

DISCIPLINARY POLICY & PROCEEDURE

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SHAPINSAY DEVELOPMENT TRUST



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DISCIPLINARY POLICY AND PROCEDURE

Introduction

The purpose of the Disciplinary Procedure is to help and encourage all employees to achieve and maintain required standards of conduct, job performance and good discipline. It is also a statutory requirement when contemplating disciplinary action including dismissal of an employee.

It seeks to enable the individual whose performance and/or conduct has failed to reach the required standard, to make the necessary improvement through guided instruction. The aim is to ensure that the organisation's interests are safeguarded while Staff are treated fairly and equitably, with an emphasis on correction rather than punishment.

This document does not form part of your contract of employment and may be changed from time to time in line with current best practice and statutory requirements, and to ensure that business needs are met. You will be consulted and advised of any changes as far in advance as possible of the change being made, unless the change is required by statute.

Principles

This procedure will work in accordance with the following principles:

Informal action

Since it is the Management Committee's (MC) aim to encourage acceptable standards of conduct and performance, every effort will be made to deal with relatively minor problems through informal counselling by the supervisor/line manager with the aim of avoiding the need to implement the formal procedure. This will include setting clearly defined objectives and standards, and monitoring them over a reasonable time period. The supervisor will arrange for provision of support, practical assistance and/or training as appropriate to ensure that acceptable standards of work performance and behaviour are met.

Counselling is not disciplinary action. It should be a two-way discussion with the objective of encouraging and helping the employee to improve.

A note of counselling will be kept for reference purposes.

Mediation

As an alternative to the formal disciplinary procedure or at any stage of the procedure, an employee or the manager may request that the matter is dealt with through mediation. Mediation is voluntary and will only take place with the agreement of both parties. Where mediation is agreed once the formal disciplinary procedure has been started, the formal procedure will be adjourned whilst the mediation takes place. In the event that no mutually acceptable solution is reached through mediation, the procedure will be reconvened at the point of adjournment.

Investigation

This procedure is designed to establish the facts of each case quickly, and to deal consistently with disciplinary issues. No formal disciplinary action will be taken until the matter has been fully investigated. Written records of all investigations will be kept including notes of any investigatory meetings held to establish the facts of the case. At the investigatory stage it will be made clear to the employee that it is not a disciplinary hearing and that the decision at the end of the investigation will be to:

- Drop the matter
- Use the informal process
- Use the formal disciplinary process

The right to be accompanied

At all stages of the formal disciplinary procedure employees have the right to be accompanied by a work colleague or trade union representative. Before any meetings take place the employee should tell the employer whom they have chosen as a companion. The companion will be allowed to address the hearing in order to:

- Put the employee's case
- Summarise the employee's case
- Respond on the employee's behalf to any views expressed at the hearing
- Confer with the employee
- Ask witnesses questions if required

It will not be acceptable for the companion to:

- Answer questions on the employee's behalf
- Address the hearing against the wishes of the employee
- Prevent the organisation from explaining their case

Should the companion attempt to act out with their remit or display signs of aggressive and/or disruptive behaviour the meeting will be adjourned until the companion agrees to comply with their remit or a replacement companion can be found.

Interpreter

In addition, where the employees' first language is not English and an interpreter is needed, the companion may interpret for the employee or an interpreter may attend in addition to the companion. Before any meetings take place the employee should tell the employer whom they have chosen as a companion and if the companion is able to interpret for the employee or if there is the need to appoint an interpreter.

Where it is necessary to appoint an interpreter the costs will be met by the organisation.

Right to appeal

At all stages of the formal disciplinary procedure employees have the right to appeal against any disciplinary action taken.

Disability

At all times during any informal or formal proceedings the organisation will ensure, where they know an employee has a disability, to make any possible reasonable adjustments to ensure the procedure is fully accessible and understandable to all employees. These adjustments may include but are not limited to:

- Location and timing of meetings
- Alternative formats of all written disciplinary information
- Equipment such as an induction loop, sign language interpreter
- Appropriate adjustments for people with a learning disability

Records

Accurate records will be kept at each stage of the procedure. These will be stored confidentially and retained in accordance with the timescales noted in this procedure and the Data Protection Act 1998.

