****

**Disciplinary Policy**

**[Date of Issue]**

|  |  |
| --- | --- |
| Policy Lead: | [Policy Lead] |
| Version No. | 1 |
| Date of Issue: | [Date of Issue] |
| Date for Review: | [Date of Review] |

CONTENTS

[1. Introduction 3](#_Toc148005122)

[2. Policy Statement 3](#_Toc148005123)

[3. Scope 3](#_Toc148005124)

[4. Procedures 3](#_Toc148005125)

[5. Monitoring 8](#_Toc148005126)

[6. Related Policies 8](#_Toc148005127)

[7. Legislation and Guidance 8](#_Toc148005128)

[8. Summary of Review 9](#_Toc148005129)

# Introduction

The purpose of the disciplinary policy and procedures is to provide a structure for dealing with staff misconduct. All staff members have the right to fair and consistent treatment, the investigation of alleged misconduct and fair application of any warnings.

# Policy Statement

[Company Name] is committed to ensuring all staff members are treated fairly and consistently. The Disciplinary Policy and the procedures may be used where there is an allegation of misconduct brought to the attention of a member of the Management Team.

All allegations will be promptly investigated. Where possible and appropriate, this will be done by a member of the Management Team independent to the allegations.

# Scope

This policy and the procedures apply to all staff members and any persons employed by the service.

# Procedures

**General principles**

[Company Name] will follow the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice relating to disciplinary issues:

* Issues should be raised and dealt with promptly. There should be no unreasonable delays, either to the holding of meetings, making decisions or communicating the outcome.
* Managers and staff members should act consistently.
* Investigations should be carried out thoroughly to establish the facts.
* Staff members should be given information about the basis of the issue and have the opportunity to put forward their case in response before any decision is made.

**Investigating an allegation**

Where an allegation is raised to a member of the Leadership Team or another member of the Management Team, they will appoint an investigating officer. This person will not be in any way connected to the person/people alleging or the alleged individual. The investigating officer will be requested to undertake a prompt investigation to establish the facts.

Investigations may include holding meetings with the staff member(s) concerned. Witnesses may be asked to give statements about the alleged misconduct. Anonymous witness testimonies are discouraged. Other evidence available will be collected.

**Suspension**

If the allegations are thought to constitute serious misconduct, present a risk to company property or to other people, such as work colleagues or clients, the decision may be taken to suspend the staff member. Such suspension will be for as minimum a period as is possible and the staff member will/will not continue to receive their normal pay for the period. At the point of suspension, the staff member must surrender any company property that they have - such as their ID badge and uniform.

**Deciding upon action**

If the investigating officer concludes that there is, on the balance of probabilities, a justified allegation of misconduct, a disciplinary hearing will be arranged to discuss the allegations and the findings of the investigation. Where the investigation has proven that there is no case of misconduct to answer, the staff member must be informed of this.

The staff member will receive details of the nature of the alleged misconduct and what the potential outcome of the hearing may be. This will be given to the staff member in writing, the letter will also include the date, time and location of the hearing, as well as the staff member’s statutory right to be accompanied at the hearing by a single work colleague or an accredited trade union representative.

The staff member will be given a minimum of 2 days advance notice of the hearing in order that they may prepare to answer the case and arrange to be accompanied. If the staff member and/or chosen companion are unable to attend the hearing it will be postponed to an alternative date, this will not normally be more than 5 days after the original date. There may be extenuating circumstances where a staff member is not available to attend a hearing. In these rare cases the staff member will receive advice in writing that the hearing will be held in their absence.

**The hearing**

The hearing will be chaired by a member of management not involved in the investigation. This will normally be the staff member’s line manager who will be accompanied at the hearing by a note taker.

Both the staff member and investigating officer will have the chance to put forward their case and answer any questions put to them by the Chair. If the staff member is accompanied, their companion can put the staff member’s case forward on their behalf and respond on their behalf. The companion will not be allowed to answer questions put directly to the staff member.

The hearing may be adjourned at any point to allow the staff member and their companion to confer or for the Chair to gather more information or obtain advice. The hearing will be adjourned by the Chair once all the evidence has been presented and questions have been answered. Time will then be taken to make a decision on the appropriate and fair penalty to be given.

**Disciplinary action**

In cases where the decision is taken to give a disciplinary warning, the staff member must receive details of this in writing. The warning given will be valid for the period as stated below. Once the warning has expired it will remain on the staff member’s file but will be disregarded in any future investigations, unless there is an emerging pattern of misconduct, that is when the staff member re-offends after the expiry of a previous warning for the same or similar misconduct.

**Formal caution**

Where the misconduct is minor, a staff member may be given a formal caution or ‘improvement notice’ together with details of the improvements that are required. This warning will remain valid on the staff member’s file for a period of 6 months.

