



DISCIPLINE & GRIEVENCE

POLICY AND PROCEDURE

ASPECTS CARE DISCIPLINE AND GRIEVANCE

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Policy

Aspects Care sets standards of conduct and work performances which are necessary for it to operate effectively in its staffs best interest. The purpose of this procedure is to help and encourage staff to achieve and maintain the required standards and to provide a fair and consistent method of dealing with alleged failures.

The need to discipline may be avoided if staff are given a thorough induction and adequate training as necessary.

The Company rules and this procedure apply to all staff, and are expected to know and understand them.

General Procedures

- depending on the seriousness of the misconduct, seniority, length of service and any previous unspent disciplinary warnings, it may be appropriate to bypass the initial stages of the procedure
- no disciplinary action will be taken against a member of staff until the allegations have been fully investigated
- at each stage in the procedure, a formal interview will be held at which the member of staff will be advised of all the allegations against him/her and they will be given the opportunity to explain the circumstances
- at all stages of the procedure, the member of staff may be accompanied at the interview by a work colleague
- the staff member will have the right of appeal at every stage of the procedure
- disciplinary action may only be taken by a Manager with the requisite level of authority

Counselling

In most cases when a member of staff's performance, conduct or attitude is below the level required, his/her manager will hold an informal counselling interview to outline the shortcomings and discuss how the required improvements might be achieved and within timescale. Any training needs should be addressed and other help offered if required. If the appropriate improvements are not achieved and maintained, or the problem is more serious, then the formal disciplinary procedure will be followed.

Staff must be informed that their performance will be monitored.

Four stages of the disciplinary procedure

The four stages of the disciplinary procedure are outlined below:-

- 1) Verbal warning
- 2) First written warning
- 3) Second/final written warning
- 4) Dismissal

Verbal Warning

If, after counselling, further training or other assistance the member of staff show no sign of improvement, a verbal warning may be issued.

Note: Adequate time must have elapsed for an improvement to have been shown. The length of time varies depending on the situation but the member of staff must be advised of when this is to be reviewed.

Brief notes of the details and the date(s) of the misconduct must be kept and reference made to targets and objectives. This must be placed on the relevant staff member file, but only as a record and not to be mistaken for a written warning.

A verbal warning is spent after 6 months.

First Written Warning

Issued either:

- a) when a verbal warning is current and there are no signs of improvement following the review

OR

- b) for more serious misconduct e.g. failure to report to work without adequate explanation

A first written warning is spent after 6 - 9 months.

Second/Final Written Warning

Issued either:

- a) when there are further offences and a current written warning is already on file

OR

- b) where a sufficient work standard has still not been met following the review

OR

- c) where you commit an offence which is serious, but not sufficiently so as to warrant dismissal (i.e. first and final warning).

A second/final written warning is spent after 12 months.

Dismissal

In any cases of possible dismissal another Company Director must be informed prior to the Disciplinary interview and before any dismissal letter is issued.

a) **Dismissal with Notice**

Occurs as a final step when, despite warnings, performance or conduct has not improved. The member of staff must be given the appropriate period of notice, although they may be paid in lieu of notice.

b) **Dismissal without Notice (summary dismissal)**

If, after investigation, suspension and a disciplinary interview, it is confirmed that a member of staff has committed an act of gross misconduct, then he/she will be summarily dismissed.

If there is evidence of gross misconduct the staff member must be interviewed and suspended on full pay following the procedure below:

- 1) He/she must be advised why they are being suspended
- 2) He/she must be advised that they will receive full pay whilst investigations are taking place
- 3) An 'investigatory suspension on full pay' letter must be issued.
- 4) He/she must be advised of where and when the disciplinary interview will be held (no more than 3 days should elapse whenever possible)
- 5) He/she must be advised that they may have a work colleague present
- 6) A full investigation must take place. The suspension should be continued if investigations are not completed by the time of the disciplinary interview, or if further information comes to light during the disciplinary interview
- 7) If he/she is to be dismissed for gross misconduct they forfeit their right to notice and holiday pay

Reasons for summary dismissal will include:

- physical violence
- fraud or theft
- forgery or falsification of records
- being on duty under the influence of drugs or alcohol
- unauthorised possession of, or wilful damage to company property
- flagrant disregard to health and safety
- rudeness to customers
- sleeping on duty
- criminal offences in the workplace
- receiving or accepting a gift which could be considered to be a bribe or corrupt reward
- sex or race discrimination including harassment

This list is not exhaustive.

Appeals

If a member of staff wishes to exercise their right to appeal, they must inform the next level of management in writing, setting out the full grounds for the appeal, within 7 days of the warning being issued. The appeal hearing will be held within 21 days of receipt of the written request. The decision taken as a result of an appeal hearing is final.

