

# CS014 - Disciplinary Policy and Procedure

<b>MONITORING FORM</b>	
Department	Human Resources
Department Director	Human Resources Director
This policy is applicable to	All employees
Author	Sarah Bickerstaff
Original Version approved by & date	Included in staff handbook
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Date of next review	22 July 2022
Internal /external consultees (if required).	All employees

## **1. INTRODUCTION**

- 1.1 It is necessary for the proper operation of Weslo's business and the health and safety of our employees that the organisation operates a disciplinary procedure.
- 1.2 The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by Weslo's management save to the extent that a minor reprimand is given for any minor act of misconduct committed by an employee.
- 1.3 Weslo reserves the right to implement the procedure at any stage as set out below taking into account the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence.
- 1.4 Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the organisation.
- 1.5 Employees have the right to be accompanied at a formal disciplinary hearing by a fellow worker or trade union representative of their choice. The policy does not permit legal representation for internal matters.

## **2. SCOPE**

- 2.1 For the purposes of this policy and procedure it is deemed to include the following: Weslo Housing Management and its subsidiary, Weslo Property Management, all employees (permanent, temporary or fixed terms) and any other stakeholder if relevant to the Policy.

## **3. DISCIPLINARY OFFENCES**

- 3.1 Matters that Weslo views as amounting to disciplinary offences include (but are not limited to):
  - i. persistent bad timekeeping;
  - ii. unauthorised absence;
  - iii. minor damage to the organisation's property;
  - iv. failure to observe the organisation's policies and procedures;
  - v. abusive behaviour;
  - vi. unreasonable refusal to follow an instruction issued by a manager or supervisor;
  - vii. poor attendance;
  - viii. data protection breaches and misuse of the organisation's information;
  - ix. smoking [or use of an e-cigarette] on work premises, tenants homes and in company vehicles; and
  - x. bribery offences under the Bribery Act 2010

## **4. INVESTIGATION**

- 4.1 An investigation will normally be used only when an employee is suspected of committing an act of serious misconduct or act in serious breach of any of the organisation's policies, procedures or rules. The Investigation procedure should be followed. [Refer to Investigation Procedure]
- 4.2 An investigation will not normally be used in cases of minor misconduct, which should instead be dealt with directly and promptly by the individual's line manager. Similarly, where the matter is routine or straightforward, there will be no need to conduct a separate investigation (for example if the problem relates to repeated poor timekeeping and the line manager has a clear record of the dates/times when the employee arrived to work late).
- 4.3 The investigation procedure should not be used in cases of perceived unsatisfactory job performance as Weslo's performance improvement procedure will be applicable in these circumstances.
- 4.5 Where an investigation is deemed necessary the employee's line manager, or nominated investigating officer, will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of Weslo's policies or procedures or may otherwise be a disciplinary matter.
- 4.6 Weslo reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

## **5. SUSPENSION**

- 5.1 There may be instances where suspension with pay is necessary while investigations are carried out. Weslo has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work.

## **6. PROCEDURE FOR ARRANGING A DISCIPLINARY HEARING**

- 6.1 Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct; the employee will be invited to attend a disciplinary hearing. The disciplinary hearing will not be heard by the same person who investigated the matter.
- 6.2 In the event of a disciplinary hearing taking place Weslo will confirm in writing the following:
  - a. give the employee a minimum of five working days' advance notice of the hearing;

- b. tell the employee the purpose of the hearing and that it will be held under the Weslo's disciplinary procedure;
  - c. explain the employee's right to be accompanied at the hearing by a fellow worker or trade union official;
  - d. give the employee written details of the nature of his/her alleged misconduct; and
  - e. provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the organisation intends to rely upon against the employee) not less than two working days in advance of the hearing.
- 6.3 Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. Weslo will comply with (6.2 a) above in respect of giving notice of the rearranged hearing.
- 6.4 Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's fellow worker or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.
- 6.5 Where the chosen companion is unavailable on the day scheduled for the hearing, it will be rescheduled, provided that the employee proposes an alternative time within five working days of the scheduled date.

