

## **GUIDELINES FOR DISCIPLINARY ISSUES INVOLVING CHILDREN**

These guidelines are provided for managing a disciplinary procedure with an emphasis on cases of misconduct by a member of staff/volunteer involving children. For Disciplinary issues not involving children, refer to the SCA Grievance, Disciplinary and Appeals Policy

It outlines good practice but it is not intended as an exhaustive guide to all disciplinary matters.

If your organisation has existing disciplinary procedures and practices in place these should be followed.

When managing any concern regarding the conduct of a member of staff/volunteer involving children it is first important to refer to your organisation's 'Responding to Concerns' Procedure.

**Please note that the police or social work services can be contacted for advice with regard to any concern involving the alleged mistreatment of a child. If the nature of the concern suggests a criminal offence has occurred, or that a child may have been abused, the police or social work services must be contacted for advice. If a child is at risk of immediate harm contact the police.**

### **1. MANAGING A PRECAUTIONARY SUSPENSION**

**Duration** - the duration of the suspension will vary depending on the circumstances. Typically it should not exceed the time taken to conduct a satisfactory investigation.

**Communication** - at the outset the member of staff/volunteer should be invited to a suspension interview. The member of staff/volunteer will be informed of the reason for the suspension (within the confines of sharing information) and the duration of the suspension. The details of the suspension should also be confirmed in writing. (*Notice of Precautionary Suspension*)

**Extensions** - an extension to the suspension period may be appropriate; if for example a disciplinary hearing uncovers further facts for investigation or it is advised by the police or social work services. The period of suspension should be kept under review and the member of staff/volunteer informed in writing of extensions.

**Pay** - in the case of a paid member of staff, any period of suspension should be with full pay, as to freeze pay may be interpreted as a disciplinary penalty.

**Status** - at the conclusion of the investigation the member of staff/volunteer should be invited to a disciplinary hearing. Consideration should be given to the suspension status of the member of staff/volunteer at this time. It may be extended pending further investigation or terminated following the conclusion of the disciplinary hearing. The member of staff/volunteer should receive confirmation in writing when the suspension is terminated.

It is important to recognise that the suspension of a member of staff/volunteer may generate disruption within the organisation and consideration should be given to how to minimise this.

### **2. MANAGING A DISCIPLINARY PROCEDURE**

Where the initial assessment of a reported concern identifies misconduct, but not child abuse, by a member of staff/volunteer, the formal disciplinary procedure should be followed.

If the nature of the concern suggests a criminal offence has occurred or that a child may have been abused then advice must be sought from the police before instigating the disciplinary procedure.

A disciplinary procedure should be based on the principles of natural justice which promote fair treatment:

- the member of staff/volunteer will be made aware of the nature of concern or complaint
- the member of staff/volunteer will be given an opportunity to put forward their case
- the organisation will act in good faith, ensure the matter is dealt with impartially and as quickly as possible in the circumstances
- the organisation will offer the member of staff/volunteer the opportunity to appeal a disciplinary decision.

### **3. ROLES IN MANAGING A DISCIPLINARY PROCEDURE**

Typically there are three key roles in the management of a disciplinary procedure:

1. Investigating Officer.
2. Disciplinary Manager/Panel.
3. Appeal Manager/Panel.

The Investigating Officer will conduct the disciplinary investigation to establish the facts surrounding the alleged misconduct.

The Disciplinary Manager/Panel will conduct a disciplinary hearing, make a decision on disciplinary action, and communicate the decision to the member of staff/volunteer at the centre of the allegation.

The Appeal Manager/Panel will review the grounds for appeal by the member of staff/volunteer and make a determination on the appropriateness of the initial disciplinary action.

Post holders should:

- be selected taking account of impartiality (that is, have no bias and be unconnected to the incident(s) in question)
- be familiar with the standard procedures
- understand the importance of dealing with confidentiality, rumour and intimidation
- have consideration and respect for all parties including witnesses
- make efforts to put people at ease and deal firmly but sensitively with a potentially stressful experience.

To promote impartiality at each stage of the process the Investigating Officer should not be involved in the Disciplinary or Appeal Hearing unless to deliver evidence. The Manager/Panel Members involved in the Disciplinary Hearing should not be involved in the Appeal Hearing.

### **4. CONDUCTING A DISCIPLINARY INVESTIGATION**

The following are recommendations for conducting a disciplinary investigation:

#### **Step 1 - Planning the Investigation**

- Establish the precise details of the allegation, (seek clarification from complainant).
- List the parts of the code of conduct that have been breached.
- List what further information/evidence is needed to establish the facts.
- Define the resources and timelines for conducting the investigation.

