

# Discipline

## 1. Introduction

The Forestry Commission (FC) expects all employees to maintain the required standards of conduct and behaviour. This procedure sets out the steps to ensure that instances of suspected misconduct are fully investigated and the individuals involved are managed fairly and consistently.

This procedure will not be used to manage issues relating to performance or sickness absence unless there is evidence of dishonesty, negligence, failure to follow instructions or another form of misconduct.

## 2. Standards of conduct and behaviour

The standards of conduct and behaviour that are expected of all FC employees are set out in the [HR Policy and HR Procedure - Conduct and Security](#), which forms part of the terms and conditions of employment of every civil servant.

The [FC Values](#) describe how you should behave towards your FC colleagues and how you should expect them to behave towards you, as well as how you should behave towards a customer, a supplier or a contractor. The [FC Competency Framework](#) details the behaviours that must be displayed to be effective in your role.

You should ask your manager for guidance if you are unsure of the conduct or behaviour expected of you.

### 2.1 Monitoring conduct and behaviour

Managers will monitor conduct and behaviour on an ongoing basis and provide regular, constructive feedback throughout the year. Where your conduct or behaviour gives cause for concern, this will be discussed with you at the earliest opportunity so that you can make the required improvement.

#### 2.1.1 Allegations of misconduct

If a grievance is raised by another employee that makes allegations of misconduct, you will be managed in line with this procedure.

This does not infer that there is a case to answer or pre-suppose the outcome of the grievance but ensures that you are advised of any allegations, given the opportunity to participate in any investigation and kept up to date of progress at each stage.

If a grievance is raised about an issue that relates to ongoing disciplinary proceedings, a decision may be taken to temporarily suspend the disciplinary process to deal with the grievance or both matters may be dealt with at the same time.

## 2.2 Fraud / financial irregularities

If you are suspected of fraud or financial irregularities, your case will be referred within 24 hours to [Director, HR](#) and the person with overall financial responsibility for your area, as follows:

- FC England and Central Services – Finance Director, England
- FC Scotland – Head of Corporate Services, Scotland

Advice may be sought from the appropriate Government Department's internal audit representative on any investigation procedures.

## 2.3 Criminal offences

If you are charged with, or convicted of, a criminal offence, your manager will not automatically take disciplinary action. The circumstances will be reviewed to assess the likely impact that the charge/conviction will have on your ability to carry out your duties as well as your relationship with the FC, other employees and stakeholders.

In some cases, acts of misconduct 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.

Managers will not normally progress 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, managers will not await the outcome of any prosecution before taking fair and reasonable action.

Where the Police are involved, they will not conduct any investigation on behalf of the FC, nor will the Police be present at any investigation interviews or disciplinary hearing conducted by the FC.

## 3. Informal management of misconduct

Managers will generally try to tackle minor misconduct informally in the first instance. The informal disciplinary procedure is set out in [Appendix 1](#).

Your manager will meet with you to:

- remind you of the required standards of conduct and/or behaviour;
- explain why your conduct is causing concern; and
- agree what action is required and if necessary, provide you with coaching and support to make the required improvements.

Your manager may send you a short email or note after the meeting summarising the discussion and any improvement required.

If your conduct and/or behaviour improve then no further action will be taken.

### 3.1 Informal fact finding

Where the circumstances surrounding the alleged misconduct require factual confirmation, it may be necessary for an informal fact finding to be carried out. This will enable your manager to look into the issues and confirm/establish the facts, before deciding if any actions are needed to resolve the situation. You will be kept informed about the actions your manager is taking.

As part of the informal fact finding, your manager may ask to meet with you and any colleagues who may be able to help clarify the situation. These meetings are not formal so there is no right to be accompanied by a Trade Union representative or workplace colleague.

If fact finding indicates that misconduct has occurred, your manager will decide whether it is appropriate to manage this informally or using the formal disciplinary procedure (see [Section 4](#)).

## 4. Formal procedure

The formal disciplinary procedure will be used if: informal attempts to improve minor misconduct have been unsuccessful; the misconduct is likely to be considered serious or gross; or an allegation of serious or gross misconduct has been made using the grievance procedure. The formal disciplinary procedure is set out in [Appendix 2](#).

## 4.1 Hearing manager

A hearing manager is the manager who will determine if a formal investigation is necessary and conduct your disciplinary hearing deciding if any misconduct has taken place. The seniority of the hearing manager will depend on the seriousness of the alleged misconduct:

- Minor misconduct will be dealt with by line managers
- Serious misconduct will be dealt with by a manager of at least unit manager level
- Gross misconduct will be dealt with by a manager at Senior Staff Group level or their nominated deputy

Repeated instances of misconduct, where a more serious penalty may be considered, will be dealt with at unit manager or Senior Staff Group level, as appropriate.

