

Discipline

1. Introduction

All Forestry Commission staff need to be aware of the **Discipline Policy**. The aim of this Disciplinary Procedure is to:

- make sure that everyone follows the required standards of conduct for Forestry Commission staff;
- provide a fair and open way of dealing with suspected misconduct; and
- help make sure staff are treated fairly and consistently across the FC.

This procedure applies to all FC employees.

You can find guidance on the **standards of conduct** expected from civil servants in the Staff Handbook Chapter 4. You should ask your manager for advice if you are not sure of what is expected of you.

The Disciplinary Procedure will generally not apply when the problem is one of poor performance or poor attendance unless aggravating factors such as dishonesty, negligence, failure to follow instructions, or other misconduct are involved.

In all types of cases, disciplinary decisions will be taken by someone who is at least one pay band higher than the individual whose conduct is being examined. No one, who is likely to be interviewed as part of an independent investigation, will be involved in conducting that investigation or taking decisions on the case. The manager who is responsible for taking the decision on the case and deciding on any penalty will conduct the disciplinary hearing. Appeals will normally be heard by someone at least one pay band higher than the decision-maker.

2. Types of Misconduct

All line managers have a responsibility to deal with minor misconduct. Serious and gross misconduct will only be dealt with by the level of manager shown below. There are three categories of misconduct. They are:

- Minor (dealt with by the line manager);
- Serious (dealt with by the unit manager); and

- Gross (dealt with by a manager at Senior Staff Group level or their nominated deputy).

Examples of what constitutes misconduct in each classification are set out in the Discipline Policy.

While there are certain acts that fit well into one of the three separate classifications (minor, serious and gross misconduct), each case will be assessed based on:

- the facts;
- the circumstances; and
- the requirement for consistency across the FC.

No one will be dismissed for a first offence except in the case of gross misconduct, where dismissal without notice is justified, after using this procedure. Information on penalties is in Section 9. The Director HR will be advised of all cases that may involve dismissal, downgrading, financial irregularities or fraud as early as possible, and kept fully informed of the proceedings.

3. Criminal Offences

You should tell your line manager about any criminal offence that you have committed during your FC employment, including driving offences. If you are charged with, or convicted of, a criminal offence, you will not automatically be disciplined or dismissed – we will treat each case on its merits and look at the implications, if any, for your work.

However, where there is enough evidence, after investigation, that you have breached conduct standards, we may take disciplinary action. The FC will determine any disciplinary action; the Police will conduct any criminal investigation. Where the Police are involved, the FC will not ask them to conduct any investigation on its behalf, nor will they be present at any investigatory or disciplinary hearing conducted by the FC.

In some cases, offences committed at work may also be criminal offences - for example, assault, theft, fraud or accessing illegal material on the internet. The FC will contact the Police at an early stage where there is reasonable suspicion of criminal conduct. Generally, the FC will not carry out internal disciplinary procedures until it is clear that no criminal proceedings will arise, or until criminal proceedings are complete. However, where the conduct requires prompt attention, the FC will not await the outcome of any prosecution before taking fair and reasonable action.

4. Investigations

If you are suspected of misconduct, it will be investigated promptly and thoroughly. No action will be taken until any necessary investigation has established the facts. The appropriate manager will decide on what form of investigation is required. We use an investigation to establish the facts and to give the manager a firm basis to work from. In cases where the manager has been able to draw together all the relevant facts, such as a breach of the e-mail policy by the forwarding of a discriminatory e-mail, they may not have to undertake further investigation. The nature and extent of the investigation will depend on the seriousness of the matter. During an independent investigation you are likely to be interviewed. You will be informed in writing at the start of the following:

- a disciplinary investigation is underway;
- the alleged misconduct being investigated; and
- the investigators' names.

The investigators will write to you with arrangements for any investigation interview. This interview is aimed at fact-finding and does not imply that you are being disciplined or are guilty of the alleged misconduct.

There is no statutory right for an employee to be accompanied to an investigatory interview. However, as a matter of policy the FC will allow you to be accompanied by a Trade Union representative or workplace colleague at any investigation interview, if you make a reasonable request before the interview.

