

# Disciplinary and Capability Procedure

## Purpose and Scope

This procedure is designed to help and encourage all employees of the Church to achieve and maintain standards of conduct, attendance and performance in their ministry/work. The aim is to ensure consistent and fair treatment for all. This procedure applies to all employees of the Church and will normally be followed where a breach of discipline occurs but the procedure is not contractually binding upon the Church and is for guidance only.

## Principles

- No disciplinary action will be taken against an employee until the case has been fully investigated.
- In normal circumstances disciplinary action will only be taken by Minister (Team Leader) and/or the Elders.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct for which an individual may be dismissed without notice or payment in lieu of notice.
- An employee will have the right to appeal against any disciplinary penalty imposed.
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

## Concurrent Procedures

In the event that an employee submits a grievance during a disciplinary procedure, the Church may at its discretion, decide whether to suspend the disciplinary procedure in order to fully consider the grievance, or to deal with both procedures concurrently, where the issues are related.

## Establishing the facts

The Church will investigate, without delay, any allegation or indication of poor performance or misconduct. In some cases, this will require an investigatory meeting, held by a senior Church representative, to establish the true facts in the matter.

The Church may consider it necessary to suspend the employee on full pay pending investigation.

## **Suspension**

The Church may at any time suspend the employee for a reasonable period of time, during any period in which the Church is carrying out a disciplinary investigation into any alleged acts or defaults of the employee. During any period of suspension, the employee shall continue to receive their salary and contractual benefit. This is not disciplinary action, but a neutral act pending the outcome of the investigation.

## **Informing the employee**

If, following the investigation, either misconduct or unsatisfactory performance is confirmed and it is felt that there is a disciplinary case to answer, the employee will be asked to attend a formal meeting and the employee will be notified in writing that disciplinary action may follow. This notification will contain sufficient information about the alleged misconduct or poor performance to allow the employee to prepare a response for any disciplinary hearing. It will also include any evidence gathered during the investigation, which supports the decision to take disciplinary action.

The employee will also be informed of the time, date and venue of the disciplinary hearing, and advised of the employee's right to be accompanied by a colleague or trade union representative.

## **Disabilities**

Consideration should always be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing his/her duties or providing additional equipment or training. The Church may also consider making adjustments to this procedure in appropriate cases.

If the employee wishes to discuss this or inform the Church of any medical condition which they consider relevant, he/she should contact his/her supervisor or the Church Secretary.

## **Confidentiality**

The Church's aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter, which is subject to this disciplinary procedure.

The employee and anyone who accompanies them (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure.

The employee will normally be told the names of any witnesses whose evidence is relevant to their disciplinary hearing, unless the Church believes that a witness's identity should remain confidential.

### **Notification of a hearing**

If the Church considers that there are grounds for taking formal action over alleged poor performance, the employee will be required to attend a capability hearing. The Church will notify the employee in writing of its concerns over the individual's performance, the reasons for those concerns, and the likely outcome if it decides after the hearing that the employee's performance has been unsatisfactory. The Church will also include the following where appropriate:

- a) A summary of relevant information gathered as part of any investigation;
- b) A copy of any relevant documents which will be used at the capability hearing; and
- c) A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the Church will give the employee as much information as possible while maintaining confidentiality.

The Church will give the employee written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time, usually two to seven days, to prepare his/her case based on the information which the Church gives you.

### **Right to be accompanied at hearings**

The employee may take a companion to any capability hearing or appeal hearing under this procedure. The companion may be either a trade union official or a fellow employee. The employee must tell the manager conducting the hearing who his/her chosen companion is, in good time before the hearing.

Employees are allowed reasonable time off from duties without loss of pay to act as a companion. There is no duty on employees to act as a companion if they do not wish to do so.

If the chosen companion will not be available at the time proposed for the hearing the employee may request that the hearing be postponed to a day not more than five working days after the day proposed by the Church. If the time proposed is reasonable, and the employee representative is able to attend, the hearing will be postponed until that time.

Whilst the companion may address the hearing and confer with the individual during the hearing, they do not have the right to answer questions on the part of the individual.

If the employee's choice of companion is unreasonable the Church may require him/her to choose someone else, for example:

- a) If in the Church's opinion the employees' companion may have a conflict of interest of may prejudice the hearing; or
- b) If the employees' companion works at another site and someone reasonably suitable is available at the site at which they work;

- c) If the employees' companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

The Church may, at its discretion, allow the employee to take a companion who is not an employee or union official (for example, a member of his/her family) where this will help overcome a particular difficulty caused by a disability, or where the employee has difficulty understanding English.

### **The procedure**

Where possible, matters will be dealt with informally, where the matter is more serious either the capability or the disciplinary procedure will be used.

