



Disciplinary Procedure

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Summary of Changes

Section	Change
All	Procedural information removed from Policy



Disciplinary Procedure

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1.0 Introduction

This procedure supports the Disciplinary Policy (HR18) and outlines the process to be followed. Ark is committed to following a full and fair process in dealing with disciplinary matters to ensure consistency of treatment for all employees. Set out below is the process that we will normally follow. This procedure forms part of an employee's contract of employment.

All employees are expected to achieve and maintain appropriate standards of conduct during their employment at Ark, both inside and outside of the workplace.

Where behaviours or conduct have fallen below an acceptable standard this will be addressed under this procedure.

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

2.0 Misconduct

Misconduct is when an employee's inappropriate behaviour or action breaks workplace rules. Some misconduct examples are set out below. Note that this list is not exhaustive.

- Bullying.
- Harassment.
- Refusing to do work.
- Being absent without permission (some people call it absent without leave or 'AWOL').
- Negligence in performance of duties.

3.0 Gross Misconduct

Gross misconduct is behaviour or an act that is so serious that, after following the disciplinary process, may lead to a dismissal without notice. Ark has set out below a list of behaviours that we would consider as gross misconduct. A breach of any of the following rules may result in the employee's dismissal without notice. Note that this list is not exhaustive.

- Theft.
- Fraud.
- Falsification of time-sheets or expenses claims or other documentation relating to employment.
- Violent conduct towards fellow employees, customers, clients or suppliers.
- Threatening conduct or swearing at fellow employees, customer, clients or suppliers.
- Gross insubordination, or a repeated refusal to obey a reasonable management instruction.
- Gross negligence.
- Instances of bullying or harassment.
- Instances of sexual harassment.

- Serious breach of the Company's Equality Policy including discriminatory acts based on a person's protected characteristics.
- Serious breach of the Company's e-mail or internet policy, including the downloading or sending of pornographic or sexually explicit material, and the sending of racially offensive jokes.
- The introduction of viruses into the Company's computer system.
- Attending work whilst unfit as a result of alcohol or illegal drugs, including any instances where alcohol is consumed or illegal drugs are used during working hours.
- Any serious breach of the Company's Health and Safety policy.
- Negligence regarding the carrying out of prescribed duties which adversely affects the tenant or supported person concerned and/or the reputation of Ark.
- Breach of SSSC or other regulatory bodies codes of conduct.
- Unauthorised use of Ark property or equipment.
- Failure to follow the Equality Policy and / or any incidents of bullying or harassment.
- Making defamatory or derogatory comments, or photographs regarding Ark, its employees, supported people or tenants which includes information posted on social media.
- Attendance at work under the influence of alcohol or drugs.
- Action or behaviour that has the potential to bring the organisation into disrepute including behaviour outside of work.
- 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.
- Any act of deceit or dishonesty relating to the person's duties, or any other aspect of Ark's activities.

4.0 Informal Stage

Where possible, one off, minor issues of misconduct will be dealt with informally in the first instance. This will be in the form of a conversation between the employee and their line manager or another appropriate manager, who will discuss the issue, why it has occurred, what improvement is required and when the improvement has to be achieved by.

A record of this conversation will be captured within an employee's supervision records and signed by an employee and their manager, this conversation will not be considered a formal warning, however please note that if there are further incidents of misconduct the record may be used as evidence in any future investigations.

If there is no improvement, Ark will proceed to the formal disciplinary process into misconduct.

5.0 Investigation

Prior to taking any disciplinary action, Ark will fully investigate any allegations of wrongdoing. Notes will be taken of all interviews and meetings in connection with the investigation all notes must be

signed by the employee and investigating manager, and these notes will normally be made available to the employee prior to any disciplinary hearing.

Where the alleged misconduct is more serious or where there has been no improvement after the informal stage then the formal investigation process will begin. The aim of the investigation is to establish the facts and the amount of investigation that will be carried out will depend on the allegations. In some situations this will require investigation meetings and in others this may be the collection of evidence.

