

05.02 DISCIPLINARY AND DISMISSAL PROCEDURE – all Employees.

1. PURPOSE AND SCOPE

- 1.1 This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The aim is to ensure consistent and fair treatment for all who breach rules, behave in an inappropriate manner at work or are unable to work to the required standard of performance. It applies to all employees. The management authority levels for taking disciplinary action for i) office-based and ii) scheme-based are detailed on pages 14 – 17.
- 1.2 The disciplinary procedure provides a framework for investigating any potential shortcomings in conduct or performance, considering the information gathered, holding a meeting or formal disciplinary hearing (as appropriate) and deciding what, if any, disciplinary action to take. The steps taken in accordance with this procedure can help an undisciplined or poorly performing employee to become effective again.
- 1.3 The procedure must be followed to ensure consistency and fairness. Managers are also asked to contact Human Resources at an early stage for guidance.
- 1.4 Bield recognises its responsibilities as an employer to determine appropriate standards required by employees and to advise employees of these standards. Line Managers should ensure that induction, support and supervision (development-based employees) and equivalent meetings for office-based employees are undertaken. Equally all employees should familiarise themselves with the rules and conditions governing their employment as contained in:
 - Code of Conduct
 - Departmental procedures manual, guidance notes etc.
 - Offer of Employment Letter containing terms and conditions of employment
 - Employee Handbook
 - Health and Safety Policies and Procedures
 - Housing & Care Services Operational Manuals (where applicable)
 - Scottish Social Services Council (or other regulatory code where appropriate) Code of Practice
- 1.5 The Head of Human Resources is responsible for monitoring the application of the disciplinary procedure. HR Advisors and more senior members of the Department of Human Resources are available to advise both managers and employees on the interpretation and application of all aspects of the disciplinary procedure and to assist with investigation where appropriate. An HR Advisor or more senior member of the Department of Human Resources normally attends formal disciplinary hearings to provide advice and to ensure consistency throughout Bield.

2. PRINCIPLES OF BIELD DISCIPLINARY PROCEDURE

There are a number of principles in Bield's disciplinary procedure which are adhered to in all disciplinary cases:

- 2.1 No disciplinary action can be taken against an employee until the case has been fully investigated.
- 2.2 Within the formal procedure the employee is advised of the nature of the complaint against him/her and is given the opportunity at a disciplinary hearing to state his or her case before any decision is made on any disciplinary action.
- 2.3 Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.
- 2.4 At disciplinary and appeal hearings the employee has the right to be accompanied by one of the following individuals: a Bield Staff Representative, a Bield Work Colleague or a Trade Union Representative. Where an employee needs special arrangements due to disability or for communication purposes this can be arranged in conjunction with Human Resources.
- 2.5 An employee has the right to appeal against any formal disciplinary action imposed on the grounds as set out in section 12.
- 2.6 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action (refer to section 11.).
- 2.7 If a grievance is raised during the disciplinary process the appropriate way to proceed will be considered i.e. whether to deal with the disciplinary and grievance concurrently if they are related.

3 WHAT IS CONSIDERED A DISCIPLINARY OFFENCE?

The following lists are to provide general guidance about misconduct and how seriously it is viewed.

3.1 GROSS MISCONDUCT

Gross misconduct is generally regarded as misconduct serious enough to destroy the employment contract between the employer and employee and make any further working relationship and trust impossible.

Matters that Bield views as amounting to gross misconduct include (but are not limited to):

- (a) **Acts of physical assault, threatening, intimidating or bullying behaviour**
towards service users, work colleagues or members of the public.
- (b) **Theft and Fraud**
Any deliberate attempt of – or actual act of – theft or fraud from the Association, service users, employees, contractors or members of the public involved with the Association including deliberate falsification of overtime sheets or other attendance records, expenses claims or other financial records.
- (c) **Other offences of Dishonesty**
- (d) **Negligent behaviour**
An act or failure to act which seriously threatens the health or safety of service users, employees, or members of the public (or an act which causes actual loss, damage or injury through serious negligence).
- (e) **Serious Insubordination**
- (f) **Prolonged Unauthorised Absence from Work**
- (g) **Unlawful Discrimination, Harassment or Victimisation of a colleague on the grounds of sex, sexual orientation, race, disability, age, religion or belief or no belief**
- (h) **Serious Incapability at Work caused by Alcohol, Illegal Drugs or misuse of Prescription Drugs**
- (i) **Conduct that brings the Association into serious disrepute**
- (j) **Serious Breach of the Code of Conduct, SSSC (or other Regulatory Body) Code of Practice or any Bield Policy or Procedure**
- (k) **Falsification of a qualification that is a stated requirement of the employee's employment, registration or results in payment of a higher level of salary**
- (l) **Conviction, or in some circumstances charges, of a criminal offence that is relevant to employment.**

If, after investigation and consideration at a disciplinary hearing, it is concluded that an employee has committed an offence deemed to be gross misconduct the normal consequence will be dismissal. While the alleged gross misconduct is being investigated the employee may be suspended on pay (see also section 7).

