

DISCIPLINARY PROCEDURE

This procedure accompanies Woking Mind disciplinary policy

Document History

Version	Date	Drafted by	Authorised by	Reason for revision

This policy was approved on 10/08/2011 and will be reviewed within one calendar year.

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Purpose and scope

This procedure is designed to help and encourage all of our employees to achieve and maintain satisfactory standards of conduct, attendance and job performance. Its aim is to ensure consistent and fair treatment for all. It covers all employees other than those in their probationary period.

This procedure is non-contractual, and sets out the procedure Woking Mind will normally follow although we reserve the right, at our discretion, to vary, replace or terminate the procedure at any stage. In all cases, we will take all steps to ensure that any dismissal is both fair and reasonable.

The procedure is based on the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Principles

The following principles should be followed by those dealing with disciplinary matters.

Investigation

- Except for suspension, no disciplinary action will be taken against an employee until a disciplinary hearing has been held.
- No disciplinary action will be taken without full and proper investigation.
- In misconduct cases, where practicable, different people will carry out the investigation and disciplinary hearings. An investigatory meeting will not by itself result in any disciplinary action.
- Each step in the procedure will be taken without unreasonable delay and the timing and location of any meetings will be reasonable and any meeting held in as private a location as possible without interruptions.

Invitation to a hearing

- The employee will always be given written notice of an invitation to any disciplinary hearing of which he or she is the subject, and will be advised of the nature of the complaint against him/her, the circumstances that have led to us contemplating the need for disciplinary action or dismissal and the procedure to be followed. Copies of any written evidence will normally be provided in advance of the hearing.
- The employee will be given sufficient information and time to enable him/her to prepare a response. This may vary depending on the circumstances of each case but is not likely to be less than 24 hours.
- At all formal stages of this procedure, the person chairing the meeting is advised to be accompanied by a third party who will act as a witness and take full notes of everything that is said. Where no internal person of sufficient seniority or confidential status is available, or where preferred, an external party may be invited to attend in this capacity.
- The employee will have the right to be accompanied, either by a work colleague or a trade union representative
- The employee should inform Woking Mind in advance whom he or she has requested to act as a companion.
- The companion is there to act as a witness to what was said, to provide moral support and to assist and advise the employee in presenting his/her case. He or she may address the hearing to ask questions on behalf of the employee and confer with the employee but not answer

questions on behalf of the employee. Nor may the companion prevent the employer from explaining its case.

- If either the employee or his/her chosen companion is unable to attend any meeting under this procedure, Woking Mind will attempt to rearrange the meeting for a date within five working days of the original planned date.
- The employee is expected to take all reasonable steps to attend the hearing on the appointed date and time. Where an employee fails to attend an agreed disciplinary hearing, without good reason, a decision may be made in the employee's absence based on the evidence available.
- If the employee is disabled, reasonable adjustments will be made to ensure that he or she is not disadvantaged at the hearing.

The hearing

- At the disciplinary hearing, the person conducting the hearing will explain the complaint against the employee and go through the evidence that has been gathered.
- The employee will be given the opportunity to present any information in his/her defence, explain or comment before any decision is made.
- Either party may ask questions, call witnesses, submit witness statements and also question any witnesses called by the other party. If the employee wishes to call any witnesses, he or she should notify the person conducting the hearing in advance. Witnesses cannot be compelled to attend.
- A disciplinary hearing may be adjourned at any stage by the person conducting the hearing, in order to calm a tense situation, to check out facts or to take advice. Such adjournments will be kept brief wherever possible in order not to hold up the resolution of the hearing but may be extended where particular information needs to be checked in the interests of fairness or consistency.

The disciplinary warning

- Before making any decision on disciplinary action, the employees disciplinary and general record will be taken into account will take into account, any similar precedents, any mitigating circumstances or explanations given by the employee, what would be reasonable under the circumstances and whether any training, additional support or adjustments to the work are necessary.
- An employee who is given a disciplinary warning or improvement note will be told where his or her performance or conduct falls short of what we consider satisfactory, what improvement in conduct or performance is required, and over what timescale this is to be achieved.
- For employees who are underperforming, a review date will be set and we will also confirm any support, including any training that we will provide to assist the employee.

Dismissal

- If the employee's standard of work or conduct remains unsatisfactory, and, after warnings, remains below the level that is acceptable, he/she may be dismissed.
- The reasons for dismissal will be confirmed in writing, together with the date on which the employment will end, the appropriate period of notice and the right of appeal.
- A fair disciplinary process should always be followed, even in cases of dismissal for gross misconduct.

We may omit any of the stages within the disciplinary procedure detailed below. It should be noted that, despite ongoing disciplinary action, an individual may be dismissed for another unrelated disciplinary matter if sufficiently serious.

Gross misconduct

An employee will not normally be dismissed for a first incident of misconduct, unless it amounts to gross misconduct, in which case summary dismissal without notice and without the need for any prior warnings may take place.

The list below is not exhaustive, but is a guide to the type of offence which normally results in summary dismissal (ie dismissal without notice or pay in lieu of notice):

- theft, fraud or falsification of records
- being under the influence of alcohol
- being in possession of, or under the influence of, non-medically prescribed drugs
- assault or fighting either on our premises or whilst engaged on Woking Mind business
- violent, abusive or intimidating conduct
- serious act of sexual, racial or other harassment, bullying or offensive behaviour
- misuse of property belonging to Woking Mind or of our Name
- malicious damage to property belonging to Woking Mind, our clients or other employees
- flagrant disregard of the procedures, rules and regulations
- any action in serious breach of legislative requirements which may affect our business
- gross negligence
- use of foul language or any act that violates commonly accepted standards of behaviour
- actions which damage the reputation of Woking Mind or bring it into disrepute – this includes taking part in activities which result in adverse publicity to ourselves, or which cause us to lose faith in your integrity
- any action constituting a criminal offence which makes you unsuitable for employment with us
- unauthorised use or disclosure of confidential information
- failure to disclose correct information on your application form
- serious breach of Health and Safety rules
- acts of dishonesty
- undertaking private work on our premises and/or during working hours without express permission
- inappropriate use of the internet or computer misuse in breach of our policies.

