



DISCIPLINARY POLICY AND PROCEDURE

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CONTENTS

	PAGE NUMBER
1. SCOPE	1
2. INTRODUCTION	2
3. DEAL WITH THE ISSUE INFORMALLY	2
4. MANAGERS AUTHORISED TO UNDERTAKE DISCIPLINARY HEARINGS AND APPEALS UNDER THE FORMAL PROCEDURE	2
5. ESTABLISH THE FACTS OF EACH CASE	3
6. ALLOW THE EMPLOYEE TO BE ACCOMPANIED	3
7. INFORM THE EMPLOYEE	3
8. HOLD A HEARING WITH THE EMPLOYEE TO DISCUSS THE PROBLEM	3
9. DECIDE ON APPROPRIATE ACTION	4
• Verbal Warning	4
• First Written Warning	4
• Final Written Warning	4
• Dismissal	5
10. PROVIDE THE EMPLOYEE WITH THE OPPORTUNITY TO APPEAL	5
11. APPEALS AGAINST DISMISSAL	6
12. SUSPENSION	6
13. OTHER CONSIDERATIONS	6
Appendix A	8
Description of change	9

1. SCOPE

1.1 The procedure applies to all employees of Black-E.

1.2 The procedure does not apply:

- to cases of poor performance where this is beyond the control of the employee (ie: where the employee cannot perform to the required standards rather than where the employee can perform to the required standards but will not).
- genuine sickness absence unless there is a reason to suspect neglect of duty, dishonesty or non-compliance with procedures or related rules.

2. INTRODUCTION

2.1 The conduct of employees (to include freelancers) within The Black-E is a key factor in ensuring that The Black-E Plan priorities, values, aims, objectives and targets are delivered. All employees, freelancers and contractors must demonstrate high standards of professional and personal conduct and treat all those with whom they have contact with respect, and in line with the Black-E's procedures.

2.2 This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of conduct. The aim of this procedure is to ensure that all employees receive consistent and fair treatment.

2.3 At every stage in the procedure, the employee will be advised in writing of the nature of the complaint against them and will be given the opportunity to challenge the allegations and state their case before any disciplinary action is taken. Written notice will be given of any formal disciplinary hearings.

2.4 Meetings held at all stages of the process will either be held in person or?.

2.5 A HR Trustee is available for consultation at each stage of the procedure and managers are encouraged to seek advice from this trustee at the earliest possible opportunity.

3.0 DEAL WITH ISSUES INFORMALLY

3.1 The Black-E believes that, for minor concerns about conduct and other issues, it is in the best interests of all involved if minor faults are dealt with informally by the immediate manager, (that is without recourse to the formal procedure) as soon as a problem occurs.

3.2 This should be a two-way discussion aimed at discussing possible shortcomings in performance and encouraging improvement. The emphasis should be constructive, with the emphasis on finding ways for the employee to improve and for the improvement to be sustained.

3.3 There is no statutory right for employees to be accompanied at informal meetings. However, Management should be careful that informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied.

3.4 Informal action is not formally documented; however, Management should retain their own notes of the discussion and the agreed outcomes. These should be disregarded after 6 months

3.5 If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned and the employee informed that the matter will be continued under the formal disciplinary process.

4. MANAGERS AUTHORISED TO UNDERTAKE DISCIPLINARY HEARINGS AND APPEALS UNDER THE FORMAL PROCEDURE

4.1 Management are expected to deal with informal disciplinary issues. Formal hearings or appeals can also be heard by a trustee to be determined by the Chair of Trustees.

4.2 If there is a possibility that the employee's contract of employment may be terminated, then the hearing must be chaired by the HR Trustee.

4.3 An Appeal Committee made up of trustees, chaired by the Chair of Trustees, will hear an appeal against dismissal.

5.0. ESTABLISH THE FACTS OF EACH CASE

5.1 All disciplinary cases will be dealt with as quickly as possible. It is important to carry out necessary investigations of potential disciplinary matters without delay to establish the facts of the case. Employees should be made aware of any investigation at the earliest opportunity as appropriate. No disciplinary action will be taken against an employee until the case has been fully investigated.

5.2 Management if appropriate, should carry out the investigation. Where practicable, the HR Trustee should then carry out any disciplinary hearing.

5.3 The investigating officer will determine whether there is a case to answer formally, whether the matter can be dealt with informally or that there is no case to answer.

6. ALLOW THE EMPLOYEE TO BE ACCOMPANIED

- 6.1 Employees will have the right to be accompanied by a trade union representative or work colleague at all stages of the formal disciplinary process.
- 6.2 The representative should be allowed to address the disciplinary or appeal hearing, put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The representative does not, however, have the right e.g. to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the manager from explaining the Council's case.

7. INFORM THE EMPLOYEE

- 7.1 The employee must be informed, in writing, of the outcome of the investigation.
- 7.2 If it is decided that there is a disciplinary case to answer, the notification should contain *sufficient information* about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing.
- 7.3 The notification should also give details of the time and venue for the disciplinary hearing and advise the employee of their right to be accompanied at the hearing.

