

# Disciplinary Policy



Dalmuir Park Housing Association can provide this document on request, in different languages and formats, including Braille and audio formats.

<b>Policy:</b>	Disciplinary Policy
<b>Purpose:</b>	To establish DPHA's policy on how the Association will manage disciplinary matters to ensure a fair and consistent approach for line managers, Team Leaders, and employees.
<b>Implementation date:</b>	August 2022
<b>Review Date:</b>	July 2024
<b>Next review date:</b>	August 2027
<b>Guidance:</b>	EVH Disciplinary Model Policy and Grievance procedures May 2018 EVH Terms and Conditions SHR Notifiable Events Statutory Guidance February 2024 ACAS Guidance
<b>Regulatory Standards:</b>	<b>Standard 4:</b> The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.  <b>Standard 5:</b> The RSL conducts its affairs with honesty and integrity.
<b>Other Relevant Policies</b>	Terms & Conditions of Employment Grievance Policy Staff Code of Conduct Notifiable Events Policy Entitlements, Payments & Benefits Policy Equality & Human Rights Policy Data Protection Policy
<b>Date reviewed by Policy Review Working Group (PRWG):</b>	2 August 2022
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<b>Publish on the Website:</b>	No

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## **1.0 INTRODUCTION**

- 1.1 Dalmuir Park Housing Association (DPHA) requires you, the employee to maintain the highest possible standards of attendance, conduct and performance, whilst working for DPHA. The purpose of this policy is to help you understand these standards and encourage you to maintain them.
- 1.2 This policy will inform you of our expected standards of conduct, performance and attendance. Please speak to your line manager if you are unsure of the standards expected of you. If you do not meet our standards, then we will manage this in accordance with this Disciplinary Policy and procedures.
- 1.3 The policy and associated procedures and guidance are designed to be transparent and fair and reflect EVH's standard Terms and Conditions of Employment, ACAS guidance and the principles of natural justice.
- 1.3 This policy and procedure applies to all of DPHA's employees.

## **2.0 AIMS OF THE POLICY**

- 2.1 Our policy aims to:
  - To make sure that you know the standards expected in respect of conduct, performance and attendance.
  - To manage improvements in conduct, performance or attendance in accordance with the procedures in this policy should you fall short of our expected standards.
  - To manage the way we deal with any fall in standards in a transparent, fair and consistent manner.
- 2.2 You can expect DPHA to:
  - Inform you of all the allegations against you and give you the opportunity to state your case.
  - Not take any formal disciplinary action until we have fully investigated the allegations against you.
  - Conduct our own investigation irrespective of any external organisations proceedings and make decisions in accordance with this policy based on evidence and information available to us at the time.
  - Pay you full pay if we decide to suspend you pending any investigation outcome unless we decide otherwise.
  - Keep you fully informed of the process, including any delays in the timescales outlined elsewhere in the policy.

- Only proceed with disciplinary action after an appropriate investigation has taken place, you will be informed in writing of our reasons for proceeding with such action.
- Not take any disciplinary action or suspend you if you are a trade union representative until we have had discussions with a full-time official of the union. If the full-time official is not available, we will contact a regional officer.
- Give you the right to be accompanied by a companion in the form of either a trade union representative of your choice or a workplace colleague at any stage of the formal procedure.
- Make sure if any action is taken against you, (other than dismissal) that we make clear the standards of improvement required, the timescale within which we expect this to be achieved, the frequency of reviews, and the consequences of inadequate or un-sustained improvement.
- Not dismiss you if this is the first issue with your conduct, performance or attendance unless you have committed an act that we consider to be gross misconduct. In this case, the penalty will normally be summary dismissal without notice or pay in lieu of notice.
- Provide you with a right of appeal, and explain the appeal process to you, if we issue you with any formal action.
- Keep records on your personal file of any live disciplinary action, which will only be available to you and authorised personnel.
- Refuse the use of recording devices (in normal circumstances) during any investigation, disciplinary or appeal hearings.
- Apply the procedure at any stage (see Section 9- Formal Procedure, for further information) depending on the seriousness of the allegations against you. This may mean that we omit certain lesser stages in our Formal Procedure depending on the seriousness of the issue and individual circumstances.

### 2.3 In order to maintain DPHA's values and standards, we expect that you will:

- Be honest and transparent in all aspects of your work for us.
- Treat all colleagues, customers, partners and anyone connected with us with respect, dignity and tolerance.
- Not abuse DPHA's facilities. For example, your work place, IT equipment or working arrangements.
- Not disclose any confidential information obtained in connection with your employment with us.
- Be frank and upfront about any connections you may have in any business that we deal with.
- Not publish or profit from any work done within DPHA as this belongs to us until such time as we give permission for its use.
- Not accept any gift, favour or inducement from businesses or individuals in connection with us.
- Be open and honest and ask permission before taking up any other work (paid or unpaid) – particularly if this in any way affects your ability to work for us or may be considered a possible conflict of interest.
- Meet the standards and expectations set out in all our policies and procedures

regardless of any personal or political beliefs you may hold and in particular, those provided to you through our:

- Code of Conduct
  - Entitlement, Payments and Benefits Policy
  - Equality and Human Rights Policy
  - Dignity at Work Policy
  - Values, Behaviours and Culture as contained in our Business Plan and within employee role profiles.
- Maintain high standards of performance and carry out your role to the best of your ability.
  - Maintain high levels of attendance as required in our Attendance and Absence Management Policy.
  - Follow instructions and requests from your line manager and any other senior member of staff.
  - Participate as much as reasonably possible in all parts of the disciplinary procedure.

