

Disciplinary Policy

Purpose

National Express recognises that there are sometimes situations in the work place where an employee's conduct does not meet expectations and, given the seriousness of this misconduct, an informal approach is not appropriate.

This document describes the policy for, and procedure to be followed, when dealing with more serious conduct issues. As described below, this procedure may result in a disciplinary sanction being issued whether this be a letter of concern, first formal warning, final written warning, dismissal (with or without notice), or some other sanction such as demotion.

The application of this procedure is to enable the Company to act consistently when dealing with misconduct issues which need to have a more formal approach applied. At all times management decisions on disciplinary sanctions should be reasonable and fair. Managers should also consider not only which sanctions may be appropriate but also ways we can support rehabilitation and prevent a repeat of misconduct.

This procedure may be implemented at any stage if the alleged misconduct requires such action. On rare occasion the Company also reserves the right to depart from the precise requirement of the procedure where it is appropriate to do so

This procedure does not form part of any employee's contract of employment and it may be amended at any time. The Company may also on exceptional circumstances may vary this procedure, including time limits, as appropriate in any case.

Please note that there is a separate company policy for dealing with poor performance at work where capability rather than conduct is the root cause. Please see The Performance Improvement Policy for more information.

Employee Rights / Key Principles

The Right to be Accompanied

At every **formal** stage (e.g. at the formal disciplinary hearing) employees will have the statutory right to be represented / accompanied by a Trade Union Representative or a work place colleague.

It may not always be possible at the investigation stage to make arrangements for a representative, for example at the scene of an accident, and therefore the Company may continue with its fact finding.

Furthermore it should be noted that, given at an informal fact finding stage no decision will have been made as to whether formal disciplinary action is appropriate, the Company is entitled to interview employees in a fact

gathering context without a representative if unreasonable delays are going to be caused to the process by waiting for such representation to be arranged. It will be the investigating manager who determines what constitutes an unreasonable delay.

Where an employee exercises their statutory right to be accompanied at the disciplinary interview, the meeting will be rearranged a maximum of two occasions to enable the representative to be present. If the representative (work place or Trade Union) is unable to attend on the first or second occasion, the meeting will go ahead on the second occasion. In preparation for the second rearranged meeting the employee will be asked to provide dates when the employee and representative are available to attend the meeting and the second rearrangement will be scheduled taking this into account and will, where absolutely possible, be on a date where the representative is available. There may be occasions where this is not possible.

In the majority of cases investigatory and disciplinary hearings should be conducted in work time.

The Role of a Representative

Where an employee chooses to bring along a representative then that representative is permitted to address the disciplinary hearing in order to do any or all of: putting the employee's case; summing up that case; and responding on the employee's behalf to any view expressed at the hearing. The representative is also permitted to confer with the employee during the disciplinary hearing.

However, the representative has no statutory right to answer questions on the employee's behalf, even if the employee wishes him or her to do so. The representative also has no right to address the disciplinary hearing if the employee indicates at the hearing that he or she does not wish the representative to do so. In addition, the representative may not use his or her rights to address the hearing and to confer with the employee in a way that prevents the manager explaining the case or any other person at the hearing making his or her contribution.

If the hearing manager believes the representative is being disruptive or unhelpful to the hearing the manager can give the representative warning that if they continue as there are they will be asked to leave, and if the disruptive behaviour continues the manager has the right to ask the representative to leave the hearing. The employee will then be asked to identify another representative who is immediately available so the hearing can resume.

Calling of witnesses The employee should be allowed to call relevant witnesses. The employee should give advance notice that they intend to do this, who they want to call, and their relevance to the hearing.



Where the manager has agreed a witness to attend, the employee should be given a reasonable opportunity to ask questions and present evidence. They should also be given an opportunity to raise points about any information provided by witnesses.

If an employee calls a witness and they cannot or choose not to attend it will not be assumed that their evidence is no longer relevant.

The hearing manager will decide whether to allow the witness to be called to ensure that the person is relevant and appropriate to the hearing. The number of witnesses will also be determined by the hearing manager. The hearing manager cannot unreasonably deny witnesses attending in support of an employee.

Recording

The Company does not allow any hearings/meetings and / or interviews to be recorded by mobile phones or any other recording equipment. All hearings will be recorded by a note taker (a Company representative such as a member of the HR team, another manager or suitably appointed person). The employee's representative may also take written notes.

Any attempt to conceal recording equipment or a refusal to not take note of this, will be considered as gross misconduct.