All employees must cooperate fully and promptly with any investigation and attend investigation meetings where these are required and provide full information.

Investigations will be carried out without unreasonable delay however some investigations may take longer than others depending on the allegations, level of investigation and availability of information and witnesses.

All employees must treat any information communicated to you in connection with an investigation or disciplinary matter as confidential.

5.1 Outcome of Investigation

The outcome of the investigation may be:

- **No further action:** This means that there will be no further action taken in relation to the allegations
- **No formal action:** This means that there will be no formal hearing however you may be required to attend training or placed on a Personal Improvement Plan (PIP)
- **Formal Action:** This means that a disciplinary hearing will be called which may result in a formal sanction

In some instances Ark may need to inform Disclosure Scotland, SSSC or any other relevant regulatory body of the investigation and the outcome of this. In some cases Ark are required to share relevant information in relation to the investigation. Ark are responsible for ensuring their employees meet the required standards set out by relevant regulatory bodies and have a duty to report any actions that fall below the standards set out. See Appendix 1 for information regarding reporting employees.

6.0 Suspension

In cases of serious alleged misconduct, Ark may elect to suspend the employee on full pay to allow an investigation to take place. The period of the suspension will be kept to a minimum, and will not be viewed or treated as a punitive measure against the employee. Suspension not only safeguards Ark, it also safeguards an employee from further allegations being made. The purpose of suspension is to enable a full and proper investigation to be conducted into the allegation against an employee. It may be necessary to hold an investigatory meeting with an employee as part of that investigation and therefore employees should remain available for work.

A suspension checklist must be completed prior to an employee being suspended this is completed by the manager and authorised by an appropriate level of management with agreement from an HR

Business Partner. If there is doubt that suspension is the appropriate course of action the Head of People and Organisation Development or Assistant Director to Care & Support must approve.

Where an employee is absent from work due to sickness during any period of suspension, the suspension will automatically come to an end, and the employee will be treated as on sickness absence, and will receive his/her sick pay entitlement. Sickness absence reporting should be followed which is outlined in HR17 Sickness Absence Management.

During suspension the staff member will continue to be bound by the terms of their contract of employment including in relation confidentiality of information, however they should not visit Ark premises or contact other staff or supported people unless by prior agreement and we may ask the staff member to return any Ark property for the duration of the suspension.

The line manager or another appropriate person will keep in touch with the staff member during the period of suspension on a weekly basis.

Ark are required to inform SSSC or any other relevant regulatory body that a staff member have been suspended. We are required by law to do so to allow regulatory bodies to assess the staff members' fitness to practice.

7.0 Formal Action

Where formal action is recommended a disciplinary hearing will be held as soon a reasonably practicable, Appendix 2 sets out the process and timeframe.

7.1 Disciplinary Hearing

Reasonable notice of the date, time and location of the meeting will be given. This will normally be 3 to 5 working days to allow staff time to prepare for the meeting. The meeting will normally be heard during working hours.

A copy of all of the documentation that will be referred to at the hearing including the investigation report and any witness statements will be issued beforehand. Where there are good reasons for witnesses to remain anonymous we may not give the full statement but we will give as much information as possible whilst maintaining confidentiality.

The meeting will be Chaired by an appropriate level of management and a note taker will normally also be in attendance. Appendix 3 outlines appropriate levels of management.

At the hearing the Chair will go through the allegations and will present the evidence that has been gathered. Staff will be given the opportunity to state their response to the allegations, ask questions and present any evidence of their own.

On occasions it may be required to adjourn the meeting to allow further investigation to be carried out. If this is the case a further, reasonable opportunity to review any additional information or evidence before being invited to a reconvened meeting will be given.

8.0 Attendance at Hearings

If, for good reason, the staff member is unable to attend the hearing on the date and time specified we will normally give them one further opportunity to attend a meeting.

