, the following sanctions may be considered: **a final written warning, and if allowed for in the contract or mutually agreed, disciplinary suspension without pay, demotion, transfer to other duties.**

Disciplinary Authority

In the event of a breach of the employer's rules disciplinary hearings and appeals will be conducted by the appropriate disciplinary authority as follows:

Stage	Disciplinary Hearing	Appeal
Stage 1 (Recorded Verbal)	(Insert job title)	(Insert job title)
Stage 2 (First written)	(Insert job title)	(Insert job title)
Stage 3 (Final written)	(Insert job title)	(Insert job title)
Stage 4 (Dismissal)	(Insert job title)	(Insert job title)

THE RIGHT TO BE ACCOMPANIED

As detailed above the employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or trade union official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion). The employee must tell the employer who their chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

See the Labour Relations Agency Code of Practice in relation to the right to be accompanied.

STATUTORY MODIFIED DISMISSAL AND DISCIPLINARY PROCEDURE

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. *(Employers Guidance - These instances are extremely rare and specific advice should always be sought. Remove this sentence before issuing)*

These situations will be where:

- dismissal is without notice and occurs at the time when the employer became aware of the misconduct or immediately thereafter;
- the employer is entitled, in the circumstances, to dismiss by reason of the misconduct without notice and without pay in lieu of notice; and
- the employer believed that it was reasonable, in the circumstances, to dismiss before enquiring into the circumstances in which the misconduct took place.

In these **very exceptional situations** the following **modified procedure** will apply:

Step 1

Statement of grounds for action

The employer will provide the dismissed employee with:

- a written statement of the alleged misconduct which led to the dismissal, and
- written particulars on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and
- a written confirmation of his/her right of appeal against the dismissal.

Step 2

Appeal

- If the employee wishes to appeal he/she must inform the employer within 5 working days.
- All appeal requests must be made to **(insert job title)**.
- Appeal hearing usually shall be heard within 5 working days of receipt of the request.
- The employee must take all reasonable steps to attend the hearing.
- The employee has the right to be accompanied at the appeal hearing.
- The result of the appeal hearing shall be notified to the employee usually within 5 working days of the appeal hearing.

APPENDIX 18B

NOTICE OF THE DISCIPLINARY MEETING

Date _____

Dear _____

I am writing to inform you that you are required to attend a disciplinary meeting on _____ at _____ am/pm, which is to be held in _____.

At this meeting, we will discuss the possibility of disciplinary action against you, in line with the organisation's disciplinary procedure, in relation to: [SET OUT ALLEGATION]

The basis for this allegation is that [GIVE SUMMARY OF INFORMATION OBTAINED AS A RESULT OF INVESTIGATIONS INTO THE ALLEGATION].

[I enclose an investigation report, which sets out further detail of the allegations.] If there are any [further] documents you wish to be considered at the hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained. *delete if not appropriate

The hearing will be held in accordance with the disciplinary procedure which is attached. If you are found guilty of misconduct we may decide to [issue you with a written warning or a final written warning OR dismiss you with notice or pay in lieu of notice]. If you are found guilty of gross misconduct, you may be dismissed without notice or pay in lieu of notice.

The hearing will be conducted by [NAME] and the following people will also be present: [GIVE NAMES OR JOB ROLES OF PARTICIPANTS]. You are entitled to be accompanied by another work colleague or trade union representative. If you wish to bring a colleague or trade union representative, please let me know their name as soon as possible.

[Your suspension on full pay will continue pending the outcome of the disciplinary hearing.]

Please confirm that you have received this letter and that you will attend at the time stated above. If for any unavoidable reason you or your companion cannot attend at that time please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting. If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please also contact me as soon as possible.

Yours sincerely

_____ Manager

APPENDIX 18C

NOTICE OF THE RECORDED VERBAL WARNING, FIRST WRITTEN WARNING OR FINAL WRITTEN WARNING

Date _____

Dear _____

You attended a disciplinary hearing on _____

I am writing to confirm the decision made that you will receive a *recorded verbal warning/*first written warning/*final written warning under the organisation's disciplinary procedure.

This warning will be placed in your personnel file but will not be considered for disciplinary purposes after _____ months, as long as your conduct improves or performance reaches a satisfactory level.

- a) The nature of the unsatisfactory conduct or performance was:
- b) The conduct improvement expected is:
- c) The timescale within which the improvement must be made is:
- d) The likely consequence of further misconduct or not enough improvement is a first written warning*/a final written warning*/dismissal.

You have the right to appeal against this decision (in writing) to _____ within _____ days of receiving this disciplinary decision.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18D

NOTICE OF THE APPEAL MEETING AGAINST THE WARNING

Date _____

Dear _____

You have appealed against the recorded verbal warning* / first written warning* / final written warning* confirmed to you in writing on _____.

I am writing to request your attendance at an appeal hearing which will be heard by _____ in _____ on _____ at _____.

[INSERT NAME] may also be in attendance at the meeting to take notes.

You are entitled to be accompanied by a work colleague or trade union representative. If you wish to bring a work colleague or trade union representative please inform me of their name as soon as possible.

[I enclose copies of relevant documentation for use at the appeal.] If there are any [further] documents you wish to be considered at the appeal, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

Please confirm that you have received this letter and that you will attend at the time and place stated above. If for any unavoidable reason you [or your companion] will be unavailable [or you wish to suggest an alternative time or place] please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting. If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please speak to me as soon as possible.

The decision of this appeal hearing is final and there is no further right of appeal under the disciplinary procedure.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18E

NOTICE OF THE RESULT OF THE APPEAL AGAINST THE WARNING

Date _____

Dear _____

You appealed against the decision of the disciplinary hearing that you be given a warning in accordance with the organisation's disciplinary procedure. The appeal hearing was held on _____.

