

# Disciplinary Policy

## Purpose

This Policy exists to help and encourage employees to achieve and maintain acceptable levels of conduct. The Company's aim is to ensure that any breach of company rules and standards is dealt with in a manner that is consistent and fair.

The Company may vary or amend this Policy at its discretion and may apply it as far as practicable in the circumstances. The Company reserves the right, depending on the seriousness of the matter, to start or proceed to any stage of this procedure.

## Who is covered by the Policy?

The company rules and this policy apply to all employees. The aim is to ensure consistent and fair treatment for all in the organisation.

## Contents of this Document:

- Accountabilities
- Our Policy
- Principles
- Informal Procedure
- The Disciplinary Formal Procedure
- Disciplinary Penalties
- Misconduct
- Gross Misconduct
- Suspension
- Appeals

## Accountabilities

Line Managers are responsible for:

- Ensuring they have a full understanding of this Policy.
- Maintaining discipline within the organisation and ensuring employees are aware of the standards concerning conduct and performance at work.
- Implementing disciplinary procedures in line with the guidelines set out in this Policy.
- Seeking advice from the HR Department or Managing Director in advance of any potential case of dismissal.

The Managing Director and HR Advisor are responsible for:

- Supporting the process and advising Line Managers where appropriate.
- Raising Line Manager awareness of this Policy and promoting best practice.

Employees are responsible for:

- Adhering to Company standards of conduct and performance at work.
- Making all reasonable attempts to attend meetings held as part of the disciplinary process when requested to do so by management.

## **Our Policy**

This Policy is used to deal with misconduct and some instances of poor performance. It does not apply to cases involving genuine sickness absence, proposed redundancies or capability. In those cases, reference should be made to the appropriate Policies.

## **Principles**

- This Policy may be implemented at any stage if the employee's alleged misconduct is found to warrant such action.
- An employee may be dismissed for a first breach for example in the case of gross misconduct or where the employee has yet to complete their probationary period.
- The Investigating and Hearing officer will be different people
- The Hearing officer should be at least equal to, but preferably senior to the individual being disciplined
- Informal action will be considered, where appropriate, to resolve problems.
- No disciplinary action will be taken against an employee until the case has been fully investigated.
- For formal action 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 at a disciplinary meeting.
- Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.
- Should a disciplinary hearing be required, the employee will have the right to be accompanied by a trade union representative, or work colleague, for this and any subsequent hearings after.
- No employee will be dismissed for a first breach of the disciplinary policy 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 action.

## **Confidentiality**

The Company's aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this disciplinary procedure.

## **Informal Procedure**

Although this Policy is primarily concerned with the rules and process to follow regarding formal disciplinary action, it is important to stress the need to consider a more informal approach for certain instances of poor conduct.

Matters which the Company considers to be minor or straight forward will be dealt with on an informal basis. In such circumstances, dialogue, advice and discussion will be the most commonly adopted means of correcting and improving behaviour. It should be regarded as an important aspect of a Line Manager's role since it may assist in preventing the need for formal disciplinary action, or highlight at an early stage the

need for training or further assistance.

A record should be kept of any discussions. If there are any conditions or standards expected of an individual, these should be confirmed in writing. In the event that the informal guidance is unsuccessful in resolving the matter the formal stages of this procedure will be invoked. In such circumstances, the notes from any informal discussions may be referred to.

## **The Formal Disciplinary Procedure**

The key purpose of any disciplinary action will be to seek to address any further breach of misconduct or poor performance.

### **Investigation**

The Company will investigate the facts relating to any disciplinary allegations against an employee as appropriate before deciding whether to proceed to a disciplinary hearing. The appropriate Management team member will decide who will be the Investigating Officer and who will be the Hearing Officer for any disciplinary hearing.

All investigations will be carried out without unreasonable delay to establish the facts of the case and to decide whether to proceed to the disciplinary hearing.

If an employee is under investigation, they will be informed in writing of the allegations against them and that an investigation will be carried out. An investigation will only be concealed if there are very good reasons, such as, because an employee may be able to influence witnesses or tamper with evidence. The level of investigation required will depend on the nature of the allegation and will vary from case to case. It may involve interviewing and taking statements from the employee subject to disciplinary proceedings, and any witnesses, and/or reviewing relevant documents. A Witness Statement will usually be a signed copy of the notes from an investigation meeting. An interviewee will be given a copy of their statement taken at the investigation meeting to check they agree it is accurate. SOS Homecare will only accept a statement without a meeting in exceptional circumstances such as: if a witness is not a worker; when the facts from the witness are very simple; where a witness is ill and unable to attend an investigation meeting. The investigator will provide any employee that they intend to interview advance written notice of their investigation meeting. No disciplinary action will be taken against an individual until the case has been carefully investigated and a disciplinary hearing has taken place.

