



Version 1.0

sportscotland
the national agency for sport

Guide to Managing Disciplinary and Appeal Processes

Contents

Introduction.....	3
Principles of a Disciplinary Process:	5
How to decide if you need to take informal or formal action.....	5
Taking Informal Action	7
Taking Formal Action	8
Disciplinary Hearing Procedural Steps:	10
1. Prior to the hearing considerations.....	10
2. During the hearing considerations.....	15
3. Making disciplinary decisions	17
Appeal Procedural Steps	20
1. Prior to the appeal considerations	20
2. During the appeal considerations	21
Appendix 1.....	22
Disciplinary Policy and Procedure – Template.....	22
Appendix 2.....	27
2a) Letter of notification for disciplinary hearing.....	27
2b) Letter of notification where dismissal or action short of dismissal is being considered.....	28
Appendix 3.....	29
3a) Hearing Decision Letter (Written warning/final written warning)	29
3b) Hearing Decision Letter (After disciplinary hearing considering dismissal).....	30
Appendix 4.....	31
4a) Letter/Notice of Appeal Hearing against Warning	31
4b) Letter/Notice of Appeal Hearing against Dismissal/Disciplinary Action.....	32
Appendix 5.....	33
5a) Letter/Notice of Result of Appeal against Warning.....	33
5b) Letter/Notice of Result of Appeal against Dismissal/ Disciplinary Action short of dismissal	34

Acknowledgements

The [Case Management Support Service](#) (CMSS) is a partnership between Children 1st and **sportscotland**, established to support Scottish governing bodies of sport (SGBs) to manage investigations and disciplinary processes around wellbeing and protection concerns for children and adults in sport. CMSS provide advice, training, guidance, templates, and consultancy in developing organisational practice to keep children and adults safe in sport.

This resource has been co-designed with the expertise of colleagues within Children 1st, informed by SGBs, and created alongside [Kyniska Advocacy](#), where we are very grateful for everyone's support, contributions and insight. We would also like to acknowledge the learning and resource templates gained from [ACAS](#), [CIPD](#) and the [Ann Craft Trust](#).

Introduction

This guidance document has been created for Scottish governing bodies of sport (SGBs) to support existing wellbeing and protection in sport procedures in Responding to a Concern about an Adult's Conduct. The guidance and associated templates will demonstrate best practice to confidently manage disciplinary and appeal processes in a timely and appropriate manner.

In developing this guidance, the Case Management Support Service has benefited from a co-design approach with colleagues internal to [Children 1st](#) including expertise in children's rights, data protection, information management, participation, HR and [Bairns Hoose](#). External support has included learning from and adoption of training and guidance from The Advisory, Conciliation and Arbitration Service (ACAS); a non-departmental public body of the Government of the United Kingdom whose purpose is to improve organisations and working life through the promotion and facilitation of strong industrial relations practice.

The guide builds on the recommendations of ACAS's [Discipline and Grievance at Work Guide \(2020\)](#), adapting their document to provide specific advice for SGBs. The guide has also taken guidance from [Kyniska Advocacy](#), bringing lived experience of adults who have reported concerns about wellbeing and protection in sport.

Implementation of this guide will:

- Set and maintain standards and compliance with Codes of Conduct for SGBs.
- Clarify expectations for individuals to ensure a safe sporting environment.
- Help maintain good relationships in sport through clear processes of formal action, notably for small communities of sport.
- Ensure fairness and consistency through a human right's-based approach to disciplinary action.
- Provide support in often stressful and difficult situations for all involved in the process.
- Contributes to protection from legal challenge through increased confidence that the right action is being taken.

Also contained within this document is a template policy and procedure for SGBs to implement that aligns with the procedural guide and additional appendices to support with the disciplinary process application.

This guidance can be complemented and used alongside the [Guide for Undertaking Wellbeing and Protection Investigations](#). For consistency in language for both guidance documents and for ease of reading, the following words will be used to cover the description of the text shown:

- Complaint, includes concern or complaint about an adult's conduct or behaviour.
- Complainant, is the person who is either raising the concern or complaint about actions of adult towards them or other people.
- Investigator, is either the Wellbeing and Protection Officer (WPO) or person appointed to carry out the investigation.
- Person subject of the complaint is the adult whose conduct is being questioned, challenged or reported against.
- Witness, is any person of any age who is considered to have witnessed, observed or experienced the alleged concerning conduct.

Principles of a Disciplinary Process: How to decide if you need to take informal or formal action

Where an investigation into a complaint about an adult's conduct identifies there is a case to answer; a fair, consistent, and transparent disciplinary process must be managed, with a range of possible decisions to be reached. The flowchart below indicates the basic process to follow.

The unique nature of sport

The ACAS principles of a disciplinary process from which this guidance has been built are designed for employees. However, sports organisations sit in a unique position where a considerable amount of work is done by volunteers and involves work with children and young people. This means there is specific vulnerability and risk for those working in sport compared to other employment areas. Therefore, in line with the [Standards for Child Wellbeing and Protection in Sport](#), this guidance adds to the ACAS principles to encourage a child-centred culture in sport which is accountable for all decisions made relating to children and young people and is just as relevant in considering the wellbeing and protection of adults.

It is recommended that best practice when managing volunteers is still to follow the same process for employees to ensure the correct action of support is taken with the security that, if no improvement takes place or if their conduct is either unacceptable or creates unmanageable risk, the adult can be removed from that role in sport.