Grievance Procedures

Grievances are concerns, problems or complaints that Employees raise with their Employers. Grievance procedures are used to deal with these complaints. Employers must have procedures available to Employees so that their grievances can be properly considered and dealt with fairly, consistently and speedily.

Employees should aim to resolve most grievances informally with their Line Manager. If a grievance cannot be settled informally, the Employee should raise it formally in accordance with the grievance procedure. There is now a statutory grievance procedure that Employees must invoke if they subsequently wish to use the grievance as the basis of certain applications to an Employment Tribunal.

Under the statutory grievance procedure, a grievance is defined as *'a complaint by an Employee about action which the Employer has taken or is contemplating taking in relation to him/her'*. It includes grievances about the actions of third parties and work colleagues where the Employer could be held vicariously liable.

It has been left to case-law to identify precisely what constitutes the raising of a statutory grievance by an Employee. The following principles can be gleaned:

- For a statutory grievance to have been raised, it does not matter that the Employee may not have actually intended to raise a grievance by their written complaint; the intention of the Employee is not relevant.
- An Employee is not required to indicate that their written complaint constitutes a grievance or that the grievance procedure is being invoked.
- The Employee does not need to comply with any contractual grievance procedure in order for a written complaint to amount to a statutory grievance.
- There is no particular formality or technical detail required for a statutory grievance – all that an Employee needs to do is to set out their complaint in writing. That complaint could be by letter, fax, e-mail or written on an informal note.
- The fact that a written complaint is contained in a resignation letter makes no difference. Similarly, the fact that the written complaint also deals with other matters (for example, the making of a flexible working request) does not prevent it being a statutory grievance.
- It is not necessary that every detail of the Employee's complaint be set out. It is sufficient if the Employer can understand the general nature of the complaint.
- The written complaint can be made by the Employee's Solicitor or other third party representative.
- Discrimination and equal pay questionnaires are not written complaints capable of constituting statutory grievances.

Under the standard statutory procedure, Employees must:

- Step 1: Inform the Employer of their grievance in writing.
- Step 2: Be invited by the Employer to a meeting to discuss the grievance, where the right to be accompanied applies, and be notified in writing of the decision. The Employee must take all reasonable steps to attend this meeting. The meeting must not take place unless the Employee has informed the Employer what the basis for the grievance was and the Employer has had a reasonable opportunity to consider his response to that information.
- Step 3: Be given the right of an appeal and invited to attend an appeal meeting if they feel the grievance has not been satisfactorily resolved and be notified of the final decision.

Note that the standard statutory grievance procedure is triggered simply by a written complaint being submitted by the Employee, however vague or brief that complaint may be, although there is no requirement on the Employer to hold a grievance meeting until the Employee has gone on to set out the basis for their grievance. Therefore, the time when Employees must inform the Employer of the basis for their grievance is after the invitation to a grievance meeting has been made by the Employer but before the meeting takes place.

Generally, the Employee should at least have raised their grievance in writing and waited 28 days before presenting an Employment Tribunal claim relating to the matter. A premature claim will be rejected by the Tribunal although, subject to certain time limits, it may be presented again once the written grievance has been raised. Furthermore, if a grievance comes before an Employment Tribunal and either party has failed to follow the statutory grievance procedure, then the Tribunal will normally adjust any compensation award by 10% or, where it feels it just and equitable to do so, by up to 50%, depending on which party has failed to follow the procedure.

Wherever possible, an Employee should raise, and an Employer should deal with, a grievance before the Employee leaves employment. A modified grievance procedure, however, applies where an Employee has already left employment, the standard procedure has not been commenced or completed and both parties agree in writing that it should be used instead of the standard procedure. Under the modified procedure, the Employee should set out their grievance in writing and send it to the Employer as soon as possible after leaving employment and the Employer must write back setting out his response.

Grievance Meetings

On receiving a formal grievance, a Manager should invite the Employee to attend a grievance meeting as soon as possible and inform them that they have the right to be accompanied by either a work colleague or Trade Union Representative. The grievance should be treated confidentially.

At the grievance meeting, the Employee should be allowed to explain their complaint and say how they think it should be settled. The Employer should then give the grievance careful consideration before responding. This may involve further investigation. The grievance meeting should be adjourned if further investigation needs to be carried out.

The Employer should then respond in writing to the Employee's grievance within a reasonable time and should let the Employee know that they can appeal against the Employer's decision if they are not satisfied with it. Five working days is normally long enough for an appeal to be lodged.

Appeals

If an Employee lodges an appeal, the Employer should arrange an appeal meeting and notify the Employee of their statutory right to be accompanied. The appeal stage is still part of the statutory procedure and if the Employee fails to appeal, the Tribunal may reduce any award of compensation.

