**Guide to Managing Disciplinary and Appeal Processes for Wellbeing and Protection Concerns in Sport**

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**Acknowledgements**

The Case Management Support Service (CMSS) is a partnership between Children First and **sport**scotland, 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 First, 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.

**Please note:** This guidance should not be applied with Under 18s. Separate guidance is being co-produced with young people in respect of responding to concerns shown by U18s 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.
* 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](#_Appendix_1) 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](https://children1stscotland.sharepoint.com/teams/CaseManagementSupportService/Shared%20Documents/General/Learning%20and%20Development/Resources/Guides/Draft%2025%20Guide%20to%20Investigations%20review.docx). For consistency in language in all documents and for ease of reading, the following words will be used to cover the description of the text shown:

* Concern, any issue raised about an adult’s conduct or behaviour.
	+ Person raising the concern, is the person who is either raising the issue about actions of an 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 concern (PSOC) 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.
	+ Disciplinary Manager, is the person within the SGB who agrees terms of reference with the WPO or Investigator, then takes formal disciplinary action when required.

**Notes on update:**

The first version of the guide to managing Disciplinary and Appeals process, published in April 2024, was introduced to address the lack of guidance in the Scottish sport sector for managing the disciplinary and appeals processes in relation to wellbeing and protection concerns. The guide provided step-by-step support of best practice for the disciplinary and appeals process for SGBs to implement.

Since being published, the guide has been praised for helping better structure SGB’s processes and improving rigour, safety and fairness in the system. We recognise importance of routinely reviewing and improving this guide to best support Scottish Sport. Feedback from the initial guide has been listened to and the following points and changes have been made:

* Further advice around humanising the process and protecting all those involved from harm potentially caused by the process.
* Further clarity around employment, membership and volunteer differences and the complexity of sport settings.
* Addition of appendix on check lists.
* Addition of threshold decision making support.

# **Principles of a Disciplinary Process**

The disciplinary process is a step-by-step procedure any sports organisation commits to following, where an employee, member or volunteer must be formally warned, reprimanded, or dismissed on a failure to comply with relevant Code of Conduct. The process is based in the ideals of natural justice which includes the right to a fair hearing. This requires that individuals should not be penalised by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The fact that a decision affects an individual’s rights or interests is sufficient to subject the decision to the procedures required by natural justice.

Where an investigation into a concern 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 activity is done by volunteers and involves interaction with children, young people and members of all ages. 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.

Given the considerable variation of SGB’s jurisdiction, it is not possible to give guidance on every possible structural difference in this document. However, it is commonplace that SGB’s membership is necessary in order for individuals to be formally involved in their sport. This is often the case for both employees and volunteers. If an SGB is making a potential decision about an individual’s membership and therefore continued right to practice in their sport, this sits in a unique regulatory position. It is important to highlight that this is not an employment disciplinary. Employment disciplinary would likely fall with the employer. The SGB decision will likely form part of either the process before an employer makes a decision about continued employment or after someone is dismissed and a decision on right to continue to practice in the sport as a whole is required. This is important as employment decisions and those that impact an individual’s potential capacity to be employed in the sport can be challenged through legal tribunal, where in the importance of following fair disciplinary process is paramount.

It is recommended that best practice when managing members or volunteers is therefore 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 all employees, members 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 an 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.

**Flowchart**

Contact police or social work if someone is at **immediate** risk of harm or in need of protection.

**Wellbeing or protection concern reported to WPO.**

Initial assessment of concern against code of conduct.

**Take no action.**

Facts do not substantiate concern raised.

WPO records and updates person raising the concern that the issue is resolved.

Possible breach of code of conduct identified. WPO and Disciplinary Manager agree **Terms of Reference** for an investigation.

Take **advice** from police or social work on next steps to be taken by WPO.

Investigator or WPO completes **investigation** providing report to Disciplinary Manager.

**Take formal action.**

Investigation establishes facts of concern raised with potential serious poor practice, misconduct or gross misconduct by PSOC or informal/formal action unsuccessful.

Disciplinary Manager arranges **hearing.**

**Take informal action.**

Wherever possible and appropriate for poor practice or inappropriate behaviour.

Complete agreement with PSOC to record informal action taken and completed.

**Issue resolved:**

WPO update policies and procedures from any learning. Record low-level concern.

