

# Staff Capability, Discipline and Grievance Policy



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### 1. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when a member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

### 2. Legislation and guidance

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#) including all recent amendment regulations.

### 3. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to '**staff**' include **ALL** Releasing Potential employees within the Charity.

### 4. Roles and responsibilities

Where the member of staff subject to the procedure is the a member of Charity SLT, the chair of Trustees will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not a member of Charity SLT, a nominated member of Charity SLT will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

Cases of minor misconduct or unsatisfactory performance will usually be dealt with informally to assist in improving employee conduct. In some cases, additional training,

coaching and advice may be provided. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, employers should make employees aware of the intention to take formal action.

During the process of meetings a written record is kept by the senior manager

## **5. Capability procedure**

Performance is monitored by line managers.

Formal capability procedures will normally begin with line management support through the frequent check in and appraisal process. If this have been unable to bring about satisfactory performance or improvements in the staff member's work. An improvement plan will be put in place and monitored by the line manager. This will normally have been in place before formal capability procedures are triggered. Evidence of this will be available before the process begins.

Capability issues will follow the disciplinary procedure with a focus on understanding the cause of the under-performance and seeking improvement.

## **6. Disciplinary Procedure**

### **6.1 Guidelines for the conduct of discipline meetings**

### **6.2 Stages of the discipline procedure**

### **6.3 Summary Dismissal**

### **6.4 Appeals against discipline action**

### **6.5 Records**

The disciplinary procedure is designed to ensure fair treatment for those whose job performance is perceived to be below requirements and those involved in breaches of discipline.

Depending upon the seriousness of the case the disciplinary procedure may be entered into at any of the stages outlined below. Except for instances of gross misconduct, dismissal will not be the first step.

In general, particular shortcomings on the part of an employee in meeting job requirements or standards will be initially brought to their attention by the line manager in informal conversations accompanied by the offer of assistance towards achieving improvement. A record of the discussions may be held on a personnel file.

A member of SLT should decide, based on available information, whether a problem warrants the application of a formal disciplinary procedure. Further investigation may be needed before making this decision.

## **Procedural Arrangements**

The first six months of employment will be a probationary period during which time performance and conduct will be monitored and appraised. Both during and at the end of that period, employment will be reviewed and may be terminated if you are found for any reason whatsoever to be incapable of carrying out or otherwise unsuitable for your job. Alternatively, the Company may extend the probationary period by up to three months.

The Company reserves the right during the probationary period to waive this disciplinary procedure and thus may, at its discretion, terminate employment without any warnings.

It is a basic principle that employees have the right to be supported by a suitable work colleague (agreed by the investigator), or an accredited Trade Union Representative, at any formal concerns meeting as stated above, and at each stage of the formal disciplinary procedure, including any appeals. The definition of companion is in accordance with the ACAS Code of Practice so, requests for relatives, friends or solicitors to be a companion will not be accepted, unless they already meet the stated criteria. The only possible exception is if it is acknowledged that you have additional needs, e.g. a recognised disability, are a young or vulnerable worker, or have poor language skills because English is not their first language. In such circumstances, we may agree, on a case-by-case basis, to widen the definition of companion to permit a mutually agreed external person to accompany them to support specific needs, if no suitable work colleague can do this.

All parties involved in the disciplinary process, including any initial investigatory action, i.e. Management, employee, companion, should treat the matter in confidence, unless an investigation requires discussion with others.

If the employee is unable or unwilling to attend meetings due to mental health, then a meeting is likely to be held in their absence. If they do not attend, they may provide a written statement as evidence which will be considered and may ask the chosen companion to present their case.

We may hold meetings either in person, via telephone or video conference call, and employees are expected to fully co-operate with the method chosen.

### **Initial Decision Making**

**In the organisation – Line Manager**

**In the Charity – Line Manager**

**Inter Departmental – CEO and Charity SLT**

Part of the normal function of Management is to deal with minor matters of disappointing conduct/performance/attendance on a day-to-day basis, and to make employees aware of these concerns. Informal action for minor matters will normally be at the discretion of a Manager. A record of discussions may be held on a personnel file.

A Manager should decide, based on available information, whether a problem warrants the application of the formal disciplinary procedure. Further investigation may be needed before making this decision.

## **Criminal Charges**

Where conduct is the subject of a criminal investigation, charge or conviction, we will investigate the facts, as best we can, before deciding whether to take formal disciplinary action.

We will not usually wait for the outcome of any police investigation or prosecution before deciding what action, if any, to take. Where an employee is unable, or has been advised not to attend relevant meetings, or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside of work may be treated as a disciplinary matter if we consider that it negatively affects the employment relationship, or the reputation of the organisation.

## **Suspension**

At any stage of the procedure, it may be necessary to suspend with pay. This does not mean that the employee has been, or will be, found guilty of any particular offence or act of misconduct. This suspension is not considered a disciplinary action in its own right.

