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5.3. Human Resources Policies and Procedures

NB:

- **Extract Cover Sheet Must Remain with Extract**
- **Extracts are Uncontrolled Documents and are only Valid at Point of Submission**
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18 Disciplinary Procedure

The Centre expects all employees to conduct themselves in an appropriate manner in their day to day work, including in their dealings with colleagues, service users and external organisations.

Employees should familiarise themselves with those Centre policies which set out expected standards of behaviour. Where employee conduct falls short of these standards, the Centre will attempt to resolve the matter through informal means where appropriate so that employees are given the opportunity to improve.

If these actions do not provide a resolution, or the conduct is such that it cannot be addressed through informal means then the Formal Disciplinary Procedure set out in this document should be followed.

The Centre aims to deal with all disciplinary issues in a fair and consistent manner. It recognises that, for the employee and manager concerned, involvement in a Disciplinary Procedure can be difficult and stressful. The Centre will therefore ensure that those involved are made aware of available guidance and support, and that disciplinary issues are dealt with as quickly as the specific circumstances allow.

18.1 Purpose & General Principles

The application of Disciplinary Procedures is not primarily a means of imposing sanctions. Kibble aims to encourage improvement in individual conduct and performance and this will be underpinned by supportive counselling. It is intended that the rules of natural justice and of confidentiality will be adhered to throughout.

These rules may be defined as:

- the right to an unbiased hearing
- the right for a party to put a case and to know what is alleged against him/her
- the right to be made aware of all evidence against him or her, and an opportunity to respond to that evidence
- the right to representation

Where misconduct is alleged and the employee denies this, it is accepted that there is a presumption of innocence and that the onus is on management to show reasonable grounds for considering disciplinary action.

Nothing in these procedures shall preclude efforts by a senior member of staff to resolve problems by informal discussion and mutual agreement with the employee concerned without recourse to formal procedure.

At all stages of these disciplinary procedures, employees shall be entitled to be represented by a trade union representative or accompanied by another work colleague and shall be so advised at each stage. In addition, should management feel that the interests of all parties are best served by a deviation from the disciplinary procedure outlined below, this will be discussed and agreed with the employee(s) concerned and their representatives.

No disciplinary action shall be taken under this procedure against an accredited trade union representative until the circumstances of the case have been discussed with the appropriate full-time official of the union concerned. As a consequence of this, the unions should ensure the reasonable accessibility of full-time officials.

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When there has been a written complaint the nature and content shall, save in exceptional circumstances, be divulged to the employee and shall form part of the "relevant documentation". A copy of the written complaint will normally be given to the employee.

Where performance of duties or conduct by the employee is such as to give rise to concern disciplinary action may be taken in accordance with the following procedures.

The normal policy of the Centre in all cases is to identify any disciplinary problem, discuss it with the employee, and attempt to resolve any problem to the satisfaction of both parties. The Centre, however, reserves the right to terminate an employee's employment without having used the Disciplinary Procedure where the employee has completed less than two years' continuous service.

Any investigatory and initial disciplinary action will normally include at least one person from the relevant discipline within Kibble, to which the employee in question belongs.

18.2 Investigation Process

When made aware of possible circumstances that could lead to a disciplinary hearing, the HR Manager or Senior HR Officer will determine the most appropriate action. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

18.2.1 Investigatory Meetings

Where an investigatory meeting(s) is required an Investigating Officer(s) will be appointed, the employee concerned will be notified and reasonable effort made to fully investigate the matter.

Witnesses should be interviewed individually with a careful note being taken of the date, time and length of the interview. All witnesses are entitled to be accompanied by either a trade union representative or work colleague. Written reports should be prepared after each interview and countersigned by those present. Where a complaint against an employee appears particularly serious or complex, a minute taker will attend investigative interviews, to permit the investigating officer(s) to concentrate on the discussion. The minute taker will play no part in the decision making process.

