

ARK HOUSING ASSOCIATION LTD (ARK)

DISCIPLINARY POLICY

POLICY REF: HR 18

Version 3.0 – February 2017

1. ARK'S VALUES

1.1 Our organisational values are the basis for everything that we do from providing housing, care and support to tenants and service users to ensuring that staff have clear standards of performance and conduct set. ARK believes that everyone should have the opportunity to lead a happy, healthy and safe life. We value:

- the worth of each person
- trusting relationships
- understanding difference
- challenging oppression
- personal and organisational accountability
- caring for our physical environment
- enjoyment

1.2 All ARK policies and procedures are underpinned by our values and we will ensure that our employees are treated fairly, consistently and in line with our values.

2.0 PURPOSE

2.1 ARK recognise that it is important to have clear standards of performance and conduct at work, and that our standards should be communicated effectively to all staff through the terms and conditions of employment and ARK's published policies and procedures.

2.2 ARK also recognises that it is important to have effective disciplinary procedures so that we can deal fairly and consistently with situations when a member of staff's capability or conduct falls below the acceptable standards.

2.3 The aim of this document is to inform all members of staff about ARK'S Disciplinary Policy and procedures.

3.0 SCOPE

3.1 This policy complies with the standards laid out in the ACAS Code of Practice Disciplinary & Grievance Procedures which replaced government statutory procedures.

3.2 The Disciplinary Policy and Procedure HR18 will apply to all permanent and temporary staff, relief workers and the Board of Management.

3.3 A staff member may raise a grievance while disciplinary action is being considered or is being taken. The grievance may or may not be related to the disciplinary case. The grievance should be made in writing to the appropriate manager and/or HR Department When this happens the manager concerned will seek advice from the HR Department as there will be various possible courses of action. For further details see Section 8 of ARK's [Grievance Procedure](#) HR19.

- 3.4 The emphasis of this policy is on improvement or correction rather than the imposition of a penalty. With this in mind and depending on the nature of the capability or conduct issues managers should make every effort to resolve any conduct or performance issues in an informal setting. Within ARK these discussions are referred to as counselling sessions and ARK recognises this as a positive and constructive way in which managers can meet with an employee to discuss minor failures in conduct or performance. Counselling does not form part of the disciplinary procedure and no formal warnings are given. Counselling can often prevent the need for disciplinary action through helping the staff member to recognise and overcome particular problems at an early stage.

4.0 POLICY PRINCIPLES

- 4.1 ARK's Disciplinary Policy is based on the principles in the ACAS Code of Practice as follows:

Investigation Meetings

- In order to establish the facts of the case any necessary investigations of potential disciplinary matters will be carried out without unreasonable delay
- The investigation and disciplinary meetings will be carried out by different people
- An investigatory meeting in itself will not result in disciplinary action
- There is no entitlement for the employee to be accompanied at investigation meetings, and in most cases the investigating manager will also not be accompanied, in certain cases a note taker may be required
- The employee will normally be asked to submit a written statement on the matter under investigation which will be submitted to the investigating officer
- On completion of the investigation the Investigating Manager will inform the HR Department and employee of the outcome.

Suspension

- In cases where a period of suspension is considered this will be with pay, will be kept as brief as possible and will be kept under review. Where an employee is suspended from duty this in itself is not considered a disciplinary sanction.
- Where appropriate suitable alternative duties may be assigned to the employee who will remain at work with specific amended conditions attached to the suspension from work
- Any suspension from duty will be confirmed in writing by the HR Department and mailed by normal and recorded delivery. Failure to comply with the terms of suspension without reasonable explanation may result in the suspension continuing unpaid
- Where an employee has been suspended and then subsequently reports as unfit for work whilst the suspension is still in place ARK's normal sickness absence and annual leave reporting procedures and occupational sick pay entitlements will apply. The conditions of suspension will remain in place during any sickness absence period
- Employees who are suspended from duty should make themselves available for all meetings as reasonably required by ARK Housing

