

# **Conduct and Capability Management Policy**

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### **Appendices (available separately)**

Appendix One – Levels of Authority

Appendix Two – Referral to the DBS Procedure

# Conduct and Capability Management Policy

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<b>Department</b>	Human Resources

## Scope

This policy covers the steps that all staff members must follow in relation to managing conduct and capability in the workplace, to help ensure that the charity applies best practice and complies with legislation.

## Summary

### Conduct

This policy outlines the charity's approach to conduct in the workplace. Line managers should not view this primarily as a way of imposing penalties or as leading to dismissal. The policy needs to be seen as corrective rather than punitive, ensuring that staff adhere to the charity's agreed standards of conduct.

Managers should act immediately. Allowing poor behavior to continue without addressing it will lead the individual to conclude that it is acceptable and may also lead to colleagues acting similarly. Staff members should know what is expected of them and be in no doubt as to what will happen if they fail to achieve and maintain accepted standards

This policy ensures that all staff members have a clear understanding of behaviour that is consistent with the charity's core beliefs, values and [code of conduct](#); and have a clear understanding of actions that may be taken if breached.

### Capability

This policy provides a framework within the charity's commitment to performance management to help address issues of non-achievement of work standards. The NAS is committed to investing in the effective management, support and development of its staff members.

Following the policy will ensure that clear priorities link the management and development of staff members to the charity's strategic aims and objectives at organisation, team and individual level.

This policy must be used together with the Conduct and Capability Procedure.

## Definitions

### Misconduct

The standards of conduct expected of staff members are those necessary to maintain mutual trust and confidence. Non-exhaustive examples of misconduct could be;

- failure to adhere to management instruction,
- poor time keeping
- not adhering to the charity's policies or procedures
- unauthorised absence,
- unreasonably negative attitude, disruptive behaviour,
- unacceptable level of personal phone calls,
- a breach of our code of conduct
- a breach of our values

In the first instance, line managers should handle misconduct of this nature through day-to-day coaching and guidance, support and supervision meetings as well as appraisals. However if a staff member fails to follow appropriate standards of conduct, then it will be appropriate to move to the formal procedure as outlined in the Conduct and Capability Procedure.

Nonetheless, some offences are so serious that they are considered to be gross misconduct.

### Gross misconduct

Gross misconduct is any act by a staff member that is seriously detrimental to the good conduct or reputation of the charity and/or to the welfare of the people we support.

An act of gross misconduct may, after an investigation and a fair hearing, generally lead to summary dismissal. Summary dismissal is where an employee's contract is being terminated immediately without being issued with a formal warning and without notice or pay in lieu of notice. This is a non-exhaustive list of examples of offences which may amount to gross misconduct:

- theft, fraud and the deliberate falsification of records
- willful or negligent damage to, or misuse, or unauthorized use of our property or facilities
- working whilst under the influence of alcohol or non-prescribed drugs
- the use, handling or possession of illegal drugs on or off our premises
- reckless or serious misuse of one of our vehicles
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious negligence which causes or might cause loss, damage or injury
- serious insubordination
- accepting a gift from a person we support or their family, carer or advocate without disclosing this to your line manager
- sleeping on duty
- gross misuse of social media
- discrimination on the grounds of race, sex, disability, sexual orientation, religion or belief or age
- bullying or harassment of colleagues or people we support

- violent, dangerous or intimidating conduct
- serious breach of confidentiality (subject to the Public Interest (Disclosure) Act 1998)
- serious breach of our rules and procedures
- serious infringement of health and safety rules
- bringing our organization into serious disrepute
- breaches of our legal and policy obligations to avoid conflicts of interest
- conviction for a criminal offence that in our opinion may affect our reputation or our relationships with our staff, customers or the public, or otherwise affects your suitability to continue to work for us
- being concerned or interested in action which is damaging or anti-competitive to our business
- giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment or other benefits
- bribery, corruption or the improper use of position within our organization for personal gain
- conduct and/or behaviour, including that occurring outside working hours, which brings or may bring us into disrepute or make you unsuitable for your post
- publications on any social media site which are derogatory in content or tone towards our organization or our employees or stakeholders or which have a significant adverse effect on our reputation
- falsification of records (of any kind);
- serious insubordination;
- deliberate damage to property
- unauthorised use or disclosure of confidential information

## Capability

Capability is defined as the ability to carry out a role and fulfil the requirements of that role according to expected standards with integrity. Managers must be aware of their staff member's competences and workloads and staff members must also adhere to instructions and complete their duties in a skillful and timely manner.

Disciplinary situations can include poor performance and in all cases, the causes should be investigated and resolved informally in the first instance. It is best to tackle poor performance concerns at an early stage rather than allow for it to continue unchallenged.

Where the staff member wants to do the job but for some reason cannot meet the expected standards or cannot cope adequately with any aspects of their employment, the charity must provide support and set reasonable timescales to reach the required performance standards.

Capability issues can end up in dismissal if there is no improvement in performance or if there is an unsatisfactory level of improvement within a defined time period.

Managers must consider the nature of the concern and whether it is deliberate or due to other factors such as the staff member's capability to undertake their role, or whether the staff member's capacity to undertake their role is due to health reasons.

Where this may be the case, managers should consider addressing this by using the Conduct and Capability Procedure or the Coming to Work (Absence Management) Policy and Procedure.

