

Merton Mencap

**Disciplinary & Capability Review
Procedure**

March 2014



Merton Mencap

Disciplinary & Capability Review Procedure

This procedure has been adopted by Merton Mencap through its Executive Committee which remains responsible for its review.

Original signed version is kept at the Merton Mencap office.

Signed: _____ Date: _____

Name: _____

Chair of Executive Committee

Signed: _____ Date: _____

Name: _____

Chief Executive

Record of adoption and review of this policy and procedure:-

Adopted: 1 May 2006
Reviewed: 11 March 2014

Merton Mencap

DISCIPLINARY AND CAPABILITY REVIEW PROCEDURE

THIS PROCEDURE IS NOT CONTRACTUALLY BINDING

1. Purpose and scope

Throughout this document, *staff* and *staff member* refer to members of staff and bank staff.

The following procedure that applies to all members of staff is set out in order to deal fairly with matters of work performance or conduct. The aim is to ensure consistent and fair treatment for all in the organisation and it shall be used in all cases where there are concerns about either of these two areas. However, this procedure is not contractually binding and Merton Mencap may enter this procedure at any stage, according to what is appropriate, and may not use it at all where the member of staff has served less than two years with the organisation.

The organisation's policy is to investigate the situation and then, if formal action is taken, to give the member of staff the opportunity to state his or her case and also gives the right to appeal against disciplinary action.

2. Principles

1. No disciplinary action will be taken against a member of staff until the case has been fully investigated
2. At every stage in the procedure the member of staff will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made
3. At all stages of the procedure, the member of staff will have the right to be accompanied by a trade union representative, or work colleague
4. No member of staff will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice
5. A member of staff will have the right to appeal against any discipline imposed.
6. Nothing within this procedure takes away from managers the responsibility of informally bringing issues of capability or conduct to the attention of the member of staff.

2. The Categories of Offences

Staff are expected to observe all Merton Mencap's Standards, Policies & Procedures (including Codes of Conduct) and to behave in a reasonable way towards the organisation, other members of staff, volunteers and service users. Staff should note that the following lists are not exhaustive but are examples of misconduct offences, which would render staff liable to disciplinary action.

2.1 Offences other than Gross Misconduct

Inadequate performance and misconduct amounting to less than gross misconduct do not normally constitute grounds for dismissal on the first occasion. However, if they occur more than once or if they occur in conjunction with other offences, this may result in termination of employment, after a formal warning. The following list, which is not exhaustive or exclusive, gives examples of such offences:

- Poor standard of job performance, in terms of either quantity or quality
- Poor timekeeping. Persistent lateness will be considered as serious misconduct.
- Breach of Merton Mencap rules, provided no danger to health and safety was involved
- Petty insubordination or behaving in a mildly disorderly manner
- Failure to report an accident or incident that has a potential impact on safety
- Smoking in an area where it is not permitted, but not hazardous to do so
- Persistent absenteeism, which appears to be unreasonable
- Failing to maintain reasonable standards of presentation or appearance

2.2 Gross Misconduct

The following list, which is not exhaustive or exclusive, sets out examples of offences, which if committed **may lead to summary dismissal on the first occasion for gross misconduct:**

