

## Disciplinary and Capability Procedure

The aims of the procedure are:

- to provide a fair, consistent and effective method of dealing with matters of discipline, involving employees of the Company;
- to reinforce essential standards of performance and behaviour;
- to lessen the possibility of misunderstanding, promote good employee relations and to ensure employees are given an opportunity to improve.

The Company acknowledges the rights of employees to:

- know the standards expected of them;
- give an adequate explanation of faults or failings;
- respond to any alleged fault or failing;
- be represented during disciplinary procedures by a colleague or recognised Trade Union representative;
- appeal against disciplinary warnings or dismissal.

## Purpose

The Disciplinary and Capability Procedure set out below is applicable to all employees. It is designed to ensure that employees are dealt with fairly and consistently in disciplinary, poor performance and other related matters affecting their work with the Company or its Associated Companies.

## Unsatisfactory performance (Capability)

The Company will usually deal with any concerns it has about an employee's performance separately from any concerns it has about that employee's conduct. Where an employee's unsatisfactory performance is being addressed for the first time, the Company will always give an employee the opportunity to explain the unsatisfactory performance, and will give him or her a reasonable time within which to improve. The first warning will normally be an oral warning, (see below), but in cases where the Company considers that the unsatisfactory performance in question is particularly serious it reserves the right to start the unsatisfactory performance procedure at a later stage. Only in the most exceptional circumstances will an employee be dismissed for a first instance of unsatisfactory performance.

Where the Company considers that an employee needs training or support in order to attain the necessary standards, it will do what it considers is reasonable to give such training or support.

## Misconduct

The Company shall have the right to suspend an employee on full pay and benefits at any stage of an investigation or disciplinary procedure where it considers it necessary to do so. The suspension will be for no longer than is necessary to investigate the allegations and the Company will confirm the arrangements to the employee in writing. While suspended an employee should not visit Company premises or contact any of its clients, customers,

suppliers, contractors or employees, unless authorised to do so by a Director. Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations.

The Company will conduct an investigation into any allegations of misconduct where it considers it necessary or desirable to do so. All investigations will be carried out in a fair and objective manner. An investigation may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents. The Human Resources Department will usually appoint an Investigating Officer to carry out the investigation. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. Employees do not normally have the right to bring a companion to an investigative interview. However, the Company may allow employees to be accompanied to an investigative interview if it helps the employee to overcome any disability, or any difficulty in understanding English. Employees must co-operate fully and promptly in any investigation. This will include informing the Company of the names of any relevant witnesses, disclosing any relevant documents to the Company and attending investigative interviews if required.

### Examples of Misconduct

Examples of behaviour, which could result in disciplinary action, are given below. In general such behaviour would warrant the first level of warning unless they are considered serious or severe in nature, or constitute a repeated offence for which a warning has already been given. In such circumstances it is appropriate to move to a higher level of warning in line with the severity of the problem or stage of the procedure.

This list is given for guidance purposes only and is not exhaustive:

- Minor breaches of Company policies contained in the Employee Handbook including the IT, E-mail and Internet policy, the Health and Safety policy, Equal Opportunities policy and the Data Security policy;
- Minor breaches of the employment contract;
- Damage to, or unauthorised use of, company property;
- Poor timekeeping;
- Time wasting;
- Unauthorised absence from work;
- Refusal to follow instructions;
- Use of the Company telephone for personal calls;

- Personal e-mail or internet usage;
- Obscene language or other offensive behaviour;
- Negligence in the performance of your duties; or
- Smoking in no-smoking areas.

#### Examples of Gross Misconduct warranting summary dismissal

There may be occasions where an offence, even if it is the first of its kind, is of such a serious nature that the Company is justified in no longer continuing the employee's employment. Such cases may warrant summary dismissal (i.e. dismissal without notice). The following list details those offences, if proven to have occurred without any form of reasonable justification or mitigating circumstances, could result in immediate dismissal.

Again, this list is for guidance only, and is **NOT** exhaustive.