## **Step 2 - Establishing the Facts**

- Identify who needs to be interviewed and the information required.
- For guidance on interviewing children or young people refer to section 6.
- Plan the order of interviews. Interviewing the volunteer/staff member at the centre of the allegation first may save a lot of time if, for example, he/she admits to the allegation.
- Ensure notice is provided to the interviewee and that it is at a convenient time and in a private location.
- It may be helpful to prepare questions or points to cover during the interview.
- State clearly the purpose of the interview and what the information will be used for.
- Open-ended questions (e.g. who, what, where, how and why) encourage people to talk and expand on the subject.
- Close-ended questions (e.g. Do you..) will only be answered by 'yes' or 'no' and should be used sparingly. They can be useful for confirming facts.
- Record the key points of the interview and ask the interviewee to confirm that it reflects the content of the conversation.

## **Step 3 - Assessing the Facts**

- Review all of the evidence to confirm whether there are any gaps in it.
- Assess the investigation findings and determine whether a disciplinary hearing is appropriate.
- Certainty is preferable but it is sufficient to form an opinion on the balance of probabilities.

## **5. MANAGING A DISCIPLINARY HEARING**

Where the investigation findings provide sufficient evidence to instigate a disciplinary hearing the disciplinary procedure must be followed. The following are good practice guidelines on managing a Disciplinary Hearing and Conducting a Disciplinary Hearing:

### **Invitation to Disciplinary Hearing**

This should be in the form of a letter to the member of staff/volunteer at the centre of the allegation (*Notice of Disciplinary Hearing*) and include:

- Confirmation of the date, time and venue of the proposed hearing.
- Confirmation that there is a requirement to attend.
- Reasonable detail of the allegations which will be presented.
- A copy of any documentary evidence that may be used at the hearing.
- Confirmation that the alleged misconduct may, if proven, require a disciplinary penalty to be imposed. If dismissal is an option this should be clearly stated in the letter.
- Clarification that no judgement will be made in advance of the disciplinary hearing.
- Confirmation that there will be the opportunity to answer the allegations.
- Clarification on the right to be accompanied by a colleague or trade union representative.

### **Conducting the Disciplinary Hearing**

The following practices are recommended when conducting a disciplinary hearing:

- The allegations and evidence will be put clearly to the member of staff/volunteer.
- The member of staff/volunteer will be asked to comment on the evidence and the allegations.
- If matters come to light at the disciplinary hearing that warrant further investigation, consideration will be given to adjourning the hearing while those matters are investigated. The results of any further investigation will be reported to the member of staff/volunteer who will be given an opportunity to comment.
- Once the issues have been put to the member of staff/volunteer and discussed, the respective positions of both sides will be summarised at the end of the hearing.
- The member of staff/volunteer is told that all that they have said will be considered and that they will be written to with the Manager/Panel's decision.
- The Manager/Panel will retire to consider its decision before contacting the member of staff/volunteer.

The Disciplinary Manager/Panel should avoid the following behaviours during the course of the disciplinary hearing:

- Using humour.
- Being apologetic or debating the evidence.
- Defending, arguing, justifying.
- Allowing the meeting to go on too long.
- Making promises that can not be kept.

## **6. SPECIAL CONSIDERATIONS - SPEAKING TO CHILDREN DURING THE INVESTIGATIVE PROCESS OR AS PART OF A DISCIPLINARY HEARING**

In establishing the facts of any concern or complaint, it may be necessary to speak to a child or children who were involved in the alleged incident.

In some circumstances, it would not be appropriate for the person conducting the investigation to speak to a child involved in the incident. In particular, if the nature of the concerns suggests a criminal offence has occurred or that a child may have been abused, then it is the job of specially trained and competent police officers and social workers to interview the child.

If there is any doubt as to whether it is okay to speak to a child, advice should firstly always be sought from the police or social work services.

In cases where the nature of the complaint or concern is such that the police or social work services are not involved, careful consideration should still be given before approaching children to give information as part of the initial investigation process or as part of a disciplinary hearing.

To minimise distress or anxiety for the child it is a good idea to give some thought as to how to approach them. Some things to consider are:

- The age, gender and background of the child i.e. will they require an interpreter?
- Whether the child has any learning or physical disability which might affect their ability to communicate with others
- The child's emotional state

- Timing and location of interview, bearing in mind the child's daily routines
- What you will do if the child becomes upset
- Obtaining consent from the parents/ carer
- Any other information which may be relevant.

Parties should decide whether it is absolutely necessary for the child to be involved in a disciplinary hearing. If the child is to be involved consideration should be given to the following:

- Allowing the child to be accompanied by a relative or other responsible adult (preferably someone who is not involved in the case)
- The environment or room layout - how intimidating it could appear to a child
- The number of people present - try to ensure only those who need to be there are present whilst the child gives evidence
- The age of the child
- The nature of the evidence the child may be giving
- The nature of the relationship between the child and the subject of the hearing
- The tone and style of questioning i.e. clear, non-threatening with sufficient opportunity for the child to consider the questions and answer them.

