


# DISCIPLINARY POLICY AND PROCEDURE

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## Policy Statement

*All employers are unfortunately forced to administer discipline to staff at some time or another. This organisation believes that any disciplinary action taken should aim to identify those problems that precipitated the disciplinary action being required, and to assist in correcting them. The organisation believes that it is in the interests of all that disciplinary actions are carried out in a prompt, uniform and impartial way, and that the main purpose of disciplinary action is to correct the problem, prevent its recurrence and prepare the employee for delivering satisfactory service in the future.*

*This organisation adheres fully to the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice Disciplinary and Grievance Procedures.*

## Introduction

1. It is necessary to have a minimum number of rules in the interests of the whole organisation.
2. The rules set standards of performance and behaviour whilst the procedures are designed to help promote fairness and order in the treatment of individuals. It is our aim that the rules and procedures should emphasise and encourage improvement in the conduct of individuals, where they are failing to meet the required standards, and not be seen merely as a means of punishment. We reserve the right to amend these rules and procedures where appropriate.
3. Every effort will be made to ensure that any action taken under this procedure is fair, with you being given the opportunity to state your case and appeal against any decision that you consider to be unjust.
4. The following rules and procedures should ensure that:
  - a) the correct procedure is used when requiring you to attend a disciplinary hearing;
  - b) you are fully aware of the standards of performance, action and behaviour required of you;
  - c) disciplinary action, where necessary, is taken speedily and in a fair, uniform and consistent manner;
  - d) you will only be disciplined after careful investigation of the facts and the opportunity to present your side of the case. On some occasions temporary suspension on contractual pay may be necessary in order that an uninterrupted investigation can take place. This must not be regarded as disciplinary action or a penalty of any kind;
  - e) other than for an "off the record" informal reprimand, you have the right to be accompanied by a fellow employee at all stages of the formal disciplinary process;
  - f) you will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct; and
  - g) if you are disciplined, you will receive an explanation of the penalty imposed and you will have the right to appeal against the finding and the penalty.

## The Policy

This policy is intended to set out the values, principles and policies underpinning this organisation's approach to staff discipline. The purpose of this policy is to ensure a fair and systematic approach to the enforcement of acceptable standards of conduct and behaviour amongst all employees.

1. **Disciplinary Rules:** It is not practicable to specify all disciplinary rules or offences that may result in disciplinary action, as they may vary depending on the nature of the work. In addition to the specific examples of unsatisfactory conduct, misconduct and gross misconduct shown in this handbook, a breach of other specific conditions, procedures, rules etc. that are contained within this handbook or that have otherwise been made known to you, will also result in this procedure being used to deal with such matters.
  - a) **Rules Covering Unsatisfactory Conduct and Misconduct** (these are examples only and

*not an exhaustive list*). You will be liable to disciplinary action if you are found to have acted in any of the following ways:

- i. failure to abide by the general health and safety rules and procedures;
- ii. smoking in designated non-smoking areas;
- iii. persistent absenteeism and /or lateness;
- iv. unsatisfactory standards or output of work;
- v. rudeness towards service users, members of the public or other employees, objectionable or insulting behaviour, harassment, bullying or bad language;
- vi. failure to devote the whole of your time, attention and abilities to our organisation and its affairs during your normal working hours;
- vii. failure to carry out all reasonable instructions or follow our rules and procedures;
- viii. unauthorised use or negligent damage or loss of our property;
- ix. failure to report immediately any damage to property or premises caused by you; and
- x. failure to abide by the rules and regulations issued by the Care Quality Commission, a copy of which is available for inspection in the office.

**b) Serious Misconduct**

- i. Where one of the unsatisfactory conduct or misconduct rules has been broken and if, upon investigation, it is shown to be due to your extreme carelessness or has a serious or substantial effect upon our operation or reputation, you may be issued with a final written warning in the first instance.
- ii. You may receive a final written warning as the first course of action, if, in an alleged gross misconduct disciplinary matter, upon investigation, there is shown to be some level of mitigation resulting in it being treated as an offence just short of dismissal.

**c) Rules Covering Gross Misconduct:** Occurrences of gross misconduct are very rare because the penalty is dismissal without notice and without any previous warning being issued. It is not possible to provide an exhaustive list of examples of gross misconduct.

