

**Discipline Policy and Procedure**

HR8.2 Employment Policies

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1. Introduction
   1. MHA is committed to providing a safe working environment that promotes the health and wellbeing of all MHA colleagues. MHA expects all colleagues to conduct themselves in a professional manner in line with MHA’s values to nurture, inspire, and respect.
   2. Whilst all our colleagues are considered to be hardworking, committed individuals; line managers at every level have a duty to ensure that where the rules on discipline or standards of behaviour are breached that appropriate action is taken in a timely manner.
   3. This policy provides a framework for line managers to follow when engaging with colleagues who are not meeting MHA’s expectations to ensure that all issues are dealt with fairly, consistently, and promptly, when standards are not met.
   4. Unacceptable standards of attendance due to sickness should be dealt with using the procedure outlined in the Sickness Absence Management Policy. Similarly, an unacceptable level of performance due to the colleague’s capability should be dealt with using the procedure detailed in the Capability Policy. This policy reflects the ACAS Code of Practice on Discipline and complies with current legislation.
2. Scope and Purpose
   1. All colleagues, except those on probation (who are usually in their first six months of employment) are covered in the scope of this policy. For colleagues in their probation period, refer to the Probation Policy.
   2. The purpose of this policy is to ensure that MHA’s standards of behaviour and conduct are explicit, colleagues understand their obligations, and that where misconduct is alleged that people are managed in a fair, consistent, and timely manner. It is the aim of our policy that any colleague involved in this procedure feels that they have been treated with consideration.
   3. The procedures outlined in this policy provides anticipated timescales for the completion of the process which are in place to ensure that any formal investigation or hearing is not delayed. It is our intention to ensure that avoidable delays are minimised and that any concerns regarding conduct are resolved as quickly as possible thereby alleviating as much as possible the strain on people involved.
3. Informal Procedure and Coaching / 1:1 Meetings
   1. MHA understand that people come to work with the best intentions, therefore we endeavour to learn when things do not happen in the way they should do, rather than take disciplinary action. However, there may be times when disciplinary action is necessary due to the seriousness of an issue, in this instance it is essential that colleagues are treated with dignity and kindness in-line with our values, regardless of the circumstances. Poor attitude and behaviour of any kind is not acceptable. If a colleague’s attitude or behaviour is considered to be inappropriate, it is reasonable for management to discuss their concerns with the colleague to understand their version of events, and work with the colleague to improve. However, managers should also advise the colleague of the possible consequences if repeated.
   2. Individuals make mistakes and the management system is established to provide advice, guidance, direction and coaching as necessary to ensure satisfactory behaviour and performance. The objective of the discipline policy is to help the colleague improve. Therefore, coaching or guidance should normally be given unless the offence is repeated or serious enough to warrant immediate use of the formal procedure. This will normally be done as part of the supervision process.
   3. Line Managers must retain their own notes of concerns raised with individuals, as part of the supervisory process, as they may be relevant if formal disciplinary action is taken later. It is of paramount importance that these notes are kept securely and confidentially. Concerns can be recorded in 121 notes, or where appropriate, using the record of concern form. Please seek advice from the HR team if you are unsure.
   4. 1:1 meeting is not part of the formal discipline procedure. Written notes of 1:1 meeting should be taken for the manager’s and colleague’s records and should be retained in the colleague’s personal file as a record of the conversation and may provide a reference in situations that require disciplinary action. Whereas the action taken should not be decided based wholly upon the 1:1 record, this information may of course be relevant when determining whether action at a particular stage of the procedure is justified.
   5. If an informal approach does not bring about the improvement required, and/or the misconduct is too serious to be classed as minor, then we would move to a formal process.
4. Fact Finding
   1. It is important to always assess cases thoroughly to ensure there is sufficient understanding of the issues or concerns and the circumstances relating to them, to justify the initiation of any action. This will allow consideration of any action being proportionate and justifiable and whether managing situations informally achieves a more productive outcome.
   2. Prior to commencing formal disciplinary investigation, if it is not clear what the concern/allegation is, a fact-finding meeting should take place to establish if any formal process (including potential suspension) needs to be initiated. This meeting should take place in a private environment on a 1 to 1 basis and the individual/s involved should be asked to explain what has happened. This allows the individual/s the opportunity to give their version of events, so that can fully understand the situation, before deciding on the next course of action (including potential suspension). It may also be necessary to meet with other people to help gather facts and to ensure a balanced view.
   3. If, after the fact-finding meeting/s it becomes evident that there is not a problem, the individual/s involved should as soon as possible and practicable be informed of this straight away.
   4. Where a decision is made to refer the issue to a formal investigation, the colleague should be informed of this as soon as possible and practicable.
   5. Incidents of alleged gross misconduct may result in immediate formal investigation, without the need for factfinding to be undertaken. Managers should seek advice from the HR Team to determine whether this is appropriate.
   6. The “Supporting colleagues fairly through workplace situations” tool (Appendix 1) has been developed to support managers understand how an appropriate response may differ according to the circumstances.
5. Suspension
   1. It is emphasised that suspension is not a presumption of guilt and does not constitute disciplinary action. It is important that consideration is given to the wellbeing and mental health of anyone you are thinking of suspending. Suspension should always be a last resort when all other alternatives have been considered.
   2. Other alternatives to consider should include all options to remove risk in the circumstances such as:
   * Work in a different place or at a different time
   * Removal of some duties, e.g., medication duties
   * Supporting a project or other work away from normal location
   * Taking a short period of paid authorised leave. In some cases when a concern first arises, an individual may be sent home to allow the manager and relevant parties to discuss the next steps and any further action that may be required. This would normally be until the following working day, up to a maximum of 5 working days. This will be recorded as ‘Authorised Absence.’
   1. All considerations must be documented on the suspension checklist form (Suspension Checklist) with reasons for decision-making recorded. This should include a plan of what support is to be provided to a suspended colleague e.g., schedule regular welfare calls during period of suspension.
   2. Suspension must be authorised by a Regional Director/ Head of Retirement Living, or Executive Leadership Team member, alongside the Director of People and Communications or Head of People.
   3. After considering the above, if no other alternative is deemed appropriate to mitigate the risks below, a colleague may be suspended when:
   * That there may be a risk to residents, another colleague, or the colleague themselves
   * Or a risk that the investigation could be compromised.
   1. Suspension will usually be on normal contractual pay, except in cases where:
   * An individual is the subject of criminal proceedings and/or regulatory body investigation which may affect whether they can do their job
   * Where an individual is unable to continue providing proof of their right to work in the UK
   * Where an individual is subject to compliance of registration with a professional body e.g., nursing/music therapist, and fails to comply or is refused registration.
   1. In these cases, the organisation reserves the right to suspend the individual without pay.
   2. Where an individual is certificated as being sick during a period of suspension, their suspension and its terms will remain in place, but they will receive sick pay entitlement in accordance with their contract of employment.
   3. A decision to suspend does not preclude the Manager who has authorised the suspension from hearing a disciplinary or an appeal, provided that they have not made decisions or judgements regarding the case.
   4. In all cases, suspension should be for the shortest practicable time in order for the investigation to be completed and for any hearing to take place. The period of suspension should be kept under review, and it may be appropriate dependent on the investigation to lift the suspension or take alternative action.
   5. A member of HR should be nominated to be available for the suspended individual to contact if they need help or information whilst suspended. This is to offer a personal line of communication and is over and above any communication with the investigator.
6. Investigations – Roles
   1. **Investigator**