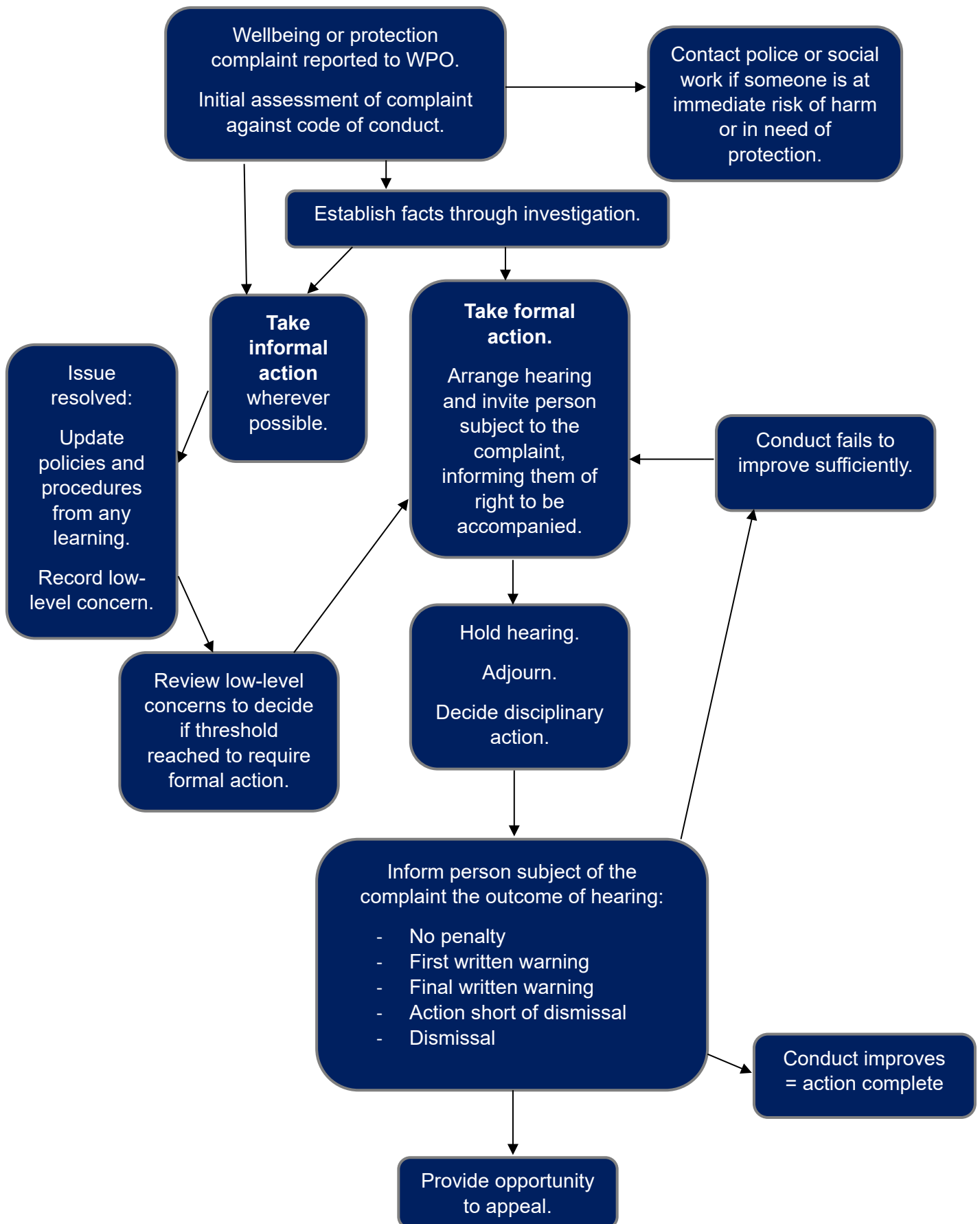
Employment Considerations

While best practice for both employers and volunteers is recommended in using the flowchart below, specific consideration should be given to the [ACAS Code of Practice for disciplinary and grievance procedures](#) when managing adult's conduct in the workplace.

This is important in ensuring best possible action is taken should the situation reach any disputes between employees and employers that could result in [Employment Tribunals](#). The most likely cases in managing wellbeing and protection in sport which lead to disciplinary action that could reach Employment Tribunals, would be claims of unfair dismissal.

NOTE: *Throughout this guide, content that applies specifically to employees will be indicated in italics. These are essential steps due to their rights under employment law.*

Flowchart - How to decide if you need to take informal or formal action



Taking Informal Action

Informal action can be used in response to a complaint about poor practice or inappropriate behaviour, or a low-level concern, deemed as a misdemeanour. However, the term 'low-level' concern does not mean that it is insignificant. A low-level concern is any concern – no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' – that an adult may have acted in a way that:

1. Is inconsistent with SGBs Code of Conduct, *including inappropriate conduct outside of work for employees*.
2. Is not serious enough to merit a referral to the police or social work e.g. No crime is suspected or wellbeing concern for an adult or child has been raised.

Addressing low-level concerns appropriately through this informal action process is a necessary step for protecting those in your sport.

