

Sandwell Mind Disciplinary Procedure

Purpose

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and performance required by Sandwell Mind. The aim is to ensure fair and consistent treatment for all and to provide an opportunity for the employee to improve. The procedure has been worded in such a way that there are clear stages which should be followed in the event of disciplinary issues. Sandwell Mind will always try and resolve issues in a fair and amicable way, without having to resort to disciplinary action if at all possible.

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 in the procedure the employee will be advised in writing of the nature of the complaint against them and have the opportunity to state their case before any decision is made. At all formal stages of the procedure the employee will have the right to be accompanied by a trade union representative or work colleague of their choice. Please see Appendix I. An employee has the right to Appeal against any disciplinary penalty.

Investigations

No disciplinary action will be taken against an employee until there has been an investigation of the circumstances. For minor faults and offences the investigation may be carried out by the line manager. For faults and offences of a more serious nature a full investigation will be carried out by an independent member of the management team. Sandwell Mind may suspend the employee whilst the investigation is carried out.

Procedures

Informal Procedure

Minor faults or first offences will be dealt with informally in the first instance. If during the informal meeting there is evidence to suggest that the matter is more serious the meeting should cease and the formal procedure should be adopted. However, depending on the nature and seriousness of the offence management have discretion to proceed to any stage in the procedure.

Formal Procedure

For more serious offences or repeated failure to meet the required standards advised in informal meetings, formal action may be taken. Employees will be invited in writing to attend a disciplinary hearing relating to the matter at an agreed time and date convenient to both the employee and Organisation. The employee will be advised in writing of the nature of the complaint against them at least 5 working days before the disciplinary hearing date. Documentation to be used at the hearing should be exchanged by the employer and the employee at least 3 working days before the disciplinary hearing. At the disciplinary hearing, the employee will be given an opportunity to state their case and

will have the right to be accompanied and represented by the trade union representative or workplace colleague of their choice.

If the employee fails, without good reason, to attend a disciplinary hearing, the Organisation reserves the right to hold the hearing in their absence. The Organisation will make a decision and where applicable issue any resulting penalty. However, if the employee has a good reason to postpone the date of the disciplinary hearing this will be acceptable so long as the postponed date is within 5 working days of the original date, and is convenient to both the employer and employee. If the chosen representative of the employee is unavailable on the date of the initial hearing, the employee may delay the date of the disciplinary hearing by up to five working days to enable the chosen representative to attend. This may be extended by mutual agreement. The timing of any alternative hearing should be convenient to both the employer and the employee.

Disciplinary hearings will normally be conducted in the manner detailed in Appendix II.

Penalty

No formal disciplinary penalty will be imposed without a disciplinary hearing. In the case of gross misconduct or gross negligence, the penalty could result in summary dismissal without notice. Following a disciplinary hearing and taking into account the details of the allegation, the case presented by the employee and/or their accompanying representative and any mitigating factors, the outcome could be that disciplinary action is not warranted or that one of the following penalties is applied:

Stage 1 – Verbal Warning

The employee will be advised in writing of the reason for the Verbal Warning, that it is the first stage of the disciplinary procedure and their right to Appeal. A copy of the Verbal Warning will be kept on the employee's personal file for a period of 6 months.

Stage 2 – First Written Warning

If a further offence occurs, or the offence is of a more serious nature, a Written Warning will be issued. The employee will be advised in writing stating full details, together with the improvement required and the timescale in which the improvement is required. The Written Warning will state that if the improvement is not achieved within the required timescale or there is a recurrence of the offence the matter will progress to the next stage of the Disciplinary Procedure. The employee's right to Appeal will be stated. A copy of the warning will be kept on the employee's personal file for 12 months.

Stage 3 – Final Written Warning

If a further offence is committed or there is a failure to improve within the timescale as set out in the Written Warning, a Final Written Warning may be issued. A Final Written Warning may also be issued in the event of misconduct that is of a more serious nature but does not justify dismissal, or for a dismissible offence that due to mitigating circumstances does not justify dismissal. The Final Written Warning will state the full details, the improvement required and timescale for the improvement. The Final Written Warning will also state that failure to meet required improvement within the timescale or if there is a recurrence of the offence the matter will progress to the next stage of the Disciplinary Procedure. The employee's right of Appeal will be stated. A copy of the Final Written Warning will remain on the employee's personal file for 24 months.

