

DISCIPLINARY PROCEDURE

Policy Control/Monitoring

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Version:	5.0
Approved by: (Name/Position in Organisation)	Tara Allen Director of Support Services and Business Transformation
Date:	
Accountability: (Name/Position in Organisation)	Lindsay Murray HR Manager
Author of policy: (Name/Position in organisation)	Lindsay Murray HR Manager
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Associated Policies: (insert hyperlinks)	
Associated National Guidance	
Document status	<p>This document is controlled electronically and shall be deemed an uncontrolled documented if printed. The document can only be classed as 'Live' on the date of print.</p>

Equality Impact Assessment

This document forms part of Percy Hedley's commitment to create a positive culture of respect for all staff and service users. The intention is to identify, remove or minimise discriminatory practice in relation to the protected characteristics (race, disability, gender, sexual orientation, age, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity), as well as to promote positive practice and value the diversity of all individuals and communities.

As part of its development this document and its impact on equality has been analysed and no detriment identified.

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Version Control Tracker

Version Number	Date	Author/ Title	Status	Comment/Reason for Issue/Approving Body
V0.1	September 2012	Unknown	Approved/archived	Business requirement
V0.2	Unknown	Unknown	Approved/archived	Update
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V0.5	September 2020	Lindsay Murray HR Manager	Approved/live	Review

Roles & Responsibilities

Role	Responsibility
Director of Support Services and Business Transformation	Final approval of any changes to this policy.
Head of Human Resources	To ensure that this policy is kept up to date in accordance with current regulations, legislation and guidance.
Head of Service/Head of department	To ensure the appropriate the deployment of this policy.

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1. Introduction

The Percy Hedley Foundation expects high standards of behaviour, conduct and attendance from all its employees. The disciplinary procedure provides a framework for dealing with incidents where employees are alleged not to have met these high standards.

1. Purpose

The disciplinary procedure has been developed to ensure that employees fully understand the standards of conduct which are expected of them whilst in the employment of the Foundation and the potential action which may be taken if these standards are not met.

The main purpose of formal disciplinary action is to correct problems, prevent their reoccurrence and prepare employees for improved conduct in the future.

Formal disciplinary action may take any one of three forms depending on the severity of the misconduct and the number of occurrences – a written warning, a final written warning or dismissal. There may be circumstances when one or more steps in the procedure are bypassed due to the nature of the misconduct involved. The Foundation also recognises that there are certain types of misconduct that are so serious they may justify dismissal without a verbal or written warning being given.

3. Scope

This procedure will apply to all employees employed by the Foundation under a contract of employment except those staff who are within their probationary period of service and who will be subject to the Foundation's Probationary Policy and Procedure.

Staff falling within the probationary period will not normally be subject to the Foundation's Disciplinary or Capability procedures. However, The Foundation reserves the right to invoke dismissal procedures in cases of alleged serious or gross misconduct or incapability. All other cases of poor performance will be dealt with within the probationary procedure.

This procedure is entirely non-contractual and does not form part of an employee's contract of employment.

4. Responsibilities

The following staff will have specific areas of responsibility:-

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Senior Managers are responsible for ensuring that the disciplinary procedure is implemented fairly and consistently throughout their service area and for seeking advice from the HR Department where necessary. Senior Managers will authorise an employee's suspension where necessary and any cases where dismissal is considered the appropriate sanction to be taken.

Line Managers are responsible for communicating the required standards of conduct to individuals, identifying issues where unacceptable standards have been demonstrated, supporting and advising employees to bring about improvement. In addition they are responsible for implementing the procedure consistently and in line with current legislation and best practice.

The HR Department is responsible for providing guidance and support to managers on disciplinary matters and for advising relevant Directors when any disciplinary action may result in dismissal. No action should be taken by any manager without prior consultation with the HR Department.

5. Principles

The procedure takes full account of the recommendations of the ACAS Code of Practice on Disciplinary and Grievance Procedures and also reflects the principles of fairness, transparency and natural justice.

