

EMPLOYEE DISCIPLINARY POLICY AND PROCEDURE

This policy and procedure is designed to help and encourage all employees to achieve and maintain high standards of conduct, attendance and job performance and by so doing, to contribute to the success of the organisation and the well-being of colleagues. This policy and procedure will be reviewed and updated from time to time. Any amendments will be notified to employees in writing.

Staff involved in using this procedure should read the ACAS Code of Practice, 'Discipline and Grievances at work' (www.acas.org.uk) to ensure that all aspects of good practice are understood and followed.

Minor concerns will be dealt with informally by the appropriate line-manager. Good supervision procedures should tackle all issues at an early stage, and all employees should be clear about the standards expected of them.

Where the matter is, or becomes, more serious, independent mediation may be considered at the discretion of the Chair of Trustees. If this is deemed inappropriate or does not settle the matter then the following steps may be taken:

1. INVESTIGATION

The organisation is committed to ensuring that all potential infringements of disciplinary rules are fully investigated to establish the facts of the case. The Chair of AVPB Trustees will make a report available to all the parties concerned. Where necessary, the identity of witnesses will be kept confidential. This may entail carrying out interviews with the employee concerned and third parties such as witnesses, colleagues and line-managers, as well as analysing written records and information. It may also involve a search of the employee's person and/or property. Where an employee is called to attend an investigatory interview, it will be made clear that this is not a disciplinary hearing.

The investigation may conclude that there is no case to answer, or that informal actions are sufficient to resolve the matter. For issues of poor performance it will normally be appropriate for the employee's line manager to set out the improvements required, the timescales and review date, and the support to be given. It will warn the employee that, if there is no satisfactory improvement, formal disciplinary action may be taken.

For issues of poor conduct which are sufficiently serious to warrant formal action, or poor performance which has not improved despite previous informal action, a formal hearing should be set up. This is only to be done in serious cases, or when informal approaches have failed. Copies of any findings to be used in the hearing should be given to the employee prior to the hearing.

SUSPENSION WITH PAY DURING THE INVESTIGATIONS

If there appears to be serious misconduct or serious, immediate risk to property or other people, a period of suspension with pay will be considered while the case is being investigated. This decision will be taken by the Chair of Trustees or, where the decision is urgent and the Chair is unavailable, by at least two other trustees. A suspension allows time and distance for objective thinking and planning. Any suspension should be as short as possible, kept under review, and the employee should be given an explanation in writing, clearly stating that the suspension is not considered a disciplinary action or an indication of judgement.

During any period of suspension the employee shall not attend his or her place of work other than for the purpose of attending disciplinary proceedings, including investigatory interviews. Nor shall the employee contact any other employees, stakeholders or customers of the organisation except any person the employee chooses to accompany him or her to any hearings, without the organisation's consent.

2. THE FORMAL HEARING

- AVP will write to the employee inviting him or her to attend a disciplinary hearing to discuss the allegation. The letter should contain sufficient information about the alleged misconduct or performance and the possible consequences
- The invitation will give details of the time and venue of the meeting. Written copies of any supporting evidence and witness statements should also be included with this letter.
- The meeting will not take place unless the employee has had a reasonable opportunity to consider his or her response to that information. At least 24 hours' notice should be given before any disciplinary hearing takes place.
- The invitation will inform the employee of his or her right at all stages to be accompanied by a work colleague or a trade union representative during the investigation, disciplinary interview or disciplinary appeal.
- The invitation will also inform the employee of his or her right to appeal.
- The employee will take all reasonable steps to attend the meeting. If there is a genuine reason why he or she cannot attend then AVP must set another time as soon as possible.
- The timing and location of all meetings will be reasonable, and conducted in a manner that enables both the organisation and the employee to explain their cases
- Any witnesses should be asked to attend. If witnesses cannot attend then statements are acceptable but should be shared with the employee beforehand.
- Each stage of the procedure: the investigation, disciplinary hearing and the appeal hearing, will be conducted by a different member of the organisation.
- The Chair of the disciplinary hearing and the accompanying member of the organisation must not have been involved in the investigation stage in misconduct cases.
- Ideally the Disciplinary Chair will have another member of the organisation with them at the hearing to take detailed minutes and act as a witness.

AT THE HEARING:

All the facts, records and mitigating circumstances should be at hand. The employee must be heard in good faith and issues should not be prejudged.

Meetings rarely proceed in neat orderly stages but the following guidelines may be helpful:

- The Disciplinary Chair should introduce those present to the employee and explain their roles. If the employee is not accompanied the Chair should ensure that the employee knew in advance that this was his/her right and ask again if they wish someone to accompany them.
- The Chair should then explain that the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the organisation's disciplinary procedure and should explain how the meeting will be conducted
- The Chair should then state precisely what the complaint is and outline the case briefly by going through the evidence.
- The employee will then be given the opportunity to state his/her case and answer any allegations that have been made.
- There should then be time allowed for further general questions and discussions.
- The Chair should ask the employee whether there are mitigating circumstances and what their view of a way forward is.

- Either side may adjourn the meeting at any time if required for a short time.
- Finally the main points should be summarised and the Chair should ensure the employee has said everything he or she wishes to say.

The Chair will then adjourn to make a decision.

When making a decision, the Chair must consider all the facts of the case, the record and service of the employee, mitigating circumstances, and the treatment of others in similar circumstances. He or she must consider how clear AVP had made the standards expected of staff and have a reasonably held belief that the act in question was committed by the employee before any sanctions are taken.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty will be summary dismissal, i.e. dismissal without notice or pay in lieu of notice.

Issues of performance will be dealt with separately from issues of misconduct. For example, an employee should not receive a first written warning for lateness and then follow on to a final written warning for poor performance.