### **3.0 INVESTIGATION**

- 3.1 Before any informal or formal action takes place, we will conduct an appropriate investigation. The purpose of this is to establish the facts surrounding the allegations against you. This will normally involve speaking to you and anyone else that may provide us with relevant information. We will also collect any other information we deem to be relevant. The investigator will be a senior member of staff not involved in the situation and, depending on circumstances, will usually be your line manager.
- 3.2 The length and complexity of the investigation will be determined by the circumstances and the nature of the allegations. If you are unable, or choose not to participate in the investigation, we will proceed without your input.
- 3.3 Where we deem it necessary or appropriate to conduct an independent investigation, the nominated investigator will be neutral and impartial and present their findings in an unbiased, factual, and relevant way. The investigation report will include all evidence referred to. Information will be made available to both you and the disciplinary officer/panel, whilst maintaining the confidentiality of others who may be involved in the matter.
- 3.4 On completion of the investigation, the investigator will make one of the following three recommendations and you will be informed in writing of the outcome:
- No further action – the matter is considered closed.
  - Informal action (See Section 9)
  - Formal disciplinary action (See Section 10)

### **3.5 Police Scotland Involvement and Criminal Offences**

- 3.5.1 We may treat any criminal investigation, charge or conviction connected to you as a disciplinary matter if we consider it relevant to your employment with us.
- 3.5.2 Should you be subject to any police investigation, we will conduct our own independent investigation, and proceed regardless of the status or outcome of any police involvement.
- 3.5.3 If you are subject to any of the above and believe this may in any way affect your ability to do your job or our reputation, you must discuss this with your line manager as soon as you possibly can.
- 3.5.4 The same considerations will apply to investigations by any other statutory body.

### **4.0 SUSPENSION**

- 4.1 We will suspend you on full pay if the allegations against you are considered to involve potential gross misconduct. Suspension will be considered very carefully and will only usually be applicable if relationships have broken down or if there is a risk to a staff member or the Association's property or our responsibilities to other parties.
- 4.2 We will aim for your suspension to last no longer than is necessary. If the investigation has not finished within one week, we will write to you and update you on progress each week until the investigation is concluded, and you are advised of the outcome. While on suspension you must not have any contact with any Board members or other employees other than the person named on your suspension letter as your contact point.
- 4.3 We may also suspend you if we feel you may, or are found to be, interfering with an investigation in any way, even if the allegations are not at gross misconduct level.

### **5.0 TIME LIMITS OF WARNINGS**

- 5.1 We may extend the time limits referred to throughout this procedure, depending on the circumstances of individual cases.

### **6.0 ALTERNATIVES TO DISCIPLINARY ACTION**

- 6.1 In addition to issuing warnings, the disciplinary panel/decision maker may consider

other actions instead of dismissal including, redeployment, demotion, or an extension to the time limit of a warning.

## **7.0 EXAMPLES WHEN THE DISCIPLINARY PROCEDURE MAY BE USED (THIS LIST IS NOT EXHAUSTIVE):**

- 7.1
- Any issues relating to your conduct/performance/attendance.
  - Poor timekeeping and/or attendance.
  - Unauthorised absence.
  - Failure to follow absence notification procedures.
  - Abuse of flexi time and/or TOIL.
  - Failure to meet and/or maintain the improvements required in an informal action.
  - Breaches of our policies, procedures, values or defined behaviours/ culture.
  - Performance below our expected standards.
  - Deliberate misuse or damage of our property (including corporate clothing, electronic devices, email and internet).
  - Not following our health and safety instructions.
  - Unsafe working practices.
  - Wilful and persistent refusal to obey reasonable instructions.
  - Professional incompetence.
  - Internet abuse including inappropriate use of social media including activity outwith work that we consider potentially damaging to DPHA.
- 7.2 The level and type of warning issued will depend on the circumstances and severity of individual cases.

## **8.0 TYPES OF OFFENCES**

8.1 The following are examples of various categories of misconduct or poor performance, (this list is not exhaustive):

### **8.1.1 Misconduct**

- Poor timekeeping (repeated lateness or leaving early).
- Failure to let us know within a reasonable time the reasons for your absence in line with procedures.
- Unauthorised absence.
- Failure to meet and/or maintain the improvements required in an informal action plan.
- Breaches of our policies, procedures, values or defined behaviours/ culture.