The guiding principles of the procedure are:-

- a) The purpose of any disciplinary action is corrective and is used to help and encourage employees to improve.
- b) The Foundation aims to secure equality of opportunity in all its activities, and in this respect, the disciplinary procedure reflects the Foundation's Equality & Diversity Policy and is free from any discrimination.
- c) Managers are responsible for addressing conduct and behaviour issues as early as possible and for taking appropriate action. Where possible, steps will be taken to resolve issues on an informal basis without using the formal procedure
- d) Disciplinary action will only be undertaken where, after investigation, evidence exists that a breach of discipline has occurred.
- e) The employee will be informed of the complaint and provided with an opportunity to explain their conduct or behaviour before any decision is

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reached.

- f) Any necessary investigations will be carried out to establish the facts before any formal stages of the procedure are instigated.
- g) All information relating to the situation will be kept confidential.
- h) If suspension is considered necessary prior to a disciplinary hearing being arranged such action is not a disciplinary measure and the suspended employee will continue to be paid in full.
- i) Employees will be entitled to be accompanied at a disciplinary hearing by a work colleague or an accredited trade union representative
- j) Any disciplinary action that may be taken should be dealt with promptly, reasonably and appropriately to the nature of the misconduct.
- k) Employees will be given the opportunity to appeal against disciplinary sanctions.
- l) That the procedure for handling disciplinary matters is equally in the interests of employees and the Foundation.
- m) Employees will not be dismissed for a first disciplinary offence, unless it is a case of gross misconduct.
- n) Employees will always be given an explanation for any disciplinary action taken and will be made aware of what improvement is expected.

6. Misconduct

The following lists represent examples of actions or misconduct that may result in disciplinary action being taken against an employee ranging from a first written warning to dismissal. It should be understood that repeated or continuing acts of misconduct may result in increasing levels of disciplinary action being taken against an employee including dismissal.

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These lists are not exclusive or exhaustive and are by way of example only. The Foundation reserves the right to consider other acts as falling within these categories.

Note: It is expected that poor performance issues are addressed by line managers through day to day management, use of PDR (Performance Development & Review) and supervision. However, where performance issues continue, the Foundation may have no option but to instigate the Disciplinary Procedure.

Examples of misconduct could be:

- Minor breaches of Foundation policies and procedures [including Attendance Management Policy, Health and Safety Policy, Medication Policy, Social Media Policy];
- Minor breaches of your contract;
- Damage to, or unauthorised use of, our property;
- Poor timekeeping;
- Time wasting;
- Unauthorised absence from work;
- Refusal to follow instructions;
- Excessive personal usage of phones during working time;
- Excessive personal e-mail or internet usage during working time;
- Inappropriate, obscene or offensive language or behaviour;
- Negligence in the performance of your duties; or
- Smoking in no-smoking areas.

7. Gross Misconduct

Gross misconduct is misconduct that is serious enough to irreparably damage the trust between the Foundation and the employee and/or make a further working relationship between the Foundation and the employee impossible. The examples given below will normally lead to summary dismissal (i.e. dismissal without pay) from the Foundation, unless there are genuine mitigating circumstances which management may take into account.

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Examples gross misconduct could be:

- Deliberately supplying false information to the Foundation e.g. on application forms, on sickness record forms or during any company investigations
- Serious insubordination
- Serious breach of trust and confidence
- Theft of Foundation or another person's property or funds
- Deliberate and serious damage to property
- Dishonesty – this includes falsification of expenses claims or wage documentation and recording of working hours, or accepting or offering a bribe.
- Assault on an employee, student, service user or visitor either verbally or physically
- Serious use of obscene or threatening language or other offensive behaviour;
- Drunkenness or being under the influence of drugs during working hours or where the employee can be associated as being a representative of the Foundation (whether during or out of working hours)
- Possession, use or supply or attempted supply of illegal drugs
- Serious negligence causing loss, damage or injury e.g. serious errors in administering medication.
- Serious breaches of health and safety rules e.g. where an employee's actions puts another employee, student, service user or visitor at risk
- Disloyal conduct - this includes participating in activities which are in direct conflict with the business interests of the Foundation such as divulging

