



## **Disciplinary Procedures of the Kent Estuary Youth Project**

### **1. Introduction**

The KEY requires good standards of conduct from its staff members, together with satisfactory standards of work. The purpose of the procedure is to be supportive and corrective rather than punitive and it should be recognised that the existence of procedures such as these is to help and encourage staff members to achieve and maintain standards of conduct, attendance and job performance and to ensure consistent and fair treatment for all. This procedure has been written to reflect the principles set out in the ACAS Code of Practice and Guidance Notes on Disciplinary issues.

For the purpose of this policy the term “organisation” will mean the KEY Trustees. For the purpose of this policy the terms “staff member” and “staff” also include the Key Worker and Volunteers.

This procedure does not form part of any staff members' contract and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

### **2. Policy Statement**

As noted above, this policy takes into account ACAS advice and best practice. It is the policy of the KEY to ensure that any disciplinary or performance matter is dealt with fairly and that steps are taken to establish the facts. Staff members will not be subjected to formal disciplinary action (including dismissal) without being provided with the following:

- a written statement of the allegations;
- a hearing before any decision is reached; and
- the right to an appeal hearing

### **3. General Principles**

This procedure applies to all staff members who have successfully completed their probationary period and such staff members should familiarise themselves with its provisions. It does not apply to agency workers or self-employed contractors.

Minor conduct issues can often be resolved informally between the member of staff and the Line Manager. These discussions should be held in private and without undue delay

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whenever there is cause for concern. In these cases an informal verbal warning may be given. (Such a warning lies outside this formal procedure, but a record should be kept of matters such as the date that it was issued, the areas of concern and required improvements).

Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the concerns). Except in cases of gross misconduct a staff member will not normally be dismissed for a first act of misconduct. Staff will normally be given a warning and an opportunity to improve.

Any steps under this procedure should be taken promptly unless there is a good reason for delay. Trustees may vary any time limits set out in this procedure if it is reasonable to do so and if this is the case the member of staff's agreement will normally be sought.

Should this agreement be withheld it may be necessary to proceed without this, where Trustees consider that there is a justified reason to do so. It is often good practice to appoint an appropriate person to investigate any disciplinary concerns (the 'Investigating Officer'), and designate a person to manage the disciplinary process (the 'case manager'). If a member of staff has difficulty at any stage of the procedure because of a disability, they should discuss the situation with their line manager as soon as possible so that any reasonable adjustments can be identified and made.

In some situations a staff member subject to this procedure may offer their resignation at a point before or during the proceedings. Trustees will consider these offers on a case by case basis. In situations where there is evidence of criminal activity or there is a safeguarding issue, Trustees may proceed with the disciplinary procedure in any event.

#### **4. Confidentiality**

The aim during an investigation or disciplinary procedure is to deal with matters sensitively and with due respect for the privacy of any individuals involved, so far as this is reasonably possible.

All staff members must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Failure to do so could itself lead to disciplinary action.

Members of staff are not permitted to make any electronic recordings of any investigative meetings, disciplinary or appeal hearings. A representative, or any companion or witnesses who may accompany a member of staff to any meetings or hearings are also forbidden from making electronic recordings. However a note taker will be present at formal hearings in order to produce and distribute a summary of the meeting; however this will not be verbatim.

A staff member will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings, unless, in Trustee's discretion, it is considered that a witness's

identity should remain confidential. This would only happen in exceptional cases where there is a risk that harm may be suffered by the witness and this risk is felt to outweigh any prejudice that may be suffered by the staff member being disciplined in the event that they are not told of the witness's identity.

Witnesses must treat as confidential any information given to them in the course of an investigation or hearing, including the identity of any staff members under investigation.

## **5. Investigation**

The purpose of an investigation is for the Trustees to establish a fair and balanced view of the facts before deciding whether to proceed with a disciplinary hearing or take informal action. The investigation will depend upon the allegations and will vary from case to case. This may involve reviewing any relevant documents, interviewing the member of staff concerned and any witnesses, taking witness statements and any other action deemed appropriate by Trustees to fully establish the facts of the matter.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. A staff member may bring a representative with them to the investigative meeting (see paragraph 8).