PSOC practice fails to improve sufficiently.

Hold hearing.

Adjourn hearing.

Decide disciplinary action.

Review low-level concerns to decide if threshold reached to require formal action.

Inform PSOC the outcome of hearing:

1. No penalty
2. First written warning
3. Final written warning
4. Action short of dismissal
5. Dismissal /removal of membership

If agreed, hold hearing.

Adjourn hearing.

Decide any change to outcome and inform PSOC.

Provide opportunity to **appeal**.

PSOC conduct improves then **issue resolved**.

PSOC conduct fails to improve sufficiently.

If PSOC dismissed or removed, consider **referral to PVG** if criteria met.

Hold hearing.

Adjourn hearing.

Decide disciplinary action.

# **Taking Formal Action**

Resolving disciplinary issues through formal action is essential to manage wellbeing and protection cases of unacceptable conduct that could reflect serious poor practice, misconduct or gross misconduct. Where an investigation has identified that a disciplinary hearing needs to take place, this should be informed by an appropriate [investigation report](https://children1stscotland.sharepoint.com/teams/CaseManagementSupportService/Shared%20Documents/General/Learning%20and%20Development/Resources/Guides/Draft%2025%20Guide%20to%20Investigations%20review.docx) that has established the basic facts.

A hearing should be scheduled, and the PSOC 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/removal of membership. This decision should be provided to the PSOC 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 PSOC.

***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

## **Prior to the hearing considerations**

**When to hold a hearing**

As soon as the investigation into the wellbeing and protection concern has been concluded, the report will be shared with the SGB’s Disciplinary Manager, and a decision should be made about convening a hearing. The disciplinary hearing should be held without unreasonable delay whilst allowing the PSOC reasonable time to prepare their case.

The PSOC 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. The SGB may also arrange another hearing if the PSOC 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.

Please find a checklist in [appendix 2](#_Appendix_2_1) for all considerations prior to the hearing.

**Who is invited to the hearing**

The hearing attendees should be made up of:

* The hearing manager (and hearing panel members, if agreed)
* The investigator, if needed
* The PSOC
* The PSOC’s companion, if requested.
* 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.

**Additional considerations:**

**Hearing Panel members**

It is the SGBs decision as to whether to appoint a panel or a single hearing manager. Panel formation increases fairness and rigour in the process but is not always proportionate. It is common to see organisations instruct a disciplinary manager for employment decisions but a panel for membership decisions, particularly if taking the decision can take away the individual’s ability to practice in the sport.

Panel size and composition should be considered in advance. Members with wellbeing and protection knowledge is recommended and a clear understanding of the SGB’s threshold and policies needed to support their decision making.

**Legal representation**

Disciplinary hearings are not a legal forum and therefore do not invite the need for legal representation. It is the right of an organisation to refuse legal representation if requested.

**Witnesses**

In most cases, a thorough investigation should provide sufficient evidence through written statements, making in-person witness attendance unnecessary. The hearing manager or panel can review the report and meet directly with the person subject of concern (PSOC). If clarification is needed, the hearing can be paused and further information gathered by the investigator.

The PSOC may request additional witnesses, such as character references or individuals not interviewed during the investigation. These requests should be reviewed for relevance and appropriateness.

It is generally not appropriate for the person raising the concern to attend, as this may cause further distress. If they wish to be present, contact the CMSS team for guidance and consider trauma-informed adjustments, such as:

* Joining remotely
* Avoiding direct contact with the PSOC
* Having a support person
* No cross-examination
* Questions relayed through the hearing manager

**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).

It is best practice to afford the same rights to members and volunteers, particularly if any disciplinary action may influence their capacity for future employment.

Informal discussions, counselling sessions or 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 for an employee 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)

If the PSOC is the employee concerned and a trade union representative, discuss the case with a trade union full-time official after obtaining the employee’s agreement. This is because the action may be seen as an attack on the union.

