

## DISCIPLINARY PROCEDURE

This Disciplinary Procedure is for the employees of Cameron & Cooper limited, trading as The Beech House, Willow Lodge, Cherry Blossom, and The Beech House School. The Procedure is designed to help employees achieve and maintain acceptable standards of work, attendance and conduct and explains the course of action to be followed where standards are not being met. Its primary objective is to assist and encourage employees to become involved in the procedure to meet their required improvements.

This Disciplinary Procedure complies with the ACAS Code of Practice on Disciplinary Procedures and is indicative of how we wish to deal with disciplinary matters where an employee has passed their probationary period and been confirmed in post. The Disciplinary Procedure does not, however, constitute a contractual right. The disciplinary procedure is specifically designed for capability or conduct issues and may not be relevant to other legal reasons for dismissal. For anything unrelated to capability or conduct, please refer to the 'Some other Substantial reason' procedure.

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### 1. PRINCIPLES

In many cases the right word at the right time and in the right way may be all that is needed and a satisfactory method of dealing with a breach of discipline or unsatisfactory conduct. In those circumstances this Procedure will not be used.

No disciplinary action will be taken against an employee until the case has been fully investigated. If an employee has been with the company less than 2 years, the full disciplinary process does not need to be followed.

At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

The employee will have the right to be accompanied by a trade union representative or work colleague at any formal meeting or hearing.

Usually, an employee will not be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty will be dismissal without notice or payment in lieu of notice.

An employee will have the right to appeal against any disciplinary penalty imposed.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

## 2. PROCESS

Managers and Shift Leaders are responsible for the day-to-day management of staff, which includes raising matters of concern in relation to staff capability or conduct.

### 2.1 INFORMAL PROCEDURE

In many cases the right word at the right time and in the right way may be all that is needed and a satisfactory method of dealing with a breach of discipline or unsatisfactory conduct. In those circumstances the Informal Procedure will be used first. This informal conversation should contain the following aspects:

- 1) Private conversation with staff involved.
- 2) Listen to point of views
- 3) Agree improvements or actions moving forwards
- 4) Set a training, development or performance support plan or support mechanisms to be implemented (depending on the matters raised).

This must be followed up with an email to the employee, confirming what was discussed. HR should be copied in on these emails.

Performance can also be dealt with during supervisions, where again anything discussed must be recorded on the supervision form and sent to HR to be placed in the employment Folder.

If work or conduct still fails to meet acceptable standards, where a disciplinary matter arises and it is considered that action beyond counselling or normal line management supervision or there is an occurrence of gross misconduct, the matter will be dealt with under the formal disciplinary procedures.

### 2.2 FORMAL DISCIPLINARY PROCEDURE

**Note:** Where there are any child protection concerns or allegations against staff, no formal procedures may be taken without the agreement of relevant Child Protection agencies or the Local Authority Designated Officer (LADO/designated officer or team of officers).

If there are persistent occurrences of misconduct or issues of capability and competence, where a disciplinary matter arises and it is considered that action beyond counselling or normal supervision is appropriate, or there is an occurrence of gross misconduct, the Responsible Individual or service manager must be consulted before taking any formal action.

A disciplinary hearing and any sanction shall not be convened/imposed until the circumstances of the case have been fully investigated by an individual who has not been involved in the matters relevant to the allegation (the individual responsible for investigation is called an 'Investigating Officer').

In some circumstances, e.g. where all the facts are known and not disputed, the process for investigation and hearing can be undertaken quickly/on the same day – so long as the process is fair.

The Investigating Officer should be a neutral person/manager; if this is not possible, the Investigating Officer should ensure that they seek independent advice; especially in cases of serious or gross misconduct.

Where disciplinary proceedings are instigated following an investigation and where evidence about an employee's alleged misconduct has been obtained from third parties in the form of written statements, either the statements themselves or a summary of their content will be given to the employee. However, the Company reserves the right to conceal the identity of any or all of the parties if there is a legitimate reason to do so, such as where there may be a risk to the safety of others if the identity of witnesses is disclosed. In those circumstances, the Company will consider providing a summary of the information to the employee.

When an investigation is complete the report compiled by the Investigating Officer will be considered by the Responsible Individual or service manager, who will determine whether based on the evidence a disciplinary hearing should be arranged.

If, following a formal investigation, a disciplinary hearing is not deemed to be warranted, the employee will be informed in writing of the outcome of the investigation and why the allegations will not be pursued through the disciplinary procedure.

### 3. DISCIPLINARY SANCTIONS

The following sanctions may only be imposed following an investigation and hearing (see below) and must be imposed as indicated but are not necessarily sequential. When a disciplinary sanction is imposed, account will be taken of any 'live' disciplinary warning previously imposed on the employee. Management reserve the right to review and amend the period of 'Live' warnings following a review of individual cases, in line with findings from investigations.