## **7. ROLE OF COMPANION**

- 7.1 The employee's chosen companion has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing.
- 7.2 The companion may also confer with the employee during the hearing. However, there is no requirement for Weslo to permit the companion to answer questions on behalf of the employee, or to address the hearing where the employee indicates that he/she does not wish this.

## **8. RECORDING OF MEETINGS**

- 8.1 The employee, or any person acting on his/her behalf, is not normally permitted to record electronically any meeting held by the organisation as part of the disciplinary process. Any breach of this provision may lead to disciplinary action against the employee, up to and including dismissal.
- 8.2 In certain limited circumstances, Weslo may permit the meeting to be recorded electronically. For example where the employee is disabled, it may be appropriate as a reasonable adjustment under the Equality Act

2010. Where the organisation permits the meeting to be recorded electronically, it will take responsibility for making the recording.

## **9. DATA PROTECTION**

- 9.1 Weslo processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its data protection policy.
- 9.2 In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure.
- 9.3 Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with Weslo's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

## **10. THE DISCIPLINARY HEARING**

- 10.1 A disciplinary hearing will normally be conducted by the employee's department manager [Hearing Chair]; a member of the Corporate Services team [HR Admin] will also be present. Any member of management responsible for the investigation of the disciplinary offence(s) shall not hear the case, although such managers may present any supporting facts and material to the disciplinary hearing.
- 10.2 The employee will be entitled to be given a full explanation of the case against him/her and be informed of the content of any statements provided by witnesses.
- 10.3 He/she will be permitted to set out his/her case and answer any allegations.
- 10.4 The employee will be given a reasonable opportunity to ask questions and present evidence. He/she will also be given the opportunity to raise points about any information provided by witnesses.
- 10.5 The Chair may adjourn the disciplinary proceedings if it appears necessary or desirable to do so including for the purpose of gathering further information.
- 10.6 The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union representative, to consider the new information prior to the reconvening of the disciplinary proceedings.

- 10.7 As soon as possible after the conclusion of the disciplinary proceedings, the Chair will convey the decision of the panel to the employee and will also inform the employee what disciplinary action, if any, is to be taken.
- 10.8 The decision will be confirmed in writing. The employee will be notified of his/her right of appeal under this procedure.

## **11. SENIOR STAFF [EXECUTIVE TEAM]**

- 11.1 Where disciplinary proceedings relate to the Chief Executive, for conduct or capability reasons, the Chair of the Weslo Board will oversee investigations and disciplinary hearings and may appoint external facilitators to carry out these roles. Appeals in this instance will be heard by The Chair of the Board who may select other members of the Board and/or external experts to assist in the process.
- 11.2 Where disciplinary proceeding relate to other members of the Executive Team, for conduct and capability reasons, the Chief Executive will oversee investigations and disciplinary hearings and may appoint external facilitators to carry out these roles. Appeals in this instance will be heard by The Chair of the Board who may select other members of the Board and/or external experts to assist in the process.
- 11.3 In the event that disciplinary action is taken against an Executive Director of the Board, the Board Code of Conduct may apply and should therefore be referred to.

## **12. DISCIPLINARY ACTION**

- 12.1 Where, following a disciplinary hearing, the organisation establishes that the employee has committed a disciplinary offence; the following disciplinary action may be taken:
- a. Where a minor offence or offences have been committed, a recorded oral warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. The employee should be informed of the period that the warning will remain "live". During this period, the organisation may rely on such a warning in the event of further misconduct on the part of the employee.
  - b. Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a recorded oral warning that remains "live", the employee will receive a first written warning. The warning will:
    - i. set out the nature of the offence committed;
    - ii. inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;

- iii. specify the period for which the warning will remain "live", after such period [the organisation will review the warning/the warning will automatically lapse]; and
    - iv. state that the employee may appeal against the warning.
  - c. Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the organisation decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains "live", a final (or combined first and final) written warning may be given. Such a warning will:
    - i. set out the nature of the offence committed;
    - ii. inform the employee that further misconduct is likely to result in his/her dismissal; and
    - iii. state that the employee may appeal against the warning.
  - d. Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given under c. above, the employee may be dismissed with notice or with pay in lieu of notice.
  - e. Where the organisation establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.

