

CAIRNGORMS NATIONAL PARK AUTHORITY DISCIPLINARY POLICY

1.0 PURPOSE AND SCOPE

- 1.1 The Cairngorms National Park Authority aims to ensure that, in undertaking their role, all staff contribute as intended to the successful delivery of the aims and objectives of the National Park Authority. Most staff will perform all their duties satisfactorily and to a high standard. However, a minority of staff may not conform to the behaviour of standards expected. The National Park Authority is committed to addressing these concerns when they arise, and this procedure is primarily to help and encourage staff to improve rather than just as a way of imposing punishment. However, the National Park Authority also wants to take care that the services of the National Park Authority are not compromised. Therefore this policy and procedure ensures consistent and equitable treatment of employees that are considered not to be complying with acceptable standards.
- 1.2 This policy and procedure aims to ensure good practice by applying the standards set out in the relevant sections of the ACAS Code of Practice on Disciplinary and Grievance Procedures. The principles of natural justice will be applied when dealing with disciplinary issues.
- 1.3 This policy and procedure applies to all employees of the National Park Authority.

2.0 PRINCIPLES

- 2.1 All line managers are responsible for promptly identifying any deficiencies in conduct or performance, discussing the matter with the individual member of staff and assisting him/her to improve. It is anticipated that minor matters will normally be dealt with informally through standard line management practices in the first instance.
- 2.2 No formal disciplinary action will be taken unless there is sufficient evidence to warrant such action and the case has been carefully investigated.
- 2.3 At each stage of the procedure, individuals will be informed in writing of the nature of the complaint(s) and/or allegation(s) against them and will be given the opportunity to state their case at a disciplinary meeting before any disciplinary decision is made.
- 2.4 An employee has the right to be accompanied at a disciplinary meeting by a trade union representative or work colleague of their choice. Individuals may

not be accompanied by anyone acting as a legal representative at any stage of the procedure.

- 2.5 The disciplinary procedure may be entered at any stage depending on the nature and seriousness of the issue.
- 2.6 Employees will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct. The decision in regards to the penalty will be subject to the merits of each individual case and the relevance of the circumstances at the time.
- 2.7 Arrangements will be made to take written records, agreed by both parties at each phase. All written records will be destroyed should the process find no grounds for disciplinary proceedings.
- 2.8 A criminal offence committed outside of employment will not necessarily be treated as an automatic reason for disciplinary action, unless it is relevant to the duties of the employee.
- 2.9 Individuals have the right of appeal against any formal disciplinary action taken.

3.0 PROCEDURE

3.1 INFORMAL DISCUSSIONS

- 3.1.1 In many circumstances it will not be appropriate to proceed immediately to formal disciplinary procedures. Minor cases of misconduct may best be dealt with by informal advice, coaching and support from the line manager in the first instance, rather than through the formal disciplinary procedure.
- 3.1.2 Line managers should discuss problems with individuals with the objective of encouraging and helping them to improve their conduct or performance. It is important that staff understand what needs to be done, how conduct will be reviewed and over what period. Staff should also be made aware of what action may be taken if they fail to improve their conduct. Informal counselling is not part of the formal disciplinary procedure and the member of staff should be informed of this.
- 3.1.3 Where informal procedures have been invoked, and either there is no satisfactory improvement within the agreed time period or the individual relapses over time, then the line manager should consider entering the formal disciplinary procedure.

3.2 INVESTIGATION

- 3.2.1 Before contemplating disciplinary action, a manager should satisfy him/herself of the facts. To do this, it may be necessary to hold a preliminary investigation. In all circumstances, the individual will be informed of any investigation of which they are the subject at the outset.
- 3.2.2 The manager appointed by HR to conduct the investigation will be impartial and not immediately involved in the case. This manager will seek to establish the facts by carrying out investigatory interviews with relevant persons, including the individual concerned as soon as possible and where possible shall obtain written signed statements from witnesses who will be advised that they may be requested to appear at any subsequent disciplinary meeting.

