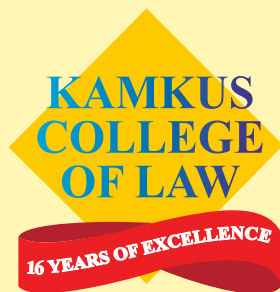


DISCIPLINARY & CAPABILITY POLICY

2023



KAMKUS COLLEGE OF LAW



DISCIPLINARY & CAPABILITY POLICY

A. DISCIPLINARY POLICY

Purpose, Principles and Values

The disciplinary policy provides a framework for dealing fairly and consistently with issues where an employee / staff is alleged to have breached the standards of conduct and behavior. It applies to all employees / staff of Bhagirath Sewa Sansthan (hereinafter referred to as 'BSS', which shall include the institutions under the BSS umbrella).

BSS expects all employees / staff to maintain the highest standards of both personal and professional behaviour and conduct.

At all times employees / Staff must:

- Behave with integrity
- Treat colleagues with respect and fairness
- Create a working environment that supports and enables colleagues to do their role
- Follow reasonable instructions
- Comply with BSS work practices, policies and procedures
- Work to the highest standards of governance and risk management.
- Observe all relevant legal and regulatory obligations applicable to the performance of their role and the execution of their duties.

This document is intended to be a statement of BSS policy. It supersedes all other disciplinary policies, procedures and practices of BSS.

This policy may be amended at any time, which shall be duly notified to all concerned.

Disciplinary Issues:

Misconduct is when an employee / staff has failed to follow BSS rules, work practices, work instructions, policies or procedures, including any policy or has breached any existing applicable laws or regulations.

The misconduct / gross misconduct incidents whether minor or major will be dealt with by the management representative or team constituted by the management.

Examples of misconduct include but are not limited to:

- Failure to follow reasonable instructions whether verbal or written
- Neglect of duties
- Regular/persistent lateness or unauthorized absence
- Behaviours that do not support BSS Values
- Conduct which does not meet the requirements of BSS, regulators, or other relevant bodies.

Examples of Gross misconduct include but are not limited to:

- Gross misconduct is a serious breach of BSS rules, work practices, policies, procedures, laws, regulations or other misconduct of a serious nature.
- A finding of gross misconduct will normally result in summary dismissal, without contractual notice period or payment in lieu of notice being given.
- Any misconduct, which is detrimental to the operation / running / goodwill of the institution.

Disciplinary Procedure:

The following are the key steps in the disciplinary procedure:

1. Investigation
2. Disciplinary meeting
3. Outcome
4. Appeal

1. INVESTIGATION

INVESTIGATION

Investigations carried out by specialist investigation teams (such as ICC) are not covered by the procedure outlined here.

An investigation into any matter that is suspected to contravene any of BSS policies or rules or instructions or any applicable law or regulation, or which otherwise may be a disciplinary matter, will be carried out as soon as reasonably practical.

The purpose of the enquiry is to establish the facts of the case and whether there is a case to answer.

Investigation will be carried out by Principal / Operational head of Institution. The investigator conducting the enquiry shall have had no previous direct involvement with the matter.

After consideration of the evidence found during the investigation, the investigator will decide whether there is a case to answer and accordingly shall frame the allegations / charges against the employee / staff.

Suspension:

In some circumstances, where appropriate, the investigator may during the pendency of the investigation decide to suspend an employee / staff prior to or during an investigation or later in the disciplinary procedure.

A decision to suspend may be taken, for example, where the allegations are believed to be so serious that they may constitute gross misconduct, where it is believed that the employee's / staff's presence at work could hinder the investigation or where allowing the employee / staff to remain in work may create a risk to BSS, its students, employees / Staff.

A decision to suspend is not a disciplinary sanction and is taken as a precautionary measure, pending the outcome of any investigation and / or subsequent to disciplinary proceedings.

Normal compensation will continue during suspension, which will last no longer than is reasonably necessary.

At the time of being suspended, the employee / staff will be informed in writing of the reason for the suspension and its likely duration. Any suspension will be kept under review during the enquiry / investigation and disciplinary procedure.

Outcome of the Investigation:

If following an investigation the Investigator decides that no further action should be taken, the matter will be closed.

If it is decided that the matter should progress to a disciplinary meeting procedure, a management representative or a team / member (s) constituted by the management, which may comprise of internal or external person, shall be appointed by Management (the “Disciplinary Authority”) to conduct the meeting and make a decision on any outcome.

