

# **Merton Mencap**

## **Disciplinary & Capability Review Procedure**

**Last reviewed**  
March 2025

**Next review**  
March 2027

**This policy and procedure has been adopted by Merton Mencap  
through its Executive Committee which remains responsible for its review**

## **Merton Mencap**

# **Disciplinary & Capability Review Procedure**

## **1. Definitions, Purpose and scope**

The following procedure applies to all members of staff and aims to deal fairly with matters of work performance or conduct. Throughout this document, *employee*, *staff* and *staff member* refer to members of staff and bank staff.

Merton Mencap may enter this procedure at any stage or may not use it at all where a member of staff has less than two continuous years of service.

The aim is to ensure consistent and fair treatment for all staff in the organisation.

Disciplinary procedures are used when employers (in this case, Merton Mencap “the Charity”) take disciplinary action against employees for misconduct or poor performance.

A capability review is undertaken when an employee appears to be unable or unwilling, for whatever reason, to do the job they are contracted to fulfil.

## **2. Principles**

2.1 Problems of poor, or inadequate, performance will be dealt with quickly and equitably.

2.2 A conversation, with evidence-based examples, will be held with the employee about where they are not meeting the required standard/s. Where possible these will be as close to the incident/s as practicable, to ensure feedback is timely.

2.3 Merton Mencap will generally use formal procedures only once a range of informal methods have been attempted, for example, using the normal staff appraisal and target-setting process or through documented conversations between line managers and staff.

2.4 Employees will be informed in writing of any complaints made against them and of their rights.

2.5 Employees will be encouraged to respond to any feedback, including a complaint, before any decision to use formal procedures is taken.

2.6 An employee has the right to be accompanied to any meeting held as part of this procedure by an accredited union representative or a colleague.

2.7 Documentation involved in this procedure will be treated, and held, confidentially and will only be circulated to those directly involved.

2.8 When the formal stage of a capability procedure is begun, the Chief Executive, or Chair of Trustees, will be involved at every stage to review how the procedure is being followed. They will offer advice and guidance to make sure that the procedure is also being followed consistently in the interests of fairness.

2.9 In cases of capability issues to due ill health, the employee needs to inform their line manager of their health issues with a view to discussing reasonable adjustments to their workload and working conditions. Based on appropriate medical advice these may be adjusted to accommodate their health issue.

2.10 Confidential records will be kept at each stage of a disciplinary or competency procedure, including minutes of all meetings and reasons for any decisions that are taken.

### 3. Possible reasons for a disciplinary procedure

All staff are expected to observe Merton Mencap's Standards, Policies & Procedures (including Codes of Conduct) and to behave in a reasonable way towards the organisation, other members of staff, volunteers and service users.

The following are examples of situations that may lead to disciplinary action as a result of misconduct but *they are not comprehensive and should not be read as being exhaustive*:

#### 3.1 Gross Misconduct

Below are examples of gross misconduct which are likely to result in summary dismissal on the first occasion that they occur:

- Serious infringement of Merton Mencap's Staff Code of Conduct(s)
- Serious and willful infringement of Merton Mencap'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 material facts relating to the person's work at Merton Mencap, theft or pilferage of property
- Inappropriate and/or unlawful disclosure of confidential information
- Knowingly or recklessly installing, creating, introducing or proliferating within Merton Mencap's systems or elsewhere, any disruptive virus or code, or other disruptive element
- Serious, deliberate or willful damage to property
- Falsification or misrepresentation of expense claims or other paperwork whether for their own gain or for the benefit of others
- Conducting a business, or business activities, whether or not they are for profit, during working hours

- Conducting business outside work that interferes with work for Merton Mencap (staff must obtain written approval from the Charity, so should ask their line manager for clarification of this rule before taking up other employment)
- Inappropriate use of the internet or computer misuse
- Conduct on or off duty that may reasonably be considered to bring the good reputation of Merton Mencap into disrepute. This includes postings made by staff on personal or Merton Mencap social media sites.
- Making malicious claims of harassment against colleagues, families or service users
- Failure to carry out a direct instruction from a manager or Trustee
- The use of excessive swearing or aggressive behaviour on work premises
- Fighting, harassing, threatening or otherwise intimidating other members of staff, parents/carers or service users on or off duty, including displaying prejudice (verbally or through their behaviour), or discrimination on the grounds of disability
- Reporting for work whilst showing signs of the use of intoxicants, or possessing or taking of any intoxicants on Merton Mencap premises, other than drinking alcohol at Merton Mencap sponsored events
- Illegal and indecent acts while at work
- Allowing or condoning a breach of the law
- Removing any material or equipment from the place of work without prior permission
- Endangering the health and safety of another person at a place of work
- Receiving bribes for placing Merton Mencap business with a supplier of goods or services
- Unauthorised access or attempted access into Merton Mencap computer systems and records, or assisting others to do so
- Receiving gifts or services from service users, their families, commissioners or suppliers without first declaring these to their line manager Merton Mencap (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 Merton Mencap)

**Any act of serious misconduct that is not specifically referred to above may nonetheless result in disciplinary action being taken, up to and including summary dismissal.**

### **3.2 Other forms of misconduct that may lead to a disciplinary procedure**

Poor or inadequate performance and less serious forms of misconduct than those listed above do not normally constitute grounds for summary dismissal or dismissal on the first occasion that they occur. However, if they occur more than once or if they occur in conjunction with other offences, this may result in termination of employment, after a formal warning.