If there does not appear to be good reason or the staff member is unable to attend a second, re-scheduled meeting we will normally proceed with the meeting and make a decision on the evidence available. The staff member may wish to make a written submission instead of attending the meeting and should inform Ark of their intention no later than 48 hours prior to the meeting.

9.0 Outcome of the Hearing

The outcome of the Hearing may be:

- No disciplinary sanction
- *Counselling*: Where an employee has committed a breach of the Code of Conduct above (see section 15), or where performance is unsatisfactory, Ark may issue a counselling. This will be recorded through supervision notes and will be retained on the employees personnel file.
- First Written Warning: Where there are repeated minor breaches following a counselling or in the case of more serious misconduct, Ark may issue a first written warning. A first written warning will be held on the personnel file; however it will subsequently be disregarded after a period of twelve months from the date of issue.
- Final Written Warning: Where further breaches of discipline or performance standards occur after a written warning, or where the misconduct is viewed as serious, Ark may issue a final written warning. The final written warning will specify that any further breaches of discipline may result in an employee's dismissal. A final written warning will subsequently be disregarded after a period of eighteen months.
- Dismissal: Where further breaches of discipline or performance standards occur after a final written warning, or where the employee breaches any of the rules set out in gross misconduct section 11, Ark may dismiss the employee either with or without notice. In cases of gross misconduct, normally no notice will be given or paid by Ark. Ark may consider other sanctions short of dismissal, including demotion or redeployment to another and/or extension of a final written warning with a further review period. In the case of dismissal the written outcome will confirm the effective date of dismissal and any payments in lieu of notice, if applicable, that will be received.

The staff member will be notified of the outcome in writing and will receive a copy of the notes of the meeting. The staff member will be notified of the nature of the misconduct, the change in behaviour required, when the improvement is required by, how long the penalty will remain live and the potential consequences of any future misconduct.

When a warning has been issued it will remain permanently on the staff personnel file, but we will not usually take these into account in determining the outcome of future disciplinary proceedings after the following periods:

- First Written warning: 12 months from the date the warning was issued;
- Final written warning: 18 months from the date the warning was issued.

If some cases we may issue a warning that will remain active for a longer period. This may apply to (but is not limited to):

- Serious incidents.
- Circumstances where the penalty is less than we could otherwise have imposed.
- Where the misconduct follows an earlier similar act of misconduct.
- Where there is a history of allowing conduct to lapse after the expiry of warnings.

If we consider that conduct has not improved sufficiently at the end of the active period of a warning we may extend the active period. Improvements will be measured through regular supervision meetings with the line manager and will include monitoring any recommendations made by the chair of the disciplinary hearing

10.0 Appeal

Staff have the right to appeal any outcome if they disagree with the decision that there was misconduct, the level of sanction imposed or the process followed. The written notification of the outcome will confirm the details of who the appeal should be made to. This will normally be someone who has not previously been involved in the case.

Any appeal needs to be made in writing, should confirm the reason for appeal and needs to be made within 5 days of receipt of the written notification of the outcome.

The invite to an appeal hearing and providing a copy of the documents that will be referred to will be the same as for the original disciplinary hearing.

If an appeal against dismissal is being made, the dismissal will still take effect until the outcome of the appeal is known.

The outcome of an appeal may be:

- Confirm the original decision and sanction.
- Confirm the original decision but change to a lesser penalty.
- Remove the original decision and penalty.
- Confirm the original decision and impose a higher penalty.

The appeal outcome will be final and there will be no further right to appeal. Ark have aligned the appeal process with ACAS guidelines.

11.0 Right to be accompanied

Staff will not normally be entitled to be accompanied at any investigation meetings.

There is a statutory right to be accompanied at any disciplinary meeting or appeal meetings by a colleague, Trade Union Representative or Trade Union Official. Ark must be informed of the name and position of the person who will be accompanying the staff member at least 24 hours before the meeting.

A staff representative can address the hearing by explaining and summing up the case and responding to any views expressed at the hearing. They may confer with the staff member (privately if wished) during the hearing but may not answer questions on the staff member's behalf, address the hearing if the staff member does not wish them to do so or prevent the person chairing the hearing from explaining their case.