As far as is reasonably practicable, the appeal should be heard by a more Senior Manager than the one who dealt with the original grievance. As with the first meeting, the Employer should write to the Employee with a decision on their grievance appeal as soon as possible. They should also tell the Employee that the appeal meeting was the final stage of the grievance procedure, if this is indeed the case. Some larger organisations may allow a further appeal to a higher level of Management.

Special considerations

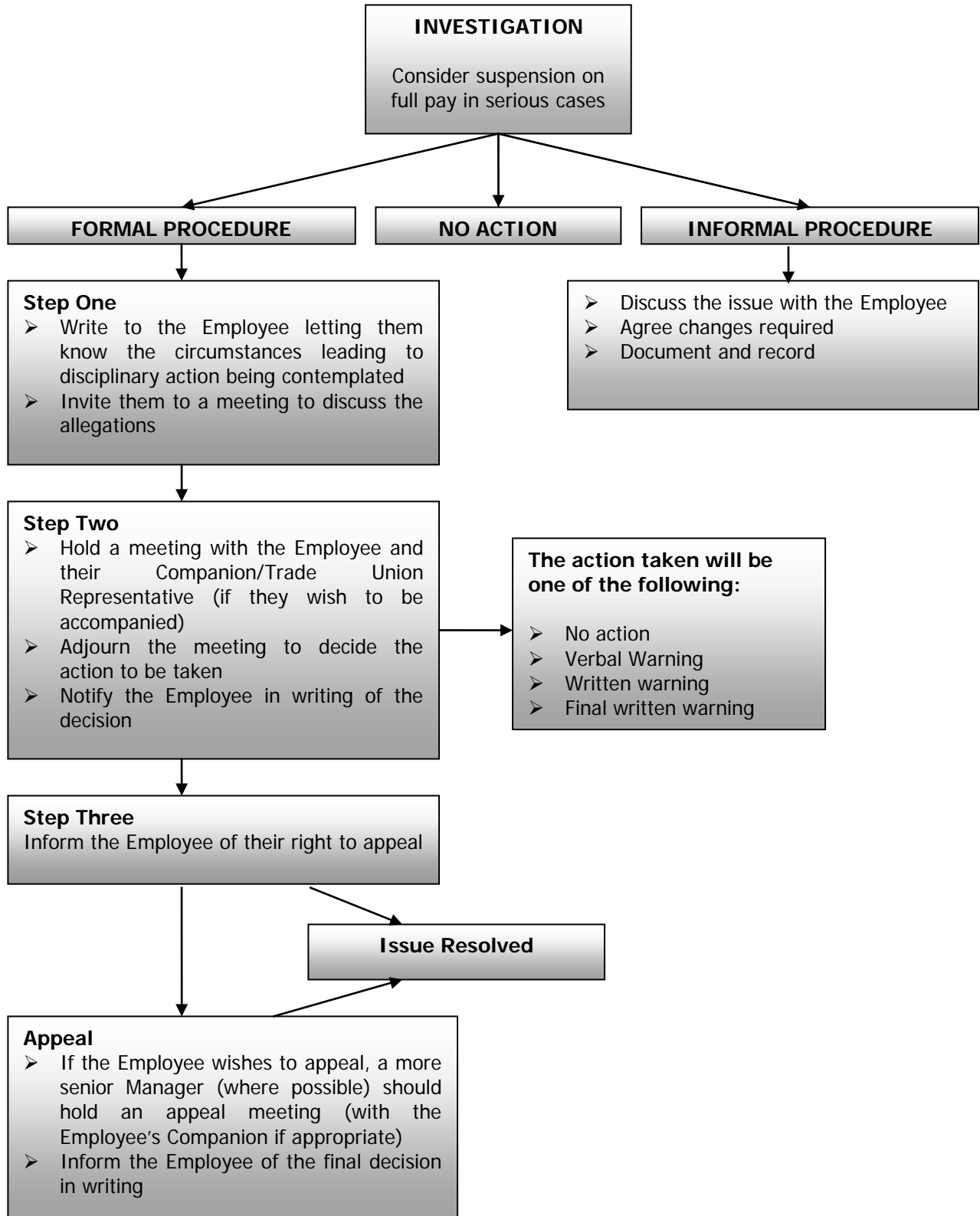
Complaints about discrimination, bullying and harassment in the workplace are sensitive issues and Employers may therefore have separate procedures for dealing with these. It is important that these procedures meet the statutory minimum requirements.

Features of a grievance procedure

Grievance procedures should make it easy for Employees to raise complaints with Management and should be simple and put in writing. They should keep proceedings confidential, enable an Employee's Line Manager to deal informally with a grievance if possible and allow the Employee to be accompanied at grievance meetings.

It is important that all Employees understand the grievance procedures, including the statutory requirements. Employees should therefore be given a copy of the procedures and the details should be explained to them.

Discipline Procedure Flowchart



Grievance Procedure Flowchart