### **8.1.2 Serious misconduct**

- Deliberate unauthorised absence.

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- Unsafe working practices.
- Not following our health and safety instructions.
- Further issues/ breaches following a previous disciplinary outcome.
- Abuse of flexi time and/or TOIL.
- Serious breaches of our policies, procedures, values or defined behaviours/ culture.
- Acts of professional incompetence.
- Internet abuse including inappropriate use of social media including activity outwith work that we consider potentially damaging to DPHA.

### **8.1.3 Gross misconduct**

Equates to a serious breach of contract and includes actions that will have a serious effect on our business, reputation or damage the relationship of trust and confidence between us. We will normally regard the following as examples of gross misconduct:

- Theft regardless of value and/or serious wilful damage or misuse of our property from us, our staff, clients, customers or anyone connected with us.
- Bullying, threatened/actual violence, or provoking violence.
- Under the influence due to alcohol or any other substance.
- Possession, use, supply or attempted supply of illegal and/or legal substances.
- Fraud, forgery or other dishonesty including, fraudulent wage claims or falsification of records/expenses including time sheets and overtime.
- Harassment, discrimination or victimisation.
- Serious infringement of health and safety rules and procedures, or any other policies, operating procedures or workplace rules put in place by us.
- Acts of gross professional incompetence.
- Bringing DPHA into serious disrepute.
- Serious breaches of security or confidentiality, including misuse or disclosure of confidential information.
- Acceptance of bribes or other concealed payments.
- Deliberately accessing internet sites containing illegal, pornographic, offensive, obscene, and/or information to incite or carry out any acts of violence.
- Being charged or convicted of a criminal offence that in our opinion may affect our reputation, or relationships with staff, clients, customers or anyone connected with us, and/or affects your suitability to work for us.
- If we become aware of any official information from outside agencies that may compromise your suitability for your role, e.g. PVG scheme.
- Deliberate and persistent refusal to follow reasonable instructions.
- Making malicious or untrue allegations against others.

## **9.0 INFORMAL PROCEDURE**

- 9.1 We will normally use the informal procedure first. If your performance, conduct or attendance does not meet our required standards then your line manager will meet

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with you informally. You will be able to provide your line manager with any information you feel may be relevant to the situation. Your line manager will consider all the circumstances and decide what improvements are required, the support available, and explain any further consequences if you do not meet or maintain the standards we require.

- 9.2 We will provide all this information in writing to you in an Informal Action Note together with a timescale by which we expect improvements to be made.
- 9.3 This informal meeting is not subject to the same processes described in Section 9 and as such you will not be accompanied by any third party and the meeting may be arranged at short notice.

## **10.0 FORMAL PROCEDURE**

- 10.1 We will observe the EVH Guidance Manual for Handling Discipline & Grievance Issues and will use EVH Discipline & Grievance Process Checklist. At the same time, we will ensure that we follow the ACAS Code of Practice on Disciplinary and Grievance Procedures and the principles of natural justice.
- 10.2 We will follow our formal process when attempts to improve any conduct, performance and/or attendance issues have not improved through the informal process. We will also use the formal process straight away for more serious matters. If you are invited to a formal hearing, this will be done as soon as reasonably practical on conclusion of an appropriate investigation. You will also be given a minimum of 2 working days' notice of the hearing. Within reason the timing of the hearing will take account of the availability of any representative you wish to accompany you. If we issue you with a formal warning, you will have the right to appeal and we will give you the details of how to do this in the letter confirming the outcome of your hearing. We will not apply any formal stages of this procedure unless an appropriate investigation has taken place.
- 10.3 **Appendix 1** provides additional guidance on how we will manage serious complaints/grievances involving the Chief Executive in line with SHR regulatory expectations.
- 10.4 **Appendix 2** provides additional guidance for all parties involved in the disciplinary process.
- 10.5 We have three stages in our formal procedure, and these will be instigated only once a formal investigation has been completed and the outcome notified to you.

### **10.4.1 First Stage**

If you do not meet our standards detailed at the informal stage, or the matter is serious, a manager will invite you, in writing, to attend a formal disciplinary hearing. The purpose of the hearing is to provide you with an opportunity to state your case

and consider all appropriate evidence and the outcome of our investigation. If, after considering all the evidence, including your response, and we believe this to be unsatisfactory, and/or it is still appropriate, we will issue you with a first written warning or performance note. This will remain on your file for six months.

#### **10.4.2 Second Stage**

If you have a live written warning and conduct or performance remains below our standards or, if we consider the matter very serious, a manager will invite you, in writing, to attend a formal disciplinary hearing. The purpose of the hearing is to provide you with an opportunity to state your case and consider all appropriate evidence and the outcome of our investigation. If, after considering all the evidence, including your response and we believe this to be unsatisfactory, and/or it is still appropriate, we will issue you with a final written warning. This will remain on your file for 12 months.