Disciplinary Action	Period of 'live' warning
1st Written Warning	A minimum of 12 months
Final Written Warning	A minimum of 18 months
Transfer and/or demotion accompanied by a Final Written Warning	A minimum of 18 months
Dismissal	N/A

Warnings will normally be disregarded after the expiration of their term. However, they will not be disregarded if a subsequent warning is issued in relation to further misconduct (of whatever nature) which occurs whilst a warning is 'live'. If the date the 'live' warning is due to expire is prior to the date the formal disciplinary hearing is due, the live warning maybe considered even if the meeting occurs after the date of expiry.

**Note:** Warnings issued to employees relating to their conduct in regard to the young people, will be retained on their HR file. In the event of further misconduct relating to young people, any relevant retained warnings will be considered.

#### **4. SUSPENSION**

Suspensions of staff must be approved by the Responsible Individual or Service Manager and Quality Assured by HR.

Where suspension is appropriate the employee will be suspended from work on contractual pay i.e. pay inclusive of payments which would have been made in respect of the employee's normal working arrangements whilst the matter is investigated.

Any suspended employee submitting a sickness absence certificate shall still be deemed suspended. Any employee who is absent due to sickness during the course of disciplinary proceedings or during investigations into alleged breaches of rules, procedures or contractual obligations, will not be entitled to sickness payment from the Company (other than SSP).

Written confirmation of the suspension should be forwarded to the employee as soon as possible and within three working days. The confirmation will state the reason for the suspension.

The need to continue with the suspension of an employee shall be reviewed on a regular basis by the Responsible Individual or Service Manager and quality assured by HR. The suspended employee must be advised of progress.

The suspended employee must be available during normal working hours if required to be so by the Company. Suspended employees are reminded that all other conditions of service continue to apply whilst suspended, e.g. regarding reporting of sickness, applications for leave, working elsewhere for other agencies etc. Consequently, permission for any matters which would ordinarily require prior approval must be granted by management in the normal manner.

If a member of staff is suspended or otherwise moved from working with children resulting from an allegation of abuse or occurrence of other serious incident, a Regulation 40 must be submitted and the LADO/designated officer or team of officers must be consulted with a view to referring the member of staff to The Disclosure and Barring Service (DBS). This applies even if the allegation/suspicion is on the face of it unfounded.

#### **5. ARRANGING A DISCIPLINARY HEARING**

If after investigating the evidence it is decided that disciplinary action is appropriate, a disciplinary hearing will be arranged.

The employee will normally be given a minimum of 2 clear working days' notice of the hearing (although this period of notice may be varied if appropriate and with the consent of both parties).

If, for good reason, the employee is unable to attend the hearing, every effort should be made with the employee and his/her representative to agree a mutually suitable date for a rearranged hearing.

If there is no alternative but for the hearing to proceed in the absence of the employee, any written submissions made by the employee will be considered.

#### **6. DISCIPLINARY HEARING PROCESS**

The decision about who will conduct disciplinary hearings will be made by the Responsible Individual or service manager in consultation with the Home's Manager. The person who conducts the hearing must be at Deputy Manager level or above and, wherever possible, should not have undertaken the investigation and should not be lower graded than the employee subject to the disciplinary proceedings.

Before any disciplinary hearing takes place, the employee will be told in writing of the allegations/complaints, and the basis of those allegations. The employee will also be provided with copies of any relevant documentary evidence. The employee will be given a reasonable opportunity to consider his or her response to that information.

HR should arrange for a representative to be present and ensure that the procedure is fair and consistent. The Manager chairing the disciplinary hearing should introduce who is in attendance at the meeting and why, explain the purpose of the hearing and briefly state how it will be conducted.

Where the individual responsible for investigation is different from the chair of the meeting, they should state precisely what the complaint is and outline the case by going through the evidence that has been gathered. This will be presented in writing to the Manager chairing the meeting.

The employee will be invited to state his or her case, ask questions and present evidence (including witness statements) in answer to the allegations made.

The Manager conducting the hearing shall be entitled to question and discuss evidence presented at any time in order to establish all the facts.

The individual responsible for investigation and the employee will be entitled to make a closing statement in summation. The parties shall then adjourn, withdraw from the meeting and the Manager (assisted by any advisory staff) shall consider all the evidence presented with a view to arriving at a recommendation, which is reasonable in all the circumstances. In some cases, it may be necessary to defer making a recommendation on that day to give a longer period of consideration. When the recommendation is finally made, it shall be discussed with the Responsible Individual or service manager, who will make the final decision and notify the staff member verbally and in writing within five working days of the disciplinary hearing.

## 7. TERMINATION OF EMPLOYMENT

Any decision to terminate an employee's contract must be made by the Responsible Individual or in their absence by the service manager.

If an employee's contract is terminated on the grounds of mistreatment or abuse of a child, a Regulation 40 must be submitted and the Disclosure and Barring Service (DBS) should be notified, in consultation with the Placing Authority, Regulatory Authority and Local Authority Designated Officer (LADO/designated officer or team of officers) in the area where the home is located.

For more information about the circumstances which may result in a referral, and the process for making a referral, go to [The Disclosure and Barring Service \(DBS\) website](#).