It is the staff member's responsibility to ensure the representative is willing and able to attend the meeting. If they are unable to attend on the original date the meeting can be re-scheduled to accommodate them as long as this is within 5 working days of the original meeting date.

12.0 Sickness Absence

If the staff member is absent from work during a period of suspension the suspension will be put on hold until the period of sickness absence ends. Once the period of sickness has ended suspension will re-commence.

If the staff member is absent from work during an investigation we still require them to be available to attend investigation and disciplinary hearings unless there is medical evidence to confirm they are unfit to attend meetings.

In this case disciplinary proceedings will be paused until the staff member is fit to return, however if they are still unable to attend or are on extended sick leave we will work with them to make reasonable adjustments to support them to attend. If they are still unable to attend we may go ahead with the meeting in their absence and ask them to provide a written submission. Ark may seek medical input from a GP or Occupational Health to assess the staff member's fitness to participate.

13.0 Criminal allegations

We will not usually put disciplinary proceedings on hold pending the outcome of criminal proceedings. If the staff member is unable, or have been advised not to, attend an investigation meeting or disciplinary hearing or to say anything about a pending criminal matter, we may make a decision based on the available evidence.

14.0 Probationary Period

Ark may bring employment to an end if performance, conduct or absence is unsatisfactory during the probationary period by giving one week's notice. The staff member will formally be invited to a probationary review meeting and informed in advance that this meeting may result in dismissal.

15.0 Code of Conduct

Please see G03 to read Ark's Staff Code of Conduct.

16.0 Implementation and Review

16.1 Implementation

The Head of People & Organisational Development is responsible for ensuring this procedure is implemented when required.

16.2 Review

The Head of People and Organisational Development will ensure that this procedure is reviewed at least every three years.

Appendix 1 When to refer to Disclosure Scotland & SSSC

Disclosure Scotland:

Ark are required to refer employees to Disclosure Scotland for the following reasons:

Employee has been dismissed as a result of harmful behaviour.

Employee would have been dismissed for harmful behaviour but they stopped doing regulated work before they could be dismissed, for example, if the employee resigns or makes no further contact with Ark immediately after the incident(s) or after starting but not concluding a disciplinary process or when an individual's probation or fixed term contract is not extended .

Was transferred permanently (not temporarily while under investigation) from regulated work with children/protected adults to a role within the organisation that does not involve regulated work with those groups.

Types of harm can include:

Physical harm (including assault or inappropriate restraints).

Psychological/emotional harm (for example, placing a child/protected adults in a state of fear, alarm or distress).

“Damage to property, rights or interests”, such as theft, fraud, embezzlement or extortion.

Attempts to harm.

Trying to make others cause harm.

Encouraging someone to self-harm.

Placing at “risk of harm” is a wide ranging category but may include behaviour or incompetence that may cause someone to be harmed (even if unintentional and/or where harm does not actually occur).

SSSC:

Ark are required to adhere to the responsibilities which are set out in the Code of Practice for Employers of Social Service Workers (the Code for Employers) and the Regulation of Care (Scotland) Act 2001 (the Act). All Support Worker/ Relief Support Workers/ Care & Support Managers/ Operations Managers/ Regional Managers fall under the social service worker category and may be referred to the SSSC

Ark are required to refer employees to SSSC for the following reasons:

That you have suspended, dismissed, and demoted a social service worker.

That a social service worker has resigned during a disciplinary investigation where the employer would have considered dismissal.

Anything you would refer to Disclosure Scotland.

That a worker has been charged or convicted of a criminal offence.

In any other circumstances where you are concerned that the behaviour or actions of a worker raises a serious concern about their fitness to practise.

Behaviours that are likely to call into question a worker's fitness to practise and should be referred to the SSSC regardless of the outcome of any disciplinary/performance/criminal process are as follows:

Dishonesty, fraud, abuse of trust.

