

PER16	ADOPTED: 1.10.97	REVIEWED: 22.10.01; 25.10.04; 31.10.07; 24.11.10; 28.8.13; 26.10.16;
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DISCIPLINARY & APPEALS POLICY

1.0 INTRODUCTION

- 1.1 Prospect Community Housing recognises the importance of implementing and monitoring an effective disciplinary and appeals policy and procedures in order to ensure the fair and consistent treatment of all members of staff who may be subject to disciplinary action.
- 1.2 Through our published policies and procedures, we will aim to ensure that all members of staff are clear about the standards of performance and behaviour required, and the disciplinary action which may result from a failure to attain or maintain these standards.
- 1.3 The purpose of disciplinary action is to deal with a situation where:
 - our rules have been breached, or
 - an individual's standards of behaviour or performance are less than satisfactory.
- 1.4 The aim of disciplinary action is to:
 - clarify and restate the rules, policies or standards required, and
 - encourage, improve or correct the member of staff's behaviour or performance.
- 1.5 This policy complies with the current Code of Practice on Disciplinary and Grievance Procedures issued by the Advisory, Conciliation and Arbitration Service (ACAS) in 2015. The key principles are:
 - the procedure is designed to establish the facts quickly and deal consistently with disciplinary issues;
 - the levels of management who can take different types of action are specified;
 - at every stage in the procedure the member of staff will be informed of the nature of the complaint against them;
 - no disciplinary action will be taken until the matter has been fully investigated and the member of staff has been given an opportunity to state their case;

- all information and/or documentation relevant to the issue will be made available to the member of staff and, should they agree, to their representative;
- the member of staff has the right to be accompanied and be represented, if they wish, at every stage of the formal disciplinary procedure by a work colleague or a trade union representative, so long as the presence of the companion will not prejudice the hearing or result in a conflict of interest;
- the disciplinary procedure may be initiated at any of the stages 1 – 3 (see below), depending on the seriousness of the alleged misconduct;
- disciplinary warnings given for different reasons will be cumulative for the purposes of following the various stages of the procedure;
- a member of staff will not normally be dismissed for a first offence, except where the offence comes into the category of gross misconduct;
- a member of staff will have the right to appeal against any disciplinary penalty imposed;
- the member of staff will be informed in writing of any disciplinary action taken, the reasons for the action, the change or improvement in behaviour etc. expected (with timescales where appropriate, which will be reasonable according to the circumstances), the consequences of any failure to improve or of further incidents requiring disciplinary action, and the procedure for submitting an appeal;
- written communications will be sent to the member of staff's home address;
- disciplinary warnings issued will be kept on the individual's personnel record after they cease to be valid. This is consistent with the document 'Discipline and Grievances at work: The ACAS guide'. Such warnings are still relevant when deciding probability in future cases and can explain why Prospect would not want to substitute a lesser warning for future disciplinary cases affecting the employee. ACAS also allow for spent warnings to be taken into account when deciding how long a future warning should remain in place for where there is a pattern emerging.

- 1.6 In implementing this policy and procedure we will ensure that we comply with our Equality and Diversity policy, in particular where any special arrangements are required for those with a disability.

2.0 INFORMAL COUNSELLING

- 2.1 Wherever possible we aim to encourage and maintain acceptable standards of conduct and performance without having to use the disciplinary procedures. We will therefore seek to deal with minor problems through performance management or informal counselling.
- 2.2 Performance management and counselling will not be part of the formal disciplinary procedure. Their aim will be to prevent the need for disciplinary action through helping the member of staff to recognise and overcome particular problems at an early stage.

3.0 INVESTIGATION

- 3.1 In cases where an alleged offence of misconduct is received that may result in disciplinary action being taken, an investigation will always be carried out prior to a decision being taken about any further action. The staff member who carries out this investigation will not also be involved in any disciplinary meeting,

4.0 DISCIPLINARY ACTION

4.1 There will be three levels of disciplinary action:

- | | | |
|----------------|---|--|
| Level 1 | - Improvement Note or First written warning | - for a minor breach of rules, or unsatisfactory conduct or performance. |
| Level 2 | - Final written warning | - for continued breaches of rules, or a more serious first offence. |
| Level 3 | - Dismissal (with or without suspension) | - for continued breaches of rules, or gross misconduct. |

Examples of the types of offences which would result in disciplinary action are detailed in Appendix 1.

4.2 Each level of disciplinary action will be active for periods as set out below:

- | | |
|--|--|
| Improvement Note/first written warning | - normally 6 months, but can be for up to a year |
| Final written warning | - normally 12 months, but can be for up to 2 years |

4.3 For a warning period to be extended beyond the minimum outlined above, one of the following circumstances must apply:

- A previous warning that has expired existed for a similar issue of misconduct – this is to cover a situation where an employee's conduct is satisfactory throughout the warning period, only to lapse thereafter. Where a pattern emerges, or there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.
- As a result of mitigating circumstances the level of action decided upon is reduced but the resulting reduced level of warning can remain live for longer.

