

2.15 Disciplinary Procedure

The aims of this disciplinary procedure are to help and encourage all employees to achieve and maintain required standards of conduct and good discipline and to ensure that the Association's interests are safeguarded while staff are treated fairly and equitably.

The object of the procedure is to attempt to correct a failure to meet the Association's standards of conduct and performance, and thereby allow employees an opportunity to improve. It is the Association's practice to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

Whilst the Association is not required to follow the disciplinary procedure during an employee's probationary period, every effort will be made to ensure treatment has been fair and reasonable before a decision to dismiss is taken.

2.15.1 Informal Action

Minor conduct issues can often be resolved informally between the employee and their line manager. Effort should be made to deal with relatively minor problems through discussion with the line manager, which may also result in the issuing of a supervisory letter that will provide the employee with details of the improvement required. Supervisory letters are not deemed to be part of the disciplinary procedure.

Where informal action is implemented and there is no or insufficient improvement, the line manager will take formal action as outlined within this procedure.

2.15.2 Confidentiality

The Association's aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat any information communicated to them in connection with an investigation or disciplinary matter with the appropriate level of sensitivity and confidentiality.

Any employee or person accompanying the employee must not make electronic recordings of any meetings or hearings conducted under this procedure unless it is agreed by all parties in the room that a recording may be made to accommodate a disability that the employee has. Recording without consent will be regarded as gross misconduct.

Any employee who is facing disciplinary allegations will be told the names of witnesses whose evidence is relevant to the proceedings and will have these names notified to them as part of the evidence provided in advance of the hearing unless the Association believes that a witness' identity should remain confidential. It is common practice for the names of service users to be redacted from investigation paperwork issued to the employee. Any documents that contain sensitive personal information but are relevant to the proceedings will be made available at the disciplinary hearing rather than being issued to the employee.

2.15.3 *Misconduct*

It is not practicable to specify all types of misconduct and the following is a non-exhaustive list of examples that may constitute misconduct. As with all rules regarding conduct, there is no substitute for common sense.

- Unauthorised absence from work including leaving before the official finishing time;
- Perpetual lateness in attending work;
- Failure to follow the Association's policies and procedures;
- Objectionable, insulting and/or bad language;
- Use of the Association's property for a purpose other than normal duties;
- Poor attitude to work;
- Poor job performance and carelessness.

2.15.4 *Gross Misconduct*

Where an employee is found to have committed acts of gross misconduct, it is the Association's standard practice for the employee to be summarily dismissed without notice or payment in lieu of notice. If gross misconduct is suspected, then suspension, with pay, prior to investigation would be the usual procedure.

The following are examples of conduct that are considered to amount to gross misconduct. This is not an exhaustive list.

- A serious or wilful or repeated breach of the misconduct rules;
- Physical assault on any other person;
- Indecent or immoral behaviour;
- Intoxication, caused by alcohol or drugs, dangerous behaviour, fighting or physical assault;
- Deliberate falsification of any records, including benefit forms etc, in respect of the employee or a service user or a fellow employee;
- The theft of money or property, whether this belongs to the Association, a fellow employee, or any third party;
- The destruction, damage or sabotage of the Association's property, or any property on the Association's premises;
- Serious breaches of the health and safety rules which endanger the lives of any other person;

- Gross insubordination and/or the refusal to carry out legitimate instructions given by a supervisor or manager;
- Any breach of a statute which directly affects the employee's ability to carry out the employee's duties and/or the desired characteristics of the employee's position;
- Any act of dishonesty;
- Unauthorised use of software, illegally copying software, gaining unauthorised access to a computer or a file on a computer, or committing any other breach of data security rules laid down by statute or the Association. This includes (but is not limited to) sending offensive or inappropriate e-mails or accessing, downloading, viewing or distributing offensive, unsuitable, obscene or pornographic web-pages or material from the internet or mobile phones;
- Non-genuine sick leave;
- A serious breach of the data protection regulations or the Association's e-mail policy;
- Any criminal conduct that affects the ability or suitability for the employee's continued employment;
- Serious or repeated acts of discrimination against a fellow employee or service user;
- Making malicious or unfounded allegations of a serious nature;
- 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.

2.15.5 Criminal Charges

Where an employee's conduct is the subject of a criminal investigation, charge or conviction, the Association will investigate the facts before deciding whether or not to take formal disciplinary action.

The Association will not normally wait for the outcome of a prosecution before deciding what action, if any, to take. Where the employee has been unable or advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Association 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 Association considers that it is relevant to the employee's employment.

2.15.6 The Disciplinary Procedure

a) Conduct matters

The employee will be provided with details of the conduct and any allegations will be put to the employee in full. This allows the employee to answer those allegations and gives the employee an opportunity to fully state their case.

The employee will be given an opportunity to fully explain their response. If the employee's response gives rise to any concern about the employee's capability to perform duties, the employee may again be required to sign a mandate to permit the Association to obtain access to the employee's medical and occupational health records. If the employee needs time to prepare an answer and the disciplinary manager deems it appropriate, the disciplinary hearing can be adjourned and reconvened when the employee has had an opportunity to consider matters more fully.