The Disciplinary Meeting

- If it is decided there is a disciplinary case to answer, the employee will be notified in writing. The employee will be made aware of the alleged misconduct or capability issue, given a copy of all the investigation evidence and be made aware of the possible consequences. This should enable the employee to prepare to answer the case at the meeting.
- The notification will give the employee appropriate notice of the date, time and venue for the meeting and the employee will also be informed of their right to be accompanied.
- The meeting will be held where possible without unreasonable delay whilst allowing the employee reasonable time to prepare their case.
- Employees have the right to be accompanied to a disciplinary meeting by a fellow employee, a trade union representative or an official employed by a trade union. Where the trade union representative is not an employed official they must have been certified by the union as being competent to accompany a worker.
- The companion will be allowed to address the meeting and to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The companion may not answer questions put to the employee on their behalf or prevent the chair from explaining the case.
- All parties should make every effort to attend the meeting. At the meeting the allegation(s) will be put to the employee and all parties will consider the evidence before them. The employee will be given ample opportunity to set out their case, refer to any evidence and respond to the allegation(s). The employee will also be given the opportunity to ask questions, present evidence and call witnesses related to the case (provided reasonable advanced notice has been given that they intend to call witnesses and who the witnesses are).
- In accordance with our Equality & Diversity Policy and to comply with the Equality Act 2010 the relevant manager will ensure that there is suitable access to all meetings and that, where required, there is assistance provided to staff members whose first language is not English.
- Human Resources staff must be consulted by the relevant manager before making a decision about disciplinary action.

Outcome of the meeting

- Where misconduct is confirmed or the employee is found to be performing unsatisfactorily the employee may be given a disciplinary sanction. . Examples of the type of capability or conduct issues which may warrant such disciplinary sanction are given in Appendix B
- The employee will be notified in writing where a disciplinary sanction is given.
- If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.
- A first or final written warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required with a timeframe. The employee should be told how long the warning will remain current. The employee should be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a written or final warning. For instance that it

may result in dismissal or some other contractual penalty such as demotion or loss of seniority.

- A decision to dismiss may only be taken by a manager who has the authority to do so (see Appendix A). Where dismissal occurs this will be confirmed in writing to the employee outlining the reasons for the dismissal, the date on which the contract of employment will end, the appropriate period of notice (including any payment to be made in lieu of notice) and outlining the right of appeal.
- Some acts termed gross misconduct are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. Examples of some of the type of acts which may come under this category are also outlined in Appendix B.
- Where an employee is unable or unwilling to attend a disciplinary meeting without good cause a decision will be made in their absence based on the information available.
- Where an employee is absent from work at the time of the meeting due to ill health this will not automatically be taken as an indication that the employee is not fit to take part in the disciplinary process. Where an employee is likely to be absent for the foreseeable future and feels unable to take part in the disciplinary process they may submit a written statement and a decision will be made on the basis of the information available

Appeals

- Where an employee feels that disciplinary action taken against them is wrong or unjust they have the right to appeal against the decision. The employee should set out in writing the grounds of their appeal and submit this to the relevant member of management as shown in Appendix A within 7 days of the date on which they received written confirmation of the sanction.
- The appeal will be dealt with impartially by a manager who was not involved with the original case. It should be noted that whilst the employee's disciplinary sanction may be reduced it may also be increased by the person hearing the appeal
- The employee has the right to be accompanied at the appeal meeting.
- The employee will be informed in writing of the results of the appeal meeting as soon as possible.
- The employee will have the right to one appeal against the disciplinary sanction.
- If as a result of the appeal the employee is re-instated they will be entitled to back payment of salary for the time they have been away from work.

5.0 SPECIAL CASES

5.1 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed. Depending on the circumstances however, and in agreement with the employee concerned, ARK may discuss the matter with an official employed by the union at an early stage.

5.2 A staff member must report any criminal proceedings, including warnings, cautions, reprimands or convictions received while in employment with ARK, to their manager immediately as stated in their contract of employment. Failure to do so may result in disciplinary action being taken against the staff member. The manager will contact a senior manager or the Human Resources department as soon as possible and, following advice; will decide whether or not disciplinary action should be considered.

- 5.3 If an employee is charged with, or convicted of a criminal offence this is not normally in itself a reason for disciplinary action. Consideration will be given to the severity of the conviction and what affect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.
- 5.4 In cases of suspected irregularities relating to the finances of the Association, the Finance Director (or in their absence the Chief Executive) will be informed as soon as possible by the relevant manager. If appropriate, the Finance Director or Chief Executive will instruct the internal or external auditors to investigate. The staff member(s) concerned may be suspended during any investigation.
- 5.5 Completion of a Disclosure or PVG application is required as a condition of employment. If it is discovered that a staff member has failed to disclose a criminal conviction where such disclosure is required, e.g. in applying for a post with ARK, the matter may be dealt with under this procedure.