2. DISCIPLINARY MEETING

DISCIPLINARY MEETING

The Disciplinary Authority shall send the written invitation (through email / e-message / post / by hand) to the meeting which will:

- Set out the allegations / charges
- Include the date, time and place of the meeting
- Include the evidence/details of the evidence from the investigation which will be relied on
- Explain the employee's / staff's role in the meeting

Employees / Staff will be given sufficient time to prepare for the meeting. The length of this period will depend on the complexity of the case but it will not normally be less than 24 hours.

If an employee / staff is unable to attend, the he/she must notify the Disciplinary Authority as soon as possible. The meeting will be rearranged as soon as reasonably practical.

Where an employee / staff is persistently unable or unwilling to attend a disciplinary meeting without good cause, the disciplinary meeting can be held in their absence and a decision will be made using the evidence available.

Employees / Staff should prepare thoroughly for the disciplinary meeting. The employee / staff will be given the opportunity to state their case, offer any explanation and/or mitigating circumstances.

Disciplinary meetings can be adjourned to enable the Disciplinary Authority to investigate any matters further, to seek further advice or to consider their decision.

3. OUTCOME

If it is decided that there is no case to answer, no further action will be taken and this will be confirmed to the employee / staff in writing.

If the Disciplinary Authority believes that there has been an act(s) of misconduct, there is a range of possible formal actions/sanctions which may be imposed. The Disciplinary Manager may also recommend informal action (for example, further training / coaching) including situations where the Disciplinary Manager does not believe that a formal sanction for the misconduct would be appropriate.

The Disciplinary Authority will decide the appropriate sanction taking into account the employee's / staff's explanation and any mitigating factors.

The decision will be communicated as soon as reasonably practical and, where possible, the employee / staff will be informed in person. However, where this would create unreasonable delay, or BSS thinks it is not appropriate, or where it has been agreed with the employee / staff, the outcome may be communicated in writing only.

There are three levels of formal disciplinary sanctions and any one may be used depending on the circumstances of the case:

Stage 1 – First Written Warning

For acts of misconduct, a first written warning may be issued, unless there is a current warning on file or the case is sufficiently serious.

Stage 2 – Final Written Warning

A final written warning may be issued for further acts of misconduct following a written warning, or in serious cases which fall short of gross misconduct.

Any warnings are given in writing and will:

- Set out the nature of the misconduct that must not reoccur
- State the period that the warning will remain live for
- Inform the employee / staff that further misconduct is likely to result in further disciplinary action up to and including dismissal
- State that the warning may be taken into account when considering the employee's / staff's performance reviews and compensation decisions.
- State that the employee / staff may raise an appeal against the warning.

First and final written warnings for misconduct will normally remain live for 12 months from issue.

Depending on the particular issues or situation, BSS may impose disciplinary action at any stage and/or omit certain stages. The sanctions above may be imposed on an employee / staff, whether or not any of the above disciplinary action has been imposed or together with any of those disciplinary actions. Each situation will be determined on its own facts.

Stage 3 – Dismissal / Termination

A decision to dismiss with notice may be taken where a previous written warning has already been issued but further misconduct has occurred, or the matter is so serious that it is no longer appropriate for employment to continue.

Gross Misconduct Dismissal

Where gross misconduct has occurred, BSS is entitled to dismiss an employee / staff without contractual notice period or payment in lieu of notice being given.

Examples of behaviour that would be considered as gross misconduct include:

- Criminal activity where it is relevant to ongoing employment including theft, fraud or falsification of records, irregular practices concerning cash, vouchers, records, returns, accounts or expenses.
- Acts of dishonesty.
- Abuse of position as an employee / staff to access and/or process entries or facilities on his/her own behalf, or someone else's facilities or information on a colleague without appropriate authority.
- An act of discrimination, harassment, victimization or threatening behaviour and/or physical violence whether on or off BSS premises, during or outside of working hours or on social occasions for which BSS is responsible and/or its employees / Staff are associated.
- Retaliation against an employee / staff who has raised an issue with the management.
- An act which is discreditable, dishonourable or detrimental to the conduct of BSS educational motives, its employees / Staff, students, associates and counterparts.
- Deliberate damage to, misuse, or unauthorized use of BSS's property.
- Unauthorized disclosure, or use, of BSS's confidential information.
- Provision of false and/or misleading information during the recruitment process.
- Gross negligence or gross incompetence, including but not limited to any acts which show a deliberate or reckless disregard for risk management.

