



## **DISCIPLINARY POLICY**

### **1.0 Introduction**

This policy sets out The Caldecott Foundation's approach to disciplinary issues.

The purpose of this procedure is to:

- a) Set out how the organisation will deal with instances of misconduct, including gross misconduct
- b) Ensure that managers are clear about what approach they should adopt in cases of misconduct and gross misconduct
- c) Ensure that employees understand what standards of conduct are expected of them, to encourage employees to meet these standards and to ensure that they understand what action may be taken if they do not meet them.

### **2.0 Overview**

For minor cases of misconduct, a manager will normally deal with these through an informal discussion with the employee. This is part of the normal day-to-day management process and does not form part of the formal disciplinary procedure.

Line Managers / Supervisors must deal with such matters on the spot or via normal supervision (or equivalent). Such occurrences should be recorded in the supervision (or equivalent) record. Where practice does not improve, issues of misconduct are repeated, or issues of capability remain evident, the staff member will be issued with a letter inviting them to attend a performance improvement meeting. The performance improvement meeting should set out the performance problem, the improvement that is required, the timescale and any help that may be given. A record of the performance improvement will be retained on the employee's file. (See Appendix D for the template for the performance improvement meeting)

If further occurrences/problems arise, the Line Manager may extend or amend the performance improvement period. However, 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 equivalent) is appropriate, or there is an occurrence of gross misconduct, the matter will be dealt with under the formal disciplinary procedures. Where gross misconduct is alleged, in certain circumstances it will be necessary to suspend the employee on full pay, but each case

will be considered individually, and appropriate action will be taken by the Investigating Officer taking all circumstances into account (see section 9 for more information).

**Note:** Where a child protection concern or allegation against a member of staff has been raised and referred to external agencies, formal procedures may be put on hold at the request of the Police, LADO (Local Authority Designated Officer) or other relevant statutory authority.

The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the organisation's management.

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 performance improvement processes or normal line management supervision is appropriate, or there is an occurrence of gross misconduct, an appropriate member of the Senior Management Team must be consulted before taking any formal action.

The organisation reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence, except in cases of Gross Misconduct.

The time limits are referred to in this procedure are for guidance and may be varied by circumstances or agreement between the employee and the organisation.

Employees have the right to be accompanied at any formal disciplinary hearing or appeal by a fellow worker or trade union official of their choice. The trade union official need not be an employee of the organisation, but if he/she is not a fellow worker or an employee of his/her union, the organisation may insist on him/her being certified by the union as being experienced or trained in accompanying employees at disciplinary hearings.

The choice of companion is a matter for you; however, it is important that they have had no involvement in the issue or any other issue which may be related. Please note that individual workers are not obliged to agree to accompany you. Companions will be given appropriate paid time off to allow them to accompany colleagues at a disciplinary hearing or appeal hearing.

At any hearing or appeal hearing, your companion will be allowed to address the meeting, respond on your behalf to any view expressed in the hearing, and sum up the case on your behalf; but cannot answer any questions put directly to you.

Where the chosen companion is unavailable on the day scheduled for the meeting or appeal, the meeting or appeal can be rescheduled once, if you can propose an alternative time within five working days of the scheduled date.

Examples of matters that the organisation views as amounting to disciplinary offences are referred to in Appendix A.

**Please note that the Foundation reserves the right to dispense in whole or part with this disciplinary procedure during an employee's probation period and first two years of service and may choose instead to refer to a formal Employment Review meeting.**

### **3.0 Investigation**

An employee's supervisor, line manager or suitable person appointed by the organisation will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the organisation's policies, rules or may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for employees to be accompanied at an investigatory interview. The organisation reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing as required.

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 organisation 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 organisation 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 Senior Manager, who will determine whether on the basis of 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.

If the matter is deemed to be a minor incident of misconduct, then the matter may be referred back to the Manager or Supervisor to complete a Performance Improvement Meeting and a Letter of Concern may be placed on the employee's file.

### **4.0 Procedure**

Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing before an appropriate meeting chair appointed by the organisation.

In the event of a disciplinary hearing taking place the organisation will:

- a) Give the employee a minimum of 5 calendar days advance notice of the hearing.
- b) Tell the employee the purpose of the hearing and that it will be held under Disciplinary Policy and procedure.
- c) Explain the employee's right to be accompanied at the hearing by a fellow worker or trade union official.
- d) Give the employee written details of the nature of their alleged misconduct; and
- e) Provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the organisation intends to rely upon against the employee) not less than 2 calendar days in advance of the hearing.

