**DISCIPLINARY POLICY AND PROCEDURES**

1. **Purpose**

1.1 Omega Care Group is committed to ensuring all employees are treated equally and fairly while dealing with workplace issues fairly and reasonably. This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. This procedure applies to all employees.

**2. Aim**

2.1 By implementing fair practices and procedures allows Omega Care Group to ensure employees know what is expected of them in terms of standards of performance and conduct, including the likely consequences of failure to meet these standards.

2.2 To identify obstacles to individuals achieving the standards required of them such as training needs, clarity of job requirements or additional support enabling employers to take appropriate action.

2.3 Omega Care Group aims to resolve matters without recourse to external dispute resolution processes. We also will ensure no disciplinary action is taken against an employee until the case has been fully investigated.

**3. The Procedure**

3.1 **Informal Stage Including Preliminary Investigations (If the actions are so severe then the informal stage will need to be missed and you should refer straight to formal stage**

3.2 The Manager will need to determine if the issue can be resolved informally. This will depend on several factors such as the seriousness of the complaint/allegation and the impact it has on others.

3.3 All the facts must be gathered and put before the employee at the informal meeting. It is important that these concerns are outlined to the individual.

3.4 Give the employee a full opportunity to respond and explain the factors that may be affecting their performance at work.

3.5 Explore the possible factors/reasons/specific problems which maybe contributing to the issues and therefore preventing improvement. Clear action plans/follow up targets for attaining a sustained improvement and the proposed timescales should be outlined and agreed to.

3.6 Notes of the meeting must be kept and in minor cases, the outcome of the meeting, including any remedial action should be recorded. The notes of the meeting should consist of:

* A clear statement of what was discussed regarding the employee’s conduct and an explanation of why this is unsatisfactory.
* The required level of improvement discussed and agreed with the employee. These should be measurable in terms of quantity, frequency, timing etc.
* How management plan to assist the individual in achieving these standards.

3.7 A copy of the action plan should be given to the employee and a copy placed on the employee’s supervision file however will not be placed on their personnel file. The individual should be explained to that failure to follow the plan the formal action will be taken.

**4. Safeguarding**

4.1 Where a matter arises which concerns a safeguarding issue i.e there is a concern regarding the conduct of an employee in respect of as child or young person, the manager must ensure that they report it to the Safeguarding Officer/ Service Manager. In the case of the concern involving either/or the Safeguarding Officer/Service Manager, advice from Director should be sought.

4.2 The Service Manager and Director must decide whether suspension or alternative duties should be utilised. Consultation with Human Resources should be sought. They should report the potential safeguarding issue to the Local Authority Designated Safeguarding Lead if they are not already aware through other means.

4.3 It is important that the internal investigation starts immediately alongside any Local Authority investigation unless there is a police investigation. If the police are to investigate then Omega Care must wait to be instructed by the police or Local Authority to start an internal investigation.

4.4 Safeguarding must take priority until risks are satisfactorily managed in accordance with the Working together to Safeguard Children 2018 and Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations (England and Wales) 2008. (Also please refer to Omega Care Group Safeguarding Policy)

**5. Disclosure and Barring Referrals**

5.1 The Safeguarding Vulnerable Groups Act (2006) sets a legal duty for a company to refer information to the DBS on dismissal or removing a member of staff/volunteer from working with children and/or young people.

5.2 Omega Care has a duty to refer all allegations of abuse or misconduct towards a child or young person made against a member of staff/volunteer/agency worker.

5.3 A referral must meet the criteria below:

5.4 Omega Care Group withdraws permission for an individual to continue in their role, or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not working directly with children or young people because they think that the individual has:

5.5 EITHER - engaged in relevant conduct:

• That endangers a child or young person or is likely to endanger a child or young person;

• If repeated against or in relation to a child or young person, would endanger them or would be likely to endanger them;

• Involving sexual material relating to children (including possession of such material);

• Involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate;

* Of a sexual nature involving a child or adult, if it appears to DBS that the conduct is inappropriate.

5.6 OR - where Omega Care Group believes that an individual:

• may harm a child or adult,

• may cause a child or adult to be harmed,

• puts a child or adult at risk of harm,

• attempts to harm a child or adult, or

• incites another to harm a child or adult.

OR - received a caution or conviction for a relevant offence.

5.7 If one or both conditions have been met the information must be referred to the DBS once the Investigating Officer has gathered sufficient evidence as part of their investigations to support their reasons for withdrawing permission to engage work, they must consult with the Local Authority Designated Safeguarding Lead.

5.8 If following an internal investigation, it is decided that the best course of action is to issue a formal warning and return the employee to their role with additional training Omega Care Group still have a duty to refer to the DBS.

**6. Formal Stage**

6.1If the manager determines that the matter cannot be dealt with by the informal stage, they should seek advice from Director, Service Manager and the engaged HR consultation service on how the formal stage should progress. (See Investigating Officer Guidance)

6.2 Managers should immediately determine whether the employee remains in the workplace or if it is necessary for the individual(s) to be suspended pending investigation. (See suspension guidance)

6.3 At all stages of the formal disciplinary procedure the individual will:

* Informed of the nature of the issues of concern or case and given the right of reply to all and any allegations made against them BEFORE any decision or disciplinary action is taken;
* Be advised of the nature of any disciplinary action taken against them and the consequences of such action
* Have the opportunity to be accompanied by a work colleague or Trade Union representative to any disciplinary hearing as described above.
* Be given reasonable notice of any formal meeting or hearing
* Notified of any outcome of any formal meeting or hearing in writing.