These considerations should be balanced against the need to ensure the member of staff/volunteer has a fair hearing.

## **7. DECIDING ON THE DISCIPLINARY PENALTY**

Where the Disciplinary Manager/Panel believes that a case of misconduct is proven, a decision must be reached on the appropriate disciplinary penalty.

A decision on the disciplinary penalty should be applied in accordance with the disciplinary procedure.

The following should be considered when deciding on the penalty:

- The nature and seriousness of the misconduct.
- Previous disciplinary record.
- The likelihood of repeating the misconduct.
- Previous service/contribution to the organisation.

The penalty should be appropriate to the severity of the misconduct.

Once the penalty has been agreed the member of staff/volunteer should be written to with confirmation of the penalty and the brief reasons (*Notice of Written Warning or Final Written Warning*).

If a warning is to be given, the length of time for which this will be live should be stated in the letter and should be in accordance with the disciplinary procedure.

Any letter of dismissal should make clear the reason why the member of staff/volunteer is being dismissed and the date when the termination will take effect (*Notice of Dismissal of Action Short of Dismissal*).

## **8. THE APPEAL PROCESS**

In line with the principles of natural justice a member of staff/volunteer should have the right to appeal a disciplinary penalty decision. Letters communicating a disciplinary penalty should

state that the member of staff/volunteer has a right to appeal against the disciplinary penalty and should include details of the person to write to and the timescales involved.

A member of the organisation who is in a more senior position than the person making the penalty decision should conduct an appeal.

The person(s) hearing the appeal should not have been involved in the procedure leading up to the penalty decision.

The appeal hearing should be arranged with advance notice of date, time and venue and should be confirmed in writing to the member of staff/volunteer.

Prior to the appeal hearing, the member of staff/volunteer should be asked to confirm any grounds on which they are appealing and why they believe the penalty decision was incorrectly made.

Once any issues have been discussed at the appeal hearing the matter should be adjourned and the member of staff/volunteer told that a decision will be made and confirmed in writing.

The decision of the Appeal Manager/Panel should be confirmed in writing to the member of staff/volunteer. In accordance with the club's disciplinary procedure the letter should confirm whether there is any further right of appeal (*Notice of Appeal Hearing Against Disciplinary Action*).

## **DISCIPLINARY PROCEDURE**

The Scottish Canoe Association (SCA) aim is to encourage high standards of individual behaviour in all aspects of the sport. This procedure sets out the action which will be taken when the code of conduct is breached by a volunteer or a member of staff. This procedure should be read in conjunction with the procedure for Responding to Concerns about the Conduct of a Member of Staff/Volunteer

### **1. PRINCIPLES**

- a) This procedure is designed to establish the facts quickly and to deal with disciplinary issues consistently.
- b) No disciplinary action will be taken until a matter has been fully investigated.
- c) The member of staff/volunteer involved may be suspended from their role while an investigation is carried out. Suspension is not a form of disciplinary action. A decision to suspend will be made by the CEO. Notification of the suspension and the reasons will be conveyed in writing to the member of staff/volunteer.
- d) At every stage of the formal disciplinary procedure the member of staff/volunteer will have the opportunity to state his/her case at a disciplinary hearing. If so wished he/she will have the opportunity to be represented or accompanied at the hearings by a third party e.g. a friend or colleague or a trade union representative, (where applicable).
- e) The member of staff/volunteer has the right to appeal against any disciplinary action.
- f) The disciplinary procedure may be implemented at Stage 1, 2 or 3 if the member of staff/volunteer's alleged misconduct warrants such action.

### **2. THE PROCEDURE**

#### **2.1 Initial Assessment/Stage**

The purpose of the initial assessment is to clarify the nature and context of the concern. It should determine whether there is reasonable cause to suspect or believe that a child has been abused or harmed, or is at risk of abuse or harm. It will involve asking some basic questions of appropriate individuals with the sole purpose of clarifying the basic facts.

If the nature of the concern suggests a criminal offence has occurred, or that a child may have been abused, then advice must be sought from the police before speaking to child witnesses or to the member of staff/volunteer at the centre of the allegation.

The possible outcomes of the initial assessment are:

1. No further action (facts do not substantiate complaint).
2. Situation is dealt with under formal disciplinary procedures (by sports organisation).
3. Child protection investigation (jointly by the police or social work services).
4. Criminal investigation (by the police).