Timescales

This policy and procedure will normally be implemented within 28 days of the incident. There are exceptions, which include cases of a more serious nature, such as gross misconduct cases and perhaps cases which involve police action or intervention and cases where the matter is not brought to the Company's attention immediately, such as customer complaints.

Types Of Misconduct

Misconduct

Misconduct is any type of behaviour or conduct at work that falls below the standard required by the employer and includes a breach of any Company policy or rule.

If on completion of an investigation the Company is satisfied that misconduct has occurred, a disciplinary sanction may be applied.

Gross Misconduct

Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and the employee and therefore justifies summary dismissal (dismissal without notice) for example theft, fraud, physical violence, driving a company vehicle whilst using a mobile phone, gross negligence or a serious form of insubordination.

Examples of Misconduct

The following examples, where applicable, are regarded as breaches of contract and misconduct. This list is not exhaustive. Please contact your manager or a member of the HR team if you have any queries.

- Poor timekeeping. Employees will be deemed as being late if they are not performing their role at the start time of your shift / working day.
- Conduct likely to give offence to customers, suppliers, visitors or fellow employees of the Company (may be considered an act of Gross Misconduct if serious).
- Poor attitude or any act of insubordination (may be considered an act of Gross Misconduct (if serious)).
- Failure to use safety equipment provided for a specific task.
- Minor breaches of Company Policy which lead to unacceptable standards of behaviour and conduct.
- Failure to achieve or maintain the required standards of performance.
- Being involved in other work outside of the Company (but not in competition) without the Company's approval (see second job policy).
- Failure to comply with working time recording procedures.
- Unsatisfactory standard of work, appearance or driving standards (where applicable).
- Unauthorised use of Company vehicles and carrying of passengers.
- Failure to produce driving licence (where applicable).
- Breach of the smoking and vaping policy.
- Blameworthy or preventable minor accidents whilst in a company vehicle.
- Failure to complete defects report immediately a defect becomes apparent.
- Minor breach of any other company policy or procedure.
- Early running less than 5 minutes (early running in excess of this may constitute more serious action being taken).
- Failure to make customer safety announcements at each point a new customer boards a coach as required by law.

Examples of Gross Misconduct

The below list is not exhaustive and other offences may also be included at the discretion of the Company.

- Theft or attempted theft either from the Company, colleagues or customers.
- Deliberate action that deprives the Company of revenue or property belonging to it.

- Fraud, deliberate falsification of Company records or aiding and abetting others to commit such acts.
- Deliberate or grossly negligent contravention of Company rules or procedures.
- Being involved, working or having an interest in a competitor's business or any other business in competition with the Company without the Company's approval (see second job policy).
- Wilful neglect of, or damage to, Company, Colleague or Customers' property.
- Fighting, assault or attempted assault on another person (customer or colleague).
- Gross insubordination.
- Reporting for duty under the influence of alcohol, or being under the influence of non prescription drugs or controlled substances or consuming drugs or alcohol whilst on duty other than prescription drugs which do not impair performance in accordance with the Company Drugs and Alcohol policy.
- Possession or misuse of drugs (other than those prescribed by a doctor) or trafficking of drugs on Company premises.
- Testing positive for drugs and/or alcohol, refusing to be tested, to sign a consent form or otherwise contravening the Company's Drugs & Alcohol policy and/or procedures for drugs and alcohol testing.
- Gross negligence.
- Acts of discrimination or harassment on the grounds of age, sex, race, religion, colour, ethnic origin, marital status, disability or sexual orientation or other grounds of unlawful discrimination.
- Any ticket irregularity.
- Misappropriation of Company or Customer's property or cash.
- Bringing the Company into disrepute in anyway.
- Criminal convictions affecting the individual's duties or status or which may have an adverse impact on the Company, whether such offences were committed at work or outside the course of employment.
- Contravention of the Company's Cash Counting Policy.
- Breach of Company Health and Safety procedures.
- Loss of PCV licence where driving is the focus of the role.
- Loss of driving licence where alternative arrangements are not appropriate.
- Failure to disclose convictions or pending criminal or civil charges and court cases in a timely manner that may affect your suitability for employment.
- Fundamental breach of confidence.
- Wilful refusal to carry out a reasonable instruction given by a Manager/Supervisor.