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| Investigator - Description |
| In most cases, the individuals line manager will be responsible for appointing the  investigator. In most cases, an allegation will be investigated by a Deputy  Manager (or equivalent) from the Home, Scheme or Department where the person  under investigation works, or another member of the senior team (or equivalent).  The exception to this will be in cases where these members of colleague are witnesses to the incident or conduct under investigation, or where they are working at the same level as the person under investigation or where there is any other conflict of interests which would prevent them from carrying out the role. In these circumstances, the Area Manager (or equivalent) is responsible for appointing an investigator as soon as they are made aware of the allegation. |

* + 1. Prior to any disciplinary hearing being held, an investigation into the circumstances of the incident and/or allegation(s) must be conducted by an appropriate manager.
    2. The investigator must be appointed without delay. Individuals conducting investigations may seek procedural advice from the appointed disciplinary chair and/or HR, or advice from other relevant specialists, throughout the process, as required.
    3. The investigator should remain objective during the investigation and remember that the role is to collect and establish the facts. It is not the investigators’ role to prove the guilt of any party, but to investigate whether or not there is a case to answer by collecting relevant information and facts and presenting these in a form of a report.
    4. The investigator should personally interview everyone, including those who are not colleagues of MHA, who they consider will be able to add to their understanding of the facts of the case. There is a template on the Intranet to record the questions and answers from these interviews.
    5. Where witnesses have recorded their recollections prior to an investigatory meeting, during a fact-finding stage for example, the investigator should meet with the witness to discuss the content and ask any further questions to ensure that the statement is as comprehensive as possible. Witnesses must be informed that their witness statements will be provided to the colleague accused of the offence and that they may be asked to attend any disciplinary hearing resulting from the investigation, in order that the person chairing the disciplinary hearing may ask questions connected to their statements.
    6. Witnesses should be encouraged to provide statements and attend disciplinary hearings wherever possible. Should any person not want to provide a witness statement as part of an internal investigation, or should they not be prepared to attend any subsequent disciplinary hearings, any evidence provided by that individual can be considered, but only after a detailed investigation by the investigator to corroborate the evidence provided, as far as possible.
    7. In exceptional circumstances it is possible to ‘anonymise’ statements and allow private questioning of witnesses away from the hearing.
    8. The colleague under investigation must be interviewed by the investigator to consider their viewpoint. If the colleague does not attend, the investigator should reschedule. If the colleague remains unavailable or unwilling, the investigator will rely on available evidence to make a reasonable decision.
    9. If necessary, the colleague may submit a written statement. If it is not possible to interview promptly, MHA may proceed to a disciplinary hearing. Colleagues who refuse to participate will be informed that the investigation and disciplinary hearing, if needed, will proceed based on available information.
    10. It is best practice for such meetings to take place as early as possible. An individual attending an investigatory meeting will not normally have a companion with them. Where it is not possible or practicable to hold a face-to-face investigatory meeting with the individual, in a timely manner, a meeting may be held over the telephone/teams call in order to gather a statement.
    11. The investigator will collect all the facts based on the witness statements, the colleague’s statement and any supporting documentary evidence and will confirm their findings and advise in their report whether they feel there is a case to answer. If so, HR will review the Investigation Report [HR8.2b] prior to this being sent to the nominated disciplinary chair.
  1. **Appointed Disciplinary Chair**