12.2 The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

### **13. APPEAL**

- 13.1 An employee may appeal against any disciplinary sanction imposed against him/her, with the exception of an informal oral warning.
- 13.2 The appeal will be heard by a Director who has not been involved in the decision to impose the disciplinary sanction on the employee.
- 13.3 In the event that a Dismissal has been the outcome of a Disciplinary Hearing, the Chief Executive will hear the appeal.
- 13.4 The Director is obliged to consider any representations made by the employee, the employee's fellow employee or trade union official and those of the Investigating Officer who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction.

- 13.5 The Director hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction.
- 13.6 In the event that the Director finds for the employee, the Director shall allow the appeal and shall remove all records of the disciplinary sanction from the employee's record.
- 13.7 In the event that the Director does not accept the representations made by or on behalf of the employee, the Director must uphold the disciplinary sanction.
- 13.8 When lodging an appeal, the employee should state:
- a. the grounds of appeal; and
  - b. whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.
- 13.9 The employee must provide written notice of the appeal within five working days of being informed of the disciplinary sanction being imposed against him/her.
- 13.10 Appeal hearings will normally take place within 14 days of receipt of the employee's written notice of appeal.
- 13.11 Upon completion of the appeal, the Director conducting the hearing will convey his/her decision to the employee. The decision will be confirmed in writing within 5 working days. The organisation's decision at the appeal is final.
- 13.12 Where there is an appeal 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 already have commenced on the date that the decision was given by the panel.
- 13.13 If the panel's decision was to dismiss the employee summarily without notice, Weslo 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.
- 13.14 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. His/her continuous service will not be affected.

#### **14. LEVEL AND TIME LIMITS OF WARNINGS**

- 14.1 The following outlines the level of disciplinary warnings and a guide to the length of the 'live' period [refer to 14.2 for repeated conduct after the warning has lapsed]:

Verbal – 6 months

First Written – 9 months

Final Written Warning – 12 months or more in exceptional circumstances

- 14.2 There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.

## **15. GROSS MISCONDUCT**

- 15.1 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the organisation.
- 15.2 In the event that an employee commits an act of gross misconduct, the organisation will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.
- 15.3 Matters that the organisation views as amounting to gross misconduct include (but are not limited to):
- i. stealing from the organisation, members of staff or the public;
  - ii. other offences of dishonesty;
  - iii. falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
  - iv. falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
  - v. sexual misconduct at work;
  - vi. bullying and/or harassment;
  - vii. fighting with or physical assault on members of staff or the public;
  - viii. deliberate damage to or misuse of the organisation's property;
  - ix. serious damage to the organisation's property;
  - x. drunkenness or being under the influence of illegal drugs while at work;
  - xi. possession, custody or control of illegal drugs on the organisation's premises;
  - xii. serious breach of the organisation's rules, including, but not restricted to, health and safety rules and rules on computer use;
  - xiii. gross negligence;
  - xiv. conviction of a criminal offence that is relevant to the employee's employment;
  - xv. conduct that brings Weslo's name into disrepute;
  - xvi. discrimination or harassment of a fellow worker on the grounds of sex, sexual orientation, race, disability, age or religion or belief;
  - xvii. serious insubordination;
  - xviii. assault, acts of violence, or aggression;

- xix. unacceptable use of obscene or abusive language;
- xx. refusal to carry out reasonable management instructions;
- xxi. accepting gifts from outside organisations which have not been approved by management;
- xxii. breach of confidentiality, including the unauthorised disclosure of Company business to the media or any other party;
- xxiii. Other acts of misconduct may come within the general definition of gross misconduct.

## **16. EQUALITY & DIVERSITY**

- 16.1 This Policy will always be carried out in accordance with Weslo's Policy of Equality & Diversity which aims to promote diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures.

## **17. MONITORING & REPORTING**

- 17.1 This policy will be reviewed regularly to ensure compliance with applicable legislative changes, changes within the organisation and best practice.