Resolving disciplinary issues informally could be appropriate to manage cases of poor practice or inappropriate behaviour. This can allow some issues to be addressed quickly and confidentially. A quiet word or confidential informal discussion can be arranged to bring any issues to the awareness of the person subject of a complaint. This should include reference to appropriate Code of Conduct, highlighting the expectations of behaviour and agreeing a timeframe for the behaviour to be improved or addressed. This two-way conversation should allow for the adult to give their perspective and raise any contributory considerations that may have affected their conduct.

If it becomes apparent during the discussion that the matters are more serious than originally understood, where practice that is unacceptable and could be considered as misconduct or gross misconduct is suspected to have taken place, **stop the discussion** to prevent the informal action leading into possible formal action, then take necessary steps to follow a formal disciplinary process.

Should the discussion highlight evidence that there is no problem to be addressed, reassure this with the individual and make this clear. If, however improvements are identified, these should be agreed and recorded with a timescale for review should that be appropriate.

This record should be kept in line with SGBs Low-Level Concern policy. It is recommended these concerns are stored in a central low-level concerns file with the other wellbeing and protection records. The rationale for storing such records on a central file, rather than in personnel files, is that it makes it easier to address possible issues such a situation may indicate e.g.:

- The Code of Conduct is not clear.
- The briefing and/or training has not been satisfactory.
- The Low-Level Concerns policy is not clear enough.

It also allows for review of the file and recognition of any potential patterns of inappropriate, problematic, or concerning behaviour. In this instance, repeat low-level concerns may warrant formal action being taken to address them. Central recording also reassures those involved with the sport, encouraging them to share low-level concerns.

Taking Formal Action

Resolving disciplinary issues through formal action is essential to manage cases of unacceptable conduct that could reflect misconduct or gross misconduct. Where it is identified that a disciplinary hearing needs to take place, this should be informed by an appropriate investigation report that has established the basic facts.

A hearing should be scheduled, and the person subject of the complaint should be notified and informed they can be accompanied, sometimes referred to as a [companion](#). Decisions reached at a hearing can range from no penalty to dismissal. This decision should be provided to the person subject of the complaint in writing, along with the opportunity to appeal the decision. If conduct does not improve following the disciplinary action, this could result in a further hearing. Where the conduct does improve, the disciplinary action should be considered complete and confirmed in writing with the person subject of the complaint.

The complainant should be supported throughout this procedure by being afforded the opportunity to be updated with the basic progress of the investigation and disciplinary hearing process. This should be guided by the individual circumstance and led by the complainants needs. Allocation of a support person from the organisation or signposting to access other support services may be best practice to achieve this.

NOTE: *If criminal actions are being investigated but the conduct requires prompt attention, the SGB need not await the outcome of the criminal prosecution before taking fair and reasonable action. Advice should be sought from the police in this regard, but formal action can still be taken. The standard of proof for action is lower for employment matters than criminal matters and therefore action can be taken if, on a balance of probability, the misconduct or gross misconduct occurred as opposed to in criminal standard of proof of beyond reasonable doubt.*

Disciplinary Hearing Procedural Steps:

Taking Formal Action

The Purpose of the Disciplinary Hearing:

1. To establish whether there is a failure to achieve required behaviours or standards of conduct
2. To establish any reason(s) for the failure
3. To establish the appropriate response / outcome

1. Prior to the hearing considerations

When to hold a hearing

As soon as the investigation into the complaint has been concluded, the report will be shared with [SGB] HR/Disciplinary Officer and a decision should be made about convening a hearing. The disciplinary hearing should be *held without unreasonable delay whilst allowing the person subject of the complaint reasonable time to prepare their case.*

The person subject of the complaint may offer a reasonable alternative time of the proposed hearing date, normally within five working days of the original date, if their chosen companion cannot attend.

You may also arrange another hearing if the person subject of the complaint fails to attend through circumstances outside their control, such as illness.

In practice, there is no set time on what is 'reasonable'. However, timely decision making is essential for all involved and therefore timescales should be measured in days as opposed to weeks.

Who is invited to the hearing

The hearing attendees should be made up of:

1. The hearing manager.
2. The investigator
3. The person subject of the complaint.
4. The person subject of the complaint's [companion](#), if requested.
5. Any [witnesses](#) to be called by the SGB or the person subject of the complaint.
6. A note-taker.

Any conflict of interest between attendees of the hearing should be considered in advance to ensure the hearing can be facilitated in a fair and objective manner.

Preparing for the hearing

- Appoint a hearing manager (e.g., SGB's HR/Disciplinary Officer). This should not be the person who undertook the investigation.
- Ensure investigation report has been completed effectively and all relevant statements and evidence are enclosed.
- *If the person subject of a complaint is the employee concerned and a trade union representative, discuss the case with a trade unions full-time official after obtaining the employee's agreement. This is because the action may be seen as an attack on the union.*
- Ensure the hearing is held at a time and location that is as private as possible, in a suitable room, and where there will be no interruptions.
- Consider the provision of an interpreter or facilitator if there are understanding or language difficulties (The organisation should ensure this is provided for transparency of the hearing and should consider external agencies to provide this. A friend of the person subject of the complaint, or a co-worker for employees, may be suitable if considered a trustworthy representative). This person may need to attend in addition to the companion, though one person could carry out both roles.
- Make provision for any reasonable adjustments to support the needs of any person with a disability.
- Where possible arrange for someone who is not involved in the case to take a note of the hearing and to act as a witness to what was said.
- Distribute letters of invite to the hearing. ([Appendix 2](#))

- Within person subject of the complaint invitation letter include nature of the complaint, possible outcome if proven, right to be accompanied and copies of written evidence. These could include relevant papers, witness statements and notes from interviews. At no time should personal details of any children or young people under the age of 18 years or adults seeking anonymity, who have been interviewed or provided statements during the investigation, be included when these papers are being shared.
- Allow the person subject of the complaint to identify if they want to call witnesses or submit witness statements.
- Think about the structure of the hearing and make a list of points you will wish to cover.
- Consider what explanations may be offered by the person subject of the complaint, and if possible, review prior to hearing.