- Gross insubordination
- Drunkenness or being under the influence of prohibited drugs or alcohol whilst at work or possession of illegal drugs on work premises.
- Wilfully slowing down performance and / or abetment or instigation thereof.
- Unauthorised possession of any lethal weapon in BSS premises.
- Distributing or exhibiting within the premises of BSS hand-bill, pamphlets, posters and such other things or causing to be displayed by means of signs or writing or otherwise visible representation of any matter without previous written consent of BSS.
- Gambling on BSS premises or systems or while travelling for official purpose.
- Collection of money, funds or otherwise at BSS premises or while a BSS employee / staff, without prior written consent of BSS;
- Breach of rules/ laws pertaining to bribery and corruption;
- Breach of the rules of any regulatory or statutory authority which regulates BSS;
- Failure to co-operate with internal investigations or formal investigations conducted by any regulatory and statutory authority or by BSS;
- Breach of the terms and conditions of an employee's / Staff's contract of Employment. A breach of or non-compliance with BSS rules, policies, procedures, employment contract or other malpractice (detrimental to the interests of BSS) including but not restricted to:

Health and safety

- Electronic communications, including using computers and other means of electronic communications for the access, transmission, processing and/or passing of any material which is regarded as inappropriate and/or which could potentially result in a loss or risk to BSS or its affiliates, associates and

- Data protection
- Confidential information
- Conflict of interests, failure to declare outside interests, or regulatory/compliance related policies
- Unauthorized gifts and entertainment
- Rules on disclosing information about himself / herself including obligations on an employee / staff to disclose changes in his/her right to work status or any court judgements, arrests, convictions or police cautions for criminal offences made against him/her.

This above list is not exhaustive and BSS reserves the right to treat any case of misconduct as gross misconduct depending on the severity and frequency of occurrence.

At any stage of the disciplinary procedure, other sanctions may be considered either as a consequence of a warning, for example, as a result of a finding relating to regulatory or supervisory duties, or as an alternative to dismissal, for example, transfer and /or change in role. Such sanctions must be approved by the Management.

Following dismissal the employee / staff will receive a letter confirming the reasons for the dismissal, confirmation of the effective date of termination and outlining the right of appeal.

4. APPEAL

Employees / Staff have the right of appeal against any disciplinary decision.

The appeal will be heard by an independent external expert person nominated by the management (the “Appellate Authority”). In exceptional circumstances the management may appoint two persons to conduct the appeal procedure (one external expert person and other the internal member of the institute / BSS).

An appeal should be submitted in writing within 10 working days after receipt of the disciplinary decision and must clearly set out the grounds for the appeal.

An employee / staff will receive an invitation to an appeal meeting confirming the date, time and location of the meeting.

The Appellate Authority will invite the employee / staff to a meeting as soon as is reasonably practical and normally within 20 working days.

If the employee / staff is unable to attend the meeting the employee / staff must notify the Appellate Authority as soon as possible. The meeting will be rearranged for as soon as reasonably practical.

The appeal meeting is intended to provide an opportunity for the employee to present any new evidence or explain why they believe the original disciplinary decision was incorrect. The appeal is not a re- hearing of the original issue.

Appeal meetings can be adjourned to enable the Appellate Authority to investigate any matters further, to seek further advice or to consider their decision.

The Appellate Authority will reach one of the following decisions:

- To uphold the original disciplinary action taken,
- To reduce the level of sanction that was issued, or
- To overturn the original decision.

This decision is final and there shall be no further right of appeal.

Note: Practices, Policies, Procedures and Standards referred in this document are all as modified from time to time

B. CAPABILITY POLICY

Purpose, Principles and Values

The Capability Policy provides a framework for dealing fairly and consistently with employees / Staff where their performance (including attendance and punctuality) falls below the required standards. It applies to all employees / Staff of all BSS institutions.

BSS expects all employees / Staff to aim to meet the highest standards of performance. Where there are concerns about an employee's / staff's performance, steps will be taken to effectively manage the issue, including setting out clear expectations as to the standards required and providing support and guidance for achieving those standards.

The Capability Policy also provides a framework for dealing with non- conduct issues which may impact the individual's fitness and propriety with or without performance concerns and external matters relevant to the individual's fitness and propriety.

This document is intended to be a statement of BSS policy and does not form part of an employee's / staff's contract of employment or otherwise have contractual effect. It supersedes all other capability policies, procedures and practices in BSS.

This policy may be amended at any time.

Capability Procedure

Informal Stage

Any issues relating to performance should be identified, and addressed at an early stage, to ensure that the employee / staff not only improves performance levels, but also sustains that improvement.

The management or representative of management (internal or external) should

discuss performance issues and their reasons with the employee/staff and where appropriate seek opinion of the expert or knowledge partner.