Implementation stage

The procedure may be implemented at Stage 1, 2 or 3 if the alleged misconduct warrants such action. For example, where there is evidence of gross misconduct the employee may be dismissed.

Timescales

All timescales mentioned in relation to arranging hearings and giving decisions are subject to change in the event that particular circumstances prevent them being adhered to.

Formal Procedure

Where informal counselling fails, or the matter is more serious, the following formal procedure will be used.

Investigation

The person/s designated to investigate will identify and clarify the issue by establishing the essence of the problem. The matter must be investigated in a systematic and thorough manner by gathering information promptly, establishing relevant facts and taking into account statements of witnesses if appropriate.

The employee will be expected to attend any investigatory meeting called.

Suspension

In serious cases, the Management Committee will have the power to suspend the employee, with full pay, pending investigation of the allegations. Suspension in these circumstances does not constitute disciplinary action. The employee will be informed in writing of the reasons for the suspension. Any suspension will be to allow a full investigation to be completed and will be conducted as efficiently as possible, the employee will be suspended for as short a period as possible to allow the investigation to be completed.

Disciplinary Hearing

Following the investigation if a disciplinary hearing is warranted, the employee should, within 5 working days, be given a written statement of the allegation and advised of the intention to hold a disciplinary hearing. The statement will detail the date, time and location of the disciplinary hearing and who will be present. The statement will set out the employee's rights under this procedure, including the right to be accompanied by a trade union representative or work colleague and the right to an appeal. The employee will be provided with copies of all documentation and supporting evidence to be presented by the employer at the hearing, including details of any witnesses or witness statements prior to the hearing, as appropriate.

If the employee's chosen companion is unavailable to attend on the date or at the time originally set for the hearing, the employer must postpone the meeting to another date and time proposed by the employee within five working days of the date proposed by the employer.

On conclusion of the disciplinary hearing the employee will be advised in writing, within 5 working days, of the outcome of the hearing and any disciplinary sanctions to be applied.

I would add wording to allow some flexibility on the timings if it is a complex disciplinary issue. "Employees should note that if the disciplinary matter is complex or where employees or witnesses are on annual leave it may take longer than 5 days to advise of the outcome."

Disciplinary Sanctions

Depending on the circumstances, one of the following ranges of disciplinary sanctions may be applied.

Stage 1 - First Written Warning

If conduct or performance is unsatisfactory, a first written warning will be issued. This will be confirmed in writing, and recorded. The written warning will give details of the complaint, the improvement or change in behaviour required, the timescale, if any, allowed for this, the employee's right of appeal, and whether a final written warning may be considered if there is no sustained improvement or change. The warning will be disregarded after 6 months if satisfactory service is achieved and maintained.

Stage 2 – Final Written Warning

If an offence is sufficiently serious, or no improvement has been made, or a further offence occurs, a final written warning will be issued. This should detail the nature of the misconduct in question (or evidence of a continuing deterioration in performance); specify the time limits within which improvements are to be effected; and remind the employee of his or her right to appeal. This will remain on record for 12 months, and will make it clear that a failure to improve, repetition of the offence, or other misconduct will result in dismissal.

Stage 3 – Dismissal

If there is no satisfactory improvement, or if further misconduct occurs, the employee will be dismissed. The letter should specify the reasons for the dismissal, the date on which the dismissal is to take effect, and the appropriate period of notice (or pay in lieu of notice). It should also remind the employee of his or her right of appeal.

Gross Misconduct

If, after investigation, and a disciplinary hearing, it is confirmed that the employee has committed gross misconduct, the normal outcome will be dismissal without notice.

Examples of gross misconduct are listed below under Disciplinary Offences.