Informal counselling

We recognise that cases of minor misconduct or poor performance may best be resolved through informal counselling, goal or target setting, advice or training and these do not form a formal part of this procedure. Where an improvement is required, we will ensure that the employee understands what is required, how this will be measured, and over what period. Any agreed action plan will be confirmed in writing. Where a sustained improvement is not apparent, or where matters are more serious or where the issue is one of misconduct, the formal disciplinary procedure will be used.

Stages of the disciplinary procedure

First written warning (or improvement note)

- for incidents of misconduct or unsatisfactory performance

Final written warning

- for further continued unsatisfactory performance or further misconduct or if an incident of serious misconduct occurs

Dismissal with notice

- for continued unsatisfactory performance or conduct

Gross misconduct and summary dismissal

Certain offences may be regarded as so serious as to render the employee liable to summary dismissal without prior warning (see examples above). A dismissal for gross misconduct will only be made following a disciplinary hearing and will be confirmed in writing, giving the reasons for dismissal, confirming that the employment terminates immediately without notice, or pay in lieu of notice, and outlining the employee's right of appeal.

Penalties other than dismissal

There may be circumstances where we consider alternative disciplinary action to dismissal to be appropriate. Such disciplinary action could include demotion (which may result in a reduction in pay for the employee), or transfer to another position which may result in a reduction of pay.

Suspension

We reserve the right at any stage of this procedure to suspend the employee. Suspension will be on full basic pay, and will be for as short a period as possible in order to carry out any investigation of an alleged serious offence or to prevent any recurrence. Such suspension is not disciplinary action, and does not involve any prejudgement.

If suspended, the employee must be available to attend any fact finding interview called during the suspension period. Contact will be maintained with the employee throughout the period of suspension to keep him/her informed of the investigation. An employee who is suspended will only be allowed to contact Woking Mind through a nominated person.

Appeal

An employee who feels that a disciplinary warning, improvement note or dismissal is unfair may appeal against this. Appeals should be lodged, in writing, within seven calendar days of the decision being notified to the employee. The employee should clearly state the grounds on which the appeal is made (eg the finding is unfair, the penalty too harsh, new evidence comes to light, or because of a procedural defect).

Principles

- An appeal hearing will be arranged without unreasonable delay. Where possible, the appeal will normally be heard by a trustee of Woking Mind who has not previously been connected with the disciplinary process so that an independent decision may be made. If this is not possible, then a further independent party or other external party may be requested to attend the hearing and advise.
- The person conducting the appeal is advised to be accompanied by a suitable third party who will act as a witness and take full notes of everything that is said. Where no internal person of sufficient seniority or confidential status is available, or where preferred, an external party may be invited to attend in this capacity.
- The employee may be accompanied by a work colleague or a trade union representative.
- The employee should tell the person conducting the appeal hearing in advance whom he or she has chosen as a companion. As with a disciplinary hearing, the companion will be able to address the hearing, ask questions on behalf of the employee and to confer with the employee but not to answer questions on behalf of the employee.

- If either the employee or his/her chosen companion is unable to attend an appeal meeting then we will attempt to rearrange the meeting for a date within five days of the original planned date.
- If the employee is disabled, reasonable adjustments will be made to ensure that he or she is not disadvantaged at the hearing. This may include the provision of further assistance where necessary.
- The grounds of the appeal will be considered when deciding the extent of any new investigation: it may be that a complete re-hearing will be held should there be any suspected procedural defects.
- The employee will be notified of the appeal decision in writing within fourteen calendar days: whatever decision is taken at the appeal hearing will be final.

Duration and removal of warnings

A copy of the written confirmation of any warnings, improvement notes, dismissal, suspension or other disciplinary penalty (plus any appeal documentation) will be given to the employee and a copy placed on the employee's personnel file. Such documentation will be regarded as confidential.

Warnings will remain 'active' for the following periods unless a different period is confirmed in writing to the employee:

- first written warning or improvement note: **twelve months** from the date the warning is notified to the employee or such other period as may be specified
- final written warning: **eighteen months** from the date the warning is notified to the employee, or indefinite, depending on the circumstances resulting in the warning or such other period as may be specified.

Following completion of the appropriate period, the warning will no longer be active and will normally be disregarded for the purposes of any future disciplinary action. Records of disciplinary warnings will however be retained on file for purposes of disclosure as required by regulation 11 of the Transfer of Undertakings Regulations 2006.

Probationary employees

Employees who are still within their probationary period are not covered by this procedure. If a probationary employee is not performing satisfactorily or there are incidences of misconduct, then he or she will normally be seen by his or her manager, informed of any shortcomings in performance or conduct, offered training and support, where appropriate, and warned that failure to improve will result in dismissal.

If there is doubt about the employee's ability to reach a satisfactory standard, the probationary period may be extended, in which case the employee will be told of this and a new date set for the expiry of the probationary period. If the employee is still unable to reach a satisfactory standard of performance or conduct he or she will normally be invited to a formal meeting (with the right to be accompanied) prior to a decision being taken concerning his or her continued employment.

A probationary employee who commits an act of gross misconduct will be summarily dismissed.