3.1.1 Criminal Offences

An employee will not automatically be dismissed or otherwise disciplined because he or she has been charged with, or convicted of, a criminal offence. The question to be addressed in such cases is whether such conduct warrants action because of its employment implications. Where a criminal charge has been made, the Association is not obliged to await the outcome of the prosecution provided any disciplinary action taken is fair and reasonable in all the circumstances.

An employee who has been charged with a criminal offence should notify their line manager of this. The manager should seek advice from the HR Partner or more senior member of the HR Department. An employee who is registered with the SSSC or other regulatory body must comply with the notification requirements laid down by that regulatory body.

3.2 MISCONDUCT

Matters that Bield views as amounting to misconduct include (but are not limited to):

- (a) Unauthorised absence from work**
- (b) Persistent poor timekeeping and/or attendance**
- (c) Less serious incapability at work caused by Alcohol, Illegal Drugs or misuse of Prescription Drugs** (with appropriate reference to the Alcohol Policy and Drugs Policy)
- (d) Failure or refusal to carry out reasonable instructions or follow procedures**
- (e) Less serious carelessness or negligence in carrying out duties and responsibilities of the post**
- (f) Less serious breach of the Code of Conduct, SSSC (or other Regulatory Body) Code of Practice or any Bield Policy or Procedure.**

This is an indication only of the types of misconduct which after investigation may result in disciplinary warning(s) and will normally only result in dismissal after previous warnings.

4 REPORTABLE ALLEGATIONS AND INCIDENTS

A number of regulatory or funding bodies have either legal or contractual requirements for allegations and/or the outcome of disciplinary procedures to be reported (as detailed overleaf).

- 4.1 The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations (SSI 2002/114), Regulation 21 (Notification of death, illness and other events) states that Providers of care services must tell the Care Inspectorate immediately of any allegation of misconduct by the provider or any person who is employed in the care service.

- 4.2 As a care service provider Bield must provide the Scottish Social Services Council (SSSC) with any information it may reasonably require about employees in the exercise of its regulatory functions (section 57B of the Smoking, Health and Social Care Act (Scotland) 2005. The SSSC has responsibility for the registration and regulation of social service workers and is required to be assured of the good conduct of registrants; the focus of the SSSC is consideration of whether or not an individual's misconduct or negligence is serious enough to call into question their suitability to become or remain (as applicable) registered as a social service worker.
- 4.3 Some employees will be registered with regulatory bodies other than the SSSC so in addition to the requirements outlined in 4.2, Bield is required to report cases of possible unfitness to practice to the relevant regulatory body e.g. Nursing and Midwifery Council where it is believed that the conduct or practice of a registrant is impaired to the extent that public protection may be compromised.
- 4.4 The SSSC or other regulatory bodies can receive directly complaints about the conduct of a social service worker; the regulatory bodies each have their own procedures for investigating complaints.
- 4.5 In addition, as part of their contracts for services, some local authorities require to be informed of serious allegations/disciplinary action.
- 4.6 The Protection of Vulnerable Groups (Scotland) Act 2007 places a duty on organisations to make a referral when certain criteria are met. Broadly speaking, the criteria are that: (a) an individual doing regulated work has done something to harm a child or protected adult and (b) the impact is so serious that the organisation has (or would) permanently remove the individual from regulated work.

A table of Requirements of Reportable Allegations and Incidents is available below. This table should assist managers to make appropriate reports to regulatory or funding bodies about either allegations of misconduct and/or the outcome of disciplinary procedures, in addition there are internal reports required in some circumstances. Reports should be made without delay.

TABLE OF REQUIREMENTS: REPORTABLE ALLEGATIONS AND INCIDENTS

The table below is to assist managers to make appropriate reports to regulatory or funding bodies about either allegations of misconduct and/or the outcome of disciplinary procedures, in addition there are internal reports required in some circumstances. Reports should be made without delay.

