

Scottish autism

Disciplinary Policy

Director Responsible

Director of Human Resources

Author

Caroline Nolan (Senior HR Business Partner)

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June 2014	Claire Brisbane	Policy review	4
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CONSULTATION AND RATIFICATION SCHEDULE

Name of Consultative Body	Date of Approval
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CROSS REFERENCE TO OTHER POLICIES / STRATEGIES

This policy should be read in conjunction with:	Detail
Policy 1	Grievance
Policy 2	Attendance Management
Policy 3	Performance Management
Policy 2	Disclosure
Policy 3	Data Protection

EQUALITY & PRIVACY IMPACT ASSESSMENTS

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APPENDICES

Appendix 1 - Investigation Report Template

Appendix 2 - Appeal Form

Appendix 3 - Flow Chart

1. INTRODUCTION / POLICY STATEMENT

Scottish Autism (the organisation) recognises the need for managers to manage their employees in a supportive, consistent and fair manner. This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct, attendance and job performance.

The aim of this policy is to ensure that all employees are aware of the procedure to be followed and their rights and obligations in respect of discipline and that disciplinary action is consistently and fairly applied across the organisation. The policy will explain the procedure which should be followed when it is necessary to take action against an employee. Ideally potential cases should be dealt with at an early stage in the hope that these issues and problems can be resolved as quickly and fairly as possible, whilst encouraging all employees to improve their standard of work / conduct / attendance. The policy is not intended primarily as a means to impose sanctions and punishment but as a means of emphasising and encouraging the attainment of good standards of individual conduct.

2. KEY PRINCIPLES

The main principles that strengthen our approach:

- Employers and employees should - raise and deal with issues promptly and act consistently
- Informal processes will be used where appropriate, to resolve issues of misconduct, behaviour and performance.
- No disciplinary action will be taken against any employee until the case has been fully investigated.
- Employees should be informed of the basis of the problem giving them opportunity to state their case before any decisions are made. Any concerns about misconduct or behaviour will be dealt with fairly, consistently and as quickly as possible.
- Managers must always make sure that action and decisions are objectively taken and are non-discriminatory.
- Employees have the right to be accompanied during a formal investigation meeting, disciplinary hearing or appeal.
- Employees have the right to appeal against any formal disciplinary action taken including dismissal.

3. SCOPE

This policy applies to all staff employed by the organisation.

4. EMPLOYEE RESPONSIBILITIES

All employees have a responsibility to:

- Take full accountability for their actions and inactions.
- Maintain expected levels of attendance, conduct and performance at work.

- Make every effort to attend and participate in relevant meetings and advise of this attendance in a timely manner.
- Comply with the organisation's policies and procedures.
- Maintain an appropriate standard of behaviour acceptable to management and other employees.

5. INFORMAL DISCIPLINARY PROCEDURE

When an incident arises the manager should contact their relevant HR Business Partner to discuss the case. It is not always appropriate for managers to use the disciplinary procedure in the first instance. Managers should carry out a fact finding exercise to gain a better understanding of the situation. At this stage the employee does not have the right to be accompanied. Informal meetings are not formal investigation meetings or disciplinary hearings, however if at any point during the meeting it becomes apparent that the situation is more serious than originally expected, the meeting should be adjourned it should be made clear to the employee that the situation may be pursued through the formal disciplinary procedure. A formal investigation meeting will be arranged to investigate further.

All informal meetings must be recorded within the employee's supervision records, which must be signed off by the line manager and the employee. If an informal warning is issued details of the action and what targets are necessary to improve the performance / conduct / attendance must be documented. These meetings can be referred to if further incidents occur and may result in disciplinary action.

6. MEDIATION

Mediation is used on occasion, when informal action has not resolved an issue and possibly as a recommendation following formal procedures.. Mediation is completely voluntary and confidential and involves an independent, impartial person helping two or more parties reach a decision that is acceptable to both parties. This would be undertaken within prescribed time limits. A representative from HR will take the role of mediator in most instances, however a manager from another service area trained in mediation may also take on this role. Both parties are required to participate in the mediation process.