- Wearing Company uniform when in licensed premises where the main trading of the establishment is the serving of alcohol, except when using the toilet facilities at the establishment.
- Action likely to threaten the Health and Safety of yourself, fellow employees, customers or members of the public.
- Failure to disclose accurate medical history/conditions
- Failure to report a company vehicle accident and complete an accident report form or report a conviction or summons for a driving offence.
- Any use of a MP3, mobile phone or hands free equipment (Bluetooth) whilst in charge of a vehicle, including the wearing and / or use of any type of earpiece or portable music device, any breaches of relevant law or statute including PCV regulations.
- Sexual misconduct at work, or outside of work that may result in a criminal offence.
- AWOL (Absent Without Leave) / Unauthorised Absence
- Not wearing a seatbelt whilst driving a company vehicle, where a seatbelt is fitted.
- Serious blameworthy accident.
- Social Media. For example misrepresenting the company / bringing the company into disrepute in anyway through the misuse of Social Media such as Facebook and Twitter.
- Covertly recording meetings or hearings without the full knowledge and consent of those involved.
- Misuse of the Company's concessionary travel scheme.
- Importing into the Country, by Coach illegal quantities of duty free goods, including but not limited to tobacco / alcohol and which may result in a Company vehicle being seized.

Criminal Allegations

- Where an employee's conduct is the subject of a criminal investigation, charge or conviction the Company will investigate the facts before deciding whether to take formal disciplinary action.
- The Company will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Company may have to take a decision based on the available evidence.
- A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Company considers that it is relevant to the employee's employment.

The Investigation Process

Investigation

Before a decision is reached on whether disciplinary action is appropriate, employees are entitled to put forward their case and, where possible and appropriate, an investigation / fact finding interview will take place.

A written record of this meeting will be made and may be used as evidence at a disciplinary hearing. The manager leading the interview and the employee will be asked to sign the notes. Where disciplinary action is not considered appropriate, the notes will be held on file.

An investigation may also include other evidence being collated such as witness statements, CCTV evidence, documents such as vehicle records checks and training records. The employee will be given copies of any evidence collated during the investigation prior to any disciplinary hearing.

Investigation of offences may involve observation by covert cameras and/or Company Officers who may be required to wear plain clothes where appropriate. This is likely to occur on rare occasion and only where other means of detecting an offence have been exhausted or ruled out after due consideration.

Suspension

Where an allegation is made of serious misconduct or where they may be a potential risk to the business, customers, employees or witnesses, it is normal practice to suspend the employee from work on full pay without prejudice, while the Company fully investigates the allegation(s).

Confirmation of suspension will be provided in writing and will be kept under review whilst the investigation takes place. During a suspension an employee is not permitted to enter the Company's premises without permission or discuss their case with their fellow employees. The employee must also remain available for investigation meetings and disciplinary hearings in relation to the incident. Failure to do so will result in salary being withheld.

The Disciplinary Hearing

The employee will be advised of the nature of the complaint against them, and will be given the opportunity to put forward their case at a disciplinary hearing before a decision is made.

A disciplinary invite will normally be issued 7 days in advance, along with copies of all documents to be referred to as evidence (this will usually include a Management Investigation Report and supporting evidence listed as appendices, which may also include CCTV footage).

The manager appointed to hear the disciplinary will:

- Outline the allegation(s)
- Present any evidence to support the allegations (witness statements etc)
- Allow the employee to ask questions
- Carefully consider any verbal or written evidence submitted by the employee or their representative
- Adjourn the meeting to review
- Reach a decision
- Verbally communicate the decision to the employee or in writing where the adjournment has gone beyond the hearing day
- Provide details of appeal

All decisions will be confirmed in writing and sent recorded delivery within 7 days of the completion of the hearing, confirming the following:

- Reasons for and details of the sanction
- Details of any action required by the employee to remedy the situation and any period of review decided upon
- Details of what action is likely to result if any further misconduct occurs
- Their right of appeal

Possible Outcomes of a Disciplinary Hearing / Sanctions

- **No Action**
Where no formal action is being taken against the employee in respect of the allegations made against them, for example, where the allegations are not founded, the employee should be advised of this at the meeting and also in writing, following conclusion of the meeting.
- **A Letter of Concern**
If an employees' behaviour / conduct falls below the standard expected, or where there is a further case of minor misconduct after previous discussions, a manager may issue an employee with a letter of concern. This will be followed up in writing detailing the concern or concerns, the agreed steps, the possible outcome, where there is a repeat or little / no improvement and the next steps, which where there is no improvement will be disciplinary action.
- **First Written Warning**
If the conduct is of a more serious nature, or if there is no improvement/inadequate improvement in standard, or if a further offence occurs when there is a live letter of concern, then the employee may be given a First Written Warning. This will set out the conduct problem, the improvement or change of behaviour that is required, the

timescale and any help or support that may be given. The employee will also be given details of their right of appeal.

