



# PERFORMANCE AND CONDUCT POLICY AND PROCEDURES

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# CONTENTS

<b>Introduction .....</b>	<b>3</b>
1 Purpose and Scope .....	3
2 Policy Principles .....	3
3 Capability Issues under Performance and Conduct.....	5
4 Status of Performance and Conduct Policy and Procedures .....	6
<b>Appendix 1 - The Performance and Conduct Procedure.....</b>	<b>7</b>
1 Informal Stage .....	7
2 Formal Action .....	7
3 Disciplinary Enquiry Which May Lead to a Disciplinary Investigation ....	7
4 Suspension.....	8
5 Representation .....	9
6 Witnesses .....	9
7 Steps Taken Prior to a Formal Performance and Conduct Hearing.....	10
8 Procedure At A Formal Hearing.....	11
9 Formal Action .....	13
10 Appeals.....	15
11 Procedure at an Appeal .....	15
<b>Appendix 2 - Conduct Policy Guidelines .....</b>	<b>17</b>
1 Misconduct .....	17
2 Gross Misconduct.....	17
3 Child Protection and Criminal Investigation .....	18
<b>Appendix 3 - Appeal Form .....</b>	<b>19</b>
<b>Appendix 4 - Managers With The Authority To Dismiss.....</b>	<b>20</b>
<b>Appendix 5 - Monitoring And Application To The Court In Cases Affecting     Children’s Guardians .....</b>	<b>21</b>



# PERFORMANCE AND CONDUCT POLICY AND PROCEDURES

## Introduction

This Policy details Cafcass' approach to handling performance and conduct issues within the workplace. It supersedes all other performance and conduct policies, which have previously applied.

### 1 Purpose and Scope

Cafcass has a responsibility to ensure that employees know what standards of conduct and performance are expected at work for both the efficient provision of services and for reasons of health and safety. In order to provide a fair and effective method for dealing with unsatisfactory conduct and performance the following procedure will be applied in all instances where management regard it to be warranted. This procedure applies only in cases of unsatisfactory conduct or performance. Appendices 1 and 2 set out the standards and procedure for conduct and Section 3 deals with capability issues arising from poor performance or attendance at work. Concerns relating to sickness absence will be dealt with in accordance with the Management of Sickness Absence Policy.

Complaints against Cafcass employees and their handling of current cases will usually be dealt in accordance with "The Comments, Compliments & Complaints Procedure". However, should it transpire that the alleged offence constitutes misconduct in accordance with the Performance and Conduct Policy and Procedures, this procedure will apply.

### 2 Policy Principles

- 2.1 Our aim is to encourage improvement in individual conduct and performance. We aim to have a fair and systematic approach to the enforcement of standards of conduct and performance.
- 2.2 The main objective of instigating the procedure for conduct and performance is corrective rather than punitive, with the aim of assisting employees to achieve and maintain the required standards of performance.

- 2.3 No disciplinary action will be taken until the allegation or poor performance has been fully investigated.
- 2.4 Neither the employee(s), nor the employer may use another procedure for example the grievance procedure to frustrate or stop the process of this procedure.
- 2.5 At every stage in the procedure employees will be advised in writing of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- 2.6 Employees have a right to be accompanied by a trade union representative, or work colleague at every stage of the procedure. The employee should be advised of this right as soon as a disciplinary investigation is established.
- 2.7 No employee can be dismissed for a first breach of discipline except in the case of gross misconduct.
- 2.8 No disciplinary action will be taken against an accredited union representative until the case has been discussed with the appropriate full-time official. The union steward will also be given the opportunity to be represented by a full-time official, of the appropriate union, at any subsequent investigatory interviews and the disciplinary hearing if one is convened. Where a union representative is suspended, the Disciplining Officer will inform his/her full-time official as soon as possible. The suspension of a union representative is a serious step and should normally only be undertaken after consulting the Human Resources Team.
- 2.9 Where gross misconduct is alleged or suspected an employee may be suspended on full pay pending further investigations and, where necessary, until the disciplinary hearing. Suspension is not a form of disciplinary action. In the event of an employee not being suspended when suspected of gross misconduct, Cafcass shall retain the right to dismiss that employee if gross misconduct is found to have occurred.
- 2.10 The procedure may be implemented at any stage if the employee's conduct or performance warrants it. It is desirable to deal with performance and conduct issues at the lowest level possible in the first instance.
- 2.11 Guidance is set out in Appendices 4 and 5 on the appropriate manager to deal with a case and the appropriate sanction. This Guidance is subject to the principle that any manager involved in any part of the Procedure (including the investigatory stage) will be able to act independently in the circumstances.
- 2.12 Cafcass and our Trade Union partners are committed to undertaking joint training initiatives to ensure that managers, Trade Union representatives