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

- a) Poor standard of job performance, in terms of either quantity or quality.
- b) Poor timekeeping. Persistent lateness will be considered as serious misconduct.
- c) Breach of Merton Mencap rules, provided no danger to health and safety was involved.
- d) Petty insubordination or behaving in a mildly disorderly manner.
- e) Failure to report an accident or incident that has a potential impact on safety.
- f) Smoking in an area where it is not permitted, but not hazardous to do so.
- g) Persistent absenteeism, which appears to be unreasonable.
- h) Failing to maintain reasonable standards of presentation or appearance.

## **4. Investigations**

In cases of possible misconduct, investigation of the evidence and background to the case will be undertaken by a manager who will not be the person who conducts the hearing. The output of this investigation may be a collection of statements and/or a report that will be given to the Chief Executive (or, in their absence, Chair of Trustees) to decide whether a formal disciplinary hearing is justified. After receiving the report, the Chief Executive (or Chair of Trustees) will decide whether or not a hearing should be convened.

## **5. Suspension with Pay Whilst Investigation Takes Place**

The member of staff may be suspended on non-disciplinary grounds with pay while a case is being investigated. This is a neutral act and not a disciplinary sanction. Whilst the member of staff is on suspension, they are not to come onto our premises or contact any member of staff without their manager's written permission, except for the limited reason of arranging to be accompanied to a hearing by a colleague.

## **6. Statement of the Grounds for Action Being Taken**

If the member of staff is invited to a disciplinary or capability review hearing, they will receive a written statement of the alleged conduct, characteristics or other circumstances that have led to the hearing being convened, and will be provided with a copy of the available evidence, including witness statements, where that is relevant.

## **7. Being Accompanied**

Staff have the right to be accompanied to all disciplinary or capability review hearings and subsequent appeal hearings by a colleague employed by Merton Mencap or an accredited trade union official trained for the role. This person is allowed to speak on the staff members' behalf if the staff member wishes them to.

Staff do not have to be accompanied and will not be disadvantaged if they are not.

## **8. Postponement**

Providing the request of a companion is a reasonable one, we will postpone a hearing for up to five (5) working days to allow the employee their choice of person to be present. A hearing will only be postponed once for such reason.

If an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the ACAS code says your employer may end up having to make a decision on the evidence available, and without the employee present. Therefore, the Charity will take each case on its merits but will usually consider it to be reasonable to do this where we have reason to believe the employee is being difficult or trying to inconvenience us.

If an employee is off sick, we will take the circumstances into account but we will not put off a disciplinary hearing indefinitely. We will only proceed to hearing if we have exhausted other avenues, for example, inviting the employee to make written submissions if they cannot be present due to sickness, or trying to obtain an occupational health report on their ability to participate. It may be that a video call would be an appropriate way to proceed.

## **9. Hearings**

The purpose of the hearing is to investigate the facts related to the staff member's apparent unsatisfactory performance or misconduct. Generally, Merton Mencap will give the member of staff at least 48 hours written advance notice of the hearing.

The staff member will be given details about the specific allegations against them and a copy of the evidence, including any witness statements that have been taken. The staff member will be given the opportunity to state their case and produce any additional evidence that they wish to. If they wish to suggest any further lines of enquiry, and if these are reasonable and relevant, the hearing will be adjourned until these further enquiries can be made. If the case against the staff member has been established, they may give examples of any mitigating circumstances. After the staff member has had the chance to state their case, an adjournment will take place to allow the Chief Executive or Chair of Trustees to make a decision.

If the staff member feels that the hearing is not being conducted in a proper way, they can begin a grievance procedure. This will mean that the hearing will be adjourned so that the grievance can be addressed.

Grievances about other, unrelated, matters will not cause the hearing to be adjourned.

The staff member will be informed of the outcome of the hearing in writing. They may also be informed ahead of the written communication, verbally, where this is reasonable and practical.

If the warning is for capability the manager will agree the performance standards expected of them during a review period, with agreed interim review dates scheduled. The Charity will offer assistance, including training and support as reasonably identified in order to help the employee attain and sustain the required standards.

The outcome letter will include the employee's right to appeal against any disciplinary decision.

## **10. Sanctions**

Disciplinary action will vary according to each individual case. Before any decision is made to impose a sanction on the member of staff, there will be a thorough investigation of the circumstances and events involved. The categories of sanctions are as follows:

1. First written warning (6 months)
2. Final written warning (12 months)
3. Dismissal

In certain circumstances it may be appropriate to consider a reassignment or a transfer, potentially on different terms and conditions and / or a suspension without pay as an alternative to dismissal.