#### **10.4.3 Third Stage**

If you have a live final written warning and conduct or performance remains below our standards, or if we feel you may have committed an act of gross misconduct, a senior member of staff will invite you, in writing, to attend a formal disciplinary hearing. The purpose of the hearing is to provide you with an opportunity to state your case and consider all appropriate evidence and the outcome of our investigation. If, after considering all the evidence we deem it appropriate, we may dismiss you. We will make a payment in lieu of notice if the reason for dismissal is anything other than gross misconduct. If we dismiss you for gross misconduct, we will not give you notice or make a payment in lieu of notice. Members of the JNC Appeal will hear appeals against dismissal.

### **10.5 Notice of Decision**

10.5.1 We will issue you with the outcome of our decision, including the reasons for this in writing within 5 working days of the formal disciplinary hearing. This letter will detail the reasons for the formal warning and what we expect of you in order to address the issues raised and any support we will provide. If we dismiss you, we will provide you with details of your last date of employment and inform you of any outstanding payments that we will make to you in your final salary.

### **10.6 Appeals**

10.6.1 If you wish, you have the right to raise an appeal within 5 working days of receiving your letter, which details any formal action against you. Details on how to appeal will be included in your decision letter. We will arrange an appeal hearing within 10 working days of receiving your request. We will write to you after the hearing confirming our decision regarding your appeal.

10.6.2 Any appeal will be taken, where possible, by a senior member of staff who was not involved in the original disciplinary hearing.

### 10.6.3 Appeals Procedure

- Appeals against any formal warnings will be made to one level above at which the disciplinary action was taken, if possible.
- You have the right to one internal appeal against any formal warnings
- You should raise your appeal within one week (5 working days) of receiving your outcome letter stating the grounds for your appeal.
- Your appeal will be heard within 10 working days of the appeal being lodged.
- At the appeal you will be asked to explain the reason for your appeal and provide evidence to substantiate your reasons.
- The appeal manager/panel will ask any appropriate questions and/or call on other parties to attend as required.
- The appeal hearing will conclude and the appeal manager will conduct any necessary further investigation before coming to a decision.
- We will advise you of the outcome of your appeal in writing. This decision will be final.
- At all levels, the outcome of an appeal hearing may:
  - Confirm a previous decision.
  - Dismiss the previous decision; or
  - Substitute a lesser disciplinary penalty.
- We will hold appeal hearings within 10 working days of receiving your request, (with the exception of a Joint Negotiating Committee (JNC) Appeal).
- There is one appeal against a final written warning and after this, it will be made to the JNC Appeal Chair.
- If you are appealing against dismissal, you must do so to the JNC Appeal Chair.
- The JNC Appeal Chairs are independent people appointed by the Joint Negotiating Committee of EVH.
- Appeal hearings to the JNC Appeal Chair will be held within 20 working days (where possible).

### 10.6.4 JNC appeals

The JNC Appeal Chair is the final stage of the Association's disciplinary and grievance procedure. The Secretary to the JNC Appeal will send you a copy of the guidance notes if you make a valid request for an appeal. The Chair's decision will be followed by a written report, which will be sent to both parties.

Once a JNC appeal has taken place and a decision has been notified to both parties and the report issued, the matter will be closed.

## **11.0 AUTHORITY TO TAKE DISCIPLINARY ACTION**

- First written and final warning → Line Manager
- Dismissal → Chief Executive or Staffing Committee
- Dismissal of Chief Executive → Staffing Committee recommendation to the Board unless other delegation agreed.

## **12.0 RECORDS**

- 12.1 We will keep records on your personal file of any disciplinary action, which will only be seen by you, your line manager and the senior officer if appropriate. Your manager will remove disciplinary warnings from your file when no longer live.
- 12.2 We will keep notes of all formal disciplinary meetings.

## **13.0 DATA PROTECTION**

- 13.1 The organisation will treat your personal data in line with our obligations under the current data protection regulations and our own Privacy Policy and Employee Fair Processing Notice regarding how your data will be used and the basis for processing your data is provided in DPHA's employee privacy notice.

## **14.0 EQUALITY AND HUMAN RIGHTS**

- 14.1 We are committed to promoting an environment of respect, understanding, encouraging diversity, and eliminating discrimination by providing equality of opportunity for all. This is reflected in our Equality and Human Rights Policy.

## **15.0 DISSATISFACTION**

- 15.1 Any employee not satisfied with the implementation of this policy can in the first instance raise their concerns with their manager or Team Leader. If the employee remains dissatisfied they should refer to the Association's Grievance Policy and procedures.

