

GUIDELINES FOR CHILD PROTECTION DISCIPLINARY ISSUES

These guidelines are provided for managing a disciplinary procedure with an emphasis on cases of misconduct by a member of staff/volunteer involving children.

It outlines good practice but it is not intended as an exhaustive guide to all disciplinary matters.

If your organisation has existing disciplinary procedures and practices in place these should be followed.

When managing any concern regarding the conduct of a member of staff/volunteer involving children it is first important to refer to your organisation's 'Responding to Concerns' Procedure.

Please note that the police or social work services can be contacted for advice with regard to any concern involving the alleged mistreatment of a child. If the nature of the concern suggests a criminal offence has occurred, or that a child may have been abused, the police or social work services must be contacted for advice. If a child is at risk of immediate harm contact the police.

1. MANAGING A PRECAUTIONARY SUSPENSION

Duration - the duration of the suspension will vary depending on the circumstances. Typically it should not exceed the time taken to conduct a satisfactory investigation.

Communication - at the outset the member of staff/volunteer should be invited to a suspension interview. The member of staff/volunteer will be informed of the reason for the suspension (within the confines of sharing information) and the duration of the suspension. The details of the suspension should also be confirmed in writing. (Notice of Precautionary Suspension)

Extensions - an extension to the suspension period may be appropriate; if for example a disciplinary hearing uncovers further facts for investigation or it is advised by the police or social work services. The period of suspension should be kept under review and the member of staff/volunteer informed in writing of extensions.

Pay - in the case of a paid member of staff, any period of suspension should be with full pay, as to freeze pay may be interpreted as a disciplinary penalty.

Status - at the conclusion of the investigation the member of staff/volunteer should be invited to a disciplinary hearing. Consideration should be given to the suspension status of the member of staff/volunteer at this time. It may be extended pending further investigation or terminated following the conclusion of the disciplinary hearing. The member of staff/volunteer should receive confirmation in writing when the suspension is terminated.



It is important to recognise that the suspension of a member of staff/volunteer may generate disruption within the organisation and consideration should be given to how to minimise this.

2. MANAGING A DISCIPLINARY PROCEDURE

Where the initial assessment of a reported concern identifies misconduct, but not child abuse, by a member of staff/volunteer, the formal disciplinary procedure should be followed.

If the nature of the concern suggests a criminal offence has occurred or that a child may have been abused then advice must be sought from the police before instigating the disciplinary procedure.

A disciplinary procedure should be based on the principles of natural justice which promote fair treatment:

- the member of staff/volunteer will be made aware of the nature of concern or complaint
- the member of staff/volunteer will be given an opportunity to put forward their case
- the organisation will act in good faith, ensure the matter is dealt with impartially and as quickly as possible in the circumstances
- the organisation will offer the member of staff/volunteer the opportunity to appeal a disciplinary decision.

3. ROLES IN MANAGING A DISCIPLINARY PROCEDURE

Typically there are three key roles in the management of a disciplinary procedure:

1. Investigating Officer.
2. Disciplinary Manager/Panel.
3. Appeal Manager/Panel.

The Investigating Officer will conduct the disciplinary investigation to establish the facts surrounding the alleged misconduct.

The Disciplinary Manager/Panel will conduct a disciplinary hearing, make a decision on disciplinary action, and communicate the decision to the member of staff/volunteer at the centre of the allegation.

The Appeal Manager/Panel will review the grounds for appeal by the member of staff/volunteer and make a determination on the appropriateness of the initial disciplinary action.

Post holders should:

- be selected taking account of impartiality (that is, have no bias and be unconnected to the incident(s) in question)
- be familiar with the standard procedures
- understand the importance of dealing with confidentiality, rumour and intimidation



- have consideration and respect for all parties including witnesses
- make efforts to put people at ease and deal firmly but sensitively with a potentially stressful experience.

To promote impartiality at each stage of the process the Investigating Officer should not be involved in the Disciplinary or Appeal Hearing unless to deliver evidence. The Manager/Panel Members involved in the Disciplinary Hearing should not be involved in the Appeal Hearing.