Written warnings remain in force for the period indication above. However, where appropriate and reasonable, a longer period may be used.

## **11. First Written Warning**

Where it is not a case of gross misconduct, after a properly convened and run disciplinary or capability review hearing and on the first occasion, the Chief Executive or Chair of Trustees will usually give a written warning to the member of staff.

If a warning concerns poor or inadequate performance, a set period of time will be indicated for review of the staff member's performance, and the standards that they are meant to attain and to sustain will be made clear. Details of the warning will be recorded on the member of staff's personal file.

The warning letter will also inform the member of staff that a final written warning may be considered if there is no sustained satisfactory improvement, or correction, is achieved.

The member of staff will be asked to sign a copy as proof of receipt. If they refuse to sign it, this will be recorded on the warning. A first warning has a life of six (6) months from the date given, after which time it will be disregarded for disciplinary purposes. However, where appropriate and reasonable, a longer period may be used.

## **12. Final Written Warning**

If there is no sustained improvement or correction since the issue of a first written warning, or a repeat misconduct offence has been committed, or an extremely serious offence has occurred for the first time, a final written warning will be given to the member of staff after a properly convened and run disciplinary or capability review hearing.

The final warning letter will also warn that failure to improve may lead to dismissal and will explain the staff member's right of appeal.

The member of staff will be asked to sign a copy as proof of receipt. If they refuse to sign it this will be recorded on the warning. Final warnings have a life of twelve (12) months from the date given, after which time they will be disregarded for disciplinary purposes. However, where appropriate and reasonable, a longer period may be used.

## **13. Dismissal**

Where the member of staff has still failed to meet or to sustain the required standards, or has committed further related misconduct, or in any case of gross misconduct, dismissal may be considered necessary. This will result in the employee being served written notice, in line with their contract, which they will usually not be required to work.

In cases of gross misconduct, Merton Mencap will generally terminate employment without notice being given or pay in lieu of notice being paid.

## **14. Suspension Without Pay**

A member of staff may be suspended without pay for up to a maximum of ten (10) working days as a disciplinary action, where it is considered appropriate.

## **15. Reassignment or transfer**

As an alternative to dismissing an underperforming employee, Merton Mencap may offer a suitable alternative role to enable them to remain with the Charity. This will be a last resort to dismissal, having exhausted the above procedures. The new role may not offer the same level of pay, terms or conditions. It will be up to the employee as to whether they wish to accept this alternative.

## **16. Appeals**



Staff have the right to lodge an appeal against a disciplinary or capability review action within five (5) working days. The appeal will be heard by a person who has not been involved in the initial proceedings or investigation, normally a Trustee.

The staff member may appeal on the grounds that they did not commit the alleged offence, or that the penalty imposed was too severe. The appeal should be sent to the person who held the hearing and they will then arrange an appeal hearing. The appeal hearing will generally be a review of the case, or the staff may ask for a complete re-hearing of the case if they believe that facts were not properly taken into account.

The appeal will review but cannot increase a disciplinary penalty. An answer, in writing, should normally be given to the member of staff within five (5) working days of the end of any such appeal, although a longer time may be required for the person hearing the appeal to investigate the issues further, in which case the member of staff concerned will be informed and told the likely length of the delay. The appeal is final.

## **17. Legal Proceedings**

If criminal proceedings are instituted against any member of staff during the course of their employment with Merton Mencap, they must inform their line manager or the Chief Executive as soon as possible. Failure to do so will be considered misconduct, and if the criminal proceedings are serious and clearly affect the person's safety or ability to do their job, then failure to notify Merton Mencap may be considered to be gross misconduct.

The Chief Executive or another senior manager will investigate the nature and circumstances of the criminal proceedings and establish whether this affects the staff member's ability to continue their normal duties. If they are found guilty in a court of law, or we regard the matter to be serious enough, their employment may be terminated. The disciplinary procedure described above will be applied.

## **18. Notes to the Procedure**

**18.1** Unless the member of staff appeals against a disciplinary decision within five working days of the action being taken, we will assume that they have accepted the decision. This period may be extended by a reasonable amount of time if there is a good reason to do so, such as sickness or holiday absence. Although an answer to their appeal should be given to them within ten days, there may be circumstances where it is not possible to do so.

**18.2** It is the responsibility of Merton Mencap to fully investigate all the facts before disciplining a member of staff. These investigations will allow the staff member to hear the evidence against them and will include giving them the opportunity to state their side of the case and to explain their point of view.

**18.3** Disciplinary action will always depend upon the circumstances of the individual case therefore it may not always be appropriate for this procedure to be followed in the order described above.

**18.4** Nothing in this Procedure is intended to remove the right of Merton Mencap to give an informal reprimand, such as a 'letter of concern' or a verbal warning when a member of staff is believed to have committed a minor infringement of the established standards of conduct.

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