Exploitation of a vulnerable person.

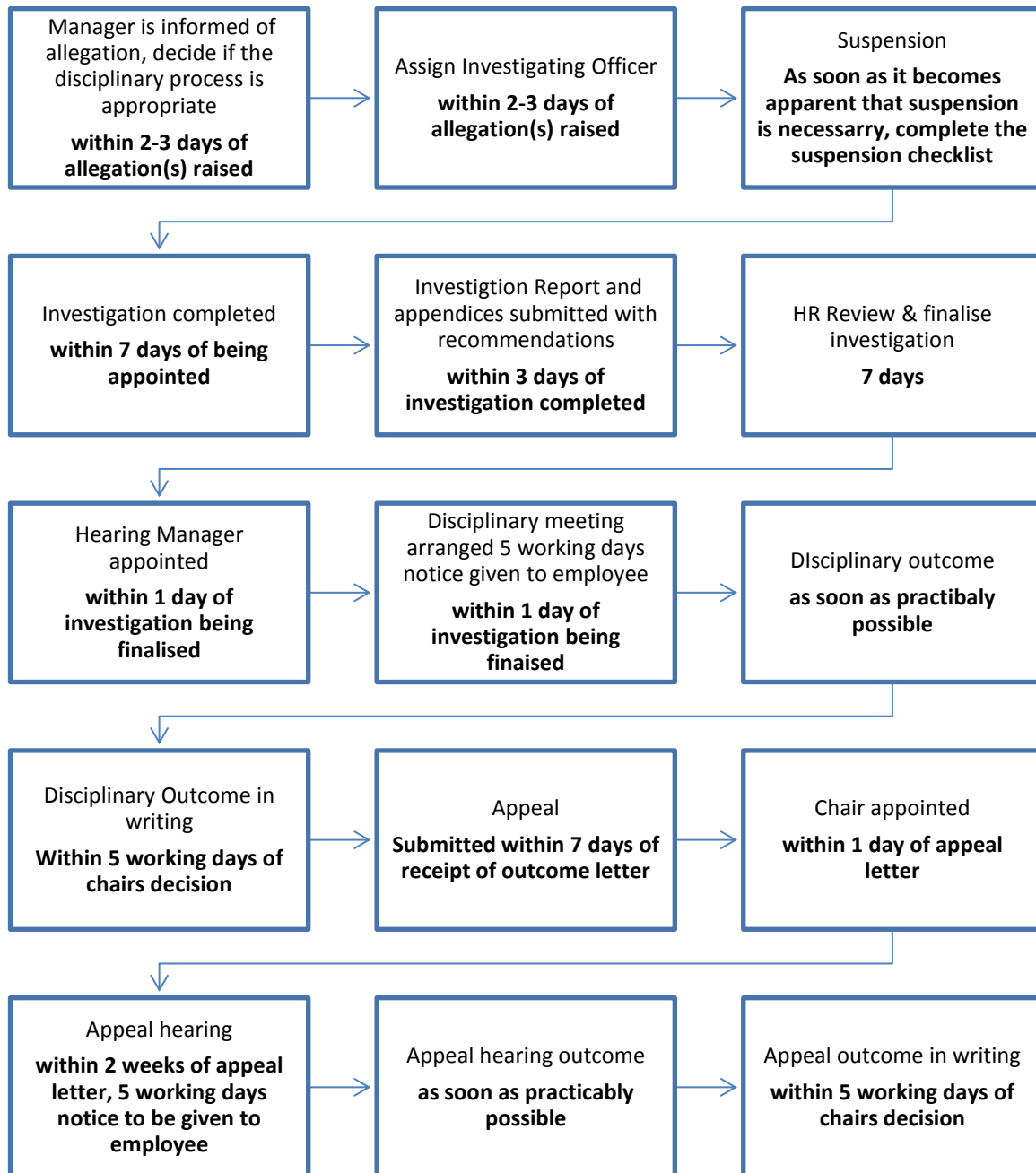
Failure to respect the rights and choices of people who use services.

