

# Disciplinary Policy

## Contents

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<b>1</b>	<b>Purpose</b>	<b>1</b>
<b>2</b>	<b>Scope</b>	<b>2</b>
<b>3</b>	<b>Policy Statement</b>	<b>2</b>
<b>4</b>	<b>Poor Conduct Potentially Warranting Disciplinary Action</b>	<b>2</b>
<b>5</b>	<b>Potential Outcomes of a Disciplinary Hearing</b>	<b>4</b>
5.1	Stage One – Formal Warning	4
5.2	Stage Two- Written Warning	4
5.3	Stage Three – Final Written Warning	5
5.4	Stage Four – Dismissal	5
<b>6</b>	<b>Procedure</b>	<b>5</b>
6.1	Investigation	5
6.2	Notification of a Disciplinary Hearing	6
6.3	The Disciplinary Chairperson	6
6.4	Attendance at a Disciplinary Hearing	6
6.5	Representation at the Disciplinary Hearing	7
6.6	The Hearing	7
6.7	The Outcome	8
6.8	The Appeal	8
6.9	Employees who work with Children or Vulnerable Adults	9
6.10	Employees Raising a Grievance	10
<b>7</b>	<b>Revision History</b>	<b>10</b>

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## 1 Purpose

This policy aims to inform all Employees of their rights and responsibilities with regard to the disciplinary and appeal process. Furthermore, this policy aims to ensure a fair and consistent

approach to the management of disciplinary issues, encouraging improvement and issuing sanctions as appropriate.

## **2 Scope**

The Company retains discretion in respect of the disciplinary procedures to take account of the length of an Employees' continuous service and to vary the procedures accordingly.

If the Employee has a short amount of service, they may not be in receipt of any warnings before dismissal but they will retain the right to a hearing and the right to appeal.

In summary, this disciplinary procedure does not apply to any Employee who has been employed by the Company for less than two years where that Employee commenced employment with the Company on or after April 6 2012.

This disciplinary procedure is entirely non-contractual and does not form part of the Employee's contract of employment.

## **3 Policy Statement**

Whilst the Company does not intend to impose unreasonable rules of conduct on Employees, certain standards of behaviour are necessary to maintain good employment relations and discipline in the interest of all Employees and of others who come into contact with the organisation. When these standards are breached, disciplinary action may be taken.

It is important to note that disciplinary action will usually only apply where an Employee has displayed poor conduct, as opposed to poor capability. If an Employee appears to be incapable of carrying out their role, the Capability Policy will usually apply as opposed to the Disciplinary Policy.

## **4 Poor Conduct Potentially Warranting Disciplinary Action**

Examples of poor conduct which could warrant a disciplinary sanction include, but are not limited to:

- Inappropriate displays of anger or frustration
- Bad language
- Withdrawal of communication
- Non-cooperation with colleagues and managers
- Inappropriate actions
- Negligence in performing the job tasks
- Disregarding of reasonable requests or instructions.

Examples of gross misconduct, for which an Employee could potentially be summarily dismissed i.e. dismissed without notice or pay, include, but are not limited to:

- Failure to report another Employee's misconduct
- Sever cases of unprofessional or inappropriate behaviour.
- Theft, or attempted theft, including the use of Company property or services for personal use or gain.
- Fraud or the deliberate falsification of documents of any kind
- Using illegal drugs or alcohol at work or attending work under the influence of drugs or alcohol
- Failure to report illegal drug usage by residents or staff
- Violence, assault or attempted assault
- Any form of harassment, bullying or discrimination
- Conviction of a criminal offence or the receipt of an unsatisfactory CRB disclosure list [though this will also be considered as a dismissal under a statutory ban]
- Inclusion on the DBS list [though this will also be considered as a dismissal under a statutory ban]
- Breach of government regulations
- Gross insubordination
- Gross negligence
- Placing residents in unnecessary danger
- Accepting gifts from residents or others without the Company's prior consent
- Sleeping during waking duty
- Unjustified breach of guidelines, policies or procedures
- Serious infringement of Company health and safety policy
- Wilful neglect, damage or fraudulent use of Company property or brand
- Misuse of e-mail or the internet
- Abuse of service users
- Negligence which causes loss, damage or injury
- Breach of confidentiality
- Using a mobile phone on shift or whilst in charge of either a Company vehicle or privately owned vehicle on Company business
- Any other serious breach of policy or procedure leading to loss of trust and confidence
- Physical, emotional or verbal abuse or rudeness towards a service user or colleague
- Violent, abusive or intimidating conduct
- Sexual, racial or other harassment or any form of discrimination
- Dishonesty
- Falsification of records (of any kind)

- Serious insubordination
- Deliberate damage to property
- Unauthorised use or disclosure of confidential information
- Attending work under the influence of alcohol or drugs
- Reckless or serious misuse of a Company vehicle
- Serious breach of a health and safety rules which endangers others
- Failure to disclose correct information on a job application form
- Failure to disclose any arrest, police caution, reprimand or conviction received during employment
- Conviction whilst an Employee for any serious criminal offence, or one that renders employment untenable
- Any other act or omission that is likely to bring the Company into disrepute.