I am now writing to confirm that the decision made by the manager who carried out the appeal hearing, **still applies* / will be withdrawn*** [say if no disciplinary action is being taken or what the new disciplinary action is].

You have now used your right of appeal under the organisation's disciplinary procedure, and this decision is final. There is no further right of appeal under the disciplinary procedure.

If you have any further questions please do not hesitate to contact me.

Yours sincerely

_____ Manager

**The wording should be amended as appropriate*

APPENDIX 18F

LETTER TO BE SENT BY THE EMPLOYER, SETTING OUT THE REASONS FOR THE PROPOSED DISMISSAL OR ACTION OTHER THAN DISMISSAL AND ARRANGING THE MEETING (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

I am writing to invite you to attend a disciplinary meeting on _____ at _____ am/pm which is to be held in _____.

_____ [insert organisation's name] is considering dismissing you or taking disciplinary action [enter proposed action] against you.

This action is being considered in the following circumstances. [SET OUT THE BASIS OF THE ALLEGATION AND A SUMMARY OF INFORMATION OBTAINED AS A RESULT OF INVESTIGATIONS INTO THE ALLEGATION]

[I enclose an investigation report, which sets out further detail of the allegations.] If there are any further documents you wish to be considered at the hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

The hearing will be held in accordance with the disciplinary procedure which is attached. If you are found guilty of misconduct we may decide to [issue you with a written warning or a final written warning OR dismiss you with notice or pay in lieu of notice]. [If you are found guilty of gross misconduct, you may be dismissed without notice or pay in lieu of notice.]

The hearing will be conducted by [NAME] and the following people will also be present: [GIVE NAMES OR JOB ROLES OF PARTICIPANTS]. You are entitled to be accompanied by a work colleague or trade union representative. If you wish to bring a colleague or trade union representative, please let me know their name as soon as possible.

[Your suspension on full pay will continue pending the outcome of the disciplinary hearing.]

Please confirm that you have received this letter and that you will attend at the time stated above. If for any unavoidable reason you or your companion cannot attend at that time please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting.

If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please also contact me as soon as possible.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18G

LETTER TO BE SENT BY THE EMPLOYER AFTER THE DISCIPLINARY MEETING (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

On _____ we told you that [insert organisation's name] was considering dismissing you or taking disciplinary action [enter the proposed action] against you.

This was discussed in a meeting on _____.

At this meeting, it was decided that [*delete as appropriate]
*your conduct or performance was still not satisfactory and that you be dismissed.
*your conduct or performance was still not satisfactory and that the following disciplinary action would be taken against you.

*no further action would be taken against you.

*The reasons for your dismissal are as follows.

*I am writing to you to confirm the decision that you will be dismissed and that your last day of employment with the organisation will be _____.

*I am writing to you to confirm the decision that disciplinary action will be taken against you. The action will be _____ . The reasons for this disciplinary action are as follows.

You have the right to appeal against this decision. If you wish to appeal this decision please write to _____ within _____ days of receiving this disciplinary decision.

[SET OUT THE ARRANGEMENTS FOR THE TERMINATION OF EMPLOYMENT SUCH AS:

- Date the dismissal takes effect
- Entitlement to notice
- Holiday entitlement outstanding
- The return of company property
- The date final salary will be paid
- Whether there are any clauses in the employee's contract that will remain in force such as confidentiality and restrictive covenants]

If you have any questions please do not hesitate to contact me.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18H

NOTICE OF THE APPEAL MEETING AGAINST THE DISMISSAL OR RELEVANT DISCIPLINARY ACTION (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

You have appealed against *your dismissal / *disciplinary action on _____ which was confirmed to you in writing on _____

I am writing to request your attendance at an appeal hearing which will be heard by _____ in _____ on _____ at _____. [INSERT NAME] may also be in attendance at the meeting to take notes.

You are entitled to be accompanied by a work colleague or trade union representative. If you wish to bring a work colleague or trade union representative please inform me of their name as soon as possible.

[I enclose copies of relevant documentation for use at the appeal.] If there are any [further] documents you wish to be considered at the appeal, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

Please confirm that you have received this letter and that you will attend at the time and place stated above. If for any unavoidable reason you [or your companion] will be unavailable [or you wish to suggest an alternative time or place] please contact me as soon as possible. Please note that under our disciplinary procedure we expect you to make your best efforts to attend this meeting. If your companion is not available on the date suggested, we expect you to propose a further date within 5 working days of the date suggested. If you are not available on the date suggested, we will arrange another meeting with you within a reasonable period.

If you have any specific needs at the hearing as a result of a disability, or if you have any other questions, please speak to me as soon as possible.

The decision of this appeal hearing is final and you cannot ask for a review.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate

APPENDIX 18I

NOTICE OF THE RESULT OF THE APPEAL AGAINST THE DISMISSAL OR RELEVANT DISCIPLINARY ACTION (FOR THE STATUTORY PROCEDURE)

Date _____

Dear _____

You appealed against the decision of the disciplinary hearing that *you should be dismissed/*other disciplinary action should be taken against you. The appeal meeting was held on _____.

I am now writing to confirm that the decision made by _____ [enter the name of the manager] who carried out the appeal meeting *still applies / *will be withdrawn [say if no disciplinary action is being taken or what the new disciplinary action is].

You have now used your right of appeal under the organisation's disciplinary procedure. This decision is final. There is no further right of appeal under the disciplinary procedure.

The arrangements for dismissal set out in our letter of [DATE] are [revoked OR varied as follows]
[INSERT NEW ARRANGEMENTS INCLUDING EFFECT ON EMPLOYMENT TERMS AND SALARY]

If you have any further questions please do not hesitate to contact me.

Yours sincerely

_____ Manager

*The wording should be amended as appropriate