4. CONDUCTING A DISCIPLINARY INVESTIGATION

The following are recommendations for conducting a disciplinary investigation:

Step 1 - Planning the Investigation

- Establish the precise details of the allegation, (seek clarification from complainant).
- List the parts of the code of conduct that have been breached.
- List what further information/evidence is needed to establish the facts.
- Define the resources and timelines for conducting the investigation.

Step 2 - Establishing the Facts

- Identify who needs to be interviewed and the information required.
- For guidance on interviewing children or young people refer to section 6.
- Plan the order of interviews. Interviewing the volunteer/staff member at the centre of the allegation first may save a lot of time if, for example, he/she admits to the allegation.
- Ensure notice is provided to the interviewee and that it is at a convenient time and in a private location.
- It may be helpful to prepare questions or points to cover during the interview.
- State clearly the purpose of the interview and what the information will be used for.
- Open-ended questions (e.g. who, what, where, how and why) encourage people to talk and expand on the subject.
- Close-ended questions (e.g. Do you..) will only be answered by 'yes' or 'no' and should be used sparingly. They can be useful for confirming facts.
- Record the key points of the interview and ask the interviewee to confirm that it reflects the content of the conversation.

Step 3 - Assessing the Facts

- Review all of the evidence to confirm whether there are any gaps in it.
- Assess the investigation findings and determine whether a disciplinary hearing is appropriate.
- Certainty is preferable but it is sufficient to form an opinion on the balance of probabilities.



5. MANAGING A DISCIPLINARY HEARING

Where the investigation findings provide sufficient evidence to instigate a disciplinary hearing the disciplinary procedure must be followed. The following are good practice guidelines on managing a Disciplinary Hearing and Conducting a Disciplinary Hearing:

Invitation to Disciplinary Hearing

This should be in the form of a letter to the member of staff/volunteer at the centre of the allegation (Notice of Disciplinary Hearing) and include:

- Confirmation of the date, time and venue of the proposed hearing.
- Confirmation that there is a requirement to attend.
- Reasonable detail of the allegations which will be presented.
- A copy of any documentary evidence that may be used at the hearing.
- Confirmation that the alleged misconduct may, if proven, require a disciplinary penalty to be imposed. If dismissal is an option this should be clearly stated in the letter.
- Clarification that no judgement will be made in advance of the disciplinary hearing.
- Confirmation that there will be the opportunity to answer the allegations.
- Clarification on the right to be accompanied by a colleague or trade union representative.

Conducting the Disciplinary Hearing

The following practices are recommended when conducting a disciplinary hearing:

- The allegations and evidence will be put clearly to the member of staff/volunteer.
- The member of staff/volunteer will be asked to comment on the evidence and the allegations.
- If matters come to light at the disciplinary hearing that warrant further investigation, consideration will be given to adjourning the hearing while those matters are investigated. The results of any further investigation will be reported to the member of staff/volunteer who will be given an opportunity to comment.
- Once the issues have been put to the member of staff/volunteer and discussed, the respective positions of both sides will be summarised at the end of the hearing.
- The member of staff/volunteer is told that all that they have said will be considered and that they will be written to with the Manager/Panel's decision.
- The Manager/Panel will retire to consider its decision before contacting the member of staff/volunteer.

The Disciplinary Manager/Panel should avoid the following behaviours during the course of the disciplinary hearing:

- Using humour.
- Being apologetic or debating the evidence.
- Defending, arguing, justifying.
- Allowing the meeting to go on too long.
- Making promises that can not be kept.



6. SPECIAL CONSIDERATIONS - SPEAKING TO CHILDREN DURING THE INVESTIGATIVE PROCESS OR AS PART OF A DISCIPLINARY HEARING

In establishing the facts of any concern or complaint, it may be necessary to speak to a child or children who were involved in the alleged incident.

In some circumstances, it would not be appropriate for the person conducting the investigation to speak to a child involved in the incident. In particular, if the nature of the concerns suggests a criminal offence has occurred or that a child may have been abused, then it is the job of specially trained and competent police officers and social workers to interview the child.