Where a member of staff/volunteer fails to meet the required standard of behaviour and the shortfall is of a minor nature, the CEO may decide to speak to the member of staff/volunteer on an informal basis to avoid the need for formal disciplinary action. The CEO will also



advise the member of staff/volunteer of the need to achieve and maintain the standards required. The CEO may inform the member of staff/volunteer that failure to achieve the required standards will result in a formal disciplinary hearing, which may result in disciplinary action.

Facts of the conversation should be noted and confirmed in writing to the member of staff/volunteer so there is clarity about what has to be achieved.

Following the initial assessment a period of precautionary suspension may be helpful or necessary while a concern is being further investigated.

## **2.2 Precautionary Suspension**

Precautionary suspension may be considered in the following circumstances:

- if the police or social work services advise suspension
- if the allegation made against the member of staff/volunteer was ultimately to be proved, then there would be a significant concern about the conduct of that member of staff/volunteer towards children or other adults
- if the member of staff/volunteer's attendance or involvement in the club could compromise the investigation
- if Disclosure Scotland notify the SCA that an individual is being considered for the Children's List.

Suspension is not a form of disciplinary action and does not involve pre-judgment.. It should only be considered in the above circumstances.

In all cases of suspension the welfare of children will be the paramount concern.

## **2.3 Formal Disciplinary Procedure**

- Stage 1 – First warning

If conduct is unsatisfactory, the member of staff/volunteer will be given a written warning. Such warnings will be recorded. The warning will expire after [6 months] of satisfactory conduct. A final written warning may be considered if there is no sustained satisfactory improvement or change.

- Stage 2 – Final written warning

If the offence is serious, or there is no improvement in standards, or if a further offence of a similar kind occurs, a final written warning will be given. The written warning will expire after 12 months. Action at Stage 3 will be taken if there is no sustained satisfactory improvement or change.

- Stage 3 – Dismissal or Action Short of Dismissal

If the conduct has failed to improve, the member of staff/volunteer may suffer demotion, disciplinary transfer, or dismissal.

### **Gross misconduct**

If, after investigation, it is confirmed that a member of staff/volunteer has committed an offence of the following nature (the list is not exhaustive), the normal consequence will be dismissal without notice or payment in lieu of notice: - theft, damage to property, fraud,



incapacity for work due to being under the influence of alcohol or illegal drugs, physical violence, bullying, abuse of a child and gross insubordination.

Following advice from the police, cases that also involve a criminal investigation will not preclude disciplinary action being taken.. This is provided sufficient information is available to enable the SCA to make a decision and that to do so does not jeopardize the criminal investigation. Any decision to dismiss will be taken by the SCA only after full investigation.

### **3. APPEALS**

A member of staff/volunteer who wishes to appeal against any disciplinary decision must do so to the President within seven working days of the disciplinary decision being made known to them.

The member of staff/volunteer should provide a written statement of the appeal, indicating the grounds for the appeal together with such accompanying documents as they feel appropriate.

The appeal will be heard by an Appeal Panel and a decision on the case made as impartially as possible.

The Appeal Panel will notify the member of staff/volunteer of the decision in writing as expeditiously as possible. The decision of the Appeal Panel is final and there is no right of appeal.

### **4. REFERRALS TO THE CHILDREN'S LIST**

Where the SCA takes disciplinary action to remove a member of staff/volunteer from regulated work as a result of harmful behaviour towards a child, then they have a duty to refer the member of staff/volunteer to Disclosure Scotland so that consideration can be given to whether that individual should be barred from any kind of regulated work with children. Without this duty there would be no way of preventing individuals moving undetected to other organisations where they may continue to pose a risk.

The Protection of Vulnerable Groups (Scotland) Act 2007 stipulates that organisations must refer to Disclosure Scotland the case of any member of staff/volunteer who (whether or not in the course of their role within the organisation) has:

- harmed a child
- placed a child at risk of harm
- engaged in inappropriate conduct involving pornography
- engaged in inappropriate conduct of a sexual nature involving a child, or
- given inappropriate medical treatment to a child.

**AND** as a result:

1. The SCA has dismissed the member of staff/volunteer.
2. The member of staff/volunteer would have been dismissed as a result of the incident had they not resigned, retired or been made redundant.
3. The SCA has transferred the member of staff/volunteer to a position in the SCA which is not regulated work with children.

4. The member of staff/volunteer would have been dismissed or considered for dismissal where employment or volunteer role was not due to end at the expiry of a fixed term contract; or,

5. The member of staff/volunteer would have been dismissed or considered for dismissal had the contract not expired.

The SCA will also refer the case of a member of staff/volunteer where information becomes available after the member of staff/volunteer has:

- been dismissed by the SCA
- resigned, retired or been made redundant
- been transferred to another position in the SCA which is not regulated work with children; and,
- where the SCA receives information that a member of staff/volunteer who holds a position of regulated work has been listed on the Children's List, the member of staff/volunteer will be removed from the regulated work with children post.