6.4 Once an Investigation Officer has been appointed (usually the manager) then the investigation should start without delay. The Investigating Officer should seek advice and guidance during the investigation from HR. The investigation should be carried out as a priority and concluded without delay to avoid any undue anxiety/stress. Once the investigation is concluded then the Investigating Officer should determine one of the following options:

* + No case to answer
  + Sanction short of formal hearing
  + Formal hearing

6.5 If the outcome of the investigation is no case to answer then a report should be complied to explain the reasons why there was no case to answer. A copy of this report should be sent to the Service Manager and the Director. This may be shared with HR consultation services. If the employee has been suspended pending investigation, then arrangements should be make for them to return back to work. The individual’s Line Manager will be informed verbally that there was no case to answer.

6.6 If the outcome of the investigation is a sanction short of a hearing, this should be reflected in a report as to the reasons why along with clear guidelines of the sanctions placed and time scales for these sanctions. Examples of this would be:

* The employee is advised of the need to improve a particular skill e.g.: communication style and an action plan can be put in place to support this.
* The employee’s conduct needs addressing but a formal sanction is considered too severe and could possibly be resolved through self-awareness.

**7 Formal Disciplinary Hearing**

7.1 Where a formal disciplinary hearing is considered appropriate, arrangements for the hearing will be made as soon as is reasonably practicable. A Disciplinary Panel consisting of a Senior Manager, with no prior involvement in the case, will hear all the evidence and decide the outcome. This will normally be the Director, with authority to dismiss. An HR Officer may also attend, together with the Investigating Officer, the employee, their representative (if they wish). Both management and the employee can submit documentation and call and question witnesses. Omega will confirm the arrangements to all parties giving at least 5 working days notice.

7.2 Distribution of full documentation packs to all parties 5 working days prior to the hearing. Any additional documentation that either management or the employee wishes to be considered at the hearing, must be made available to the Admin Officer who is processing the information no later than 7 working days prior to the hearing to enable (where practicable)

7.3 If there is a late submission of evidence it will be for the Chair of the Disciplinary Panel to decide whether this will be accepted.

As part of the disciplinary hearing pack the employee subject to the investigation will be given a copy of the investigation report. In certain circumstances (for example to protect a witness) some information may be withheld and/or redacted.

**8. DISCIPLINARY HEARING OUTCOMES**

8.1 Omega Care Group’s Policy and Procedure allows for the following disciplinary hearing outcomes:

* No Further Action - Where it is considered there is no case to answer.
* Management Action Where the alleged offence is proven but a reprimand is considered an appropriate outcome due to mitigating circumstances or the nature of the offence, e.g. a relatively minor issue.
* First Written Warning - Where the employee’s conduct has fallen below acceptable standards or, where the offence is sufficiently serious to justify an immediate formal sanction.
* Final Written Warning - Where the employee’s conduct continues to be significantly below acceptable standards and previous written warning(s) have not resulted in sufficient improvement, or

Where the offence is so serious that a final warning is appropriate as a first formal warning or where dismissal would normally be appropriate but significant mitigation is accepted by management.

NB: The warning will be regarded as live for disciplinary purposes for 12 months.

8.2 All warnings will be confirmed in writing and will include:

• A clear statement of the unsatisfactory conduct or behaviour

• The level of the warning

• The length of time it will remain live for disciplinary purposes

• The required level of improvement (in measurable terms)

• The consequences of no improvement in conduct or behaviour

• The right to appeal

8.3 Dismissal will occur where there has been gross misconduct OR where the employee has a warning in force and is deemed appropriate for any further misconduct or unsatisfactory conduct that has taken place.

8.4 Should and employee leave Omega Care Group pending an investigation, Omega Care Group will conclude the internal investigation and if it was found on the balance of probabilities a disciplinary hearing may have been called then the Investigating Officer should seek further advice from the appropriate professional/legal body.

**9. APPEALS**

9.1 An employee has the right to appeal against any formal disciplinary action taken against him/her under this procedure. This appeal must take place within 5 working days of receipt of the outcome of the hearing and should be in writing clearly stating the reasons for appeal. The employee will receive a reply within a further 5 working days with a date for when the appeal will be heard should the reasons warrant an appeal.

9.2 The following are examples of misconduct and gross misconduct. These are examples only and not an exhaustive list:

9.3 Misconduct:

* Poor time keeping
* Unauthorised/unreasonable absence from work
* Failure to meet the adequate standard of job performance
* Failure to comply with procedures
* Failure to answer a question during a properly constituted investigation
* Minor violation of safety practices company regulations
* Improper use of business funds or property
* Minor breaches of company regulations
* Inappropriate standards of dress
* Contravention of minor safety regulations
* Disruptive behaviour

9.4 Gross Misconduct

* Theft or wilful damage of or negligence which leads to loss, damage to property or goods belonging to the company, its customers or suppliers, or other employees
* Unreasonably refusing to the company searching your bags or vehicle
* Unauthorised disclosure or use of confidential information from the company or about any of its customers
* Conduct likely to damage the reputation of the company
* Drunkenness and/or unlawful drug abuse
* Discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion and belief, sex or sexual orientation or harassment or bullying of colleagues or our young people.
* Accepting bribes or offering bribes
* Bullying, colluding and harassment
* Fraud, dishonestly or any other offence which would be a breach of the law of the land
* Indecent, violent or offensive behaviour, assault or attempted assault of other employees, our young people, associates or members of the public
* Failure to carry out a reasonable order given by a manager during working hours during working hours or serious disregard of duties
* Serious insubordination
* Serious breaches of the IT policy
* Slanderous or defamatory statements made regarding the company, its employees, young people or associates either verbally, in writing or posted on social networking sites
* Serious breaches of health and safety policy
* Serious interference with fire-fighting equipment
* Safeguarding issues including emotional, neglect, physical, sexual, institutional
* Maladministration of drugs