8. HOLD A HEARING WITH THE EMPLOYEE TO DISCUSS THE PROBLEM

- 8.1 The disciplinary hearing should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

- 8.2 The employee will be given at least 10 working days' notice of the hearing date and time.
- 8.3 If the employee wishes to submit evidence to the hearing, they should submit their evidence at least 5 working days before the hearing to the HR Trustee. Evidence in relation to The Black-E's case should also be submitted to the HR trustee within this time period.
- 8.4 Both parties will be sent a copy of all documents and/or witness statements to be considered at the hearing in relation to both The Black-E's case and employee's case at least 53 working days before the hearing.
- 8.5 Where management or the employee intends to call relevant witnesses, they should give notice that they intend to do this.
- 8.6 All parties should make every effort to attend the hearing. If the employee or their representative is unable to attend the hearing for good reason, the hearing may be rescheduled, within 5 working days from the original hearing date if possible. The reasons that the employee cannot attend must be confirmed to the HR Trustee in writing. In the event of illness, a medical certificate will be required. Where an employee is unable or unwilling to attend a disciplinary hearing without good cause, the hearing should proceed in the employee's absence and the person hearing the disciplinary should make a decision on the evidence available or the employee should be invited to put forward their case through a representative or in written form as an alternative to attending.
- 8.7 At the hearing, the Hearing Officer should explain the complaint against the employee and go through the evidence that has been gathered, calling any witnesses as necessary. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should

also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses.

- 8.8 Employees will have the right to have their previous work record and conduct taken into account, and to have any extenuating circumstances considered fully at any formal disciplinary hearing.
- 8.9 A representative of the Trustees will be present at all formal hearings in order to advise on policy and procedures.

9. DECIDE ON APPROPRIATE ACTION

- 9.1 Once all the evidence and final submissions are heard, the Hearing Officer with the support of a HR Trustee will decide in private whether disciplinary or any other action is justified and inform the employee accordingly in writing. The types of formal action that may be taken are set out below. Formal action may be implemented at any stage depending upon the seriousness of the employee's alleged misconduct. The stage at which the action is being implemented will be clearly indicated to the employee and, where relevant, to their representative. The action applied will reflect the seriousness of the incident and/or the employee's prior disciplinary records.

9.2 Stage 1: Formal Verbal Warning

If conduct does not meet acceptable standards, the employee will normally be given a formal verbal warning. The employee will receive written confirmation of the warning including its timescale, the nature of the improvement required, if applicable and confirmation that a breach may result in another more serious warning. The employee will be informed of their right of appeal. A record of the warning will be kept on their personal

file, but will be disregarded for future disciplinary purposes after 6 months, subject to their satisfactory conduct

9.3 Stage 2: First Written Warning

The employee will be issued with a written warning if further misconduct occurs during the life of a verbal warning (even if the offence is unrelated), or if the misconduct itself warrants more than a verbal warning. This warning will specify the nature of the complaint against the employee; that it is the first stage of the disciplinary procedure; will set out the timescale for achieving and or maintaining the required improvement(s); will inform them of their right of appeal; and will confirm that a further breach may result in a more serious warning being issued. A copy of the letter will be kept on their personal file but will be disregarded for future disciplinary purposes after 12 months, subject to their satisfactory conduct.

9.4 Stage 3: Final Written Warning

The employee will be issued with a final written warning where further misconduct occurs during the life of a written warning, or where the seriousness of their misconduct is such that, it is not appropriate to give a first written warning. This warning will specify the nature of the complaint against the employee; will give the timescale for achieving and/or maintaining the required improvement(s) (which may be different from the life of the warning); will confirm that a further breach may result in dismissal or further action short of dismissal; and will inform them of their right of appeal. A record will be kept on their personal file but will be disregarded for future disciplinary purposes after 12 months, subject to their satisfactory conduct.

9.5 Stage 4: Dismissal

If conduct is still unsatisfactory, and there is still a failure to reach the required standards, this will result in dismissal with notice. (Actions other than dismissal can be considered, such

as a demotion, suspension and loss of seniority. Any such measures would need to be with the written agreement of the employee). A decision to dismiss should only be taken by the HR Trustee or above. The employee should be informed in writing within 5 working days or as soon as possible thereafter, the reasons for the dismissal, the date on which the employment contract will end the appropriate period of notice and their right of appeal. An employee will not be dismissed for a first breach of discipline, except in the case of Gross Misconduct (See below).

9.6 Gross Misconduct

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and The Black-E. If an employee commits an act of gross misconduct, The Black-E will be entitled to terminate the employee's contract of employment without notice or pay. (Examples of what could constitute gross misconduct are set out in Appendix A).

10. PROVIDE THE EMPLOYEE WITH AN OPPORTUNITY TO APPEAL

- 10.1 Where an employee feels that disciplinary action taken against them is wrong or unjust they can appeal against the decision. Appeals should be heard without unreasonable delay.
- 10.2 The appeal should be dealt with impartially and wherever possible, by a manager/Trustee who has not previously been involved in the case. If the appeal is against dismissal, the appeal must be heard by a panel of trustees known as the Appeals Committee.