However, any behaviour or negligence resulting in a fundamental breach of contractual terms that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct. Examples of offences that will normally be deemed as gross misconduct include serious instances of:

- i. theft or fraud;
- ii. physical violence or bullying;
- iii. deliberate damage to property;
- iv. deliberate acts of unlawful discrimination or harassment;
- v. possession, or being under the influence, of drugs\* at work; and (*\*For this purpose, the term 'drugs' is used to describe both illegal drugs and other psychoactive (mind-altering) substances which may or may not be illegal.*)
- vi. breach of health and safety rules that endangers the lives of, or may cause serious injury to, employees or any other person;
- vii. maltreatment of service users; by neglect, omission and/or commission;
- viii. failure to report an incident of abuse, or suspected abuse of a service user;
- ix. abandoning duty without notification or sleeping on duty;
- x. acceptance of gifts & hospitality in contravention of the Bribery Act 2010;
- xi. failure to give notice of any pecuniary interest of which you are aware, in a contract which has been, or is proposed to be, entered into by the organisation;
- xii. wilful misrepresentation at the time of appointment including:
  - ✗ Previous positions held
  - ✗ Qualifications held
  - ✗ Falsification of date of birth
  - ✗ Declaration of health
  - ✗ Failure to disclose a criminal conviction/caution within the provisions of the Rehabilitation of Offenders Act;
- xiii. wilful misrepresentation at any time during employment in connection with qualifications held;
- xiv. deliberate disclosure of privileged confidential information to unauthorised people;
- xv. negligent or deliberate failure to comply with the requirements of the organisation's policy & procedure concerning medicines;

- xvi. working whilst contravening an enactment, or breach of rules laid down by statutory bodies
- xvii. any act or omission constituting serious or gross negligence / or dereliction of duty;
- xviii. serious failure to abide by the rules and regulations issued by the Care Quality Commission, a copy of which is available for inspection in the office.
- xix. consumption of alcohol on service user's or home premises prior to and/or during hours of duty;
- xx. failure to attend or gain access to visits and not reporting to a Manager/ on call; and
- xxi. conviction for a criminal offence which clearly indicates unsuitability for the role employed to undertake.

*(The above examples are illustrative and do not form an exhaustive list.)*

### Staff Disciplinary Policy

In this organisation disciplinary action may be taken in response to one of the following:

- ! Abuse
- ! Unsatisfactory performance at work
- ! Improper behaviour at work
- ! Persistent lateness or absenteeism
- ! Misconduct
- ! Negligence and Omission
- ! Persistently not attending staff meetings and scheduled training

*The above list is not exhaustive*

In this organisation disciplinary action may take one of the following forms depending on the severity of the problem and the number of occurrences:

- ! Verbal warnings
- ! One or more written warnings
- ! Suspension with or without pay
- ! Dismissal.

*Suspension is considered as a "last resort" mechanism which considers employee length of service and security of the breach.*

**In this organisation the following procedure applies.**

a) Disciplinary action taken against you will be based on the following procedure:

OFFENCE	1 <sup>st</sup> OCCASION	2 <sup>nd</sup> OCCASION	3 <sup>rd</sup> OCCASION	4 <sup>th</sup> OCCASION
<b>UNSATISFACTORY CONDUCT</b>	Formal verbal warning	Written warning	Final written warning	Dismissal
<b>MISCONDUCT</b>	Written warning	Final written warning	Dismissal	
<b>SERIOUS MISCONDUCT</b>	Final written warning	Dismissal		
<b>GROSS MISCONDUCT</b>	Dismissal			

b) We retain discretion in respect of the disciplinary procedures to take account of your length of service and to vary the procedures accordingly. *If you have a short amount of service you may not be in receipt of any warnings before dismissal.*

c) If a disciplinary penalty is imposed it will be in line with the procedure outlined above, which may encompass a formal verbal warning, written warning, final written warning, or dismissal, and full details will be given to you.

d) In all cases warnings will be issued for misconduct, irrespective of the precise matters concerned, and any further breach of the rules in relation to similar or entirely independent matters of misconduct will be treated as further disciplinary matters and allow the continuation of the disciplinary process through to dismissal if the warnings are not heeded.

- ! For offences other than serious or gross misconduct, the employee's immediate supervisor or line manager should first ascertain the facts and review any evidence

relating to any breach of rules or discipline. The employee will be interviewed in private and should be asked for an explanation. The immediate supervisor or line manager will then decide upon a course of action.