Circumstances of Allegation or Disciplinary Finding:	Reportable to:	Responsible for Report:
<p>Alleged Misconduct Defined as intentional wrongdoing, deliberate violation of a law or improper behaviour – which warrants investigation, disciplinary action or dismissal.</p>	<p>Care Inspectorate – Registered Care Services only. Report allegation not personal details of individual concerned.</p>	<p>Service Manager</p>
<p>Alleged Theft Theft must be investigated in accordance with the Fraud and Theft Policy.</p> <p>Alleged Theft (any value) Alleged Theft over £500 Alleged Theft over £1000</p>	<p>Care Inspectorate– Registered Care Services only. Police - notification where appropriate is also expected by the Care Inspectorate</p> <p>Departmental Director Senior Management Team The Scottish Housing Regulator</p>	<p>Service Manager</p> <p>Service Manager</p> <p>Line Manager. Dept. Director Chief Executive</p>
<p>Act of Theft established – whether or not an allegation is made or proved against an individual.</p> <p>Theft (any value) Theft over £500 Theft over £1000</p>	<p>Care Inspectorate – Registered Care Services only. Police</p> <p>Departmental Director Senior Management Team The Scottish Housing Regulator</p>	<p>Service Manager</p> <p>Line Manager Dept. Director Chief Executive</p>
<p>Allegations of a criminal nature.</p>	<p>Care Inspectorate Police notification where appropriate is also expected by the Care Inspectorate</p> <p>Departmental Director</p>	<p>Service Manager</p> <p>Head of Service</p>
<p>Dismissal on grounds of gross misconduct/misconduct or, where but for the individual’s resignation or abandonment of employment, the individual would have been dismissed or dismissal on such grounds would have been considered.</p>	<p>SSSC Individual’s name and an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.</p>	<p>HR Partner or more senior member of HR Department.</p>
<p>Dismissal of an employee undertaking regulated work or transfer to a post which would not be considered regulated work (as a form of disciplinary action)</p>	<p>Disclosure Scotland Individual’s name and an account of the circumstances which led to the dismissal/transfer or which were present when the resignation or abandonment took place.</p>	<p>HR Partner or more senior member of HR Department.</p>
<p>Serious complaint, investigation or disciplinary action relating to senior management. Dismissal of senior management.</p>	<p>The Scottish Housing Regulator</p>	<p>Chief Executive</p>

Whistle-blowing (qualifying disclosures as defined by the Public Interest Disclosure Act 1998 and raised under the Association procedure).	The Scottish Housing Regulator	Chief Executive
Serious events which may potentially bring the Association into disrepute or which would raise public concern about the Association.	The Scottish Housing Regulator	Chief Executive
Employment Tribunals	The Scottish Housing Regulator	Chief Executive

5. RESOLVING CONDUCT OR PERFORMANCE ISSUES INFORMALLY

- 5.1 Cases of minor misconduct are usually most effectively dealt with informally. A timely discussion with the employee about the facts of what happened, listening to their explanation and agreeing future expectations can achieve an improvement in performance or correction of conduct. The discussion should be approached with the objective of encouraging and guiding the employee to improve. However, some issues are just so serious they have to be dealt with more formally i.e. matters of gross misconduct or more serious misconduct (an illustration of such matters is provided in section 3).
- 5.2 Where an improvement is required the manager will make sure that the employee understands what needs to be done, how performance or conduct will be reviewed and over what period. The employee will be advised that if there is no improvement the next step may be the formal disciplinary procedure. Line Managers will take a brief note of any such interviews and a copy will be given to the employee as this will constitute an informal warning. The notes should contain details of work areas discussed, those aspects of performance/conduct to be improved and any targets set (including timescales for improvement). These notes will be kept on an appropriate confidential local file and can be used for reference purposes should the matter have to eventually be taken further within a reasonable and relevant time period.
- 5.3 These meetings are not part of the formal disciplinary procedure and the employee should be informed of this. As such it is not normal practice for an employee to be accompanied at such meetings.

6 INVESTIGATION

- 6.1 The purpose of the investigation is to obtain sufficient information to establish the facts of the conduct or performance of an individual or individuals. On the basis of the investigation a decision will be made of how the conduct or performance will be dealt with i.e. which of the possible next stages of the procedure is most appropriate to the facts of the investigation for example, management feedback and application of informal support structures such as support and supervision or progression to disciplinary hearing.
- 6.2 Where possible, the investigation of *conduct* will be separate from the decision-making process to ensure that the same manager is not leading the case against the employee and also deciding if the allegation is valid. It is likely that the first stages of a *capability* procedure are best dealt with by the line manager.
- 6.3 It is important that an investigation is carried out without unreasonable delay. Due to the complexity/nature of the investigation, geographical spread of Bield's workplaces or shift-work nature of some posts, some investigations may take some time to complete. In such cases, the employee will be kept up to date (minimum of a weekly basis) on the likely timescales for completion of the investigation.
- 6.4 The manager conducting the investigation must contact the HR Partner (or HR Advisor or more senior member of the HR Department in their absence) in the first instance to advise of the requirement of the investigation and to agree the terms of that investigation including who is best appropriate to investigate. A management guidance note on conducting investigations may also be obtained from the Department of Human Resources.