- Theft, or unauthorised removal of Company property or the property of an employee, contractor, customer or member of the public;
- Fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets;
- Falsification of qualifications that are a requirement of employment, or entitlement to work (including immigration status) in order to gain employment or other benefits
- Physical violence or bullying;
- Deliberate and serious damage to property;
- Serious misuse of the Company property or name;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Serious insubordination;
- Unlawful discrimination or harassment;
- Bringing the Company into serious disrepute;
- Being under the influence of alcohol, illegal drugs or other substances during working hours;
- Serious incompetence or negligence in the performance of work;
- Serious breach of the Company's Health and Safety policy;
- Serious breach of the Company's policies; professional rules of conduct or legislative requirements;
- Serious breach of confidence;

- Conviction for a criminal offence that in the Company's opinion may affect its reputation or its relationships with its employees, customers or the public, or otherwise affects the employee's suitability to remain an employee;
- Unauthorised disclosure of confidential information

### Stages of the Procedure

Minor faults or deviations from accepted standards of work will usually be dealt with informally (unless frequently repeated), but where the matter is more serious the following stages will normally be followed.

### INFORMAL STAGE

If conduct or capability falls below the standards expected this may be dealt with informally by the line manager, or through performance reviews. Informal warnings and counselling are not part of the disciplinary procedure. In more serious cases, the Company may follow the formal procedure set out below.

### THE FORMAL STAGES

If an employee is suspected of misconduct or lack of capability following an investigation, or is considered to be performing poorly, any meetings held other than informal interviews should be considered to be disciplinary hearings. Normally, for each disciplinary hearing held:

- The employee will be given advance notice (usually at least 5 days) of the hearing
- At the same time as notice of the hearing is given, the employee will be informed in writing of the complaints and, where possible, provided with copies of any documents, about which s/he will be expected to answer questions,
- The employee will be reminded of the right to be accompanied (see below)
- The employee will be informed of the possible sanctions.

If evidence comes to light during a disciplinary hearing which requires further investigation, the hearing will be adjourned to allow additional investigation to take place and only reconvened after sufficient time is allowed to study the outcome of any such investigation. In cases of misconduct or unsatisfactory work performance there will normally be four stages to the procedure. One or more of the early stages may be omitted in more serious cases.

### **Stage 1 - Oral Warning**

#### Unsatisfactory performance

In a first instance of unsatisfactory performance (other than minor issues), an employee will normally be given a formal ORAL WARNING. The employee will be advised of the standards that are expected and be given a reasonable time within which to improve. He or she will also be given reasons for the warning, and of the consequences of any failure to improve to acceptable standards. A brief note of the oral warning will be entered on the employee's personnel record, and will remain in force for nine months. It will be disregarded for disciplinary purposes after nine months, subject to satisfactory conduct and performance.

### Misconduct

In cases of minor misconduct, an employee will initially be given a formal ORAL WARNING. The employee will be advised of the reasons for the warning, and of the consequences of any repetition. A brief note of the oral warning will be entered on the employee's personnel record, and will remain in force for nine months. It will be disregarded for disciplinary purposes after nine months, subject to satisfactory conduct and performance.

### **Stage 2 - Written Warning**

#### Unsatisfactory performance

In the event of a failure to improve standards of work performance, the employee will normally be given a WRITTEN WARNING. This will give details of the complaint, the improvements required and the timescale. It will also inform the employee of the consequences of failure to improve performance to acceptable standards. A copy of this written warning will be kept on the employee's personnel record. The warning shall remain in force for 12 months, even though any specified time for improvement has passed. It will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct and performance.

#### Misconduct

In the event of more serious or further misconduct, the employee will normally be given a WRITTEN WARNING. This will give details of the complaint, the improvements required and the timescale. It will also inform the employee of the consequences of failure to improve conduct. A copy of this written warning will be kept on the employee's personnel record. The warning shall remain in force for 12 months, even though any specified time for improvement has passed. It will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct and performance.

### **Stage 3 - Final Written Warning**

#### Unsatisfactory performance

In the event of further failure to improve standards of work performance, or if the unsatisfactory performance is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warning) a FINAL WRITTEN WARNING will be given to the employee. This will give details of the complaint, and warn that any continued failure to improve performance to acceptable standards will render the employee liable to dismissal. A copy of the final written warning will be kept on the employee's personnel record. This final written warning shall remain in force for 18 months even though any specified time for improvement has passed. The final written warning will be disregarded for disciplinary purposes after 18 months (or such longer period as may be stipulated), subject to satisfactory performance.