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confidential commercial information to competitor organisation's and actions which conflict with the Foundation's core values

- Serious breaches of Foundation policies and procedures [including Safeguarding Policy, Health and Safety Policy, Medication Policy, Social Media Policy, Acceptable Internet Access Policy];
- Discrimination, harassment or victimisation of employees, service users, visitors, or members of the public related to gender, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, disability, religion or belief or age.
- Actions where the name of the Foundation could be brought into disrepute
- A convictable offence that will bring the Foundation into disrepute or prevent the normal conduct of its business.
- Being found guilty of or having confessed to or having reasonable grounds to suspect that a criminal act or act of dishonesty, whether committed in the course of employment or not, which makes the individual unsuitable for employment within the workplace.
- Any other misconduct which the Foundation believes to be serious.

8. Criminal charges or convictions

An employee will not normally be dismissed or otherwise disciplined solely because he or she has been charged with or convicted of a criminal offence. Advice should be sought from the HR Department to establish whether the employee's conduct or conviction merits action because of its employment implications.

An employee must inform their line manager or the HR Department immediately in the event that they become subject to a criminal investigation or are charged with, and/or convicted of, a criminal act.

9. Informal Action

It is recognised as being in the interests of the Foundation and its employees that in some situations, the right word at the right time may be more appropriate than dealing with a breach of discipline using formal disciplinary procedures. Informal

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action will not be used in cases of serious or gross misconduct and where a repeated offence has taken place.

The employee's manager should hold the discussion away from all other employees and it should take the form of a two-way discussion. The purpose of this discussion is to ensure that the employee understands the nature of the concerns, expectations of improvement in conduct and where appropriate timescales and the nature of any support available.

If improvement is needed the employee shall be informed:

- What he/she is expected to do in order to improve his/her conduct or behaviour
- How his/her conduct will be monitored and reviewed
- Any training or development action required
- How long the period for improvement shall last before the formal disciplinary procedure will be invoked if there is not satisfactory improvement.

A performance improvement plan (PIP) may be completed in some cases of unsatisfactory conduct.

Only if informal discussions do not resolve the situation, should the formal procedure be invoked. Managers must bear in mind that the disciplinary action taken, if it is to be fair, must be reasonable.

Employees will not be allowed to be accompanied where informal action is undertaken.

A note will be placed on the employee's file as a record of any conversations where informal action has taken place.

10. Formal Action

If informal action does not bring about an improvement or the misconduct is considered to be too serious to be classed as minor, formal action will be taken.

The disciplinary procedure may be entered into at any stage depending on the seriousness of the offence.

11. Investigation

In all cases where there is a suspected or actual breach of conduct, a full investigation must be carried out. Managers should refer to the Foundations Investigations Guidance Document for further details.

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Depending on circumstances this may include asking questions of witnesses.

It will usually be necessary to hold investigatory meetings. These meetings should be for the purpose of gathering information to determine whether there has been an act of misconduct and how serious it is. If such a meeting is held prior to a disciplinary hearing, the employee will be informed at the outset that the meeting is an investigatory and fact finding meeting.

If an employee is invited to attend an investigatory meeting, there will be no automatic right to be accompanied. However, if this request is made it should be responded to positively as long as it does not result in a delay in the proceedings.

If, following an investigatory meeting, it becomes clear that disciplinary action is appropriate a formal disciplinary meeting will be arranged.

12. Roles and Responsibilities

The Investigating Officer is responsible for establishing the exact nature of the allegation(s), gathering the evidence to substantiate them (or not) and preparing an investigation report. The Investigating Officer will normally be the employee's line manager. In certain circumstances it may be more appropriate to appoint a manager from elsewhere in the Foundation to investigate.

The Disciplinary Officer is responsible for making a decision based on the Investigating Officer's findings as to whether there is a case to be answered under the Disciplinary procedure.