- 10.3 With the exception of dismissal, if an employee wishes to appeal, they must write to the HR Trustee within 10 working days of receipt of notification of the disciplinary action, stating the reasons for their appeal.
- 10.4 With the exception of dismissal, employees will be sent a letter giving them at least 10 working days' notice of the date of the appeal hearing, where it will take place and who will hear their appeal.
- 10.5 The employee has a statutory right to be accompanied by a trade union representative or work colleague at appeal hearings.
- 10.6 The instigation of an appeal will not suspend or defer the effect of the previous disciplinary action, which will remain in place unless it is overturned on appeal.
- 10.7 The result of the appeal could be to revoke, confirm or reduce the original decision. The original decision cannot be increased. Employees should be informed in writing of the outcome of the appeal hearing within 5 working days, or as soon as possible thereafter.
- 10.8 The decision of the appeal hearing is final.

11. APPEALS AGAINST DISMISSAL

- 11.1 Any appeal against dismissal will be heard by the Trustees Appeals Sub Committee. An employee wishing to lodge an appeal must write to the HR Trustee within 10 working days of the date of confirmation of the disciplinary action, stating the reasons for their appeal. The hearing will be heard within a period of 2 months from the decision date unless exceptional circumstances cause a delay.

- 11.2 For an appeal against dismissal, employees will be sent a letter giving them at least 15 working days notice of the date of the appeal hearing and where it will take place.

12. SUSPENSION

- 12.1 In serious cases the employee may be suspended from work on full pay if their continuing presence at work could be prejudicial to the satisfactory operation of The Black-E business. In some cases, it may be appropriate that the employee should not be present at work while an investigation is being carried out. Such a suspension should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. The decision to suspend may be taken only by the Chair of Trustees in consultation with HR Trustee.
- 12.2 The employee will be advised as soon as possible in writing why they are being suspended, and suspension should last for no longer than the time necessary for a thorough investigation to take place.
- 12.3 Suspension is not a form of disciplinary action, it is a neutral act, nor does it automatically follow that a disciplinary hearing will be called as a consequence of a suspension.
- 12.4 Employees should be told clearly that they are suspended; that the suspension will be for as short a period as possible and that they will be called back for an investigatory interview.
- 12.5 Employees on suspension will not be entitled to access their work premises or documents, including logging onto any of The Black-E's networks remotely without the prior consent of the HR Trustee. However, the Black-E will take account of the need for an employee to prepare their case and make contact with any witnesses.

13. OTHER CONSIDERATIONS

- 13.1 Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. However, the matter will be discussed as soon as possible with a full time official of the union, after obtaining the employee's agreement.
- 13.2 If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and the potential of bringing The Black-E into disrepute. However, there may be occasions where it is necessary to await the outcome of a Police Investigation in advance of taking disciplinary action. For these cases, advice should be sought from the HR Trustee.

Appendix A

Examples of gross misconduct:

- Theft from The Black-E, members of staff or the public
- Falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain
- Falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee; and/or failure to disclose correct information
- Serious breach of The Black-E's rules, policies and procedures
- Failure to comply with relevant statutory or regulatory requirements
- Failure by an employee to report actual or suspected physical or sexual abuse of a child/vulnerable adult by another employee or other person having contact with the child/vulnerable adult.
- Actions on The Black-E's premises or to its employees and/or customers or suppliers constituting a criminal offence
- Unauthorised use or disclosure of confidential information, including unauthorised press statements on The Black-E's behalf, regarding The Black-E
- Sexual misconduct at work
- Bullying
- Discrimination or harassment of a fellow worker on the grounds of gender, sexual orientation, race, disability, religion, belief, or age
- Fighting with, verbal or physical assault on members of staff or the public
- Reckless or deliberate damage to, or misuse of, The Black-E's property
- Drunkenness or being under the influence of illegal drugs whilst at work
- Possession, custody or control of illegal drugs on The Black-E's premises
- Serious acts of negligence causing appreciable loss, injury or damage to The Black-E property
- Fraud – i.e. all intentional irregularities and illegal acts for private gain perpetrated by staff outside or inside the organisation
- Accepting bribes or gifts that could be construed as a bribe
- Failure to obey a lawful and reasonable order or written instruction, leading directly to serious disorder or loss of control
- Conviction of a criminal offence, or receipt of a police caution for a serious offence that is relevant to the employee's employment, such as:
 - ⇒ Any racially motivated crime
 - ⇒ Any offence of violence
 - ⇒ Corruption
 - ⇒ Any serious offence of criminal damage or arson
 - ⇒ Sexual offences
 - ⇒ Fraud
 - ⇒ A conviction for driving under the influence of alcohol or drugs if the employee is employed in a post that is designated as an Essential Car user or some other post, which requires them to drive on The Black-E business.

This list is not exhaustive; other acts of misconduct may come within the general definition of gross misconduct.

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