- ! If an informal, verbal warning is decided upon then this should be administered in private by the immediate supervisor or line manager, and appropriate notes made in the employee's personnel file.
- ! If a formal, written warning is required because an informal warning has already been given for the offence or because of the severity of the offence only the registered manager should carry this out. Appropriate notes should be made in the employee's personnel file.
- ! If the offence is repeated, or agreed improvements are not made, then a second and final written warning may be issued.
- ! If standards improve and there is no repetition of the offence then the employee may request that the warning is removed from their file after 12 months. The organisation reserves the right to refuse to remove the offence from the file if it feels that the offence warrants or that there is a likelihood of further transgression.
- ! An employee may be suspended without pay if the organisation deems them incapable of performing their duties, or while investigations take place. A written copy of the suspension should be given to the member of staff by the head of organisation.
- ! An employee may be dismissed if:
  - ! They have already received a final written warning and then repeat the offence
  - ! They have been suspended and the organisation decides that, upon investigation, their offence merits dismissal
  - ! They have committed serious or gross misconduct
  - ! They have committed an offence that makes their continued employment impossible.
  - ! The organisation recognises that there are certain types of problem that are so serious they justify either a suspension or, in extreme situations, dismissal, without verbal or written warnings being given.

### **In this organisation the following apply:**





- ! Disciplinary matters should be dealt with quickly and fairly
- ! An indication should be provided of the disciplinary action that might be taken
- ! Supervisors or line managers can issue verbal warnings
- ! Only the registered manager can use written warnings and dismissal
- ! Employees should be told of the complaint against them and be given full opportunity to state their case before a decision is taken
- ! Employees have the right to be accompanied by a fellow employee of their choice
- ! Employees will not normally be dismissed for a first offence, other than gross misconduct
- ! No disciplinary action will be taken before there has been a full investigation
- ! An explanation of any penalty will be given
- ! Employees have a right of appeal.

### **Disciplinary Authority**

The operation of the disciplinary procedure contained, in the previous section, is based on the following authority for the various levels of disciplinary action. However, the list does not prevent a higher or lower level of seniority, in the event of the appropriate level not being available, or suitable, progressing any action at whatever stage of the disciplinary process.

<b>ALL EMPLOYEES</b>	
<b>Formal verbal warning</b>	<b>Registered Manager</b>
<b>Written warning</b>	<b>Registered Manager</b>
<b>Final written warning</b>	<b>Registered Manager</b>
<b>Dismissal</b>	<b>Registered Manager</b>

## General Notes





-  If you are in a supervisory or Managerial position then demotion to a lower status may be considered as an alternative to dismissal except in cases of gross misconduct.
-  In exceptional circumstances, suspension from work without pay for up to five days as an alternative to dismissal (except dismissal for gross misconduct) may be considered by the person authorised to dismiss.
-  Gross misconduct offences will result in dismissal without notice.
-  You have the right to appeal against any disciplinary action.

## Period of Warnings

1. **Formal verbal warning:** *A formal verbal warning will normally be disregarded for disciplinary purposes after a three-month period.*
2. **Written warning:** *A written warning will normally be disregarded for disciplinary purposes after a six-month period.*
3. **Final written warning:** *A final written warning will normally be disregarded for disciplinary purposes after a twelve-month period.*

## Written warnings

Written warnings should state clearly:

-  *The conduct concerned*
-  *The improvement required and the time limit for this, if appropriate*
-  *The likely consequences of further offences or failure to improve (e.g. final warning, dismissal, etc.).*
-  *The warning should be handed to the employee, who should be informed of the right of appeal.*

## CAPABILITY / DISCIPLINARY APPEAL PROCEDURE

You have the right to lodge an appeal in respect of any capability/disciplinary action taken against you.

1. If you wish to exercise this right you should apply either verbally or in writing to the person indicated in your individual Statement of Main Terms of Employment.
2. It may be necessary, because of the size of our organisation, for the appeal to be heard by the person who took the original action and it is therefore important that your appeal gives details of why the penalty imposed is either too severe, inappropriate or unfair in the circumstances.
3. If you are appealing on the grounds that you have not committed the offence, it may be necessary for the person conducting the appeal to have a complete re-hearing so that there can be a reappraisal of all matters before a decision is made to grant or refuse the appeal.
4. You may be accompanied at the appeal hearing by a fellow employee of your choice and the result of the appeal will be made known to you in writing, normally within five working days after the hearing. This is the final stage of the appeal process.

## Records

Records will be kept in the employee's personnel file that detail the nature of any breach of disciplinary rules, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records will be carefully safeguarded and kept confidential. The company disciplinary policy is included in the induction training for all new staff.

### *Related Policies*

*Appraisal  
Code of Conduct for Workers  
Employee Handbook  
Grievance  
Supervision*