- 6.5 The nature and extent of the investigation will depend on the seriousness of the matter. The investigation may involve talking to any witnesses of the alleged misconduct or poor performance (normally including the employee involved). A note of any such interviews held must be taken by the investigator. A copy of the note should be provided to the witness and will be considered along with other evidence gathered (e.g. written statements, records, supervision notes) in the investigation.
- 6.6 Investigative interviews into the facts surrounding a disciplinary case are not disciplinary hearings (and as such an employee does not have a right to be accompanied). Having gathered all the facts a report with accompanying evidence and/or notes of investigatory interviews will be passed on to the Senior Manager and identified HR Advisor or HR Partner to make a decision as outlined in section 8 of this procedure.
- 6.7 **Important related Policies and Procedures**
- a) **Whistle Blowing Policy:** some investigations may be initiated under this policy. In all such cases the investigator should take care to ensure that the terms of this policy are adhered to, particularly in respect of the confidentiality of employees.
- b) **Complaints Policy:** if an investigation conducted under the complaints policy identifies a potential conduct or performance issue the information gathered in the investigation of the complaint will normally be used as part of disciplinary investigation and/or form part of the evidence presented at a disciplinary hearing.
- c) **Fraud & Theft Policy:** All allegations of fraud or theft must be investigated in accordance with the Fraud and Theft Policy.

7 SUSPENSION

- 7.1 An employee may be suspended on full pay while investigations take place. Suspension can be applied in the following (indicative and not exhaustive) circumstances:
- where gross misconduct is alleged;
 - to deal with a potentially difficult or inflammatory situation;
 - where there are risks to an employee's or the Association's property or responsibilities to other parties; or,
 - if it will help an investigator to proceed with an investigation e.g. to eliminate the possibility of evidence being altered or removed.
- 7.2 Suspension will only be applied after careful consideration and the arrangement will be reviewed to ensure that it is still appropriate. Other measures may be applied as appropriate to the circumstances of the allegations and operational practicalities e.g. temporary transfer or working under supervision.
- 7.3 Suspension is not an assumption of guilt or form of disciplinary action and should not be regarded as such. Guidance on suspending an employee is available from the Department of Human Resources.
- 7.4 **Suspension of Scheme-based Employees**
If an act of gross misconduct or an act of serious concern occurs during office hours the Housing/Care Managers should contact their Housing Officer/Head of Service and agree who will liaise with the Human Resource Partner regarding the decision whether or not to suspend.

Area Housing Managers and Area Managers or more senior staff have the authority to suspend employees. Outwith office hours and where circumstances prevent the presence of senior staff at the service, the most senior manager present up to the level of Manager in Housing Services and Deputy Manager in Care Services have the authority to suspend but is required to advise the appropriate Head of Housing, Head of Supported Living or HR Partner of the action taken as soon as practicable.

7.5 Suspension of Office-based Employees

The line manager has the authority to suspend but should liaise with the Head of Human Resources or Human Resources Partner regarding the decision whether or not to suspend; where this is not possible the line manager is required to advise the Department of Human Resources of the action taken as soon as practicable.

- 7.6 In all cases, the Human Resources partner or Head of HR will confirm in writing to the suspended employee the reasons for a suspension and any conditions which apply as soon as practicable.

8 DECISION MAKING PRIOR TO A DISCIPLINARY HEARING

- 8.1 The disciplinary procedure provides a fair and consistent method of dealing with problems of conduct or work performance. However, whilst consistency is important, it is also essential to take account of the situations and people involved. Any disciplinary matters will be dealt with fairly and consistently and above all reasonably taking account of all the circumstances.
- 8.2 Disciplinary problems will be dealt with as promptly as possible. If a decision is made to hold a formal disciplinary hearing this will be arranged as soon as practicable.
- 8.3 Prior to any disciplinary hearing being arranged the manager will have fully investigated any disciplinary issue. Having gathered all the facts a report and any associated evidence and/or notes of investigation interviews will be passed on to the Senior Manager and identified HR Representative to make a decision whether:

i) Not to proceed to Disciplinary Hearing

It may be decided there is no case to answer. However, it is important that this decision and the reasons for it are discussed with the individual employee who was subject to investigation.

ii) Informal Warning and/ or other identified Management Action i.e. Support & Supervision, Training or Referral to the Employee Counselling Service.

