



# **CAPABILITY, DISCIPLINARY & GRIEVANCE POLICY**

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# **1. CAPABILITY & CAPABILITY DISMISSAL PROCEDURE**

## **1.1 Introduction:**

**1.1.1** We recognise that during your employment with us your capability to carry out your duties may vary or become compromised. This can be for a number of reasons, the most common being that the job changes over a period of time and you fail to keep pace with the changes, or you change (most commonly because of health reasons) and you can no longer cope with the work.

## **1.2 Job Changes:**

**1.2.1** If the nature of your job changes we will make every effort to ensure that you understand the level of performance expected of you, as outlined in your job description and work-plan, and that you receive adequate training and supervision. If we have concerns about your capability to carry out your specified duties, these will be discussed in an informal manner and you will be given time to improve.

**1.2.2** If your standard of performance is still not adequate you will be warned in writing that a failure to improve and to maintain the performance required could lead to further action. We will also consider the possibility of a transfer to more suitable work within NE Youth.

**1.2.3** If there is still no improvement after a reasonable time and we cannot transfer you to more suitable work, you will be issued with a final warning that you will be dismissed unless the required standard of performance is achieved and maintained within the agreed period.

**1.2.4** If such improvement is not forthcoming after an agreed period of time, you will be dismissed with the appropriate notice.

### **1.3 Personal Circumstances:**

**1.3.1** Personal circumstances may arise which do not prevent you from attending for work but which prevent you from carrying out your normal duties (e.g. a lack of dexterity or general ill health). If such a situation arises, we will normally need to have details of your medical diagnosis and prognosis so that we have the benefit of expert advice. Under normal circumstances this can be obtained by us asking your own doctor for a medical report. Your permission is required before we can obtain such a report and we will expect you to co-operate in this matter should the need arise. When we have obtained as much information as possible regarding your condition and after consultation with you, a decision will be made about your future employment with us in your current role, or where circumstances permit, in a more suitable role.

**1.3.2** There may also be personal circumstances which prevent you from attending work, either for a prolonged period(s) or for frequent short absences. Under these circumstances we will need to know when we can expect your attendance record to reach an acceptable level. This may again mean us asking your doctor for a medical report or by making whatever investigations are appropriate in the circumstances. When we have obtained as much information as possible regarding your condition, and after consultation with you, a decision will be made about your future employment with us in your current role or, where circumstances permit, in a more suitable role.

## **2. DISCIPLINARY & DISCIPLINARY PROCEDURES**

### **2.1 Introduction:**

**2.1.1** It is necessary to have a minimum number of rules and procedures that everyone understands in the interests of the whole organisation.

**2.1.2** The rules set standards of performance and behaviour whilst the procedures are designed to help promote fairness and order in the treatment of individuals. It is our aim that the rules and procedures are fair and should emphasise and encourage improvement in the conduct of individuals, where they are failing to meet the minimum standards, and not be a means of punishment.

**2.1.3** Every effort will be made to ensure that any action taken under this procedure is fair, with you being given the opportunity to state your case against any decision that you consider to be unjust.

**2.1.4** The following rules and procedures should ensure that:-

- a the correct procedures are used;
- b you are fully aware of the standards of performance and behaviour required of you;
- c disciplinary action, where necessary, is taken in a timely, fair, uniform and consistent manner;
- d you will only be disciplined after careful investigation of the facts and the opportunity to present your side of the case. On some occasions temporary suspension on full pay may be necessary in order that an uninterrupted investigation can take place. This must not be regarded as disciplinary action or a penalty of any kind;
- e you have the right to be accompanied by a fellow employee, trade union representative or friend who may act as a witness or speak on your behalf, at all stages of the formal disciplinary process;

- f you will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct;
- g if you are disciplined, you will receive an explanation of the decision and any penalty imposed; and
- h you will have the right to appeal as set out in this procedure.

## **2.2 Disciplinary Rules:**

**2.2.1** It is not practicable to specify all disciplinary rules or offences that may result in disciplinary action, as they may vary depending on the nature of the work. In addition to the specific examples of unsatisfactory conduct, misconduct and gross misconduct, a breach of other conditions, procedures, rules etc. within this or other organisation policies will also result in the disciplinary procedure being used to deal with such matters.

