Disciplinary Procedure

**1. Scope**

1.1 This procedure applies to all staff except those who are within their probationary period, who are covered by Rainbows GB Probation and Induction Policy. Issues of underperformance should be addressed in line with Rainbows GB Capability Policy on managing under-performance.

**2. Authority under the Procedure**

2.1 Any reference to " Head of Department " (HoD) includes anyone deputed by them.

**3. Objectives**

3.1 The purpose of this document is to set down the procedures to be followed when standards of conduct give rise to problems which cannot be resolved by advice and encouragement, training or increased support. Rainbows GB is committed to the avoidance of formal disciplinary procedures wherever possible by addressing problems as soon as they arise. This procedure is intended to provide consistency in the treatment of staff and follows good practice as laid down in ACAS guidelines. Rainbows GB will undertake disciplinary action only in accordance with the provisions of this procedure.

**4. Guiding Principles**

* ***Fairness:*** The application of this procedure will be consistent, prompt, impartial, reasonable and applied without discrimination.
* ***Confidentiality:*** Information relating to an allegation of misconduct should not be divulged to any parties not involved in the disciplinary process. Statements, letters and other communications will be strictly confidential to those involved in the disciplinary procedure.
* ***Natural justice:*** At every formal stage of the disciplinary procedure, the employee will be advised of the nature of the complaint, in writing and will be given the opportunity to state their case. Where a warning is given, the individual will be provided with appropriate support to improve his/her conduct.
* ***Equal opportunities:*** T his policy will be applied without any distinction as to sex or gender, age, sexual orientation, marital or parental status or other family circumstance, race, ethnic or national origin, colour, creed, disability, political belief, membership of or activities as part of a trade union, or social or economic status.
* ***Representation:*** The employee has the right to be accompanied by a trade union representative or work colleague at every stage of the procedure. The companion/representative shall have an opportunity to speak on behalf of, and confer with the employee but not answer questions on the employee's behalf, except where this has been agreed by the panel. Where the chosen representative is not available at the time proposed for the meeting, the employee has the right to request that the meeting be postponed and to suggest an alternative time within seven calendar days of the original hearing date and all such reasonable requests will be honoured.
* ***Right of appeal*** : Individuals have a right of appeal against any formal disciplinary sanction and appeals will be heard by two Trustees not previously involved in the case in any way, in accordance with the Appeals Procedure.

**5. Investigation**

5.1 Disciplinary action will not be undertaken until the necessary facts have been established. The Investigating Manager, will be responsible for the conduct of a disciplinary investigation. The Trustees of Rainbows GB should be approached for advice and support in investigating a disciplinary matter, at the earliest opportunity. The Investigating Manager will conduct an investigation which will include taking statements from, and usually meeting with relevant parties, including where appropriate any witnesses to the incident(s) of misconduct. Any witness to the alleged misconduct may be required to make a signed, written statement.

5.2 The Investigating Manager may be accompanied by a Trustee at such meeting(s) to provide advice and guidance. The member of staff concerned may be accompanied at such meeting(s) by a Trade Union representative or work colleague.

5.3 The Investigating Manager will advise the person who is the subject of the allegation, of the detail in writing and invite his/her response. The Investigating Manager will prepare a report based on the findings of his/her investigation and determine whether or not a disciplinary hearing is required based upon the findings of the investigation. If Investigating Manager considers that it is not appropriate to convene a formal disciplinary hearing, but that informal advice or guidance is appropriate, any resulting discussion will be in private and the employee will be informed that no disciplinary action is being taken.

**6. The Disciplinary Procedure**

6.1 Prior to formal disciplinary procedures being invoked, a member of staff will normally have received from his/her supervisor some informal indication that his/her conduct or behaviour is unsatisfactory. Informal advice and guidance are not part of the formal Disciplinary Procedure and should be given in confidence, usually with no other person present. Members of staff for whom assistance or direction of this type is provided, are not entitled to representation.

**Disciplinary Hearing**

6.2 Where there is believed to be a disciplinary case to answer, the Investigating Manager will consult with a Trusree before establishing a disciplinary hearing. If it is deemed that a formal oral warning may be issued however, the Trustees may not be involved.