## **16.0 POLICY REVIEW**

16.1 This policy will be reviewed every 3 years by the Board, or earlier if required.

### Handling a serious complaint against the Chief Executive/Member of the Leadership Team

#### Based on an Extract from the Scottish Housing Regulator's Notifiable Events Statutory Guidance February 2024

##### Purpose

- 1 This note sets out what the Scottish Housing Regulator (SHR) expects the Board to do when dealing with a serious complaint or grievance against a senior member of staff (Chief Executive or member of the Leadership Team) at DPHA.
- 2 The SHR requires us to tell them when there is a serious complaint, investigation or disciplinary action relating to senior staff. These serious complaints do not arise often but because of their nature and sensitivity and potential impact on leadership arrangements, they have the potential to seriously damage the Association. Their experience of these cases has shown that if the Board does not have a clear process to deal with matters like this then it can get into difficulties and the original issue can be made worse by the complaint being handled inappropriately. This note sets out the SHR's regulatory expectations so that we can deal properly with this type of situation.
- 3 As a general rule the SHR do not get involved in employment matters. Employment issues are for the Board as an employer to resolve with the individual employee. The SHR need to be assured that the Board will handle a serious complaint or grievance about the Chief Executive/Leadership Team member properly and will get external advice and support to help manage these situations.

##### SHR expectations

- 4 We should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about the chief Executive/Leadership Team member and the role of the Board Management Committee. The SHR expects us to be open and transparent about the decision-making processes for handling such matters.
- 5 When dealing with a serious complaint or grievance about a Chief Executive/Leadership Team member, the SHR expects us to:
  - tell them about it, in accordance their guidance on notifiable events; and
  - take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

##### Notify SHR

- 6 We should deal with and resolve minor issues informally, at a local level, and the SHR would not expect to be notified about minor grievances. Even serious complaints can

be dealt with informally, but some serious complaints cannot be successfully resolved at the informal stage or if they are raised formally.

- 7 The Chair of DPHA should notify the SHR if there is a formal serious complaint against the Chief Executive/Leadership Team member - for example, serious allegations from an individual employee of bullying or harassment by the Chief Executive/Leadership Team. The Chair should also tell the SHR how the Board intends to handle the complaint.
- 8 The SHR recognises the highly sensitive nature of such serious complaints. If we give the SHR information in confidence, they will respect that confidentiality, provided it does not compromise their ability to safeguard the overall interests of the Association or the sector, or breach their legal obligations.

### **Take prompt, independent and professional advice**

- 9 The SHR need to be assured the Board is seeking independent professional advice to support it to handle the complaint. In normal circumstances it is the Chief Executive who provides advice to the Board. Where it is the Chief Executive/Leadership Team member who is the subject of the serious complaint or grievance, they have a clear conflict of interest and **cannot be involved in any way in managing the complaint made against them**. In cases like this the Board should obtain external advice and support to manage the complaint.
- 10 The Board needs to act quickly when a staff member raises a serious grievance about the Chief Executive/Leadership Team member. For instance, if the grievance is about bullying or aggressive behaviour, then the Board must take immediate action. Given the likely sensitive nature of the grievance, it should be handled carefully with independent, expert support and advice. We may need to get an employment/personnel specialist to assist or a consultant with expertise in investigating such matters.
- 11 Where a serious complaint has been made against the Chief Executive/Leadership member Team by a Board member or someone else who is not an employee, then the SHR also expects the Board to ensure that it is taking independent advice about how to handle the complaint and that the Chief Executive/Leadership Team member takes no part in any investigation other than co-operating with the investigator.

### **Have clear procedures**

- 12 We have clear procedures setting out how we will investigate serious complaints or grievances against the Chief Executive/Leadership Team. The SHR expects us to apply the available good practice in dealing with the grievance and to meet their expectations as set out in their Notifiable Events guidance note.

## The Board's role

13 Our Staffing Committee will lead on the following matters and report back to Board which will make the final decision unless a specific remit is otherwise agreed:

- **Dismissal of Chief Executive/Leadership Team member** including: commissioning of any independent investigation; appointment of appropriately qualified professional support if required; recommendation to the Management Committee.
- **Disciplinary action against the Chief Executive/Leadership Team member** including: commissioning of any independent investigation; appointment of appropriately qualified professional support if required; recommendation to the Board.
- **Grievance hearings** whether about or by the **Chief Executive/Leadership Team member** including: commissioning of independent investigation if required, hearing of Grievance; appointment of appropriately qualified professional support if required; recommendation to the Board.

In the case of a serious complaint against the Chief Executive/Leadership Team member, the SHR would always expect the Staffing Committee to be informed and involved, rather than the Chairperson dealing with the complaint alone. The Staffing Committee is likely to be involved in hearing and deciding on the grievance. But in some cases, it may be more appropriate to commission an independent party to conduct the investigation and report back to the Committee. Where there is an investigation, then the Committee must oversee the investigation and record all decisions to ensure transparency.

14 Where the decision is taken to investigate a serious complaint, then the full Board should be informed. However, it should not be told any of the detail, this must be kept confidential. This is to ensure:

- the full Board retains control over our affairs;
- the details of the grievance remain confidential (the individuals at the centre of allegations have the right to confidentiality);
- the full Board knows the grievance is being dealt with, for example, by the Staffing Committee;
- if the RSL needs to bring in outside help, then the full Board is aware of the situation from the outset and can authorise any associated costs;
- the Board can monitor if a pattern of grievances emerges and decide what action to take; and
- by keeping the substance of the grievance confidential then there is a clean route for any appeal to be heard by other members of the Board who are untainted by detailed knowledge about the issue.