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing may be adjourned to another day. The organisation will comply with (a) above in respect of giving notice of the rearranged hearing. If the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's fellow worker or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

If any aspect of the disciplinary procedure causes you difficulty on account of any disability that you may have, or if you need assistance because English is not your first language, you should raise this issue with the HR Manager, who will be able to offer reasonable adjustments to the normal process.

Where the chosen companion is unavailable on the day scheduled for the meeting, it will be rescheduled, provided that the employee proposes an alternative time within 7 calendar days of the scheduled date.

#### ***4.1. Role of companion***

The employee's chosen companion has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The companion may also confer with the employee during the hearing. However, the companion cannot answer questions on behalf of the employee or address the hearing where the employee indicates that he/she does not wish this.

#### ***4.2. The disciplinary hearing***

A disciplinary hearing will normally be conducted by the appropriate manager together with the organisation's HR representative (the panel). Any member of management responsible for the investigation of the disciplinary offence(s) will not normally be a member of the panel, although such

managers may present any supporting facts and material to the disciplinary hearing. At the discretion of the hearing chair the investigating officer may be requested to attend.

#### **4.3 Hearing Process:**

The HR representative should 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.
- The Chair or investigating officer (if present) 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 investigating officer 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.

As soon as possible after the conclusion of the disciplinary proceedings, the employee will be informed of the panel's decision, and what disciplinary action, if any, is to be taken. The decision will be confirmed in writing within 7 calendar days wherever possible. The employee will be notified of their right of appeal under this procedure.

#### **5.0 Disciplinary action**

Where, following a disciplinary hearing, the organisation establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

- Where a minor offence(s) has been committed, a recorded verbal warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action.
- The employee should be informed of the period that the warning will remain "live". During this period, the organisation may rely on such a warning in the event of further misconduct on the part of the employee.
- Where, either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a recorded verbal warning that remains "live", the employee will receive a first written warning. The warning will:
  - a) set out the nature of the offence committed

- b) inform the employee that further misconduct is liable to result in further disciplinary action under this procedure
  - c) specify the period for which the warning will remain "live", after such period the warning will automatically lapse
  - d) state that the employee may appeal against the warning.
- Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the organisation decides, after taking into account all appropriate mitigating circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains "live", a final written warning may be given.
- Such a warning will:
  - a) Set out the nature of the offence committed.
  - b) Inform the employee that further misconduct is likely to result in their dismissal; and
  - c) State that the employee may appeal against the warning.
- Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given under c. above, the employee may be dismissed with notice or with pay in lieu of notice.
- Where the organisation establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed (i.e., without notice).

### **5.1 Disciplinary Sanctions**

The following sanctions may only be imposed following an investigation and hearing (see below) and must be imposed as indicated. When a disciplinary sanction is imposed, account will be taken of any 'live' disciplinary warning previously imposed on the employee. Senior 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
Verbal Warning	A minimum of 6 months
1st Written Warning	A minimum of 12 months
Final Written Warning	A minimum of 12 months

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 may be considered even if the meeting occurs after the date of expiry.

Other sanctions made be considered if deemed appropriate, reasonable and proportionate, such as the removal of an additional/enhanced responsibility arrangements. Such sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

## **6.0 Dismissal**

Any decision to terminate an employee's contract must be made by the appropriate Senior Manager.

If an employee's contract is terminated on the grounds of mistreatment or abuse of a child, 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.

**Note:** If a member of staff is not suspended but is moved to another post, leaves of their own accord, retires or hands in their notice as a result of an allegation or suspicion of abuse or child mistreatment, a Schedule 5 Notification is required to the Regulatory Authority, Placing Authority and, in consultation with the Local Authority Designated Officer (LADO/designated officer or team of officers), consideration should be given to notifying The Disclosure and Barring Service (DBS). This applies even if the allegation/suspicion is on the face of it unfounded.

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](#).

## **7.0 Appeal**

An employee may appeal against any disciplinary sanction imposed against them. The appeal will be heard by a senior manager who has not been involved in the decision to impose the disciplinary sanction on the employee.

The senior manager is obliged to consider any representations made by the employee, the employee's fellow employee or trade union official and those of the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction. The senior manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction.

In the event that the senior manager finds for the employee, the senior manager shall allow the appeal and shall remove all records of the disciplinary sanction from the employee's record. In the event that the senior manager does not accept the representations made by or on behalf of the employee, the senior manager must uphold the disciplinary sanction.

When lodging an appeal, the employee should state:

- a) The grounds of appeal; and

- b) whether they are appealing against the finding that they committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.
- c) The employee must provide written notice of the appeal within 14 calendar days of being informed of the disciplinary sanction being imposed against them.