Stage 4 – Dismissal

The Chief Executive or Care and Support Services Manager, (having had regard for the case presented by the employee the representative of trade union or workplace colleague and taking into account any mitigating factors) may give notice of dismissal to the employee if:

1. the employee fails to comply with a Final Written Warning;
2. or despite having been given a Final Written Warning as the result of either misconduct, or continued unsatisfactory work performance, the employee commits a further offence of misconduct or their work performance continues to be unsatisfactory.

Prior to being given such notice of dismissal, the employee shall have the right to make representations, (including oral representation, in mitigation, for which purpose they may be accompanied and represented by the trade union representative, or workplace colleague) to the Chief Executive or to any person appointed to investigate the matter and to make recommendations, as the Organisation may decide. The notice of dismissal will be in writing and will specify full details of the reasons for dismissal, the date on which the employment will end and the right of appeal against the dismissal.

The Chief Executive or Care and Support Services Manager may summarily dismiss the employee if, on completion of the investigation and a disciplinary hearing, it is established that the employee has been guilty of gross misconduct or gross negligence. Summary dismissal will be without notice and will be confirmed to the employee in writing, giving full details of the reasons for the dismissal. The employee's right to Appeal will also be stated.

Time Limits

Time limits at each stage of this procedure will be specified. An investigation to establish the facts will be undertaken as quickly as possible. If a written warning is issued following the Disciplinary Hearing this will normally be within 5 working days. The time within which the written Appeal should be made following receipt of a written warning is 5 days.

Suspension Pending a Disciplinary Hearing

When the Chief Executive or Care and Support Services Manager is of the view that an employee may have been guilty of gross misconduct, or that because of some other good and urgent cause, the continuing attendance of the employee at work cannot be permitted, the Chief Executive or Care and Support Services Manager may suspend the employee from duty on full pay pending an investigation and the holding of a formal disciplinary hearing. Such a suspension should only be imposed after careful consideration. It should be made clear to the employee that if suspension action is taken, that any such suspension will not have a detrimental affect on the employee.

If the Chief Executive or Care and Support Services Manager decide to suspend an employee from duty, the Chief Executive or Care and Support Services Manager shall:

- (i) confirm the suspension in writing to the employee immediately; and

- (ii) inform the employee in writing of the reasons for the suspension, within 5 working days.

Levels of Authority

The Personnel Manager will be consulted about procedures prior to any stage of the disciplinary process being implemented.

The people who will carry out the various stages of the procedure are as follows:

Stage 1 - Verbal Warning	Line Manager
Stage 2 - First Written Warning	Line Manager, or their line manager
Stage 3 - Final Written Warning	Chief Executive/Care and Support Services Manager
Stage 4 – Dismissal	Chief Executive/Care and Support Services Manager

In the case of management dismissal the Chief Executive will assume responsibility. In the case of disciplinary action for the Care and Support Services Manager the Chief Executive will assume responsibility. In the case of disciplinary action for the Chief Executive the Management Committee will assume responsibility

Serious Offences

The following are examples of Gross Misconduct that may lead to summary dismissal: ***The list is not exhaustive.***

- Abuse of service users or employees
- Theft or unauthorised possession of any property or facilities belonging to the Organisation, or to any employee or client.
- Deliberate damage to the Organisation's property
- Deliberate falsification of records
- Bribery or corruption
- Refusal to carry out duties or reasonable instructions or to comply with Organisations rules
- Serious acts of insubordination.
- Serious negligence/incompetence which causes unacceptable loss, damage, injury or endangers the health and safety of service users or employees.
- Serious incapability as a result of being intoxicated by reason of alcohol or illegal drugs.
- Serious breach of the Organisation's Policies and Procedures
- Violent, dangerous or intimidatory conduct.
- Violation of the Organisation's rules and procedures concerning health and safety at work.
- Sexual or racial harassment of another employee or client, or harassment in relation to age, disability, gender, sexual orientation, religion or belief

- A criminal offence, which may (whether it is committed during or outside the employee's hours of work for the Organisation) adversely affect the Organisation's reputation, the employee's suitability for the type of work he or she is employed by the Organisation to perform or his or her acceptability to other employees or to students.
- Victimisation of another member of staff in circumstances where that employee has used or attempted to use the Whistleblowing Procedure; malicious vexatious or unreasonable use of the Whistleblowing Procedure; failure to follow the Organisation's Whistleblowing Procedure when disclosing malpractice (as defined by the procedure)
- Fraudulent Acts
- Actions leading to bringing the Organisation, its employees or service users into disrepute

Appeals Procedure Against Disciplinary Penalties Other than Dismissal

Employees have the right to appeal at every stage of the disciplinary procedure. Appeals should be in writing within 5 working days of the disciplinary action, clearly stating the grounds for the appeal. In the case of staff members the appeal should be made to the Care and Support Services Manager or the Chief Executive In the case of management the appeal should be made to the Chief Executive In the case of the Care and Support Services Manager the appeal should be made to the Chair of the Management Committee. In the case of the Chief Executive the Management Committee will decide on an appropriate panel to deal with the appeal. Decisions will be communicated back to the person making the appeal as soon as possible, subject to the complexities of investigations in to the facts.

