

Spiral Sussex

Disciplinary & Capability Review

Policy

February 2019

Spiral Sussex

Disciplinary and Capability Review

Policy and Procedure

This policy and procedure has been approved by the Executive Committee of Spiral Sussex which are responsible for its review.

The original signed copy of this policy and procedure is kept at Spiral Sussex's office.

Signed: Mark Shanahan Date: 5th February 2019

Name: Mr Mark Shanahan

Chair of Trustees

Signed Marc Blackwell Date: 5th February 2019

Name: Mr Marc Blackwell

Trustee

Record of adoption and review of this policy and procedure:-

- Adopted:
- To be reviewed: (+1 years from the adopted date)

Spiral Sussex

Disciplinary and Capability Review

Policy and Procedure

1. Definitions

The following terms in this policy and procedure are understood as:

“staff and staff members”

means all Spiral Sussex employees including part-time, full-time, consultants, volunteers and interns

2. Purpose and Scope

Disciplinary procedures may be required by Spiral Sussex against staff members in the case of misconduct or poor performance.

In the case that staff members appear unable to complete their tasks and responsibilities associated with their position, a capability review may be carried out.

This policy and procedure applies to all Spiral Sussex staff members. It aims to fairly address issues with staff members work, performance or conduct. It aims to ensure that all staff are treated in a fair and consistent way by Spiral Sussex.

Spiral Sussex however reserves the right to start this procedure at any time and in the case of serious misconduct and perceived risk or harm to service users or other staff. Please refer to the Safeguarding of Adults at Risk Policy and Procedure and the Safeguarding of Children Policy and Procedure.

3. Principles

Spiral Sussex is committed to employing the following principles:

- Problems of poor performance will be dealt with in a quick and equitable manner
- A full explanation will be given to the employee in cases where they are regarded as not meeting the required standard
- Formal procedures will be embarked on only once a range of informal methods have been attempted, for example, using the

normal staff appraisal and target-setting process or through conversations between line managers and staff members

- Staff members will be informed in writing of any complaints made against them and of their rights
- Staff members will be allowed to respond to a complaint before any disciplinary decision is taken
- Staff members have the right to be accompanied to any meeting held as part of the procedure by their union representative, other official or by a fellow staff member
- Documentation involved in this procedure will be treated confidentially and only circulated to those directly involved
- When the formal stage of a capability procedure has begun, the Chief Executive or Chair of Trustees will be involved in all subsequent procedural review stages to offer advice and guidance to make sure that the procedure is being followed fairly and equitably
- In the case that capability issues arise due to ill health, the staff member should inform their line manager at Spiral Sussex immediately of their health issues and in what ways they need their workload or working conditions adjusted
- Records will be kept for each stage of any disciplinary or capability procedures, including minutes of all meetings and reasons for any decisions

4. Possible reasons for disciplinary and capability procedures

Spiral Sussex holds all staff responsible for following Spiral Sussex's policies and procedures including codes of conduct. Staff are expected to behave in a reasonable way towards the organisation, other members of staff, volunteers and service users.

Disciplinary or capability procedures may be embarked on in the following situations, though not limited to these:

4.1. **Gross Misconduct**

Cases of gross misconduct may lead to disciplinary action that would result in immediate dismissal, examples include:

- Serious infringement of Spiral Sussex's Staff Code of Conduct
- Serious and infringement of Spiral Sussex's policies and procedures, especially where it concerns health and safety or safeguarding issues
- Dishonest conduct of any kind, including but not limited to misrepresentation or omission of facts relating to the person's work with Spiral Sussex
- Theft or pilferage of property
- Inappropriate and/or unlawful disclosure of confidential information
- Being involved in, whether knowingly or due to recklessly installing or creating a disruptive virus or code, or other disruptive element into Spiral Sussex's systems
- Serious or intended damage to property
- Falsification or misrepresentation of expense claims whether for personal gain or for the benefit of others
- Conducting other business activities not related to the staff members role, whilst during working hours
- Inappropriate use of the internet or misuse of Spiral Sussex computers and other technical equipment
- Conduct any activities, whether on or off duty that may bring Spiral Sussex into disrepute. This includes social media postings by staff whether on personal or Spiral Sussex
- Making malicious claims of harassment against colleagues, service users or their families
- Failure to carry out a direct instruction from a manager or Trustee
- Inappropriate language or behaviour whilst on Spiral Sussex premises or on location, including use of excessive swearing or aggressive behaviour
- Fighting, harassing, threatening or otherwise intimidating other staff members, service users and their families which includes discrimination or demonstrating any form of prejudice on the grounds of disability, gender, race, class, ethnicity and so on
- Being intoxicated during working hours or possessing illegal substances or alcohol on Spiral Sussex premises or when on

location, however exceptions may be made at Spiral Sussex events where alcohol has been explicitly permitted