There is **no** legal right to have a legal representative at a disciplinary hearing such as a lawyer or solicitor for employees. Members and volunteers may identify a lawyer or solicitor as their chosen companion, given they won’t have a trade union representative as an option. SGBs should seek legal advice if the volunteer plans on bringing legal representation.

|  |  |
| --- | --- |
| The Companion **may**:  | The Companion **may not**: |
|  - address the hearing - put forward the PSOC’s case - sum up the PSOC’s case - respond to any view expressed at the hearing  - confer with the PSOC - ask questions | - answer questions on the PSOC’s behalf  - address the hearing if the PSOC does not wish it  - prevent the PSOC from explaining their case- interfere, disrupt or unnecessarily interrupt the hearing process |

**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. The PSOC should provide enough time for the SGB to deal with the companion’s attendance at the hearing.

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

**What if the PSOC repeatedly fails to attend a hearing?**

There may be occasions when the PSOC is repeatedly unable or unwilling to attend a hearing. This may be for various reasons, including illness or a refusal to acknowledge the issue. The Disciplinary Manager 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 PSOC is an employee, their disciplinary record (including current warnings), general work record, work experience, position, and length of service.
* Medical opinion on whether the PSOC is fit to attend the hearing.
* How similar cases in the past have been appropriately dealt with.

Where the PSOC continues to be unavailable to attend a hearing the Disciplinary Manager may conclude that a decision will need to be made on the evidence available. The PSOC should be informed in writing when this is to be the case.

## **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 always proceed in neat, orderly stages but it is good practice to:

* introduce those present to the PSOC 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:
* Statement of concern
* PSOC’s response
* General questioning and discussion
* Summarising the hearing
* Adjournment before decision
1. **Statement of concern**

At this stage, the Disciplinary Chair should provide a clear and concise summary of the concern raised, state the terms of reference for the hearing, and highlight the key evidence gathered during the investigation. The Chair should then confirm that the PSOC and their companion have read the investigation report in advance and understand the nature of the concerns and the process. If necessary, the Chair may seek further clarification on specific elements of the investigation report from the investigator to ensure shared understanding.

1. **PSOC’s response**

The PSOC should be given the opportunity to respond to the concerns raised and present their case. This includes the right to ask questions, present evidence and address any points within the investigation report. Their accompanying person or companion may also ask questions and should be allowed to confer privately with the PSOC during the hearing.

Panel members should listen carefully and allow time for considered responses. Remaining silent after proposing a question can be an effective way to give the PSOC space to reflect and respond fully.

1. **General questioning and discussion**

The PSOC should be asked whether they have any explanation for the reported misconduct or unsatisfactory conduct, and whether there are any mitigating or special circumstances the panel should consider. It is important to establish whether the PSOC accepts that their actions may have fallen short of expected standards or breached the Code of Conduct. If they do, they should be given the opportunity to discuss any steps they are willing to take to address the situation and prevent recurrence.

If, during this stage, it becomes clear that the PSOC has provided an adequate explanation or there is insufficient evidence to support the allegation, the panel should consider bringing the proceedings to a close.

Should any new or relevant facts emerge during the hearing, it may be necessary to adjourn proceedings to allow time for further investigation. The hearing should then be reconvened once those matters have been appropriately addressed.

1. **Summarising the hearing**

Once the questioning is complete, the Chair should summarise the main points of the discussion. This allows all parties to be reminded of the nature of the concern, the evidence presented and to ensure that no important details have been overlooked. The PSOC should be invited to make any final comments or provide any additional information they wish the panel to consider. This step reinforces the fairness and transparency of the process and helps demonstrate that the PSOC has been given a full and reasonable opportunity to respond.

1. **Adjournment before decision**

Before making any decisions regarding the outcome or potential disciplinary action, the panel should adjourn to allow time for careful reflection and full consideration of the case. This also provides an opportunity to clarifying any outstanding issues, particularly where there is uncertainty or dispute over key facts.

During this period, the panel should consider the following:

* Were the disciplinary procedures correctly followed?
* What was the PSOC’s response to the concerns raised, and was any mitigation offered?
* Is further investigation required to corroborate any points?
* Has the standard of proof been met – is it likely ‘on the balance of probabilities’ that the concern occurred?
* What are the actual and potential consequences of any decision taken?

For a comprehensive list of considerations during the hearing and decision-making process, please refer to the checklist provided in [appendix 3](#_Appendix_3).