Once the investigator believes they have established the facts of the matter as far as is reasonably possibly and appropriate, they will complete an investigation report that explains their findings. This report will be handed to the disciplinary hearing officer for review. The investigator will not usually be involved in any further action other than to discuss the report in person with the hearing officer or attend the disciplinary hearing in a fact giving capacity if it is deemed necessary.

### **Inform the employee**

Following the investigation, if it is decided there is a disciplinary case to answer the employee will be notified in writing and the employee will be provided with copies of any written evidence, which may include any witness statements. The employee will be invited to attend a disciplinary hearing, and the individual must make all reasonable attempts to attend the hearing. A reasonable amount of time should be given to the employee in advance of a disciplinary hearing in order that they have time to prepare. Where possible this should be at least 3 working days unless the employee and the Company agree otherwise.

Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause the hearing may proceed in their absence and a decision made on the evidence available.

### **The employee's right to be accompanied**

An employee who is subject to the disciplinary process does not normally have the right to bring a companion to an investigative meeting. The employee does have the right to be accompanied by a fellow worker or Trade Union official at any disciplinary hearing or subsequent appeal. The accredited Trade Union official need not be an employee of the Company, but if the individual is not a fellow worker or an employee of the individual's union, the Company may insist on him/her being certified by the union as being experienced or trained in accompanying employees at disciplinary or appeal hearings.

The choice of companion is a matter for the employee, but the Company reserves the right to refuse to accept a companion whose presence would undermine the disciplinary process. Please note that individual workers are not obliged to agree to accompany the employee. At any hearing or appeal hearing, the employees chosen companion will be allowed to address the meeting, put and sum up the employee's case, convey the employee's views and confer with the employee during the hearing. The employee's companion does not however, have the right to answer questions on behalf of the employee, address the hearing if the employee does not wish them to or prevent the Company from explaining their case.

If the employee's chosen companion cannot attend on a proposed date, they can suggest another date that must suit everybody involved. The new date must be within 5 working days of the date originally proposed by the Company and can only be extended by mutual agreement.

### **Conducting the disciplinary hearing**

A reasonable amount of time should be given to the employee in advance of a disciplinary hearing in order that they have time to prepare. Where possible this should be at least 3 working days unless the employee and the Company agree otherwise.

At all formal hearings during the disciplinary process, the employee has the right to ask questions, present evidence, and raise points about any supporting statements. Where the employee intends to produce supporting evidence, the company should be notified and given a copy of such evidence prior to the hearing. The Company may adjourn the disciplinary hearing if it appears necessary or appropriate to do so without unreasonably delaying the disciplinary procedure for example to carry out any further investigation of facts.

### **The Decision**

- The employee will be informed in writing of the decision of the hearing.
- The Employee will be informed of the right of appeal against that decision if formal disciplinary action has been taken.
- The Company may apply any of the sanctions referred to below if considered appropriate in the circumstances. The employee will be told how long the warning will remain current and the consequences of further misconduct within the set period following the warning.
- Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause the hearing officer should make a decision on the evidence available.

## **Disciplinary Penalties**

### **No Warning**

Based on the evidence available, if the Hearing Officer concludes that the employee's action or behaviour was justified in the circumstances or that the action or behaviour does not merit formal disciplinary action, it may be decided to take no action. If this is the case, an employee in these circumstances will not be prejudiced in his or her employment going forward for having been involved in that disciplinary process. This outcome should still be confirmed in writing with the employee.

### **First Written Warning**

If a breach of misconduct occurs, a written warning will be given to the employee. The Line Manager will issue the warning, which will give details of the breach, the improvement required and the timescales for improvement. It will warn that further action under this Policy may be considered if there is no satisfactory improvement in conduct or any further breach and will advise of their right to appeal. A copy of this warning will be placed on the employee's file and will usually lapse after 6 months, subject to satisfactory standards being maintained.

### **Final Written Warning**

If there is still a failure to improve conduct or performance or there are further act(s) of misconduct or a breach of a different nature occurs or if one act of misconduct is deemed serious enough, a final written warning will be given to the employee. The warning will give details of the breach, will warn that dismissal may result if there is no satisfactory improvement in conduct within a given timescale or if there is repeated

misconduct and will advise of their right to appeal. A copy of this final written warning will be kept on file but will lapse after 12 months, subject to satisfactory standards being maintained.

### **Dismissal**

If there is still failure to improve conduct or further misconduct occurs of the same or a different nature or the Company believes that the employee has committed gross misconduct, the employee may be dismissed. The employee will be provided as soon as is reasonably practicable or usually within 5 working days with a letter confirming the reasons for dismissal, the date on which their employment will terminate, and the right of appeal (and to be accompanied to such an appeal).

### **Misconduct**

The following list, which is not exhaustive, provides examples of offences that are normally regarded as misconduct:

- Minor breaches of the Company's policies; Minor breaches of the employee's contract;
- Damage to, or unauthorised use of, the Company's property; Poor timekeeping;
- Time wasting;
- Unauthorised absence from work;
- Unauthorised excessive personal e-mail or internet usage; Smoking in non-smoking areas; or
- Persistent behaviour, which causes offence to fellow employees (e.g. deliberate or malicious talk to the detriment of another employee).