All appeal meetings will follow a set agenda (Appendix C). The employee must take all reasonable steps to attend the appeal meeting. Appeal hearings will normally take place within 21 calendar days of receipt of the employee's written notice of appeal.

Upon completion of the appeal, the senior manager conducting the hearing will convey their decision to the employee. The decision will be confirmed in writing within 7 calendar days wherever possible. The senior manager's decision at the appeal is final. There will be no further right of appeal.

Where an appeal lies against a dismissal by the panel, the panel's decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given by the panel. If the panel's decision was to uphold the dismissal of the employee summarily without notice, the organisation will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand. If the panel's decision to dismiss is overturned, the employee will be reinstated with immediate effect, and they will be paid for any period between the date of the original dismissal and the successful appeal decision. Their continuous service will not be affected.

## **8.0 Gross misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the organisation. In the event that an employee commits an act of gross misconduct, and it is proven following an investigation and disciplinary process; the organisation will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice. For Teachers who commit an act of gross misconduct, and it is proven following an investigation and disciplinary process the employer may make a referral to the Teacher Regulation Authority or Disclosure Barring Service. See Appendix B for examples.

## **9.0 Suspension**

Where gross misconduct is alleged, in certain circumstances it will be necessary to suspend the employee on full pay, but each case will be considered individually, and appropriate action will be taken by the Investigating Officer taking into account all of the circumstances.

The Investigating Officer or a manager at an appropriate level will suspend the employee in any case where the Investigating Officer believes that:

- The employee may have committed an act which might be judged at a disciplinary hearing to constitute gross misconduct, potentially resulting in dismissal, OR



- The employee, if continuing to attend the workplace, may try to interfere with the investigation of the matter (for example by threatening or pressurising potential witnesses, tampering with evidence), or there is a potential risk to the organisation or other employees/third parties in allowing the employee to remain at work, OR
- The employee is in a position where they can damage the successful operation of a service (for example by interfering with data held on computer) OR
- It would be appropriate, either for the individual or the organisation to remove the member of staff from the workplace for the duration of the investigation, OR
- The organisation would compromise its Safeguarding responsibilities by allowing the employee to remain in the workplace.

Suspension will take place as soon as practicably possible once the organisation becomes aware of any potential gross misconduct matter where suspension is deemed necessary. Any suspension of an employee will be precautionary and should not be viewed as a disciplinary action. The purpose of suspension is to protect both the organisation and the employee. Suspension will be on full pay. The suspension will be confirmed in writing by the Investigating Officer.

During the period of suspension, the employee must not:

- a) Attend their place of work unless asked by the Investigating Officer to do so.
- b) Attempt to influence any potential witnesses or work colleagues.
- c) Attend any work-related meetings, seminars, or conferences, unless requested to do so by their manager.

The employee will be required to make themselves available to attend any investigatory interview or disciplinary hearing that may be arranged. If the employee needs access to particular information, either to respond to questions during the investigation or to prepare for any disciplinary hearing, they may request this from the Investigating Officer, who will provide it in a timely manner or arrange for access to the required information.

Once suspension has occurred, there are a number of possibilities as to what may happen next. The Investigating Officer may decide (not an exhaustive list):

- That on further investigation that there is no disciplinary case to answer. At that point the suspension would be lifted, and the employee would return to work; or
- There is a disciplinary case to answer but that none of the allegations to be put to the employee at the hearing could constitute gross misconduct. At that point the suspension could be lifted (unless any of the concerns in section 9 are relevant) and the employee could return to work, but would still need to attend the disciplinary hearing to address the allegations of misconduct; or
- There is a disciplinary case to answer, and that this does include allegations of gross misconduct. In this situation the suspension would continue until the disciplinary hearing has concluded.

## 10.0 Review

The principles laid down in this policy form part of all employees' contracts of employment. The Caldecott Foundation is committed to equal opportunities and fairness for all and will review this policy and process to ensure that it remains fit for purpose and will be updated in accordance with changes in the law.