## **2.3 Rules Covering Unsatisfactory Conduct And Misconduct:**

(these are examples only and not an exhaustive list)

**2.3.1** You will be liable to disciplinary action if you are found to have acted in any of the following ways:-

- a failure to abide by the general health and safety rules;
- b objectionable or insulting behaviour, sexual harassment, harassment, bullying or bad language;
- c consumption of alcohol, or being under the influence of alcohol and/or illegal drugs whilst at work; smoking or vaping in designated non-smoking areas;
- d persistent absenteeism and/or lateness;
- e unsatisfactory standards or output of work;
- f rudeness towards service users, members of the public or other employees
- g failure to devote the whole of your time, attention and abilities to our organisation and its affairs during your normal working hours;

- h failure to carry out all reasonable instructions or follow our rules and procedures;
- i unauthorised use or wilful negligence, damage or loss of our property;
- j failure to report immediately any damage to property or premises caused by you;
- k the use of any vehicles for the purposes of NE Youth work without authorisation;
- l failure to report any incident whilst driving our vehicles, whether or not personal injury or vehicle damage occurs;
- m if your work involves driving, failure to report immediately any type of driving conviction, medical condition which affects your ability to drive, or any summons which may lead to your conviction;
- n carrying unauthorised passengers in a vehicle or the use of a vehicle for personal gain;
- o failure to report the loss of your driving licence where driving on public roads forms an essential part of the duties of the post; and
- p the use of any equipment or asset of the organisation for personal gain.

## **2.4 Serious Misconduct:**

**2.4.1** Where one of the unsatisfactory conduct or misconduct rules has been broken and if, upon investigation, it is shown to be due to your extreme negligence and/or has a serious or substantial effect upon our operation or reputation; you may be issued with a final written warning in the first instance.

## **2.5 Rules Covering Gross Misconduct:**

(these are an example only and not an exhaustive list)

**2.5.1** You will be liable to summary dismissal if you are found, in the course of your duties, to have acted in any of the following ways:-

- a grossly indecent or immoral behaviour, deliberate acts of discrimination in relation to the 9 protected characteristics outlined in the Equality Act 2010. The protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender); and sexual orientation;
- b violent behaviour, fighting or physical assault;
- c incapacity at work or poor performance caused by alcohol or drugs;
- d deliberate falsification of any records (including time sheets, absence records and so on, in respect of yourself or any fellow employee);
- e undertaking private work in working hours without express permission;
- f working in competition with us;
- g taking part in activities which result in adverse publicity to ourselves;
- h theft or unauthorised possession of money or property, whether belonging to us, service user, or a third party;
- i destruction/sabotage of our property or premises, or any property on the premises in which you carry out our duties.
- j serious breaches of health and safety rules that endanger the lives of, or may cause serious injury, to employees or any other person;
- k interference with, or misuse of, any equipment for use at work that may cause harm;
- l gross insubordination and /or continuing refusal to carry out legitimate instructions;
- m maltreatment of service users or others;
- n failure to report an incident of abuse or mistreatment, or suspected abuse or mistreatment of a service user, in line with the organisation's Child Protection & Safeguarding Policy;
- o abandoning duty without notification;

- p wilful misrepresentation at the time of appointment including:
- \* previous positions held
  - \* qualifications held
  - \* falsification of date of birth
  - \* declaration of health
  - \* failure to disclose a criminal conviction/caution within the provisions of the Rehabilitation of Offenders Act;
  - \* employment status to work in the UK
- q wilful misrepresentation at any time during employment in connection with qualifications held;
- r deliberate disclosure of privileged confidential information to unauthorised people; or breach of the Data Protection policy;
- s maliciously making allegations under the organisation's policies and procedures against an individual;
- t Covert or unauthorised recording of meetings;
- u any of the above actions carried out, outside of your normal duties, which brings the organisation's reputation into disrepute, may result in disciplinary action in line with the procedure.

## 2.6 Disciplinary Procedure:

2.6.1 Disciplinary action taken against you will be based on the following procedure:-

Offence	First Occasion	Second Occasion	Third Occasion	Fourth Occasion
Unsatisfactory conduct	Formal verbal warning	Formal Written warning	Final written warning	Dismissal
Misconduct	Formal Written warning	Final written warning	Dismissal	
Serious Misconduct	Final written warning	Dismissal		
Gross Misconduct	Dismissal			

2.6.2 You may receive a final written warning as the first course of action, if, in an alleged gross misconduct disciplinary matter, upon investigation, there is shown to be some level of mitigation resulting in it being treated as an offence just short of dismissal.

2.6.3 If a disciplinary penalty is imposed it will be in line with the procedures outlined above, which may encompass a formal written warning, final written warning or dismissal, and full details will be given to you.

2.6.4 In all cases warnings will be issued for misconduct, irrespective of the precise matters concerned. Further breach of the rules during the period in which the rules are active may be treated as further disciplinary matters and allow the

continuation of the disciplinary process, through to dismissal, if the warnings are not heeded.

## **2.7 Disciplinary Authority:**

**2.7.1** The operation of the disciplinary procedures contained in the previous section is based on the following authority at the various levels of disciplinary action.

	<b>Person Authorised to take Disciplinary Action in the case of:</b>	
	<b>Chief Executive</b>	<b>Other Employees</b>
<b>Formal verbal warning</b>	Chairman	Line Manager
<b>Formal written warning</b>	Chairman	Chief Executive
<b>Final written warning</b>	Chairman	Chief Executive
<b>Dismissal</b>	Chairman	Chief Executive

## **2.8 Period of Warnings:**

### **2.8.1 Formal verbal warning**

A formal verbal warning will be disregarded after a three month period.