## 4.2 Formal investigation

The hearing manager (see [Section 4.1](#)) may decide that it is necessary for a formal investigation to be carried out. The nature and extent of any investigation will depend on the seriousness of the alleged misconduct.

### 4.2.1 Formal fact finding

If the hearing manager requires to confirm/establish facts which appear to be relatively straightforward, a formal fact finding will be carried out, normally by your manager.

As part of the formal fact finding, your manager may ask to meet with you and any colleagues who may be able to help clarify the situation.

There is no statutory right for you to be accompanied at these meetings. However, you may request to be accompanied by a Trade Union representative or workplace colleague which may be allowed so long as this does not delay the fact finding. Your representative or colleague can address the meeting, ask questions and sum up your case. However, they cannot answer questions on your behalf.

### 4.2.2 Independent investigation

If the facts appear particularly unclear, complex, in dispute or if another member of staff is involved, an independent investigation may be necessary. This investigation will be carried out by two investigators from outside of your Unit. The hearing manager will work with an HR Operations Manager to appoint appropriate investigators.

The investigation will be carried out promptly and thoroughly and no disciplinary action will be taken until the investigation has been concluded.

If an investigation is required the hearing manager will write to inform you of:

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

Formal investigations will normally be concluded within **thirty working days** and you will be advised if the investigators need more time to finish their report which will be presented to the hearing manager.

### 4.2.3 Investigation interviews

As part of the formal investigation, the investigators may ask to meet with you and any of your colleagues who may be able to clarify the situation. The investigators will write to you to arrange a date, time and place for the meeting. If you are interviewed, interview statements will be written up, agreed and normally included as part of the investigation report.

The interview does not imply that anyone is guilty of any alleged misconduct or that disciplinary action will follow.

There is no statutory right for you to be accompanied at this interview. However, you may request to be accompanied by a Trade Union representative or workplace colleague which will be allowed so long as this does not delay the investigation. Your representative or colleague can address the meeting, ask questions and sum up your case. However, they cannot answer questions on your behalf.

### 4.2.4 Action following a formal fact finding or independent investigation

Once all the necessary information has been gathered, the hearing manager will review the outcome of the formal fact finding or the investigation report and decide whether it is necessary to progress to a disciplinary hearing (see [Section 5](#)).

If the hearing manager decides that no further action is necessary you will be advised in writing that the formal procedure has ended. You will not normally receive a copy of the investigation report and all paperwork will be kept secure and handled in line with the FC's data protection and information security requirements.

If the hearing manager decides that there is case to answer, you will be invited to a disciplinary hearing (see [Section 5](#)).

You will normally receive a copy of the full investigation report including any witness statements. If the manager decides that it is not appropriate to fully disclose the

investigation report to you, you will receive a summary of the investigation report and be given enough information to understand fully the reasons for the disciplinary hearing.

### 4.3 Suspension with pay

Exceptionally, it may be necessary for you to be suspended from duty for a short time during the disciplinary process, for example while a formal fact finding or investigation is being carried out or if there is a potential risk to others. Details of your suspension will be confirmed in writing and the suspension will be reviewed regularly by your line manager or the hearing manager (in liaison with your line manager) at least every **fifteen working days**.

Suspension is not a disciplinary penalty and does not imply that you are guilty of the alleged misconduct.

## 5. Disciplinary hearing

The purpose of the disciplinary hearing is to provide an opportunity for you and the hearing manager to discuss the alleged misconduct. You can put forward evidence so that the hearing manager can decide whether any misconduct has taken place.

If you do not attend the hearing and do not offer an acceptable explanation for your absence, then the hearing manager will make a decision based on the evidence available.

### 5.1 Before the hearing

The hearing manager will write to you, giving you **five working days** notice of a disciplinary hearing. The letter asking you to attend the hearing will confirm:

- details of the alleged misconduct;
- if dismissal is a potential outcome (see [Section 7](#));
- your right to be accompanied by a Trade Union representative or workplace colleague (see [Section 5.1.1](#)); and
- the names of any witnesses that the hearing manager intends to call (see [Section 5.1.2](#)).

#### 5.1.1 Right to be accompanied

You will be advised of your right to be accompanied by a Trade Union representative or workplace colleague and you must advise the hearing manager at least **two working days** before the hearing if you are being accompanied.

