

# DISCIPLINARY PROCEDURE

**This procedure details the fair and consistent approach taken to allegations of employee misconduct.**

## **Introduction**

We intend this procedure to assist and encourage you to achieve and maintain appropriate standards of conduct and performance. We do not construe the procedure simply as taking punitive action. We make every effort to ensure any action we take is consistent, fair and reasonable to all.

This procedure is taken from the Employee Handbook. For the avoidance of doubt, please note that this section of the employee handbook is non-contractual and does not form part of your contract of employment.

## **General Principles**

- We always consider informal action in preference to using formal disciplinary procedures as a first resort.
- We fully investigate all potential disciplinary matters before any action is taken.
- We may suspend you on full pay while we investigate more serious allegations. Such action is entirely precautionary and not a pre-judgement of the outcome.
- We will give you notice of any disciplinary hearing and detail of the complaint(s) in advance. We will provide written copies of evidence and relevant witness statements.
- A work colleague or trade union representative can accompany you at formal disciplinary hearings and appeals. Union representatives must be certificated by that union to act as a worker's companion.
- We will provide suitable notice of meetings. We will consider one adjournment if the date or time selected is inconvenient to your representative.
- We will give you the opportunity to provide your views during the hearing and before any decision is made.
- We will appoint an appropriate representative of management to conduct disciplinary investigations. Investigations may be conducted by a representative of management at the same, or higher, level than yourself.
- We will appoint an appropriate representative of management to conduct disciplinary hearings. A more senior representative of management, with no previous involvement

in the matter, will normally conduct the hearing. They will normally be at a higher grade than yourself.

- Where practical, investigations and hearings are undertaken by separate representatives of management.
- Where the disciplinary penalty is dismissal, the reason(s) will be confirmed in writing by an appropriately authorised representative of management.
- You have the right to appeal against any formal disciplinary action imposed or against your dismissal. A more senior representative of management without prior involvement will normally conduct the appeal, wherever possible. They will normally be at a higher grade than yourself.
- Only someone specifically authorised by our organisation can take the decision to discipline or dismiss you.

### **Rights of Appeal**

Informal action about minor issues of misconduct or unsatisfactory performance is part of day to day management. It carries no right of representation or appeal.

You are entitled to appeal following the imposition of any formal disciplinary penalty including a decision to dismiss. We will send you a letter setting out the outcome of the disciplinary hearing. If you wish to appeal, you must do so in writing within five days of receipt. A more senior representative of management without prior involvement will hear appeals, wherever possible.

### **Short Service**

In the first two years of your employment, including any probation period, we reserve our right to shorten this procedure. We may do this if we believe that warnings or further training will not lead to sufficient or sustained improvement. In particular, we may consider dismissal for an initial breach of disciplinary provisions other than gross misconduct.

You retain the right to be accompanied by a work colleague or trade union representative at any formal hearing. You also retain the right of appeal against any penalty we impose.

### **The Key Differences between Capability and Disciplinary Provisions**

- If you break our rules or codes of behaviour this is culpable conduct. We normally refer to it as misconduct and utilise our disciplinary procedure. This is in accordance with the ACAS Code of Practice.
- Where you do not meet our work expectations or standards of performance, this too is culpable conduct. However, it often identifies a training need. We normally deal with lack of skill, knowledge, ability etc. via our capability procedure. This is in accordance with the ACAS Code of Practice.
- Occasionally we may encounter both misconduct and poor performance. For instance, we may be dealing with inadequate attendance and shortly afterwards discover falsified expenses. It does not matter whether either – or both – our

capability and disciplinary procedures are activated. Both deal with allegations of culpable conduct.

- Any penalty we consider will be a reasonable response; fair and appropriate to the nature and seriousness of the misconduct/poor performance. Our consideration includes your disciplinary and general work record (including current warnings), work experience, position, length of service etc. This is in accordance with the provisions of the ACAS Code of Practice and ACAS Guidance.
- Where ill health or injury is the predominant factor, this is not a consequence of culpable conduct. Hence we follow the special medical capability provisions set out within the capability procedure. Medical capability considerations are excluded from the ACAS Code of Practice.
- Breaches of attendance standards or sickness triggers impact on our activities and on other colleagues. We treat this as culpable conduct and not a direct consequence of ill-health. Normally we follow our capability procedure. Occasionally, we may follow the disciplinary procedure if we believe there is evidence of misconduct. The reason we follow the capability or disciplinary procedure is to protect your rights under the ACAS Code of Practice.