and Human Resources staff have the skills to carry out the requirements of this procedure.

### **3 Capability Issues under Performance and Conduct**

#### **3.1 Performance**

3.1.1. In some cases, concern over an employee's performance may arise from non-culpable inability, lack of skill or experience, or frequent and persistent absence due to ill health, long-term illness, or other factors beyond his/her control. Action in cases where there is doubt about the capability of an employee to do his/her job is not disciplinary action, but follows the same steps both informal and formal of the Performance and Conduct Procedure.

3.1.2. At the informal stage, the manager of an employee whose capability is in doubt will ensure that the employee has received the appropriate training and supervision needed, review what has been provided and that there is nothing else impeding adequate performance. The advice or warnings given to employees at each stage in capability cases will specify:

- The areas in which his/her performance is unsatisfactory;
- The improvement in performance which is required, and how it will be measured;
- What support will be given, such as training, mentoring, workload monitoring or other appropriate support and the timescales for this;
- When his/her performance will be reviewed again;
- The action, which may follow if the, required improvement in performance is not achieved.

The manager will discuss this with the employee and his/her representative at each stage to ensure that they understand what is required.

3.1.3 If at any stage of the procedure all parties accept, that for reasons beyond his/her control, the employee will not be able to achieve the necessary improvement in performance, but would be able to perform at the required level in another post, then Cafcass will endeavour to identify suitable alternative employment, if at all possible. Existing salary and other terms and conditions of employment will not automatically be protected in cases where an employee is redeployed for reasons of poor performance.

### **3.2 Poor Attendance**

When dealing with Poor attendance including frequent absence or punctuality, a distinction should always be made between authorised absences and unauthorised absence, which may lead to disciplinary action.

### **3.3 Sickness Absence**

Sickness absence cases are dealt with under the Cafcass Management of Sickness Absence Policy and Procedure, which should be referred to in all cases.

## **4 Status of Performance and Conduct Policy and Procedures**

These Performance and Conduct Policy and Procedures have been agreed with the Cafcass Partnership Committee. Cafcass will seek to agree future changes to this Policy and Procedure with the Partnership Committee. This Performance and Conduct Policy and Procedure forms part of Cafcass' employees' terms and conditions of employment.

## APPENDIX 1

### **The Performance and Conduct Procedure**

The following stages, will apply to both conduct and performance concerns. Management may enter the procedure at any stage taking into account the facts of the case and what is considered to be reasonable in the circumstances. Formal action is only appropriate where informal action has not led to the necessary improvement in conduct and/or performance, or in more serious cases. A copy of the policy must be provided to employees entering any stage of the procedure. The appropriate level of management must conduct formal proceedings. Advice should be sought from Human Resources prior to the instigation of formal proceedings on the approach to be adopted.

#### **1 Informal Stage**

Managers should be encouraged to deal with issues about conduct and performance informally. In many cases an informal conversation between manager and employee will be enough. In cases of less serious misconduct or concern about conduct and performance, the manager will meet the employee to talk about the problem and what needs to be done about it. The manager will make a brief note of the reasons for, and the outcome of the meeting, and give a copy to the employee, who may comment on it in writing if they wish.

#### **2 Formal Action**

If an employee's conduct or performance does not improve sufficiently after an informal stage, or in more serious cases, the line manager shall consider formal action.