It may be decided it is not appropriate to proceed to disciplinary hearing but that it is necessary to give guidance and support which will improve the situation.

iii) To arrange a Disciplinary Hearing

This will be necessary when the matter is more serious and it appears that conduct or performance may constitute a disciplinary offence or capability issue which requires appropriate action.

9 ARRANGEMENTS FOR THE DISCIPLINARY HEARING

- 9.1 If, following the investigation, the decision is taken to proceed to a formal disciplinary hearing the employee will be given not less than three working days' notice of the hearing and details of the complaint. Working days for the purposes of this procedure are defined as Mondays to Fridays excluding fixed public holidays.

9.2 Once a date for a disciplinary hearing has been set, a letter will be sent by the Department of Human Resources to the employee confirming:

- the nature of the complaint;
- the location, time and date;
- what the formal hearing is about,
- who will be present and in what capacity
- the right to be accompanied
- and enclosing copies of written evidence or statements.

9.3 The employee will be advised that if they wish to submit any further written evidence or statements they should make the submissions to the disciplinary hearing panel ahead of the hearing.

9.4 Witnesses

A witness is someone who provides or is asked to provide information which is relevant to the alleged misconduct or job performance of an employee

It will normally be sufficient for the evidence from a witness to be provided to the employee facing allegations in the form of a note of interview taken by the investigating manager or a written statement rather than to attend the disciplinary hearing in the person.

If the manager conducting the hearing wishes to call any witnesses the employee will be informed of this in the letter detailing the hearing arrangements. Management reserve the right to request employees to attend disciplinary hearings as witnesses but will use their discretion to refuse to call a witness to personally attend the hearing if in their opinion, attendance at the hearing may cause the witness undue stress.

If the employee facing allegations wishes to call witnesses s/he must advise the manager conducting the hearing prior to the hearing of the name(s) of the witness(es) and reasons for the request.

The agreement of requests for witnesses is dependent upon the overall request being reasonable (i.e. a large number of witnesses would not be required to make the same point that fewer witnesses could make), the witness evidence being relevant and the witness being willing to take part.

It is not appropriate for Service Users to attend disciplinary hearings and employees facing allegations must not ask them to do so under any circumstances.

9.5 Right to be Accompanied at a Disciplinary Hearing

Employees required to attend a disciplinary hearing have the right to be accompanied by an individual from the following: Bield Staff Representative, Bield Work Colleague, Trade Union Representative. Where an employee or their companion needs special arrangements due to disability or for communication purposes this can be arranged in conjunction with Human Resources.

It is not permitted for an employee to be accompanied at a disciplinary hearing by a colleague who may have a conflict of interest or whose presence may prejudice the case. Nor would it be viewed as reasonable for an employee to be accompanied by a colleague from a geographically remote location when an appropriate person is available at their place of work or a location which is close by.

Bield will try to agree a mutually convenient date for the disciplinary hearing with the employee and their chosen companion. Where the chosen companion cannot attend on the date proposed the employee can offer an alternative time and date. This alternative date must be within a reasonable time period and wherever possible should be within **five** working days of the date initially proposed by Bield. In proposing an alternative date the employee should have regard to the availability of the relevant manager conducting the hearing.

If the availability of the preferred companion would lead to an unreasonable delay, Bield can ask the employee to seek an alternative companion.

10 WHAT WILL HAPPEN AT A DISCIPLINARY HEARING

10.1 The points below should be used as a guideline. It may be appropriate to change the order of the points in some cases:

- (a) Those present will be introduced and the reason for their attendance will be explained including the role of the person accompanying the employee. If the employee has chosen not to be accompanied by a Bield Work Colleague, Bield Staff Representative or Trade Union Representative this fact will be recorded in the note of the hearing.
- (b) The purpose and format of the hearing will be explained. (i.e. that it is part of the formal disciplinary procedure, the aim is to establish the facts and give the employee an opportunity to put their side of the case, and that a decision will be taken after the hearing as to what action may be taken or penalty imposed.)
- (c) The complaint(s) against the employee will be outlined by going through the evidence which has been gathered. In doing so in some cases the manager conducting the hearing may ask the investigating officer, if in attendance, to present their findings/evidence and call and question witnesses as appropriate.
- (d) The employee will be given the opportunity to state his/her case, ask questions of the investigating officer or witnesses if present, present evidence or call witnesses on their own behalf if appropriate.
- (e) The person conducting the hearing will try to establish all the facts by general questioning and discussion.
- (f) The main points concerning the offence, the main points raised by the employee and any matters that need to be checked will be summarised.
- (g) The employee will be asked to leave the meeting to allow proper consideration of all the matters raised. The meeting may be reconvened to advise the employee of the outcome, or it may be agreed that the employee will be advised of the outcome by letter within a reasonable time-scale. In deciding the penalty to be imposed, relevant factors will include the employee's general record, position, length of service, precedent, intent and any special circumstances.