6.3 Where the charge is one of gross misconduct the Hearing will consist of a panel consisting of two Trustees and Investigating Manager.

6.4 The Investigating Manager will advise the member of staff, in writing that s/he is required to attend a disciplinary hearing at a specified place and time, the details of the complaint that has been made against him/her and that s/he has the right to be accompanied at the hearing by a Trade Union representative or work colleague. Rights of representation are as set out in page two of this procedure. The member of staff must be given at least seven calendar days notice of the date for the hearing including all relevant documentation presented in support of the disciplinary charge to enable him/her to prepare. If the member of staff wishes to present any documentation in response to the allegation, it must be presented to the the Investigating Manager at least 4 calendar days in advance of the hearing in order that it can be distributed.

6.6 If a member of staff does not attend the disciplinary hearing without good reason the hearing may proceed in his/her absence.

6.7. The Investigating Manager will normally present the case to the Trustees (or a disciplinary panel if it is a case of gross misconduct) and the member of staff and his/her representative will have the opportunity to question him/her and present her/his response to the allegation.

6.8 A note will be taken of all disciplinary hearings and will be typed as soon as possible after the hearing if requested by any of the parties. The typed notes will always be made available to all parties in advance of an appeal.

6.9 The Investigating Manager or the Disciplinary Panel, having fully considered the circumstances of the case, will decide what disciplinary action, if any, should be taken. The decision will normally be indicated orally to the member of staff at the hearing and written confirmation outlining the reasoning for the decision will be produced within one working day of the decision.

**Levels of Disciplinary Action**

6.10 Disciplinary action can range from an oral warning to dismissal. Levels of disciplinary action are as follows:

1. **A Formal oral warning** - will normally be issued if:

* it is considered that the conduct of a member of staff has fallen below an acceptable standard and the member of staff has committed a minor offence

Where it is found that such a disciplinary offence has occurred, the outcome will normally consist in the first instance of an oral warning, which will be recorded by the manager concerned.

1. **A written warning** - will normally be issued if:

* there is no improvement in conduct about which the employee has previously been warned **or**
* another related offence has occurred during the currency of a previous warning **or**
* the conduct is of such seriousness that an oral warning is not appropriate.

Where it is found that such a disciplinary offence has occurred a written warning will be given to the employee and a copy placed on his/her personal record

1. **Final written warning** - will normally be issued if:

* A formal warning has already been issued and another offence has occurred while it is current **or**
* there is no improvement in the conduct about which the employee has previously been warned **or**
* the conduct is of such seriousness that Level 1 and 2 actions are not appropriate.

Where it is found that such a disciplinary offence has occurred, a final written warning will be given to the employee and a copy placed on his/her personal record.

**Dismissal** - will normally occur if:

* an allegation of gross misconduct is found to be proven **or**
* there is no improvement in the conduct which has been the subject of a final written warning **or**
* another offence has occurred during the currency of a previous warning and a final written warning has already been issued.

Where a member of staff is dismissed; s/he will receive a written statement of the reasons for his/her dismissal. Should the Disciplinary Panel consider, however, that in light of all the circumstances, dismissal is not warranted, an alternative to dismissal may be imposed in the form of extending the period of the existing final written warning for a further twelve months.

6.11 Any dismissal for gross misconduct will take immediate effect once the decision has been made and the individual will be entitled to no notice period regarding the termination of their employment.

6.12 Below is a list of some examples of gross misconduct which may result in dismissal. This list is not exclusive or exhaustive.

* serious negligence resulting in unacceptable loss, damage or injury
* intentional serious breach of Rainbows GB policy or regulations or improper conduct in relation to job responsibilities
* bringing Rainbows GB into serious disrepute
* serious breach of Rainbows GB policy on Harassment and Bullying
* theft, fraud or deliberate falsification of records or Rainbows GB documents
* assault or attempted assault of a physical or sexual nature
* malicious damage to Rainbows GB property
* deliberate refusal to comply with reasonable instructions or requests made by a line manager within the work place
* a breach of health and safety rules which places a member of staff or others in danger
* intentional misuse of confidential information
* fraudulent misuse of the Rainbows GB property or name
* unauthorised entry to computer records or inappropriate use of Rainbows GB data or computing equipment.