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| Appointed Disciplinary Chair - Description |
| In most cases, the Manager of the Home, Scheme or Department where the person under investigation works will be the person responsible to Chair any formal Disciplinary Hearing. The exception to this will be in cases where the Manager is a witness to the incident or conduct under investigation, where they have already made judgements or decisions regarding the case or where there is any other conflict of interest which would prevent them from carrying out the role.  In these circumstances, the Area Manager (or equivalent) is responsible for appointing a manager to carry out this role as soon as they are made aware of the allegation.  Please note that it is common, particularly where the appointed disciplinary chair is the registered manager, that the manager will already have been advised of a particular incident. This in itself does not preclude the Manager from hearing the case.  The appointed disciplinary chair must ensure that they are satisfied that the investigation contains all the relevant information they require in order to conclude the process. If they feel that the investigation should include more information, they must contact the investigator immediately and request that they obtain the additional information.  Where disciplinary action against a Trade Union representative is being considered, they should be asked whether they would like information about the case to be shared with an official employed by the union or whether they would prefer to do this themselves. The matter should only be discussed with the union with the individual's permission.  Where dismissal is a possible outcome, the appointed disciplinary chair must discuss the matter with HR prior to the hearing taking place. |

* + 1. Disciplinary matters should be handled as confidentially as is reasonably possible and all colleagues involved in the process are required to maintain the strictest of confidence.

1. Formal Disciplinary Procedure
   1. **Action to Take Prior to a Formal Disciplinary Hearing**
      1. Where the informal procedure has not affected the required change, or where the incident/allegation(s) has been investigated and is believed to justify moving directly to the formal procedure, the member of colleague will be asked to attend a formal disciplinary hearing.
      2. The application of the disciplinary procedure is the responsibility of the disciplinary chair. However, to ensure a consistent approach, the disciplinary chair and HR should be kept informed in cases where dismissal is a possible outcome and should be consulted throughout the process and prior to the decision being made on the action to be taken.
      3. Whenever practicable, at least two working days’ written notice of a hearing should be given.
      4. The notice of the hearing must contain the following, as shown in the standard letter:
   * Where dismissal is known to be a possible outcome of the hearing, the colleague must be notified prior to the hearing that their employment is at risk.
   * The colleague must be advised that they have the right to be accompanied by an either an MHA work colleague or a trade union representative. If their preferred companion is not available at short notice, the hearing may have to be delayed by up to 7 calendar days, in order to allow the companion to be able to attend.
   * If the companion is unavailable at the rescheduled time, the colleague will need to select an alternative companion.
   * The invitation to disciplinary hearing letter should also include a request from the colleague in writing to make known the name of their companion, witnesses they will arrange to attend and set out the reasons that they have nominated them as a witness, the evidence they are expected to give and explain why it is necessary for the witness to attend in person rather than submitting a witness statement. If the disciplinary chair decides that it is not relevant for the witness(es) to attend the hearing in person, they reserve the right to refuse and notify the colleague for their reason(s), The disciplinary chair may choose to speak to the witness(es) before or after the hearing and will usually inform the colleague of the information received from the witness. There is no obligation on any witness to attend the hearing in person.
   * Wherever possible, the invitation to the member of colleague to attend the hearing must include full details of the actual alleged offence e.g., “on 17 February 2012 signed to say medication was given to resident [RS] when in fact it wasn’t”; or “was sleeping on a waking shift on 2 March 2012”.
   * A copy of the Discipline Policy, the investigation report including any witness statements or other supporting documentation being relied upon must be made available to the colleague at least two working days before the hearing. Where necessary some information relating to residents and/or other colleagues may require redacting. Please speak to the HR Team for advice.
   * Failure to include this information may result in any disciplinary decision being viewed as unfair.
     1. If the colleague cannot attend the hearing e.g., due to illness, they must notify the hearing chair with good reason(s). The hearing may then be rescheduled, but this will only be allowed once. If the colleague cannot attend the rescheduled time, exceptionally, MHA may proceed with the hearing with written submissions used i.e., the colleague’s responses to the allegation(s) being made against them.
   1. **Formal Disciplinary Hearing**
      1. The Disciplinary Chair will always be accompanied by another colleague e.g., an Administrator, who will take notes and may also have an HR representative present. The investigator will also normally be present to outline the evidence they have gathered and to answer questions from both the disciplinary chair and the colleague.
      2. If the colleague fails to attend a hearing and has not notified the Disciplinary Chair of the panel that they cannot attend, MHA reserves the right to continue with the hearing in their absence.
      3. At the hearing, the procedure will be as follows:
   * The chair of the hearing will open by explaining the reasons why the hearing has been arranged and detailing the incident or allegation. They will also check that the individual has received all the relevant paperwork. If paperwork has not been received the meeting will be adjourned so that they have an opportunity to read it. If necessary, the meeting will be reconvened for another day so that the individual has time to prepare their response to the new information.
   * Covert recording is not permitted in any circumstances and will be treated as a breach in its own right and should be communicated to all present at the hearing prior to its commencement.
   * The investigator will go through the evidence that they have gathered. Full details of any witness statements being relied upon must have been made available to the colleague.
   * The colleague will then be given the opportunity to respond to the allegations and, where appropriate, may ask for witnesses to attend providing appropriate notice has been given to the chair.
   * The colleague or companion must be allowed to challenge witness statements; this may be done directly or may be done by the chair asking questions of witnesses on the telephone, during an adjournment or after the hearing.
   * The detail of the colleague’s response will then be discussed until the full content of their response has been clarified.
   * At any time, the companion may add their input to the hearing and may confer with the colleague. However, the companion must not answer questions on behalf of the colleague.
   * At the end of the hearing, the disciplinary chair will sum up the main points of the discussion.
   * The hearing will then be adjourned and the individual, their companion and the investigator will leave the room. The person chairing the meeting will decide what action is appropriate, (this will involve consultation with HR in relation to Standard Allegations and Potential Outcomes – Appendix 3)
   * During the adjournment, the chair will consider in coming to a decision all the facts of the case and consider any mitigating circumstances, which may include length of service, previous disciplinary record, provocation etc.
   1. **Sanctions**
      1. Sanctions will usually take the form of:
   * First Written Warning
   * Final Written Warning
   * Dismissal