Right to be accompanied

Employees have a statutory right to be accompanied where they are required or invited by their employer to a disciplinary hearing that could result in:

- a formal warning being issued to an employee (i.e. a warning that will be placed on the employee's record)
- the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action.
- the confirmation of a warning or some other disciplinary action (i.e., following an appeal hearing).

Informal discussions, counselling sessions or disciplinary investigatory meetings/interviews do not attract the right to be accompanied. Meetings to investigate a disciplinary issue are not disciplinary hearings. It may however be appropriate to allow an individual to be accompanied to any of the above for wellbeing purposes so long as it would not jeopardise the purpose of the meeting.

If it becomes apparent during any informal process that formal disciplinary action may be needed, then this should be dealt with at a formal disciplinary hearing, at which the statutory right to be accompanied will apply.

The chosen companion may be:

- A fellow worker
- A trade union representative or an official employed by a trade union.

- A trade union representative who is not an employed official (however they must have been certified by their union as being competent to accompany an employee)

There is **no** legal right to have a legal representative at a disciplinary hearing such as a lawyer or solicitor for employees.

There is no legal right to bring anyone else, such as a parent or friend, however as an SGB you might deem this proportionate support, particularly for young or vulnerable staff and volunteers.

The Companion may :	The Companion may not :
<ul style="list-style-type: none"> - address the hearing - put forward the employee's case - sum up the employee's case - respond to any view expressed at the hearing - confer with employee - ask questions 	<ul style="list-style-type: none"> - answer questions on the employee's behalf - address the hearing if the employee does not wish it - prevent the employer from explaining their case

Who is reasonable to request to be a companion?

Whether the requested companion is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide if disputed.

Employees should provide enough time for the employer to deal with the companion's attendance at the hearing.

Employees should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance, the name of the companion where possible and whether they are a fellow worker or trade union official/representative.

What if the person subject of a complaint repeatedly fails to attend a hearing?

There may be occasions when the person subject of a complaint is repeatedly unable or unwilling to attend a hearing. This may be for various reasons, including illness or a refusal to acknowledge the issue. [SGB] HR/Disciplinary Officer will need to consider all the facts and come to a reasonable decision on how to proceed.

Considerations may include:

- Any disciplinary policy or procedural content the SGB has for dealing with failure to attend disciplinary hearings.
- The seriousness of the disciplinary issue under consideration.
- Where the person subject of the complaint is an employee, their disciplinary record (including current warnings), general work record, work experience, position, and length of service.
- Medical opinion on whether the person subject of a complaint is fit to attend the hearing.
- How similar cases in the past have been appropriately dealt with.

Where the person subject of the complaint continues to be unavailable to attend a hearing the [SGB] HR/Disciplinary Officer may conclude that a decision will need to be made on the evidence available. The person subject of the complaint should be informed when this is to be the case.

Who is appropriate to call as a witness?

A thorough investigation is essential to allow for witness statements and questions to have been gathered in advance. This written testimony, in most instances, should suffice for evidence and in person witness testimony may therefore be unnecessary.

Witnesses are most likely brought by the person subject to the complaint and may not have been spoken to as part of the investigation. These may be people who act as character references or those who the person subject to the complaint feel would change or influence the decisions of the disciplinary hearing.

It may not be appropriate for the complainant(s) to be present at the hearing. This is because it is unlikely in their best interest to be questioned and, given they have potentially been harmed, it would be inappropriate to put them through this process. In cases whereby the complainant(s)

wants to attend the hearing, consideration must be given to how this will be managed to reduce potential re-traumatisation. We would advise contacting the CMSS team to discuss this ahead of making a decision to invite the complainant(s) to a hearing.

2. During the hearing considerations

How should the disciplinary hearing be conducted?

Remember that the point of the hearing is to establish the facts, not to catch people out. The hearing may not proceed in neat, orderly stages but it is good practice to:

- introduce those present to the person subject of a complaint and explain why they are there.
- introduce and explain the role of the accompanying person/companion if present.
- explain that the purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the SGB's disciplinary procedure.
- explain that the hearing will be conducted in the following stages:
 - a) Statement of complaint
 - b) Person subject to complaints response
 - c) General questioning and discussion
 - d) Summarising the hearing
 - e) Adjournment before decision

a) Statement of the complaint

State precisely what the complaint is and outline the case briefly, by going through the evidence that has been gathered during the investigation. The investigator should be invited to share the findings of their investigations at this stage. This is also the time that the SGB would call any further witnesses that they feel are necessary in addition to the investigation report to evidence their findings. Ensure that the person subject of the complaint and their accompanying person/companion are allowed to see any statements made by witnesses.

b) Person subject of the complaint's response

Give the person subject of the complaint the opportunity to state their case and answer any allegations that have been made. They should be able to ask questions, present evidence, and

call witnesses they have chosen. The accompanying person/companion may also ask questions and should be able to confer privately with the person subject of the complaint.