3.3 SUSPENSION

- 3.3.1 In exceptional circumstances a period of suspension may be deemed necessary in order to fully investigate the facts, but this will not normally be imposed unless it is felt necessary to protect the interests of the National Park Authority, the employee concerned or other employees.
- 3.3.2 Any period of suspension should be as short as possible and will be kept under review to ensure it is not unnecessarily protracted.
- 3.3.3 Any period of suspension will be confirmed in writing and the employee will be entitled to full pay for the duration of the period of suspension.
- 3.3.4 It should be made clear to the employee that the suspension is not disciplinary action in itself and does not involve any prejudgement.

3.4 CONVENING A DISCIPLINARY MEETING

- 3.4.1 If, after fully investigating the allegations, there is reasonable belief that there is a disciplinary case for the employee to answer, in terms of his or her standard of behaviour, attendance or performance, a disciplinary interview will be held.
- 3.4.2 Once a decision has been reached to instigate the disciplinary procedure, a letter will be sent to the employee (normally 5 *working* days before the disciplinary interview), informing him/her of:
 - a) the nature of the allegations and the fact that the interview is to be a disciplinary one;
 - b) the date, time and location of the interview;

- c) the right to be accompanied by a single companion, (who will be another employee of the CNPA, or a full-time officer employed by a trade union);
 - d) the names and roles of the people who will be present at the interview;
 - e) the names of any witnesses to be called by management;
 - f) the need to inform management prior to the disciplinary interview of their intentions regarding calling witnesses or whether they wish to be accompanied;
 - g) where appropriate, the need for written statements of case from both parties to be presented to the HR Manager for circulation at least 3 working days before the interview;
 - h) Provision of the investigation report.
- 3.4.3 The employee's companion should be allowed to address the hearing to put and sum up the employee's case, and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf.

3.5 CONDUCTING A DISCIPLINARY MEETING

- 3.5.1 Normally the disciplinary interview will be conducted by the employee's Group Director, advised by the HR Manager, with the allegations against the employee being presented by the relevant manager.
- 3.5.2 The Director will introduce those present and explain the reason for their attendance, the purpose of the disciplinary hearing, the nature of the allegations and the format of the interview.
- 3.5.3 The case against the employee will be outlined by the relevant supervisor or manager, by way of presentation of evidence and/or the calling of witnesses. A colleague may assist the supervisor or manager in this task.
- 3.5.4 The employee will be allowed to present his or her case and respond to the allegations, calling their witnesses as required.
- 3.5.5 Both sides may question each other and any witness called. The Director and the HR Manager may also question both parties and their witnesses.
- 3.5.6 If at any time, evidence arises which needs further investigation then the interview will be adjourned and reconvened later.
- 3.5.7 Both sides will then be asked to summarise their cases and then leave the hearing.
- 3.5.8 The Director, advised by the HR Manager will consider the case. The Director will decide if the allegations are well-founded, on the balance of probability and, if so, what level of disciplinary action, if any, should be taken.

- 3.5.9 The Director will reconvene the interview and inform the employee of his or her decision.
- 3.5.10 The factors to be taken into consideration by the Director hearing the disciplinary when making such a decision are:
- a) The gravity of the case - is disciplinary action warranted - if so, at what level – initial or final written warning?
 - b) Any guidance offered by the Disciplinary Procedure;
 - c) Any precedents;
 - d) The employee/worker's disciplinary and service record;
 - e) Any mitigating circumstances.

3.6 OUTCOME OF DISCIPLINARY MEETING

- 3.6.1 Where a disciplinary warning is given, the employee will be informed as soon as possible after the hearing of the outcome of the hearing. This should include details of the required improvement(s), the time span and consequence of failure to improve and the right to appeal against the decision.
- 3.6.2 Where a disciplinary warning has been given, the employee will be formally notified in writing within five working days of the disciplinary interview.
- 3.6.3 The letter will be delivered to the employee either by hand, in the presence of a witness, or by recorded post to his or her home address. A certificate of recorded delivery shall be deemed to constitute evidence of receipt.
- 3.6.4 A record of the disciplinary interview and any disciplinary action taken will be held by the HR Manager.