* With Notice
* Without Notice (Summary Dismissal)
  + 1. Other alternatives may include demotion and / or transfer to another position and / or location.
    2. **Sanction Considerations**
       1. If a sanction is considered necessary, the level will be dependent upon:
  + the severity of the offence (check the Allegations and Standard Outcomes list), and/or
  + whether there are existing (active) warnings currently retained on the colleague’s file
  + any mitigating circumstances.
  + If the disciplinary chair wants to give a different sanction from that in the Allegations and Standard Outcomes list due to mitigating circumstances, this must be discussed with HR.
    1. **Warnings**
  + If the Disciplinary Chair decides a sanction is warranted the colleague will be informed that their conduct is expected to improve to an acceptable standard within a specified time scale. As far as possible, specific objectives will be given to establish the accepted standard. Where the colleague’s line manager is not the disciplinary chair, the chair must inform them of the resulting action and objectives and the line manager will be responsible for monitoring and reviewing progress against the objectives.
  + In the case of warnings given in cases of financial irregularities, harassment and abuse, records will remain in your personal file and be retained as per the retention schedule for personal files. The appropriate regulatory bodies will be notified, in accordance with requirements imposed on the organisation due to the nature of our services. The regulatory bodies may require that the records be retained for a longer period.
    - 1. **First Written Warning**
  + Where the informal procedure has not affected the required change, or where the offence warrants moving directly to the formal procedure (as decided by the investigator), for minor offences of misconduct a First Written Warning may be necessary.
  + Normally, this warning will become inactive six months after the hearing.
  + When a First Written Warning has been issued, it will specify that if conduct has not been sufficiently improved or further acts of misconduct have occurred within the specified time scale, then a further disciplinary hearing may be held.
    - 1. **Final Written Warning**
  + In the case of a sufficiently serious incident/allegation(s), or if the required improvement has not been made following a First Written Warning, or if there has been an accumulation of minor offences, a Final Written warning may be warranted.
  + Normally, this warning will become inactive 12 months after the hearing.
  + If a Final Written Warning is necessary, the colleague will be informed that if conduct does not improve or further acts of misconduct occur, a further disciplinary hearing will be held, and depending upon the outcome, they may be dismissed from the organisation’s employment. Conduct will be expected to improve to an acceptable standard within the specified time scale.
    1. **Dismissal**
       1. In cases of a sufficiently serious incident/allegation(s) which constitutes gross misconduct or if the required improvement has not been made following a Final Written Warning, dismissal, with or without notice, may be warranted.
       2. If the chair decides that dismissal is warranted, they will consider whether there are any alternatives to dismissal e.g., demotion and/or transfer to another location or position.
       3. Dismissal for gross misconduct will usually be summary (i.e., with no notice period).
       4. If the decision is taken to dismiss as a result of an allegation of abuse or serious neglect of service users, the relevant Director (via HR) must be notified by completing the Disciplinary Report. If the colleague does not appeal or if an appeal is unsuccessful, the line manager will then carry out any necessary referrals i.e., under the SOVA legislation, governing and professional bodies.
    2. **Alternatives**
       1. An alternative sanction may be considered such as demotion or transferring the colleague to a vacant alternative role at either the same or a lower level. Alternative sanctions may or may not be accompanied by a warning.
       2. If an alternative is possible and considered appropriate, the colleague should receive the terms in writing. Such an alternative would not attract any protection of earnings. In circumstances where the alternative is instead of dismissal, should the colleague refuse to accept an alternative, they would leave us with no option but to dismiss.
    3. **Outcome Notification**
       1. The colleague will be informed of the decision as soon as possible (which will normally be after the hearing) once the chair has had an opportunity to review the evidence and discuss the case with HR, by the chair of the disciplinary panel. In cases of dismissal HR must be contacted before the colleague is informed of the decision.
       2. In any case, the individual will be given confirmation of any action being taken, including sanction and full reasons for the decision, in writing (see standard letter on Intranet) within 7 calendar days of the hearing. This letter must also explain the appeals procedure. Failure to notify an individual of their right to appeal against the decision may lead to the decision being viewed as unfair.
       3. If there is a need to delay this timescale this will be communicated to the colleague explaining why in writing and giving an alternative timescale.
       4. All disciplinary outcome letters should be sent to HR for review prior to being sent.
       5. Notes of the hearing will be available to the colleague and retained on the colleague’s file.