When satisfied that explanations are required the investigating officer(s) should inform the member of staff of their intention to proceed to a formal investigatory interview, which could lead to disciplinary action being taken.

For the investigatory meeting the member of staff will be given the opportunity to be accompanied by a representative of an appropriate trade union or work colleague. It is up to the employee to decide whether or not to be so accompanied. In cases being investigated by a single investigating officer, they should also be accompanied. If the investigating officer(s) then considers that there is a case to answer, the matter should be reported to a senior manager, with recommendations as to whether a disciplinary hearing is warranted.

If the decision is made to progress to a disciplinary hearing the employee concerned should be informed in writing and provided with the findings to date. If the decision is to proceed, the letter calling the employee to the meeting should contain the following:

- the fact that the hearing is being held within the appropriate conditions of service of employees
- the date, location and time of the hearing

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- the allegations regarding work, conduct, or omission of the employee
- a clear invitation to the employee to be accompanied by a representative

The letter should be issued sufficiently far in advance to allow the employee the opportunity to be accompanied by an appropriate representative. Every effort should be made to rearrange the date of the hearing if, in the view of the senior manager, the employee has made reasonable efforts to obtain representation but has been unsuccessful.

Should the employee or their representative wish to seek clarification on any issues arising from the investigatory process including interviews they must submit their questions in writing to the investigating officer(s) no less than 3 days before the proposed disciplinary hearing date. The investigating officer(s) will then seek to clarify the questions raised by carrying out a further investigation where necessary prior to the disciplinary hearing. In cases where the matter of concern is under external investigation, it will not be possible to submit questions to the witnesses as this may undermine the external investigation.

Where an additional investigation is carried out by the investigating officer(s) he/she may then take the decision not to proceed with any disciplinary action thus cancelling the disciplinary hearing. This decision will be communicated in writing to the employee.

18.2.2 Suspension from Duty

It may be necessary to suspend an employee whilst an investigation is taking place. Any suspension will be kept to a minimum and will be on full pay. In these circumstances the suspension itself will not constitute disciplinary action. All managers within the Centre are authorised to suspend an employee from duty as a precautionary measure; however, a member of the senior management team will always confirm such decisions in writing. All suspensions will be reviewed on a regular basis and will only continue as long as is necessary in the circumstances. The maximum period between reviews will be four weeks.

18.3 Disciplinary Hearings

18.3.1 Format

A disciplinary hearing should be held in a room suitable for the purpose and telephone calls should not disrupt the proceedings.

All disciplinary panels will comprise of one or two people, at managements' discretion, both of whom will be senior in status to the employee involved. In addition, a representative from HR or Administration may also be present to prepare a careful record of the proceedings, which will become a minute of the hearing. This minute shall be agreed with the employee and his/her representative. Where the issues are particularly complex, the meeting may be recorded with the mutual consent of all parties.

The format of the hearing may vary according to circumstances but every hearing (including appeal hearings) should include:

- a statement by the Chair of the Disciplinary Panel to confirm the allegations against the employee
- the opportunity to provide counter evidence by the employee or representative
- the opportunity to clarify any of the evidence provided by the employee or representative by the Disciplinary Panel

The hearing should end with a summation of the evidence by the panel chair, together with any concluding remarks from both parties. The disciplinary panel may reach a conclusion immediately and thereafter communicate this to the employee. Normally, however, the members of the panel will wish time to consider the evidence and the employee should be informed of the likely timescale of decision making - which would

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normally be within five working days. Once a decision is reached the hearing may be reconvened and the employee informed of the outcome. In either case a written statement will follow.

In the event of a disciplinary warning being issued, or the employee being dismissed, the employee should be informed that they have the right to appeal, within ten working days of receipt of the written advice of the disciplinary action.

18.4 Disciplinary Action

The Chair of the Disciplinary Panel shall be empowered to impose any disciplinary sanction.