- Indecent acts while at work
- Allowing or condoning a breach of the law
- Removing any materials or equipment from Spiral Sussex premises or sites used by Spiral Sussex without prior permission
- Endangering the health and safety of any persons at Spiral Sussex
- Receiving bribes for any purposes
- Unauthorised access or attempts to access confidential records or the Spiral Sussex computer records, or assisting others to do so
- Receiving gifts or services from service users, their families, commissioners or suppliers without declaring these to responsible managers (generally, staff are not allowed to accept gifts worth more than £25 for work that they have carried out as part of their duties at Spiral Sussex)

The above list is an example, other acts of serious misconduct that may not be listed above, may result in immediate dismissal or pursuit of disciplinary procedures.

4.2. Other Forms of Misconduct

Other forms of misconduct may lead to disciplinary procedures. These are less serious forms of misconduct such as inadequate performance. These many not constitute grounds for immediate dismissal.

In the case that there are repeated forms of misconduct or continued inadequate performance, dismissal of the staff member may be pursued after a formal warning.

The following list, which is not exhaustive or exclusive, gives examples of such offences:

- Poor standard job performance
- Poor timekeeping and/or persistent lateness
- Breach of Spiral Sussex rules where these did not impact negatively on the health and safety of Spiral Sussex service users, other staff members or their family members
- Insubordination or behaving in a disorderly manner
- Failure to report an accident or incident that has a potential impact on the health and safety of Spiral Sussex service users, other staff members or their family members

- Smoking in an area where it is not permitted, but where it is not a serious hazard to do so
- Persistent absenteeism without good motive
- Failing to maintain reasonable personal hygiene standards and presentation

5. Investigations

In the case of suspected misconduct, an investigation of the evidence and background of the case will be undertaken. This will be led by a responsible manager who will be different from the person who conducts the hearing.

This investigation may lead to the collection of statements and/or a report that will be given to the Chief Executive (or, in their absence, the Chair of Trustees) who will decide whether a formal disciplinary hearing is required. On receiving the report, the Chief Executive (or in their absence, the Chair of Trustees) will decide whether or not a hearing should be called.

See section 9 in this policy and procedure for information on hearings.

6. Suspension with pay during the investigation

The staff member may be suspended with pay on non-disciplinary grounds during the investigation of the case. In this case, this is not a disciplinary sanction.

During the suspension of the staff member, they must not come to the Spiral Sussex premises or contact any other staff member without prior permission from their line manager or other responsible manager, except in the case of arranging to be accompanied by such colleague, to their hearing.

7. Statement concerning the grounds for action being taken

In the case that the staff member is called to a capability review hearing or a disciplinary hearing, a written statement of the alleged misconduct

will be provided including a copy of available evidence, such as witness statements.

8. Accompaniment to hearings

All staff have the right to be accompanied by their trade union representative, other professional or colleague, to any disciplinary or capability review hearings and appeal hearings. The person accompanying the staff member undergoing a hearing, is allowed to speak on the behalf of the staff member being investigated given the staff member wants them to.

Staff are not required to be accompanied, it will not be a disadvantage to them if they are not. A hearing can be postponed for up to 5 working days in order for the staff members choice of person to be present. Postponement can only occur once.

9. Hearings

The hearing's purpose is to investigate the facts related to the alleged inadequate performance or misconduct. Spiral Sussex will in general give the staff member at least 48 hours' notice of the hearing.

During the hearing, in the case that the staff member feels that it is not being conducted in a proper way, they can start a grievance procedure in which case will be postponed for the grievance to be addressed. If the grievance is not related to the hearing, this will not lead to the hearing being postponed.

During the hearing, the staff member will be given the opportunity to state their case and provide any additional evidence. In the case that the staff member suggests other lines of enquiry that are deemed reasonable, the hearing can be postponed until these are addressed. Any mitigating circumstances may also be provided by examples.

After the staff member has made their case, the Chief Executive or Chair of Trustees will make a final decision. This may not happen immediately, but may require a break in the hearing.

The final outcome of the hearing will be communicated verbally (if reasonable) and in writing. In writing they will be informed if they are able to appeal against any disciplinary decisions.

If the outcome of the hearing is a warning concerning the capability and performance of the staff member, the responsible manager will agree with the staff member, their expected performance standards and improvements and what reasonable support they need to meet these standards.

10. Sanctions

Any disciplinary action will depend on each individual case and may vary case to case. Any disciplinary decisions will come from a thorough investigation of the facts and circumstances involved.

Sanctions may include:

- Initial written warning
- Final written warning
- Dismissal
- Suspension without pay

Any written warnings remain in force for twelve months though where they are appropriate and reasonable, a longer period may be used.