The above appeals procedure applies to stages 1,2, 3 of the Disciplinary Procedure

Appeals Procedure Following Notification of Dismissal

An employee who wishes to appeal against dismissal or notice of dismissal should inform the Personnel Manager in writing within 5 working days of the date of the decision which forms the subject of the appeal. The letter of appeal must clearly state the basis of the appeal. The appeal will be heard by a Panel of the Management Committee. The Appeal Hearing will normally take place no later than 28 working days after the notice to appeal has been received by the Personnel Manager or as soon as reasonably practicable thereafter. The employee will be given at least 5 working days' notice of the date, time and place fixed for the Appeal Hearing. At the Appeal Hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or workplace colleague of his or her choice. The decision of the Panel of the Management Committee appointed to hear the appeal will be notified or confirmed to the employee in writing within 5 working days or as soon as reasonably practicable thereafter and will be final.

Appendix I

The Statutory Right to be Accompanied

There is a statutory right applicable to employees allowing them to be accompanied by a fellow worker, or trade union representative at most disciplinary and grievance meetings. The employee must make a reasonable request to the employer to be accompanied. It is not reasonable for the companion to be someone:

- Whose presence would prejudice the Disciplinary Hearing.
- Who might have a conflict of interest.

The companion can be another employee or worker; an official employed by a trade union or a lay trade union official who has been certified by the union to act as a companion. The trade union official can be from any trade union regardless of whether the organisation recognises it. The fellow worker or union official does not have to accept a request to accompany. A companion who has agreed to accompany is entitled to a reasonable amount of paid time off to fulfil their responsibility. This time should cover the hearing but it is also good to allow time for them to familiarise themselves with the case.

The companion should be allowed:

- A say in the date and time of the hearing
- To put the employee's case to the hearing
- To sum up the employee's case
- To respond on the employee's behalf to any view expressed at the hearing
- To confer with the employee throughout the hearing

The Companion does not have the right:

- To answer questions on the employee's behalf
- To address the hearing if the employee does not wish it
- To prevent the employer from explaining their case

Appendix II

Recommended Procedure for Disciplinary Hearing

This procedure has been written to give guidance to all parties on how a Disciplinary Hearing may be conducted. It is in no way prescriptive of how every hearing will be conducted.