18.4.1 First Written Warnings

A first written warning shall be issued to an employee where misconduct is confirmed or the employee is found to be performing unsatisfactorily.

A first written warning shall specify the nature of the misconduct and the fact that the employee has been notified in writing. Where no appeal has been lodged, or where the first written warning has been upheld, it shall remain on the personal record of the employee for six months. Thereafter, the first written warning shall be expunged. The employee shall be informed of this in writing. The further omission or commission of a similar act, or a subsequent but different offence, may result in a further warning which may be a final written warning.

18.4.2 Final Written Warnings

A final written warning shall be issued by the same procedure as for a written warning and shall indicate that further misdemeanour may result in punitive disciplinary action. A final written warning shall be entered on the personal record of the employee and stand to be admissible for a period of one year. Thereafter it shall be expunged. The employee shall be informed of this in writing.

18.4.3 Dismissal or Other Sanction

If an employee's conduct or performance does not improve within the timescales above, or there are further breaches of discipline, the final step open to management is dismissal. Employees can only be dismissed by agreement from a member of the senior management team, by virtue of their position as Executive Directors.

Where an employee is dismissed, they will be informed in writing of the reasons for their dismissal, the date their employment will terminate and given information on the right of appeal. By mutual agreement, the parties may agree the imposition of a disciplinary sanction short of dismissal e.g. withholding an increment, a period of unpaid suspension or demotion. This discussion will be without prejudice and will be formally arranged with the parties and their representatives.

18.5 Examples of Misconduct/Gross Misconduct

The following examples are not exhaustive but indicative of conduct that the Centre considers may warrant disciplinary action up to and including *summary dismissal in the case of gross misconduct.

Examples of misconduct

- Unsatisfactory attendance at work e.g. unauthorised or unreported absence or persistent lateness
- Misuse of internet, email and other Centre facilities
- Refusing or failure to carry out a reasonable management instruction
- Failure to comply with agreed working practices

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- Failure to take reasonable care of Kibble property or using it for personal use without necessary authorisation
- Persistent offences of misconduct may lead to the termination of employment.

Any misconduct of a sufficiently serious nature may be deemed to be gross misconduct and dealt with accordingly. Examples of behaviour that may constitute gross misconduct are shown below. Again these examples are not exhaustive.

Examples of gross misconduct

- Assault on another employee, service user or member of the public
- Breach of Confidence – serious and/or persistent breaches of confidence
- Dishonesty – Theft, fraud or falsification of records
- Unlawful Discrimination – intentional unlawful discrimination or serious bullying and harassment of employee or service user
- Deliberate damage to Kibble property
- Serious insubordination
- Bringing the Centre into disrepute
- Incapability whilst on duty brought on by alcohol or illegal drugs
- Negligence which causes or might cause unacceptable loss; damage or injury
- Infringement of health and safety rules
- Unauthorised access to or use of computer data, including copying of computer software, other than when authorised in the employee's normal course of employment.

*Summary dismissal - is dismissal for gross misconduct which takes immediate effect and there is no notice period or pay in lieu of notice given as a result of the dismissal.

18.6 Appeal Procedure

18.6.1 Grounds for Appeal

The opportunity to appeal against a decision following a disciplinary, performance or absence meeting is essential to natural justice. Employees may appeal for a number of reasons, which may include the perceived unfairness of the judgement, the severity of the action taken, new evidence becoming available which was not available at the original hearing, or procedural flaws.

If the employee wishes to submit additional evidence at the appeal hearing, he or she should inform the chair of the appeal hearing, of the nature of the additional evidence prior to the day of the appeal hearing to allow the matter to be investigated. The person or sub-committee hearing the appeal may, if it is considered that the nature of the further evidence is vexatious, frivolous or otherwise unnecessary or unreasonable, decline to allow such evidence to be submitted.