The Appeals Officer is responsible for hearing an employee's appeal against a decision taken under the Disciplinary procedure

The above roles must be kept separate to ensure impartiality and objectivity. For example, The Disciplinary Officer cannot become the Appeals Officer.

13. The disciplinary procedure

In the event of a formal disciplinary meeting, the following steps will always be taken:

Step 1 - Statement of grounds for action and invitation to meeting

A written statement confirming the full nature of the complaint/allegation and an invitation to attend a formal meeting including date and time of the meeting will be issued to the employee. They will normally be given copies of relevant documents and witness statements. Employees will be given sufficient notice to

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allow time to consider a response and arrange to be accompanied by a work colleague or an accredited trade union representative (see *Right to be accompanied*). The meeting will normally be held within 5 working days from the date of the letter inviting the employee to the meeting. Please note that a trade union representative must have experience or training in acting as an employee's companion at disciplinary meetings.

The employee should inform HR who the chosen companion is prior to the meeting. If the companion cannot attend at the date and time proposed the employee can ask for a postponement of up to 5 working days beginning on the first working day after the original date proposed.

Should either The Foundation or the employee intend to call any relevant witness to the meeting they are required to give advance notice that they intend to do this.

Step 2 - The Meeting

A meeting will always take place before action is taken. At the meeting, the Disciplinary Officer will:

- a) Introduce the attendees.
- b) Explain the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the Foundation's disciplinary procedure.
- c) Discuss the basis of the complaint/allegation.
- d) Provide any supporting evidence, including any investigatory report and call any appropriate witnesses.
- e) Allow the employee to submit a response.
- f) Allow the employee to call or question any witnesses as required.
- g) Allow the employee to be accompanied at the disciplinary meeting.
- h) Instigate or allow an adjournment of the proceedings to permit either party to confer, review further evidence or carry out further investigations.

A representative from the HR Department may be present during the meeting to advise on the procedure.

Notwithstanding any further investigations or information gathering, the decision will be confirmed in writing within 5 working days of the meeting.

Where it has not been possible to immediately notify the employee of the outcome of the disciplinary meeting as a result of further investigations and/or information gathering being necessary, the employee will be kept informed of the actions and timescales necessary to complete the disciplinary proceedings.

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Once all necessary action has taken place, the employee will be notified of the outcome of the disciplinary proceedings in writing or invited to a reconvened disciplinary hearing if necessary to deal with the further information that has been gathered.

Step 3 - Appeal

All employees have the right to appeal against any disciplinary decision taken against them in accordance with the following procedure:

An appeal against disciplinary action must be made in writing by the employee no later than 5 working days after the date on which disciplinary action was notified to the employee and should state the grounds for the appeal.

The appeal authority will without undue delay, inform the employee of the date and time at which an appeal hearing will take place.

The appeal will be heard by an appropriate manager of the Foundation not previously involved in the dismissal or disciplinary hearing.

The appeals procedure provides an opportunity to the employee or their companion to comment on any new evidence arising during the appeal before any decision is taken.

The employee must attend the appeal hearing in person to explain the grounds of the appeal. In the event of non-attendance by the employee, the Foundation reserves the right to conduct the hearing in the employee's absence except where there is a good or justifiable reason to postpone the appeal hearing.

A representative from the HR Department will be present during the meeting to advise on the procedure. The employee may be accompanied at this meeting by a work colleague or an accredited trade union representative.

The employee will be informed of the outcome of the hearing within 5 working days of the appeals hearing taking place. Any decision made will be final.

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Any re-instatement or re-engagement that may take place as a result of an appeal against dismissal will take effect from the date of the disciplinary action in question and previous continuous service with the Foundation will be counted. The employee concerned will suffer no loss of entitlement to his / her contractual earnings except where suspension is allowed without pay.

Where it is considered appropriate, a decision may be taken to increase the original level of disciplinary sanction at appeal.