Your representative or companion would attend as an observer at the investigation interview and may ask questions. However, they cannot answer questions for you. Investigations will normally be concluded **within 30 days**, but where the investigators require more time to finish their report, you will be told when the investigation should finish.

If the investigation finds that you have not committed a disciplinary offence, the manager will tell you in writing, but will not tell you what was in the investigation report.

4.1 Suspension with Pay

If you are under disciplinary investigation for serious or gross misconduct, or are the subject of a criminal investigation, you may be suspended from duty, where it is necessary, while the investigation takes place. The suspension letter will be copied to the relevant Trade Union representative involved in the case. The suspension will be as brief as possible and will be reviewed regularly, at least every 15 days. You will be told if it is to continue.

Suspension in these circumstances is not a form of disciplinary action and does not imply that you are responsible for the alleged act or acts of misconduct.

4.2 After the Investigation

If it is decided after investigation that there is a misconduct case to answer, you will be told in writing of the alleged misconduct and its possible consequences, so you can prepare your reply, before a disciplinary hearing is held. The disciplinary procedure that will follow is set out in the following sections, depending on the type of alleged misconduct.

5. Minor Misconduct

Line managers will deal with minor misconduct.

There are two levels of formal warning open to line managers dealing with minor misconduct:

- a noted verbal warning; or
- a written warning.

When dealing with minor misconduct, line managers will use the following three-step procedure:

5.1 Step One – Invitation to a Hearing

Line managers must hold a disciplinary hearing before they impose noted verbal warnings or written warnings. You will receive written notice of the disciplinary hearing and will be given enough information and/or documents about the alleged misconduct in advance, to enable you to answer the case.

You will be reminded of your right to be accompanied by a Trade Union representative or workplace colleague.

If you fail or refuse to attend the hearing without good cause, the line manager will make a decision using the evidence available.

5.2 Step Two – Disciplinary Hearing and Deciding on Appropriate Action

At the hearing, the line manager will explain the areas of concern and go through any evidence. You will be allowed to set out your case and to answer any questions or allegations that have been made. You will be allowed to ask questions, present any other

evidence, including the opportunity to call relevant witnesses, and raise points about the evidence, or information, provided by other employees. You can mention mitigating factors about your conduct. Your companion may:

- speak at the hearing;
- respond to views;
- confer with you during the hearing but cannot answer questions on your behalf; and
- sum up the case.

A note of the hearing will be prepared and given to you after the hearing. The line manager will decide, following the hearing, whether disciplinary action is justified or not.

If the line manager decides that no action is required, they will tell you in writing. If disciplinary action is justified, the line manager will decide which penalty fits and write to you with that decision, confirming your right to appeal and telling you who to send your written appeal to. This could be a noted verbal or written warning, with a specified shelf-life. The line manager will aim to send the decision within **five working days** of the disciplinary hearing.

5.3 Step Three - Appeal

There is a right of appeal against the outcome of disciplinary action - for example, where you feel that the action is wrong or unjust. You must send written confirmation of your wish to appeal, together with the grounds for appeal, within **ten working days** of the date of the decision letter.

Once an appeal is lodged, the Appeal Manager will write to you as soon as possible setting out the date and arrangements and reminding you of your right to be accompanied to an appeal hearing by a Trade Union representative or workplace colleague.

At the hearing, the Appeal Manager will be accompanied by a second person who will be there to take notes of the proceedings. Possible outcomes of an appeal hearing include:

- upholding the original disciplinary action and penalty;
- changing the penalty (but not increasing the severity of the penalty); or
- overturning the decision.

After the appeal hearing, the Appeal Manager will write to you, setting out the decision and explaining the reasons for it. For minor misconduct, this is the final stage of the procedure.

5.4 Minor Misconduct that is Repeated after a Warning

If the misconduct continues within the shelf-life of a noted verbal warning, the line manager may, after following the **three-step** disciplinary procedure again, extend the shelf-life of the warning, or issue a written warning. If a written warning was applied earlier, the appropriate penalty is a final written warning, or some other additional penalty as considered appropriate, and the line manager will pass the matter to the Unit Manager for action.

