



Disciplinary

1. Background

Abbeyfield The Dales Ltd. (ATD) is committed to avoiding formal disciplinary procedures wherever possible by addressing issues as soon as they arise. Where some form of informal or formal action is needed, ATD will ensure that issues are raised and dealt with promptly, fairly and consistently and that disciplinary action will only be undertaken in accordance with the provisions of this policy and procedure.

2. Objectives

ATD is committed to providing services that enhance the quality of life for older people and developing services that will meet the needs of future generations. This commitment is based on the Mission and Values of ATD. ATD will also comply with all relevant and current legislation.

The aim of this policy is to set down the procedures to be followed to address unacceptable conduct.

3. Scope

This policy applies to all ATD staff. It does not apply to employees within their probationary period. Conduct or performance issues with regards to employees within their probationary period are dealt with in accordance with ATD's Probation Policy and further advice sought from ATD's Human Resources (HR) Department.

This policy does not apply where the cause of an employee's poor conduct or performance in their job is considered to be one of competence, in which case the Capability Policy should be used. Capability issues arise where the issue is attributable to an employee's ability, skills or aptitude to carry out the responsibilities of their job or to behave appropriately.

This policy does not form part of any employee's contract of employment and it may be amended at any time. We may also vary the procedures set out in this policy, including any time limits, as appropriate in any case.

4. Policy

4.1. Roles & Responsibilities

The following confirms the roles and responsibilities of those involved in the formal disciplinary procedure.

4.1.1. Chairperson / Disciplinary Officer

The Chairperson/Disciplining Officer will be a manager other than the Investigating Manager and they will be responsible for:

- Chairing the Disciplinary Hearing;
- Deciding on the appropriate action at the conclusion;
- Confirming the decision and drafting the detailed reasons for that decision in an outcome letter, to be sent to HR prior to being sent to the employee along with the notes of the meeting; and
- Ensuring that copies of all documentation are sent to HR.

It is important the Chairperson remains independent of the content and detail of the Formal Investigation itself.

4.1.2. Investigating Manager

The Investigating Manager will normally be the employee's line manager unless they may need to input into the formal investigation itself, in which case another manager should be asked to carry out this role. The role of the Investigating Manager will be to:

- Carry out the formal investigation in accordance with this procedure;
- Ensuring that the formal investigation is conducted in a correct and timely manner; and
- At the conclusion of the formal investigation, produce an investigation report with recommendation(s).

4.1.3. Manager Hearing the Appeal

The Manager hearing the Appeal will be senior to the Chairperson and will be responsible for:

- Conducting the Appeal Hearing in accordance with this procedure;
- Deciding on appropriate action (with other members of the Panel where appropriate) at the conclusion of the Appeal Hearing; and
- Informing the employee of the outcome of the Appeal hearing.

It is essential that the Manager hearing the appeal remains independent of the Disciplinary Investigation and Hearing.

4.1.4. Human Resources

The role of HR, be they internal or consultants, will be to advise managers and employees on all aspects of the disciplinary process. In particular, HR will normally be responsible for:

- Identifying an investigating manager to conduct the formal investigation;
- Informing the employee of the investigation and ensuring they are aware of their rights;
- Providing guidance and advice to the investigating manager as to how to proceed following receipt of complaint / concern;
- Providing guidance and advice to the Chairperson and appeals managers as required; and
- Assisting the investigating, chairperson and appeals manager with the drafting and sending of all letters and formal documents involved in the process.

4.2. Informal Action

It is clearly to the benefit of all concerned to avoid the use of the Disciplinary Procedure. Therefore, informal action will be considered, where appropriate, to resolve issues of minor misconduct or unsatisfactory performance.

In these instances, the employee's Line Manager will arrange an informal meeting to discuss the issues of concern. The line manager will:

- Set out clearly the area of concern in relation to the conduct or performance of the employee;
- Ensure the standards required of the employee are understood;
- Advise how their conduct or performance will be reviewed and over what period; and
- Confirm in writing what has been discussed and decided.