If you or your representative are unable to attend on the proposed date then you may request an alternative, provided it is within **five working days** of the original date set.

You are not entitled to legal representation unless the hearing manager considers that your circumstances are exceptional.

### 5.1.2 Evidence submitted/witnesses

If a formal investigation was carried out you will have been provided with a copy of the investigation report (see [Section 4.2.3](#)) along with any documents or witness statements the hearing manager intends to use at the hearing. You will also be advised of the names of any witnesses the hearing manager intends to call.

If you have documentation that you wish to be considered or witnesses that you would like to call, you must submit the evidence and/or witness names, along with your reason for wishing to call them, at least **two working days** before the hearing in order for the hearing manager to consider your request.

## 5.2 During the Hearing

The hearing manager will explain their understanding of the alleged misconduct and any evidence that has been gathered, as well as seeking information from any witnesses, where appropriate.

You may be required to answer questions and you will be given the opportunity to set out your case and explain any mitigation for your conduct and/or behaviour. You will be allowed to ask questions and raise points about any evidence or information provided by other employees, as well as presenting additional evidence in support of your case.

Your representative or colleague can address the meeting, put forward and sum up your case, ask questions and confer with you, but cannot answer questions on your behalf.

## 5.3 Outcome of the hearing

At the disciplinary hearing, notes will be taken by someone who has not previously been involved in the case. After the hearing, you will be given a copy of the notes for comment.

Once the disciplinary hearing is complete and all the necessary information has been gathered, the hearing manager will decide what action to take. You will be sent a letter with the manager's decision within **five working days** of this decision being reached. If it is not possible to respond in this timescale, the manager will explain the reason for the delay and let you know when to expect the decision.

If the hearing manager decides that no further action is necessary, you will be advised in writing that the formal procedure has ended. All paperwork will be kept secure and handled in line with the FC's data protection and information security requirements.

If the hearing manager decides that further action is necessary, you will be issued with a disciplinary warning (see [Section 6](#)).

## 6. Disciplinary Warnings

A formal warning will only be issued after a formal disciplinary hearing has been held and any factors contributing to the misconduct have been investigated.

Your manager will send you an outcome letter within **five working days** of the disciplinary hearing which will specify:

- the level of warning being issued (see [Section 6.1](#));
- length of time that the warning will remain 'live' (see [Section 6.2](#));
- the improvements required and consequences of a failure to maintain the required standard of conduct and behaviour ( see [Section 6.3](#) and [Section 6.4](#));
- any additional disciplinary penalty being applied, where appropriate (see [Section 6.1.1](#)); and
- your right to appeal (see [Section 8](#)).

### 6.1 Level of Warning

When deciding on the level of warning, the hearing manager will consider the seriousness of the misconduct, the circumstances of the case and any previous warnings that remain live (see [Section 6.3](#)). There are three possible levels of warning that can be issued:

- Noted Verbal Warning;
- Written Warning; and
- Final Written Warning.

For cases of gross misconduct, or repeated serious misconduct, consideration will be given to dismissal or downgrading (see [Section 7](#)).

#### 6.1.1 Additional Disciplinary Penalties

Depending on the circumstances of the case, it may also be necessary to supplement the disciplinary warning with an additional disciplinary penalty. This may include:

- an order to make reimbursement to the FC;

- withholding a pay award;
- disciplinary transfer; or
- a ban on promotion for a specific period.

## 6.2 Length of time the warning will remain “live”

- Noted Verbal Warnings will normally remain live for 6 months.
- Written Warnings will normally remain live for 12 months.
- Final Written Warnings will normally remain live for 24 months.

In certain circumstances it may be appropriate to extend the length of the warning.

During this period an acceptable standard of conduct and behaviour must be maintained. After the warning has expired, it will normally be disregarded but will be retained on your personal file for 3 years after the expiry date.

## 6.3 Further misconduct while a warning is live

If you commit further misconduct while a warning is live, you will normally re-enter the formal procedure. The hearing manager will consider issuing the next level of warning unless there is clear justification to repeat the previous level of warning and extend your existing warning period.

## 6.4 Further misconduct after expiry of warnings

There may be occasions when you maintain an acceptable standard of conduct and/or behaviour throughout the live warning period but have further instance of misconduct soon after it expires. Where a pattern emerges, this will be taken into consideration when deciding how long any future warning should remain live.

# 7. Dismissal or Downgrading

You may be dismissed on grounds of misconduct if you have been given a final warning for serious misconduct or if your actions are so serious that they are considered to be gross misconduct.