### **2.8.2 Formal Written warning**

A formal written warning will be disregarded after a six month period.

### **2.8.3 Final written warning**

A final written warning will be disregarded after a two year period.

## **2.9 General Notes:**

**2.9.1** If you are in a supervisory or managerial position, then demotion may be considered as an alternative to dismissal.

**2.9.2** Gross misconduct offences will result in dismissal without notice.

**2.9.4** You have the right to appeal against any disciplinary action.

### **3. CAPABILITY/DISCIPLINARY APPEAL PROCEDURE**

**3.1** You have the right to lodge an appeal in respect of any capability/disciplinary action taken against you.

**3.2** If you wish to exercise this right you should apply in writing to your line manager within five working days.

**3.3** An appeal against a formal warning or dismissal should give details of why you consider the penalty imposed is too severe, inappropriate or unfair in the circumstances.

**3.4** The appeal procedure will normally be conducted by a senior member of staff or a Board member, as appropriate, not previously connected with the process so that an independent decision of the action taken can be made.

**3.5** If you are appealing on the grounds that you have not committed the offence, then appeal may take the form of a complete re-hearing and reappraisal of all related matters. This is to ensure that the person conducting the appeal can make an appropriate decision before deciding to uphold or refuse the appeal.

**3.6** You may be accompanied at any stage of the appeal hearing by a fellow employee, trade union representative or friend of your choice, who may act as a witness or speak on your behalf.

**3.7** The result of the appeal will be made known to you in writing within five working days after the hearing.

## **4. GENERAL DISMISSAL & APPEAL PROCEDURES**

### **4.1 Step 1: Statement of grounds for action and invitation to meeting.**

- \* Your alleged conduct or characteristics, or other circumstances, which lead us to contemplate dismissing or taking disciplinary action against you, will be set out in writing.
- \* This statement, or a copy of it, will be sent to you and you will be invited to attend a meeting to discuss the matter.

### **Step 2: Meeting.**

- \* The meeting will take place before action is taken, except in the case where disciplinary action consists of suspension.
- \* The meeting will not take place unless:
  - (a) You have been informed what the basis was for including in the statement, under Step 1, the ground or grounds in it: and
  - (b) You have had a reasonable opportunity to consider your response to that information.
- \* You must take all reasonable steps to attend the meeting.
- \* After the meeting, you will be informed of the decision and notified of the right to appeal against the decision if you are not satisfied with it.

### **Step 3: Appeal.**

- \* If you wish to appeal you must inform us in writing, within 5 working days.
- \* If you inform us of your wish to appeal, you will be invited to attend a further meeting and will have the right to bring a fellow employee, trade union representative or friend of your choice/
- \* You must take all reasonable steps to attend the meeting.
- \* The appeal meeting need not take place before the dismissal or disciplinary action takes effect.

- \* After the appeal meeting you will be informed of the final decision.

#### **4.2 General Requirements:**

##### **4.2.1** The following requirements will be adhered to in respect of the above procedures (so far as applicable):

- \* Each step and action under the procedure will be taken without reasonable delay.
- \* Timing, location and notice of meetings will be reasonable.
- \* Meetings will be conducted in a manner that enables both parties to explain their cases.
- \* In the case of appeal meetings, which are not the first meeting, we will, so far as is reasonably practicable, be represented by a more senior manager or Board member who did not attend the first meeting.

## **5. GRIEVANCE PROCEDURE**

**5.1** It is important that if you feel dissatisfied with any matter relating to your employment you should have an effective means by which such a grievance can be aired and, where appropriate, resolved.

**5.2** Nothing in this procedure is intended to prevent you from informally raising any matter you may wish to mention. Informal discussion can frequently solve problems without the need for a written record. However, if you wish to raise a formal grievance you should do so in writing from the outset. Whilst we will give the same consideration to any grievance that you raise verbally, provided that you make it clear that you wish it to be treated formally, you should be aware that, in most circumstances, the law requires you to provide us with written details of your grievance before taking certain types of legal action.

**5.3** You have the right to be accompanied at any stage of the procedure by a fellow employee, trade union representative or friend of your

choice who may act as a witness or speak on your behalf to explain the situation more clearly.

- 5.4** If you feel aggrieved at any matter relating to your work you should first raise the matter with the person specified as your line manager, explaining fully the nature and extent of your grievance. You will then be invited to a meeting at a reasonable time and location at which your grievance will be investigated fully. You must take all reasonable steps to attend this meeting. You will be notified of the decision, in writing, normally within ten working days of the meeting, including your right of appeal.
- 5.5** If you wish to appeal you must inform your line manager in writing within five working days. You will then be invited to a further meeting, which you must take all reasonable steps to attend. As far as reasonably practicable, the organisation will be represented by a more senior manager or Board member who did not attend the first meeting.
- 5.6** Following the appeal meeting you will be informed of the final decision, normally within ten working days, which will be confirmed in writing.