15 At the end of the process, the full Board should be told about the outcome of the grievance but again without detail to protect confidentiality.

## **SHR involvement**

- 16 If the SHR have concerns about the action the Board is proposing to take, or it appears that the Chief Executive/Leadership Team member is involved in advising the Board or in handling the grievance, then the SHR may need to act to support the Board to carry out its role effectively and properly.

### **1. GUIDANCE NOTE FOR THOSE INVOLVED IN THE DISCIPLINARY PROCESS**

- 1.1 This Guidance Note should be read in conjunction with the above Policy, EVH's Guidance Manual for Handling Discipline & Grievance Issues and ACAS Guidance.

### **2. GENERAL CONSIDERATIONS**

- 2.1 We recognise that being involved in a disciplinary process can be difficult for everyone involved and we will support all parties throughout the process maintaining confidentiality where appropriate but ensuring there is an open and transparent process at the heart of our Policy and in keeping with our values.
- 2.2 When a disciplinary investigation is undertaken, we will ensure that it is done so fairly, diligently and in accordance with our policies. The person undertaking the investigation will be neutral and impartial. We may choose to appoint an independent investigator outside of DPHA.
- 2.3 For routine disciplinary issues, it will usually be the employee's Line Manager who deals with the matter, both informally to begin with, and if there is no early resolution, they will manage the formal process too.
- 2.4 The employee who is the subject of the disciplinary process will be regularly kept informed of progress by the line manager, including any delays and the impact such delays may have on resolving the matter.

### **3. INFORMAL DISCIPLINARY PROCESS**

#### **a) The Line Manager's Responsibilities**

1. If as Line Manager you become aware or you are informed of an issue that may involve DPHA's Disciplinary Process, you should conduct some informal "fact finding". Remember at this stage nothing is "formal" and so you are not formally investigating the issue. You are looking to see what the situation is and what the circumstances are. Talk to those who have brought the issue to your attention or who were present when the incident occurred.
2. Once you are fully aware of the facts, and you have consulted the Policy, if you believe the matter to be a low-level concern, and you feel able to deal with it informally, then arrange a meeting with the employee. If the matter is more serious, you may need to move to the formal stage of the process. You should prepare your own notes in advance of the meeting, these can then be used later as the basis of a record of the discussion.

3. There is no right for the employee to be accompanied at this informal meeting. The Line Manager should set out what the issue is and ask for the employee to explain the situation and present their view. The Line Manager should then set out how they intend to deal with the situation, their observations on the matter and what actions they intend to take to support the employee address their performance or conduct. The Line Manager should make the employee aware of the consequences of not meeting the Line Manager's expectations at this stage, in that any further similar occurrences will be dealt with formally.
4. Although the meeting is informal, a written record of the meeting should be kept and the agreed actions provided to the employee in writing by the Line Manager. This does not need to be a verbatim account of the meeting; it should simply reflect the discussions that took place and the actions agreed.

#### **a. The Employee**

Your Line Manager has asked you to attend the informal meeting as they believe that the matter to be discussed is not sufficiently serious to invoke DPHA's Formal Disciplinary Procedure.

At the meeting, the Line Manager will explain what the situation and the circumstances are and why you have been called to the meeting. They will also ask you for your response.

You should correct any points of accuracy, and if someone else can help corroborate your version of events, let the Line Manager know. If you accept that the issue occurred as the Line Manager has stated, then say so. Remember that taking responsibility for your own actions and listening and accepting constructive criticism are all part of DPHA's values and culture and expected behaviours.

Your Line Manager will explain what happens next and how the matter will be resolved; this is usually providing you with a written note about the meeting and the actions you need to take and the support your line manager (or others) will provide to help you improve or address the concern.

***NOTE:*** *The informal process cannot change into a formal process during this meeting, if the issue under discussion escalates, if the employee challenges the process or is unwilling to accept the Line Manager's advice and guidance, then consideration should be given to calling the meeting to a halt and invoking the formal disciplinary procedure.*

#### **4. FORMAL DISCIPLINARY PROCEDURES**

##### **a) The Investigating Manager**

1. Under most circumstances, the person conducting the investigation should be the employee's Line Manager. There may be circumstances where that is not appropriate

and another manager is appointed as the investigator. In exceptional circumstances, an independent investigator may be appointed.