## 7.1 Role of Director, HR

[Director, HR](#) must be consulted on every case of gross misconduct and any case where downgrading or dismissal is being considered. The role of Director, HR is to ensure that a fair and reasonable approach has been taken and to ensure consistency across the FC.

## 7.2 Dismissal decision

The decision to dismiss you will be confirmed in writing within **five working days** of your disciplinary hearing. The letter will confirm:

- the reason for dismissal and effective date;
- your notice period (in cases of gross misconduct you may be summarily dismissed without notice); and
- your right to appeal.

If you are entitled to notice you may not be expected to work during your contractual notice period, but will be paid during this time.

## 7.3 Recovery of loss of public funds

If you are dismissed following misconduct which has resulted in loss of public funds, the FC may recover the losses incurred (or a proportion of the total amount) from your final salary or by withholding any other payments due on your last day of employment. In cases involving serious losses or criminal cases such as fraud, your pension entitlements may also be reviewed.

## 7.4 Downgrading

In exceptional circumstances, downgrading may be considered as an alternative to dismissal. Downgrading will only take place where there is a suitable vacancy at a lower pay band and where your manager, of at least unit manager level, is confident you could carry out the role effectively.

If this manager decides that downgrading is appropriate, you will be informed in writing within **five working days** of your disciplinary hearing. The letter will confirm your new job title, salary and other details of the role, as well as your right to appeal against the decision.

# 8. Appeals

You have the right to appeal against a formal warning, additional penalty or the decision to dismiss or downgrade you. You must appeal within **ten working days** of the date of the warning letter or dismissal or downgrading letter, clearly setting out your grounds for appeal.

## 8.1 Appeal Manager

An appeal manager will be appointed whose role is to review the original decision and conclude whether the decision reached was reasonable. The appeal manager will

consider any new information that you present, however the appeal hearing will not normally be a re-hearing of information already put forward at your formal disciplinary hearing.

The appeal manager will be at least one pay band above the manager who made the decision. Where this is not possible, the appeal will be heard by a manager outside of your management chain who has not previously been involved in the case.

Appeals against dismissal or downgrading will be heard by the Country Heads, Chief Executives, Director, Central Services or their nominated deputies, as appropriate.

## 8.2 Appeal Hearing

The appeal manager will invite you to attend an appeal hearing where you will be given the opportunity to explain your grounds for appeal.

You will be given at least **five working days'** notice of the hearing and the letter asking you to attend will confirm:

- the decision that you are appealing against; and
- your right to be accompanied by a Trade Union representative or workplace colleague if you wish.

If you or your representative are unable to attend on the proposed date you may suggest an alternative, provided it is within **five working days** of the original date.

If you do not attend the hearing, the appeal manager will make a decision based on the evidence available.

## 8.3 Appeal Outcome

At all appeal hearings, notes will be taken by someone who has not previously been involved in the case. After the hearing, you will be given a copy of the notes for comment.

The appeal manager will notify you of their decision in writing within **five working days** of the appeal hearing. If there is likely to be a delay, you will be informed of the delay and likely timescale.

The appeal manager may decide to:

- **Fully uphold the appeal** - disregard the warning, additional penalty, decision on dismissal or downgrading. Details of the warning, additional penalty or decision will be removed from your personal file. Any previous warnings remain in place.
- **Partially uphold the appeal** – Where the warning and/or penalty is changed (but not increased) because the appeal manager is provided with new evidence which was not available during the formal investigation/disciplinary hearing stage and, in their view, the original decision is no longer appropriate, even though there was an instance of misconduct.
- **Reject the appeal** - the warning remains live, the additional penalty remains, dismissal or downgrading is progressed.

The outcome of the appeal hearing is final. Any grievances relating to issues that have already been addressed at appeal hearings will not be accepted.

## 9. Procedural Appeal

If you feel that the discipline procedure has not been followed correctly, you have the right of appeal to [Director, HR](#). This right of appeal will assess compliance with procedure and will not review the discipline outcome.

A procedural appeal should be made in writing to Director, HR within **ten working days** of receipt of the discipline outcome letter, highlighting the key elements of the procedure that you feel were not followed.

Director, HR will assess the grounds of your appeal and if they determine that there was a fundamental flaw in the procedure that undermines the decision made, they could request that any warnings issued be removed from your personal file, and the discipline procedure is repeated.

You will be advised of the outcome within **ten working days** of receipt of your appeal. If it is not possible to respond in this timescale, Director, HR will explain the reason for the delay and let you know when to expect a decision.