In most cases the outcome of the disciplinary hearing will be given to the employee following the adjournment. The Chair will also confirm the decision and the reasons for the decision in writing within five working days. The letter will also restate the employee's right to appeal

STAGE 1 –FIRST WRITTEN WARNING

If the offence is deemed serious a written warning will be issued to the employee.

For issues of poor performance it will normally be appropriate to issue an 'improvement note'. This should set out the improvement required, the timescales and review date, and the support to be given. It will warn the employee that, if there is no satisfactory improvement, further disciplinary action may be taken and it will advise the employee of his or her right of appeal. The warning will be time limited to six months. After this date if there are no further issues the warning will be disregarded for disciplinary purposes.

For issues of conduct a written warning should be given setting out the consequences of failure to improve. It will warn the employee that, if there is no satisfactory improvement, further disciplinary action may be taken and it will advise the employee of his or her right of appeal. This warning will be time limited to six months after which if there are no further issues the warning will be disregarded for disciplinary purposes.

If there is a failure to improve conduct or performance, or if the employee's misconduct is sufficiently serious to warrant only one written warning, but insufficiently serious to justify dismissal (in effect both first and final written warnings), a final written warning will normally be issued. This will give details of the allegation, will warn that dismissal will result if there is no satisfactory improvement, and will advise of the right of appeal. A copy of this final written warning will be placed on the employee's file but will be disregarded for disciplinary purposes after twelve months subject to the employee's satisfactory conduct and performance.

STAGE 3 - DISMISSAL

If conduct or performance is still unsatisfactory, and the employee fails to reach the prescribed standards whilst the previous warning is still operative, dismissal will normally result. Only the Director, in conjunction with the Board of Trustees, can take a decision to dismiss. The employee will be provided with written reasons for dismissal as required by legislation, the date on which his or her employment will terminate (in accordance with the employee's notice entitlement), and the employee will be notified of his or her right of appeal. Dismissal will normally be with notice or payment in lieu of notice. However, if dismissal is for gross misconduct then the dismissal will be without notice or payment in lieu of notice.

Alternatives short of dismissal may be considered, e.g. transfer to other duties.

Dismissal or actions falling short of dismissal must not occur without following the minimum statutory procedure. .

GROSS MISCONDUCT

In cases where an employee has committed an act of gross misconduct, AVP is entitled to dismiss an employee without notice or pay in lieu of notice. When an employee is suspected of gross misconduct he or she may be suspended on normal pay while the organisation investigates the alleged offence and arranges a disciplinary hearing.

Examples of gross misconduct are:

- violence or assault
- theft or fraud
- acts of bullying, harassment or discrimination
- a serious breach of trust or confidentiality
- a serious breach of the safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the organisation, its employees, volunteers or clients
- an inability to perform job duties through being under the influence of alcohol or drugs
- a serious act of insubordination, such as deliberate refusal to carry out proper instructions
- deliberate or reckless damage to the organisation's property
- conviction of a criminal offence that makes the employee unsuitable or unable to carry out his or her duties
- unauthorised entry to computer records or deliberate falsification of records
- a serious breach of the organisation's rules on e-mail and internet usage

This list is not intended to be an exhaustive one and only gives an indication of the types of offence that may be considered gross misconduct.

If an employee fails to attend a disciplinary hearing a second meeting may be arranged. If the employee fails to attend the second hearing, unless there are good written reasons for not attending, the disciplinary hearing will be held in their absence and the outcome communicated in writing.

APPEALS

If the employee wishes to appeal against a disciplinary decision, he or she must do so within five working days of the receipt of the disciplinary letter. The appeal should be made in writing, stating the ground(s) on which the disciplinary penalty should be reviewed.

The employee will be invited to attend the appeal hearing normally within five working days. The employee must take all reasonable steps to attend the hearing. He or she must be informed in writing of his or her right to be accompanied.

As far as is reasonably practicable at least one Trustee will hear the appeal. In the rare circumstances where this is not possible, alternative arrangements will be agreed with the employee and his or her companion.

The Chair of the appeal stage and members of the appeal panel must not have been involved in either the investigation or disciplinary hearing stages.

The decision of the Appeal Chair shall be final. After the Appeal meeting the Chair must inform the employee of the final decision in writing.

At the Appeal hearing, the employee will be given full opportunity to state the ground(s) on which the appeal is made. The Appeal Chair will then have the opportunity to explain his or her decision. An appeal hearing is not intended to repeat the detailed investigation that led to or formed part of the disciplinary hearing, but to focus on specific factors that the employee feels have received insufficient consideration, such as:

- an inconsistent/inappropriately harsh penalty
- extenuating circumstances
- bias of the Disciplinary Chair
- unfairness of the hearing
- new evidence subsequently coming to light.

When all the evidence has been heard the hearing will be adjourned. The Appeal Chair and Trustee(s) conducting the appeal will consider the merits of the appeal, in private, before reaching a decision.

The Appeal Chair will, whenever possible, verbally inform the employee of the decision reached and confirm this in writing no later than five working days after the hearing. The decision of the appeal hearing is final.

GRIEVANCES ARISING DURING THE DISCIPLINARY HEARING

The grievance procedure should not be used for appeals against disciplinary decisions, as that is the purpose of the disciplinary appeals procedure. If, however, the employee has a complaint against the behaviour of the Disciplinary Chair during the course of a disciplinary case, they may raise it as a grievance to the Director. If necessary, the Chair of Trustees, having regard to the ACAS advice on good practice, may decide to suspend the disciplinary procedure for a short period until the grievance can be considered. A different person may be brought in to deal with the disciplinary case.

Date approved by Board: 1 June 2018

Date for next review: June 2020