At a reconvened disciplinary hearing, after an adjournment, the employee will be expected to comment on matters of concern to the Association and give any explanation reasonably required. If criticisms are justified, and the employee agrees with this, mitigating circumstances may be taken into account.

If the employee has an alternative explanation as to the matters concerned, or if the employee is in a position to entirely deny the matters concerned, dependent upon the circumstances, the Association may undertake further investigations to establish the credibility of the employee's explanation, or to allow an opportunity for the Association to investigate matters further, to establish a true understanding of the circumstances.

In these circumstances the employee may be invited to a second disciplinary hearing. This will be to discuss the outcome of further investigations before a final decision is made.

The employee has the right to be accompanied by a single companion, who can be another worker of the Association or an accredited trade union representative, at any disciplinary meeting. The employee must inform the Association in advance of the identity of the chosen companion. The Association may deem the employee's choice of companion as unreasonable if the companion has a conflict of interest that may prejudice the meeting (e.g., has acted as a witness) or the companion is unavailable at the time of the meeting and will not be available for more than 5 working days afterwards.

The accredited trade union representative or chosen companion will be permitted to confer with the employee and allowed to address the meeting but not to answer on the employee's behalf. The companion, if another employee of the Association, will be allowed time off work with pay to undertake this role.

The Association has a recognition agreement in place with UNISON in order to facilitate the process where employees have the option to access trained and experienced trade union representatives for meetings such as these.

Where the employee believes there are relevant witnesses who need to be interviewed prior to a decision being taken, those witnesses should be identified and notified to the Association, preferably as part of the investigation or

otherwise well in advance of the disciplinary hearing. Witness statements will typically be taken and used at disciplinary hearings. Should the employee wish to request that a witness be present at a hearing, they can make that request and should explain why it is necessary for the witness to be present (as opposed to using a witness statement). However, the Association is under no obligation to grant such a request and have witnesses in attendance where the Association thinks that the hearing can reasonably proceed using statements. The employee will always be given the opportunity to respond to any information given by a witness.

b) Capability matters

The employee will be given details of any shortfall in the employee's performance so that the employee may understand the exact nature of the complaint against the employee and be able to respond in an appropriate and relevant manner. It can sometimes be difficult for an employer to decide whether such a shortfall is caused by the employee's conduct or ill health. Different considerations have to be weighed in each situation. Should the Association consider it possible that the employee's shortfall in performance may be influenced by health matters, the employee may be required to sign a mandate to permit access to the employee's medical records and/or attend an occupational health assessment. It may also be necessary for the Association to obtain access to said records in order to discharge its statutory duties irrespective of any disciplinary considerations.

(c) Procedures in cases of Misconduct (i.e. other than Gross Misconduct) and Capability

When disciplinary matters arise, an investigation is carried out promptly to establish the facts. The investigation takes into account statements of any available witnesses and the account of the individual employee.

Before a decision is reached, the Association will write to the employee, notifying the employee of the basis of the allegation(s) and invite the employee to a disciplinary meeting to discuss this matter. The employee will normally be given at least five working days' notice of this meeting.

The purpose of the disciplinary meeting is to explain the nature of the disciplinary allegations in as much detail as possible and to generate a decision on whether any disciplinary action is justified or not. At the hearing, both the Association and the employee should present their case in relation to the allegations.

(d) Procedures in cases of Gross Misconduct

Sometimes it may be necessary to suspend an employee on full pay during the course of an investigation to avoid a potentially difficult situation or to allow a full and uninterrupted investigation to take place or where the facts, if proved, may result in the dismissal of the employee.

Suspension with pay is a temporary measure to allow an investigation and is not a form of disciplinary action or a penalty of any kind. It does not prejudice the employee's rights and should not be seen as a presumption of guilt.

After a hearing has taken place and a decision to dismiss has been taken, the Association will set out in writing the nature of the employee's gross misconduct that led to the employee's dismissal, specifying the reasons for the dismissal decision. A copy of the statement will be sent to the employee together with a notification of the right to appeal against the decision.

If the employee wishes to appeal, the employee must inform the Association accordingly. The employee must inform the Association of this wish to appeal in writing and within 7 days of the date of the notification sent to the employee as specified above. The Association will then invite the employee to a meeting which the employee must take all reasonable steps to attend. After the appeal hearing, the employee will be informed of the Association's final decision. At the last mentioned meeting, the employee may choose to be accompanied by a single companion, who can be another worker of the Association, or an accredited trade union representative.

If the employee cannot attend a meeting, the employee should inform the person who has written to the employee inviting the employee to the meeting, in advance whenever possible.

If the employee fails to attend through circumstances outwith the employee's control and unforeseeable at the time the meeting was arranged (e.g. illness), the Association will arrange another meeting. A decision may be taken in the employee's absence if the employee fails to attend the rearranged meeting without good reason.

If the employee's companion cannot attend on a proposed date, then the employee can suggest another date, so long as it is reasonable and is not more than five working days after the date the Association originally proposed. This five day time limit may only be extended by mutual agreement.