## 10. Reasonable Adjustments

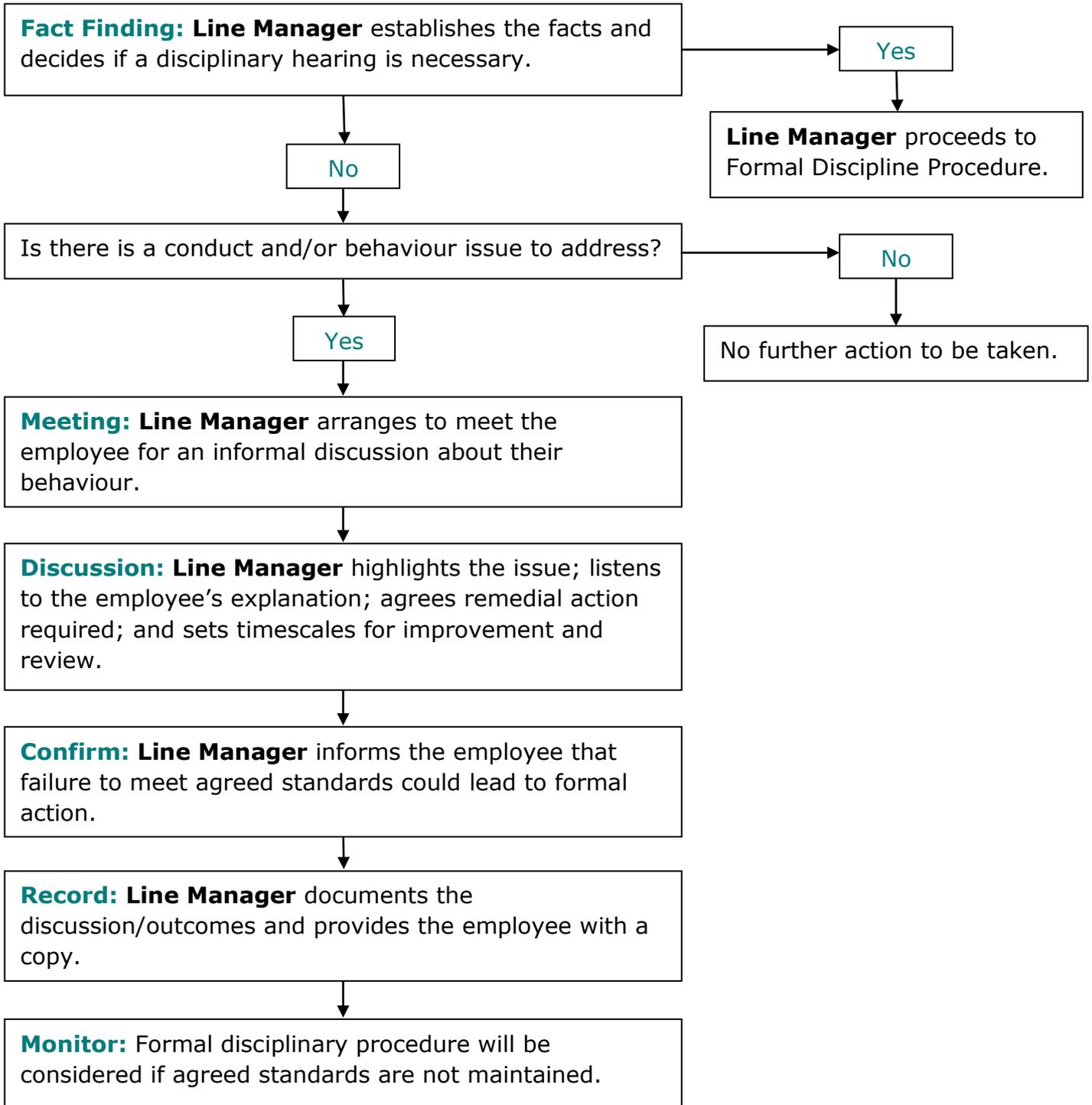
Managers will consider any reasonable adjustments which will allow you to engage fully with the disciplinary process. You should provide sufficient notice for your request for an adjustment to be considered and at least **two working days** before any informal or formal meeting.

## 10.1 Audio/video recording

Neither you nor your manager will be permitted to make audio/video recording during any stage of the informal or formal disciplinary procedure, unless this is pre-agreed as a reasonable adjustment to enable you to engage with the process.

Appendix 1

# Informal procedure



Appendix 2

# Formal procedure