2. In this section the term “investigator” will be used will cover all of the above options.
3. The first thing to do is to clarify the situation and the circumstances. The investigator should take appropriate advice and make sure they have a good understanding of their role, procedures, the remit of the investigation and the situation before they proceed any further. You may need to informally speak to those who may or may not have been involved to establish the scope of the investigation, the seriousness of the allegations and who to include as witnesses. You should notify the employee that a formal disciplinary investigation is underway and that they will be kept informed throughout.
4. If the matter is sufficiently serious, DPHA may opt to suspend the employee at this stage. Suspension is only to be considered in very specific circumstances and advice should be sought before any final decision is made.
5. If the investigation concerns the employee’s conduct towards a colleague, a service user or another third party, it is usual to interview them first in the process. The investigator should prepare for each meeting and have a clear focus on the questions to ask. Notes should be taken as a record of interview should be provided to each participant on completion. If the participant has any issues with the record, they should correct the notes and return them to the investigator.
6. Once the investigator has interviewed all the parties and undertaken a review of any evidence, a report should then be written up concluding the investigatory stage of the process, The investigator should draw relevant conclusions and make recommendations regarding the next steps.
7. These next steps can be one of three outcomes:

**One – No further action.** The investigator has concluded that the matter does not need to be followed up with any disciplinary actions, formal or informal. If this is the case, the employee should be informed in writing of the circumstances and the decision.

**Two – Informal Action.** The matter will be dealt with as an informal action – see notes above.

**Three – Formal Action.** The matter will be resolved through a disciplinary meeting (hearing) in accordance with DPHA’s Policy.

If this is the outcome, the investigator should be prepared to present their report, explain the rationale for their conclusions and recommendations at a formal disciplinary meeting (hearing) and take questions from the decision-making manager and the employee.

## **b) The Decision-Making Manager**

1. If you are appointed as the decision maker in a formal disciplinary hearing, you should be as far as possible, neutral and independent of the investigation process up to this point.
2. It is your responsibility to ensure that the meeting is fair, that the process outlined in DPHA's Policy and EVH's Guidance is adhered to. You should ensure that all necessary paperwork is provided to the employee and that they have adequate notice to attend the meeting. The employee also has the right to be accompanied by either a colleague or a union representative at this meeting. Ensure that you provide adequate notice if the employee chooses the latter, as union representatives can be very busy. You can and should ask who the employee wishes to bring with them, as there are restrictions on who they can bring. If in doubt, seek advice.
3. EVH's Guidance notes describe how the meeting should proceed and what roles the various parties must play. You should ensure that you remain in control of the meeting, it can be quite emotional and challenging at times for those involved. The meeting should be conducted respectfully allowing parties to have their say but avoiding interruptions or arguments. You may wish to adjourn or offer breaks if this is the case.
5. If witness statements have been provided to the investigator, then any challenge to these statements (and a request for the witness to attend the meeting) should be submitted in advance. To keep meetings manageable, it is not usually necessary to call all the witnesses who have submitted statements just to confirm the content of their statement. However, if the employee challenges the content during the meeting, then the decision-making manager should consider whether the meeting should be paused to allow that, or whether the bulk of the remaining evidence influences whether the issue is sufficiently clear.
6. If anything new is brought up by the employee, which is not covered by the report or contradicts any of the conclusions, then further investigation may be necessary. The meeting would be adjourned and re-convened once the additional investigation has been completed. The previously appointed investigator may be asked to revisit their work and their report, or alternatively the decision-making manager can conduct their own limited investigation into the points raised.
7. Unless the matter is very straightforward and an appropriate disciplinary sanction is obvious, it would be usual for the decision-making manager to consider the responses from the employee to the report, the evidence, witness statements and any information submitted at the meeting in private before concluding. It is normal for the decision-making manager to make their decision after the meeting has concluded to give them appropriate time to reflect.

8. Once a conclusion has been reached, it should be fully explained in writing to the employee.
9. If the employee then chooses to appeal the decision. It is DPHA's intention that the decision-making manager is also involved in the appeal process. The appeal manager may wish to hear directly from the decision-making manager during the appeal meeting or request specific information from them as part of the appeal process.

### **c) The Employee**

1. If you are required to attend a formal disciplinary meeting (hearing) then you should first review DPHA's Policy and Procedures.
2. You should be provided with a letter explaining why you are to attend the meeting and provided with relevant documentation (reports, evidence etc) and notified well in advance of the date and time of the meeting. You can be accompanied to the meeting by a colleague or a union representative. Their roles are explained on the ACAS website, broadly they can support you in the meeting but cannot ask direct questions on your behalf, it is up to you to put questions either to the investigator or the decision-making manager.
3. DPHA believe in openness and transparency as key elements of the process, if you have questions about the investigators report or the contents of witness statements, you should contact the manager who has invited you to the meeting well before the date. If you are being supported by a trade union representative, they have a lot of experience in this area and can provide you with advice. Or, if your line manager is not involved in the process, you should seek their support if unsure about anything.
4. On the day of the meeting, DPHA will offer you some time beforehand to consult with the person accompanying you to the meeting. You will hear first hand from the investigator and you will be able to ask them questions about their report or the evidence they have gathered and the people they have spoken to as witnesses.
5. The decision-making manager will also ask you to provide your own account of the issue under investigation.
6. It is unlikely that the decision-making manager will conclude matters on the day of the meeting, they will usually want some time to consider what they have heard before reflecting on the process and concluding. They will then write to you with their decision. The letter will explain how they came to the decision and, if there is a disciplinary sanction, what that means and any lessons you should take from the situation.
8. If you disagree with the outcome, either because you feel the result is unfair, the process has not been followed correctly, or there was evidence that was relevant but ignored, then you can appeal the decision. This should be done in writing and your

union representative can help with that. Further information about the appeals process can be found in the Policy.