2.15.7 Levels of Disciplinary Action

All disciplinary action taken against the employee is based on the following procedure:

Offence	First Occasion	First or Second Occasion	Second or Third Occasion	Third or Fourth Occasion
Minor Instances of Misconduct		Written warning recorded on file	Final written warning recorded on file	Dismissal
Misconduct	Written warning recorded on file	Final written warning recorded on file	Dismissal	
Gross Misconduct	Dismissal *			

* The Association may, in certain circumstances, choose to issue a final written warning that lasts for a period of 12 or 24 months as an alternative to dismissal.

In instances where the Association believes that formal disciplinary action is not appropriate but where practice or behaviour requires to be improved or corrected, the issues will be discussed with the employee and, where appropriate, a note of concern will be placed on the employee's file.

In all disciplinary procedures, the Association retains discretion to take account of the employee's length of service or any special circumstances, and to vary the procedures accordingly.

Written warnings will contain details of all relevant matters. They will summarise the content of the misconduct and the disciplinary process, including information put to the employee by management of the Association, the employee's explanations and any conclusions reached.

Warnings for capability or performance will include:

- The improvement that is required;
- The timescale for achieving this improvement;
- A review date; and
- Any support the Association can provide to assist the employee in achieving adequate improvement.

Warnings for conduct will require no repetition of the matter concerned or an immediate improvement.

Warnings may be issued for capability and/or conduct.

The reason for this is to allow further matters giving rise to disciplinary action to be treated as a continuation of the disciplinary process through to dismissal if the appropriate improvements and warnings are not heeded. It must be recognised that some offences are so serious that only dismissal can be justified. However, all warnings will include a reminder of the employee's right to appeal as shown in the disciplinary appeal section.

If the result of the disciplinary process is dismissal, whether for gross misconduct or following a series of warnings, the employee will be issued a letter outlining the reasons for the employee's dismissal. This letter will also contain a reminder of the employee's right to appeal.

2.15.8 *Period of Warnings*

It is not the Association's intention for any form of warning to remain on the employee's record indefinitely. Provided the employee's conduct improves and remains at an acceptable level, warnings will be disregarded as follows:

- **Written warnings** - Disregarded after a 6 month period
- **Final written warnings** - Disregarded after a 12 month period (may be extended to 24 months in certain circumstances)

The employee has the right to appeal any disciplinary action, including warnings.

Gross misconduct will render the employee liable to dismissal without notice, i.e. summary dismissal.

2.15.9 Alternatives to Dismissal

In some cases, the Association may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include demotion, transfer to a different job/work location, a period of suspension without pay or loss of seniority.

2.15.10 Disciplinary Authority

Disciplinary action can only be taken by the relevant parties as follows:

Dismissal	Area Manager, other Senior Manager, Director or Chief Executive
Final written warning	As above
First written warning	As above, Project Manager or department supervisor

In most circumstances, the procedure will be for the employee's line manager (or manager of similar status) to conduct the investigation into the allegations and for that manager's manager to conduct any disciplinary hearing required. However, this may be varied for operational reasons.

Where allegations involve the Chief Executive or a member of the Executive team, it will be appropriate to assign responsibilities to the Chairperson, Vice Chairperson and/or members of the Human Resources Committee.

The investigating officer will never conduct the subsequent disciplinary hearing.

2.15.11 Disciplinary Appeal Procedure

The disciplinary rules and procedures form part of the employee's employment contract and incorporate a right to appeal against any formal disciplinary action taken against the employee.

To exercise this right, the employee should apply in writing to the Human Resources Manager within five working days of receipt of the letter specifying the disciplinary penalty.

An appeal against a written warning or a dismissal must give details of why the penalty imposed is either too severe, unfair or inappropriate in the circumstances.

The employee should try to be specific as to what aspect of the disciplinary action the employee wishes to appeal against.

If the employee considers it appropriate, at the beginning of the appeal hearing, the employee may request the aspects of the disciplinary action against the employee to be fully explained. This is to allow the employee to understand the action against them so that they may challenge the areas about which they are concerned.

The disciplinary appeal procedure will be conducted by somebody not previously involved with the disciplinary action taken and of a more senior status to the disciplining manager.

At the appeal, the employee may be accompanied by a single companion, who can be another worker of the Association or an accredited trade union representative.

The companion will be permitted to confer with the employee and allowed to address the hearing but not to answer on the employee's behalf. If the companion is an employee of the Association, the companion will be allowed time off work with pay to undertake this role.

At the appeal, the employee may introduce information the employee considers is appropriate or, if permitted, call witnesses relevant to the matter concerned. Such information and a list of witnesses should be submitted five working days before the appeal hearing.

The Association may feel it appropriate to call to the meeting the person who took the disciplinary action and any other individuals involved in the disciplinary process to clarify relevant issues.

The Association's aim for the appeal is to consider the grounds of the appeal. This could include determining if the previous decision was fair on the basis of the evidence available, hearing any new facts or judging the fairness of the procedures as applied to the employee.

The result of the appeal will be made known to the employee in writing within 7 days of the hearing.

This is the final stage of the appeal procedure.