Management should carefully investigate whether there are any mitigating circumstances, underlying reasons or a disability affecting performance. If so, may seek appropriate advice from the expert or knowledge partner before taking any action.

Informal action will include setting, and communicating during feedback sessions or review meetings, clear standards for performance and timescales for the employees / staff to improve. Opportunities for appropriate training, support and guidance to help the employee improve performance or attendance may also be considered.

If the employee's / staff's performance reaches the required standard through informal action, that improvement must be sustained. If there are persistent or recurrent issues then the formal capability procedure may be commenced immediately without the need for further informal action.

Where concerns about performance arise during the probation period (one year), if the required improvement is not attained following the informal stage, then the management may, after appropriately and timely documenting and evidencing the issues, proceed to initiate actions for dismissal without initiating the capability procedure.

Formal Stage

Where informal action to improve performance has not been successful or the issue is such that it is not appropriate to deal with it informally, the formal stage of the Capability Procedure may be followed.

Step 1: Performance Improvement Plan (PIP)

- PIP is a useful tool that provides a formal framework to address performance issues with the employee and provide the employee with the opportunity to succeed. It may be used to address failures to meet specific job goals or to ameliorate behavior-related concerns or to address punctuality related issues.
- PIP sets out clear performance goals and facilitates constructive communication. It enables an employee / staff to understand the under performance and what specific areas need improvement. It encourages the employee / staff to improve performance within a specified period of time.
- PIP can be initiated at any stage of the performance cycle. As soon as an employee's performance falls below the required standard a PIP should be initiated.
- At the end of the PIP it should be confirmed to the employee / staff whether the PIP has been successful or unsuccessful.
- If the PIP is successful, the employee / staff needs to sustain the performance for an observation period of 6 months failing which the management may proceed directly to the capability meeting.
- If the PIP has been unsuccessful, the capability meeting should be initiated.

Step 2: Capability Meeting

- The capability meeting proceeds if the PIP is unsuccessful or if the employee has been unable to sustain performance in the 6 month observation period

- issue(s), and offer any explanation and/or mitigating circumstances.
- A capability meeting will be conducted by a management's representative.

The employee / staff will receive a written invitation to the meeting which will:

- Set out the performance or attendance issues to be reviewed
 - Include the date, time and place of the meeting
 - Include any relevant documents/details (e.g. PIP closure documents) that will be considered at the meeting
- Employees / Staff will be given sufficient time to prepare for the meeting, which will not be less than 24 hours.
 - If an employee / staff is unable to attend the meeting, he / she must notify the management's representative as soon as possible. The meeting will be rearranged for as soon as reasonably practical.
 - Where an employee / staff is persistently unable or unwilling to attend a capability meeting without good cause, the capability meeting can be held in the employee's / staff's absence and a decision will be made on the basis of the evidence available.
 - Capability meetings can be adjourned to enable the representative to investigate any matters further, to seek further advice or to consider the decision.

Step 3: Outcome

- If after reviewing all the evidence the representative concludes that there are issues with the employee's / staff's performance or attendance and ability to carry out duties as a result, a range of possible sanctions may be applied.
- The decision will be communicated as soon as reasonably practical and where possible, the employee / staff should be informed in person of the decision. However, where this would cause unreasonable delay, or where it has been agreed with the employee / staff, the outcome may be communicated in writing only (or through electronic means).

Final Written Warning

- The level of sanction at a first formal capability meeting would normally be a final written warning, unless there is a current warning on file or the issue is sufficiently serious to justify a more significant sanction.

Warnings are given in writing and will:

- Set out the nature of the performance issues
- Set out the performance standards that are required
- Provide the timescale for improvement and if appropriate, what support BSS may provide to help the employee achieve the improvement
- State the period that the warning will remain live on the employee's/ staff's file inform the employee / staff of the potential consequences of not achieving and sustaining the expected level of performance (at final warning stage, this may be dismissal)
- State that the warning may be taken into account when considering the employee's / staff's performance reviews and compensation decisions

- Written warnings will normally remain live for 6 months from issue. Dismissal If an employee / staff fails to demonstrate a sufficient or sustained improvement in performance following a written warning, or there has been a further instance of a serious performance issue, the employee will be invited to a final formal capability meeting.
- The outcome of this meeting may result in the employee / staff being dismissed. Capability dismissals will usually be immediate.
- Following dismissal, the employee / staff will receive a letter confirming the reasons for the dismissal, confirmation of the effective date of termination and communicating.
- This decision is final and there is no right of appeal.



Thank You

We Encourage Students to Develop
**THEIR UNIQUE QUALITIES
AND TALENTS**



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