- Infringement of Merton Mencap's Code of Conduct(s)
- Dishonest conduct of any kind, including but not limited to theft or pilferage of property
- Disclosure of confidential information
- Knowingly or recklessly installing, creating, introducing or proliferating within Merton Mencap's systems or elsewhere, any disruptive virus or code, or other disruptive element
- Serious or wilful damage to property
- Falsification or misrepresentation of expense claims or other paperwork for themselves or others
- Conducting a business, or business activities, whether or not they are for profit, during working hours
- Conducting business outside work that interferes with work for Merton Mencap. (Staff must ask their manager for clarification of this rule before taking up other employment.)
- Inappropriate use of the internet or computer misuse
- Conduct on or off duty that brings Merton Mencap into disrepute. This includes postings made by staff on private social media sites
- Making malicious claims of harassment against colleagues or service users
- Failure to carry out a direct instruction from a manager of Trustee
- The use of excessive bad language or aggressive behaviour on work premises, in front of service users or towards other members of staff
- Serious breach of Merton Mencap rules, policies and procedures, especially where it concerns health and safety or safeguarding issues
- Fighting, harassing, threatening or otherwise intimidating other members of staff or service users on or off duty, or making racial, religious, ageist, sexual or ethnic remarks, or discrimination on the grounds of disability
- Reporting for work whilst showing signs of the use of intoxicants, possessing or taking of any intoxicants on Merton Mencap premises, other than at sponsored events
- Indecent or immoral acts while at work
- Allowing or condoning a breach of the law
- Removing any material or equipment from your place of work without prior permission
- Loss of driving licence on conviction where driving is all or an essential part of the job
- Endangering the health and safety of another person at your place of work
- Receiving bribes to effect the placing of business with a supplier of goods or services
- Unauthorised access or attempted access into Merton Mencap computer systems and records, or assisting others to do so
- Receiving gifts or services (worth more than around £20) from service users or suppliers without declaring them to Merton Mencap

Any act of misconduct, gross or otherwise that is not specifically referred to above may nonetheless result in disciplinary action being taken, up to and including dismissal.

3. Investigations

In cases of possible misconduct investigation of the evidence and background to the case will be undertaken by a manager who will not be the person who conducts the hearing. The output of the investigation may be a collection of statements and/or a report that will enable a manager to decide whether a formal disciplinary hearing is justified. After receiving this report the hearing manager will decide whether or not a hearing should be convened.

The usual practice is to ask witnesses, if there were any, to write their own version of what happened. If this is not convenient, the investigator may interview the person and write down their statement that they should then read and sign to confirm that it is a correct version of their evidence.

4. Suspension with Pay Whilst Investigation Takes Place

The member of staff may be suspended on non-disciplinary grounds with pay while a case is being investigated. Whilst the member of staff is on suspension, they are not to come onto our premises or contact any member of staff without their manager's permission, except for the limited reason of arranging to be accompanied by a colleague.

5. Statement of the Grounds for Action Being Taken

If the member of staff is invited to a disciplinary or capability review hearing, they will receive a written statement of the alleged conduct or characteristics or other circumstances that have led to the hearing being convened, and will be provided with a written account of evidence where that is relevant.

6. Being Accompanied

Staff have the right to be accompanied to all disciplinary or capability review hearings and their appeal hearings by a colleague employed by Merton Mencap or a trade union official trained for the role. This person is allowed to speak on the staff members' behalf if the staff member wishes them to. Staff do not have to be accompanied and will not be disadvantaged if they are not. Providing the request of a companion is a reasonable one, the organisation will postpone a hearing for up to 5 working days to allow their choice of person to be present. A hearing will only be postponed once for such reason.

7. Hearings

The purpose of the hearing is to investigate the facts to do with the staff's apparent unsatisfactory performance or misconduct. Generally we will try to give the member of staff at least 48 hours notice of the hearing.

If the staff member feels that the hearing is not being conducted in a proper way they can ask for a grievance about the disciplinary process to be heard at any time. If this does occur the hearing will be adjourned so that your grievance can be addressed. Grievances about other matters will not cause the hearing to be adjourned.

The staff member will be told the specific allegations against them, including a review of the evidence that they already have. The staff member will be given the opportunity to state their case and produce any evidence that they wish to. If they wish to suggest any further lines of enquiry, and if they are reasonable and relevant, the hearing will be adjourned until these further enquiries can be made. If the case against the staff member has been established, they may give examples of any mitigating circumstances. After the staff member has had the chance to state their case, an adjournment will take place before the manager makes a decision.

After an adjournment, the staff member will be told the outcome of the hearing and what level of warning is being given, if any; or that the staff member will undergo a period of unpaid suspension or be dismissed. The staff member will also be told that they can appeal against any disciplinary decision. If the warning is for capability the manager will agree the performance standards expected of them during a review period, and offer whatever help they reasonably need in order to meet these standards during the review period.