13.1 Disciplinary Sanctions

If an allegation is found to be proven, the employee will be issued with a warning, the level of which will depend on the seriousness of the misconduct and circumstances of the case. In the case of gross misconduct or repetition of other misconduct the outcome could be dismissal or some other punitive action.

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in place, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee's disciplinary record will be borne in mind in deciding how long any warning should last.

13.2 First Written Warning

A first written warning will be issued where there are no other active written warnings on an employee's disciplinary record.

A copy of the warning letter will be attached to the employee's staff file and will be deleted after a maximum period of 9 months provided that there has been no further misconduct within this period.

13.3 Final Written Warning

In the case of repeated misconduct for which a written warning or warnings have previously been issued, or in the case of gross or serious misconduct not of itself warranting immediate dismissal, a final written warning will be given to the employee, which will state that a repetition of this misconduct or further misconduct will result in dismissal.

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A copy of this warning will be placed on the employee's staff file, but will be deleted after a period of 12 months provided there has been no further misconduct within this period.

13.4 Dismissal

Dismissal will be applied in the case of repeated misconduct for which a final written warning or warnings still active on the employee's staff file have been issued, or in the case of gross misconduct.

In cases where dismissal is due to gross misconduct, an employee will be summarily dismissed without notice or payment in lieu of notice.

Dismissals will be carried out by a manager within the service who is of an appropriate level of seniority.

All employees dismissed from their employment will be provided with a written reason for their dismissal.

13.5 Other Punitive Action

An employee may have other punitive action taken against him/her such as loss of seniority, demotion, an extension of a final written warning with a further review period. If the employee has a live warning on file pay increments will be reviewed.

13.6 Suspension

In the event of serious or gross misconduct, an employee may be suspended on full pay at any stage of the disciplinary procedure. Such suspension is not a penalty and does not imply guilt or blame.

Any suspension will be considered seriously given the individual circumstances of a case.

An over-hasty or ill judged decision to suspend a member of staff can have a substantial detrimental effect on their career.

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It will usually be considered in the following situations:

- If there is a potential threat to the Foundation and other employees;
- If there is a risk that an employee may tamper with or destroy evidence;
- If there has been a breakdown in relationships;
- If there is a risk that an employee may seek to influence witnesses; or
- If there is a risk to an employee's or a service users health and safety.

The decision to suspend will be taken by a Senior Manager after consultation with the HR Department. A manager authorised to suspend an employee should always consider if alternative arrangements to suspension are appropriate, to allow the employee to remain at work during any investigation. For example, temporary redeployment, additional supervision or the restriction of duties.

In cases where there is a serious allegation of a safeguarding nature, it may be necessary for the manager to send home the member of staff immediately whilst the appropriate local safeguarding team is contacted and the manager considers whether suspension is necessary.

In all cases, the suspension will be confirmed in writing, no more than 5 working days after the suspension. The letter will;

- confirm the suspension, the reason for this, and how long it is anticipated that it will last;
- confirm that the suspension is temporary, not an assumption of guilt and not a disciplinary sanction;
- explain the employee's rights and obligations whilst they are suspended;
- confirm that their employment contract will continue but that they will not be required to report for work and that they must not contact clients or colleagues; and
- provide them with a point of contact to have during their period of suspension.

Regular contact will be made with the employee during any period of suspension to provide updates on any developments and there will be an individual manager identified as a contact point.

Periods of suspension should be as short as possible and the decision to suspend should be kept under ongoing review. The reason and arrangements for the suspension will be reviewed periodically (every four weeks) by the Senior Manager in consultation with the HR Department.

During any period of suspension, the employee will be required to cooperate fully with any investigation and to be available to meet during normal working hours. Whilst suspended, the employee will not be entitled to access any Foundation premises unless directed to do so or to use the Foundation's internet/intranet

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facility or to engage in his or her normal day to day duties unless agreed in advance.

Any request to attend the workplace during suspension to access information required in preparation for a meeting or hearing will not be unreasonably refused but the employee will be accompanied.

If the employee becomes ill or wishes to take annual leave during the period they are suspended the procedures for reporting and authorising such leave will still be applicable. In these circumstances managers should contact the HR Department.