4.4 The length of time will begin on the date the warning was issued, whether or not the member of staff submits an appeal which is subsequently unsuccessful. If, during the period of one warning a further warning is issued, the time period for the new warning will supersede the time period for the earlier warning.

4.5 The period that a warning remains active will be suspended during period(s) of sickness absence. The remainder of the specified warning time will resume on the member of staff's return to work.

4.6 Disciplinary warnings will be issued by the appropriate level of management, as detailed in Appendix 2.

5.0 APPEALS

5.1 We recognise the importance of having an effective policy and procedure to enable a member of staff to appeal against disciplinary action taken against them.

5.2 Our appeals procedures are based on the principles contained in the ACAS Code of Practice on Disciplinary and Grievance procedures. The key principles are:

- the time limit within which an appeal should be lodged is specified;

- an appeal is dealt with speedily;
- the appeals procedure is separate from the Grievance Procedure;
- the appeal is heard by the level of management or Committee above that which took the disciplinary action (for this purpose, the Committee Appeal Group is the highest level);
- the action which may be taken by those hearing the appeal is specified;
- the member of staff has the right to be accompanied and be represented, if they wish, by a colleague, or, if appropriate, by a staff association/trade union representative, who has been certified in writing by their union as having experience of, or training in, acting as a worker's companion at disciplinary or grievance hearings;

5.3 Appeals against disciplinary action will be heard by the appropriate level of management as detailed in appendix 2.

6.0 EXTERNAL ADVICE

6.1 Where required, to ensure that this policy is implemented fairly and consistently, the manager or Committee Office Bearer carrying out an investigation or considering disciplinary action may seek professional advice from an appropriate external organisation, such as Employers in Voluntary Housing (EVH). As well as giving advice, EVH can be present at any disciplinary hearing or appeal, in an advisory capacity.

7.0 REPORTING, RECORDING, IMPLEMENTATION AND REVIEW

7.1 The Manager taking the disciplinary action will ensure that the reporting and recording requirements, as detailed in the Disciplinary and Appeals Procedures, are followed.

7.2 The Director is responsible for ensuring that those with the authority to take disciplinary action apply this policy and the supporting procedures consistently.

7.3 The Director is responsible for ensuring that this policy is reviewed at least every three years by the Board.

Review approved by the Management Committee on 26 October 2016

Next review due by October 2019

EXAMPLES OF OFFENCES WHICH MAY RESULT IN DISCIPLINARY ACTION

The examples of offences and misconduct below are not exhaustive. Members of staff are under a duty to comply with the standards of behaviour and performance required by Prospect, and to behave in a reasonable manner, at all times.

1. The following examples are regarded as ‘minor’ or ‘less serious’ and may result in an Improvement Note or First Written Warning (an Improvement Note may be used where ‘poor performance or behaviour’ is the main issue, while a First Written Warning may be used where a breach of rules or procedures has occurred).

- Failure to achieve the required standards of work performance;
- Sub-standard or careless work over a period of time;
- Poor time-keeping, including failure to follow flexitime procedures;
- Unacceptable level of short-term absences, or unexplained absenteeism;
- Failure to obey a reasonable instruction;
- Failure to adhere to staff security procedures;
- Unacceptable standard of dress or appearance;
- Breach of minor safety rules where no injury, or damage to property or equipment has resulted, including failure to use safety clothing or equipment when required to do so ;
- Failure to follow computer security procedures, which does not result in any breach of confidentiality, or loss or damage to data;
- Neglect of equipment resulting in minor loss or damage to equipment or property;
- Negligence regarding the carrying out of prescribed duties or a breach of a policy which adversely affects the efficiency of Prospect;
- Minor incidents of ‘harassment’ against a colleague, which do not involve a breach of our Equality & Diversity policy.

Depending on the circumstances, any of the above may be regarded as ‘more serious’ conduct which may result in a Final Written Warning.

2. The undernoted offences are regarded as ‘more serious’ and will normally result in a Final Written Warning.

- Any of the offences listed under (1) above occurring, or re-occurring, during the period that an Improvement Note or First Written Warning is in force;
- Negligence regarding the carrying out of prescribed duties or a breach of a policy which adversely affects Prospect’s efficiency and reputation and/or which may breach a code of practice or statutory guidance;
- Breach of safety rules which results in minor injury to self or others, or minor damage to equipment or property (however depending on the circumstances, this may result in dismissal);

- Failure to comply with the Equality & Diversity policy, including specific racial, sexual, age, sexual orientation, religion, belief or disability discrimination, harassment or victimisation;
- Attendance at work under the influence of alcohol or drugs, but not wholly incapable or performing duties to a reasonable standard;
- Action or behaviour while on duty that brings the organisation into disrepute;
- Deliberate or wilful failure to follow computer security procedures including a loss or damage to data, abusive emails, copying of computer software, removal of software or licences, use of unauthorised software and/or unauthorised activities;
- Deliberately initiating a 'mischievous' grievance against a colleague or Committee Member.