## **5 Potential Outcomes of a Disciplinary Hearing**

We aim to treat all Employees fairly and consistently, and a penalty imposed on another Employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

### **5.1 Stage One – Formal Warning**

If, despite informal discussions, an Employee has been found to continue to fail to meet acceptable standards of conduct, or if the breach is deemed serious enough, the Employee will normally be given a Stage One warning.

If a Stage One Warning is given, the minutes of the hearing, evidence and the written warning will remain on the Employee's personnel file and will be live for disciplinary purposes for 6 months.

### **5.2 Stage Two- Written Warning**

If an Employee has already been issued with a Stage One Warning but fails to improve their conduct sufficiently within the 6 month timescale, or if a further breach of misconduct occurs, a Stage Two warning will usually be given. A Stage Two Warning may also be issued where the Employee does not have a live Stage One Warning but where the misconduct is deemed serious enough to warrant a Stage Two Warning.

If a Stage Two Warning is given, the minutes of the hearing, evidence and the written warning will remain on the Employee's personnel file and will be live for disciplinary purposes for 6 months.

### **5.3 Stage Three – Final Written Warning**

If an Employee has already been issued with a Stage Two Warning but fails to improve their conduct sufficiently within the 6 month timescale, or if a further breach of misconduct occurs, a Final Written Warning will usually be given. A Final Written Warning may also be issued where the Employee does not have a live Stage Two Warning but where the misconduct is deemed serious enough to warrant a Final Written Warning.

If a Final Written Warning is given, the minutes of the hearing, evidence and the written warning will remain on the Employee's personnel file and will be live for disciplinary purposes for twelve months.

### **5.4 Stage Four – Dismissal**

If an Employee has already been issued with a Final Written Warning but fails to improve their conduct sufficiently within the 12 month timescale, or if a further breach of misconduct occurs, they will potentially be dismissed from the Company. In this instance the Employee will be entitled to receive notice, or payment in lieu of notice, from the Company,

The Company reserves the right to increase or amend the timescales set out above if the offence committed is particularly serious or if an offence is repeated periodically each time a warning expires.

In some cases the Company may choose to impose the following sanctions instead of, or addition to, the warnings detailed above:

- Demotion
- Transfer to another department, service or job role
- Loss of future pay increment or bonus
- Loss of seniority
- Pay reduction
- Loss of overtime

## **6 Procedure**

### **6.1 Investigation**

Please refer to the Company's Investigation Procedure.

## **6.2 Notification of a Disciplinary Hearing**

If the investigating officer concludes that a disciplinary hearing is needed, a Disciplinary Chairperson will be appointed and a hearing will be arranged.

The Employee will receive a letter from the Company notifying them of the hearing and of the allegations made against them. At this stage the Employee will be provided with the investigation report and the supporting evidence. This will always be given to the Employee at least 48 hours prior to the hearing to allow the Employee time to prepare for the hearing. In exceptional circumstances, with the agreement of the Employee, the hearing may be held with less than 48 hours' notice.

## **6.3 The Disciplinary Chairperson**

The meeting will be chaired by someone who is independent to the process that hasn't taken any part in the initial proceedings or involved as a witness.

Depending upon the complexity of the matter, the chairperson may choose to be accompanied by a third person or a HR representative. The role of this person will be to support the Chairperson, and to take notes/minutes if the meeting is not being recorded.

## **6.4 Attendance at a Disciplinary Hearing**

The Disciplinary Hearing will usually be scheduled to take place during the Employee's normal working hours. However, where this is not possible e.g. if the Employee normally works nights or weekend shifts, the Employee is expected to attend the hearing outside of their normal working hours.

Given the nature of our business, it is not always appropriate to hold Disciplinary Hearings at an Employee's normal place of work and so the hearing is likely to take place at one of our Regional Offices. Employees are expected to attend the hearing outside of their normal place of work if required.

Employees will be paid their usual basic hourly rate of pay to attend Disciplinary Hearings. Where the hearing takes place outside of an Employee's usual place of work, the cost of the additional travel can be claimed back via expenses in line with the Company's Expenses Policy.

If the Employee or their companion is unable, for good reason, to attend the Disciplinary Hearing, the Employee is required to inform the Disciplinary Officer at least 24 hours prior to the meeting unless this is not possible. The Company will then rearrange the hearing to take place within the next 5 days.

If the reason for non-attendance is not deemed to be reasonable, the Company will insist on the hearing proceeding as planned. Failure to attend will then result in the hearing being re-arranged and the charge of failure to comply with a reasonable management request will be added to the original list of allegations.

Once a hearing has been re-arranged it will not be re-arranged again without exceptional reason. If an Employee fails to attend a hearing once it has been re-arranged for their convenience, it is likely that the hearing will go ahead in the Employees absence and a decision will be made based on all of the evidence available to the Disciplinary Chairperson.