Conviction of a criminal offence outside the workplace and normal working hours may be deemed as gross misconduct depending on the nature of the offence, its relevance to the individual's employment and the sentence incurred.

**Suspension on full pay**

6.13 If it is deemed necessary to suspend an employee from work, for example, to facilitate investigation into a potential disciplinary matter, or to allow a cooling off period, suspension will be on full pay for such time as is necessary to permit proper investigation or to arrange a hearing date. The fact and conditions of the suspension will be confirmed in a letter to the individual immediately.

6.14 Suspension is not a disciplinary penalty. Normally an employee will be suspended by the Head of Department only after consulting with the Trustees. In such a case, formal written confirmation of the suspension and the reasons for it will be confirmed by the Head of Department as soon as the Trustees have been informed.

**Notification of Outcome**

6.15 Where disciplinary action is taken, the member of staff will be informed of the outcome as soon as possible including:-

1. The disciplinary sanction awarded including the level of any warning given.
2. The reasons why the disciplinary action was taken.
3. The consequences of any further failure to adhere to acceptable standards of conduct. In cases where a final written warning is given it should be made clear that further formal disciplinary action may result in dismissal.
4. The provision of any support, counselling or corrective action that is required and if not immediate, the time within which improvement will be expected.
5. The time period within which the warning will be considered to have lapsed
   * a formal oral warning will normally lapse 6 months after issue.
   * a written warning will normally lapse 12 months after issue.
   * a final written warning will normally lapse 18 months after issue.
6. The fact that a record of warnings will be kept.
7. The right of appeal, advising that this should be formally submitted in writing to the Chairman of the Trusrtees within seven calendar days and the right to representation at any future appeal hearing.

**7. Appeal Procedure**

7.1 Where a member of staff is notified that a disciplinary sanction has been awarded against him/her, s/he will also be notified of the right of appeal. A member of staff wishing to appeal against disciplinary action should submit notice of appeal to the Chairman of the Trusrtees in writing within seven calendar days of receipt of the written confirmation of disciplinary action, stating the grounds of appeal. The disciplinary action imposed as a result of the original hearing will remain in force unless and until it is modified as a result of the appeal.

7.2 An Appeal Hearing is not designed to re-hear the case but to examine the grounds of appeal. The appellant must be specific about the grounds of the appeal; these will effectively form the agenda for the hearing. Appeals will be raised on one of the following grounds:

* the procedure: a failure to follow procedure had a material effect on the decision
* the decision - the evidence did not support the conclusion reached
* the penalty - was too severe given the circumstances of the case
* new evidence - which has genuinely come to light since the first hearing.

7.3 Arrangements will be made for appeals against disciplinary action to be heard as soon as reasonably practicable.

7.4 The appellant will be notified as soon as possible of the time, date and place of the appeal hearing. The appellant will be advised that s/he may be accompanied by his/her Trade Union representative or workplace colleague and the rights in relation to representation outlined in page two of the this procedure will apply.

7.5 The Appeal will be heard by a panel of two Trustees who have not previously been involved in the case. The panel will be appointed by the Chairman of the Trustees .

7.6 Where an appeal against disciplinary action is upheld, reference to the disciplinary sanction shall be expunged from the individual's record and the member of staff so notified. If the appeal is not upheld but the Appeal Panel considered the sanction to be inappropriate it may reduce the sanction or deem that it be operative for a shorter period. Where an appeal against dismissal is upheld, the member of staff shall be paid in full for the period from the date of dismissal and continuity of service will be maintained.

7.7 The result of the appeal will normally be notified to the appellant orally within one day and in writing within seven calendar days of the hearing. A copy will also be sent to any representative.

7.8 The decision of the Appeal Panel is final.

**8. Monitoring**

8.1 This policy reflects UK employment law and ACAS guidance and will be reviewed from time to time, as appropriate.