The employee will be told the nature of the alleged offence, the purpose of the suspension, and its anticipated duration. Where suspension is considered necessary, pending investigation and/or disciplinary action, this period should be as short as reasonably possible. They will be kept informed about the suspension.

Any paid suspension from work may be made immediately at the time of the alleged incident, or after an investigation. Employees should be available to attend meetings, as required, within normal working hours and any failure to attend will lead to a cessation of pay, and possible disciplinary action.

## **Formal Disciplinary Process and Stages**

### **6.1 - Guidelines for the conduct of disciplinary meetings**

**In the Organisation – Line Manager**

**In the Charity – Line Manager**

**Inter Departmental – CEO & Charity SLT**

(a) The manager will state the reasons for invoking the disciplinary procedure, the disciplinary action to be taken and the corrective action required from the employee together with a specified date by which acceptable improvement should be made.

(b) Full opportunity will be given for the employee to state their case

(c) The employee will be advised of the full disciplinary procedure, including the provisions for appealing against disciplinary action, and the consequences that will follow if acceptable improvement is not made.

(d) A disciplinary meeting should be arranged as soon as possible, and employees would normally be given five working days' notice, or more, in writing of the requirement to attend. The letter giving the date, time and place of the meeting will also state the nature of the alleged offence, will identify who will be hearing the case, and will advise them of the right to be accompanied.

This notification should contain sufficient information about the alleged misconduct or poor performance, and its possible consequences, to enable the employee to prepare their case at the disciplinary meeting

(di) In misconduct cases, where practicable, different people should carry out investigations and disciplinary meetings.

## **6.2 Stages of the disciplinary procedure**

### **Stage 1 – Written warning**

If the employee's conduct or performance remains less than satisfactory in relation to the agreed improvement plan made at the informal meeting, or in more serious cases, their manager will formally review the situation with them.

Following this meeting the employee will receive from their manager a letter recording the nature and outcome of the disciplinary meeting. The employee will be asked to sign a copy of the warning letter to confirm understanding of the terms of the letter. The letter will clearly state a plan of improvement and deadline dates for achievement and a copy will be held on the employee's personal file.

### **Stage 2 – Final written warning**

If the employee's conduct or performance fails to meet the standards established at Stage 1, or in more serious cases, their manager will review the situation with the employee.

Following this meeting the employee will receive a letter from their manager recording the nature and outcome of the disciplinary meeting. The employee will be asked to sign a copy of the warning letter to confirm understanding of the terms of the letter. The letter will clearly state a plan of improvement and deadline dates for achievement and indicate that if no improvement is forthcoming the company will take steps to dismiss the employee concerned.

### **Stage 3 – Dismissal**

If the employee's conduct or performance, despite warnings, is still unacceptable their manager will review the situation with the employee. The decision to dismiss an employee must have the agreement of the CEO, prior to implementation. The decision will be confirmed to the employee in writing and this letter will also confirm to whom any appeal should be made and details of the procedure to be followed.

### **6.3 Summary dismissal**

In cases of gross misconduct, summary dismissal may be the only reasonable course of action for the company. Examples of actions that are likely to be treated as gross misconduct include:

- Fighting at work or striking a colleague or supervisor
- Drunkenness at work
- Theft
- Fraud or deliberate falsification of records
- Serious breaches of confidentiality
- Actual physical abuse of a client
- Disruptive behaviour, which reflects a disregard for colleagues and falls short of the standards expected

When gross misconduct is suspected the employee may be suspended on full pay for a maximum of 5 working days to allow for an appropriate investigation of the case. A nominated senior member of staff or director will conduct this investigation. This investigation will include a meeting with the employee. Following the investigation, the employee will be asked to attend a meeting with the responsible senior member of staff. If the investigation has upheld the case of gross misconduct, the employee will be summarily dismissed without notice or pay in lieu. The decision will be confirmed to the employee in writing and this letter will also confirm details of the appeal procedure. Irrespective of the above, your employment may be terminated without notice if you are summarily dismissed on the grounds of gross misconduct.

### **6.4 Appeals against disciplinary action**

(a) Any appeals against disciplinary action must be made in writing within 5 working days of the disciplinary action.

(b) An appeal against a written warning should be made to the CEO stating the reasons for non-acceptance of the warning. The CEO will carry out a full review of the facts, which may include a further meeting with the employee and management. Following this review, the CEO will reply in writing to the employee's comments.

(c) An appeal against dismissal should be made to the CEO, who will carry out a full review of the facts and will reply in writing to the employee within 5 working days. If the employee is directly line managed by the CEO then the appeal should be made to the Trustee board.