## **Making disciplinary decisions**

**Prior to deciding any disciplinary sanction or penalty**

When considering whether a disciplinary sanction or penalty is appropriate, and what form it should take, the following factors should be taken into account:



**Imposing the disciplinary sanction or penalty**

All warnings issued under the disciplinary procedure will clearly state that any failure to improve conduct or any further breach of the SGB’s Code of Conduct may result in further disciplinary action. Where no further concerns arise and an improvement in conduct is demonstrated, the warning will be removed in line with the specified timeframe. A record of the concern will be retained in the SGB’s central low-level concerns file, alongside other wellbeing and protection records, in accordance with the SGB’s Low-Level Concerns Policy.

**First written warning – Misconduct**

In cases of misconduct, PSOC 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 PSOC 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 PSOC has a current warning about conduct or performance, then further misconduct 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 PSOC has received a final written warning, further misconduct or unsatisfactory performance may warrant dismissal. Alternatively, employment contracts 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**

Employees should only be dismissed if, despite warnings, conduct does not improve to the required level within the specified time period. Dismissal must be fully justified 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.

Members and volunteers can be dismissed or have their membership removed without the same level of rigour. However, it is recommended that best practice when managing members or volunteers is 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.

In wellbeing and protection concern cases, dismissal without notice is likely necessary in line with gross misconduct.

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.

**Disclosure Scotland Referral**

Organisations must make a referral to [Disclosure Scotland](https://www.mygov.scot/organisations/disclosure-scotland) if a person in a regulated role shows harmful behaviour and they:

* Are dismissed as a result.
* Would or might have been dismissed but left before they could be.
* Are permanently moved away from work with children or protected adults.

This Referral must take place within 3 months.

**4. Post hearing considerations**

Once a disciplinary decision has been made, it is essential to consider the next steps to support everyone involved in the process. This includes ensuring that both the PSOC and the person who reported the concern have access to appropriate support and guidance moving forward.

***Key considerations:***

* *Support for the person who raised the concern:
Where appropriate, offer a follow-up conversation to check in on their wellbeing. This may also include:*
	+ *Providing a high-level summary of the outcome, within confidentiality boundaries.*
	+ *Offering the opportunity to complete a feedback form or share their experience of the process.*
	+ *Exploring whether they wish to contribute to future learning or improvements. Some individuals may want to help shape change, this should always be led by them, with no pressure to participate****.***

*Support for others involved in the process:
Consider whether any other team members or participants involved in the investigation require follow-up or pastoral support.*

For more details, please see [Appendix 4: Post-Hearing Considerations Checklist](#_Post_Hearing_-).

# **Appeal Procedural Steps**

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

An appeal process must never be used as an opportunity to punish the PSOC 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**

If the Person Subject of Concern (PSOC) believes that the disciplinary action taken against them is unfair or unjust, they have the right to appeal the decision. Appeals must clearly state the specific grounds for the appeal, a general disagreement with the outcome is not sufficient.

Appeals may be raised on a variety of grounds, such as the emergence of new evidence, the perceived severity of the outcome, or concerns about consistency or procedural fairness.

Depending on the nature of the appeal, it may involve a review of the decision and/or sanction, or a full re-hearing. For example, new evidence may justify a further investigation and disciplinary hearing, whereas a procedural concern may only require a review of whether a different outcome would have been appropriate.

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

## **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.
* PSOC 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 PSOC to be accompanied at any appeal hearing. Employees have a statutory right to be accompanied at appeal hearings. Wherever possible, the appeal hearing should be conducted by someone who is more senior than the person who made the original disciplinary decision and who was not involved in the original hearing or outcome. In smaller SGBs, where a more senior individual may not be available, it may be appropriate to consider whether a board member can hear the appeal.

Whoever is appointed to hear the appeal must be impartial and able to review the case objectively.

## **During the appeal considerations**

Follow the same principles as those used for the initial disciplinary hearing. However, the appeal hearing must focus specifically on the grounds for appeal and whether the original decision was fair, reasonable, and in line with organisational procedures.