1. Appeal
   1. Any colleague who is dissatisfied with the outcome of any stage of the disciplinary procedure may appeal to the individual named in the outcome letter who has not been involved in making decisions in the case. The appeal should be made within 7 calendar days of receipt of the letter detailing the disciplinary decision, and in any case, there should not be unnecessary delay in requesting an appeal. The appeal should be made in writing and clearly state the basis on which the appeal is to be made together with any appropriate evidence. Grounds for appeal which will be considered include:
   * Unfair process – discriminatory or procedural flaws
   * Flawed investigation
   * New evidence that was not considered previously
   * Substantial reason that the sanction is too harsh (including evidence to substantiate)
   1. Where practicable the appeal will be chaired by a colleague who is more senior than the disciplinary chair and who will not have been previously involved in making decisions in the case: Another suitable member or colleague, for example an Administrator, will also be present to take notes. A member of HR will be present at appeals against dismissal.
   2. The colleague/companion will be allowed to explain why they think the original decision was wrong. Normally the grounds would be that they consider the sanction too harsh; new evidence has come to light; or they wish to complain that the procedure applied at the disciplinary hearing was not fair or correct. The colleague should be allowed to put any new evidence to the chair. The decision at the appeal will be final.
   3. The individual will be sent a written acknowledgement of receipt of their appeal, and a meeting will normally be arranged within 14 calendar days of receipt of the appeal or as soon as is practicable thereafter.
   4. One appeal will be allowed at each stage of the formal disciplinary procedure.
   5. For an appeal, the colleague will be asked to attend a hearing (confirmed in writing by the appeal chair) where they have the right to be accompanied by a companion . The meeting may be postponed by up to five calendar days to enable the colleague’s chosen companion to attend. If the companion is not able to be available at the rescheduled time, the colleague will need to select an alternative companion.
   6. If the colleague cannot attend the appeal hearing they should inform the appeal chair of the good reason, and the appeal hearing may be rescheduled. This will only be allowed once. If the colleague cannot attend (e.g., due to illness) then, exceptionally, written submissions may be used instead.
   7. The senior manager/director should respond in writing to the disciplinary appeal within 14 days of the date of the appeal hearing. If that is not possible the colleague should be told when he/she can expect a response and the reason for the delay.
   * The decision of this meeting is final.
   * Once the appeal is completed, all documentation connected to the disciplinary must be kept confidentially on the individual’s personal file in accordance with the terms of the Data Protection Policy.
   1. In cases of appeal against dismissal, the colleague will not be permitted to resume working until the matter has been decided.
   2. The appropriate manager hearing the appeal may:
   * Uphold the original decision
   * Overturn the original decision (completely)
   * Overturn the original decision (by substituting the sanction)

* This includes the right, in the circumstances or if new evidence comes to light, to increase the original sanction.
  1. The dismissal date will be as determined by the disciplinary chair. In the event that the decision to dismiss is revoked at the appeal hearing, reinstatement with continuous service and employment rights will apply and the colleague’s contractual basic pay will be backdated to the dismissal date.
  2. If the colleague does not attend the appeal hearing and has not notified the appeal chair that they will not be attending, it will be assumed that the appeal is no longer required, and the colleague will be advised in writing that no further action will be taken.
  3. If the dismissal was for abuse or serious neglect of service users, the relevant Director (via HR) must be notified of the outcome of the appeal. The line manager may then carry out any necessary referrals i.e., under the SOVA legislation, governing and professional bodies, as outlined in Section 12 below.

1. Companion
   1. The person chosen by the colleague as their companion may be either a fellow worker, or an accredited trade union representative. MHA reserve the right to request evidence of accreditation of trade union representatives.
   2. Where communication may be difficult due to disability or where the colleague’s first language is not English, for reasons of providing equality and fairness at a disciplinary hearing, the organisation will consider additional support for the colleague if either the individual or the organisation deems this necessary.
   3. Appendix 4 may be provided to a companion in order to assist in explaining their role at a disciplinary/appeal hearing.
   4. The organisation reserves the right to refuse to accept an individual as a companion in the event that there is a conflict of interest or unwarranted expense incurred. The organisation should liaise with a full-time Trade Union representative if this involves a lay Trade Union representative.
   5. HR should be consulted with regard to any queries or concerns over any particular companion.
2. Grievances Raised During the Disciplinary Procedure
   1. If the colleague raises a grievance relating to action being taken against them under the disciplinary procedure this will normally be dealt with at the disciplinary hearing or appeal. The company has no obligation to adjourn the disciplinary procedure in order to follow the Grievance policy.
   2. If there are outstanding issues following matters being raised at the disciplinary hearing/appeal these will be dealt with under the Grievance policy.
   3. If, during the proceedings, an individual raises a grievance which is not relevant to the specific allegations under consideration, this should be dealt with outside the disciplinary procedure under the Grievance Policy but will not impact on the disciplinary procedure. The chair should consult with the line manager or HR on the individual circumstances of the case to decide whether the grievance should be heard before or after the disciplinary.
3. New Allegations
   1. If new allegations come to light during the disciplinary hearing, the colleague must be informed of the new allegations in writing and informed that proceedings may be delayed whilst they are investigated. If the chair plans to rely on the new allegations in making their decision, the colleague must have advance warning of them and an opportunity to answer them at the hearing – even if that means reconvening the hearing.
4. Gross Misconduct
   1. A serious breach of MHA’s Code of Conduct or of any of the Allegations listed in Appendix 3 will be regarded as Gross Misconduct and will normally result in dismissal.
   2. Please see the Allegations and Standard Outcomes list (Appendix 3).
5. Referrals
   1. MHA has a duty to comply with all external regulations which govern the sector. This includes alerting regulatory bodies of complaints upon receipt. Should there be evidence to suggest that a colleague(s) have abused or there is alleged abuse of an older person, or their actions have the potential to cause harm, they will be referred to DBS/NMC or any other professional or regulatory body relevant. This is regardless of whether the colleague is still in employment or not.
   2. **Disclosure and Barring Service (DBS) Referrals**
      1. The following flowchart should be used when devising if it is appropriate to make a DBS referral. All DBS referrals must be authorised by a Regional Director (or equivalent) and the Director of People and Communications: [DBS barring referrals flowchart - GOV.UK](https://www.gov.uk/government/publications/dbs-referrals-referral-chart)
6. Roles and Responsibilities
   1. In addition to the roles and responsibilities set out throughout this policy. General responsibilities include:

| Role | Responsibilities |
| --- | --- |
| **All Colleagues** | All those persons referred to within the Scope of this policy are required to adhere to its terms and conditions. They must understand that this policy is also incorporated into their contract of employment. |
| **Line Management** | Individual line managers are responsible for ensuring that this policy is applied within their own area of responsibility. |
| **Regional Directors and Department Heads** | Authorise DBS referral requests. |
| **People Team (HR)** | HR provides policies and guidance on the application or interpretation of this policy and templates for letters and forms. |
| **Director of People and Communications** | Authorise DBS referral requests. |

1. Training and Monitoring
   1. Training for Investigating Officers is now available for booking via the Learning Zone. The full day training will equip managers with knowledge and techniques to enable them to confidently undertake fair and effective investigations.
   2. Compliance is assessed through direct observation, monitoring, and supervision of our colleagues.
2. Communication and Dissemination
   1. This policy is disseminated and implemented within all MHA services through MHA’s channels of communication.
   2. Each colleague’s line manager must ensure that all teams are aware of their roles, responsibilities.
   3. This policy will be available to the people we support and their representatives in alternate formats, as required.
   4. Any review of this policy will include consultation with our colleagues, review of support planning, incident reports, quality audits and feedback from other agencies.
   5. Queries and issues relating to this policy should be referred to the HR Team or to the Standards and Policy Team policies@mha.org.uk
3. EDI Impact Assessments
   1. Equality, Diversity, and Impact Assessment to be confirmed.
4. Resources
   1. **MHA policy documents, procedures, and guidance:**
   * [Discipline Toolkit](https://intranet.mha.org.uk/page/15787?SearchId=2129676)
   * [Grievance Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=2491&utm_source=interact&utm_medium=quick_search&utm_term=%e2%80%a2%09Grievance+policy+%5bHR8.6%5d+or+) [HR8.6]
   * [Code of Conduct Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=2486&utm_source=interact&utm_medium=quick_search&utm_term=code+of+con) [HR8.3]
   * [Probation Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=2462&utm_source=interact&utm_medium=quick_search&utm_term=probatio) [HR4.12]
   * [Sickness Absence Management Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=2477&utm_source=interact&utm_medium=quick_search&utm_term=sickness) [HR7.1]
   * [Capability Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=2485&utm_source=interact&utm_medium=quick_search&utm_term=capability) [HR8.1]
   * [Information Governance](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=12104&utm_source=interact&utm_medium=quick_search&utm_term=ig001) Policy [IG01]
   1. **Discipline Procedure Templates**

The following documents are templates only, please seek advice and support from HR prior to use via [hr@mha.org.uk](mailto:hr@mha.org.uk)

| **Document Title** | **Code** |
| --- | --- |
| Discipline Confirmation Fact finding Concluded Letter Template | HR8.2d |
| Discipline Suspension from Work Letter Template | HR8.2e |
| Discipline Alternative to Suspension Letter Template | HR8.2f |
| Discipline Sickness and Suspension Letter Template | HR8.2g |
| Discipline Invite to Investigation Meeting Letter Template | HR8.2h |
| Discipline Investigation Meeting Minutes Colleague Under Investigation Letter Template | HR8.2i |
| Discipline Investigation Meeting Minutes Witness Letter Template | HR8.2j |
| Discipline Communication to Colleague Signing Minutes Letter Template | HR8.2k |
| Discipline Suspension Lifted Letter Template | HR8.2l |
| Discipline Investigation Outcome No Formal Action Letter Template | HR8.2m |
| Discipline Investigation Outcome Invite to Disciplinary Hearing Letter Template | HR8.2n |
| Discipline Disciplinary Meeting Minutes Template Form | HR8.2o |
| Discipline Disciplinary Hearing Outcome No Formal Sanction Letter Template | HR8.2p |
| Discipline Disciplinary Hearing Outcome First OR Final Written Warning Letter Template | HR8.2q |
| Discipline Disciplinary Hearing Outcome Dismissal Letter template | HR8.2r |
| Discipline Invite to Appeal Hearing Letter Template | HR8.2s |
| Discipline Appeal Meeting Minutes Template Form | HR8.2t |
| Discipline Appeal Hearing Outcome Letter Template | HR8.2u |

1. Appendices
   * Appendix 1 - Supporting Colleagues Fairly Through Workplace Situations
   * Appendix 2 – Discipline Process Flow Chart
   * Appendix 3 – Allegations and Suggested ‘Standard’ Outcomes
   * Appendix 4 - The Role of the Companion at Disciplinary and Grievance Hearings

Appendix 1: Supporting Colleagues Fairly Through Workplace Situations

* + This flow chart has been developed as a guide to help managers decide if your colleague requires specific individual support or intervention to work safely. It aims to ensure colleagues experience consistent, constructive, and fair treatment at work. It highlights the important principles that need to be considered before formal action is taken.