#### **3 Disciplinary Enquiry Which May Lead to a Disciplinary Investigation**

- 3.1 Where a matter arises which is suspected or believed constitutes misconduct, the Head of Service (or other appropriate officer), shall appoint an impartial 'Investigating Officer', who is not in the line relationship, to conduct a preliminary enquiry to establish if there is a prima facie case.
- 3.2 The Investigating Officer will report back to the Head of Service on whether there appears to be a case to answer.
- 3.3 If there is a prima facie case, it must be investigated promptly and adequately before proceeding with disciplinary action

- 3.4 The employee suspected of the alleged misconduct must be interviewed as part of the investigation (unless they are prevented from doing so by good reason) and be given the opportunity to respond to the allegation. The employee must be advised that it is an investigatory interview and not a disciplinary interview. The employee has the right to be accompanied by a trade union representative or work colleague. The employee will be given a minimum of 5 working days notice in writing of the investigatory interview and be advised of his or her right of representation. The written notification will indicate the matters to be investigated.
- 3.5 The Investigating Officer will carry out any other preliminary enquiries that are necessary. In doing this, the Investigating Officer must talk to any witnesses to the alleged misconduct or poor performance and ask them to provide written statements about what happened, and consider any written or other evidence.
- 3.6 On completion of the investigation, the Investigating Officer will prepare a full and balanced report for the Head of Service (Disciplining Officer) or appropriate senior officer. The report will be shared with both parties, and will form the basis of fact at any subsequent disciplinary hearing.
- 3.7 On receipt of the investigating officer's report if the Disciplining Officer considers that, on the balance of probabilities, there is a case for the employee to answer, a disciplinary hearing will be convened.
- 3.8 If the Disciplining Officer considers that there is no case for the employee to answer, then s/he will write to the employee and advise them that no formal disciplinary action will be taken.

## 4 Suspension

***Advice must always be sought from Human Resources before suspending an employee.***

- 4.1 Where a serious act, or gross misconduct is alleged, the employee may be immediately suspended while the investigation proceeds. [There may also be other appropriate circumstances where suspension may be warranted, e.g. Health and Safety reasons, and the provisions of this section will apply accordingly.]
- 4.2 Similarly if during the course of an investigation the Investigating Officer is of the view that gross misconduct may have occurred the employee may be suspended. Any decision to suspend an employee will be taken by a Head of Service or a member of CMT or another senior manager. Any decision to suspend will be confirmed in writing (including the reason for the suspension) by the Head of Service or appropriate senior officer, within one working day if possible, of the suspension taking effect. A decision to suspend is a neutral act, and not a disciplinary action.

- 4.3 A copy of the letter of suspension will be sent to Director of Human Resources and Organisational Development. The employee will also be provided with a copy of the letter, which they may forward, to his/her trade union representative or the work colleague who will be providing them with support.
- 4.4 During any period of suspension, an employee will be excluded from Cafcass' offices during the course of the Investigation/Hearing. However employees must be available to attend any meetings in relation to the enquiry.
- 4.5 Employees will also be required to refrain from all of their duties and to desist from contact with potential witnesses to the allegation.
- 4.6 Where the employee to be suspended has been appointed either by or for the Court as a Family Court Adviser, Cafcass may take the additional steps set out in Appendix 5.
- 4.7 It is important that any period of suspension is kept to a minimum and is not unnecessarily protracted. Any suspension will be regularly reviewed (at least every fortnight) and the suspended employee member kept informed.

## **5 Representation**

- 5.1 Employees have the right to be represented at all stages of this procedure - formal and informal - by a work colleague or a trade union representative and must be advised of this at each stage of the procedure. Cafcass will not be responsible for any costs incurred by an employee in seeking or obtaining representation or advice. Should an employee's work colleague or trade union representative be unavailable to attend any hearing under this Performance and Conduct Procedure, the employee has the right to postpone the hearing and request for it to be re-arranged for a reasonable alternative time, normally within 7 working days of the date the original hearing was due to take place.
- 5.2 No disciplinary action should be taken against an accredited representative of a recognised trade union until the circumstances of the case have been fully discussed with a full time official of the relevant trade union.