#### Misconduct

In the event of more serious or further misconduct, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warning) a FINAL WRITTEN WARNING will be given to the employee. This will give details of the complaint, and warn that any further misconduct will render the employee liable to dismissal. A copy of the final written warning will be kept on the employee's personnel record.

This final written warning shall remain in force for 18 months, even though any specified time for improvement has passed. In exceptional cases, depending on the seriousness and nature of misconduct, this period may be longer. The final written warning will be disregarded for disciplinary purposes after 18 months (or such longer period as may be stipulated), subject to satisfactory conduct.

#### **Stage 4 – Dismissal**

If conduct or performance remains unsatisfactory, and the employee still fails to reach the prescribed standards, DISMISSAL will normally result. The employee will be provided, as soon as reasonably practicable, with written confirmation of the dismissal and the date on which employment terminated or will terminate.

#### **Summary Dismissal**

The Company will only dismiss employees summarily in the event of gross misconduct, or some other fundamental breach of the Company's rules, or in the circumstances set out in this Handbook.

#### **Operation of the procedure**

No disciplinary action will be taken against an employee until the matter has been fully investigated and considered by Management.

Whilst the matter is being investigated, the Company may suspend the employee on full pay for such period as is necessary to conduct such investigation and operate this Procedure. Following investigation, if the Company considers that there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The Company will inform the employee in writing of the allegations against him/her, the basis for those allegations, and what the likely range of outcome will be if the Company decides after the hearing that the allegations are true. The Company will also include the following where appropriate:

- a summary of relevant information gathered during the investigation
- a copy of any relevant documents which will be used at the disciplinary hearing
- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the employee will be given as much information as possible while maintaining confidentiality.

Employees will normally receive advance notice of disciplinary hearings. The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time, [usually two to seven days,] to prepare his/her case based on the information the Company has provided. At each stage of the Procedure the employee will have an opportunity to explain the alleged misconduct or answer criticisms of unsatisfactory performance.

The person conducting any investigation will not normally be involved in decision-making at any disciplinary hearing although this may sometimes be unavoidable.

Employees may be accompanied at any disciplinary meetings or appeal hearing, if they wish, by an appropriate fellow work colleague or trade union official. It is the employee's responsibility to secure the attendance of any companion, and the companion shall have the

right to decline to attend. The Employee must inform Human Resources who his/her chosen companion is in good time before the hearing. For the avoidance of doubt, this right of an employee to be accompanied does not extend to solicitors or other legal representatives.

If the employee's choice of companion is unreasonable the Company may ask the employee to choose someone else, for example:

- if in the Company's opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- if the employee's companion works at another site and someone reasonably suitable is available at the site at which the employee works; or
- if the employee's companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

If the employee or his/her companion cannot attend the hearing the employee should inform the Company immediately and an alternative time will be arranged. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or is persistently unable to do so (for example for health reasons), the Company may have to take a decision based on the available evidence.

At the disciplinary hearing the Company will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present his/her own evidence. The employee's companion may make representations and ask questions, but should not answer questions on the employee's behalf. The employee may confer privately with his/her companion at any time during the hearing. An employee may ask relevant witnesses to appear at the hearing, provided sufficient advance notice is provided to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness.

The disciplinary hearing may be adjourned if the Company needs to carry out any further investigations such as re-interviewing witnesses in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be informed in writing of the Company's decision along with its reasons for it, usually within [two weeks] of the disciplinary hearing.

### Appeals

An employee who wishes to appeal against a disciplinary decision should inform their Line Manager in writing within three working days of the notification of the disciplinary decision indicating the specific basis of the appeal. All appeals will normally be dealt with speedily by the Company.

As far as is possible, the appeal will be heard by a different member of management from that person who took the original disciplinary action, or by a sub-committee of the Board of the Company and the decision shall be final.

The employee shall have an opportunity to comment on any new evidence arising during the appeal before any decision is taken.

Following the appeal hearing the Company may:

- confirm the original decision; or
- revoke the original decision; or
- substitute a different penalty.

The Company will inform the employee in writing of its final decision as soon as possible, usually within [two weeks] of the appeal hearing.