A copy of this letter should be forwarded to ATD's HR Department where it will be kept on the employee's personal file. This does not constitute disciplinary action and should be regarded as part of informal performance management and supervision.

4.3. Investigations

Once a complaint or concern is raised, if necessary, an investigation to establish the facts and whether there is a case to answer, will be carried out.

The requirement for an investigation will depend on the nature of the complaint or concern. If an investigation is required, the extent of the investigation will depend on the seriousness of the matter.

Once the decision is made to conduct a formal investigation, after discussion with HR, the employee will normally be sent a formal letter by the investigating manager. This will inform the employee of the allegations to be investigated and, where appropriate, inviting them to an investigatory interview. If the employee is to be suspended whilst an investigation is being conducted, they will be sent a letter confirming suspension pending investigation.

A copy of this Policy and Procedure will normally be enclosed so that the employee is fully informed of the procedure and what to expect.

The investigation will be carried out by an Investigating Manager and may include taking statements from and usually meeting with relevant parties including, where appropriate, any witnesses to the incident(s) of misconduct and the employee concerned.

Where the nature of the allegation(s) requires it, an Investigation Report will be compiled by the Investigating Manager. The Investigation Report will normally make one of the following recommendations to the Chairperson:

- That the matter be referred to a Disciplinary Hearing;
- That the matter be dealt with informally;
- That the matter be referred for action under either the Capability or Managing Sickness Absence Policies; or
- That the allegations are not substantiated and therefore the allegations should be dropped, and no further action taken. Any records collected as part of the investigation should be destroyed.

Where appropriate, this will be sent to the employee along with a letter confirming the date of any hearing to be held.

Employees are required to co-operate fully and promptly in any investigation. This will include informing the Investigating Manager of the names of any relevant witnesses, disclosing any relevant documents and attending investigation interviews if required.

4.4. Right to be Accompanied

The employee has the right to be accompanied at all formal stages of this procedure by a work colleague, a Trade Union representative or an official employed by a Trade Union. Formal stages of this process refer to the disciplinary hearing and appeal hearing only.

The companion may assist the employee at all stages of the procedure. The companion may address the hearing to put and sum up the employee's case; respond on behalf of the employee to any views expressed at the hearing and confer with the employee. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing unless the employee so wishes or prevent the case against the employee being explained.

4.5. Outcome to the Disciplinary Process

Levels of disciplinary sanctions range from a verbal warning to dismissal and will be consistent with the nature and seriousness of the issues subject to disciplinary action.

4.6. Suspension

There may be instances where suspension is necessary while an investigation is carried out, for example in gross misconduct cases, where there are risks to employees, company property or responsibilities to other parties e.g. residents or where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the hearing.

Suspension is not punitive, does not imply guilt and will only be imposed after careful consideration.

Suspension is normally without loss of pay and the length of the suspension should be kept to an **absolute minimum**. The decision will be confirmed in writing to the employee.

Where an employee is employed on a zero hours /bank contract and suspended, they will not be offered any work until the proceedings are concluded. Zero hours / bank employees will be paid for the period they are suspended by calculating an average of the last 3 calendar months' salary.

The suspended employee must make themselves available at all times during his or her normal working hours and for attendance at any investigatory meeting or Hearing as required.

4.7. Referral to the Disclosure and Barring Service (DBS)

The Registered Manager must also inform the Care Quality Commission (CQC) in accordance with Regulation 37 of the Care Homes Regulations 2001. For guidance on this, you should refer to Sections 4.10 of ATD Safeguarding Vulnerable Adults Policy.

