

SPECIALIST EDUCATION SERVICES

Grievance, Capability and Disciplinary Procedures

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1 GRIEVANCE

Anybody working in an organisation may, at some time, have problems or concerns about their work, working conditions or relationships with colleagues that they wish to talk about with management. They want the grievance to be addressed, and if possible, resolved.

It is also clearly in management's interests to resolve problems before they can develop into major difficulties for all concerned. Employees should aim to settle most grievances informally with their line manager. To this end there are structures and systems in place to provide colleagues with a forum for discussion at the very earliest stage (e.g. personal support meetings, professional development meetings) when issues may arise as a consequence of misunderstanding or misinformation, etc, and can be easily dealt with.

If a grievance cannot be settled informally or a formal approach is preferable, the employee should raise it formally with management. Grievance procedures enable employees to raise grievances with management about their employment either by themselves or with a representative. It is our policy to help resolve grievances as quickly and as fairly as possible and at the lowest relevant level.

The appropriate procedures to follow are set out in the document **SES Complaints and Representations Policy and Practice**. This outlines both the informal and formal stages.

2 CAPABILITY

This policy applies to all staff that have successfully completed their probation period and establishes guidelines for managers and staff in relation to the management of under-performance.

SES has a responsibility for setting realistic and measurable standards of performance, for explaining these standards carefully to members of staff and for supporting staff to achieve the standards set. All new members of staff will have their job explained carefully to them at outset and through the induction and probationary process. They will be given copies of, or referred to, any written guidance that exists in relation to their area of work and will be given appropriate training and support to become familiar with it. Staff will also be made aware of the standards expected of them and where expectations change and evolve over time, managers have a responsibility to inform staff of these changes.

Employees have a contractual responsibility to perform to a satisfactory level. Where sub-standard performance is found to be due to negligence or lack of application on the part of the employee, then the Disciplinary Procedure will normally be appropriate.

However, issues of an employee's capability may arise from time to time where sub-standard performance relates to a lack of the required knowledge, skills or ability rather than misconduct. In this case, the employee will, wherever practicable, be assisted through training or coaching and given reasonable time to achieve the required standard.

Capability procedures have essentially the same structure (informal to formal; oral, written and final written) as disciplinary procedures but the company takes the view that the earlier stages of capability should be aimed at preventing the use of formal stages.

An appropriate interview process, coupled with the rigorous Staff Support and Development Programme with its emphasis on growth and development of skills and knowledge, through to professional development guided by regular meetings, should eliminate the need for capability procedures except for rare and highly exceptional circumstances.

3 DISCIPLINARY

It is hoped that most disciplinary problems can be solved by informal discussions or counselling. However if this fails to resolve the problem a more formal approach is required.

The company's aim is to encourage improvement in individual conduct and performance through appropriate support, guidance and professional development.

3.1 PRINCIPLES

- The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues. No disciplinary action will be taken until the matter has been fully investigated
- At every stage you will be advised of the nature of the problem (usually regarding conduct or capability), be given the opportunity to state your case, and be represented or accompanied by a fellow employee of your choice
- You will not be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will normally be dismissal without notice and without pay in lieu of notice
- You have a right to appeal against any disciplinary action taken against you
- The procedure may be implemented at any stage if your alleged misconduct warrants such action.

3.2 INFORMAL DISCUSSIONS

Before taking formal disciplinary action, your supervisor will make every effort to resolve the matter by informal discussions with you. Only where this fails to bring about the desired improvement should the formal disciplinary procedure be implemented

3.3 INVESTIGATION TO ESTABLISH THE FACTS

It is important to investigate potential disciplinary matters promptly to establish the facts of the case before memories of events fade. This will not by itself result in any disciplinary action. However, it will be made clear to you that the investigation may lead to disciplinary charges being raised. In those cases where a period of suspension with pay is considered necessary, this period will be kept as brief as possible.

3.4 INFORMING YOU OF THE PROBLEM

If, in light of the investigation, it is decided that there is a disciplinary case to answer, you will be notified of this in writing. This notification will contain sufficient information to let you know what the alleged problem is and its possible consequences.

3.5 HOLD A MEETING WITH YOU TO DISCUSS THE PROBLEM

Before holding a disciplinary meeting we will ensure that you have been notified of the nature of the problem and the basis of the allegations against you. The meeting will then be held promptly whilst allowing you reasonable time to prepare your case. At the meeting you will be able to set out your case and answer any allegations that have been made.

3.6 BEING ACCOMPANIED AT THE MEETING

You have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action; or
- the confirmation of a warning or some other disciplinary action (appeal hearings).