Appendix 2: Discipline Process Flow Chart

Appendix 3: Allegations and Suggested ‘Standard’ Outcomes

* + The allegations listed below include examples of issues that are deemed to be either serious or Gross Misconduct. Gross Misconduct normally warrants dismissal, although mitigating circumstances will be considered in all cases. **If the issue or complaint you are dealing with is not on this list, please contact HR for advice.**
  + This list is not exhaustive and is for guidance purposes only as each case will be considered on its own individual merits (note to readers: the font size on the following table has been reduced – increase to 12 for an easier read).

| **Allegation** | **Examples** | **Normal Outcome for First Disciplinary** |
| --- | --- | --- |
| **Abuse** | Any form of abuse of a resident - physical/mental/financial | Dismissal |
| **Accommodation** | Allocating accommodation without complying with MHA's policy on allocation | Dismissal |
| **Alcohol/Drugs** | Incapability whilst on duty brought about by alcohol or illegal drugs | Dismissal |
| **AWOL** | Walking out of shift with no authorisation | Dismissal |
|  | Absent without permission (AWOL) | Dismissal |
| **Bringing name of MHA into Serious Disrepute** | Serious offence in or out of work, which impacts on MHA or the colleague's duties | Dismissal |
| **Bullying/Harassment** | Bullying or harassment (either of service users or colleagues) - physical or mental | Dismissal |
|  | Shouting at Colleagues/Residents/Visitors/ Volunteers | Dismissal |
|  | Shouting and Swearing at Colleagues/ Residents/Visitors/Volunteers | Dismissal |
| Behaving in a way that constitutes unlawful discrimination on the grounds of an individual's gender, race, disability, religion or belief, age and/or sexual orientation | Dismissal |
| **Confidentiality** | Disclosing confidential information regarding a colleague/resident | Final Written Warning/ Dismissal |
| Disclosing confidential MHA information on Internet Websites | Dismissal |
| Putting photographs of residents on the internet without their express permission | Dismissal |
| **Failure to Disclose** | Failure to disclose matters which may have an effect on an individual’s employment; a caution/ conviction, safeguarding enquiry, investigation by a professional body/statutory agency/ regulatory body | Dismissal |
| **Fraud** | Claiming expenses not spent - or signing expenses known to be wrong | Dismissal |
|  | Falsifying petty cash records | Dismissal |
|  | Falsifying timesheets - including signing timesheets known to be wrong | Dismissal |
|  | Signing or logging (Time & Attendance) in or out for someone else | Dismissal |
| **Gifts** | Accepting gifts/rewards/recompense above that permitted in MHA's Code of Conduct/ Professional Behaviour policy | Dismissal |
| **Health & Safety** | Serious breach of H&S Rules i.e., action or inaction which could have resulted in someone's health or safety being endangered | Dismissal |
| **Insubordination** | Refusing to follow reasonable management instructions | Final Written Warning/ Dismissal |
|  | Shouting at a manager | Final Written Warning /Dismissal |
|  | Being rude to a manager | Final written warning |
|  | Swearing at a manager | Dismissal |
|  | Deliberately undermining a manager | Final Written Warning/ Dismissal |
| **Medication Error** | Failing to record medication | Final Written Warning/ Dismissal |
|  | Failure to administer prescribed medication | Final Written Warning/ Dismissal |
|  | Failure to correctly administer medication as prescribed | Final Written Warning/ Dismissal |
|  | Falsifying records to cover up a mistake | Dismissal |
|  | Failure to notify when a medication error occurred | Dismissal |
|  | Leaving medication out (by accident) | Final Written Warning |
|  | Leaving/instructing medication to be administered by/with untrained/unqualified person to administer | Final Written Warning/  Dismissal |
|  | Leaving medication with resident who does not self-medicate - not ensuring it is taken | Final Written Warning/  Dismissal |
| Failing to follow the procedure for dispensing controlled drugs | Final Written Warning/ Dismissal |
| **MHA property/name** | Serious damage to MHA or residents' property - either caused deliberately or due to recklessness/ carelessness | Dismissal |
| Serious misuse of MHA or residents' property or MHA's name | Dismissal |
| **Misuse of MHA computers/phones** | Excessive personal use of computers/internet or phones | Dismissal |
| Accessing internet sites containing pornographic, offensive, or obscene material or forwarding such material | Dismissal |
| **Mobile phones** | Using a personal mobile phone whilst on duty (colleague members in homes and HWC schemes only) | Dismissal |
| Carrying a personal mobile phone unless expressly allowed (for colleague homes or HWC schemes only) | Final Written Warning |
| **Moving & Handling** | Drag Lifting a Resident | Final Written Warning |
|  | Not using a Hoist | Final Written Warning |
|  | Using a Hoist incorrectly e.g., on their own | Final Written Warning |
| **Neglect** | Not doing resident checks e.g., weight, blood pressure etc. | Final Written Warning/ Dismissal |
| Falsifying records to say resident checks were done when they were not | Dismissal |
|  | Not providing resident with adequate food/drink (without good reason) | Dismissal |
|  | Locking resident in room | Dismissal |
|  | Feeding a resident against their will or without considering their wishes regarding pace of feeding and choice of food (where the resident is capable of making those decisions). Note, this does not mean colleague members should not try to encourage/persuade residents to eat | Dismissal |
|  | Not attending to residents in need of assistance/deliberately not responding to call bells | Dismissal |
| **Violence or threatening behaviour** | Fighting | Dismissal |
| Demonstrating threatening behaviour towards a Colleague/Resident/Visitor/Volunteer | Dismissal |
| **Procedures** | Deliberately not following MHA policies/procedures | Final Written Warning |
|  | Deliberately not following MHA policies/procedures, where someone's health/safety was endangered | Dismissal |
| Manager not following correct procedures on Asylum and Immigration & Vetting and Barring | Final Written Warning/ Dismissal |
|  | Raising a grievance in bad faith and/or maliciously | Dismissal |
| **Recording of Meetings / Hearings** | Recording of any meeting / hearing / interaction with a manager/ colleague / resident / visitor / volunteer / any third party without their prior knowledge and agreement | Final Written Warning / Dismissal |
| **Sleeping on Duty** | Sleeping - no evidence that it was planned/deliberate | Final Written Warning /Dismissal |
|  | Sleeping - with evidence that it was planned/deliberate | Dismissal |
| **Social Media Websites** | Making inappropriate comments about MHA/Residents’/Colleague’s/Any third party | Dismissal |
| Uploading photos or videos that bring the work of MHA and/or of Residents/Colleagues/any third party associated to MHA into disrepute | Dismissal |
| Uploading photos or videos of Residents/Colleagues/any third party associated with MHA without appropriate consent | Dismissal |
| **Theft** | Any theft of MHA/Residents'/Visitors'/Colleagues'/Volunteers' property | Dismissal |
| Using MHA resources for personal gain - e.g., carrying out personal washing or cooking on MHA premises, using stationery or other equipment for own use | Dismissal |
| **Uniform** | Not complying with MHAs Corporate Clothing policy or any other guidelines on appropriate dress | First / Final Written Warning |