## Core Principles - Capability

- Performance management is an ongoing cycle of continuous communication between manager and staff member aimed at encouraging best performance and often forms part of :
  - Induction and Probation
  - Ongoing coaching, mentoring and counselling
  - Support and Supervision
  - Annual Performance Review (APR)
- Performance management should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement amongst employees whose conduct or performance may be unsatisfactory.
- The NAS aims to provide support to any staff member who has difficulty performing to a satisfactory standard. In line with the NAS values, our aim is to work with individuals to bring their performance back to a satisfactory level.
- The capability management process should be used in a positive way and employees should always be treated with dignity and respect.
- The important point in capability management is to act immediately through day-to-day coaching and regular Support and Supervision when performance is becoming a concern.
- Where poor performance exists and is not addressed, this could lead to the individual concluding that it is acceptable and may also encourage colleagues to act similarly.
- All performance management should link to the NAS competency framework. Employees should know what is expected of them and the consequences of not achieving and maintaining required standards.
- Where an employee is found to be failing to perform to the required standard after their manager has undertaken reasonable capability management, action may be taken to dismiss the individual on the grounds of incapability.
- Where the cause of poor performance is found to be willful negligence or misconduct, the Conduct and Capability Procedure will apply.

## Informal Action Plan - Capability

Where there are concerns about an employee's performance, the manager should try to resolve this informally through normal day to day supervision. This should be a two-way discussion, aimed at pointing out the shortcomings and encouraging improvement. Criticism should be constructive with the emphasis on finding ways for the employee to

achieve sustained improvement.

Where the required improvement has not been achieved through informal intervention the manager should implement an informal action plan with a set timescale for improvement. This should be for a minimum period of 4 weeks and a maximum period of 12 weeks. If there is no sustained improvement, this should be addressed using the formal process as outlined in the Conduct and Capability Procedure.

The Action Plan is designed to facilitate a constructive discussion between an employee and their manager on the area(s) of their work performance that needs to improve. It should;

- Provide details of areas where the employee is not meeting the required standards of performance
- Clearly outline the improvement that is required; the timescale for achieving this improvement; a review date and any support that will be provided to assist the employee
- State how performance will be monitored/evaluated and arrangements for review meetings
- Ensure that the employee understands the standard of work required
- Outline possible consequences of non-achievement of performance standards
- Ensure that issues and progress are recorded on a regular basis - both parties should keep copies of the plan

Managers should also consider whether the role is suitable for the employee or whether the capability issues arise from the job design.

Managers may find through discussions that the employee has personal issues that are impacting on their performance, in which case there may be support available through other policies and procedures and/or the Employee Assistance Program.

If poor performance is due to a health issue unrelated to the job or employee's conduct, it should be addressed through the Coming to Work (Absence Management) Policy and Procedure or the Conduct and Capability Procedure.

If following the implementation of the action plan there is no sustained improvement to the required standard, the employee should be advised that their performance remains unsatisfactory and that they will be invited to a formal meeting (please refer to the Conduct and Capability Procedure).

## **Grievance**

Suspension of proceedings may be considered in order to deal with a grievance (refer to the Grievance Management Policy and Procedure). There will be no need to delay a conduct or capability hearing if the grievance has no bearing on the outcome. However, if following an investigation, a grievance is upheld and it is deemed that disciplinary action is necessary, the Conduct and Capability Procedure will apply.

## **Fairness and dignity in the work place**

The charity is opposed to harassment in any form and is committed to providing a workplace in which the dignity of individuals is respected; where discrimination, harassment, victimisation and bullying are known to be unacceptable, and where

individuals can submit complaints without fear of reprisal.

The NAS regards harassment as a serious breach of discipline and all allegations of unacceptable behavior will be dealt with in a responsive, supportive and sensitive manner, maintaining appropriate confidentiality. The charity has a Fairness and Dignity at Work Policy which requires all staff members to respect each other and to understand that behavior that they may find acceptable may not be regarded as such by others. Where a staff member is in breach of the Fairness and Dignity at Work Policy and/or the code of code then the Conduct and Capability Procedure will apply.

When an allegation of grievance is linked to performance management, ACAS definition of bullying and harassment will be applied to all investigations linked to such a grievance.

### **Precautionary Suspension**

The charity may suspend staff members on full pay whilst an investigation is undertaken and until a decision has been made. Suspension on full pay is a precautionary measure, not a punishment or sanction, and should not be regarded as such. Please refer to the Conduct and Capability Procedure for further details.

### **Investigation**

Thorough investigations must be undertaken to determine if there is sufficient evidence to proceed to a hearing. Please refer to the Investigation Policy and Procedure and/or Conduct and Capability Procedure for further details.

### **Right to be accompanied**

A staff member is entitled to bring a companion to any formal meeting, either a fellow worker or a trade union representative/official. Please refer to the Conduct and Capability Procedure for further details.

### **Suspension of process**

Suspension of proceedings for a short period may be considered in order to deal with a grievance, absence/attendance or a capability issue. There will be no need to delay the conduct hearing if the issues have no bearing on the outcome.

### **Breach of Policy**

The charity will consider breach of policy as alleged misconduct or gross misconduct. The Conduct and Capability Procedure sets out how a breach in policy is addressed.

### **Related Policies and Procedures**

Conduct and Capability Procedure

Coming to Work (Absence Management) Policy and Procedure

Investigation Policy and Procedure

Equal Opportunities and Diversity Policy

### **Review**

The charity will review this Policy every 2 years in consultation with relevant stakeholders.

### **Employee Assistance**

There is a confidential advice, information, counselling and support service covering a range of topics including legal, financial, consumer and personal issues which employees may use. Contact details are available in your local office or on the Wellbeing page of the NAS Intranet.

***Details of this service should be included in all correspondence to the employee.***