The chosen companion may be a fellow worker, a lay trade union official, or an official employed by a trade union. A lay official must have been certified by their union as being able to accompany a worker. To exercise the right to be accompanied workers must first make a reasonable request.

The companion is allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

3.7 DECIDE ON APPROPRIATE ACTION

Following the meeting a decision will be made whether or not disciplinary or any other action is justified and you will be informed accordingly.

3.8 FIRST WARNING

If conduct or performance is unsatisfactory, the employee will be given a written warning or performance note setting out the nature of the misconduct or poor performance, the change in behaviour or improvement in performance required (with timescale). Such warnings will be recorded but disregarded after 12 months of satisfactory service. The employee will also be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change. Where the first offence is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be justifiable to move directly to a final written warning.

3.9 FINAL WRITTEN WARNING

If the misconduct is serious, or there is no improvement in standards, or if a further misconduct of a similar kind occurs within the set period, a final written warning will be given which will include the reason for the warning and a note that if no improvement results within a clearly specified time period (between one month and twelve months, at the discretion of SES), further action will be taken. Dismissal or action short of dismissal may follow, (e.g. demotion or loss of seniority).

3.10 GROSS MISCONDUCT

Some acts, termed gross misconduct, are so serious that they may call for summary dismissal for a first matter of misconduct. If, after investigation, it is confirmed that an employee has committed a matter of misconduct of the following nature (the list is illustrative, not exhaustive), the normal consequence will be dismissal without notice or payment in lieu of notice:

- Theft, damage to property, fraud, incapacity for work due to being under the influence of alcohol or illegal drugs, physical violence or perceived threat of physical violence, bullying and serious insubordination

Any decision to dismiss will be taken by the employer only after full investigation and the operation of a fair disciplinary process, including a right of appeal

3.11 SUSPENSION

As part of a disciplinary procedure a member of staff may be suspended while the case is being investigated. This is seen as a neutral act and not as a disciplinary penalty and no guilt should be implied or inferred from the suspension. Suspension will always be on full pay and for the shortest possible time, where this is within our control. You will be told exactly why you are being suspended, and that you will be called in for a disciplinary meeting as soon as possible following the investigation.

It is standard procedure that during any suspension you will be asked not to contact colleagues or return to site in order to safeguard yourself and others during the process. Ignoring this instruction may well damage or prejudice your case.

3.12 APPEALS

If you wish to appeal against any disciplinary decision, you must appeal, in writing within 5 working days of the decision being communicated to you. The grounds of appeal must be set out clearly within the letter submitted by the employee.

All appeals above and beyond the Principal will involve the Directors. Workers have a statutory right to be accompanied at appeal hearings (as in 3.6 above), should they wish. You will be informed in writing of the results of the appeal hearing as soon as possible.

A successful appeal will result in all information being removed from a staff member's record.

This document is based on the ACAS Discipline and Grievances at Work: The ACAS Guide (July 2020), ACAS Conducting Workplace Investigations (June 2019 and the ACAS Code of Practice 1: Code of Practice on Disciplinary and Grievance Procedures (March 2015);

4 APPENDICES

4.1 CONDUCTING INVESTIGATIONS

The guidance above from ACAS should be read and followed whenever an investigation is required.

SES has a standard template for conducting investigations that can be located on the Staff area of the network (SES Investigation Report Template).

The following steps provide an outline framework that help conduct workplace investigations, but they are only a guide. Note, the same principles apply for investigating a safeguarding or child protection allegation investigation.

Decision to investigate.

Who do you need to communicate with regarding the investigation? Have you got permission to investigate?

Who is going to investigate the incident?

Decide who is going to investigate the incident and the reasons why that person should investigate.

Plan the investigation.

Take some time to organise your thoughts, gather and review the information you have received already. Think about what you will need to find out to decide what happened. Who will you need to interview and what will you ask?

Conduct the interviews.

The goal of every investigation is to gather information, the most basic way to do this is by asking people questions. Decide what questions need to be asked to elicit as much information as possible by asking open ended questions. Be prepared to follow up with extra/alternative questions throughout the interviews in order to establish the facts. Always keep a record of the questions asked and the discussion taking place.

Check SES policy and key documents.

Ensure that processes and practice is in line with company policy and individual documents such as risk assessments etc.

Document the evidence

Ensure that all notes, conversations, actions and interviews are recorded clearly and can be understood clearly by external audiences if necessary.

Concluding the investigation

Complete a written summary investigation report that can be shared with external audiences. Ensure that your summary includes clear evidence of your overall findings, if appropriate, identifies any learning, and also details any necessary action recommended or required.