This warning will be kept on an employee's personnel file for a period of 6 months from the date of issue, after which it will be spent. The employee will also be advised that a Final Written Warning may be considered if there is no sustained improvement to their conduct.

- **Final Written Warning**

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve conduct where a live warning is in place, a Final Written Warning may be issued to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal or some action short of dismissal. The employee will also be given details of their right of appeal.

This warning will be kept on an employee's personnel file for a period of 12 months from the date of issue, after which time it will be spent.

- **Dismissal with Notice or Other Sanction**

If the offence is adequately serious or if a further offence occurs when there is a live Final Written Warning or there is no improvement/inadequate improvement, then the employee may be dismissed or issued with some other Action Short of Dismissal such as demotion or transfer.

Action Short of Dismissal may include down grading to a post of a lesser responsibility and rate of pay. Where demotion or transfer is to be implemented, it will be made clear to the employee that such action is being considered as an alternative to dismissal and if not implemented, then dismissal remains a sanction open to the manager.

If Action Short of Dismissal is imposed the employee will receive details of the conduct issue and be warned that dismissal could result if there is no satisfactory improvement and will be advised of the right to appeal. Action short of dismissal will normally be accompanied by a Final Written Warning and will be kept on the employee's personnel file for a period of 12 months from the date of issue, after which time it will be spent.

- **Summarily Dismissal (Gross Misconduct Only)**

In some cases the seriousness of the matter may mean the Company has no alternative but to summarily dismiss an employee in the interests of the Company, the interests of others and due to the seriousness of the matter. In this instance the employee will not receive any warning or notice pay.

Appeal Process

All employees have the right to appeal against the decision made at the disciplinary interview. The appeal should be addressed to the appropriate next level of management to who made the original decision. Employees will be advised of where to direct their appeal at the meeting and in writing.

Employees wishing to appeal against a disciplinary decision should do so in writing, stating the grounds and reasons for their appeal, within 7 days of the receipt of the disciplinary outcome letter. If employees are not at home when the letter is delivered and then the employee fails to collect the letter without good reason the 7 days will start on the day the notification is placed through the employee's letterbox.

The appeal hearing itself will normally be held within 3 weeks from the date of the letter of appeal and the employee will be advised in writing of the details of their appeal (date, time, location).

The manager hearing the appeal will have the options to confirm, reduce or withdraw the original disciplinary decision.

Where a decision is overridden, any detriment to the employee will be reversed.

It is important for the manager hearing the appeal to understand the reasons for the appeal, and the employee will have the opportunity to state the grounds / reasons for appeal. This will have also been completed in writing in advance of the meeting.

The appeal hearing will be adjourned and the reasons and grounds for appeal will be considered, along with the decision made at the original disciplinary interview and the allegations initially presented.

Where possible the decision will be verbally communicated on the same day and will also be confirmed in writing, usually, within 7 days of the appeal. There may be occasions where the decision cannot be delivered on the same day. Where this is the case, the employee will normally be advised in writing. There will be no further right to appeal.

Other Considerations / Scenarios

Failure to Attend a Disciplinary Interview

Employees will be provided with two opportunities to attend their disciplinary interview. If the employee is unable to, or does not attend their disciplinary interview on the second occasion, the meeting will be held in their absence

and the decision based upon the evidence available to the manager unless there are exceptional circumstances which explain the reason for the non-attendance.

Resignation during the Disciplinary Process

Employees are required to provide contractual notice to end their employment therefore employees who resign during the disciplinary process will be required to provide notice in line with that of their contract. Therefore, the disciplinary process will continue during their notice period.

Live Warnings

Any live disciplinary warnings on an employee's file will, where appropriate, be taken into account when considering the level and type of warning to be issued or when dismissal with or without notice is being considered.

Raising a Grievance during Disciplinary Proceedings

Where an employee raises a grievance during disciplinary proceedings and this is related to the disciplinary matter itself, then it can be dealt with by the manager appointed to lead the disciplinary interview and can be dealt with concurrently in the same hearings.

If considered appropriate, the manager can consider adjourning the disciplinary process for a short period, whilst the grievance is dealt with. A separate manager can also be appointed if considered appropriate.

Decisions will be dealt with on a case by case basis.

Appropriate Managers

A different, independent manager will be appointed to conduct the investigation, the disciplinary interview and appeal meeting.

Note Taking

Notes will be completed at all meetings and will include all relevant details. Completed notes will be issued to the employee and should be signed by the employee and manager in attendance at the meeting.

Special Requirements

If the employee requires any special arrangements for the disciplinary hearing they should contact the appropriate manager at least 2 days prior to the hearing. The Company will make reasonable adjustments to the disciplinary interview whenever that is appropriate and viable.