The following warnings can be issued:-

3.6.5 WRITTEN WARNING

A Written Warning will give details of the misconduct, the improvement required and the timescale within which improvement should be achieved. It will warn that further disciplinary action will be considered if there is no satisfactory improvement. It will also advise of the right of appeal. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after 6 months.

3.6.6 FINAL WRITTEN WARNING

If the employee has a current warning about conduct and there is still a failure to improve and conduct or performance remain unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but not to justify dismissal, a Final Written Warning notice will normally be issued.

A Final Written Warning will give details of the misconduct and will warn that dismissal is likely to result if there is insufficient improvement and will advise of the right to appeal. Such a warning should normally remain current for 12 months.

3.6.3 DISMISSAL & ACTION SHORT OF DISMISSAL

If conduct or performance is still unsatisfactory and the employee continues to fail to reach the standards required following a Final Written Warning, dismissal may result or some other penalty such as demotion or transfer to another location.

Prior to reaching the decision to dismiss, action short of dismissal should be considered. Dismissal should only occur if it is judged to be reasonable in all the circumstances of the case.

Except in cases of gross misconduct, dismissal will be with notice or with pay in lieu of notice. The member of staff will be provided with written reasons for dismissal, the date on which employment will terminate and details of the right of appeal.

3.7 GROSS MISCONDUCT

3.7.1 If, on completion of an investigation and at a disciplinary meeting the manager is satisfied that gross misconduct has occurred and the recommendation is that the individual should be dismissed this may be done, (a) with notice, (b) with a payment in lieu of notice, or (c) summarily, without notice or payment in lieu of notice. In such cases, the employee will be provided with written reasons for dismissal, confirmation of the date on which employment terminated and details of the right of appeal.

3.7.2 If, on the other hand, it is decided that the circumstances do not warrant dismissal, some lesser penalty may be imposed, including the employee being given a written warning. The employee shall be informed immediately of the decision taken. In this case also, a certificate of recorded delivery shall be deemed to constitute evidence of receipt.

Examples of offences which are normally regarded as gross misconduct are given in Appendix I.

4.0 APPEALS

4.1 APPEALS AGAINST DISCIPLINARY ACTION

4.1.1 The employee against whom formal disciplinary action has been taken may appeal in writing within five working days of receiving notification of the decision. An appeal shall be heard as soon as practicable, normally within ten working days of receipt of notice of appeal.

- 4.1.2 Written grounds explaining the reason for appeal must be submitted to the HR Manager.
- 4.1.3 An appeal meeting is not a re-run of the disciplinary meeting. The purpose of the appeal is to establish whether the finding of the disciplinary interview was appropriate and procedurally correct
- 4.1.4 The HR Manager will write to the parties and members notifying them of the time and date of the hearing. This notification will include a reminder to the parties of their rights and responsibilities for documents and witnesses.
- 4.1.5 At least three days prior to the hearing, the parties will send to the HR Manager the names of any witnesses and the written submissions (i.e. the grounds for appeal and any new evidence) they wish to have considered, together with a copy of any documentary evidence they intend to rely on at the hearing.
- 4.1.6 The HR Manager will send the names of witnesses and copies of any written submissions and documentary evidence to all parties prior to the hearing date.
- 4.1.7 Appeal Against Written Warnings

An appeal against a Written Warning will be considered by a committee of 3 members who have not previously been involved in the case. The committee will be made up of a Director, a Board member and the CEO.

- 4.1.8 Appeal Against Dismissal (including Summary Dismissal)

An appeal against dismissal will be considered by the CEO and 2 Board members and the decision will normally be issued in writing within five working days of receiving the appeal and the decision will be final.