### **Gross Misconduct**

If, on completion of the disciplinary hearing, the Company believes that gross misconduct has occurred the result may be to dismiss the employee with immediate effect, i.e. without notice and without pay in lieu of notice. The following list, which is not exhaustive, provides examples of offences that are normally regarded as gross misconduct:

- Theft or attempted theft, either from the Company, employees or service-users or patients.
- Misappropriation or deliberate falsification of Company records, funds, documents or property.
- Unauthorised removal of or deliberate damage to property.
- Assault, provoking or being involved in violent behaviour or abusive language.
- Persistent refusal to obey a lawful or reasonable instruction or a serious act of insubordination.
- Being under the influence of drink or non-medically prescribed drugs;
- Reckless behaviour which puts the safety of a work colleague or others at risk;
- Bullying of another employee including physical or verbal assault or violence towards an employee except in self-defence.
- Acts of discrimination or harassment of a fellow employee, service user,

patient or other third party on any grounds.

- Causing loss, damage or injury through gross negligence, serious incompetence or dereliction of duties.
- Unauthorised use or disclosure of confidential information.
- Serious misuse of information technology and systems, including unauthorised use of e-mail and unauthorised entry to computer records.
- Breach of any applicable professional codes of conduct or failure to renew professional registration where such registration is required to fulfil contracted duties.
- Serious breach of Health and Safety rules.
- Serious act which breaks the mutual trust and confidence or which brings or is likely to bring the Company into disrepute.
- Accepting a gift or money (subject to company Gift and Gratuities Policy) from a service user, patient, or Company's suppliers.
- Accepting bribes or other secret payments.
- Giving false information as to qualifications or entitlement to work (including immigration status).
- Obscene or offensive behaviour.
- Making untrue allegations in bad faith against a colleague; Inappropriate use of social networking sites that may include posting statements or personal opinions about the Company, its business, customers, patients, service users or staff.
- Conviction of a criminal offence that in the Company's opinion may affect their reputation or its relationships with its staff, service users or public, or otherwise affects the employee's suitability to continue working for the Company.

Whilst gross misconduct will usually relate to the Company's business, circumstances may also occur when conduct outside of the employee's employment will be treated as gross misconduct. This may be because of the employee's position or duties, the need to maintain mutual trust and confidence or the need to protect the Company's reputation.

The employee will be provided as soon as is reasonably practicable or usually within 5 working days with a letter confirming the reasons for dismissal, a copy of the minutes from the hearing, the date on which their employment will terminate, and the right of appeal (and to be accompanied to such an appeal).

### **Alternatives to dismissal**

In some cases, the Company may at their discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- (a) Demotion.
- (b) Transfer to another department or job.
- (c) A period of suspension without pay.
- (d) Loss of seniority.
- (e) Reduction in pay.

- (f) Loss of future pay increment or bonus.
- (g) Loss of overtime.

### **Suspension**

Whilst allegations of gross misconduct are under investigation it will be normal for the individual employee against whom the allegation has been made to be suspended from duties. A letter will be issued to the employee outlining details of their suspension. During a period of suspension, the employee will continue to be paid at basic average salary. Suspension is not to be regarded as a form of disciplinary action and will be for as short a period as practicably possible. Suspension may be used to protect both the client and the employee in question and should not be seen as a disciplinary sanction.

### **Criminal charges**

Where an employee's conduct is the subject of a criminal investigation, charge or conviction the Company will follow advice from safeguarding or post police investigation (See safeguarding policy). A new DBS check will be required for staff who are subject to criminal investigation, charge or conviction. If necessary, the employee will be suspended from work or provided with amended duties during this period.

### **Resignations during the disciplinary process**

Should an employee resign with immediate effect, pending disciplinary action SOS Homecare Ltd has the right to put this on employment references going forward. SOS Homecare Ltd will retain the disciplinary and investigation information for 12 months after the employee's resignation. If the employee resigns with notice SOS Homecare will endeavour to progress the disciplinary to its conclusion during the employees notice period.

### **Appeals**

The employee has the right to appeal against any disciplinary action taken against them. An appeal must be made in writing within 5 working days of receipt of the letter stating the outcome of the disciplinary hearing and should clearly state the grounds for the appeal.

The appeal will be heard by an independent manager who has not been involved in the investigation or the hearing. An appeal hearing will be arranged at the earliest opportunity and the employee has the right to be accompanied (see above). The Company may adjourn the appeal hearing if it needs to carry out any further investigations in the light of any new points the employee has raised at the hearing. An appeal may result in the removal of the disciplinary sanction; the imposition of a lesser sanction; or the confirmation of the original sanction. Following the appeal meeting, the employee will usually be informed of the outcome within 5 working days in writing. The outcome of this meeting will be final.

### **Policy Review**

This policy will be reviewed every 2 years.