Listen carefully and be prepared to wait in silence for an answer as this can be a constructive way of encouraging the person subject of the complaint to be more forthcoming.

If it is not practical for witnesses to attend, consider proceeding if it is clear that their verbal evidence will not affect the substance of the complaint. Alternatively, consider an adjournment to allow questions to be put to a witness who cannot attend in person but who has submitted a witness statement.

c) General questioning and discussion

Ask the person subject of the complaint if they have any explanation for the alleged misconduct or unsatisfactory conduct, or if there are any special circumstances to be taken into account.

Establish whether the person subject of the complaint is prepared to accept that they may have done something wrong or are not adhering to the Code of Conduct. If they are, offer opportunity to discuss what steps they could take to remedy the situation.

If it becomes clear during this stage that the person subject of the complaint has provided an adequate explanation or there is no real evidence to support the allegation, bring the proceedings to a close.

If new facts emerge, it may be necessary to adjourn the hearing to investigate them and reconvene the hearing when this has been done.

General tips for conducting this part of the hearing are:

- keep your approach formal and polite.
- encourage the person subject of a complaint to speak freely with a view to establishing the facts. A properly conducted disciplinary hearing should be a two-way process.
- use questions to clarify the issues and to check that what has been said is understood.
- use open ended questions, for example, 'then what happened?' to get the broad picture.
- ask precise, closed questions requiring a yes/no answer only when specific information is needed.
- do not get involved in arguments and do not make personal or humiliating remarks.
- avoid physical contact or gestures which could be misinterpreted or misconstrued as judgemental.

d) Summarising the hearing

Summarise the main points of the discussion after questioning is completed. This allows all parties to be reminded of the nature of the complaint, the arguments and evidence put forward and to ensure nothing is missed. Ask the person subject of the complaint if they have anything further to

say. This should help to demonstrate to the person subject of the complaint that they have been treated reasonably.

e) Adjournment before decision

Adjourn before a decision is taken about whether a disciplinary penalty is appropriate. This allows time for reflection and proper consideration. It also allows for any further clarity to be gained on any matters raised, particularly if there is any dispute over facts such as:

- Were disciplinary procedures followed?
- From the evidence presented, what was the person subject of the complaint's response, any mitigation?
- Is further investigation needed for corroboration?
- Was the standard of proof – 'on a balance of probability the complaint occurred' - met?
- Actual and potential consequences of decision reached?

3. Making disciplinary decisions

Prior to deciding any disciplinary penalty

When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to:

- whether the rules of the organisation indicate what the likely penalty or sanction will be as a result of the particular misconduct.
- the penalty imposed in similar cases in the past.
- whether standards of other employees/volunteers are acceptable, and that this employee/volunteer is not being unfairly singled out.
- The person subject to the complaint's disciplinary record (including current warnings), *general work record, work experience, position and length of service*.
- any special circumstances which might make it appropriate to adjust the severity of the penalty or sanction.
- whether the proposed penalty or sanction is reasonable in view of all the circumstances.
- *whether any training, additional support or adjustments to the employee's work are necessary.*

Imposing the disciplinary penalty

All warnings issued under disciplinary procedures will state clearly that the person subject to the complaint will be liable for further disciplinary action should their conduct not improve or should there be a further breach of [SGB] rules/Code of Conduct. In the event of no further misconduct occurring and the conduct improving, the warning will be removed. Records of the complaints should remain stored in a central low-level concerns file with the other wellbeing and protection records in line with SGBs Low-Level Concern policy.

First written warning – Misconduct

In cases of misconduct, person subject of the complaint should be given a written warning setting out the nature of the misconduct and the change in behaviour required. The warning should also inform the person subject of the complaint that a final written warning may be considered if there is further misconduct. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period (e.g. six months).

Final written warning

If the employee has a current warning about conduct or performance then further misconduct or unsatisfactory performance (whichever is relevant) may warrant a final written warning. This may also be the case where ‘first offence’ misconduct is sufficiently serious but would not justify dismissal. Such a warning should normally remain current for a specified period, for example, 12 months, and contain a statement that further misconduct or unsatisfactory performance may lead to dismissal.

Dismissal, Action short of dismissal or other sanction

If the employee has received a final written warning, further misconduct or unsatisfactory performance may warrant dismissal. Alternatively, the contract may allow for a different disciplinary penalty instead. Such a penalty may include disciplinary transfer, disciplinary suspension without pay, demotion, loss of seniority or loss of increment. These sanctions may only be applied if allowed for in the employee’s contract or with the employee’s agreement. Any penalty should be confirmed in writing, and the procedure and time limits for appeal set out clearly.

There may be occasions when, depending on the seriousness of the misconduct involved, it will be appropriate to consider dismissal without notice.

Dismissal with notice

Employees should only be dismissed if, despite warnings, conduct or performance does not improve to the required level within the specified time period. Dismissal must be reasonable in all the circumstances of the case.

Unless the employee is being dismissed for reasons of gross misconduct, they should receive the appropriate period of notice or payment in lieu of notice.

Dismissal without notice

Employers should give all employees a clear indication of the type of misconduct which, in the light of the requirements of the employer's business, will warrant dismissal without the normal period of notice or pay in lieu of notice. So far as possible the types of offences which fall into this category of 'gross misconduct' should be clearly specified in the rules, although such a list cannot normally be exhaustive.