When conducting an appeal hearing, ensure the following is addressed:

* **Set the scene clearly:**
Explain the purpose of the hearing, how it will be conducted, and the remit of the person or panel hearing the appeal. Make it clear that the outcome may result in the original decision being upheld, reduced, or overturned — but not increased.
* **Understand the grounds for appeal:**
Ask the PSOC to clearly explain the reason(s) for their appeal. Appeals must be based on specific grounds such as new evidence, procedural concerns, or the perceived severity of the outcome — not simply a disagreement with the original decision.
* **Review new evidence carefully:**
Pay particular attention to any new information that has been introduced. Ensure the PSOC (or their companion, if applicable) has the opportunity to comment on any new evidence before a decision is made.
* **Assess the fairness and process of the original decision:**
Review whether the disciplinary process was conducted fairly, consistently, and in line with policy. Was the outcome proportionate to the findings? Was there any indication of procedural flaws, inconsistency, or potential bias?
* **Be open to overturning the decision:**
If it becomes clear that the original decision was not soundly based, it is appropriate to change it. Doing so demonstrates the fairness and independence of the appeal process, not a lack of authority. If the outcome is overturned, consider whether any wider learning is required — for example, training for the original hearing manager, a review of policy wording, or other improvements.
* **Ensure impartiality:**
The person or panel hearing the appeal must be impartial and, where possible, not previously involved in the case. In smaller organisations, consider involving a board member if needed.
* **Communicate the outcome clearly:**
Inform the PSOC of the appeal outcome and the reasons behind the decision. This should be done in writing. If the decision is final and no further right of appeal exists, make this clear in the communication.

**Advice on process**

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

1. CMSS – 0300 373 1080 – cmss@childrenfirst.org.uk- (Open Monday – Friday 9am–5pm)
2. 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, members 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] Disciplinary Manager 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 Disciplinary Manager 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 a concern 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 concern (PSOC) 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 members and volunteers, the same considerations can be made during the investigation for precautionary suspension to manage any identified risks.

The person(s) raising the concern 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 person(s) raising the concern needs.

If criminal actions are being investigated but the conduct requires prompt attention, [SGB] may not need to 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 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 PSOC.

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 PSOC 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 PSOC 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 employees, members 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 members and 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 members and volunteers, a trade union representative would not be appropriate given the role is not employment based. However, there are no restrictions on members or 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 PSOC will be notified and informed they can be accompanied, sometimes referred to as a companion.

The chosen companion for an employee 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 or member/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 PSOC 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 or member/volunteer’s record 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 arrangements. The PSOC 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 PSOC, and a copy will be retained on the employee’s file or member/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 PSOC 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 PSOC will be informed that further misconduct within the specified period may result in their dismissal.

**Dismissal or action short of dismissal (step three)**

The PSOC will be dismissed if they have failed to improve during the previous steps. In the event of a gross misconduct allegation, the [SGB] Disciplinary Manager may enter the process at step three and dismissal for first offence may occur. Alternatively, to dismissal, the [SGB] Disciplinary Manager 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:

1. serious breach of rules, policies, or procedures, especially those designed to ensure safe environments.
2. sexual harassment, harassment, bullying or violent, dangerous or intimidatory conduct.
3. violation of privacy due to divulging or misusing confidential information.
4. insubordination, e.g., refusal to carry out duties within employment or obey reasonable instructions, except where safety of others may reasonably be in jeopardy.
5. grooming or exploitation of others through power imbalance or role in sport.
6. theft or fraud.
7. 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, members, volunteers, children, and young people.
8. 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 a referral to [Disclosure Scotland](https://www.mygov.scot/pvg-referrals).