## **Appendix A - Examples of Misconduct**

1. Persistent bad timekeeping, regular lateness or failure to arrive for work or missing appointments/meetings.
2. Regular failure to follow employment rules e.g., reporting absence.
3. Regularly failing to follow agreed/approved daily requirements.
4. Negligence at work leading to loss, damage, or wastage of company property.
5. Minor acts of discrimination/harassment against an employee, a child or young person or customer 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
6. Improper, disorderly, or unacceptable conduct at any time
7. Wilfully inadequate work performance or non-adherence to the organisation's Values or Code of Conduct
8. Unacceptable behaviour towards a member of the public, or fellow employees.
9. Unauthorised absence
10. Damage to the organisation's property
11. Failure to observe the organisation's procedures.
12. Smoking [or use of an e-cigarette] in non-designated areas of the organisation's premises; and
13. Bribery offences under the Bribery Act 2010.
14. Deliberate breach of Health and Safety requirements
15. Deliberate breach of Data Protection requirements

The above list is neither exhaustive nor exclusive but is indicative of the types of misconduct/

## Appendix B - Examples of 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, children & 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 outside of work.
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 children & young people. Failure to report or record any matter which it is the employee's contractual duty (either expressed or implied) to report.
8. Fighting or acts of violence at the workplace, serious threatening, or abusive behaviour towards members of the public, clients, fellow employees.
9. Criminal offences outside work (including fraudulent activities such as claiming Housing Benefit or unemployment benefit etc.) which may affect the individual's employment suitability.
10. Serious discrimination/harassment against a member of the public, children & young people or employee, 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.
11. Falsification of documents likely to be of financial benefit to the employee or other persons e.g., time sheets, bonus/expense claims, qualifications etc.
12. Serious contravention of the Company's Safer Practice with Technology procedure. Employees must not use electronic mail, the Intranet or Internet to racially, sexually, or otherwise harass or threaten fellow employees or others.
13. Obtaining employment by lies or deception in the course of selection procedures.
14. Making a false claim under any of the Company's policies and/or procedures.
15. A serious breach of the Company's Gift Giving and Receiving Policy.
16. A serious and malicious breach of data protection law or the organisation's data protection policy or established procedures.
17. Other offences of dishonesty.
18. Serious damage to the organisation's property.

19. Possession, custody, or control of illegal drugs on the organisation's premises.
20. Gross negligence.
21. Conduct that brings the organisation's name into disrepute; and
22. A serious breach of the Company's Code of Conduct which covers specific areas such as Duty of Care; Exercise of Professional Judgement; Power of Position and Trust; Confidentiality, Propriety and Behaviour; Personal Living Space; Gifts, Rewards and Favouritism; Infatuations; Social Contact; Sexual Contact; Physical Contact; Use of Control and Physical Intervention; Respect and Privacy; First Aid and Administration of Medication; One to One Situations; Home Visits; Transporting Children; Trips and Outings, Communications with Children; Access to Inappropriate Images and Internet Usage and Photography and Videos.

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

## Appendix C - Appeals Meeting Procedure

1. Person chairing the meeting will open the meeting. Each party present will introduce themselves, in the following order:

- Chair (senior manager)
- Appellant (Employee raising the appeal)
- Representatives
- Note-taker

**Person chairing the hearing will then confirm procedure as set out below:**

2. Appellant/representative will clarify their grounds for appeal. (E.g., what issue(s) they are seeking to resolve)

Presentation of the Appellant's case

- a. Appellant/representative to present details of their case.
- b. Questions from the chair to the Appellant/representative.
- c. Questions from the other party/their representative to the Appellant/representative.
- d. (If required) Appellant can call a witness in support of their case.
- e. Questions to witness from panel, and other party/representative.
- f. Summary of Appellant's case.

3. Presentation of the other party's case

- a. Other party/ representative presents details of case.
- b. Questions from the chair to the other party /representative.
- c. Questions from the Appellant/representative to the other party/their representative.
- d. (If required) Other party can call a witness in support of their case.
- e. Questions to witness from panel, and Appellant/representative.
- f. Summary of other party's case

4. Person chairing the meeting to confirm if further clarification is required by any party on any of the details presented from:

- Chair.
- Appellant/representative.
- Other party/representative.

5. Closing submission from Appellant/representative.

6. Closing submission from other party/representative.

7. Chair adjourns to make decision.

8. The decision will be confirmed in writing within 7 calendar days of the meeting.

## Appendix D

### Performance Improvement Meeting (INFORMAL)

EMPLOYEE'S NAME:	
MANAGER'S NAME:	
DATE:	

#### DESCRIPTION OF PERFORMANCE SHORTFALL (S):

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Agreed Action Required	Extra Support Needed if any	Responsibility	Deadline

#### REVIEW DATE AND TIME:

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EMPLOYEE'S SIGNATURE:	
MANAGER'S SIGNATURE:	

#### DECISION AT REVIEW MEETING:

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The level of performance is now satisfactory, so no further action needed.

The review period should be extended until \_\_\_\_\_ because:

The review meeting date and time is:

*Refer to formal procedure if performance/improvement is still unsatisfactory.*