Note: Any dismissal of a person undertaking a regulated role as defined within the Protection of Vulnerable Groups (S) Act 2007 will result in [referral to Disclosure Scotland](#).

Appeal Procedural Steps

The opportunity to appeal against a disciplinary decision is essential to natural justice. All persons subject to a complaint should be given the opportunity to appeal disciplinary decisions.

An appeal process must never be used as an opportunity to punish the person subject of the complaint for appealing the original decision, and it should not result in any increase in penalty as this may deter individuals from appealing.

Receiving an appeal

Where the person subject to the complaint feels that disciplinary action taken against them is wrong or unjust, they should appeal against the decision. Appeals may be raised by the person subject to a complaint on any number of grounds, for instance new evidence, undue severity, or inconsistency of the penalty. The appeal may either be a review of the disciplinary sanction or a re-hearing, depending on the grounds of the appeal. For example, new evidence may warrant a further investigation and hearing whereas a procedural fairness challenge may only require a review to see if a different outcome is appropriate.

Note: If an employer does not give the opportunity to appeal, this could be counted against them if the case goes to employment tribunal.

1. Prior to the appeal considerations

- Specify a time-limit within which the appeal should be lodged following disciplinary action (five working days is commonly felt appropriate although this may be extended if necessary) Appeals should be heard without unreasonable delay and ideally at an agreed time and place.
- Employees should let employers know the grounds for their appeal in writing.
- Be clear what action may be taken by those hearing the appeal. This should not result in any increase in penalty.
- Set out the right of the person subject to the complaint to be accompanied at any appeal hearing. *Employees have a statutory right to be accompanied at appeal hearings.*
- Wherever possible the appeal hearing manager someone senior in authority to the person who took the disciplinary decision and, if possible, someone who was not involved in the original hearing or decision. In small SGB's, even if there are no more senior individuals

available consider whether a board member should hear the appeal. Whoever hears the appeal should be considered impartial.

2. During the appeal considerations

Follow the [same guidance](#) taken for the initial disciplinary hearing procedure. However, ensure the following is addressed:

- Explain the purpose of the hearing, how it will be conducted, and the powers the person/people hearing the appeal have. Specifically, no increase in penalty will be made but the disciplinary decision will either be upheld, reduced or removed.
- Ask the person subject of the complaint why they are appealing.
- Pay particular attention to any new evidence that has been introduced and ensure the person subject of the complaint, or their companion if the person so wishes, has the opportunity to comment on it before any decision is made.
- Change a previous decision if it becomes apparent that it was not soundly based – such action does not undermine authority but rather makes clear the independent nature of the appeal. If the decision is overturned consider whether training for the previous hearing manager needs to be improved, if rules need clarification, or if there are other implications to be considered.
- Inform the person subject of the complaint of the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear, if this is the case, that this decision is final. This should be done in writing.

Advice on process

If guidance is needed on managing disciplinary and appeals processes, contact:

- Case Management Support Service – 0300 373 1080 – cmss@children1st.org.uk - (Open Monday – Friday 9am–5pm)
- ACAS Helpline - 0300 123 1100 - (Open Monday – Friday 8am–6pm)

Appendix 1

Disciplinary Policy and Procedure – Template

Policy and Purpose

[SGB] is committed to treating all employees and volunteers fairly and equitably and to helping everyone practice good conduct as detailed in the **Code of Conduct** [SGB to add Hyperlink].

Investigation

Prior to taking the decision to invoke this disciplinary procedure, [SGB] HR/Disciplinary Officer will ensure that a thorough investigation is carried out. The investigation will be the responsibility of the [SGB] Wellbeing and Protection Officer (WPO) or an appointed Investigator. Agreement will be reached between the HR/Disciplinary Offer and WPO/Investigator with regards to the Terms of Reference for the investigation. This is a fact-establishing process and may necessitate the gathering of detailed information as well as the carrying out of formal interviews, with written notes of the interviews, other evidence gathering, and witness statements.

A proper investigation is an integral part of the disciplinary process and, where an allegation of misconduct or gross misconduct is involved, may require employees to be precautionarily suspended or temporarily redeployed on contractual pay whilst this is carried out. This is a neutral act to protect both the person subject to the complaint and others and is not considered to be a sanction taken under the disciplinary procedure. It is there to ensure that issues are dealt with in a fair and reasonable manner, and adequate protection is given to all relevant parties. For volunteers, the same considerations can be made during the investigation for precautionary suspension to manage any identified risks.

The complainant will be supported throughout this procedure by being afforded the opportunity to be updated with the basic progress of the investigation and disciplinary hearing process. This will be guided by the individual circumstance and led by the complainants needs.

If criminal actions are being investigated but the conduct requires prompt attention, [SGB] may not need not await the outcome of the criminal prosecution before taking fair and reasonable action. Advice will be sought from the police in this regard, but formal action could still be taken. The

standard of proof for action is lower for employment matters than criminal matters and therefore action can be taken if, on a balance of probability, the misconduct or gross misconduct occurred as opposed to in criminal standard of proof of beyond reasonable doubt.

Informal action

Whenever conduct falls below an acceptable standard action will be taken. Resolving this informally will often be appropriate to manage cases of misdemeanour, poor practice or inappropriate behaviour. This will allow some issues to be addressed quickly and confidentially. A quiet word or confidential informal discussion will be arranged to bring any issues to the awareness of the person subject of the complaint.