Individuals will be referred to the DBS, by a DBS Counter signatory, for possible inclusion on the DBS Adult Barred list in the following circumstances:

- The individual is dismissed on the grounds of misconduct which harmed a resident or placed them at risk of harm;
- The individual has resigned, retired or been made redundant in circumstances where ATD would have dismissed them or considered dismissing them on such grounds if they had not resigned, retired or been made redundant; and/or
- The individual is transferred to a position which is not a care position on such grounds.

The types of misconduct which may result in a referral to the DBS Adult Barred list include but are not limited to:

- Neglect;
- Physical harm;
- Emotional and psychological harm;
- Financial abuse;
- Sexual abuse; and/or
- Verbal abuse.

An individual who is included on the DBS Adult Barred list may not be offered work in a position working with vulnerable adults. Likewise, it is an offence for anyone confirmed on the DBS Adult Barred list to knowingly apply for, offer to do, accept or do any work with the group for which they are barred.

4.8. Involvement of the Police

In cases where initial information indicates that the allegation(s) may constitute criminal activity, the manager reporting the allegation, who would normally be the employee's Line Manager, should inform the Chief Executive (CE) and HR. Following the decision of the CE and HR, the manager reporting the allegation would then inform the police of the alleged offence(s). ATD's procedures will not be replaced by police proceedings but a co-ordinated approach may be necessary in these circumstances.

4.9. Criminal charges or convictions during employment

Any employee who is charged with or convicted of a criminal offence must inform their Line Manager as soon as practicable. The action taken by ATD in such circumstances will depend on the facts of the case.

The main consideration will be whether the employee's conduct or conviction merits action because of the employment implications e.g. does the alleged offence or conviction render the employee unsuitable for the type of work they are employed to do or unacceptable to other employees. If this appears to be the case, this procedure will be invoked to investigate further.

Where an employee, charged with or convicted of a criminal offence refuses to, or is unable to, co-operate with disciplinary investigations and proceedings, this should not prevent action being taken. The employee should be advised in writing that unless further information is provided, a disciplinary decision will be taken on the basis of the information available, and this could lead to dismissal. Further advice should be sought from HR.

It is stressed, however, that each case will be considered on its merits and that there is no general rule that requires the automatic dismissal of a member of staff who is charged with or convicted of a criminal offence outside of employment.

4.10. Sickness During the Disciplinary Process

ATD recognises that going through a disciplinary process can be difficult and aims to minimise distress as far as possible. Where an employee is sick during the disciplinary process, it will continue in accordance with this procedure as it is recognised that concluding the process as quickly and carefully as possible may aid the employee's recovery.

Employees who are sick during the process must submit a GP certificate covering the full period of sickness absence. Employees may be referred to Occupational Health to obtain further advice.

4.11. Disciplinary Hearing

Where it is concluded that a Hearing is necessary, a letter will be sent to the employee by HR on behalf of the Chairperson. A minimum of 48 hours' notice of the Hearing will be given. If the employee is not able to attend on the date given, one alternative date will be offered. If the employee fails to attend the second alternative date provided, the Hearing may go ahead, and a decision made in their absence. If the employee requires additional time, in order to arrange a union representative to accompany them to the meeting, a delay of no more than 5 working days will be granted.

The Hearing will normally be carried out by the Chairperson. However, where the allegations are serious and/or complex, it may be more appropriate for one other manager to be present to form a Panel with the Chairperson.

If the employee wishes to submit written information to the hearing, this must be submitted to the Chairperson a minimum of 24 working hours before the scheduled start time of the Hearing. The names of any witnesses whom the employee wishes to attend the Hearing should also be submitted to the Chairperson 24 working hours before the Hearing.

Witnesses will not be expected to attend the Hearing as a matter of course. However, where the employee or Chairperson or the Investigating Manager feels it is necessary for some, or all, of the witnesses to be present at the Hearing to answer questions, consideration will be given to whether their attendance is necessary, and HR will be responsible for arranging their attendance.

Summary notes will be taken of the meeting. The summary notes will be transcribed, and minutes will be provided to the employee.