Staff Members must cooperate fully and promptly in any investigation. This will include informing Trustees of the names of any witnesses they consider to be relevant to the matter, disclosing any relevant documents to Trustees and attending any investigative interviews.

The amount and scope of investigation required will depend on the nature of the allegations and will vary from case to case.

Where a staff member's conduct is subject to criminal investigation, charge or conviction Trustees will investigate the facts before deciding whether to take formal disciplinary action. We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the staff member is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, Trustees may have to take a decision based on the available evidence. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider it to be relevant to the work undertaken by any of the individuals covered by this policy.

## **6. Suspension**

In cases where the staff member's continued presence in the workplace would hinder an investigation, Trustees may need to suspend the staff member from work while an investigation or disciplinary procedure is ongoing. The suspension will be for no longer than necessary and will be kept under review. The Trustees will confirm the arrangements to the staff member in writing.

While suspended a member of staff should not contact any of the Trustees, volunteers or young people with whom they have been engaged through KEY, unless s/he has been authorised to do so in writing by Management.

Suspension of this kind is not a disciplinary sanction, is a neutral act, and does not imply that any decision has already been made about the case. Suspension will be on full pay.

## **7. Formal Disciplinary Procedure**

### **7a. Written Information**

Following any investigation, if Trustees consider there are grounds for disciplinary action, the staff member will be informed in writing of the allegations against him/her and the basis for those allegations. This will normally include:

- a summary of relevant information gathered during the investigation;
- documents which will be used at the disciplinary hearing; and
- witness statements which will be used at the hearing, except where a witness's identity is to be kept confidential, in which case Trustees will give the staff member as much information as possible while maintaining confidentiality.

### **7b. Disciplinary Procedure**

The Trustees will give the staff member a minimum of 5 working days notice of the date, time and place of the disciplinary hearing, and the names of those attending (unless it is necessary to protect the confidentiality of witnesses). If the staff member wishes to submit any written evidence to the hearing or call any witnesses, a copy of the written evidence and names of witnesses must be submitted to the Trustee who will be chairing the meeting at least 2 days before the date of the hearing.

The hearing will be chaired by a trustee who has not been involved in the investigation. The investigating officer will also be present.

For cases that involve the potential dismissal of a staff member the Chair must be appointed by or on the authority of the chair of the Trustees, to ensure an appropriate level of independence.

The staff member may bring a representative with him/her to the disciplinary hearing. The staff member must take all reasonable steps to attend the hearing. If the staff member or their representative cannot attend at the time specified s/he should inform Trustees immediately and an alternative time may be agreed. If it is not possible to arrange a mutually convenient alternative time or Trustees are unable to contact the staff member despite making reasonable attempts to do so, the hearing may proceed in their absence.

The hearing may also proceed in the staff member's absence if it is considered that they have shown themselves to be persistently unwilling or unable to attend the hearing. The staff member may ask relevant witnesses to appear at the hearing provided that he or she gives the chair of the disciplinary meeting sufficient advance notice to arrange their attendance.

The purpose of the disciplinary hearing is to enable the Chair to consider the evidence and to enable the staff member to respond to the allegations that have been made against him/her. If the staff member has a representative, he or she may make representations to the Chair and ask questions, but should not answer questions on the staff member's behalf. The staff member may request a short adjournment in order to confer privately with his/her representative at any time during the hearing. The process to be followed at the hearing is as follows:

- The Chair opens the proceedings by introducing all parties and reading out the disciplinary charges to be considered.
- The Investigating Officer begins by presenting the case, using evidence previously submitted and calling witnesses as appropriate.
- The staff member and his/her representative respond to the alleged charges calling witnesses as appropriate. Both the Chair and the staff member may ask questions of the witnesses.
- The Chair may then ask questions of the staff member and his/her representative.
- The Chair may then sum up their case and may not present any new evidence at this point.
- The staff member may then sum up their case, and may not present any new evidence at this point.
- The Chair will withdraw from the hearing to consider the case, including the evidence which has been submitted prior to the hearing.
- The Chair may adjourn the disciplinary hearing if he or she feels that they need to carry out further investigations, such as re-interviewing witnesses in the light of any new points which the staff member has raised at the hearing. The staff member will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- The Chair of the Hearing will inform the staff member in writing of his/her decision concerning the disciplinary charges, and the sanction to be applied, together with the reasons for his/her decision. The staff member will also be informed of the right of appeal.

## 7c. Appeals

An appeal must be submitted in writing, to the Chair of Trustees stating the full grounds of appeal within 5 working days of the date on which the staff member (the appellant) received written notification of the decision. Appeals may be made on the basis of the severity of the disciplinary penalty received at the hearing, or on findings of fact. It is not permissible to simply appeal because the staff member is generally unhappy with the outcome of the hearing. Rather, the staff member must set out clearly the issues s/he wishes the appeal hearing to consider i.e. Findings of fact, or the severity of the disciplinary penalty.

The appeal hearing will be chaired by a Chair of the Trustees or his/her nominee, subject to them not being a member of the HR subcommittee. The chair will give the staff member written notice of the date, time and place of the appeal hearing. At least 5 days' notice will be given of the date of the appeal hearing.

Appeals against dismissal will be heard normally by the Chair of the Trustees. The staff member may bring a representative with him/her to the appeal meeting (see paragraph 8).

- The order set out below will be followed at the hearing:
- The Chair will introduce all parties
- The staff member (appellant) will present the basis for their appeal, and may use the evidence included in the appeal documentation previously submitted, calling witnesses from the original hearing as appropriate
- The Chair of the Appeal Hearing may ask questions of the staff member
- The Chair of the Appeal Hearing will also call the Chair of the original disciplinary hearing to provide evidence on the evidence which led him/her to make the original disciplinary decision. The Chair and the appellant may ask questions of the Chair of the original disciplinary hearing.
- The Chair may then sum up, and may not introduce any new evidence.
- The staff member may then sum up, [and may not introduce any new evidence.

Following the appeal hearing the Appeal Hearing may:

- confirm the original decision; or
- revoke the original decision; or
- substitute a different disciplinary sanction.

The Chair of the Appeals Panel will inform the staff member in writing of the Panel's final decision as soon as possible following the appeal hearing and within 5 working days. There will be no further internal right of appeal.

The date on which any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the staff member will be reinstated with no loss of continuity of service or pay.

## **8. Right to be Accompanied**

A staff member may bring a representative to any disciplinary or appeal hearings under this procedure. The representative may be either a trade union representative or a work colleague. The staff member must tell the Chair of the Disciplinary Hearing / Appeal Hearing the name of the representative 3 days prior to the hearing.

The Chair of the hearing may, at his/her discretion, allow the staff member to bring a representative who is not another staff member or union representative (for example, a family member) where this will help overcome a particular difficulty caused by a disability, or where the staff member has difficulty understanding English.

Acting as a representative is voluntary and staff members are under no obligation to do so. Staff members will be allowed reasonable time off from duties without loss of pay to act as a representative.

If the staff member's choice of representative is unreasonable the person conducting the hearing or appeal may ask him/her to choose someone else. For example:

- If in the Chair's opinion the representative may have a conflict of interest or may prejudice the hearing; or
- If the representative is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

## **9. Dismissals and Disciplinary Action**

### **9a. Types of Offences**

Offences which may be found to be minor, depending on the circumstances, include but are not limited to poor job performance involving sub-standard work, unsatisfactory time-keeping, absenteeism or some breaches of the terms and conditions of employment.