### The Process we Follow

#### **Informal Action**

We normally deal with minor issues of misconduct or unsatisfactory performance informally. In some cases we may offer extra training, coaching, advice or support. This is a normal facet of day to day management and not part of our formal disciplinary procedure. As such, it will not be appropriate or necessary to be accompanied by a work colleague or trade union representative.

We hold informal discussions in private. We will take account of your opinions and any mitigating circumstances you provide. Criticism will be constructive. We aim to achieve and sustain improvement through such discussion. We may confirm what is agreed in writing where appropriate.

If it emerges during discussion that the matter is more serious than previously envisaged, we will adjourn the meeting. We will reconvene it at a later date under our formal disciplinary procedure. You may then be accompanied by a work colleague or trade union representative if this happens.

#### **Misconduct**

We may issue a written warning if you repeat inappropriate activity or improve insufficiently following a previous informal warning. Misconduct may also be sufficiently serious in itself to warrant a written warning without previous informal warning. Such warning will identify the problem and the improvement we require. We will set out the time-frame for improvement and any support available. We will keep a record on your personnel file for twelve months. We will then consider it spent, subject to you achieving and sustaining the improvement we require.

## **Serious Misconduct**

We may issue a final written warning if you repeat inappropriate activity or improve insufficiently following a previous written warning. Misconduct may also be sufficiently serious in itself to warrant a first and final written warning without previous written warning. The final written warning will identify the problem and the improvement we require. We will set out the time-frame for improvement and any support available. We will keep a record on your personnel file for twelve months. We will then consider it spent, subject to you achieving and sustaining the improvement we require.

## **Ending your Employment**

We may dismiss you if there is further inappropriate activity or you fail to improve to the required standard. An instance of misconduct may also be so serious in itself that it warrants dismissal without previous warning. We normally refer to this as an act of gross misconduct. We will provide you with the reasons for dismissal in writing. We will make clear the date on which your employment ends.

We will terminate employment with notice or payment in lieu of notice in the event of your contractual dismissal for misconduct. We will summarily terminate your employment (i.e. without notice or payment in lieu of notice) for gross misconduct.

## **Gross Misconduct**

We may suspend you on full pay for a short period while we investigate an allegation of gross misconduct. A disciplinary hearing will then take place. We may summarily dismiss you if we believe your behaviour constitutes gross misconduct. Summary dismissal is dismissal without notice or payment in lieu of notice.

## **Gross Misconduct Examples**

The examples below are indicative of matters we regard as gross misconduct. This list is not intended to be exhaustive: -

- Abusing those using our services in any way which harms them, affronts their dignity or places them at risk.
- Inappropriate relationship with one of our students (or ex-students).
- Serious breach of our child protection and/or safeguarding procedures.
- Serious failure or neglect to follow our policies or procedures on administering medication.
- Theft or misappropriation of money or property.
- Action intended to defraud/deceive.

- Fighting, physical assault or threatening behaviour.
- Behaviour or action that potentially brings our organisation into serious disrepute.
- Serious insubordination.
- Dangerous behaviour or serious breach(es) of health and safety rules or procedures.
- Deliberate and serious damage to property or harmfully misusing or interfering with equipment.
- Discriminatory conduct, bullying or harassment.
- Indecent behaviour including deliberately accessing pornography, offensive or obscene material at work.
- Serious incapability at work due to alcohol or non-prescribed drugs or substances.
- A serious breach of trust or confidence.

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This procedure is agreed by the Director of HR and will be implemented by all departments.

Signed:

  
**Sarah Stookes Director of HR**

Date: January 2021

Date of review: January 2023  
Date of next review: January 2023

## Version table

**Creation:-**

**Approved by:-**

<u>Version No.</u>	<u>Date of changes</u>	<u>Reason for change</u>	<u>Changes made by</u>
1	1.1.21	Version produced to reflect Employee Handbook	Kelly Canham