If there is any doubt as to whether it is okay to speak to a child, advice should firstly always be sought from the police or social work services.

In cases where the nature of the complaint or concern is such that the police or social work services are not involved, careful consideration should still be given before approaching children to give information as part of the initial investigation process or as part of a disciplinary hearing.

To minimise distress or anxiety for the child it is a good idea to give some thought as to how to approach them. Some things to consider are:

- The age, gender and background of the child i.e. will they require an interpreter?
- Whether the child has any learning or physical disability which might affect their ability to communicate with others
- The child's emotional state
- Timing and location of interview, bearing in mind the child's daily routines
- What you will do if the child becomes upset
- Obtaining consent from the parents/ carer
- Any other information which may be relevant.

Parties should decide whether it is absolutely necessary for the child to be involved in a disciplinary hearing. If the child is to be involved consideration should be given to the following:

- Allowing the child to be accompanied by a relative or other responsible adult (preferably someone who is not involved in the case)
- The environment or room layout - how intimidating it could appear to a child
- The number of people present - try to ensure only those who need to be there are present whilst the child gives evidence
- The age of the child
- The nature of the evidence the child may be giving
- The nature of the relationship between the child and the subject of the hearing
- The tone and style of questioning i.e. clear, non-threatening with sufficient opportunity for the child to consider the questions and answer them.

These considerations should be balanced against the need to ensure the member of staff/volunteer has a fair hearing.



7. DECIDING ON THE DISCIPLINARY PENALTY

Where the Disciplinary Manager/Panel believes that a case of misconduct is proven, a decision must be reached on the appropriate disciplinary penalty.

A decision on the disciplinary penalty should be applied in accordance with the disciplinary procedure.

The following should be considered when deciding on the penalty:

- The nature and seriousness of the misconduct.
- Previous disciplinary record.
- The likelihood of repeating the misconduct.
- Previous service/contribution to the organisation.

The penalty should be appropriate to the severity of the misconduct.

Once the penalty has been agreed the member of staff/volunteer should be written to with confirmation of the penalty and the brief reasons (Notice of Written Warning or Final Written Warning).

If a warning is to be given, the length of time for which this will be live should be stated in the letter and should be in accordance with the disciplinary procedure.

Any letter of dismissal should make clear the reason why the member of staff/volunteer is being dismissed and the date when the termination will take effect (Notice of Dismissal of Action Short of Dismissal).

8. THE APPEAL PROCESS

In line with the principles of natural justice a member of staff/volunteer should have the right to appeal a disciplinary penalty decision. Letters communicating a disciplinary penalty should state that the member of staff/volunteer has a right to appeal against the disciplinary penalty and should include details of the person to write to and the timescales involved.

A member of the organisation who is in a more senior position than the person making the penalty decision should conduct an appeal.

The person(s) hearing the appeal should not have been involved in the procedure leading up to the penalty decision.

The appeal hearing should be arranged with advance notice of date, time and venue and should be confirmed in writing to the member of staff/volunteer.

Prior to the appeal hearing, the member of staff/volunteer should be asked to confirm any grounds on which they are appealing and why they believe the penalty decision was incorrectly made.



Once any issues have been discussed at the appeal hearing the matter should be adjourned and the member of staff/volunteer told that a decision will be made and confirmed in writing.

The decision of the Appeal Manager/Panel should be confirmed in writing to the member of staff/volunteer. In accordance with the club's disciplinary procedure the letter should confirm whether there is any further right of appeal (Notice of Appeal Hearing Against Disciplinary Action).

GUIDELINES: MANAGING COMMON REACTIONS IN A DISCIPLINARY HEARING

A disciplinary hearing involves having a difficult conversation and this can generate a mixture of feelings for both the person leading the hearing and the member of staff/volunteer at the centre of it.