7. RIGHT TO BE ACCOMPANIED

All employees have the right to be accompanied by a Trade Union representative, employee representative or work colleague during any formal investigation, disciplinary or appeal hearing, however they cannot act in a legal capacity and must not be a family member. The employee should advise the relevant manager if they will be accompanied and it is the employee's responsibility to arrange for their representative to be present at any **formal** stage of the procedure. The representative must have no involvement in the alleged allegation(s) to prevent a conflict of interest. If the representative is unavailable on the proposed date of the hearing the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date. The role of the representative is to support and advise the employee. They are not permitted to answer questions on the employee's behalf, but they will have the opportunity to ask questions on behalf of the employee and can confer with the employee during the meetings.

8. FORMAL INVESTIGATION

All allegations of misconduct / gross misconduct must be fully investigated before any disciplinary action is considered. The investigation will establish the facts promptly to enable a decision to be made as to whether the matter needs to proceed to a formal disciplinary hearing or whether another course of action is more appropriate. The employee should be made aware that these meetings are not disciplinary hearings. The investigating officer will normally be the employee's line manager, however if they are involved in any way with the matter, another manager must conduct the investigation. An investigating officer cannot be a member of the disciplinary panel if the case goes to a formal hearing. The relevant HR Business Partner should be advised of all potential cases before the investigation process begins.. If an employee advises they are unfit to attend an investigation meeting, occupational health advice should be sought. The organisation needs to ensure that the investigation process is completed within a reasonable timeframe; therefore if an employee continues to advise they are unable to attend, the organisation reserves the right to conclude the investigation in their absence or with the submission of a statement and make appropriate recommendations to whether or not a disciplinary hearing is required.

9. DISCIPLINARY HEARING

No disciplinary action will be taken against an employee until the case has been fully formally investigated.

On completion of the investigation, if disciplinary proceedings are recommended by the Investigating Officer, the relevant HR Business Partner will arrange for a disciplinary hearing to commence as soon as possible. The employee will be informed of this in writing and will be given 4 days' notice, including all statements and information relating to the allegation which will be referred to during the disciplinary hearing.

If the employee wishes to call witnesses, they must arrange for the witnesses to attend the hearing and ensure permission has been given from the relevant line manager for the release of witnesses. The employee must inform the Chairperson of any witnesses they intend to call. If witnesses are called by either party reasonable notice must be given.

All parties involved in the hearing must make every effort to attend. If there is good reason why the employee is unable to attend the hearing it will be rescheduled to a later date which the employee and their representative can attend. If the employee fails to attend the rearranged hearing, it will proceed in their absence with a decision being made based on the evidence provided, Alternatively if the employee was due to be accompanied then there would be an opportunity for the representative to present the employees case on their behalf. Where an employee submits a fit note during the formal process, a referral will be made to Occupational Health to ensure the employee is fit to attend meetings in relation to the allegation(s).

10. DISCIPLINARY ACTION

- Repeated cases of misconduct or poor performance will be dealt with through the formal procedure.

- The disciplinary procedure may be implemented at any stage if the employee's misconduct warrants this.

Stage one: Verbal Warning

In matters of minor misconduct / performance concerns / poor attendance or when a manager feels informal measures have been ineffective, a verbal warning may be appropriate, following the above disciplinary procedure. It will be made clear to the employee which standards of work or rules are not being met, the improvement required and the date by which it is expected. Opportunities for any necessary training and a date for review of progress will be arranged. A letter confirming the outcome of the hearing will be sent to the employee within 5 working days and will be kept on the employee's file for 6 months. The record will be destroyed after 6 months subject to satisfactory conduct / performance / attendance.

Stage two: Written Warning

For a more serious offence or where an employee's performance / conduct / poor attendance is not improving following a verbal warning and where the verbal warning is live a written warning may be given. It may also be issued where the nature of the offence is such that it is deemed appropriate to exclude all previous stages of the disciplinary procedure. At the disciplinary hearing the Chairperson will outline the misconduct and allow the employee to state their case. Opportunities for any necessary training and a date for review of progress will be arranged. A letter confirming the warning will be sent to the employee within 5 working days and will be kept on the employee's file for 12 months. The record will be destroyed after this time subject to satisfactory conduct / performance / attendance.