## **6 Witnesses**

- 6.1 Where there are witnesses to an alleged incident, it is each party's responsibility to ensure that this is brought to the attention of the investigating officer so that the Officer can ensure that written and verbal statements are obtained at an early stage. It is the general expectation that witnesses attend the Hearing; unless each party accepts the statements made, and no further cross examination/questioning is required. Employees who are witnesses can be requested to attend a

Hearing. If it is not possible for a witness to produce a written statement, a verbal statement may be taken by the Investigating Officer with the witness' agreement and included in the statement of case. All statements must be signed and dated by the witness before they can be accepted.

- 6.2 Cross examination of witnesses should be fair and undertaken in a professional manner. In exceptional circumstances where a witness is unwilling to sign a statement or attend a Hearing it is for the Disciplining Officer to decide whether or not they can proceed with the case.
- 6.3 Where a witness to an incident is not an employee of Cafcass, it is recognised that the individual may not wish to attend the Hearing. In these circumstances, it is suggested that the individual is interviewed and a statement taken by the Investigating Officer, with a trade union representative of the person who is being disciplined also being present, if possible. The statement will be taken into account at the Performance and Conduct Hearing, taking into consideration the lack of opportunity to cross-examine the individual.
- 6.4 Where children or vulnerable adults are witnesses to an alleged incident the investigating officer should refer to the management guide regarding the process of evidence collection in sensitive cases. Children and vulnerable adults will not be required to attend any disciplinary hearings.

\*Nb Refer here to the Management guide for more detailed guidance to ensure balanced and proportionate action in these situations.

## **7 Steps Taken Prior to a Formal Performance and Conduct Hearing**

- 7.1 In all cases the Disciplining Officer should seek advice available from Human Resources. If the Disciplining Officer feels that the case may constitute gross misconduct, an officer at Director level or above must hear the case.
- 7.2 If the Disciplining Officer decides that a formal hearing is necessary, he/she will seek to agree a time and date which is at the earliest convenience for both parties. Unless mutually agreed otherwise, the Performance and Conduct Hearing will normally be held within 15 working days of the date of notification. Employees must take all reasonable steps to attend the hearing.
- 7.3 Once the date for the Performance and Conduct Hearing has been set, the Disciplining Officer will write to the employee and his/her representative confirming the arrangements, explaining what the allegations of the Performance and Conduct Hearing will be, the basis for these allegations, who will be present and who will be called as witnesses, and enclosing copies of the investigating officers report which will include any written evidence or witness statements. This information must be provided to the

employee no less than 7 working days before the Performance and Conduct Hearing so the employee may consider a response to it.

## **8 Procedure At A Formal Hearing**

8.1 Where the Disciplining Officer considers that there is a case for the employee to answer a disciplinary hearing will be arranged.

8.2 The employee will be given a minimum of 7 working days' advance notice in writing of the hearing; informed of its purpose, with the nature of the alleged misconduct being outlined; and invited to attend together with his/her trade union representative or fellow employee of his/her choice.

If during the course of the investigation statements have been obtained from witnesses (including any who will not be attending the hearing), copies will be given to the employee or his/her representative not less than 7 working days in advance of the hearing.

8.3 The Disciplining Officer in discussion with the individual and/or their representative will determine which witnesses will attend the Hearing.

Postponements of hearings for up to 14 days from the date of the original hearing may be requested by the union representative and will not unreasonably be refused.

8.4 The Disciplining Officer will conduct the hearing. The Disciplining Officer will be advised and guided by a Human Resources Business Partner who will also be in attendance. A note taker may also be present at the hearing if required.

8.5 The Investigating Officer will not be party to the decision making process but will be asked to present the supporting facts and material. The employee, his/her representative, the Disciplining Officer and the Human Resources Business Partner will be entitled to question the Investigating Officer and any witnesses who may attend the hearing to give his/her account of the matter.

8.6 It is the responsibility of the Disciplining Officer conducting the formal hearing to:

- Ensure that the necessary investigations have been carried out;
- Ensure that the hearing is conducted fairly, in line with this procedure;
- Ensure that, as far as possible, all relevant facts relating to the allegations come out at the hearing;
- Decide what action, if any, is reasonable and necessary based on those facts.

