

Disciplinary Procedure & Policy *(Version 3)*

Reviewed by Board: 21/07/2020

Policy Statement

New Day Church recognise that employees should be treated fairly and this policy aims to provide consistency in the treatment of all employees.

This procedure is a framework for dealing with cases of where an individual's performance and/or conduct has failed to reach the required standard.

This procedure is designed to deal with alleged breaches of organisational policies, rules and procedures and aims to help and support employees to achieve acceptable standards of conduct.

This procedure should only be used where problems with conduct cannot be resolved through advice and encouragement, training or increased support.

In cases of poor performance this procedure will only be used once an employee has been referred from the organisation's formal capability procedure.

Compliance with ACAS Code of Practice

This disciplinary procedure follows the ACAS code of practice on Disciplinary and Grievance procedures (Updated March 2015). The code is issued under section 199 of the Trade Union and Labour Relations (consolidation) Act 1992.

A failure to follow the code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the code. This means that if the tribunal feels that an employer has unreasonably failed to follow the guidance set out in the Code they can increase any award they have made by up to 25 per cent. Conversely, if they feel an employee has unreasonably failed to follow the guidance set out in the Code they can reduce any award they have made by up to 25 per cent.

Scope of Policy

This agreement applies to all employees who will be employed at New Day Church.

General Principles

- **Fairness** – This procedure sets out to treat all employees fairly, consistently, impartially, promptly, reasonably and applied without discrimination.
- **Representation** – The employee at all stages in this procedure has the right to be represented and accompanied by their trade union representative, full-time union official or work colleague.
- **Confidentiality** – All documentation and information relating to the allegation of misconduct will not be distributed to any parties not involved with the process. Any information relating to the case will be kept in accordance with the Data Protection Act 1998. Any breach of confidence may be treated as a disciplinary case of misconduct.
- **Natural Justice** – At all stages of this process the employee will be given a full explanation of the complaint in writing and will be given the opportunity to state their case before a decision is taken. If a warning is given as part of this process, the employee will be given full support by the employer to improve their conduct.
- **Right to appeal** – At all formal stages of this policy the employee has the right to appeal. The appeals will be heard in an appeal hearing by a senior manager that has previously had no involvement with the case.
- **Recordings** – Audio/ Visual recordings of the proceedings by the employee or their companion are not acceptable at any stage of this process. Conversely the use of surveillance evidence submitted as part of the case must comply with the organisation's surveillance procedures.
- **Grievance** – The disciplinary procedure is to be used separate from the grievance procedure. If the employee is already being investigated as part of the grievance procedure, the disciplinary process will not begin until the grievance has been completed.
- **Equal Opportunities** – This procedure will be applied without discrimination. If an employee has difficulty with any stage of this process due to a disability, it is their responsibility to discuss this with their line-manager or a member of the Board as soon as possible.
- **Process** – There are four stages of disciplinary action. An employee will not normally be dismissed for the first breach of discipline unless the employee is found guilty of gross misconduct, where a penalty may be summary dismissal without pay in lieu of notice. The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- **Criminal Offences** – Where an employee is convicted of a criminal offence, they will not be automatically dismissed. The employer will consider if the offence is one that makes the employee unsuitable for his/her type of work or unacceptable to other employees, partners or clients of the organisation and if so whether there is suitable alternative work available. Following this consideration the employer may initiate the disciplinary process.
- **Trade Union Representatives** – Disciplinary action will not be taken against an accredited Trade Union Representative unless the circumstances are sufficiently serious to warrant immediate action. In these circumstances the New Day Church Board and the full-time official from the Trade Union should be notified of the case.

The Procedure

Minor misconduct

Informal action should be taken in cases of minor misconduct. The employee will be invited to attend an informal meeting by their line-manager where an explanation of the minor misconduct will be given. The line-manager will give constructive feedback and the employee should express their views on the issue. This is separate from the formal part of this disciplinary procedure. The manager will explain to the employee what needs to be improved, and put in place any measures to support the employee. The employee's conduct will be reviewed at a later date and both parties will agree any informal action and a date for the review. Notes should be kept by the manager of this meeting but not placed on the employee's file. The employee should be advised if their conduct or performance does not improve they will be moved to the next stage of this procedure.

Formal Procedure for cases other than minor misconduct

Disciplinary Offences Guideline

Misconduct is defined as failure in personal conduct, persistent poor performance or if an employee contravenes the organisation's policies, rules and procedures. A list of possible disciplinary offences follows. Reasons for disciplinary action may include but are not limited to:

Acts of misconduct	Acts of gross misconduct
Dishonesty	Theft, fraud, deliberate falsification of records
Misuse of the organisation's name	Criminal offence which affects the individual's ability to carry out his/her job
Breach of confidentiality & data protection	Physical assault by an employee on any other person
Breach of financial regulations	Serious negligence which causes unacceptable loss, damage or injury
Misuse of the organisations equipment and materials	Serious breach of confidentiality
Engaging in activities of the premises which could bring the employer into disrepute	Deliberate falsification of financial claims including overtime, expenses or flexitime
Supplying false or misleading information when applying for employment	Deliberate serious abuse of flexitime / flexible working systems
Health and Safety issues for example threatened or actual physical assault	With reference to the appropriate policy: Serious acts of harassment / bullying / discrimination, persistent alcohol or drug abuse
Deliberate or reckless damage to the organisation's property	Wilful misconduct or disobedience of lawful and reasonable orders
Abusive, obscene language or gestures	Engaging in unauthorised employment during hours when contracted to work or during periods of designated leave, for example sick leave or time off for training,

	etc.
Failure to observe establish health and safety rules and report accidents or injuries whilst at work	
Creating or contributing to unsanitary conditions	
Entering or leaving the organisation property except by designated entrances and exits	
Possession of offensive weapons	
Performance related issues for example, serious neglect of duty which undermines the organisation	
Failure over time to perform work to satisfactory standards	
Refusal to carry out a reasonable request of a line-manager, trustee or leader	
Infringement of terms and conditions of service, for example absence from duty without permission of a line-manager	
Excessive infringement of flexitime/flexible working or regular excess of debit hours at the end of accounting periods	
Breach of the organisations written policies, examples include harassment and bullying, smocking in any other than designated smoking areas, and alcohol and drug use	

The Investigation

Disciplinary action will not be taken before an investigation has taken place.

The investigation will usually be carried out by the employee's line-manager or a member of the Board. The employee will be informed as soon as possible that an investigation is taking place and the date when the investigation will conclude. The investigation should take no longer than 15 working days.

There may be instances where an employee is suspended with pay while the investigation carried out.

Depending on the case it may be necessary for the employee to attend an investigatory interview. If such an interview is held, it will be made clear that the interview is part of the investigation process and separate from the disciplinary hearing.

The employee has the right to be accompanied to an investigation interview by their trade union rep or fellow work colleague or a family member or friend.

Procedure

Once the investigation has concluded, if the employee's line-manager believes that there are reasonable grounds that an employee committed an act of misconduct, the employee will be invited to attend a disciplinary hearing. The disciplinary hearing will take place within 10 working days of the conclusion of the investigation. The disciplinary hearing will be heard by the Board Disciplinary Panel which will be made up of a subgroup of three Board Members, with an elected Chair, and they will:

- give the employee in advance at least 5 working days notice of the hearing date, time and venue;
- explain that the disciplinary hearing will be conducted under this procedure;
- the letter will give a full explanation as to why the disciplinary hearing is taking place;
- the letter will state the employee's right to be accompanied by their trade union rep or fellow work colleague or a family member or friend;
- provide the employee all relevant information including statements the employer wishes to use as part of this process;
- Witnesses – the names of any witnesses being called by the employee must be made available to the Board no later than 2 working days prior to the hearing. It is the responsibility of the employee to organise their own witnesses and inform the Board of any access requirements needed.
- The employee will be advised of the name of witnesses along with the chair / disciplinary Panel within 2 working days of the hearing.

Attendance at hearing

The employee should take all reasonable steps to attend the hearing on the date / time stated in the employer's letter. However, the hearing will be rescheduled to another time if their accompanying person is not available at the chosen time. In these cases the employee must propose another date within 10 working days of the original hearing date.

Where an employee fails to attend or remain throughout a scheduled hearing through circumstances beyond their control, the hearing or the continuation of the hearing should be arranged for another time (within 10 working days).

Employees may not be able to attend a hearing due to ill health. In these circumstances the employee may be required to submit a medical certificate from their GP. The matter will also be referred to an Occupational Health Practitioner who with the employee's consent will discuss the matter with the individual's GP to assess the length of time the employee is unable to attend hearings. If an employee does not give their consent, the Chair will have no option but to base any decision on whether to defer the hearing or proceed in the employee's absence on the information available. Each case will be evaluated on its own merits but the prime objective is to minimise any delays in holding hearings.

If there is any additional evidence presented at the hearing the Chair may decide to adjourn a hearing and reconvene at a later date (within 5 working days of the original hearing date).

Stages of Disciplinary Action

The table below sets out the stages of disciplinary action within this procedure. In more serious cases of misconduct a stage may be passed over in favour of higher level disciplinary action:

Stage 1 – Oral Warning (recorded)	If an employee’s conduct or performance does not meet the required standards the employee will be given an oral warning, which will be recorded on their HR file for 6 months and then removed. The employee is advised at this stage that if their conduct or performance does not improve, the employer will move to the second stage of this disciplinary procedure.
Stage 2 – First Written Warning	If the offence is a serious one, or following a review of stage 1 of this procedure there has been no improvement in conduct or performance, a written warning will be given to the employee. The warning will set out details of the complaint and the required improvement. This warning will be placed on the employee’s HR file for 9 months and then removed.
Stage 3 – Final Written Warning	A final written warning will be issued to an employee if there is still a failure to improve conduct or consistent poor performance or if the misconduct warrants a written warning but not dismissal. The written warning will have a full exploration of the complaint and will warn that continued misconduct or poor performance will result in dismissal. This final written warning will be placed on an employee’s file and removed after 12 months.
Stage 4 – Dismissal	If an employee’s performance or conduct continues to be unsatisfactory, then the employee will be dismissed. Only a senior manager can make the decision to dismiss an employee. The employee will receive full written confirmation of the decisions that have been taken and the date in which employment will terminate. The letter will also set out the employee’s right to appeal.
Stage 4 – Action Short of Dismissal	In serious cases where dismissal is considered but it is decided to impose disciplinary action other than dismissal

