



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive



National Ambulance Service (NAS)
Workforce Support Procedure
Operating the HSE Disciplinary Procedure

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Table of Contents:

<i>1.0 Policy</i>	<i>3</i>
<i>2.0 Purpose</i>	<i>3</i>
<i>3.0 Scope</i>	<i>3</i>
<i>4.0 Legislation/other related policies</i>	<i>3</i>
<i>5.0 Glossary of Terms and Definitions</i>	<i>4</i>
<i>6.0 Roles and Responsibilities</i>	<i>4</i>
<i>7.0 Procedures</i>	<i>4</i>
<i>8.0 Implementation Plan</i>	<i>12</i>
<i>9.0 Revision and Audit</i>	<i>12</i>
<i>10.0 References</i>	<i>12</i>
<i>11.0 Appendices</i>	<i>12</i>

1.0 POLICY

- 1.1 *The National Ambulance Service (NAS) is committed to ensuring procedures are in place so as to ensure that there is a consistent application of the HSE Disciplinary Procedure nationally*

2.0 PURPOSE

- 2.1 *To provide National Ambulance Service Managers/Supervisors with practical and contextual operating procedures to facilitate the practical application of the HSE Disciplinary Procedure within the National Ambulance Service setting.*

3.0 SCOPE

- 3.1 *This procedure applies to all Managers/Supervisors in the National Ambulance Service and should be applied in any situation where the HSE Disciplinary Procedure is to be invoked.*
- 3.2 *The HSE Disciplinary Procedure does NOT APPLY and should not be used in the following circumstances:*

- A. Termination of employment at the end of the employee's probationary period*
- B. Employees on fixed term/specified purpose contracts whose employment is terminated on the expiry date/cessor of the purpose of the contract*
- C. Employees with less than 12 months service*

4.0 LEGISLATION/OTHER RELATED POLICIES

- *Health Act 2004*
- *HSE Disciplinary Procedure*
- *HSE Dignity at Work Policy*
- *HSE Trust in Care Policy*
- *HSE Code of Standards and Behaviour*
- *Policy - NASWS001 - Capability*
- *Policy- NASP034 - Controlled Drugs including Morphine Sulphate*
- *National Ambulance Service Safety Statement*

5.0 DEFINITIONS AND ABBREVIATIONS

Examples of definitions of grade are:

- 5.1 *The Supervisor for an Paramedic is the Paramedic Supervisor*
- 5.2 *The Manager for a Paramedic Supervisor is the Operations Resource Manager*
- 5.3 *The Supervisor for an EMC is the Control Supervisor*
- 5.4 *The Manager for a Control Supervisor is the Control Manager*
- 5.5 *The Manager for an Ambulance Officer level Manager is either the Operations Performance Manager or Operational Support and Resilience Manager*
- 5.6 *The Manager for an Operations Performance Manager is the Area Operations Manager*
- 5.7 *The Manager for an Area Operations Manager is the Director*

6.0 RESPONSIBILITY

- 6.1 *Managers/Supervisors are responsible for being familiar with the operation of the HSE Disciplinary Procedure.*
- 6.2 *Managers/Supervisors are responsible for ensuring that all staff under their supervision are aware of the standards of attendance, work and conduct expected from them and for dealing with shortcomings promptly and fairly.*
- 6.3 *Managers/Supervisors are responsible for dealing with deficiencies on an informal basis through discussion, counselling and appropriate assistance rather than through the formal disciplinary procedure.*
- 6.4 *Where informal efforts are unsuccessful, Managers/Supervisors are responsible for the fair, transparent and correct application of the formal HSE Disciplinary Procedure.*
- 6.5 *The Director, National Ambulance Service is responsible for making the decision to dismiss any member of staff under Stage 4 of the HSE Disciplinary Procedure.*
- 6.6 *All employees are responsible for co-operating with their relevant Manager/Supervisor when the Disciplinary Procedure is invoked, including co-operation with any related investigation.*

7.0 PROCEDURE/GUIDELINE

- 7.1 *When is disciplinary action necessary*

7.1.1 Examples of conduct which may lead to disciplinary action include:

- A. Persistent poor timekeeping*
- B. Unsatisfactory attendance record*
- C. Poor work standards*
- D. Breach of health and safety rules*
- E. Bullying, harassment or sexual harassment (following a complaint being upheld under the Dignity at Work Policy)*
- F. Breach of internet e-mail policy*
- G. Refusal to obey reasonable instructions*
- H. Negligence*
- I. Abuse of patient/client following a complaint being upheld under the Trust in Care Policy*

7.2 Pre Procedure Counselling

7.2.1 Every effort will be made by the employee's immediate Manager/Supervisor to address shortcomings in work standards, conduct or attendance through informal counselling without invoking the disciplinary procedure.