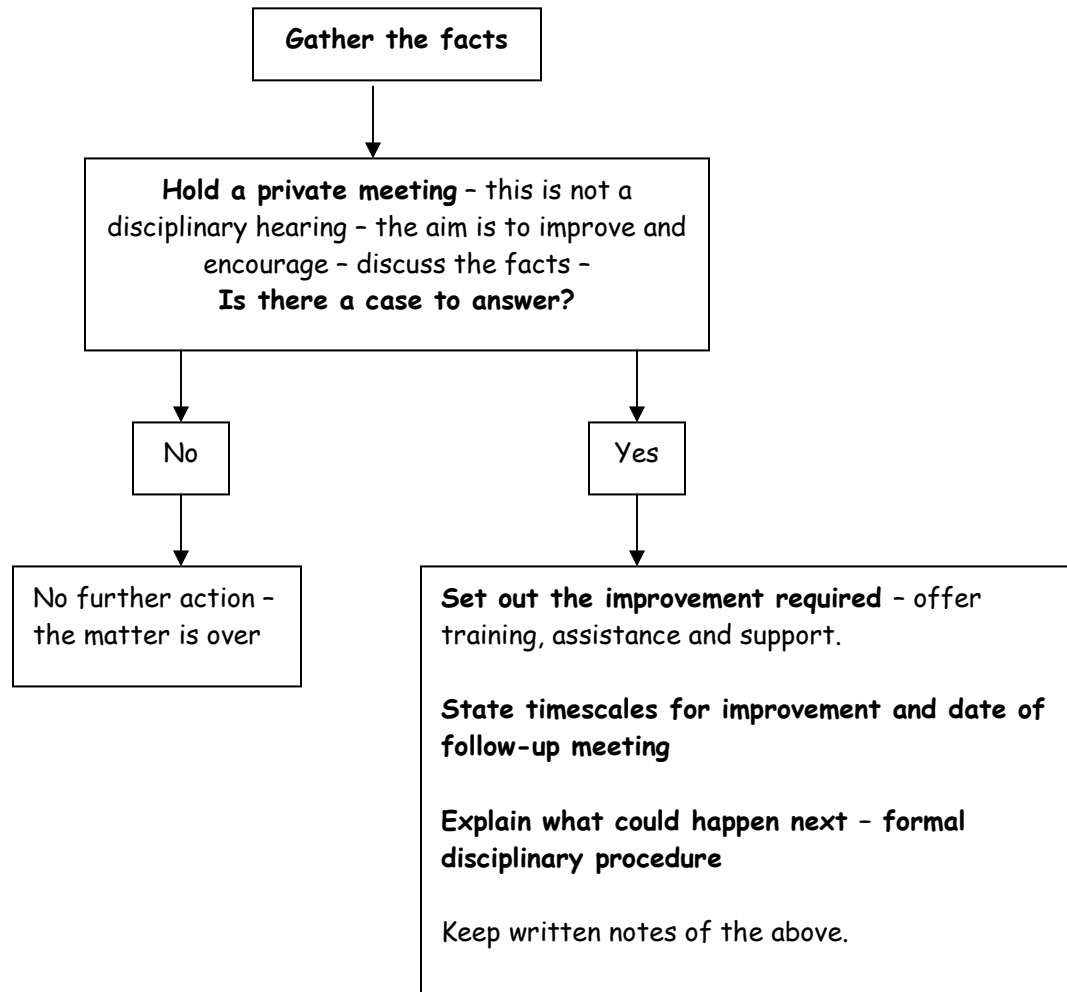
During the Disciplinary Hearing, adjournments may be requested by either party or by the Manager conducting the Disciplinary Hearing and will not be unreasonably refused. Where such a request is denied, an explanation will be given. The Manager conducting the hearing will ask whether any new evidence has been made available that could not be circulated prior to the Disciplinary Hearing and will make a judgement as to whether an adjournment is necessary to allow consideration of such evidence. The Manager conducting the Disciplinary Hearing will introduce all those present.

ORDER OF HEARING

- a) The Investigating Officer (IO) will present the details of the allegation and a report on the investigation undertaken.
- b) The employee or representative may question the IO.
- c) The Manager conducting the Disciplinary Hearing or panel members may question the IO.
- d) The IO may call witnesses and ask questions of them.
- e) The employee or representative may question the witnesses.
- f) The Manager or panel members may question the witnesses.
- g) The employee or representative will present the case against the allegations and explain any special or mitigating circumstances which may exist and the nature of the outcome sought.
- h) The IO may question the employee or representative.
- i) The Manager may question the employee or representative.
- j) The employee or representative may call witnesses and ask questions of them.
- k) The IO may question the witnesses.
- l) The Manager may question the witnesses.
- m) Should the Manager conducting the Disciplinary Hearing wish to clarify any issue with either the employee, IO, or the witnesses, they should do so at this point.

- n) The IO will summarise the evidence against the employee without introducing any new factors.
- o) The employee or representative will summarise the case against the allegation.
- p) The employee, representative, IO and any other management representative will withdraw and the Manager conducting the Disciplinary Hearing will decide whether or not an offence has been committed. The Manager may seek guidance from the Personnel Manager on procedural matters.
- q) If, in the opinion of the Manager conducting the Disciplinary Hearing an offence has been committed, the Manager will take into account the following before deciding upon an appropriate disciplinary sanction:
 - i. any mitigating factors, eg health, domestic, bereavement;
 - ii. current disciplinary record of the employee;
 - iii. length of service at the Sandwell Mind;
 - iv. nature of the offence;
 - v. evidence produced by either party at the hearing;
 - vi. statements and answers provided by witnesses;
 - vii. any sanctions imposed in the past for similar offences.
- r) Once the decision is made, the parties will be recalled and advised of the decision.
- s) The employee will be advised of their right to Appeal against the decision and informed who that Appeal should be lodged with and in what timescale.
- t) Written confirmation of the decision will be sent within 5 working days of the Disciplinary Hearing

Informal Disciplinary Action



If during the informal meeting there is evidence to suggest that the matter is more serious the meeting should cease and the formal procedure should be adopted.

Disciplinary Action