Offences which may be found to be serious, depending on the circumstances, include but are not limited to negligence resulting in minor loss damage or injury, failure to comply with a specific instruction, activities or impropriety in relation to the staff member's tasks for KEY whether or not within working hours which KEY reasonably considers to be detrimental to or conflicting with the interests of KEY or likely to affect the staff member's standard of work, failure to disclose any personal interest of the staff member which conflicts with any interest of KEY or any breach of confidence relating to KEY or other organisations involved with KEY.

Gross Misconduct includes but is not limited to serious carelessness or negligence resulting in serious loss damage or injury, fighting with or physical assault or attempted assault upon staff members , volunteers or members of the public, theft, malicious damage to property, wilful disregard of duties or of instructions relating to employment, serious breach of the Equal Opportunities Policy, serious acts of bullying or harassment, deliberate serious breach of confidence relating to KEY or its affairs, the use for personal ends of confidential information obtained by the staff member in the course of his work , misuse of KEY's IT systems and fax/telephone facilities, downloading of offensive material such as pornographic or racist material from the internet, e-mailing such material to staff, falsification of records, conduct violating common decency or conviction on a criminal charge relevant to the staff member's work , conduct which demonstrably brings KEY into disrepute, being under the influence of alcohol or drugs during working hours.

These are non-exhaustive examples of the sort of offences which if committed will lead to disciplinary action. In addition, poor performance may lead to disciplinary action, including dismissal. A finding of gross misconduct will result in dismissal without notice or pay in lieu of notice.

### **9b. Disciplinary Sanctions**

KEY aims to treat all staff members fairly and consistently. Disciplinary action previously taken against other staff members for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

Depending on the seriousness of the matter (whether relating to conduct or poor performance) any of the following stages may be omitted.

### **9c. Stage One: First Written Warning**

A first written warning will usually be given for:

- first acts of more serious misconduct or instances of poor performance, where there are no other active warnings on the staff member's disciplinary record; or
- further misconduct or poor performance where an informal verbal warning has been given previously

The warning will set out the nature of the misconduct or poor performance (i.e. the findings of the disciplinary hearing), the change in behaviour required and over what period, and the likely consequences of further misconduct or poor performance.

The warning will be placed on the staff member's personnel file and will remain active for a specified period from the date it is given, after which time it will be disregarded in deciding the outcome of any future disciplinary proceedings. The staff member's conduct may be reviewed at the end of this period and if it has not improved sufficiently Trustees may convene another hearing under this procedure.

### **9d. Stage 2: Final Written Warning**

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A final written warning will usually be given for:

- misconduct or poor performance where there is already an active warning on the record; or
- cases where there is no active written warning on file but the Chair of the Disciplinary Hearing considers that the misconduct or poor performance is sufficiently serious to warrant a final written warning.

The warning will set out the nature of the misconduct or poor performance, the change in behaviour required and over what period, and the likely consequences of further misconduct.

The warning will be placed on the staff member's personnel file and will remain active for a period to be specified. The staff member's conduct may be reviewed at the end of this period and if it has not improved sufficiently a further hearing may be required at which the staff member's future employment will be considered. After the active period it will be disregarded in deciding the result of future disciplinary proceedings.

### **9e. Stage 3: Dismissal**

The Chair of a disciplinary hearing may decide to dismiss a staff member in the following circumstances:

- misconduct or poor performance where there is an active final written warning on the staff member's record; or
- gross misconduct regardless of whether the staff member has received any previous warnings.

Gross misconduct will usually result in summary dismissal, that is, dismissal without notice or payment in lieu of notice.

In cases not involving gross misconduct the staff member will be given his/her full contractual notice period, or payment in lieu of notice.

### **9f. Alternative Sanctions Short of Dismissal**

In appropriate cases the Chair of the Disciplinary Hearing may consider some other sanction short of dismissal, such as:

- demotion;
- transfer to another role (where performance will continue to be monitored);

These sanctions may be used in conjunction with a written warning.

## **10. Decisions**

Actions short of dismissal may be taken by the chair of the disciplinary hearing.  
The decision to dismiss a member of staff may only be made by, or on the authority of the Trustees.