## **Capability Hearings**

### **Procedure at capability hearings**

The aims of a capability hearing will usually include:

- setting out the required standards that we believe the employee may have failed to meet, and going through any relevant evidence that the Church has gathered;
- allowing the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- identifying whether there are further measures, such as additional training or supervision, which may improve performance;
- where appropriate, discussing targets for improvement and a time-scale for review; and
- if dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The Church will inform the employee in writing of its decision and its reasons for it, usually within one week of the capability hearing. Where possible the Church will also explain this information to the employee, in person.

## **Stage 1: Capability Hearing**

### **First written warning OR improvement note**

Following a Stage 1 capability hearing, if the Church decides that the employee's performance is unsatisfactory, the employee will be given a first written warning OR improvement note, setting out

- the areas in which he/she has not met the required performance standards;
- targets for improvement;
- any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- a period for review;
- the consequences of failing to improve within the review period, or of further unsatisfactory performance.

A first written warning OR improvement note may be authorised by Minister (Team Leader) or the Elders.

The warning OR improvement note will normally remain active for six months from the end of the review period, after which time it will be disregarded for the purposes of the capability procedure. However, a permanent record of it will be placed on the employee's personnel file.

The employee's performance will be monitored during the review period and the Church will write to him/her to inform them of the outcome:

- if the employee's manager is satisfied with the employee's performance, no further action will be taken;
- if the manager is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## **Stage 2: Capability Hearing**

### **Final written warning**

If the employee's performance does not improve within the review period set out in a first written warning OR an improvement note, or if there is further evidence of poor performance while your employee's first written warning OR improvement note is still active, the Church may decide to hold a Stage 2 capability hearing. The Church will send the employee written notification as set out above.

Following a Stage 2 capability hearing, if the Church decides that the employee's performance is unsatisfactory, it will give the employee a final written warning, setting out:

- the areas in which the employee has not met the required performance standards;
- targets for improvement;
- any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- a period for review;
- the consequences of failing to improve within the review period, or of further unsatisfactory performance.

A final written warning may be authorised by Minister (Team Leader) or the Elders.

A final written warning will normally remain active for six months from the end of the review period, after which time it will be disregarded for the purposes of the capability procedure. A record of the warning will form a permanent part of the employee's personnel record.

The employee's performance will be monitored during the review period and the Church will write the employee to inform them of the outcome:

- if the employee's manager is satisfied with his/her performance, no further action will be taken;
- if the employee's manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

### **Stage 3: Capability Hearing**

#### **Dismissal or redeployment**

The Church may decide to hold a Stage 3 capability hearing if we have reason to believe:

- the employee's performance has not improved sufficiently within the review period set out in a final written warning; or
- the employee's performance is unsatisfactory while a final written warning is still active; or
- the employee's performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

The Church will send the employee written notification of the hearing as set out above.

Following the hearing, if the Church finds that the employee's performance is unsatisfactory, the Church may consider a range of options including:

- dismissing the employee;

- redeploying the employee into another suitable job at the same or (if your contract permits) a lower grade; or
- extending an active final written warning and setting a further review period (in exceptional cases where the Church believes a substantial improvement is likely within the review period).
- giving a final written warning (where no final written warning is currently active). The decision may be authorised by Minister (Team Leader) or the Elders.

Dismissal will normally be with full notice or payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross misconduct, in which case the Church may dismiss the employee without notice or any pay in lieu.

### **Appeals against action for capability**

If the employee feel that a decision about capability under this procedure is wrong or unjust he/she should appeal in writing, stating his/her full grounds of appeal, to the Minister (Team Leader) within one week of the date on which he/she was informed in writing of the decision.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the employee's appeal is successful he/she will be reinstated with no loss of continuity or pay.

If the employee raises any new matters in his/her appeal, the Church may need to carry out further investigation. If any new information comes to light the Church will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

The employee will be given you written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after they receive the written notice.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Church's discretion depending on the circumstances of the employee's case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted by a manager who was not previously involved in the case AND/OR the manager who conducted the capability hearing will also usually be present. The employee may take a companion with them to the appeal hearing.

A hearing may be adjourned if the Church needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing the Church may:

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

The Church will inform the employee in writing of its final decision as soon as possible, usually within one week of the appeal hearing. Where possible this will also be explained to the employee in person. There will be no further right of appeal.

## **Disciplinary Hearings**

### **Procedure at disciplinary hearings**

At the meeting the following procedure will be followed

#### **Statement of complaint**

The Church will set out what the complaint against the employee is and go through the evidence gathered during the course of the investigation.

#### **The employee's reply**

The employee will be given the opportunity to state their case and respond to any allegations made. The employee will be allowed to ask questions and confer with their companion. If the employee accepts that they have done something wrong, steps may be agreed to remedy the situation.