- 4.1.9 Where the dismissing manager was the CEO, the appeal will be heard by a nominee of the Chair of the Staffing and Recruitment Committee.

4.2 CONDUCTING AN APPEAL

- 4.2.1 At the Appeal hearing the appellant shall have the right to be accompanied by a single companion, who will be another employee or a trade union representative. The companion may assist in the preparation and presentation of his/her case, but may not answer for the appellant.

- 4.2.2 The appellant will be invited to present his/her case to the Appeals Committee, either personally or in writing, and will have the opportunity to call witnesses and submit additional documents
- 4.2.3 Members of the Committee may put questions to the appellant and they, and the appellant and/or his/her companion, may put questions to any witness.
- 4.2.4 Members of the Appeal Committee have the right to call other witnesses. Normally these arrangements are made before the meeting of the Appeal Committee to hear evidence. However, a member of the Committee may wish to seek further evidence during the meeting, in the event of which all members of the Committee must agree before further evidence is called.
- 4.2.5 If a witness is called by one of the parties, he/she will be invited by the Appeal Committee to join the hearing at an appropriate time. After the witness has made a statement and/or answered any questions, he/she will be asked to leave the hearing.
- 4.2.6 The appellant, or his/her companion, will make a final submission to the Committee.
- 4.2.7 The Committee will consider its decision after all the other parties have withdrawn.
- 4.2.8 The Chair of the Committee will inform the appellant of the decision of the Appeal Committee as soon as possible. The HR Manager will then confirm the decision to the appellant in writing. The letter will be delivered to the employee either by hand and the employee will be required to sign a form to acknowledge receipt, or by recorded post to his/her home address. A certificate of recorded delivery shall be deemed to constitute evidence of receipt.
- 4.2.9 Where an appeal against disciplinary action is upheld, and the Appeal Committee finds there should be no disciplinary penalty imposed, all reference to the disciplinary action concerned shall be removed from the employee's file and the employee shall be notified accordingly in writing.

Appendix I

EXAMPLES OF GROSS MISCONDUCT

- I. This list provides examples of offences which are normally regarded as gross misconduct and likely to result in consideration of dismissal with immediate effect (Summary Dismissal) include:
 - a. theft, misappropriation or unauthorised possession of the assets, funds, equipment and/or property of the National Park Authority, its employees and visitors,
 - b. fraud, including any deliberate attempt to defraud the National Park Authority, staff, visitors or other persons or organisations in the course of duties and responsibilities,
 - c. corruption, including the acceptance of money, goods, favours or excessive hospitality from outside parties in respect of acts or service(s) rendered which are contrary to the interests of the National Park Authority,
 - d. deliberate falsification or misrepresentation of records or claims made,
 - e. serious harassment or bullying of another employee or visitor to the CNPA,
 - f. physical violence towards fellow members of staff or visitors,
 - g. deliberate damage to property belonging to the National Park Authority, staff or visitors
 - h. serious negligence or breach of safety rules potentially causing unacceptable loss, damage or injury,
 - i. disregard of National Park Authority policies, procedures, regulations or rules in force from time to time.
 - j. serious incapability at work or on duty through alcohol, the use of illegal drugs or other substances,
 - k. serious acts of insubordination or refusal to carry out a legitimate instruction, the consequences of such a refusal being that there is a clear breach of contract between the staff member and the CNPA
 - l. serious misuse of the National Park Authority property, facilities or name,
 - m. Acts or omissions which might damage the National Park Authority operations and/or which bring the National Park Authority into serious disrepute,
 - n. A serious breach of confidence.

2. This list is neither exclusive nor exhaustive. Dismissal on the grounds of gross misconduct could, therefore, occur for offences not mentioned above which are of similar gravity, or where the contractual relationship between the CNPA and the employee has broken down. In cases of alleged gross misconduct, the employee may be suspended without prejudice to his/her pay, pending a full investigation.

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