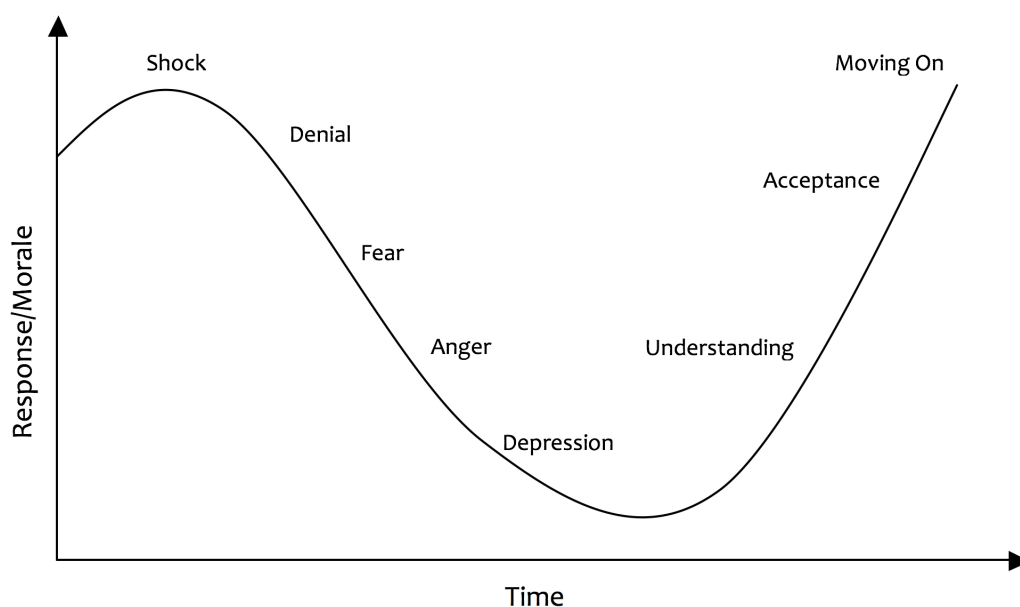
For the person leading the hearing these concerns often centre around managing the response from the member of staff/volunteer and the impact it will have on your relationship with them, or their peer group.

It is important to acknowledge these feelings and to use any available support. This might involve speaking with someone who you know has led a disciplinary process before or seeking guidance from your governing body.

As part of the preparation for managing a disciplinary procedure it can be helpful to consider the member of staff/volunteer at the centre and their possible reactions.

Below is a model that describes the stages that an individual is likely to go through when faced with a change in their lives. Indeed, the organisation's staff/volunteers can go through the same cycle.

It can be applied when considering the stages a member of staff/volunteer may go through when an allegation has been made against them. Though just a model it can be a useful prompt to consider where a member of staff/volunteer might be in the change process. This can help you consider what type of reactions you may be faced with during the course of the disciplinary hearing.



The Change Curve by Kubler Ross.



Here are some of the more typical reactions and some suggestions of how to manage them.

Person who argues

- Always expect some disagreement.
- Listen carefully and paraphrase to demonstrate you understand their point of view.
- Reiterate the why and what of the decisions that have been made.
- Don't make false promises.
- If you don't know the answer – say that you don't and that you will go and investigate.
- Remember that this person is probably in the denial stage of the change curve.

Person who loses their temper

- Stay calm, listen and hear the person out.
- Acknowledge their emotion and try to understand what is making them angry.
- Calmly restate your points and involve him/her in reaching a shared understanding.
- Focus on those things that are in the person's control.
- "I can see you have strong feelings about this news. If you continue to feel that the decision is unfair there is an appeals procedure that you can follow."
- Any use of shouting or personal insults should lead you to end the discussion.

Non-responder

- Use the silence. Give the person plenty of time to formulate a response.
- Listen.
- Ask open questions to encourage them to talk.
- Ask what they are feeling/thinking.
- Check their understanding of what has been said.

Person who cries

- Allow some time for the emotion.
- Make sure you have tissues.
- Offer them time to visit the bathroom.
- Demonstrate empathy.
- Focus on the immediate next steps.
- I can see that you are upset. What is your main concern at the moment?

Persecuted person

- Focus on the objectivity and transparency of the process.
- Avoid offering your personal opinions.
- Avoid engaging in discussion on performance of other colleagues.