#### **d) Witnesses**

1. If you are asked by a manager to make a statement or to attend an interview as a witness to an incident or an issue which is the subject of a disciplinary investigation, it is important to be open and honest as your testimony can have an impact on your colleagues and the Association.
2. It is important to remind you of our values of doing the right things, right, every time. This includes calling out inappropriate behaviours if you witness them, and contributing to workplace processes that are designed to ensure that we are all accountable in accordance with our H.E.A.R.T. values and colleagues are treated with care and respect.
3. In exceptional circumstances, it may be the case that witness testimonies are gathered anonymously, however everyone should understand that in a small organisation, it is often difficult to maintain anonymity in a formal process. If you have any concerns about the implications of providing an open witness statement, which will form part of a workplace investigation, you should explain your concerns to the investigator. They will then need to consider whether anonymity is appropriate and take advice if necessary.
4. At every stage of the process, you are expected to maintain strict confidentiality and you should not speak to anyone other than the investigator about the process, even, and especially, if you believe that other colleagues are involved in the same process.
5. If you are worried about taking part, or any element of the process, speak to the Investigator about it. They in turn can look to offer you support, either from them or from someone not involved in the investigation.
6. On occasion, you may be asked to attend a disciplinary meeting as a witness. You may be asked questions about your statement by the manager holding the meeting and the person under investigation. Again, it is important to be open and honest about the situation. The manager chairing the meeting will ensure that the process is conducted in accordance with our values and is non-confrontational.

#### **5. APPEALS**

1. The Appeal procedures are not another chance to re-visit the complaint and repeat all the stages of the original disciplinary meeting.
2. An appeal is about one of two things, either the outcome of the disciplinary meeting or the process DPHA has followed. An employee can appeal if they think the result of the disciplinary meeting is unfair or too harsh, or if the process has been flawed and

the stages of our Policy have not been followed properly or if key information has been missed.

**a. The Appeal Manager**

1. The appeal manager should be different from the person making the decisions during the disciplinary meeting and should not be the investigator either. If possible, it should be someone new and independent of the situation. Normally, they should be at the same level or more senior than the original decision-making manager.
2. The appeal manager should set a date for a meeting where both parties will state their case. The employee will explain why they have appealed the decision, the decision-making manager will explain how they came to their decision and why they viewed the decision as the correct one under the circumstances.
3. The appeal manager may need to conduct further investigation or ask for information from the investigator before arriving at their decision. The appeal process is outlined in more detail and the possible outcomes from an appeal are included in Section 9 above.
4. When coming to your decision, you should ensure that you have all the information to hand and that you have given equal consideration to both parties and the circumstances under which the original decision-making manager came to their conclusion.
5. The outcome of the appeal should be provided to the employee in writing and a copy of the letter provided to the decision-making manager.

**b. The Employee**

1. At the appeal meeting, you will again have the right to be accompanied by your union representative. You should be prepared to explain why you think the outcome of the disciplinary meeting was unfair. This could be because you think the penalty, e.g. a written warning, is unfair or inconsistent with how DPHA have dealt with similar issues in the past. Or, that the process DPHA followed was unfair. e.g. a witness you identified was not spoken to, or you were not given the opportunity to state your case in accordance with the Disciplinary Policy.
2. Usually, there is only one appeal, and the appeal manager's decision is final. They will write to you explaining what their decision is, and how they came to that decision.

**c. The Decision-Making Manager**

1. DPHA's process is to include the decision-making manager in the appeals process. It is considered an important part of what should be a transparent and fair process.

2. You will be asked to explain your rationale and how you arrived at your decision, what, if any, research you undertook or any concerns you had about the investigation. You will be asked whether you ensured there was consistency with how DPHA has managed similar issues in the past and how you ensured that your decision was fair and in keeping with our values and the guidance provided by ACAS and EVH when dealing with disciplinary matters.
3. You will be informed in writing of the appeal manager's decision once the meeting has been completed and the appeal manager has come to their conclusion.
4. It is important to note that the decision they take may not be the same as yours. However, that is the basis of their own judgement and the reason why we have an appeals process. You will receive feedback from the appeal manager on the basis of their decision and any learning points that can be taken from the process.

**d. THE JNC PROCESS**

1. The JNC (Joint Negotiating Committee) is the ultimate appeal for EVH members and an employee may appeal directly to the JNC, via DPHA, if they have been dismissed from the Association. The JNC may also be the appeal route if the issue involves the Chief Executive.
2. The JNC (usually just one individual) will be appointed by EVH and notified to all parties.
3. The JNC will provide information and guidance directly to all parties about their roles at a JNC hearing.