4.12. Conducting the Disciplinary Hearing

The Hearing will normally be conducted in accordance with the process set out below:

- The employee and their representative will be present throughout the duration of the Hearing;
- The Chairperson will summarise the content and conclusion of the Investigation;
- The employee and/or their representative will present their case (including any mitigating circumstances) and will take questions from the Chairperson;
- Witnesses will be invited individually, as necessary, and must take questions from the employee, employee's representative and the Chairperson. Witnesses need only be present to provide their statement and answer questions after which they will leave the meeting;
- An adjournment may be requested by any party to the Hearing and will be granted at the discretion of the Chairperson – in these circumstances the adjournment will be for a stated period of time;
- The employee and/or their representative will sum up their case;
- At the end of the Hearing, the employee and their representative will withdraw to allow the Chairperson to deliberate and reach a conclusion;
- Where possible, the Chairperson will normally make a decision on the same day. However, the Chairperson reserves the right to delay a decision depending on the time available, complexity of the case and other reasonable considerations;
- The employee and their representative will be informed if the decision of the Chairperson is to be delayed and told when the decision will be reached;
- The employee will be informed verbally immediately the decision is made;
- The Chairperson will send a formal letter plus notes of the meeting, to the employee within 3 calendar days of the decision been made informing the employee formally of the conclusion of the Chairperson/Hearing Panel. This letter will include the actions which have been decided upon, the disciplinary sanction and information about how to exercise their right of appeal; and
- A written record will be kept of the proceedings of the Disciplinary Hearing.

4.13. Disciplinary Sanctions

In some cases, the outcome of the Disciplinary Hearing may be that, on the balance of probabilities, there is no evidence or not enough evidence to uphold the allegations and the allegations will therefore be formally revoked and no further action taken.

Where the allegations are upheld in part or in full, the levels of disciplinary sanction are as follows:

- Verbal warning;
- First written warning;

- Final written warning; or
- Dismissal.

The level of sanction decided upon should be consistent with the nature and seriousness of the disciplinary issue. It is not necessary to 'work through' the levels of warning - a first disciplinary offence could attract any level of warning dependent on the nature of it.

4.13.1. Verbal Warning

If the offence is a first act of misconduct the Chairperson may issue a verbal warning which will be held on an employee's personnel file for **6 calendar months**.

4.13.2. First Written Warning

If the offence is a first act of misconduct or if a verbal warning has been given to the employee within the preceding 6 months, the Chairperson may issue a first written warning which will be held on the employee's personnel file for a period of **9 calendar months**.

4.13.3. Final Written Warning

If the offence is more serious or if the employee has received a first written warning within the preceding 12 months, the Chairperson may issue a final warning which will be held on the employee's personnel file for a period of **12 calendar months**.

4.13.4. Dismissal

If the offence constitutes gross misconduct or if the employee has been issued with a final written warning within the preceding 12 months, the Chairperson/Hearing Panel may decide to dismiss the employee. In cases of gross misconduct, the employee may be summarily dismissed without notice or pay in lieu of notice. In all other cases of dismissal, the employee is entitled to notice in accordance with statutory rights and their contract of employment.

A letter will be sent by the Chairperson confirming the decision in writing for all levels of warning. Where the allegation of harm or abuse is substantiated or proven the matter will be referred to DBS for listing. Only a Registered Provider may make a referral and should do so in consultation with HR.