7.2.2 The purpose of counselling is to ensure that employees understand what is expected from them and to provide an opportunity to discuss any aspects of the job which may be causing them difficulties in achieving the required standards.

7.2.3 The formal disciplinary procedure is normally only invoked where this fails to bring about the required improvements.

7.2.4 The counselling interviews should be conducted as follows:

- A. The employee shall be given precise details of the specific aspects of his or her attendance, work or conduct that require improvement.*
- B. The employee shall be given an opportunity to respond to complaints and careful consideration shall be given to any explanations given.*
- C. Having made the employee aware of deficiencies in his/her attendance, work or conduct, the Manager/Supervisor in consultation with the employee shall identify appropriate measures that can be taken to assist the employee and formulate an action plan for achieving the required improvements.*
- D. The Manager/Supervisor should make a note to file in relation to the meeting and any agreed outcome.*

7.3 Formal Disciplinary Procedure

- 7.3.1 At all stages of the formal disciplinary procedure the employee should be advised of his/her right to representation.*
- 7.3.2 Where an employee's conduct, attendance or work does not meet the required standards despite informal counselling, the matter should be dealt with under the disciplinary procedure.*
- 7.3.3 While the disciplinary procedure will normally be operated on a progressive basis (with the exception of serious misconduct), the Manager may bypass stages 1 and/or 2 should the nature of the employee's performance or conduct warrant such action.*
- 7.3.4 The authority of any Supervisor is limited to Stage 1. Any issue not addressed at Stage 1 should be referred to the immediate Manager.*
- 7.3.5 Guidelines for Managers on conducting a disciplinary hearing are set out at Appendix II.*
- 7.3.6 The stages of the disciplinary procedure are as follows:*

Stage 1 Oral Warning

- A. An employee whose work/conduct/attendance falls below the required standards will normally be issued with a formal oral warning for a period of six months.*
- B. The warning will give details of the precise nature of the complaint, the improvements required and the timescale for improvement.*
- C. S/he will be advised that the warning constitutes the first stage of the disciplinary procedure and failure to improve within the agreed timescale may result in further disciplinary action under Stage 2 of the disciplinary procedure.*
- D. A record of the warning will be kept on the employee's personnel file and will be removed after six months, subject to satisfactory improvement during this period.*
- E. Any Supervisor may issue an Oral Warning.*
- F. The employee will have a right to appeal the oral warning to a level of management higher than the original decision-maker.*
- G. Appeals must be made in writing setting out the grounds for appeal within 7 days of the employee being notified of the decision.*

Stage 2 Written Warning

- A. If the employee fails to make the necessary improvements or if the nature of the unsatisfactory performance/conduct is more serious, s/he will normally be issued with a formal written warning for a period of 9 months.*
- B. The written warning will give details of the complaint, the improvements required and the timescale for improvement. The employee will also be advised that failure to improve within the agreed timescale may result in the issuing of a final written warning under Stage 3 of the disciplinary procedure.*
- C. The warning will be removed after 9 months, subject to satisfactory improvement during this period.*
- D. Any Manager may issue a Written Warning.*
- E. The employee will have a right to appeal the written warning to a level of management higher than the original decision-maker.*
- F. Appeals must be made in writing setting out the grounds for appeal within 7 days of the employee being notified of the decision.*

Stage 3 Final Written Warning

- A. If the employee continues to fail to make the necessary improvements, s/he will normally be issued with a final written warning for a period of up to 12 months (this period may be extended in exceptional circumstances).*
- B. The warning will give details of the complaint, the improvements required and the timescale for improvement. The employee will be advised that failure to improve within the agreed timescale may lead to dismissal or some other sanction short of dismissal under Stage 4 of the disciplinary procedure.*
- C. The warning will be removed after the specified period, subject to satisfactory improvement during this period.*
- D. In addition to or instead of the final written warning, the following sanctions may be imposed.*
 - Withholding/deferral of an increment*
 - Demotion*
 - Redeployment (which may involve loss of income)*
 - Suspension without pay*
- E. A Final Written Warning must be issued by an Assistant Chief Ambulance Officer or higher level of management*

- F. The employee will have a right to appeal the final written warning and/or other sanction to a level of management higher than the original decision-maker.*
- G. Appeals must be made in writing setting out the grounds for appeal within 7 days of the employee being notified of the decision.*