**Note:** If a member of staff is not suspended but is moved to another post, leaves of his/her own accord, retires or hands in their notice as a result of an allegation of abuse or occurrence of other serious incident, a Regulation 40 must be submitted and the LADO/designated officer or team of officers must be consulted with a view to referring the member of staff to The Disclosure and Barring Service (DBS). This applies even if the allegation/suspicion is on the face of it unfounded.

## 8. APPEALS PROCEDURE

An employee has the right to appeal against any disciplinary sanction and must do so, in writing, within 10 working days of receiving written notification of the disciplinary sanction. All notices of appeal must be submitted to HR and the Responsible Individual or the service manager stating the grounds on which the disciplinary penalty should be reviewed and enclose any relevant documentation in connection with the same.

An appeal hearing will then be convened. Where practicable the appeal hearing will be heard within 10 working days of receipt of the letter of appeal unless mutually agreed otherwise. The employee

shall be given advance notice in writing of the time and place of the hearing and will have the right to be accompanied by a fellow work colleague or trade union representative of his/her choice.

Employees should note that an appeal hearing is not intended to repeat the detailed investigation of the disciplinary hearing, but to focus on specific factors which the employee feels have received insufficient consideration and which constitute the employee's grounds of appeal. This may include matters such as:

- An allegedly inconsistent, inappropriate or excessively harsh penalty;
- Extenuating circumstances; or
- New evidence subsequently coming to light.

The appeal will normally be heard by a member of management who has not been involved so far. In exceptional circumstances where this is not possible, alternative arrangements may be made. HR/Specialist assistance should be sought throughout.

When all the evidence has been heard the appeal hearing will be adjourned. The manager conducting the appeal will consider the merits of the appeal, in private, before reaching a recommendation, which should be discussed with the Responsible Individual and HR.

The manager of the appeal hearing will, whenever possible, inform the employee of the decision reached and the reasons for it in writing no later than 5 days after the hearing. The manager of an appeal hearing has the authority to quash or reduce a disciplinary penalty, but it cannot be increased.

Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.

Once an appeal against disciplinary action has been considered, no further rights of appeal will be allowed.

## **9. EXAMPLES OF UNACCEPTABLE CONDUCT**

The following lists are neither exhaustive nor exclusive but is indicative of types of misconduct and gross misconduct.

### **9.1 MISCONDUCT**

1. Regular lateness or failure to arrive for work or missing meetings;
2. Regular failure to follow employment rules e.g. reporting absence;
3. Regularly failing to follow agreed/approved daily routines within the home;
4. Regularly failing to follow/adhere to Children's Placement Plans or behaviour support plans;
5. Refusal to obey a reasonable instruction of a Senior or Management;
6. Negligence at work leading to loss, damage or wastage of company property;
7. Minor acts of discrimination/harassment against an employee, young person, visitor or member of the public, on the grounds of sex, race, ethnic origin, nationality, ethnic origin, age, sexual orientation, gender reassignment, marital or civil partnership status, pregnancy, maternity, religion or belief or disability;

8. Improper, disorderly or unacceptable conduct at, during or when arriving or leaving for work;
9. Wilfully inadequate work performance or non-adherence to the home's philosophy or ethos;
10. Abusive or threatening behaviour towards a member of the public, or fellow employees.
11. Failing to adhere to the Beech House's code of conduct, its policies and procedures.

## 9.2 GROSS MISCONDUCT

1. Persistent occurrences of misconduct, after a final written warning has been issued;
2. Prolonged unauthorised absence from work (at least 5 working days without contact);
3. Inappropriate conduct or abuse towards or contact with the public, young people and/or fellow employees;
4. Consumption of alcohol or use of controlled drugs at work or being incapable of adequately performing duties as a result of the abuse of alcohol or drugs;
5. Unauthorised removal and use of company property;
6. While purporting to be absent sick, working or indulging in activities, which are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery;
7. Theft or misappropriation of, or failure to account for, or falsely claiming entitlement to, the property, assets or funds of the Company its employees or young people;
8. Failure to report or record any matter which it is the employee's contractual duty (either expressed or implied) to report;
9. Fighting or acts of violence at the workplace, serious threatening or abusive behaviour towards members of the public, young people, fellow employees;
10. Criminal offences outside work (including fraudulent activities such as claiming Housing Benefit or unemployment benefit etc.) which may affect the individual's employment suitability;
11. Serious discrimination/harassment against a member of the public, employee, visitor or young person on the grounds of sex, race, nationality, ethnic origin, age, sexual orientation, gender reassignment, marital or civil partnership status, pregnancy, maternity, religion or belief or disability;
12. Falsification of documents likely to be of financial benefit to the employee or other persons e.g. time sheets, bonus/expense claims, qualifications etc.;
13. A serious breach of the Safeguarding Procedures;
14. Obtaining employment by lies or deception in the course of selection procedures;
15. Making a false claim under any of the Company's policies and/or procedures;
16. A serious breach of the Company's Code of Conduct.

The above list is neither exhaustive nor exclusive but is indicative of the types of misconduct and gross misconduct.