6.0 REPORTING OF DISCIPLINARY ACTION

- 6.1 An anonymous summary of disciplinary action taken is submitted to the appropriate business meeting as part of the Human Resources Department's regular reporting processes.
- 6.2 Depending on the severity of the misconduct disciplinary action may be required to be reported to the Care Inspectorate and/or Scottish Social Services Council Disclosure Scotland and Adult Support Protection as required by current legislation. HR02 Disclosure and Protecting Vulnerable Groups Policy provides full details of referrals which ARK are required to make to SSSC and Disclosure Scotland

7.0 RETENTION OF AND ACCESS TO DOCUMENTS

- 7.1 A copy of each letter sent with regard to a disciplinary meeting, disciplinary action or an appeal, will be filed in the staff member's personal file for the period specified under Section 8 below.
- 7.2 If, as a result of an appeal, any disciplinary action is withdrawn or modified, the written reference to this on the staff member's personal file will be removed or appropriately amended. The action taken and the details of any other level of warning substituted, if any, will be confirmed in writing to the staff member by the person who chaired the appeal, with a copy to any trade union representative present.
- 7.3 In accordance with the provisions of the Data Protection Act 1998, records will be treated as confidential and the staff member concerned will have the right to access the records, in accordance with our Data Protection Procedure.

8.0 EXPIRY OF WARNINGS AND REMOVAL OF DOCUMENTS

- 8.1 Warnings will expire, i.e. no longer remain in force for disciplinary purposes, after a specified period of satisfactory employment, as follows:

Written warnings - after twelve months
Final written warnings - after eighteen months

8.2 A warning will not be removed if further disciplinary action is taken against the staff member before the date the original warning is due to expire. In these circumstances the warning will remain on file for a further period in accordance with the provisions of paragraph 8.1, commencing from the date the further disciplinary action was taken.

8.3 Removal of a disciplinary record means that all papers related to the case will be destroyed. Human Resources staff will retain summarized anonymous details of all disciplinary action for analysis and policy informing purposes.

9.0 MONITORING AND REVIEW

9.1 The Chief Executive is responsible for ensuring that this policy and procedure are implemented when required.

9.2 The Head of People and Organisational Development will ensure that this policy and procedure is reviewed at least every three years, and that any proposed changes are made following consultation and agreement with representatives of the Unite the Union.

Approvals:

Approved by SLT in:	February 2017
Approved by Board of Management in:	May 2017
Approved by Unite	September 2017
Next review of policy due by:	February 2020

APPENDIX A

Staff Member	Authority to Dismiss	Appeal
C&S Staff	Area Manager H.R Business Partner	Assistant Director, C&S
Head Office Staff	Senior Leadership Team	Director Level
Director Level	Chief Executive	Group Board of Management
Chief Executive	Chair of the Group/ Board of Management	Board of Management Appeal Panel

APPENDIX B

1. WRITTEN WARNINGS

1.1 Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period of time may result in a final written warning.

Examples of actions that will normally result in a written warning for a first offence:

- Negligence regarding the carrying out of prescribed duties which adversely affects the tenant or service user concerned and/or the reputation of ARK;
- Non-compliance with ARK's value base;
- Failure to comply with ARK's policies and procedures;
- Failure to use safety clothing or equipment when required to do so;
- Breach of safety rules where no injury, or damage to property or equipment has resulted;
- Failure to obey a reasonable instruction (depending on the circumstances);
- Failure to follow computer security procedures which does not result in any breach of confidentiality or loss of data;
- Neglect of equipment resulting in minor loss or damage to equipment or property;
- Unauthorised use of ARK property;
- Minor incidents of 'harassment' against a colleague;
- Failure to follow the Equality & Diversity policy.
- Poor work performance or capability combined with failure to bring performance up to the required standard
- Unacceptable timekeeping
- Unauthorised Absence
- Breach of ARK's smoking policy including the use of e cigarettes or Vapes
- Non compliance with the registering requirements of the SSSC
- Posting defamatory or derogatory comments, or photographs regarding ARK, it's employees, service users or tenants on social media,
- Minor breaches of safety regulations which would be likely to lead to injury or harm to any service user, employee or visitor
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[NOTE: The list above contains examples only and is not to be regarded as exhaustive.]

2. FINAL WRITTEN WARNING

2.1 A final written warning may be issued where:

- A staff member has been issued with a written warning and fails to achieve and maintain the required improvement in conduct or performance by the date the warning is due to expire, or
- A further act or omission warranting disciplinary action occurs during the period a written warning is still in force, or
- The misconduct or failure in performance is of a serious nature warranting this form of disciplinary action for a 'first offence', without any previous warnings.

Examples of actions that will normally result in a final written warning for a first offence are:

- Negligence regarding the carrying out of prescribed duties which seriously affects a tenant, service user and/or the efficiency and reputation of ARK adversely, and which may breach a code of conduct or statutory guidance;
- Serious non-compliance with ARK's value base;
- Serious failure to comply with ARK's policies and procedures;
- Breach of safety procedures or rules which results in minor injury to self or to others, and/or minor damage to equipment or property (depending on the circumstances this may result in dismissal);
- An incident of more serious harassment against a colleague;
- Attendance at work under the influence of alcohol or drugs, resulting in the employee being incapable of performing duties to the required standard
- Deliberate or willful failure to follow computer security procedures including loss of or damage to data, abusive emails, use of unauthorised software or internet access;
- Deliberately initiating a 'mischievous' grievance against any colleague;
- Breach of the Section 63 (Schedule 7) rules on acceptance of gifts and benefits etc. as detailed in ARK's Code of Conduct and related policies;
- Action or behaviour that brings the organisation into disrepute.