Stage 4 Dismissal or Action Short of Dismissal

- A. Failure to meet the required standards of work, conduct or attendance following the issuing of a final written warning will lead to a disciplinary hearing under Stage 4.*
- B. A hearing under Stage 4 of the HSE Disciplinary Procedure can only be heard by the Director, National Ambulance Service.*
- C. The decision to dismiss any employee can only be made by the Director, National Ambulance Service*

7.4 Serious Misconduct

7.4.1 The following are some examples of serious misconduct which will be dealt with from the outset under Stage 4:

- A. Theft*
- B. Deliberate damage to property*
- C. Fraud or deliberate falsification of documents*
- D. Gross negligence or dereliction of duties*
- E. Gross insubordination*
- F. Incapacity to perform duties due to being under the influence of alcohol, unprescribed drugs or misuse of prescribed medication*
- G. Serious breach of health and safety rules*
- H. Serious abuse of telephone, e-mail and other facilities*
- I. Serious breaches of confidentiality*
- J. Serious bullying, sexual harassment or harassment against a member of staff*
- K. Violent behaviour within the scope of your employment*
- L. Sexual assault*
- M. Downloading/disseminating pornographic material from the internet*
- N. Circulation of offensive, obscene or indecent e-mails or text messages*

Note: The above list is not exhaustive.

7.5 How to deal with allegations of serious misconduct

7.5.1 Notify the staff member of the allegation

- A. Upon receiving an allegation of serious misconduct, the Director, National Ambulance Service or designated deputy will arrange for the gathering of preliminary facts relating to the allegation in order for the precise allegation to be formulated.*
- B. The employee against whom the allegation is made will be advised of the precise details of the allegation and invited to make an initial response.*

7.5.2 Protective Measures

- A. The Director, National Ambulance Service or designated deputy should determine whatever protective measures are necessary to ensure that no patient, client or employee is exposed to unacceptable risk.*
- B. The relevant immediate Manager will convey the nature of any protective measures to be taken to the employee against whom the allegations are made and the reasons for them. This should be done in writing and noted to file.*
- C. These protective measures are not disciplinary measures nor an indication of guilt and may include:*
 - Re-assigning the employee to other duties*
 - providing an appropriate level of supervision*
 - putting the employee off duty with pay*
- D. The views of the employee will be taken into consideration when determining the appropriate protective measures to take in the circumstances but the final decision rests with management.*

7.5.3 Investigation

- A. An investigation will be conducted by person(s) (normally Ambulance Officer level) who are acceptable to both parties.*
- B. Objections should only arise where there are legitimate concerns regarding the objectivity of the nominated person(s)*
- C. The principles governing the conduct of the investigation and the steps in conducting the investigation are set out in Appendix IV.*

- D. If the findings of the investigation uphold the allegation of serious misconduct, the Investigation Report will be submitted to the Director, National Ambulance Service or designated deputy.*
- E. The Director of the National Ambulance Service or designated deputy will convene a formal hearing with the employee against whom the allegation of serious misconduct is made.*
- F. The employee should be advised of the outcome of the investigation and that a disciplinary hearing under Stage 4 will be held and heard by the relevant decision maker in due course.*

7.5.4 Disciplinary Hearing

- A. The decision maker will be the Director, National Ambulance Service.*
- B. The employee will be informed of the following in writing in advance of the disciplinary hearing by the Director, National Ambulance Service or designated deputy:*
 - The status of the meeting, i.e. that it is a formal disciplinary hearing under Stage 4 of the disciplinary procedure*
 - The possible outcome of the hearing, i.e. it may result in a decision to terminate his/her employment.*
 - Copy of the Investigation Report and all relevant documentation*
 - The right to be accompanied by a union representative or work colleague*
- C. The disciplinary hearing will be conducted as follows:*
 - The employee will be informed of the purpose of the disciplinary hearing, the nature of the allegation and the findings of the investigation.*
 - The staff member and his/her representative will have the opportunity to present his/her case.*
 - The hearing will be adjourned to allow the decision maker to consider the representations made on the employee's behalf.*
 - The hearing will be reconvened and the staff member will be advised of the decision.*

- D. The disciplinary hearing is not intended to repeat the investigation but the employee will be able to raise any concerns regarding the investigation process if s/he feels that these concerns were not given due consideration by the investigation team.*
- E. The outcome of the disciplinary hearing will be confirmed to the employee in writing and copied to his/her representative.*
- F. Where the outcome is a decision to terminate the employee's employment, s/he will be advised of his/her right to appeal the decision and the procedure to be followed.*

7.6 Appeal against Dismissal Decisions

7.6.1 If the outcome of the disciplinary hearing is a decision to dismiss, the employee may appeal the decision to a Dismissal Appeals Committee (DAC). The appeal may be on any of the following grounds:

- A. Mitigating circumstances*
- B. Procedural deficiencies*
- C. Specific evidence submitted*
- D. Severity of the sanction imposed*

7.6.2 The employee will be required to submit the grounds for the appeal in writing within 14 days of being notified of the original dismissal decision.