Health which is not being managed and affects the safety of people who use services,

Hiding mistakes/blocking investigation.

Improper relationship with a person who uses services.
Reckless or deliberately harmful acts.
Serious or persistent failure to meet standards.
Sexual misconduct or indecency (including child pornography).
Substance abuse or misuse.
Violence or displayed threatening behaviour.
Other serious activities which affect public confidence.

Appendix 2 Investigation & Disciplinary Timeline



Appendix 3 Management Levels

Appropriate Management levels are set out below

Care & Support:

Investigation	Care & Support Manager/Operations Manager/Regional Manager
Suspension	Care & Support Manager/Operations Manager/Regional Manager
Disciplinary Hearing	Operations Manager/Regional Manager
Dismissal	Operations Manager/Regional Manager
Appeal	Regional Manager/Assistant Director

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Investigation	BP/Head of/Director
Suspension	BP/Head of/Director
Disciplinary Hearing	BP/Head of/Director
Dismissal	BP/Head of/Director
Appeal	BP/Head of/Director

Appendix 4 Suspension Checklist

Suspension From Work – Risk Assessment & Checklist

Name of Employee	
Name of Service / Department	
Date of Incident	
Summary of allegation/s resulting in suspension being considered	
Regional Manager	
Is there a serious risk to supported people, staff or ARK by allowing the employee to remain at work?	Yes/No
Is it necessary to remove the employee from the service/department during the investigation	Yes/No
Can the employee be given alternative duties or a change of work location, if not please provide reasons for decision	
HR Informed and agreed to suspension	Yes/No

<p>If immediate suspension is necessary, please outline the reasons for the suspension and the basis of the recommendation.</p> <p>Eg. Serious allegation have been made which, if substantiated, would fundamentally compromise the employment relationship; the continuing attendance at work of the employee under investigation is likely to prejudice the investigation; the way in which the concerns or allegations have arisen has led to the need to protect the interests of supported people or other employees pending the outcome of an investigation.</p>	
<p>Suspending Manager</p>	
<p>Arrangements for informing the employee of suspension, also name of any additional management witness to suspension</p>	
<p>Is the employee Registered with SSSC if so HR will inform SSSC of suspension</p>	
<p>Are there any other external agencies who need to be informed at this time by the manager, such as; Care Inspectorate, Police, Social Work etc</p>	

<p>Things to cover off during the verbal discussion regarding suspension:</p> <p>who the point of contact will be during period of suspension</p> <p>contact details for the point of contact to be given</p> <p>confirm contact details with employee</p> <p>remind employee they must remain available for work during normal working hours and be available to attend meetings during these times</p> <p>Inform employee they should not enter any of Ark's premises during the period of suspension or contact any of their fellow employees, other than exercising the statutory right to be accompanied at any disciplinary hearing</p> <p>inform employee they should not perform work for any other employer or undertake self-employment during their normal working hours</p> <p>confirm with employee if they have secondary employment what days/hours they work in that employment</p> <p>inform employee that should they fall ill or are incapacitated they should follow the normal absence reporting procedures</p> <p>If the employee has previously booked annual leave which falls during the period of suspension they will be entitled to take this leave and it will be deducted from their accrued annual leave</p> <p>provide Employee Counselling details & contact number to be given</p> <p>ensure employee has returned all Ark property including keys, mobile phones, tablets, laptops and identification pass</p>	
<p>Check the employee's current rota:</p> <p>What period is the current rota</p> <p>What days are they available for meetings</p> <p>How many sleepovers are currently planned</p> <p>What overtime is already planned</p> <p>(already planned sleepovers and overtime will normally be paid for as part of suspension, but check with HR)</p>	

Letter confirming suspension produced? Date of issue?	
Ongoing Contact Arrangements	
Staff made inactive on AIMS	
Signature of Operational Manager & Date of Signing	Signed Date
Signature of Regional Manager & Date of Signing	Signed Date