10.2 The Role of the Employee's Companion

The chosen companion has the right, if the employee wishes, to address the hearing in order to: put the employee's case, to ask questions on the employee's behalf and to sum up the case and otherwise participate as fully as the employee would wish them to in the hearing. The companion should not however answer questions on behalf of the employee.

Staff representatives, work colleagues and Trade Union representatives do not have to accept a request to accompany an employee, and should not be pressurised to do so.

10.3 Written Confirmation of the Decisions taken at a Disciplinary Hearing

The employee will always receive written confirmation of: the nature of the misconduct or unsatisfactory performance; the decision reached; any disciplinary action (see section 11 overleaf) and how long it will last; any time period for improvement and the improvement expected; the likely consequences of further misconduct or unsatisfactory performance as well as the process and timescale for lodging an appeal. A written record of the hearing will be kept and a copy provided to the employee.

11 FORMAL ACTION

Where, following a disciplinary or capability hearing, it is established that the employee has committed a disciplinary offence the following disciplinary or capability action may be taken:

LEVEL 1 – FORMAL WRITTEN WARNING

Level 1 would be the first stage in the procedure if after investigation and hearing the misconduct or unsatisfactory performance is considered to be of a nature that requires a formal warning.

Where there is no repeated misconduct within a period of normally 6 months the warning shall be disregarded in relation to any future disciplinary action. Where the matter is one of capability or performance the time-scales for the identified improvement in performance will be set as appropriate to the circumstances.

LEVEL 2 - FORMAL WRITTEN WARNING

When there is repeated misconduct or no improvement in performance following the issue of a level 1 formal warning a further hearing will be held and after full consideration of the circumstances a level 2 warning may be issued.

Level 2 can be the first stage in the procedure if after investigation and hearing the misconduct or unsatisfactory performance is considered serious enough to warrant an immediate level 2 warning.

Where there is no repeated misconduct within a period of normally 12 months the warning shall be disregarded in relation to any future disciplinary action. Where the matter is one of capability or performance the time-scales for the identified improvement in performance will be set as appropriate to the circumstances.

LEVEL 3 - FINAL WRITTEN WARNING

This level is appropriate if there is continued failure to improve and conduct or performance is still unsatisfactory after the issue of a level 1 or 2 warning.

Level 3 can be the first stage in the procedure if the misconduct or unsatisfactory performance is sufficiently serious.

Where there is no repeated misconduct within a period of normally 12 months (in exceptional cases the period may be indefinite) the warning shall be disregarded in relation to any future disciplinary action. Where the matter is one of capability or performance the time-scales for the identified improvement in performance will be set as appropriate to the circumstances.

ACCOMPANYING SANCTIONS

In exceptional circumstances it may be appropriate to consider the imposition of the following sanctions along with a level 3 formal warning:

- a) withholding or loss of salary increment and/or
- b) demotion (including application of salary for demoted post) and/or
- c) transfer to another scheme or department.

Where such disciplinary or capability action has been decided on, the employee will be given no less than five working days' notice in writing of the action being implemented.

LEVEL 4 - DISMISSAL

Where the employee has committed further acts of misconduct (these being acts other than gross misconduct) or performance does not improve despite previous warnings, the employee may be dismissed. In the case of dismissal after previous warnings Bield reserves the right to pay in lieu of notice where appropriate.

Where the employee has committed an act of gross misconduct, the employee will normally be summarily dismissed i.e. dismissed without paid notice.

12 APPEALS

The opportunity to appeal is an essential part of natural justice and employees can appeal against any formal disciplinary action (not informal warnings) as follows:

- Against the finding that s/he committed the alleged misconduct.
- That the original disciplinary hearing was unfair and/or failed to follow the disciplinary procedure.
- New evidence has come to light which was not available at the disciplinary hearing which may make a difference to the original decision.
- The disciplinary action was too severe or has been applied inconsistently in the circumstances and a less severe action is appropriate.

The written notice of appeal from the employee should clearly state the reason for the appeal (as outlined above) and the grounds for the appeal.

The written notice of appeal must be received by a senior member of the Department of Human Resources within seven working days of the date on which the employee received the letter which confirmed the disciplinary action. The appropriate recipient of the notice of appeal will be stated in the letter of confirmation of disciplinary action.