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18.6.2 Format of Appeal Hearings

A member of the Senior Management Team will hear all appeals

The format of the appeal hearing by the Senior Manager may vary according to circumstances but every appeal hearing should include:

- a written statement, by the Chair of the Disciplinary Panel, confirming the allegations against the employee and a summary of the decision of the disciplinary panel
- a statement, by the employee, or their representative, outlining his/her grounds for appeal. The opportunity to provide counter evidence by the employee or representative.
- the opportunity to clarify any of the evidence provided by the employee or their representative by the Senior Manager.

The hearing should end with a summation of the evidence by the Senior Manager, together with any concluding remarks from both parties. The Senior Manager may reach a conclusion immediately and thereafter communicate this to the employee.

Normally the Senior Manager shall wish time to consider the evidence. The employee should be informed of the likely timescale of decision making - which would normally be within five working days. Once a decision is reached the hearing may be reconvened and the employee informed of the outcome.

In either case the employee will be provided with a written statement.

The employee will have a further right of appeal to the Chief Executive in cases of dismissal. Where the Chief Executive is unavailable for an extended period of time, the employee will be given the choice (where practicable) of either waiting for the return of the Chief Executive, or to have their appeal heard by a sub-committee of the Board of Directors. The sub-committee of the Board of Directors shall consist of at least three members of the Board who have taken no part in the previous disciplinary procedure. Prior to the appeal, Board members should not receive any prejudicial information relating to previous disciplinary proceedings in the case. In particular, those who have taken the previous disciplinary action should keep their discussions with Board members hearing the appeal to the minimum necessary with the provision of information necessary to the Board's duties

The hearing of the appeal by the Chief Executive or sub-committee of the Board may vary according to circumstances, but will normally take the following format:

- a written statement, by the Chair of the Disciplinary Panel, confirming the allegations against the employee and a summary of the decision of the disciplinary panel
- a statement, by the employee, or their representative, outlining his/her grounds for appeal. The opportunity to provide counter evidence by the employee or representative.
- the opportunity to clarify any of the evidence provided by the employee or their representative by the Senior Manager.

The hearing should end with a summation of the evidence by the Chair of the Appeal Hearing, together with any concluding remarks from both parties. The Chief Executive or sub-committee may reach a conclusion immediately and thereafter communicate this to the employee.

Normally the Chief Executive or sub-committee will wish time to consider the evidence. The employee should be informed of the likely timescale of decision-making - which would normally be within five working

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days. Once a decision is reached the hearing may be reconvened and the employee informed of the outcome.

In either case the employee will be provided with a written statement.

18.7 Referral to professional bodies and/or regulatory bodies

In some cases, the Centre will be required to inform professional bodies (e.g. SSSC, GTCS, HCPC, BPS etc.) and/or regulators (e.g. Care Inspectorate, Scottish Government etc...) of the charge(s), conviction(s) or investigation(s), especially those relating to the abuse or suspected abuse or inappropriate behaviour towards young people. This referral will be made regardless of the employee's registration status.

This is not limited to criminal proceedings but referrals may also be made where internal investigations or disciplinary proceedings are involved.

18.8 Grievance Procedure

The Centre is keen to provide a positive and supportive working environment for all of its employees, and as such will take every step to resolve issues in the workplace quickly and efficiently, at the lowest possible level. It provides a framework within which to deal with complaints, and allows for complaints to be resolved informally where possible, or through a formal grievance procedure where necessary. Where employees have a complaint about the outcome or management of other formal internal processes, e.g. disciplinary or capability procedures, promotion processes, or requests for flexible working, they should always pursue such complaints through the appeals / review procedure set out in the relevant policy.

Exceptionally, this grievance procedure may be used where employees believe that the Centre's policies and procedures have not been complied with and there is no appropriate appeal mechanism through which they can make their complaint.