Serious breaches of confidentiality

[NOTE: The list above contains examples only and is not to be regarded as exhaustive.]

3. DISMISSAL

Dismissal with notice

3.1 Dismissal with notice may occur where:

- Following a final warning, the staff member fails to achieve and maintain the required improvement in conduct or performance by the date the warning is due to expire, or
- A further act or omission warranting disciplinary action occurs during the period a final written warning is still in force, or
- A failure in conduct or performance occurs of a sufficiently serious nature to justify this level of action for a 'first offence' without any prior warnings.
- A failure to register with the SSSC within the relevant timescale
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- Examples of actions that will normally result in dismissal for a first offence, following a period of suspension where deemed appropriate, are:
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- Behaving in a manner which completely disregards ARK's value base or willful abuse or disregard of any ARK policy or procedure, which has serious implications either for the Association, service users or staff members;
- Gross insubordination, i.e. refusal to obey a reasonable instruction which may include verbal abuse and/or threatening behavior;
- Fighting with a colleague at work, or abusive or very threatening behaviour towards a colleague, service user, tenant or any other person while on duty;
- Theft or unauthorised possession either of ARK property, or of the personal property of a colleague, service user or a tenant;
- Fraud or attempted fraud, e.g. falsely claiming benefits or expenses, falsification of documents including work records, time sheets, overtime sheets, attendance records, accounts or ledgers, whether manual or computerised, for personal benefit or the specific benefit of others, in breach of ARK's rules or policies;

- Any act of deceit or dishonesty relating to the person's duties, or any other aspect of ARK's activities;
- Provision of false or misleading information, or non-disclosure of information, either during the employment process or in subsequent employment, which materially affects the contract of employment;
- Breach or disregard of safety procedures or rules which seriously endangers the health and safety of others, i.e. potentially involving the loss of 'life or limb', whether or not actual injury or damage results;
- Attendance at work under the influence of alcohol or drugs to the extent that the individual is incapable of undertaking their prescribed duties to an acceptable standard;
- Willful or grossly negligent damage to ARK property or equipment, or to the possessions or property of colleagues, tenants, service users or other members of the public, while on duty;
- Breach of confidentiality, i.e. the unauthorised disclosure of any confidential information about a tenant, service user or any aspect of ARK's business to any third party;
- Computer system sabotage, introduction of viruses or 'time bombs', hacking, breach of data protection rules, viewing and/or downloading of unacceptable material from the internet, e.g. pornographic, racist, violent;
- Any act of indecent or immoral behaviour while on duty;
- Non-disclosure of an interest in a contractual arrangement between ARK and any other public agency or private company;
- Serious breach of the Schedule 7 rules on acceptance of gifts and benefits etc. as detailed in ARK's Code of Conduct and related policies;
- Serious acts of discrimination that are contrary to, or inconsistent with ARK's Equality & Diversity policy in the areas of employment or provision, including any acts of harassment, victimisation or intimidation;
- Behaviour whether on duty or not on duty which results in, or is likely to result in criminal charges which adversely affects the individual's ability and/or suitability to perform their duties and responsibilities, particularly where the duties involve a degree of trust, or where there is a perceived risk to colleagues, tenants or others;
- Failure to disclose a criminal charge or conviction whilst in ARK's employment, when the charge or conviction is deemed to have implications for the individual's continued employment.
- Abusing a position of trust.
- Fraud or deliberate falsification of records or information which relates to the employee's work or employment.
- Negligent behaviour endangering a colleague's or service user's health and well-being.
- Any unauthorised disclosure of confidential information. This includes disclosing personal information outside ARK's procedures, using personal information held on others for personal purposes, or unauthorised disclosure of confidential business information.
- Submission of false employment references.
- Making false statements or deliberate omission of relevant information on employment application form.
- Serious infringement of health and safety rules and regulations;
- Causing reputation damage to ARK as a result of social media communication
- Serious non compliance of the SSSC Code of Conduct

[NOTE: The list above contains examples only and is not to be regarded as exhaustive.]

Dismissal without notice

- 3.2 A staff member may be dismissed without notice and without any previous warning where gross misconduct is deemed to have occurred.
- 3.3 Gross misconduct is defined as behaviour of such a nature that the Association is unable to tolerate the continued employment of the individual concerned. The types of behaviour will be the most serious instances of the examples listed in Section 3 above.