7.6.3 An appeal against dismissal decisions will be heard by a DAC comprising of persons selected from a nominated panel which has been agreed between the HSE and Health Service unions.

7.6.4 Membership of the DAC will consist of:

- A. A Chairperson*
- B. A Staff side Representative*
- C. A Management Representative*

7.6.5 The Chair will be selected from an agreed panel of appropriately qualified legal practitioners or other appropriate persons that may be agreed between the parties.

7.6.6 The DAC will adopt its own procedures and may conduct such enquiries as it deems appropriate.

7.6.7 The DAC will decide whether to confirm or vary the original dismissal decision.

7.6.8 If the original decision is confirmed, the employee will be removed from the payroll.

7.7 Ad Misericordium Appeal

7.7.1 In the event of an appeal against the decision to dismiss being unsuccessful, the employee may make a final "mercy appeal" to the Chief Executive Officer.

7.7.2 The grounds for this appeal must be submitted in writing within 21 days of the employee being notified of the DAC's decision.

8.0 IMPLEMENTATION PLAN

8.1 This Procedure will be circulated electronically to all Managers, all Supervisors and Staff

8.2 This Procedure will be available electronically in each Ambulance Station for ease of retrieval and reference

8.3 Each Operational Support and Resilience Manager will ensure that the Manager/Supervisor responsible for updating Policies and Procedures will return the Confirmation Form to NAS Headquarters to confirm document circulation to all staff.

9.0 REVISION AND AUDIT

9.1 This Procedure will be reviewed every three years or whenever a relevant event or changes to the HSE Disciplinary Procedure dictates.

9.2 The Workforce Support Manager will informally advise on compliance with this procedure on an ongoing basis.

9.3 The Workforce Support Manager will monitor NAS Area compliance on any disciplinary action reaching Stage 4.

10.0 REFERENCES

None Applicable

9.0 APPENDICES

Appendix I - Procedure Acknowledgement Form

Appendix II - Guidelines on Conducting a Disciplinary Hearing

Appendix III - Issuing Warnings under the Disciplinary Procedure

Appendix IV - Conducting an Investigation into Serious Misconduct

APPENDIX II

GUIDELINES ON CONDUCTING A DISCIPLINARY HEARING

Before a decision is made regarding disciplinary sanction, a disciplinary hearing must be held. The rules of natural justice require that the employee be given an opportunity to respond to the allegation and make representations before a decision is reached. The decision maker (Manager/Supervisor) must keep an open mind during the hearing and not form any conclusions until all the facts have been considered.

Notification Requirements

The employee should be informed that s/he is required to attend a disciplinary hearing under the formal disciplinary procedure. The employee should be advised of:

- The reason for the hearing, i.e. outline the specific aspects of the employee's performance or conduct which have fallen below the required standards*
- The right to representation by a union representative or work colleague*

The employee should be given sufficient notice of the hearing to enable him/her to arrange for representation and prepare for the hearing. The following details should be confirmed in writing:

- The time and place of the hearing*
- The status of the meeting (i.e. that it is a formal disciplinary hearing under the disciplinary procedure)*
- The precise nature of the complaint*
- The right to be accompanied by a union representative or work colleague*
- A copy of relevant documentation (e.g. timekeeping/attendance record) should be attached.*

Conducting the Disciplinary Hearing

The purpose of the disciplinary hearing is to allow the employee to respond to the allegations before deciding whether or not to take disciplinary action. The employee must be made aware that the outcome of the hearing may result in a disciplinary sanction so that they appreciate the seriousness of the meeting.

However, the decision-maker must not pre-empt the outcome of the hearing, for example, by entering the hearing with the warning already written up. The final decision with regard to disciplinary action can only be made when the employee has had the opportunity to state his/her case and plead any mitigating circumstances.