The Appeal will be heard by one or two senior officers who have not been previously involved in the disciplinary action. The Director of Human Resources or representative will be responsible for selecting who will hear the appeal.

All documentation considered by the original disciplinary hearing will be submitted to those hearing the appeal by the HR Advisor who was present at the disciplinary hearing.

Once the appeal has been set up the employee will be informed in writing of the date and arrangements for the Appeal Hearing. The employee will be asked if they require a further copy of the documents considered by the original disciplinary hearing otherwise they should bring the documents to the appeal hearing. The appeal will take place as soon as possible after the receipt of the notice of appeal, normally within 15 working days. Working days are considered to be Monday to Friday.

The employee will have the right to be accompanied at the Appeal Hearing by an individual from the following: Bield Staff Representative, Bield Work Colleague, Trade Union Representative. (Provisions equivalent to those outlined in sections 9.5 and 10.2 apply at appeal stage.)

Where an employee needs special arrangements due to disability or for communication purposes this can be arranged in conjunction with Human Resources.

12.1 WHAT WILL HAPPEN AT THE APPEAL HEARING

- (a) In general appeals should be regarded as an opportunity to review the original decision and as such will focus on the grounds of appeal. An appeal is not a full re-hearing of the case.
- (b) The appeal panel will have before them copies of all documentation which was considered by those conducting the original disciplinary hearing and any further written statements which may have been submitted and provided to both parties.
- (c) Those hearing the appeal will interview both the employee against whom disciplinary action has been taken and the manager who has taken that action normally separately and ask them to state their case. The appeal panel will ask questions of each party in respect of their case. It will be for the appeal panel to decide whether they wish to interview any witnesses. If the facts of the case are uncontested, it will not normally be necessary to call witnesses to the appeal hearing. The appeal panel will consider however whether it would be beneficial to hear personally the evidence of certain witnesses.
- (d) If new evidence is produced or any statements made which raise genuine doubts about the facts as previously understood, the appeal panel will consider adjourning the hearing to allow further investigations to take place. An appeal hearing would then be re-convened to consider the original decision in the light of all the evidence now available.
- (e) Having heard the cases made by both parties and interviewed any other appropriate persons, the panel will adjourn to consider their decision.
- (f) In arriving at a decision, the appeal panel will consider the reasonableness of the original decision in the light of the evidence. In doing so the appeal panel will consider whether there were reasonable grounds for taking disciplinary action and, if so, whether the type of action taken was appropriate.

The panel has the power to:

- uphold the disciplinary action originally taken
- overturn the disciplinary action originally taken
- impose a lesser penalty.

A more severe penalty cannot be imposed on appeal.

- (g) The decision of the appeal panel will be conveyed in writing to both parties normally within seven working days.
- (h) The decision of the appeal panel is final and there is no further right of internal appeal.

MANAGEMENT AUTHORITY LEVELS FOR THE ISSUE OF DISCIPLINARY WARNINGS & DISMISSAL - OFFICE-BASED EMPLOYEES

Grades 3 and 4 Managers, as appropriate, may issue informal warnings to office-based employees of the grades below their own.

Grade 2 Managers have the authority to issue up to level 2 warnings to office-based employees of the grades below their own.

Grade 1 Managers have the authority to issue up to final warnings to all office-based employees of grade 2 and below and to dismiss employees on Grades 5 and 6.

Appropriate members of the Senior Management Team have the authority to dismiss employees from Grades 6 to 2 and, as appropriate, recommend dismissal of employees on Grade 1.

The approval of the appropriate Board Committee(s) as per the Bield's Standing Orders is required for the dismissal of staff on Grade 1.

The approval of the Board of Management is required for the dismissal of members of the Senior Management Team. In the event of an appeal being made an appropriate appeal panel will be selected.

It should be noted that in exceptional circumstances it may not be able possible to apply these normal levels of authority and Bield reserves the right to delegate the level of authority to other grades of management if required.

MANAGEMENT AUTHORITY LEVELS FOR THE ISSUE OF DISCIPLINARY WARNINGS & DISMISSAL - SCHEME-BASED EMPLOYEES.

SUPPORTED HOUSING & PRIVATE RETIREMENT HOUSING

Housing Officers may normally issue warnings up to Level Two.

Service Managers may normally issue warnings up to Level Three.

Directors and Head of Service have authority to issue warnings and/or dismiss.

Please note that it may not be possible for these guidelines to be followed on every occasion for example in the absence of the appropriate manager on urgent Bield business or leave another manager may be provided with delegated authority to issue a higher level of warning than normal.