**First written warning**

Staff members should be informed of the details of the misconduct that warranted a first written warning being given. They should be informed of any mitigating circumstances that lessened the severity of the warning. They should also be informed of the likely consequences of not making and sustaining the required improvements.

A first written warning will normally remain active on the staff member member’s file for a period of 6 months however, the company reserves the right to give a longer period based on the circumstances of the case.

**Final written warning**

A final written warning may be issued for a serious first offence of misconduct or where there has been a subsequent misconduct with a valid first written warning on the staff member’s file. A final written warning may also be given where there is a history of misconduct, even where previous warnings have expired.

A final written warning will remain active on the staff member’s file for a period of 12 months. The staff member must be informed that a repeat of the misconduct, or of similar misconduct within the active period, may lead to their dismissal.

**Dismissal**

Where a staff member has an active final written warning on their file, a further act of misconduct, other than an act constituting gross misconduct, may result in dismissal with notice or with pay in lieu of notice.

**Action short of dismissal**

In exceptional circumstances, a decision may be taken to take action short of dismissal, which may include demotion, redeployment or a period of suspension without pay. In such circumstances, the staff member should agree with the action being taken. In addition, the staff member will receive a final written warning which will remain active on the staff member’s file for a period of 12 months.

**Gross misconduct**

Gross misconduct is defined as an act of misconduct that is considered so serious that the employment relationship cannot continue. In cases where an act of gross misconduct occurs, there will still be a full investigation and hearing. The staff member should be advised in the letter detailing the hearing that the outcome may be that they are summarily dismissed. A summary dismissal is without right to notice or pay in lieu of notice. The list below is an indication of offences which may be regarded as serious enough to warrant gross misconduct (the list is not exhaustive):

* theft, fraud, accepting or offering a bribe
* falsification of company records or any dishonesty involving the company, its staff member, clients or suppliers, or attempts to commit such offences
* deliberate and/or serious breach of any company policy
* serious negligence that could or does result in unacceptable loss, damage, or injury
* fighting, assault or threatening or bullying behaviour, whether physical or verbal
* harassment or deliberate discrimination
* being unfit for work due to being under the influence of alcohol or drugs (other than those prescribed to the staff member by a suitably qualified medical practitioner), or being found with such substances in the workplace
* refusal to accept and act on reasonable instruction from a supervisor or manager
* unauthorised disclosure of confidential or proprietary information
* action likely to endanger the health and safety of another person
* accessing or possession of pornographic, offensive, or obscene material
* any action or behaviour that could damage the Company’s reputation
* deliberate or reckless damage to company property (including damage to company information systems), its staff members, workers, and clients.

**Appeals**

A staff member has the right to appeal against any level of disciplinary action taken against them. The staff member must be advised of this right in their warning letter.

Wherever possible the appeal should be heard by a more senior manager, or a manager not previously involved in the disciplinary investigation or hearing. The staff member should be informed in their warning letter who they should address their appeal to and that they have 5 days in which to lodge an appeal from the date of receipt of the warning letter. The appeal will then normally be heard within 14 days of the appeal being lodged.

The staff member must be advised that they are permitted to be accompanied at the appeal hearing by a fellow colleague or trade union representative. Staff member must state the grounds upon which they are appealing. The appeal hearing must not be a re-run of the disciplinary hearing and the appeal Chair must only revisit the evidence the staff member has raised in their grounds of appeal.

The appeal hearing should be adjourned following examination of evidence and the grounds for the staff member’s appeal. This will allow the Chair time to assess the case and decide if the disciplinary warning given was fair and appropriate. The decision must be communicated to the staff members in writing and confirm that the decision made at the appeal is final.

Where a decision is made to overturn an original decision where the staff member was dismissed, the staff member will be treated as though they have continued in employment and will be reinstated without loss of pay or service.

# Monitoring

Records and logs of disciplinary action will be kept and reported on at the Senior Leadership Team meeting held on a monthly basis.

# Related Policies

* Bullying and Harassment Policy
* EDHR Policy
* Health and Safety Policy

# Legislation and Guidance

**Relevant Legislation**

* Employment Rights Act 1996 Section 3(1)

**Guidance**

* ACAS Code of Practice on discipline and grievance: <https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html>
* Discipline and grievances at work: The ACAS Guide: <https://www.acas.org.uk/disciplinary-and-grievance-procedures>
* [Legal update: Disciplinary and grievance procedures during the pandemic | Activate | Royal College of Nursing (rcn.org.uk)](https://www.rcn.org.uk/magazines/activate/2020/june-2020/legal-update-disciplinary-and-grievance-procedures-during-the-pandemic-covid-19)

# Summary of Review

|  |  |
| --- | --- |
| Version | 1 |
| Last amended | [Date of Issue] |
| Reason for Review |  |
| Were changes made? |  |
| Summary of changes |  |
| Target audience | Care staff, Managers |
| Next Review Date | [Date of Review] |