6. Serious Misconduct

Unit Managers will deal with serious misconduct, including:

- arranging investigations;
- conducting disciplinary hearings; and
- imposing penalties.

You can find examples of disciplinary offences that will normally constitute serious misconduct in our Discipline Policy.

Unit managers will also deal with minor misconduct by those staff they are line manager for and repeated minor misconduct referred by other managers in the unit where a more serious penalty may be justified.

Unit Managers may impose any level of penalty, up to and including dismissal with notice, for cumulative offences of serious misconduct, following a final written warning, but cannot deal with gross misconduct.

The investigation procedure for serious misconduct is in Section 4. If the Unit Manager, after the investigation, decides there are enough grounds for proceeding with a disciplinary hearing, they will write to you:

- giving details of the allegation;
- enclosing a copy of the investigation report, where appropriate; and
- setting out the arrangements for the disciplinary hearing, including a reminder of your right to be accompanied by a Trade Union representative or workplace colleague.

There may be cases where the investigation report is not disclosed, or not fully disclosed. This will be because there may be risks to other employees or for other compelling reasons. Where this is the case, management will give you the reasons. You will always be given enough information on the evidence to understand why a charge is being made and to prepare your case or defence.

The disciplinary hearing and appeal stages for serious misconduct are the same as set out in Sections 5.2 and 5.3, except that the proceedings will be conducted by the unit manager rather than the line manager and that more serious penalties may be imposed. If you appeal, once the Appeal Manager has written to you setting out the decision on the appeal and explaining the reasons for it, that is the **final stage of the procedure**, unless the penalty imposed is dismissal.

A list of potential penalties for serious misconduct is in Section 9.2. There is no fixed scale relating particular penalties to particular offences, though the manager will ask the HR Case Manager for information about comparable cases so they can apply a consistent approach. However, each case will be decided on its merits and the circumstances of that case, including any factors in mitigation and your record.

The overriding requirement is the need to 'act reasonably'.

7. Gross Misconduct

There will be cases where the breach of discipline is so serious that it may result in dismissal, without the usual period of notice or pay 'in lieu' of notice, for a first offence. This is gross misconduct, which means misconduct that is so serious that it constitutes a fundamental breach of your employment contract. You can find examples of disciplinary offences that will normally constitute gross misconduct in our Discipline Policy.

Suspected gross misconduct will be dealt with by a manager at Senior Staff Group Level. The same procedure of investigation, disciplinary hearing and appeal will be followed as for serious misconduct.

In cases decided by a Senior Manager, the appeal will be to the next manager in the line management chain. Where that manager is the Director General, he may appoint a nominated delegate who will be at least the same level as the Senior Manager who made the original decision under appeal.

8. External Appeal Against Dismissal

If the final outcome, after all stages of the Disciplinary Procedure including appeal have been completed, is that you are dismissed, you may have an external right of appeal to the Civil Service Appeal Board.

The address to write to is:

Civil Service Appeal Board
Room G34
22 Whitehall
London
SW1A 2WH

9. Disciplinary Penalties

Penalties may be combined if the case warrants it.

9.1 Penalties for Minor Misconduct

- Noted Verbal Warning (normally 6 month shelf life)
- Written Warning (normally up to 12 months shelf life)

9.2 Penalties for Serious or Gross Misconduct, or Repeated Minor Misconduct

- Written Warning (normally up to 12 months' shelf life)
- Final Written Warning (normally 24 months' shelf life)
- Dismissal:
 - in cases of gross misconduct, this can be without notice; or
 - in cases of an earlier final written warning and subsequent misconduct not amounting to gross misconduct, termination will be with notice, as in the contract of employment
- Withholding a pay progression step or forfeit of progression already earned.
- Fine or an order to make reimbursement to the FC
- Suspension
- Disciplinary Transfer
- Demotion to a lower Pay Band, which may involve a reduction in pay and/or benefits
- Ban on promotion for a specific period