Depending on the circumstances, any of the above may be regarded as gross misconduct which may result in dismissal.

3. The undernoted offences are regarded as 'gross misconduct' and will normally result in dismissal, which may follow a period of suspension from duties. In the most serious of cases the action may be dismissal without suspension, notice or payment in lieu of notice.

- Any of the offences listed under (2) above, occurring, or re-occurring, during the period that a Final Written warning is in force;
- Gross insubordination, i.e. refusal to obey a reasonable instruction accompanied by verbal abuse and/or threatening behaviour;
- Fighting with a colleague at work, or assault, abusive or very threatening behaviour towards a colleague, tenant, applicant or other member of the public, while on duty;
- Theft or unauthorised possession either of Prospect property, or of the personal property of colleagues or other persons attending Prospect's office;
- Fraud or attempted fraud e.g. falsely claiming benefits or expenses, or falsification of documents for personal benefit or the specific benefit of others, in breach of Prospect's rules or policies;
- Any act of deceit or dishonesty relating to the individual's duties, or any other aspect of Prospect's business or affairs;
- Wilful breach or disregard of safety 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 staff member is incapable of undertaking their prescribed duties to an acceptable standard;
- Wilful or grossly negligent damage to Prospect's property or equipment, or to the possessions or property of colleagues, tenants, applicants or other members of the public while on duty;
- Breach of confidentiality, i.e. the disclosure of any confidential information or trade secrets of Prospect to any third party, without prior authority or consent;
- Computer system sabotage, introduction of viruses or 'timebombs' hacking' breach of data protection rules, viewing and/or downloading unacceptable material from the internet such as pornographic, racist or violent material;
- An act of indecent or immoral behaviour while on duty;

- Very serious breach of the Equality & Diversity policy, i.e. very serious discrimination, harassment or victimisation;
- Wilful non-disclosure of an interest in a contractual arrangement between Prospect and any other public agency or private company;
- Behaviour outwith normal working hours and work location which results in, or is likely to result in criminal charges which will affect the member of staff's ability to perform their duties, particularly where there is an element of trust involved or where there is a perceived risk to colleagues, tenants or others.

NOTES

1. The lists above contain examples only and are not to be regarded as exhaustive. The circumstances in each situation will be considered on their own merits, while having regard to the guidance above, and the disciplinary action to be taken will be at the appropriate level for that situation.
2. If a disciplinary warning is in force when the annual incremental review is undertaken, no increment will be awarded to the member(s) of staff subject to the warning(s).

DISCIPLINARY ACTION RESPONSIBILITIES

Staff member subject to potential discipline action:	Level of action	Disciplinary hearing	Appeal
Staff below Department Manager Grade	Improvement notice/first written warning	Department Manager	Director
	Final written warning	Department Manager	Director
	Dismissal	Department Manager	Director
Department Managers	Improvement notice/first written warning	Director and Committee member	Committee appeals group
	Final written warning	Director and Committee member	Committee appeals group
	Dismissal	Director and Committee member	Committee appeals group
Director	Improvement notice/first written warning	Chairperson and 1 other committee member	Committee appeals group
	Final written warning	Chairperson and 1 other committee member	Committee appeals group
	Dismissal	Chairperson and 1 other committee member	Committee appeals group

Notes:

Investigations will be carried out by staff members who are first level managers or above. Investigations will always be carried out by someone more senior than the staff member being investigated, and the person carrying out the investigation cannot then hold the disciplinary hearing or appeal. Where an investigation is required into the alleged actions of a Management Team member, this can if necessary be carried out by an external agency, for example EVH. This would then allow the above staff/committee members to hold any disciplinary hearing whilst still separating the investigation role.

The Committee Appeals Group, where required, will comprise of three Committee Members who have not previously been involved in the investigation or disciplinary that the appeal relates to and should include at least one office bearer where possible. The Committee Appeals Group will decide on a chair who will decide on the outcome if there is not a consensus.

PROSPECT EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy	Disciplinary and Appeals policy	
Department	Corporate	
Who is involved in the EQIA?	Management Team/Julie Thynne	
Type of policy/ practice/ strategy	New <input type="checkbox"/>	Existing <input checked="" type="checkbox"/>
Date completed	12/10/16	

Stage 1: Screening Record

What is the main purpose of the policy?

The policy provides details of the disciplinary and appeals policy to ensure fair and consistent treatment of all staff.

Who will the policy benefit and how?