A disciplinary hearing should follow a structured format as follows:

- Introduce those present*
- Confirm that this is a hearing under the formal disciplinary procedure*
- Outline the precise nature of the allegation and refer to any supporting evidence, e.g. attendance record (the employee should have been given a copy of any such relevant documentation in advance)*
- Allow the employee to respond to the allegation and give an explanation*
- Invite representations on the employee's behalf*
- Close the hearing by summarising the key points raised*
- Allow the employee to have a final say*
- Adjourn the meeting - even for a short period - to allow for careful consideration of the facts and any explanations put forward by the employee or his/her representative. Each case should be considered on its merits before deciding on what sanction, if any, to apply. The outcome of the hearing may be one of the following:*
 - No further action on the grounds that the employee has given a satisfactory explanation of events or there were strong mitigating circumstances*
 - Non-disciplinary action e.g. arrange for the employee to receive coaching/training and set targets for improvement.*
 - A formal warning*
- Reconvene the hearing and advise the employee of the decision.*

ISSUING WARNINGS UNDER THE DISCIPLINARY PROCEDURE

The primary purpose of a warning under the disciplinary procedure is to give the employee an opportunity to make the required improvements whilst making clear the consequences of failing to do so. A warning (including an oral warning) should contain the following information:

- the stage of the disciplinary procedure which has been invoked*
- details of the unsatisfactory attendance, conduct or work standards*
- details of the improvements required and timescale for improvement*
- measures to assist the employee (e.g. training or coaching) duration of the warning*
- what further action will be taken if the employee does not make the necessary improvements within the agreed timescale or if there are further instances of unsatisfactory attendance/work/conduct during this period*

Follow-up Action

The outcome of the hearing should be confirmed to the employee in writing and copied to his/her representative.

The employee's performance/conduct should be monitored during the review period and agreed support measures (e.g. coaching) should be put in place without delay.

Removal of Warnings

Where a warning is issued under Stages 1-3 and the employee makes the required improvements, the letter of warning and all documentation relating to the disciplinary process itself should be removed from the employee's file.

Where the employee does not make the required improvements and the matter progresses to the next stage of the disciplinary procedure, all documentation relating to the previous warning should be retained.

CONDUCTING AN INVESTIGATION INTO
SERIOUS MISCONDUCT

The investigation into allegations of serious misconduct will be carried out in accordance with the following principles:

- The investigation will be conducted as expeditiously as possible and without inordinate delay.*
- The investigation will be carried out with due respect for the right of the staff member who is the subject of the allegation to be treated in accordance with the principles of natural justice, including a presumption of innocence.*
- Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. It is not possible however to guarantee the anonymity of the complainant or any person who participates in the investigation.*
- A written record will be kept of all meetings and treated in the strictest confidence.*
- The investigation team may interview any person who they feel can assist with the investigation. Staff are obliged to co-operate fully with the investigation process.*
- Staff who participate in the investigation process will be required to respect the privacy of the parties involved by refraining from discussing the matter with other work colleagues or persons outside the organisation.*
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness or to attempt to obstruct the investigation process in any way.*

Steps in conducting the Investigation

- The investigation will be conducted by person(s) nominated by senior management and acceptable to both parties.¹*

- The investigation will be governed by predetermined terms of reference based on the alleged misconduct (which will be set out in writing) and any other matters relevant to the allegation. The terms of reference shall specify the following:*
 - The timescale within which the investigation will be completed*
 - Scope of the investigation will be confined to deciding whether or not the allegation has been upheld*
- The staff member against whom the allegation is made will be advised of the right to representation and given copies of all documentation prior to and during the investigation process, e.g.*
 - Details of alleged misconduct*
 - Witness statements (if any)*
 - Minutes of any interviews held with witnesses* *Any other evidence of relevance*
- The investigation team will interview any witnesses and other relevant persons. Confidentiality will be maintained as far as practicable.*
- Persons may be required to attend further meetings to respond to new evidence or provide clarification on any of the issues raised.*
- The investigation team will form preliminary conclusions based on the evidence gathered in the course of the investigation and invite the person adversely affected by these conclusions to provide additional information or challenge any aspect of the evidence.*
- On completion of the investigation, the investigation team will form its final conclusions based on the balance of probabilities and submit a written report of its findings and recommendations to senior management.*
- The staff member against whom the allegation is made will be given a copy of the investigation report.*

On completion of the investigation, the investigation team will submit a written report in accordance with its terms of reference. However, no decision regarding disciplinary sanction should be decided upon until the decision maker has held a disciplinary hearing with the employee concerned.

¹ *Objections should only arise where there are legitimate concerns regarding the objectivity of the nominated person(s).*