## **6.5 Representation at the Disciplinary Hearing**

The Employee has the right to be accompanied to the Disciplinary Hearing by a colleague who is in no way involved in the matter at hand, or by a Trade Union Representative. It should be noted that if the Employee wishes to exercise this right then it is their responsibility to make the arrangements. With regards to a senior Employee for example Home Manager level upwards, the work colleague should be someone from outside their registered service.

To ensure the positions of person(s) or the Company are not compromised, the following apply:

- A Director or Senior Manager may not accompany an individual, other than another Director or Senior Manager, to a formal hearing as either group may be required to conduct or take part in any grievance or appeal hearing.
- The Company does not allow non-Employees to attend any formal meeting unless that representative is a certified trade union official and is attending in their official capacity, a family member if this will help overcome any disability or the Employee is a young person and a parent may be allowed to attend.
- Should the Employee have a relative who is also an Employee of the organisation, this representative will only be allowed to accompany the Employee to a formal meeting where special permission has been granted. The Company requests that the Employee informs the Chairperson who will be accompanying them at least 24 hours before the hearing.

The companion may speak or ask questions on the Employee's behalf but must not answer questions asked of the Employee. The companion may also confer privately with the Employee during the meeting. They may also request an adjournment.

## **6.6 The Hearing**

In normal circumstances Disciplinary Hearings will be recorded via Dictaphone so that the notes can be types up and sent to the Employee later. If the Employee does not want the meeting to be

recorded they should inform the Chairperson at least 24 hours before the hearing starts so that they can arrange for a note taker to be present. If it is agreed that the hearing will not be recorded, it is an offence to record the hearing covertly and this could result in further disciplinary action being taken against the Employee.

During the Disciplinary Hearing the Chairperson will discuss the allegations and the investigation report with the Employee. The Chairperson will detail why the allegation is of concern to the business and they will give the Employee the opportunity to put forward their views, challenges, opinions and mitigation.

There should be full participation in the meeting by the Employee including discussing any steps, support or action that they consider will help them to improve their conduct.

If the Employees' version of events so requires, the disciplinary officer will undertake such further investigations as may be considered appropriate in order to establish the credibility of the explanation(s) given and the result of these investigations will be put to the Employee before any final decision is made.

The disciplinary officer should normally adjourn to take time to consider all the evidence, particularly the Employee's explanation and any mitigation offered. Where possible the Chairperson will reconvene the hearing to verbally inform the Employee of their decision. Where this is not possible, the chairperson will end the meeting and will then write to the individual informing them of the decision.

## **6.7 The Outcome**

Regardless of whether or not the decision has been communicated verbally to the Employee, the Company will write to the Employee setting out the following:-

- Details of the discussions which took place during the hearing (minutes/notes of the meeting will also be enclosed)
- Confirmation of the sanction being issued
- A summary of the reasoning behind the sanction
- The right of appeal

The outcome takes effect upon notification, unless otherwise stated, irrespective of any appeal.

## **6.8 The Appeal**

If the Employee wishes to exercise their right of appeal, they should submit an appeal in writing to the HR department within 7 days of receipt of the written decision stating the grounds for the



appeal and providing evidence to support those grounds. The appeal against the decision may be on the following grounds:

- Perceived unfairness of the decision; or
- Procedural irregularities.

If an appeal is accepted, the HR department will appoint an Appeal Officer and will arrange an Appeal Hearing. The Appeal Officer will be an independent person, generally more senior to that of the disciplinary officer, who had taken no part in the proceedings prior to this.

The Employee will then receive a letter from the Company notifying them of the Appeal Hearing. This will always be sent to the Employee at least 48 hours prior to the hearing to allow the Employee time to prepare. In exceptional circumstances, with the agreement of the Employee, the hearing may be held with less than 48 hours' notice.

The Appeal Hearing will be similar to that of the original meeting, dependent upon the nature of the ground(s) for appeal.

The Employee must take all reasonable steps to attend the hearing; again, the Employee has the right to be accompanied to the meeting.

The outcome of the Appeal Hearing will be communicated to the Employee in writing. The decision of the Appeal Officer will be final and there will be no further avenue of internal appeal.

If the Employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the Employee will be reinstated with no loss of continuity or pay.

## **6.9 Employees who work with Children or Vulnerable Adults**

If the Company believes that a Service User has been harmed or potentially could have been placed at risk of harm, The Safeguarding Vulnerable Groups Act (SVGA) 2006 and Safeguarding Vulnerable Groups (Northern Ireland) Order (SGVO) 2007, places a duty on the Company to make a referral to The Disclosure and Barring Service. This helps employers make safer recruitment decisions each year by processing and issuing DBS checks for England, Wales, the Channel Islands and the Isle of Man. DBS also maintains the adults' and children's Barred Lists and makes considered decisions as to whether an individual should be included on one or both of these lists and barred from engaging in regulated activity. A DBS referral can be made at any point before, during or after the disciplinary process.

## **6.10 Employees Raising a Grievance**

Suspension of proceedings for a short period may be considered in order to deal with a grievance. There will be no need to delay the conduct hearing if the grievance has no bearing on the outcome.

## **7 Revision History**

Date of next review: June 2021

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