**Appeal Process**

At every step, the PSOC 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**

## **Preparing for Disciplinary Hearing – Considerations Checklist**

|  |  |
| --- | --- |
| **Check list**  | **Things to consider**  |
| Appoint a hearing manager  | 1. Is there a conflict of interest?
2. Are they a separate person from the investigator?
3. What support do they need to be confident in your SGB’s disciplinary policy, procedure and thresholds?
4. What support do they need to effectively manage a hearing e.g. have they attended disciplinary training?
 |
| Appoint a disciplinary panel if necessary  | 1. Is there a conflict of interest?
2. Is a panel necessary?
3. Could the disciplinary panel take away an individual's ability to practice in the sport?
4. Decisions are made by simple majority
5. Hearing Manager has the casting vote
 |
| Check investigation report is appropriate  | 1. Does the hearing manager agree that the investigation is sufficient to allow for a fair hearing?
 |
| Appoint a note taker | 1. Is there a conflict of interest?
 |
| Chose a location and time of hearing  | 1. Is it private and confidential?
2. Is it an accessible location?
3. Will the room be free from interruptions?
 |
| Consider reasonable adjustments for the PSOC | Do they need any additional support? |
| Consider reasonable adjustments for person(s) raising the concern and witnesses | Do they need to attend? Have their views been sought on this?If yes, consider that they:1. attend via web link?
2. only answer questions outside of hearing to the hearing manager
3. have no contact with PSOC
4. bring an accompaniment
 |
| Distribute letters of invite to the hearing  | See Appendix 5 for template letters. |
| Allow the PSOC to identify if they want to call witnesses or submit witness statements  | Ask them to submit this request in writing.  |
| Ensure the PSOC has identified a companion if wanted  | If the PSOC is an employee is the companion:A fellow worker?A trade union representative certified by their union as being competent to accompany an employee?If the PSOC is a member/volunteer and plans on bringing legal representation – seek legal advice.  |
| Think about the structure of the hearing and make a list of points you will wish to cover. | Prior discussion with the Hearing Manager and Panel Members to agree this format, points to be covered and by whom. |

#

# **Appendix 3**

## **During the Hearing and Making Decisions - Considerations Checklist**

General tips for conducting this part of the hearing are:

* keep your approach formal and polite.
* encourage the PSOC 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.

|  |  |
| --- | --- |
| **Check list**  | **Things to consider**  |
| Set up on the day | * Waiting area set up, particularly if the person raising the concern and PSOC will both be physically present. Is it appropriate for them to be in the same room dependant on nature of concern? Need to emphasise careful planning and consideration to ensure the wellbeing of the person raising the concern
* Layout of room to reduce intimidation, an open circle of chairs can help facilitate discussion.
* Ensure facility access, tea and coffee, tissues, and anything else that you think will make the environment more conducive to a productive and supportive hearing.
 |
| Companion role  | If a companion is present, clearly speak with them to clarify their role. ([p11](#Right_to_be_accompanied)) |
| Support for PSOC | Prior to the formal commencement of the hearing, ensure the PSOC and any witnesses they have brought are clear of the plan for the hearing, and expectations. |
| Support for person raising the concern if present | Prior to the formal commencement of the hearing ensure person(s) raising the concern are clear of the plan for the hearing, and expectations. Their involvement, if necessary, should have been clearly considered in advance of the hearing:1. Ensure the person(s) raising the concern is not cross examined by the PSOC. Any questions put to them should be reviewed and asked through the hearing manager.
 |
| Support for witnesses  | Prior to the formal commencement of the hearing ensure witnesses clear of the plan for the hearing, and expectations. 1. When they will be called
2. Where they will wait
 |
| Commence hearing  | Welcome those present to the hearing and ensure everyone knows everyone else’s role, the layout for the hearing and opportunities for breaks etc.  |
| Outline Statement of concern  | 1. State the concern.
2. If present, invite the investigator to share a summary of their findings.
 |
| Call witnesses if needed  | 1. If felt necessary for the person(s) raising the concern to attend, this is when they should be called.
2. If felt necessary for other witnesses to attend this is when they should be called.
3. **Remember this is not an opportunity for cross examination, this is an exercise in establishing facts.**
 |
| PSOC response  | 1. Give the PSOC opportunity to answer the concern and present evidence.
2. Consider adjournment if evidence presented highlights need for further investigation.
 |
| Call PSOC witnesses if requested  | 1. Consider adjournment if evidence presented highlights need for further investigation.
 |
| General questioning and discussion | 1. Ask the PSOC if they have any explanation for the reported misconduct or unacceptable conduct, or if there are any special circumstances to be considered.
2. Establish whether the PSOC is prepared to accept that they may have done something wrong or are not adhering to the Code of Conduct
3. If they are, offer opportunity to discuss what steps they could take to remedy the situation.
4. If it becomes clear during this stage that the PSOC has provided an adequate explanation or there is no real evidence to support the reported concern, bring the proceedings to a close.
5. If new facts emerge, it may be necessary to adjourn the hearing to investigate them and reconvene the hearing when this has been done.
 |
| Summarising hearing  | 1. Summarise the main points of the discussion after questioning is completed.
2. Appreciate this is a hearing for the PSOC however if the person reporting the concern is present, should they be provided with an opportunity to add anything to ensure test of fairness.
3. Ask the PSOC if they have anything further to say.
4. Thank all for involvement.
5. Be clear that the decision will be deliberated and that the PSOC will have a response within a reasonable time frame.
 |
| Adjournment  | The hearing manager/panel must now deliberate their decision:1. Were disciplinary procedures followed?
2. From the evidence presented, what was the PSOC’s response, did it provide any mitigation?
3. Is further investigation needed for corroboration? Not sure we should use the term corroboration given the standard of proof etc
4. Was the standard of proof ‘on a balance of probability the concern occurred’ met?
5. Actual and potential consequences of decision reached?
 |
| Decision making – Deliberation/Considerations | Consideration should be given to:   Whether the rules of the SGB indicate what the likely penalty or sanction will be because of the misconduct identified in the hearing.  1. The penalty imposed in similar cases in the past.
2. Whether standards of other employees/members/volunteers are acceptable, and that this employee/members/volunteer is not being unfairly singled out.
3. The PSOC’s disciplinary record (including current warnings), general work record, work experience, position and length of service.
4. Any special circumstances which might make it appropriate to adjust the severity of the penalty or sanction.
5. Whether the proposed penalty or sanction is reasonable in view of all the circumstances.
6. Whether any training, additional support or adjustments to the employee’s work are necessary.
 |
| Decision making – Final or Determination | Make a decision on the band of reasonable responses with justification.1. No action2. Informal action3. First warning4. Final warning5. Action short of dismissal6. Dismissal  |
| Consider Case Advisory Group support  | CMSS offer a Case Advisory Group service whereby investigation and disciplinary decisions can be reviewed and advised upon by an independent panel of experts  |

