

# Disciplinary

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# Disciplinary

## Policy & Procedure

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## Policy & Procedure

### 1. Purpose and scope

The purpose of the Disciplinary Procedure (the "Procedure") is to provide a framework to encourage employees to improve and to maintain acceptable standards of conduct.

If employees do not maintain the standards required, all reasonable assistance will be given but disciplinary action may become necessary. Disciplinary meetings will not always result in disciplinary action being taken. However, if a warning is issued, it will be with the purpose of ensuring that employees understand what the business expects, to allow an opportunity to improve, and to advise the employee of the possible result if there is no improvement or if the conduct is repeated.

The Crown Estate's aim is to ensure consistent and fair treatment for all of its employees.

This Procedure applies to all employees who have passed their probationary period regardless of their length of service. It does not apply to agency workers or self-employed contractors.

The Procedure does not form part of your Contract of Employment and The Crown Estate reserves the right to amend the Procedure from time to time.

### 2. Principles

#### The Procedure

- The business will investigate complaints or allegations of misconduct to establish the facts of each case.
- You will be advised of the nature and basis of the complaint against you and you will be given an opportunity to state your case before any decision is taken. Copies of any documents that will be produced at the meeting will also be provided to you prior to the meeting.
- Each step and action under the Procedure will be taken without unreasonable delay.
- The business reserves the right to implement the Procedure at any stage if it considers the misconduct, or any other circumstance, warrants it.
- If the facts suggest that it is more appropriate to deal with the matter under a different procedure i.e. the Capability Procedure or Sickness Absence Procedure your HR Advisor (HRA) or HR Business Partner (HRBP) will advise.
- If you have difficulty at any stage of the Procedure because of a disability, you should discuss the situation with Human Resources as soon as possible.

#### Right to be accompanied

- You have the right to be accompanied to any disciplinary or appeal meeting by a work colleague or a trade union official. If you wish to exercise your right to be accompanied, you should inform your HRA or HRBP as soon as practicable of the identity of your proposed companion. Although your nominated companion will be able to address the meeting and confer with you, they will not be permitted to answer questions on your behalf.
- Your nominated companion must make every effort to attend the disciplinary and/or appeal meeting. If they are unable to attend the meeting, you should inform your HRA or HRBP as soon as possible. If your nominated companion is not available on the day/time the meeting is scheduled, you may propose an alternative day/time within 5 working days of the original scheduled date.
- You do not normally have the right to bring a companion to an investigative interview. However, you may be allowed to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English.

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### Disciplinary Action

- The business will record any disciplinary action taken. This information will be retained on your personnel file. Any warnings given under the Procedure will typically be "live"<sup>1</sup> for a period of 12 months. At the end of that period, subject to your satisfactory conduct and/or improved performance, the warning will normally be disregarded for disciplinary purposes but will remain permanently on your personnel record. However, the business reserves the right to issue warnings for a longer period depending on the nature or seriousness of the offence and to take prior conduct into account when dealing with subsequent allegations of misconduct or poor performance even when the stated duration of a warning(s) has expired.
- Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain "live", and the likely consequences of further misconduct in that "live" period.
- Please note that The Crown Estate reserves the right in its absolute sole discretion to extend the period of time in which the warning is "live" to reflect any period of time for which you are absent from work (not including annual leave) whilst the warning is "live".
- You will not normally be dismissed for a first act of misconduct, unless The Crown Estate decides it amounts to gross misconduct or is sufficiently serious to warrant dismissal or you have not yet completed your probationary period.
- You will be given the opportunity to appeal against any disciplinary decision taken.

### Suspension

- The business reserves the right, where it considers it appropriate, to suspend you (on full pay) whilst it undertakes an investigation. The business will endeavour to advise you of the expected length of that suspension and will keep you informed of any changes in that timeframe. Suspension is not considered by The Crown Estate to be a disciplinary sanction. You will be required to cooperate with any investigation and to be available for interview(s) during office hours. The Crown Estate may impose further conditions on you during the period of suspension of which you will be notified accordingly.

### Confidentiality

- You must treat as confidential any information communicated to you in connection with an investigation or disciplinary matter.
- You will normally be provided with evidence supporting the complaint against you before a decision is taken, but The Crown Estate reserves the right to take such steps as it considers appropriate to protect confidentiality and/or the interests of itself and other people.
- You, and anyone accompanying you, must not make electronic recordings of any meetings or hearings conducted under the Procedure.