8.7 The procedure at a formal interview will be as follows:

- a) The Disciplining Officer will outline the allegations being made and how the meeting will be conducted.
- b) The Investigating Officer will state what investigations took place and what was found, and may then be questioned by the employee and/or his/her representative and the panel.
- c) The Investigating Officer may call witnesses to present evidence on behalf of the management case. Each witness may make a statement and may then be questioned in turn by the Investigating Officer, the employee and/or his/her representative, and the panel conducting the Hearing.
- d) The employee or his/her representative will then state their case and may then be questioned by the Investigating Officer and the panel.
- e) Any witnesses for the employee will be called. Each witness may make a statement and will then be questioned in turn by the employee and/or his/her representative, the Investigating Officer, and the panel.
- f) The Investigating Officer and, finally, the employee or his/her representative will each sum up their case. No new matters may be introduced at this stage.

8.8 Evidence will not usually\* be given to the disciplining panel on previous acts of misconduct by the employee or warnings on his/her record which are unrelated to the subject of the hearing or have expired. However, the disciplining panel in determining the appropriate sanction that should be applied to the employee if warnings are still live may consider such evidence.

*\* Note: In cases where there are child protection issues, previous warnings may be taken into consideration*

8.9 The Disciplining Officer may adjourn the Hearing at any stage where necessary and if requested by the employee or his/her representative. The reason for and duration of the adjournment must be clearly stated. An adjournment must always take place before the Disciplining Officer announces his/her decision. The Disciplining Officer with the Human Resources Business Partner will deliberate in private, only recalling the employee and/or witnesses to clear points of uncertainty on evidence already given. If recall is necessary, the employee and his/her representative must return even if the Disciplining Officer wishes to clarify the evidence of a witness.

Where the Disciplining Officer has decided to dismiss, the Director of Human Resources and Organisational Development must be consulted before the decision is communicated to the employee (if the Director of

Human Resources and Organisational Development is not available within a reasonable period of time, a nominated officer from Human Resources should be consulted).

- 8.10 Following an adjournment the Disciplining Officer will reconvene the Hearing preferably on the same day (or within 5 working days) and announce the decision and the disciplinary action, if any, to be taken. The Disciplining Officer will also give the employee an explanation for that action and explain the employee's right of appeal. All these details will then be confirmed in writing to the employee within five working days of the hearing.

## **9 Formal Action**

- 9.1 When deciding whether a disciplinary penalty is appropriate and what form it should take the panel should bear in mind the need to act reasonably in all circumstances. Factors which might be relevant include the extent to which standards have been breached, precedent, the employee's disciplinary record (disciplinary records should only be looked at after the Hearing has taken place), length of service and special circumstances which might make it appropriate to adjust the severity of the penalty. If the panel decides that formal disciplinary action is to be taken against the employee, it may take one of five forms. These are not necessarily sequential; dependent upon the severity of the case, any outcome can result:

a) **Written Warning Stage**

A formal warning may be given in dealing with conduct, performance or attendance. The warning may be given orally but the Hearing will confirm the reasons for it in writing. It will remain on the employee's record for up to six months. The employee should be told clearly what improvement is required, over what period and how it will be assessed. The employee may appeal against a written warning to the appropriate designated senior manager within 10 working days of the decision being communicated to the employee.

b) **Final Written Warning**

If an employee's conduct, performance or attendance has not improved sufficiently after a formal warning, or in cases of serious misconduct or poor performance the Disciplining Officer may issue a final warning. The warning will be confirmed to the employee member in writing and will remain on the employee's record for up to 12 months. However, in cases relating to abuse or negligence towards service users, fellow employees, or the public, the warning can be retained on file for a specified longer period, for a maximum 24 months. The employee may appeal against a final warning to the appropriate designated senior manager.

c) **Dismissal or other Sanction**

**Other Disciplinary Action** – Other reasonable and appropriate action e.g. temporary or permanent transfer to a lower graded post, or another work location etc, may be imposed in conjunction with a final written warning, subject to the circumstances of each particular case. The employee must be advised of the right of appeal and that the appeal must be registered with the appropriate designated officer within 10 working days of the decision first being communicated to the employee.

**Dismissal with Notice** – For cases where a final warning is still extant and another incident of misconduct occurs, or performance does not improve. The employee must be advised of his/her right of appeal in writing and the appeal must be registered with the Director of Human Resources and Organisational Development within 10 working days of the decision being communicated to the employee.