#### **General questioning and discussion**

The person responsible for conducting the meeting may ask the employee for an explanation and query whether there are any special circumstances which should be taken into account. If the employee provides sufficient explanation, the proceedings will be brought to a close. If new facts occur at this stage, it may be appropriate for the Church to adjourn the meeting and investigate the matter further before calling the employee back to an adjourned meeting.

#### **Summing up**

At this stage the person responsible for holding the disciplinary meeting may summarise the main points of discussion. The employee will be given the opportunity to add anything further.

#### **Adjournment before decision**

The meeting will be adjourned before a decision is made about the appropriate action. Following the meeting, a decision will be made as to whether or not disciplinary action is justified. Once a decision is made, the employee will be informed in writing.



Before deciding what, if any, disciplinary action is appropriate, consideration will be given to:

- whether the organisation's rules indicate clearly the likely penalty, as a result of the particular misconduct;
- whether standards of other employees are acceptable, and whether the employee in question is not being singled out;
- the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service;
- the reasonableness of the proposed penalty in the circumstances; and
- whether training, additional support or adjustments to the work are necessary to accompany any disciplinary action.

The employee will be given details of any disciplinary action as soon as a decision is made.

### **Imposing the disciplinary penalty**

First formal action – unsatisfactory performance:

In such cases, the employee will be given an “improvement note” setting out:

- the performance problem;
- the improvement that is required;
- the timescale for achieving that improvement;
- a review date; and
- any support, including any training that the Church will provide to assist the employee.

The employee will be informed that the note represents the first stage of a formal procedure and is equivalent to a first “written warning”. The employee will also be informed that failure to improve could lead to a final written warning and dismissal.

A copy of the note will be kept and used as the basis for monitoring and reviewing performance over a specified period.

If the employee's unsatisfactory performance, or continued unsatisfactory performance, is sufficiently serious (e.g. where it is having / likely to have a serious harmful effect of the organisation) the employee may be issued directly with a final written warning.

### **First formal action – misconduct**

In cases of misconduct, depending on the seriousness of the misconduct, the employee may be given a first written warning setting out the nature of the misconduct and the change in behaviour required.

The warning will also inform the employee that a final written warning may be considered if there is further misconduct. A record of the warning will be kept by the Church but it will be disregarded for disciplinary purposes after 12 months.

### **Final written warning**

Following the issue of a written warning, if there is still a failure to improve and conduct or performance remains unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning, a final written warning will be given to the employee. This will give details of the complaint will warn that dismissal will result if there is no satisfactory improvement, or if further misconduct occurs. The final written warning will advise the individual of the right of appeal. A copy of this final written warning will be kept by the Church but it will be disregarded for disciplinary purposes after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct and performance.

### **Dismissal**

If conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, dismissal will normally result. The employee will be provided as soon as reasonably practicable with written reasons for dismissal, the date on which employment will terminate and advised of their right of appeal within a specified time.

### **Gross misconduct**

The following list is not exhaustive but provides examples of offences which are normally regarded as gross misconduct:

- verbal, physical, sexual or financial abuse of members of the Church,
- theft, fraud, deliberate falsification of records,
- serious breach of confidentiality,
- fighting, assault on another person or bullying,
- deliberate damage to the Church's property,
- serious incapability at work through alcohol or being under the influence of illegal drugs,
- serious negligence which causes unacceptable loss, damage or injury,
- serious act of insubordination,
- serious misuse of the Church's property,
- bringing the Church into serious disrepute,
- a serious breach of health and safety rules,
- a serious breach of confidence,

- failure to adhere to the BUGB Declaration of Principle or the Five Core Values required of all members of the Church (if applicable),
- deliberately accessing internet sites containing offensive or obscene material,
- unlawful discrimination or harassment,
- failure to maintain one's personal life in accordance with a good Christian testimony (if applicable);
- breach of the Code of Conduct.

If the employee is accused of an act of gross misconduct, the employee may be suspended from work on full pay, while the Church investigates the alleged offence and pending the outcome of any disciplinary hearing. If, on completion of the investigation and a subsequent disciplinary hearing, the Church is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

### **Appeals**

An employee who wishes to appeal against a disciplinary decision should put their decision to appeal and the grounds of their appeal in writing to the Church Secretary within five working days of the date they were first notified of the decision. The employee has the statutory right to be accompanied by a colleague or a trade union representative to an appeal meeting.

The appeal shall, where possible, be heard by the deacons whose decision shall be final, subject to any overriding decision of the Church Meeting.

You will be informed in writing of the outcome of the appeal hearing as soon as possible. This will usually be within 10 working days.