### Criminal Charges

- Where your conduct is the subject of a criminal investigation, charge or conviction, an investigation into the facts will take place before deciding whether to take formal disciplinary action.
- The business will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary meeting or say anything about a pending criminal matter, a decision may be taken based on the available evidence.

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<sup>1</sup> "Live" means period of time the warning will be taken into consideration for disciplinary purposes

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- A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the business considers that it is in any way relevant to your employment or affects the reputation or interests of The Crown Estate.

### 3. Procedure

It is expected that cases of minor misconduct will be dealt with informally between you and your line manager. However, if that informal discussion does not bring about an improvement or where there is a more serious case of misconduct, formal action under this Procedure may be necessary.

No disciplinary action will be taken until an investigation has been undertaken. Following the investigation, the business will decide whether to take the matter further under this Procedure or not.

### 4. Notification of a disciplinary meeting

If formal action is necessary, you will be advised in writing of our concerns and the potential consequences if they are found to be true, and you will be asked to attend a disciplinary meeting.

We will normally include the following where appropriate:

- a summary of relevant information gathered as part of any investigation;
- a copy of any relevant documents which will be used at the disciplinary meeting;
- a copy of any relevant witness statements, except where it is determined by The Crown Estate that a witness's identity should be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality;
- a copy of this Procedure

We will give you written notice of the date, time and place of the disciplinary meeting. The meeting will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually at least 2 working days', to prepare for the meeting.

You should make every effort to attend the meeting. If you are unable to attend the meeting, you should inform your HRBP as soon as possible. The meeting will usually be moved to another day and you will be normally be given at least 2 working days' notice of the rearranged meeting.

If however you are persistently unable or unwilling to attend a disciplinary meeting without good cause, The Crown Estate reserves the right to make a decision in your absence on the evidence available.

### 5. Procedure at a disciplinary meeting

At the meeting the manager conducting the meeting will go through the allegations against you and the evidence that has been gathered. You will be given the opportunity to respond and ask questions, present evidence of your own and call relevant witnesses as well as to raise any comments you have about any information provided by any of the witnesses. Should you intend to call relevant witnesses you must advise the HRA or HRBP dealing with the disciplinary meeting in advance of the meeting.

The manager conducting the meeting may adjourn the meeting if they consider there is a need to carry out any further investigations in the light of any new points you have raised at the meeting. After the meeting, the manager conducting it will decide whether or not any disciplinary or other action is to be taken. You will be notified of the decision, in writing, as soon as practicable after the disciplinary meeting. Disciplinary action may include any of the following:

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### Stage 1 – First Written Warning

Where your misconduct is of a more serious nature or, after a verbal warning has been given you commit a repeated or further act(s) of misconduct, a first written warning may be issued. A record of that warning will be placed on your personnel file.

The warning will be confirmed to you in writing, including the period of time the warning will remain "live" for and of any action that you are required to take to remedy the misconduct. Any further misconduct by you whilst that warning is "live" could lead to further disciplinary action being taken against you. A period of review and/or improvement may also be set; outlining what is required in terms of conduct.

### Stage 2 - Final Written Warning

Where your misconduct is considered sufficiently serious to warrant a final written warning but insufficiently serious to justify dismissal and/or, after a first written warning has been given, you commit a repeated or further act of misconduct; a final written warning may be issued. A record of the warning will be placed on your personnel file.

That warning will be confirmed to you in writing, including the period of time the warning will remain "live" for and any action that you are required to take to remedy the misconduct. Any further misconduct by you whilst the warning is "live" would be likely to lead to further disciplinary action being taken against you, which could include the termination of your employment. A period of review and/or improvement may also be set; outlining what is required in terms of conduct.

### Stage 3 – Dismissal

In the event that you commit an act of gross misconduct and/or after a final written warning has been given, you commit a repeated or a further act of misconduct, the business may consider dismissal or summary dismissal (that is dismissal without notice or payment in lieu of notice).

### Other sanctions

The business reserves the right to impose such other disciplinary sanctions as it considers appropriate, including demotion, transfer to a different role, a period of suspension without pay, a reduction or freeze in salary, loss of seniority, loss of future pay increment or bonus, and loss of overtime.