4.14. Offences of Gross Misconduct

Examples of gross misconduct under the terms of this policy may include:

- Unauthorised removal, use, misappropriation or theft of property belonging to ATD, a resident or fellow employee;
- Other serious offences of dishonesty, fraud or corruption;
- Acts of violence, or threatened violence, including physical assault or fighting with a client or fellow employee, either at work or otherwise;
- All forms of serious harassment, bullying or discrimination;
- Falsification or omission of any information as part of the application for employment within ATD, including medical information, criminal convictions, references, qualifications, employment record etc. and falsification of any other ATD documents during the course of employment;
- Sexual misconduct at work;
- Malicious damage to property;
- Being under the influence of illegal drugs or alcohol at work;
- Disclosure of confidential matters to unauthorised person(s);
- Acceptance of bribes or inducement;

- Serious breaches of health and safety rules or conduct which may endanger the safety of others;
- Any refusal to carry out a reasonable management instruction or serious disregard for managerial authority; and/or
- Serious breach of confidence (subject to the Public Interest Disclosure Act 1998) or bringing ATD into disrepute.

This is not an exhaustive list and all allegations will be considered according to the particular circumstances.

4.15. Appeals

The employee has the right of appeal against any disciplinary sanction issued. Appeals will be considered by a manager not previously involved in the case and who is more senior to the Chairperson responsible for the decision made at the Disciplinary Hearing.

An appeal against disciplinary action should be lodged in writing to HR within 7 calendar days of the decision of the Disciplinary Hearing having been notified to the employee. The appeal letter must include reasons for appeal.

The manager hearing the appeal will arrange for an appeal hearing to take place not more than 28 calendar days after the appeal has been lodged by the employee. Where the allegations are of a serious or more complex nature, it may be appropriate for two managers to hear the appeal. A letter will be sent to the employee by HR on behalf of the Appeals Manager confirming the details for the Appeal Hearing.

The grounds on which an appeal will be heard are:

- New evidence has come to light which was not available at the time of the Disciplinary Hearing;
- The Disciplinary Process was not followed;
- The level of disciplinary sanction was not reasonable i.e. the severity of the sanction was not consistent with the seriousness of the offence; and/or
- The decision taken by the Disciplinary Panel was not supported by the evidence presented to it.

4.16. Conducting the Appeal Hearing

The appeal hearing will normally be conducted in accordance with the process set out below:

- The employee and/or their representative will be present throughout the duration of the Hearing;
- The appellant and/or their representative will put their case for the appeal to the Chairperson;
- The appellant or their representative will sum up their case;
- An adjournment may be requested by any party to the Appeal Hearing and will be granted at the discretion of the Chairperson – in these circumstances the adjournment will be for a stated period of time;
- At the end of the Appeal Hearing, the appellant and their representative will withdraw to allow the Chairperson to deliberate and reach a conclusion;
- Where possible, the Chairperson should make a decision the same day however, they reserve the right to delay a decision depending on the time available, complexity of the case and other reasonable consideration;
- The appellant and their representative will be informed if the decision of the Chairperson is to be delayed and told when the decision will be reached;
- The appellant and their representative will be informed in writing of the conclusion of the Chairperson and the reasons for their decision;

- Notes will be taken at the meeting, transcribed and minutes will be provided to the employee; and
- A letter will be sent by the Chairperson hearing the Appeal to the employee within 3 calendar days setting out its conclusion and decision.

4.17. Grievances raised during the Disciplinary Process

Where an employee raises a grievance during the disciplinary process, then the process may need to be temporarily suspended in order to deal with the grievance.

Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

4.18. Grievances raised during the Disciplinary Hearing

Where an employee raises a grievance during the disciplinary hearing, then it may be appropriate to consider stopping the hearing and suspending the disciplinary procedure for example when:

- The grievance relates to a conflict of interest that the manager holding the disciplinary hearing is likely to have;
- Bias is alleged in the conduct of the disciplinary hearing;
- The Investigating Manager has been selective in the evidence they have supplied to the Hearing; and/or
- There is possible discrimination.

5. Finance, Value for Money & Social Value

N/A

6. Supported Appendices

N/A

7. Linked Policies

Probation

Capability

Safeguarding Vulnerable Adults

8. Legislation/Regulation

N/A

9. Review

Every 3 years, subject to any regulatory or legislative updates.

10. Procedure/Guidance

N/A