Appeals

If an employee wishes to appeal against any disciplinary decision, which has been taken, they must do so in writing to the Chair of the MC within 10 working days of being notified of that decision. The employee should make clear the reasons for their appeal. If possible, a person or persons who have had no direct involvement in the disciplinary action being appealed will hear the appeal.

The appeal hearing will be arranged as soon as possible, and in any event no longer than 10 working days from the receipt of notice of appeal. The employee will be informed of the outcome of the appeal within 5 working days of the hearing.

The outcome of the appeal hearing will be final.

Employees should note that an appeal hearing is not intended to repeat the detailed investigation of the disciplinary hearing, but to focus on specific factors which the employee feels have been dealt with unfairly or which have received insufficient consideration, such as:

- an inconsistent, inappropriate or excessively harsh penalty
- extenuating circumstances
- bias of the disciplining manager
- unfairness in the conduct of the hearing
- new evidence subsequently coming to light.

Where new evidence arises during the appeal, the employee should be given the opportunity to comment on this before any action is taken. It may be appropriate to adjourn the appeal to consider any new evidence that arises.

Where an appeal against dismissal fails, the effective date of termination will be the date on which the employee was originally dismissed.

Disciplinary Offences

Misconduct is defined as failure in personal conduct, persistent poor performance or deliberate infringement of policies, rules and procedures. The decision to take disciplinary action or the sanction imposed may vary according to the exact circumstances of the case. Reasons for disciplinary action may include but are not limited to:

- Dishonesty;

- Breach of confidentiality;
- Misuse, unauthorised use of, or reckless damage to the organisation's property, including equipment, materials and information;
- Health and safety issues, for example;
- Threatened physical assault;
- Abusive behaviour, offensive or obscene language or gestures directed at employees; members of the Management Committee; members of the public;
- Failure to observe established health, fire and safety rules and to report accidents or injuries whilst on duty;
- Smoking in any other than designated areas;
- Oppressive or abusive conduct; bullying, harassment or victimisation;
- Performance related issues, for example:
 - Neglect of duty which undermines the organisation;
 - Failure over a period of time to perform work to satisfactory standards;
 - Failure to carry out duties effectively while under the influence of alcohol or drugs, other than medically prescribed;
 - Refusal to carry out a reasonable order of a manager.

Infringement of terms and conditions of service, for example:

- Persistent lateness;
- Unauthorised absence;
- Excessive sickness absences with no appropriate certificates or authorisation;
- Failure to comply with policies, procedures and regulations as laid down by the employer from time to time;
- Engaging in or knowledge of activities on or off the premises which could be considered a discredit to the organisation or its employees;
- Undertaking additional employment which would counter the interests of the organisation or would conflict with the employee's own position;
- Making unauthorised statements to the press or news media relating to the organisation's business.

Gross Misconduct

Gross misconduct is defined as misconduct serious enough to destroy the employment contract between the organisation and the employee, which makes further working relationship and trust impossible. Gross misconduct is normally restricted to serious offences. The principal reasons for summary dismissal could include but are not limited to:

- Criminal offence which affects the individual's ability to carry out his/her job;
- Physical assault by an employee on any other person;

- Theft, misappropriation or unlawful destruction of property: the employer's, employees' or others';
- Serious infringement of safety rules or negligence which causes unacceptable loss, damage or injury;
- Supplying security access codes to any unauthorised person;
- Unauthorised disclosure of information or misuse of trust of a serious nature;
- Making malicious or unfounded allegations of a serious nature;
- Deliberate falsification of any documents or claims, including time sheets, overtime or expense forms;
- Misconduct at work or away from work of such a serious nature as to bring into disrepute either the employee's position or the organisation;
- Unlawful discrimination, harassment, victimisation or bullying;
- Alcohol or drug abuse;
- Failure to disclose unspent criminal conviction(s) or any convictions, whether spent or not, in respect of posts exempt under the terms of the Rehabilitation of Offenders Act 1975;
- Providing false information on a job application form.
- List of offences detailed in the Email / Internet Policy.

Related Policies

- Grievance Policy / Procedure
- Email / Internet Policy
- Equal Opportunities Policy

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