The policy will benefit all members of staff, managers and Committee members by providing clear information on the disciplinary and appeals process.

For each equality group, does or could the policy have a negative impact?

Protected characteristic	Negative	Positive/no impact	Don't know
Age	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marriage & civil partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy & maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or belief (including no belief)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If you answered negative or don't know to the above question you should consider doing a full EQIA.

Are there any potential barriers to implementing the policy?

The only potential barriers to implementation would be lack of knowledge by staff members, managers and Committee members. Staff members are provided with a copy of the policy should they be subject to any disciplinary process. Managers and Committee members are provided with training as appropriate to their level of involvement in the process.

	Yes	No
Is a full EQIA required?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If you answered no to the above question explain why a full EQIA is not required:

No impact on equalities identified:	<input type="checkbox"/>
Other:	

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering, including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Source	Qualitative evidence provided	Quantitative evidence provided	Which protected characteristics are covered?	Gaps identified/ action taken
Management information data		Annual staff and committee equalities data	Age, disability, gender, ethnicity. In some cases other protected characteristics	Membership data not collected. Implementation of Cx will assist with data collection.
Tenant satisfaction survey		Survey carried out in 2013	Age, disability, gender, ethnicity. In some cases other protected characteristics	Data becoming out of date. Implementation of Cx will assist with data collection.
Committee, Equalities Working Group and Tenants Forum minutes	Equality related issues identified and discussed		Various	
Review of complaints received	Tenant/service user experience	Statistical data on types of complaint	All protected characteristics	Implementation of Cx will assist with data collection and analysis of protected characteristics
Observations/conversations (anecdotal)	Staff/committee/tenant/service user levels of understanding, inclusive practice		All protected characteristics	
Edinburgh Census 2011		Statistical data	Age disability, gender, ethnicity, marital status, religion or belief.	Data becoming out of date.
SHR Annual Return on Charter data		Statistical data on staff, committee and tenant profile for RSLs	Disability, ethnicity.	
Personnel records		Statistical data on disciplinary action taken	All protected characteristics	

Stage 3: Assessing the impacts

How might the policy impact on people who share protected characteristics? Include both positive and negative impacts.

Protected Characteristic	Description of Impact
Age	Younger workers with less experience of working life may be more vulnerable to breaching codes of conduct, particularly around internet usage. The standards expected will be included as part of the induction programme.
Disability	Reasonable adjustments will be considered for any disabled staff members who may be subject to disciplinary action.
Gender reassignment	No impact identified.
Marriage & civil partnership	No impact identified.
Pregnancy & maternity	No impact identified.
Race	National research indicates Managers are more likely to choose to deal with minor disciplinary matters through more formal processes in the case of Black and or ethnic minority staff due to a fear of discrimination claims.
Religion or belief (including no belief)	No impact identified.
Sex	No impact identified.
Sexual orientation	No impact identified.

How does the policy promote equality of opportunity?

The policy will promote equality of opportunity by providing a clear framework for all disciplinary matters to be handled in a fair and consistent way, regardless of any protected characteristic.

How does the policy promote good relations?

The policy should result in an overall positive impact on all employees by helping to maintain high levels of conduct. The policy states that failing to comply with Prospect's Equality and Diversity policy could be considered a form of serious misconduct or gross misconduct, depending on the circumstances. This demonstrates Prospect's commitment to eliminating discrimination.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

If, following the impact analysis, you think you have identified any unlawful discrimination – direct or indirect - you must consider and set out what action will be undertaken to mitigate the negative impact.

Does the assessment show a potential for differential impact on any group(s)?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is there potential for unlawful direct or indirect discrimination?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

What arrangements could be implemented to reduce or mitigate any potential adverse or negative impacts identified?

All staff undergo an induction programme tailored to their individual needs, this includes guidance on the standards of conduct and performance expected of them. Reasonable adjustments will be considered for disabled staff.

Describing how Equality Impact analysis has shaped the policy making process

No changes have been made to the policy as a result of the equality impact assessment. Training for Managers and Committee members will be arranged as necessary.

Monitoring and Review

This policy and its Equality Impact Assessment will be monitored and reviewed after three years.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:
Yes ☒ No ☐
- ◆ Opportunities to promote equality in respect of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race and religion or belief have been considered, i.e.:
 - Eliminating unlawful discrimination, harassment, victimisation;
 - Removing or minimising any barriers and/or disadvantages;
 - Taking steps which assist with promoting equality and meeting people's different needs;
 - Encouraging participation (e.g. in public life)
 - Fostering good relations, tackling prejudice and promoting understanding.Yes ☒ No ☐

Declaration

I am satisfied with the equality impact assessment that has been undertaken for Disciplinary and Appeals policy.

Name: Brendan Fowler

Position: **Director**

Authorisation date: 12 October 2016