8. Sanctions

Disciplinary action will vary according to each individual case. Before any decision is made to impose a sanction on the member of staff there will be a thorough investigation of the circumstances and events involved. The categories of sanctions are as follows:

- Initial written warning
- Final written warning
- Dismissal
- Suspension without pay

Written warnings remain in force for twelve months. However, where appropriate and reasonable, a longer period may be used.

9. First Warning

Where it is not a case of gross misconduct, after a properly convened and run disciplinary or capability review hearing, on the first occasion we will usually give a written warning to the member of staff. If any warning concerns inadequate performance, a set period of time will be indicated for review of the staff member's performance, and the standards that they are meant to attain will be made clear. Details of the warning will be recorded on the member of staff's personal file.

The warning will also inform the member of staff that a final written warning may be considered if there is no sustained satisfactory improvement or another allegation of misconduct is found against them.

The member of staff will be asked to sign a copy as proof of receipt. If they refuse to sign it, this will be recorded on the warning. A first warning has a life of 6 months from the date given, after which time it will be disregarded for disciplinary purposes. However, where appropriate and reasonable, a longer period may be used.

10. Suspension Without Pay

A member of staff may be suspended without pay for up to a maximum of ten working days as a disciplinary action where it is considered appropriate.

11. Final Written Warning

If there is no improvement since the issue of a first written warning or another misconduct offence has been committed, or an extremely serious offence has occurred for the first time, a final written warning will be given to the member of staff after a properly convened and run disciplinary or capability review hearing.

It will also warn that failure to improve may lead to dismissal and will refer to the right of appeal.

The member of staff will be asked to sign a copy as proof of receipt. If they refuse to sign it this will be recorded on the warning. Final warnings have a life of 12 months from the date given, after which time they will be disregarded for disciplinary purposes. However, where appropriate and reasonable, a longer period may be used.

12. Dismissal

Where the member of staff has still failed to meet the required standards or has committed further misconduct or in any case of gross misconduct, dismissal may be considered necessary. In cases of gross misconduct Merton Mencap will generally terminate employment without notice being given or pay in lieu of notice being paid.

13. Appeals

Staff have the right to lodge an appeal against a disciplinary or capability review action within five working days. The staff member may appeal on the grounds that they did not commit the alleged offence, or that the penalty imposed was too severe. The appeal should be sent to the person who held the hearing and they will arrange for an appeal hearing. The appeal hearing will generally be a review of the case, or the staff may ask for a complete re-hearing of the case if they believe that facts were not properly taken into account. The appeal will be heard by a person who has not been involved in the initial proceedings or investigation. The appeal will review but cannot increase a disciplinary penalty. An answer should normally be given to the member of staff within five working days of the end of any such appeal, although a longer time may be required for the manager hearing the appeal to investigate the issues further.

14. Legal Proceedings

If criminal proceedings are instituted against any member of staff during the course of their employment with Merton Mencap, we may have to investigate if this affects their ability to continue their normal duties. If they are found guilty in a court of law, or we regard the matter to be serious enough, we will give serious consideration to the effect this has on the employment and in certain cases this may result in their employment being terminated.

15. Notes to the Procedure

15.1 Unless the member of staff appeals against a disciplinary decision within five working days of the action being taken, we will assume that they have accepted the decision. This period may be extended by a reasonable amount of time if there is a good reason to do so, such as sickness or holiday absence. Although an answer to their appeal should be given to them within ten days, there may be circumstances where it is not possible to do so.

15.2 It is the responsibility of Merton Mencap to fully investigate all the facts before disciplining a member of staff. These investigations will allow the staff member to hear the evidence against them and will include giving them the opportunity to state their side of the case and to explain their point of view.

15.3 As appropriate, disciplinary action will always depend upon the circumstances of the individual case it may not always be appropriate for this Procedure to be followed in the order explained above. In circumstances where it is reasonable to do so disciplinary action may be commenced at any stage of the above Procedure.

15.4 Nothing in this Procedure is intended to remove the right of Merton Mencap to give an informal reprimand or warning when a member of staff is believed to have committed a minor infringement of the established standards of conduct.