Refer to the diagram below:

LEVEL OF DISCIPLINARY ACTION	<u>MANAGEMENT AUTHORITY LEVEL</u>
LEVEL 1 - WRITTEN WARNING	Housing Officer PRH Service Manager
LEVEL 2 - WRITTEN WARNING	Housing Officer PRH Service Manager
LEVEL 3 - FINAL WRITTEN WARNING AND/OR LOSS OF INCREMENT OR DEMOTION	Service Manager PRH Service Manager
LEVEL 4 - DISMISSAL	Head of Service

Notes

1. This diagram is for guidance only and indicates the level of authority for involvement in disciplinary hearings and for issuing warnings which will normally be applied. Circumstances - including the conclusions formed about evidence presented at disciplinary hearing - may dictate the involvement of different grades of management taking decisions about disciplinary action.
2. A HR Advisor or more senior representative from the Department of Human Resources will be involved in advising line management during all disciplinary proceedings.

MANAGEMENT AUTHORITY LEVELS FOR THE ISSUE OF DISCIPLINARY WARNINGS & DISMISSAL - SCHEME-BASED EMPLOYEES.

CARE SERVICES

Care/Service Managers may normally issue up to Level Two warnings for Assistants, Cooks and Care Assistants and Level One Warnings to Senior Care Assistants and Deputy Managers.

Grade 2 Managers may normally issue up to Level Three warnings to all levels of Care Services scheme-based employees and may dismiss all levels of employees but not normally Care/Project Managers.

Head of Service/Directors have authority to dismiss all levels of Care Services scheme-based employees including managers.

Please note that it may not be possible for these guidelines to be followed on every occasion for example in the absence of the appropriate manager on urgent Bield business or leave another manager may be provided with delegated authority to issue a higher level of warning than normal.

Refer to the diagram below:

LEVEL DISCIPLINARY ACTION	MANAGEMENT AUTHORITY LEVEL		
	CARE HOUSE/PROJECT MANAGER	Grade 2 Manager	HEAD OF SERVICE / DIRECTOR
LEVEL 1 - WRITTEN WARNING	All employees up to Deputy Manager level.	All scheme-based employees.	All scheme-based employees.
LEVEL 2 - WRITTEN WARNING	Domestic Assistants/Assistants/ Cooks Care Assistants	All scheme-based employees.	All scheme-based employees.
LEVEL 3 - FINAL WRITTEN WARNING AND/ OR LOSS OF INCREMENT OR DEMOTION	Not normally applicable.	All scheme-based employees.	All scheme-based employees.
LEVEL 4 - DISMISSAL	Not normally applicable.	All scheme-based employees except Care/Project Managers.	All scheme-based employees.

1. This diagram is for guidance only and indicates the level of authority for involvement in disciplinary hearings and for issuing warnings which will normally be applied. Circumstances - including the conclusions formed about evidence presented at disciplinary hearing - may dictate the involvement of different grades of management taking decisions about disciplinary action.

2. A HR Advisor or more senior representative from the Department of Human Resources will be involved in advising line management during all disciplinary proceedings.

CAPABILITY PROCEDURE

In some cases, concern over an employee's performance may arise from an innate lack of ability, skill or experience or other factors beyond their control. Action in cases where there is doubt about the capability of an employee to do their job is not disciplinary action, but follows the same steps - informal and formal. As such there can be up to three levels of warning prior to dismissal on the grounds of capability. In the event of lack of capability however a warning can be issued at level two or three.

The employee will have the right to be accompanied by an individual, at formal meetings to discuss his/her performance, from the following: Bield Staff Representative, Bield Work Colleague, Trade Union Representative. Provisions equivalent to those outlined in sections 9.5 and 10.2 apply at appeal stage. Where an employee needs special arrangements due to disability or for communication purposes this can be arranged in conjunction with Human Resources.

There is a right of appeal against any formal warning issued.

At the informal stage, the manager of an employee whose capability is in doubt will ensure that they have had the training and supervision needed, and that there is nothing else impeding adequate performance. The advice or warnings given to employees at each stage in capability cases will specify:

- the areas in which their performance is unsatisfactory
- the improvement in performance which is required, and how it will be measured
- when their performance will be reviewed again
- the action which may follow if the required improvement in performance is not achieved.

The manager will discuss this with the employee and his/her representative at each stage to ensure that they understand what is required.

If it becomes clear at any stage in the procedure that for reasons beyond his/her control the employee will not be able to achieve the necessary improvement in performance, but would be able to perform at the required level in another post, he/she may be offered redeployment if an appropriate post is available.

In cases involving long-term ill health or frequent and persistent short-term absences due to ill health the procedures set out in the Sickness Absence Policy and Procedures will apply.