## 6. Misconduct

Examples of misconduct include but are not limited to:

- minor breaches of your employment contract;
- excessive use of The Crown Estate's telephone or mobile phone for personal calls;
- excessive personal email or Internet use including excessive use of social networking sites such as Facebook, LinkedIn, Twitter;
- breaching the no smoking policy;
- failure to comply with reasonable and lawful instructions;
- failure to comply with The Crown Estate's policies, procedures, rules or working practices or failure to comply with legal requirements;
- unauthorised absence or consistently poor time keeping;
- minor damage to our property;
- negligence or irresponsibility in carrying out your duties;
- incapability through alcohol, non-prescribed drugs or other substances;
- the use of or copying of unauthorised computer software;
- intransigent or unreasonably negative attitude to managers or fellow employees;

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- any form of harassment, including sexual and racial harassment or bullying of employees or others;
- inappropriate behaviour or use of foul or abusive language in the workplace;
- failure to comply with The Crown Estate's sickness notification and certification procedures;
- behaviour which contravenes the values of the business;
- minor breaches of the Code of Business Ethics.

### 7. Gross misconduct

Gross misconduct is behaviour which, in the opinion of the business, is so serious or so unacceptable that it is calculated, or likely, to irreparably damage the relationship of trust and confidence between the business and the employee. If proved, the normal consequence will be summary dismissal (that is, dismissal without notice or payment in lieu of notice). It is not possible to give a definitive list of all offences that may constitute gross misconduct and, in any event, each case will be dealt with on its own facts. Examples of gross misconduct include (but this is not an exhaustive list):-

- theft, fraud, dishonesty or deceit (including the provision of false or misleading information, bribery or corruption, or falsification of The Crown Estate's records);
- any act of violence or attempted violence, bullying or abusive or threatening behaviour towards people or property;
- a serious breach of the Code of Business Ethics;
- deliberate or serious damage to property;
- serious misuse of Crown Estate property or The Crown Estate name;
- being under the influence of, or breaching any Crown Estate rules concerning, alcohol, non-prescribed drugs or other substances during the course of employment (whether or not at The Crown Estate's premises);
- possession, use, supply or attempted supply of illegal drugs;
- a serious act of insubordination, gross rudeness or extreme discourtesy to a superior, another employee or a third party in the course of employment;
- a serious, deliberate, or persistent breach of The Crown Estate's policies and procedures on health and safety or any conduct likely to endanger the health or safety of others;
- serious negligence, neglect or failure in the performance of duties;
- indecent, disorderly or immoral conduct during employment;
- unauthorised use, disclosure or divulgence of any confidential information or trade secrets relating to The Crown Estate or any of its officers, or employees;
- unlawful harassment or discrimination (including harassment or discrimination on the grounds of a person's marital or civil partnership status, sex, race (including colour, nationality or ethnic or national origins), sexual orientation, religion or belief, age, gender reassignment or disability);
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- a serious breach of The Crown Estate's policies and procedures in relation to the use of IT, telecommunications, email and the internet;
- unauthorised use, processing or disclosure of personal data contrary to The Crown Estate's policies and procedures in relation to data protection;
- a serious or deliberate breach of your employment contract or of The Crown Estate's policies or operating procedures;
- knowingly breaching statutory rules affecting your work;
- accepting or offering a bribe or other secret payment or other breach of The Crown Estate's policies and procedures in relation to bribery;
- a serious breach of The Crown Estate rules and guidance on Gifts and Hospitality;
- being charged with or convicted of a criminal offence (other than an offence which, in the opinion of The Crown Estate, does not affect the employee's suitability to do the job and/or their relationship with The Crown Estate, colleagues or customers);
- undertaking unauthorised paid or unpaid employment during your working hours;

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- persistent refusal to carry out a reasonable instruction;
- any behaviour considered by The Crown Estate to be prejudicial to the interests or reputation of The Crown Estate; or behaviour which seriously contravenes the values of the business.

### 8. Appeals

All employees have the right to appeal against any disciplinary decision. If you wish to appeal, you should write to the nominated person or HR within 5 working days of receiving the written notification of the disciplinary decision. The business will deem that notification of the disciplinary decision will have been received by you within 3 days of it being posted to you. All correspondence will be sent to your home address as notified by you to the business from time to time. Your appeal letter must set out the reasons why you are appealing. Please note, that an appeal will not suspend or delay any disciplinary action taken (including dismissal).

The business will arrange for an appeal meeting to take place.

The appeal will normally be heard by a more senior manager than the original hearing manager who took the disciplinary action (unless the business considers this is not reasonably practicable). The decision of the manager conducting the appeal will be final.

Following the appeal meeting the manager conducting the appeal may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different penalty

The decision will be confirmed to you in writing.

You must make every effort to attend the appeal meeting. If you fail to attend the appeal meeting, the business reserves the right to take a decision on your appeal in your absence.

- There is no further right of appeal.

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### 9. Document Control

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