Disciplinary Action against a Trade Union Representative

Where disciplinary action is being considered against a Trade Union Representative, the full time official of the appropriate Trade Union will be informed before the formal disciplinary interview takes place. In the event of a

sanction awarded being made the Company may wish to discuss the role of the representative with the Regional Officer and whether they are believed to be suitable to remain within the business.

Procedure in the event of an employee going off sick during a disciplinary process

There may be circumstances when an employee feels too unwell to participate in the investigation, prepare for a hearing or attend the hearing itself. Where this is the case, the following will normally apply:

- The ill health of an employee will not usually be grounds for abandoning any ongoing disciplinary procedures.
- Depending on the nature of the illness, it may be deemed reasonable to delay proceedings until the employee is recovered enough to participate, but this delay will generally only be for a limited period depending on the circumstances. The disciplinary process is likely to continue where there is reasonable belief that the employee's absence (or conduct) is deliberately intended to prevent or delay the process from proceeding. This can be determined by a medical practitioner.
- At any stage during the employee's absence, the Company may require the employee to co-operate with the Company's occupational health advisers or the Company may write to the employee's GP to determine whether or not the employee is sufficiently fit to take part in the disciplinary process. The Company reserves the right to move forward with the process if it feels it is reasonable to do so or based on medical advice.
- Where an employee suddenly and unexpectedly becomes unwell at the beginning or during disciplinary proceedings and there was no evidence of illness prior to the disciplinary proceedings starting, the Company has the right to withhold Company Sick Pay based on the GP's advice. This will generally not apply to previously known underlying health issues the employee may have.
- Any employee who is signed off as sick during a period of suspension and who cannot participate in the process will be considered as 'sick' until such time as he/she becomes fit to resume work i.e. they will not receive full suspension pay during this period and may have Company Sick Pay withheld as stated above. At the time of recovery the suspension will be reapplied if the matter has not been concluded.
- If, following consultation with the Company's occupational health advisers or the employee's GP, it is confirmed to the Company that the employee is fit to take part in the disciplinary process, the process will continue, although the Company may at its discretion also take any of the steps listed in "special measures" below.
- Where it is confirmed that the employee is not fit to take a full part in the standard disciplinary procedure, the Company will consider taking any of the special measures set out below in order to enable the employee to participate effectively.

Special Measures

If the circumstances deem it necessary and appropriate the Company, at its discretion, may consider applying one or more of the following:

- **Venue.** The Company will consider holding the disciplinary hearing at a venue other than the Company's premises, either to reduce the stress caused to the employee by attending the hearing or to accommodate any physical needs that the employee may have.
- **Representation.** Where it appears to the Company that the employee's illness may affect his/her ability to explain their case, the Company may allow the employees representative to outline the employees case. The representative may be allowed an expanded role in the process where this would assist the employee in ensuring that his/her case is fully explained.
- **Written representations.** Where the employee may have difficulty in explaining his/her case, consideration will be given to allowing the employee to rely on written representations.
- **Documentation.** The Company will take particular care to ensure that the employee receives all documentation relating to the disciplinary process sufficiently in advance to allow him/her to prepare fully, taking into account any effect that the employee's health may have on his/her ability to analyse the information and prepare a response.
- **Timings.** The Company may allow extra time for any stage of the disciplinary process to ensure that the employee can participate effectively. Particular attention will be given to the duration of any disciplinary hearing and its impact on the employee and the need to take appropriate breaks.

Holding the hearing in the employee's absence

It should be possible by using any or all of the measures outlined above to conduct a fair disciplinary process in which the employee fully participates. However, there may be exceptional circumstances when the employee will not be able to attend a disciplinary hearing, whatever measures are taken.

The Company reserves the right to proceed with a disciplinary hearing in the employee's absence, although full consideration will be given as to whether or not this is necessary in the circumstances.

Where this is the case, the employee and his/her representative will be informed of the time and location of the hearing and will remain free to attend.

The outcome of the hearing will be communicated in writing to the employee, paying particular attention to the need to explain the details of any factual findings made and the basis of the decision reached.



The employee will be given a full opportunity to appeal against any decision in accordance with the disciplinary procedure. The special measures outlined above will also be considered by the Company in relation to any appeal.

Civil Recovery

In some disciplinary circumstances such as theft, serious negligence or misappropriation of Company property, National Express may seek to recover costs from you and/or reserve the right to take appropriate legal action.

Further Information

For any queries on these guidelines, please contact a member of the HR team.

Taking Action