Stage three: Final Written Warning

When a manager is satisfied that an employee's performance / conduct / poor attendance is not improving following a formal written warning, a final written warning may be issued. It may also be issued where the nature of the offence is such that it is deemed appropriate to exclude all previous stages of the disciplinary procedure. At the disciplinary hearing the Chairperson must outline the misconduct and allow the employee to state their case. Opportunities for any necessary training and a date for review of progress will be arranged. A letter detailing the warning will be sent to the employee within 5 working days. The employee will be informed that further misconduct may lead to their dismissal.

A record of this warning will remain on the employee's file for 12 months. The record will be destroyed after this time subject to satisfactory conduct / performance / attendance.

Stage four: Dismissal

If an employee's conduct / performance / poor attendance has not improved following a final written warning, this will result in the dismissal of the employee. Dismissal will be considered where there has been an opportunity to improve together with targets and timescales that have previously been given.

However where an employee commits a single error due to negligence and the actual, or potential, consequences of that error are, or could be extremely serious warnings may not be appropriate and summary dismissal may be considered. Whilst summary dismissal may be appropriate in cases of gross misconduct it is not automatic and other levels of action may be considered more appropriate.

The employee will be issued with a letter within 5 working days which will include:

- the date the employment has ceased
- details of any outstanding monies (e.g. Notice or Holiday Pay)
- an instruction to return organisation property
- notification of the relevant professional body (if applicable)
- the reasons for the termination of employment and appeal details.

Alternative Disciplinary Actions

In exceptional circumstances demotion may be applied but it must be offered as an alternative to dismissal and accepted by the employee. In case of demotion there will be no protection of earnings and this would be applied along with a final written warning. The employee must be offered the demotion in writing.

11. SUSPENSION

In certain circumstances, consideration will be given to a period of suspension from duties. Such suspension will occur where the alleged offence could be considered to constitute gross misconduct, where relationships have broken down or where there are risks to the organisation / service users / colleagues / property. In such circumstances the Regional Manager, Services Manager or Department Manager may immediately suspend the employee from work on full pay while the investigation proceeds. However the relevant Director must be contacted to authorise the suspension.

A decision to suspend will be confirmed in writing as soon as reasonably practicable outlining the allegation(s) and emphasising that it is primarily to enable the investigation to take place and it is not a disciplinary measure.

The period of suspension will be as short as possible and will be kept under review by the Regional / Department Manager and relevant Director.

A suspension from work with pay will be honoured for a maximum of 3 months, after the 3 month period the suspension will not be paid. Suspension is a precautionary measure to facilitate a thorough investigation and is not a disciplinary sanction.

Police investigations or investigations by other relevant external professional bodies are out with the control of the organisation however the organisation will endeavour to support the process where reasonably practicable to prevent any unnecessary delays.

It is the responsibility of the investigating officer to remain in regular contact with an individual who is suspended from work. Updates on the progress of the case must be given as well as expected time frames as to how long the investigation process will take.

During suspension, the employee should only maintain contact with the investigating officer or HR and not make contact with service users or other employees. The employee will not have access to any organisational systems during their suspension and should return any keys if applicable.

12. MISCONDUCT

Misconduct will not result in dismissal for a first offence. However dismissal may occur if the employee has previous live warnings on record. The following are examples of general disciplinary offences that are regarded as misconduct:

- Poor timekeeping or unauthorised absences
- Unacceptable levels of absence
- Refusal to carry out a reasonable instruction
- Negligence or abuse causing injury or damage to property
- Neglect or unsatisfactory standards in performance of duties
- Offensive or disorderly behaviour
- Insubordination or using abusive language
- Leaving the workplace without permission or due cause
- Smoking in areas designated as non-smoking
- Knowingly obstructing a disciplinary investigation

13. GROSS MISCONDUCT

Gross Misconduct is misconduct that is so serious that the organisation is justified in no longer accepting the continued presence of the employee at the place of work. If gross misconduct is proven, the result will normally be summary dismissal without notice or payment in lieu of notice. Examples of gross misconduct include:

- Theft, fraud, deliberate falsification of records
- Failure to follow financial procedures
- Exposing a service user or pupil to risk
- Physical violence, assault on another person
- Deliberate and serious damage to organisation property
- Serious misuse of the organisation's property or name
- Incapability through alcohol or being under the influence of illegal drugs
- Serious breach of health and safety regulations
- Serious negligence which causes unacceptable loss, damage or injury
- Serious act of insubordination
- Unlawful discrimination or harassment
- Bringing the organisation into disrepute
- Criminal offence, whether committed on or off duty which is of such a nature that it fundamentally breaches the trust which is the basis of the contractual relationship
- Serious breach of organisational policies and procedures e.g. IT Policy

The above lists are not exhaustive.