1. An employee may appeal against any formal disciplinary action taken under this procedure. Any appeal should be put in writing within five working days of receiving the letter confirming the decision arising from the meeting, outlining the grounds for appeal. In the case of dismissal, any appeal should be submitted in a timely manner. The employee would then be invited to attend an appeal meeting and they (and any chosen companion) should take all reasonable steps to attend.
2. A more senior Manager or Governor/Trustee who, whenever possible, has not been directly involved with the discipline/dismissal, will hear the appeal and their decision will be final.

### **Effective Date of Termination**

If the employee is told in person or over the phone that employment is being terminated, then notice will be from that date. If they are given notice in writing, then confirmation of the effective date of termination will normally be emailed to a personal email address, if known, and/or sent by registered or recorded delivery to the last known home address they advised us of. If notice is served by email, it will be deemed to be served when the email is opened, and at the latest 24 hours after being sent. If a letter is sent by post, it will be deemed to have been served 48 hours after being posted.

### **6.5 Records**

A record of any disciplinary action taken will remain on the employee's personal file for 12 months. If a staff member leaves the organisation, the information will remain on their personnel file for six months after they have left.

## **7. Formal Grievance Procedure**

**In the Organisation – Line Manager**

**In the Charity – Line Manager**

**Inter Departmental – CEO & Charity SLT**

It is our aim to provide a good working atmosphere in which employees feel that they are participating and engaged in helping us to achieve our objectives. We acknowledge that during employment some employees may have concerns, problems or complaints that need addressing, either informally or formally. Where the complaint is formal, i.e. in writing, this is known as a grievance.

### **Informal Resolution**

You are encouraged to initially seek to resolve any problems through informal discussion with your manager before invoking the formal procedure. In turn, your manager should endeavour to resolve differences of interest in a responsible and constructive way, as

part of good employee relations. If, however, this is not possible, the following formal procedure applies.

### **Procedural Arrangements**

At any stage during the formal grievance procedure (but not at any investigation meeting), you have the right to be accompanied by a work colleague or an accredited Trade Union Representative.

This definition of companion is in accordance with the ACAS Code of Practice so requests for relatives, friends or solicitors to be your companion will not be accepted, unless they already meet the stated criteria. The only possible exception is if it is acknowledged that you have additional needs, e.g. a recognised disability, are a young or vulnerable worker, or have poor language skills because English is not your first language. In such circumstances, we may agree, on a case-by-case basis, to widen the definition of companion to permit a mutually agreed external person to accompany you to support your specific needs, if no suitable work colleague can do this.>

You (and your chosen companion) need to take all reasonable steps to attend; however, if there are genuine reasons preventing attendance, then the meeting may be postponed for up to one week.

We may hold meetings either in person, via telephone or video conference call, and you are expected to fully co-operate with the method chosen.

Any medical certificate or statement containing a mental health diagnosis will not normally be accepted as a reason for not being willing to attend any investigation or grievance meeting, unless the medical evidence clearly states that you are too ill to understand what would be said at any such meeting. If you are unable or unwilling to attend meetings, then a meeting is likely to be held in your absence. If you do not attend, you may provide a written statement as evidence which will be considered, and you may ask your chosen companion to present your case. If you fail a second time to attend the grievance meeting, then it will be deemed that you no longer wish to pursue your grievance claim, having failed to justify the cause of your concerns.

All parties involved with the grievance, i.e. Management, employee, companion, should treat the matter in confidence, unless an investigation requires discussion with others.

The Manager should confirm to you the grievance outcome in writing within a reasonable timescale. If further investigation into your complaint is required, this may delay the process and communicating the outcome.

### **Stage One**

You need to set out the details of your grievance(s) in writing, explaining how you wish your concerns to be resolved, and submit this to your Manager and HR.

You will then be invited to a meeting. The purpose of the meeting is to consider and try to resolve the grievance(s) you have set out in writing.

Details of the grievance's outcome will be confirmed in writing, together with the right of appeal should you wish to exercise it.

### **Stage Two**

If you exercise your right to appeal, you must put your grounds in writing. An appeal meeting will be heard by a more senior Manager who, whenever possible, has not been directly involved in the procedure.

The purpose of the appeal meeting is to consider and try to resolve the grievance(s) you have set out in writing.

The outcome of the appeal meeting will be confirmed to you in writing, and this is the end of the internal procedure.

### **At Any Stage**

By mutual consent between the Organisation and yourself, any unresolved grievance(s) can be referred for mediation.

### **Bringing or continuing a grievance once an employee has left the Organisation**

If you resign raising a grievance as your reason for leaving, then this will be dealt with under the normal grievance procedure.

If, however, you have already left the Organisation, for whatever reason, and then raise a grievance, we will decide whether your grievance is dealt with in person or through an exchange of correspondence.

### **8. Monitoring arrangements**

The effectiveness of this policy will be monitored by the CEO and Trustees

This policy will be reviewed annually but can be revised as needed.

### **This policy links with our Staff Code of Conduct Policy**