This will include reference to appropriate Code of Conduct, highlighting the expectations of behaviour and agreeing a timeframe for the behaviour to be improved or addressed. This two-way conversation should allow for the person subject to the complaint to give their perspective and raise any contributory considerations that may have affected their conduct. Help will be given to the person in question to improve. A record of the discussion and timelines for review will be made in line with SGB Low-Level Concerns policy.

Formal action

If behaviour, practice, or standards do not improve, or the misconduct is considered too serious to be dealt with informally, there is a necessity for formal action.

If disciplinary action should become necessary, each case will be treated consistently and fairly, and this disciplinary procedure will be observed at all steps. The person subject to a complaint will be given the opportunity to provide their version of events and any extenuating circumstances will be considered through an investigation and formal hearing.

During this process, there are particular considerations for employees. Where best practice is to follow the same fair and equitable procedure for both employees and volunteers, an employee's rights (and compliance of these is necessary through legal contracts of employment) will be upheld at all times, and employees will have the right to:

- Know the case against them
- Reply
- Due consideration of their case
- Be accompanied (have a companion)
- Appeal

This also relates directly to volunteers, however the 'right to be accompanied' for employees means that they can be accompanied by an accredited trade union representative or a fellow employee of their choice. Employees however are not entitled to bring a lawyer/solicitor. For volunteers, a trade union representative would not be appropriate given the role is not employment based, however there are no restrictions on volunteers being accompanied by a lawyer/solicitor. It is down to [SGB's] discretion who may or may not accompany them to any hearing.

Disciplinary Hearing

A hearing will be scheduled, and the person subject of the complaint will be notified and informed they can be accompanied, sometimes referred to as a companion.

The chosen companion may be:

- A fellow worker
- A trade union representative or an official employed by a trade union.
- A trade union representative who is not an employed official (however they must have been certified by their union as being competent to accompany an employee)

Decisions reached at a hearing can range from no penalty to dismissal.

Disciplinary Actions

These actions will be used in cases of a breach of the Code of Conduct that have not been remedied by informal warning action or are of a level which requires immediate intervention.

Normally, formal action will follow the steps listed below, although it is acceptable to move directly to steps two or three if a case is sufficiently serious or containing potential misconduct or gross misconduct. At each step of disciplinary action, a disciplinary hearing will be held as described above.

Where a warning is issued a copy will be placed on the employee's personnel file/volunteer's record for the specified period. This period would start on the date of the warning being communicated. Any appeals would reset these periods. These periods may be longer if children are involved.

All warnings issued under this procedure will state clearly that the person subject to a complaint will be liable for further disciplinary action should their conduct not improve or should there be a further breach of [SGB] rules/Code of Conduct. In the event of no further misconduct occurring and the performance improving, the warning will be removed, and the employee's file will be clear. Concerns will remain stored in a central low-level concerns file with the other wellbeing and protection records in line with SGBs Low-Level Concern policy, The person subject to a complaint will also be advised of their right to appeal against the decision to take disciplinary action.

The steps for disciplinary action are as follows:

First written warning (step one)

A first written warning will be applied where the matters of concern are substantiated. A record of the first written warning will be given to the person subject to a complaint and a copy will be retained on the employee's personnel file/volunteer's record for *[insert number, one year recommended]* unless there is repetition within this period.

Final written warning (step two)

A final written warning will be applied where the matters of concern are substantiated. A record of the final written warning will be given to the person subject to a complaint and a copy will be retained on the employee's personnel file/volunteer's record for *[insert number, 18 months recommended]* unless there is repetition within this period. The person subject to the complaint will be informed that further misconduct within the specified period may result in their dismissal.

Dismissal or action short of dismissal (step three)

The person subject to a complaint will be dismissed if they have failed to improve during the previous steps. In the event of a gross misconduct allegation, the [SGB] HR/Disciplinary Officer may enter the process at step three and dismissal for first offence may occur. Alternatively, to dismissal, the [SGB] HR/Disciplinary Officer may decide that suspension without pay, transfer or demotion are appropriate sanctions for employees.

Gross misconduct

The following offences will be viewed by [SGB] as gross misconduct:

- serious breach of rules, policies, or procedures, especially those designed to ensure safe environments.
- sexual harassment, harassment, bullying or violent, dangerous or intimidatory conduct.
- violation of privacy due to divulging or misusing confidential information.
- insubordination, e.g., refusal to carry out duties within employment or obey reasonable instructions, except where safety of others may reasonably be in jeopardy.
- grooming or exploitation of others through power imbalance or role in sport.
- theft or fraud.
- possession or consumption of alcohol or drugs, or intoxication by reason of alcohol or drugs, which could affect a safe environment in any way or have an impact on other employees, volunteers, children, and young people.
- unauthorised or inappropriate use of email, internet and/or computer systems including illegal digital communications.

This list of examples is not exhaustive or exclusive, and offences of a similar nature will be dealt with under this procedure. Gross misconduct will result in the initiation or escalation of this disciplinary procedure and may result in dismissal without notice or pay in lieu of notice for employees. Any dismissal of a person undertaking a regulated role as defined within the Protection of Vulnerable Groups (S) Act 2007 will result in [referral to Disclosure Scotland](#).

Appeal Process

At every step, the person subject of the complaint has the right to appeal in writing. In all cases of dismissal or demotion, the appeal hearing manager will be considered as the final arbiter.