	(such as disciplinary transfer or disciplinary downgrading), it may also be decided to retain a final warning permanently on the employee's personal record and the employee be advised that any recurrence will lead to dismissal. Such a warning will be subject to review, at not less than 12 month intervals, at the request of the employee.
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The Board Disciplinary Panel has the authority to (this list is not exhaustive and only gives an indication of what action might be taken):

- Find that the employee has no case to answer to and discharge the case.
- Require satisfactory completion of a course of training or developmental activity.
- Issue a first written or final written warning and impose conditions in relation to such warnings.
- Extend the period of the final written warning as an alternative to dismissal.
- Demotion or loss of seniority in relation to the employee's current role.
- Dismiss the employee with the appropriate period of notice or payment in lieu of notice.
- Dismiss the employee without notice or payment in lieu of notice.

When deciding on the level of disciplinary action to take, the Chair and the Panel should take into account any previous disciplinary warnings issued that are still current.

Decision and Written Notice

On the basis of the discussion and evidence provided the Chair / Board Disciplinary Panel will decide what action, if any, should be taken. The Panel will seek to come to a unanimous decision but, in the absence of unanimity, a majority decision will be reached with the Chair having the final say. The employee will normally be notified in writing within 7 working days of the conclusion of the hearing.

If a disciplinary warning has been issued the written notification will set out all the conditions associated with the warning, i.e. Reason for the warning, the improvement required, how monitoring will take place, the period for which the warning will be in force, the likely penalties for failure to meet conditions of the warning, and the employee's right to appeal.

Where disciplinary action is dismissal, the written notification will state the reason for the dismissal, the date on which their employment will terminate (taking into account the employee's required notice period if appropriate) and the employee's right to appeal.

Appeal

An employee can appeal against any disciplinary sanction imposed against him / her, with the exception of an informal oral warning.

The employee has the right to be accompanied to the disciplinary hearing by another employee, a recognised trade union representative or an official employed by the recognised trade union or a friend or family member.

When lodging the appeal, an employee must state:

- The grounds of the appeal; and
- Whether he/she is appealing against the findings that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

The employee must submit a written appeal to the Board within 5 working days of being informed of the disciplinary sanction being imposed against him / her.

Names of any witnesses to be called by the employee must be made available to the Board no later than 2 working days prior to the hearing. It is also the employee's responsibility to inform witness where the appeal is taking place and the time.

The appeal will be heard by the Board Appeals Panel which will be made up of three people. This will be a combination of members of the Board who were not involved in the decision to impose the disciplinary sanction on the employee including one member of the External Board of Reference, if available. They are obliged to consider any representations made by the employee, trade union rep or trade union official or friend or family member present at the hearing and those of the line-manager who conducted the investigation and the Board members who conducted the disciplinary hearing and imposed the disciplinary sanction.

The Board Appeals Panel, on hearing the appeal, must make a judgement after reviewing all the evidence put forward from all parties, together with any further facts of evidence they may have come to light. The Panel will seek to come to a unanimous decision but in the absence of unanimity the elected Chair must make the final decision based on the majority view of the Appeals Panel as to whether to uphold the disciplinary sanction.

In the event that the Boards Appeals Panel finds for the employee, anything relating to the disciplinary sanction will be removed from the employee's record.

Appeal hearings will normally take place within 14 days of receipt of the employee's written notice of appeal.

The employee should take all reasonable steps to attend the appeal hearing on the date/time stated in the written notification. However, the hearing will be re-scheduled to another time convenient for the employee if the employee's accompany person is not available. The employee must propose an alternative date within 5 working days of the original date (this time limit may be extended only by mutual agreement).

Employees may not be able attend a hearing due to ill health. In these circumstances the employee may be required to submit a medical certificate from their GP. The matter will also be referred to an Occupational Health Practitioner who with the employee's consent will discuss the matter with the individual's GP to assess the length of time the employee is unable to attend the appeal hearing. If an employee does not give their consent, the Chair will have no option but to base any decision on whether to defer the appeal hearing or proceed in the employee's absence on the information available. Each case will be evaluated on its own merits but the prime objective is to minimise any delays in holding the appeal hearing.

Upon completion of the appeal, the Board will inform their decision to the employee. The decision will be confirmed in writing within 7 working days. The organisation's decision is final.

When an appeal lies against a dismissal by the Panel, the Panel's decision to dismiss will have had immediate effect and therefore, if the dismissal is by notice, the period of notice will have already commenced on the date the Panel gave their decision. If the Panel's decision was to dismiss the employee summarily without notice, the organisation will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand.

In the event that the Panel's decision to dismiss is overturned, the employee will be reinstated with immediate effect and he/she will be paid for any period between the date of the original dismissal and the successful appeal decision. An employee's continuous service will also not be affected.