There may be exceptional circumstances when pay may be withheld during a period of suspension. This might arise, for example, where an employee is debarred from work as the Foundation would be in breach of legislation by continuing to employ the individual. Any decision to withhold pay during a period of suspension must be authorised by the HR Manager.

13.7 Right to Be Accompanied

The employee may consult and be assisted, if he/she so wishes by a work colleague or an accredited trade union representative at a disciplinary hearing and an appeal hearing. However, the employee will not be allowed legal representation at any stage in the procedure.

Please note that any accredited trade union representative must have received training or have experience in attending such disciplinary meetings. Fellow employees or trade union representatives do not have to accept a request to accompany an employee and should not feel pressurised to do so.

It should be noted that work colleague/representative has a right to confer and make statements during the meeting but not answer questions on behalf of the employee. The companion will be allowed to address the hearing to put and sum up the employee's case, respond on the behalf of the employee to any views expressed at the meeting and to confer with the employee during the meeting. The companion does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Foundation from explaining their case.

13.8 Meeting Times

At all times, meetings will be arranged to take place at a time that is convenient for both parties. It is recognised that in some circumstances, the employee and, or his/her representative may not be able to attend a hearing on the proposed date. In such circumstances, the employee may offer an alternative time and date so

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long as it is reasonable and falls within 5 working days from the originally proposed date (beginning on the first working day after the original date proposed).

If the employee is unable to attend the meeting, they should notify the Foundation and give the reason for non-attendance as soon as it is known and in advance of the meeting. Where employees fail to attend because of circumstances outside of their control, they will be invited to attend another meeting. Where there is no valid reason for non-attendance, the Foundation may inform the employee that decisions will be made in their absence should they fail to attend a rearranged hearing without good reason.

13.9 Notes

Summary notes only will be taken at disciplinary meetings. These will be made available to the employee within 5 working days of the meeting. The person chosen to accompany the employee at the disciplinary meeting will also be allowed to take their own notes.

13.10 Confidential Records

All information in relation to all aspects of the informal and formal disciplinary proceedings will be stored confidentially and in accordance with the General Data Protection Regulation.

13.11 Mitigating Circumstances

In all situations, the Foundation will take into account any mitigating circumstances which may have contributed to or led to the act of misconduct or unsatisfactory performance.

This may have the effect of lessening the disciplinary sanction awarded, for example, with a case of gross misconduct; summary dismissal may not be automatic.

13.12 Overlapping grievance and disciplinary or capability cases

Where an employee raises a grievance during a disciplinary or capability process the disciplinary/capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary/capability cases are related it may be appropriate to deal with both issues concurrently.

13.13 Referral to External Organisations

It may be necessary to refer to other organisations depending on the nature of the case e.g.: Local Safeguarding Board, Police, DBS, Teaching Council etc.

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Where the allegation may lead to a criminal investigation, any investigation by the police will take priority over an internal investigation. The Internal investigation should be held in abeyance pending the outcome. The police may wish to interview the member of staff before any approach is made by the Foundation and should be given every assistance.

Where an employee is dismissed from a role in regulated activity with children and/or vulnerable adults, including situations when we would have dismissed, but the person resigned, retired, or left, then the responsible manager should always make a referral to DBS. Managers should refer to the Foundations DBS policy for further information regarding making a referral.

13.14 Sickness Absence

If sickness intervenes during any aspect of the disciplinary procedure, consideration will be given to the nature and anticipated length of absence and the nature of the matter under investigation. The matter shall be discussed with the HR Department to consider whether the matter should be progressed or held in abeyance pending the employee's return to work.

14. Monitoring and Compliance

Overall responsibility for the operation of this procedure lies with the Head of HR & Organisational Development. The effectiveness of the procedure will be formally reviewed and monitored at least on a bi-annual basis to ensure that it continues to meet the requirements of The Foundation and that it reflects HR good practice and statutory legislation as appropriate.

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