9.3 Recovery of Loss of Public Funds

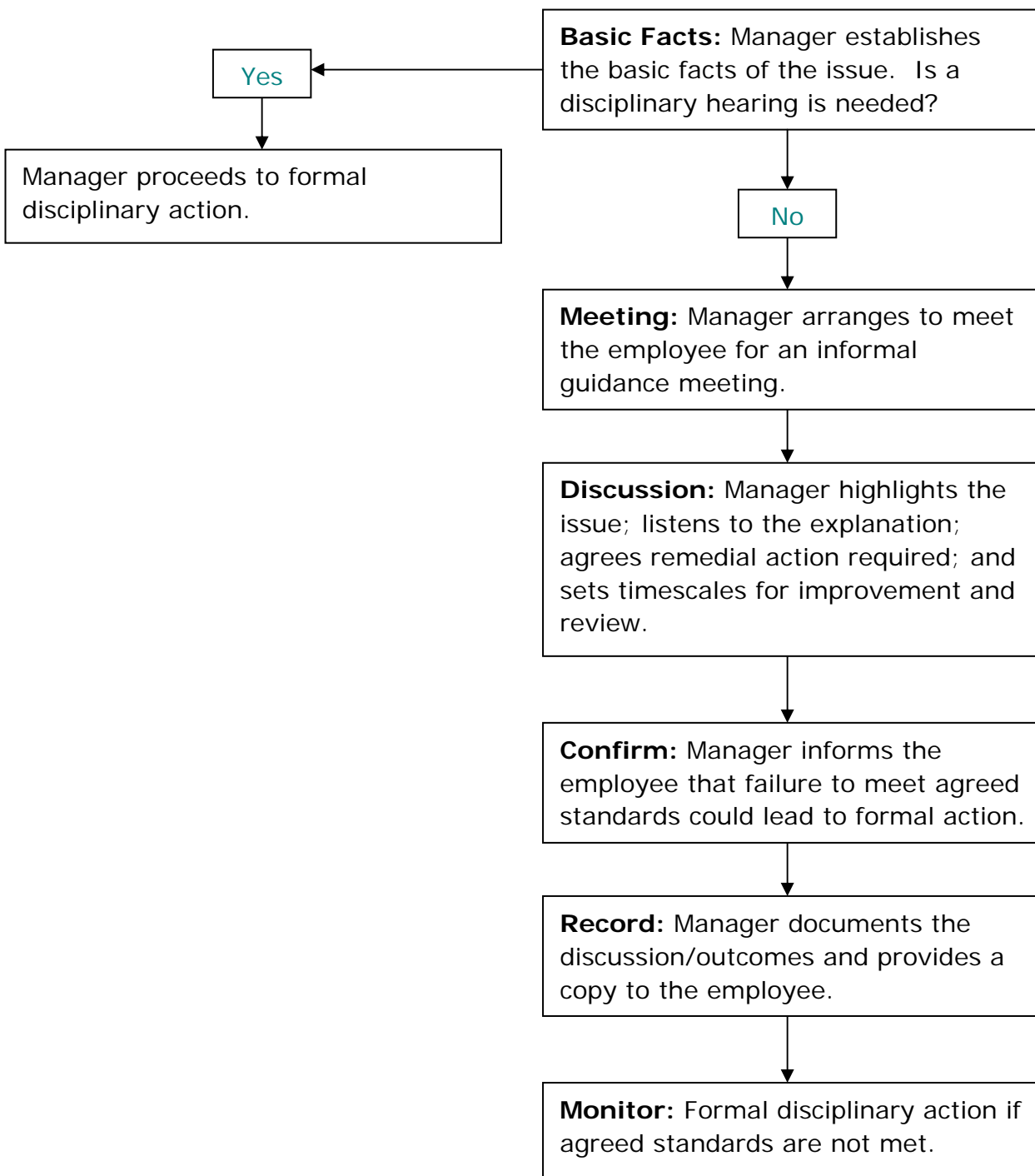
On dismissal for an offence involving any loss of public funds, any sums unpaid by the FC, for example salary or payments 'in lieu' due to the last day of employment, may be withheld by the FC, to recover all or some of the losses incurred as a result of the misconduct.

In cases involving serious losses or criminal cases such as fraud, your pension entitlements may also be reviewed.

Appendix 1

Flowcharts

1. Discipline: Informal Procedure



2. Discipline: Formal Procedure for Minor, Serious or Gross Misconduct