# **Appendix 4**

## **Post Hearing - Considerations Checklist**

|  |  |
| --- | --- |
| **Check list**  | **Things to consider**  |
| Inform PSOC of decision  | 1. Dependent on PSOC needs it may be appropriate to do this over the phone or in person. It should however always be followed up with a formal letter.
2. See appendix 6 for essential elements to include in the letter to PSOC.

***If reinstating the PSOC into their role, consideration for how the SGB will support them to manage this and challenges they may face*** |
| If decision is dismissal or removal of membership due to harmful behaviour make PVG referral  | 1. There is a legal obligation to do this within three months of the decision
 |
| Inform person(s) raising the concern of decision  | 1. Dependent on person(s) raising the concern needs it may be appropriate to do this over the phone or in person. It should however always be followed up with a formal letter.
2. You want to ensure the person(s) raising the concern has trust and confidence that the process in place has addressed the concern raised
 |
| Inform relevant others on need to know E.g. -if actions need to be taken at club level to address disciplinary decision | 1. Carefully consider what is proportionate to share to address this
 |
| Ensure recorded effectively  | 1. See data sharing section of the [introduction guide](https://children1stscotland.sharepoint.com/teams/CaseManagementSupportService/Shared%20Documents/General/Learning%20and%20Development/Resources/Guides/Draft%2025%20Introduction%20Guidance%20for%20Investigations%20and%20Disciplinary%20Processes.docx) for further guidance
 |

# **Appendix 5**

## **5a) 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 / member or volunteer option to be accompanied by SGB discretion.

You are entitled to invite witnesses and should inform us of whom you are intending to invite for us to make the necessary arrangements.

Yours sincerely

Signed ..................................................

Note: \* Delete if not applicable

## **5b) 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 / member or volunteer option to be accompanied by SGB discretion.

You are entitled to invite witnesses and should inform us of whom you are intending to invite for us to make the necessary arrangements.

Yours sincerely

 Signed ..................................................

# **Appendix 6**

## **6a) 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/member or volunteer record but will be disregarded for disciplinary purposes after a period of .................... months, provided your conduct improves/performance reaches a satisfactory level\*\*.

* The nature of the unsatisfactory conduct or performance was:
* The conduct or performance improvement expected is:
* The timescale within which the improvement is required is:
* 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

## **6b) 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:……………………………………

Or:

I am therefore writing to you to confirm the decision that no further action would be taken against you.

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

Yours sincerely

Signed ..................................................

# **Appendix 7**

## **7a) 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 / member or 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

## **7b) 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 / member or 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 8**

## **8a) 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

## **8b) 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 Procedures and this decision is final.

Yours sincerely

Signed ..................................................