Appendix 4: The Role of the Companion at Disciplinary and Grievance Hearings

* + 1. This section is to help you if you have been asked to act as a companion at a disciplinary or grievance hearing. It sets out what you can and cannot do and what your overall role is. If you have any more questions, please contact Human Resources.
    2. **Do I have a duty to accept a request to act as a companion?**
  + No, you do not have to accept a request to accompany a colleague at one of these hearings. No pressure should be placed on you to attend, and you do not have to give a reason for your decision not to attend. You should think carefully before accepting any request to act as a companion as it is an important role and must be taken seriously.
  + However, do not be put off from acting as a companion through any fear of the perception the organisation may have of you as a result of your acceptance of this role. Acceptance or refusal of any request will not reflect personally on you.
    1. **What is my role as a companion?**
  + Your main role as a companion is to support the worker whom you are accompanying. You can, if you are asked and agree to do so, present the individual’s case on their behalf (although the role of the companion does not always include this responsibility as many people wish to present their own case). You may also ask questions on their behalf or ask questions to increase your knowledge and understanding of the issues being discussed. You are allowed to ask to leave the room and confer with the worker and you may also ask to address the hearing if you so wish. You may not, however, answer questions on behalf of the worker. You should think of yourself as being there as a ‘friend’ and witness to support your colleague.
    1. **Do I have to have legal knowledge and expertise?**
  + You do not have to know the law, but you should be familiar with the facts of the particular case and with MHA’s Discipline Policy. You should get together with your colleague before the hearing to discuss the issues being considered at the hearing so that you are fully informed. If you want any additional information before the hearing, please contact Human Resources.
    1. **Will I get paid for the time off?**
  + Companions can attend meetings during working hours without loss of pay. You will be given the time not only to attend the hearing, but also reasonable time to familiarise yourself with the case and to confer with the worker before and after the hearing. If you choose to accept the request to act as a companion you are entitled to ask for a reasonable amount of paid time off in order to complete these duties. Please refer to HR if you have any queries.

1. Version Control

| Version | Version Date | Revision Description / Summary of Changes | Author | Next Review Date |
| --- | --- | --- | --- | --- |
| 6 | August 2023 | * Language/housekeeping reviewed throughout to ensure best practice and alignment with legislation, with a focus on plain English and person-centred terminology. * Addition of “Fact-finding” section. * Clarity around role of investigator, including a change to their remit of recommending whether there is a case to answer or not. * Inclusion of a “Supporting Colleagues Fairly Through Workplace Situations” flow chart to help managers determine the most appropriate way to handle a concern or issue. * Inclusion of a “Discipline Process Flow Chart.” * Inclusion of the new suspension checklist. | Author   * Head of People * Standards and * Policy Manager   Review Panel   * HR Team Review * People Panel Review | August 2025 |
| 7 | September 2023 | Appendix 1, point 4 updated - “Factors to consider here should include whether necessary access to training and supervision has been provided as expected” | Author   * Head of People * Standards and Policy Manager | September 2025 |
| 8 | October 2023 | Referrals relating to Disclosure and Barring Service (DBS) added to section 13, and roles and responsibilities updated to reflect the authorisation of DBS referrals. | Author   * Head of People * Standards and Policy Manager | October 2025 |
| 9 | January 2024 | Resources list updated.  Clarification around who is responsible for appointing an investigator. | Author   * Standards and Policy Manager | October 2025 |
| 10 | February 2024 | Resources list updated. | Author   * Standards and Policy Manager | October 2025 |
| 11 | March 2024 | Resources list updated. | Author   * HR Advisor * Standards and Policy Manager | October 2025 |
| 12 | April 2024 | Appendices updated. Suspension checklist updated and separated from policy (see HR8.2v).  Resources list updated: Record of Concern (previously Record of Discussion). | Author   * Head of People * Standards and Policy Manager | October 2025 |
| 13 | May 2024 | Suspension can be authorised by the Head of Retirement Living (or a Regional Director for care homes, or an ELT member. Alongside the Director of People and Communications or Head of People). | Author   * Head of People * Standards and Policy Manager | October 2025 |
| 14 | June 2024 | Resources list updated. | Author   * Standards and Policy Manager | October 2025 |