If you wish to appeal, you should do so in writing within *[insert number - 5 days recommended]* working days of the decision. You will be invited to attend an appeal hearing, after which a decision will be made on whether the disciplinary sanction is to be upheld or overturned. The decision of the appeal hearing will be final.

Third parties: We reserve the right to engage an independent third party to assist at any stage of the disciplinary procedure. *This policy is adopted on a non-contractual basis and therefore does not make up part of employees' contractual terms and conditions.*

Appendix 2

2a) Letter of notification for disciplinary hearing

Date

Dear

I am writing to tell you that you are required to attend a disciplinary hearing on at am/pm which is to be held in

At this hearing, the question of disciplinary action against you, in accordance with the [SGB] Disciplinary Procedure, will be considered with regard to:

I enclose the following documents*:

(Note: At no time should personal details of any children or young people under the age of 18 years or adults seeking anonymity, who have been interviewed or provided statements during the investigation, be included when these papers are being shared.)

The possible consequences arising from this hearing might be:

You are entitled, if you wish, to be accompanied by another work colleague or a trade union representative / volunteer option to be accompanied by SGB discretion.

Yours sincerely

Signed

Note: * Delete if not applicable

2b) Letter of notification where dismissal or action short of dismissal is being considered

Date

Dear

I am writing to tell you that [SGB] is considering dismissing OR taking disciplinary action [insert proposed action] against you.

This action is being considered with regard to the following circumstances:

I enclose the following documents*:

(Note: At no time should personal details of any children or young people under the age of 18 years or adults seeking anonymity, who have been interviewed or provided statements during the investigation, be included when these papers are being shared.)

You are invited to attend a disciplinary hearing on at
..... am/pm which is to be held in where this will be discussed.

You are entitled, if you wish, to be accompanied by another work colleague or your trade union representative / volunteer option to be accompanied by SGB discretion.

Yours sincerely

Signed

Appendix 3

3a) Hearing Decision Letter (Written warning/final written warning)

Date

Dear

You attended a disciplinary hearing on I am writing to inform you of your written warning/final written warning*.

This warning will be placed in your personnel file/volunteer record but will be disregarded for disciplinary purposes after a period of months, provided your conduct improves/performance reaches a satisfactory level**.

- a) The nature of the unsatisfactory conduct or performance was:
- b) The conduct or performance improvement expected is:
- c) The timescale within which the improvement is required is:
- d) The likely consequence of further misconduct or insufficient improvement is: 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

Signed

Note: * The wording should be amended as appropriate ** Delete as appropriate

3b) Hearing Decision Letter (After disciplinary hearing considering dismissal)

Date

Dear

On you were informed that [SGB] was considering dismissing OR taking disciplinary action [insert proposed action] against you.

This was discussed in a hearing on

At this hearing, it was decided that: [delete as applicable]

- Your conduct was still unsatisfactory and that you will be dismissed.
- Your conduct was still unsatisfactory and that the following disciplinary action would be taken against you
- No further action would be taken against you.

I am therefore writing to you to confirm the decision that you be dismissed and that your last day of service with the [SGB] will be

The reasons for your dismissal are:

Or:

I am therefore 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:.....

You have the right of appeal against this decision. Please [write] to within days of receiving this disciplinary decision.

Yours sincerely

Signed

Appendix 4

4a) Letter/Notice of Appeal Hearing against Warning

Date

Dear

You have appealed against the written warning/final written warning* confirmed to you in writing on

Your appeal will be heard by in on at am/pm.

You are entitled to be accompanied by a work colleague or trade union representative / volunteer option to be accompanied by SGB discretion.

The decision of this appeal hearing is final and there is no further right of review.

Yours sincerely

Signed Manager

Note: * The wording should be amended as appropriate

4b) Letter/Notice of Appeal Hearing against Dismissal/Disciplinary Action

Date

Dear

You have appealed against your dismissal/disciplinary action [delete as appropriate] on
confirmed to you in writing on

Your appeal will be heard by in on at am/pm.

You are entitled, if you wish, to be accompanied by another work colleague or a trade union
representative / volunteer option to be accompanied by SGB discretion.

The decision of this appeal hearing is final and there is no further right of review.

Yours sincerely

Signed

Appendix 5

5a) Letter/Notice of Result of Appeal against Warning

Date

Dear

You appealed against the decision of the disciplinary hearing that you be given a warning in accordance with the [SGB] Disciplinary Procedure. The appeal hearing was held on

I am now writing to inform you of the decision taken by [insert name] who conducted the appeal hearing, namely that the decision to stands*/the decision to be revoked* [specify if no disciplinary action is being taken or what the new disciplinary action is].

You have now exercised your right of appeal under the [SGB] Disciplinary Procedure and this decision is final.

Yours sincerely

Signed

Note: * The wording should be amended as appropriate

5b) Letter/Notice of Result of Appeal against Dismissal/ Disciplinary Action short of dismissal

Date

Dear

You appealed against the decision of the disciplinary hearing that you be dismissed/subject to disciplinary action [delete as appropriate].

The appeal hearing was held on

I am now writing to inform you of the decision taken by [insert name] who conducted the appeal hearing, namely that the decision to stands/the decision to be revoked [specify if no disciplinary action is being taken or what the new disciplinary action is].

You have now exercised your right of appeal under the [SGB] Disciplinary Procedure and this decision is final.

Yours sincerely

Signed