14. REPORTING TO PROFESSIONAL BODIES

Where appropriate, the organisation will report the outcome or findings of an investigation or disciplinary hearing relating to a serious act of misconduct to the Care Inspectorate and the Scottish Social Services Council. It is the Chairperson's responsibility to ensure that both bodies are updated immediately. Cases of dismissal must be reported to Disclosure Scotland. Again this is the responsibility of the Chairperson.

15. APPEAL PROCESS

Any disciplinary procedure, which is to be considered fair and reasonable by an Employment Tribunal, must provide employees with the right to appeal against disciplinary decisions taken against them. An employee who wishes to appeal against any disciplinary action must complete the appeal form (appendix 2) and submit to the appropriate Manager within 10 working days of receipt of receiving the letter detailing the disciplinary action.

The appeal is not a rehearing of the original disciplinary, but rather a consideration of the specific areas with which the employee is dissatisfied in relation to the original disciplinary action or outcome or consideration of new evidence. The manager conducting the appeal may therefore confine discussion to those specific areas. The employee will have the right to be accompanied by a colleague or trade union official. The employee will be notified of the appeal hearing in writing giving the employees 4 working days' notice to prepare. .

A suitable and independent manager will hear the appeal this will normally be the relevant Director. The outcome of the appeal will be final and will be notified to the employee in writing within 5 working days.

16. COMMUNICATING THE OUTCOME OF AN INVESTIGATION/ DISCIPLINARY HEARING

Information regarding the outcome of either a formal disciplinary investigation or a formal disciplinary hearing will only be disclosed on a need to know basis. Not all parties involved in the processes will be informed. The individual who raises the allegations and any witnesses involved do not have the right to know the outcome unless there are specific reasons for doing so.

17. GRIEVANCE AND DISCIPLINARY AT THE SAME TIME

Where an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues at the same time.

18. OFFENCES OUTSIDE WORK AND NORMAL EMPLOYMENT

Certain alleged offences may constitute criminal acts and may lead to police involvement. An employee must inform their line manager immediately if arrested, cautioned by the police, made the subject of criminal proceedings, convicted of a criminal offence or committed a traffic offence whilst on duty. The facts of the case will be established through the formal investigation procedure and establish whether the matter is serious enough to be taken through the formal procedure. Any information disclosed will be treated in the strictest of confidence and considered within the context of the employee's job. Failure to disclose such information may result in disciplinary action being taken. The main consideration will be whether the offence or alleged offence is one that makes the employee unsuitable for the type of work they are required to undertake.

In the event that the organisation becomes aware of information concerning the conduct or behaviour of any employee, that it believes could bring the organisation into disrepute, or in the event that an incident demonstrates unsuitability for further employment then the disciplinary process may be triggered. The organisation reserves the right to instigate the disclosure process in accordance with this policy.

19. RECORDS

Records of all formal disciplinary hearings must be kept on the employee's HR file for the timescales specified. These records will be confidential and retained in accordance with the disciplinary procedure and the Data Protection Act 1998 or pending reforms to this legislation.

20. MONITORING AND REPORTING

Compliance and effective implementation of this policy will be monitored by the Human Resources department.

21. IMPLEMENTATION AND TRAINING

It is important that all managers know clearly what is required of them when dealing with conduct, job performance and attendance issues and deal with the process in a consistent manner. The organisation will therefore ensure that an up to date copy of this Policy and Procedure are available for all employees to access on Source. Training on the disciplinary process will be provided to all managers to ensure that they are aware of their responsibilities under this policy and procedure. The contract of employment makes reference to this policy therefore it is important that individuals ensure they are familiar with the content of this policy.

22. POLICY REVIEW STATEMENT

This policy will be reviewed every three years or earlier if appropriate.