The grievance procedure is not a substitute for good day-to-day communication where employees are encouraged to discuss and resolve daily working issues. Many problems can be resolved informally if channels of communication are kept open and work well. If problems cannot be resolved informally a grievance may be raised and will be investigated as quickly as possible so that it can be resolved within a reasonable timeframe.

Kibble will deal objectively and constructively with all grievances, and employees who decide to use the procedure may do so with the assurance that the matter will be considered fairly and in confidence. However, it must be recognised that it is not always possible to resolve grievances to everyone's satisfaction. The Centre recognises that formal grievances can have a serious detrimental effect on employees and relationships at work, whether they are upheld or not, and will provide appropriate support to any employee involved in a grievance process from the outset to help minimise any impact.

A grievance is defined as 'a concern, problem or complaint that employees raise with their employer'. This may include a complaint from an employee about their treatment by managers or colleagues, changes to working practices, or a failure to fulfil duty of care obligations.

The procedure outlined below should be used where individual employees, or groups of employees, have a concern they wish to address. It is not for use in situations covered by a collective bargaining process, when the issue should be raised either with the relevant Trade Union, or directly with the HR Department.

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18.9 Grievance Process

To ensure that any grievances relating to employment within Kibble are settled fairly, speedily, and as near to the point of origin as possible, the following procedures shall be adhered to should a grievance arise.

The procedures are written on an individual basis, but shall equally apply to a group of employees having a common grievance.

18.9.1 Informal Discussions

If an employee has a grievance relating to any issue concerning their employment, they should discuss this informally with their line manager. The Centre hopes that the majority of concerns will be resolved at this stage.

18.9.2 Stage 1

If an employee feels that informal discussion has not resolved their complaint, they should put their grievance in writing to their section manager or department head. The supervisor shall then discuss the nature of the grievance with the employee. If the supervisor cannot provide a remedy, or cannot accept the legitimacy of the complaint, he/she should reply orally as soon as possible and in any event within 5 working days, to advise the employee of the next step open to them.

18.9.3 Stage 2

If the matter is not resolved, the employee may raise the matter in writing with one of the senior management team: all of whom are Executive Directors of Kibble. The senior manager shall then discuss the nature of the grievance with the employee. The employee may be accompanied to this meeting by a trade union representative or work colleague.

If the senior manager cannot provide a remedy, or cannot accept the legitimacy of the complaint, he or she should reply in writing to the employee as soon as possible and in any event within 5 working days, to advise of the next step open to the employee.

18.9.4 Stage 3

If a meeting with a senior manager does not resolve the matter to the employee's satisfaction, they should put their grievance in writing to the Chief Executive. The Chief Executive will meet with the employee to discuss the grievance and any steps taken thus far. The employee may be accompanied to this meeting by a trade union representative or work colleague. The Chief Executive shall consider all the information available to him or her and will give a decision in writing within 10 working days. The Chief Executive's decision is final.

In instances where the Chief Executive is unavailable for a considerable period of time, the employee has the option of waiting for the Chief Executive's return, or putting their grievance to his or her designated deputy, whose decision in these circumstances will also be final.

If, at any stage of the grievance procedure, it is not possible for the relevant manager to respond within the specified time period, an explanation will be given and a response time will be advised.

The grievance procedure detailed above does not replace an employee's rights under the Public Interest (Disclosure) Act, covering 'whistleblowing'. For further information, please see section **Error! Reference source not found..**



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18.10 Formal Disputes

In the event of a formal dispute being declared by either Kibble or the trade union(s) involved, the conditions which prevailed prior to the introduction of the circumstances causing the dispute will continue to apply until the matter is finally resolved.

No trade union involved in a dispute arising from these procedures will cause, or take part in, or authorise its members to take part in any form of industrial action against Kibble unless and until the above procedures have been followed and exhausted; similarly, no action will be taken by the Centre against any employee or trade union(s) involved.

Both parties to any dispute should, wherever possible, reach agreement on interim arrangements to allow work to continue while the procedures are being followed.