11. First Warning

In the case of a first instance of non-serious misconduct and after a disciplinary or capability review hearing, the Chief Executive or Chair of Trustees will give a written warning to the staff member.

In the case that this first warning is regarding inadequate performance, a period of time will be set to review the staff members performance prior to which the expectations for their improved performance will be clearly laid out.

Details of the warning will be recorded on the member of staff's personal file.

Written confirmation of the warning will inform the staff member that in the case of no satisfactory improvement or in the case of another report of misconduct, that a final written warning may be considered.

The staff member will be requested to sign a copy of proof of receipt. In the case that signing of receipt is refused, this will be recorded on the warning. A first warning will be in force for 6 months from the date given. At the end of 6 months, the warning will be disregarded for disciplinary purposes. It may be decided that the warning should be in place for a longer period of time.

12. Suspension Without Pay

Suspensions without pay during disciplinary action can take place for a maximum of ten working days if it is considered appropriate.

13. Final Written Warning

In the case that there is no improvement in the staff members performance or in the case of another misconduct offence, a final written warning will be given to the staff member after a disciplinary or capability review hearing.

The final warning letter will advise the staff member that continued failure to improve their performance may lead to dismissal. It will also give details for the staff members right to appeal.

The staff member will be asked to sign a copy as proof of receipt. If they refuse to sign receipt of the warning, this will be recorded on the warning. Final warnings have a longevity of 12 months from the date given. On completion of the 12 months, the warning will be disregarded for disciplinary purposes. If it is considered appropriate and reasonable, a longer period may be given for the length of applicability of the warning.

14. Dismissal

Dismissal may be considered as necessary in the case that the staff member has failed to improve their performance, or has committed further misconduct or in the case of gross misconduct. Employment or volunteer placement with Spiral Sussex will be terminated without notice nor pay in lieu being paid, in the case of gross misconduct.

15. Appeals

Staff are given 5 working days in which time they have the right to request an appeal against a disciplinary or capability review action. The staff member can appeal based on the following grounds:

- They did not commit the alleged offence or misconduct
- They believe the penalty imposed was not reflective of the misconduct (i.e. it was too severe)

The appeal should be sent to the person who is leading the hearing. This person will then arrange an appeal hearing.

In most instances, an appeal hearing will consist of a review of the case. In the case that the staff member believes that the facts were not fully or properly considered, they can request a full re-hearing. Appeals will not be heard by the same person running the hearing, usually these will be heard by a Trustee.

The appeal will not lead to any increases in disciplinary penalties. Within 5 working days an answer on the outcome of the appeal will be given to the staff member, however in some circumstances a longer time may be required for further investigation into the issues of the appeal. In this case, the staff member will be informed of likely time needed.

16. Legal Proceedings

If any staff member, during their employment with Spiral Sussex, faces criminal proceedings, even if these are external to their employment with Spiral Sussex, they must inform this to their line manager, the Chief Executive or Chair of Trustees immediately. Not informing any responsible people as listed, will be considered as an act of misconduct. In the case that the criminal proceedings are serious or clearly affect the

staff members safety or ability to do their job, failure to notify will be considered as gross misconduct by Spiral Sussex.

The Chief Executive, Chair of Trustees or other senior manager will assess whether the nature and circumstances of the criminal proceedings will affect the staff members ability to meet their tasks and responsibilities.

Employment may be terminated in the case that they are found guilty in a court of law, or if the matter is regarded to be serious enough that disciplinary procedures need to be followed.

17. Notes to the Procedure

17.1 In the case that the staff member does not appeal against any disciplinary decision within 5 working days, it will be assumed that they have accepted the decision and do not wish to refute it. If a good reason is given to extend the 5-day period of time such as due to sickness or holiday leave, this will be considered.

17.2 Although an answer to an appeal should be given within 10 days, in some circumstances this may not be possible. If this is the case, the reasons why will be explained to the staff member.

17.3 It is Spiral Sussex's responsibility to investigate fully all the facts and background to any allegations of misconduct before disciplining a member of staff. The investigation must allow the staff member to hear the evidence against them, this will include allowing them the opportunity to state their side of the case and challenge any such allegations.

17.4 The circumstances of the individual case will inform the disciplinary action to be taken, therefore the procedure outlined here may not be followed in the order described.

17.5 This procedure does not remove Spiral Sussex's right to give an informal reprimand or warning when a member of staff is believed to have committed a minor infringement

Audit Guidance

| Check | Evidence |
|---|---|
| Are disciplinary records are up to date? | Check disciplinary records Ask Chief Executive |
| Have staff members been given full hearings? | Check records Ask Chief Executive |
| Were any appeals dealt with in the procedural manner? | Check records Ask Chief Executive |