**Dismissal without Notice** – For cases where gross misconduct has been established on the balance of probabilities. The employee must be advised of the right of appeal and the appeal must be registered with the Director of Human Resources and Organisational Development within 10 working days of the decision being communicated to the employee. A copy of the letter of dismissal will be sent to the Board.

**Recording of Warnings**

All formal warnings will be recorded on the employee's personal file. The duration of the warnings, subject to satisfactory conduct and/or performance during that period are as follows:

- (a) Written Warning - 6 months
- (b) Final Written Warning - 1 year

Warnings should cease to be 'live' following the specified period, unless there is a further incident of misconduct and/or no improvement in performance.

Warnings should be removed from an employee's personal file on the date they become spent. There may, however, be occasions where an employee's conduct is satisfactory throughout the period the warning is in force but lapses soon after.

Where a pattern emerges and there is reasonable evidence of abuse, the employee's disciplinary record can then be borne in mind and the duration

of any further warning or final warning may be given for an additional 6-month period ie. Up to 18 months.

## **10 Appeals**

- 10.1 An employee who wishes to appeal against the outcome and/or formal action from a Performance and Conduct Hearing must write to the appropriate senior manager. In the case of dismissal (whether by notice or otherwise), they must write to the Director of Human Resources and Organisational Development. For the purposes of this Procedure, the relevant manager who is authorised by this Procedure to deal with the appeal shall be referred to as the "Appeal Chair". This right must be exercised within 10 working days of the date of the letter confirming the Performance and Conduct Hearing's decision. The standard Appeal Form (Appendix 2) must be used.
- 10.2 The Appeal Chair will seek to agree a date and time for the appeal with both parties. The appeal will take place as soon as possible after the receipt of the notice of appeal, normally within twenty working days.
- 10.3 Both parties must submit a statement of case to the Appeal Chair no later than seven working days before an appeal hearing. The statement of case must include the facts of the case and the arguments of the party and, where appropriate, refer to any mitigating circumstances. The statement of grounds for appeal on the Appeal Form is not sufficient for this purpose. All the papers for the appeal will be distributed to both parties at least 5 working days prior to the Hearing.
- 10.4 All appeals will constitute a review of the original decision of the Performance and Conduct Hearing. Unless, in appropriate circumstances, the Appeal Chair decides the appeal should proceed by way of complete re-hearing. The Appeal Chair will try to, if possible, agree with all parties the areas of dispute or new evidence to be heard, to clarify the proceedings.
- 10.5 The Appeal will be heard by a different manager from the original Performance and Conduct Hearing and the Appeal Chair will be a member of the Corporate Management Team (CMT). The Appeal Chair will be accompanied by a HR representative, present to provide guidance and advice on procedural matters.

## **11 Procedure at an Appeal**

### **Review**

- 11.1 The employee, his/her representative and the presenting manager will be present throughout the appeal. One party may not be present without the

other. Witnesses may only be present when they are giving evidence or being questioned.

11.2 In most circumstances the appeal will usually involve a review of all the relevant documentation including the grounds for appeal.

11.3 The Appeal Chair has the power to decide on the admissibility of questions and evidence. New evidence should normally only be considered at appeal by way of review where it has come to light after the Performance and Conduct Hearing.

11.4 The procedure at a review appeal hearing will be as follows:

- a) The employee or his/her representative will state the grounds for the appeal.
- b) The presenting manager (who will usually be the chair of original Performance and Conduct Hearing) and the Appeal Chair may question the employee.
- c) The presenting manager will state the management case.
- d) The employee and/or his/her representative, and then the appeal panel may question the presenting manager
- e) The Appeal Chair may at any stage invite anyone involved to clarify or expand on anything they have said during the hearing, which could include inviting anyone back.
- f) The presenting manager and finally the employee or his/her representative may sum up their cases. No new matter may be introduced at this stage.
- g) The employee and his/her representative and the presenting manager will then leave the appeal, and the Appeal Chair will consider their decision. The Appeal Chair may recall the parties together if there are points of uncertainty on the evidence already given.
- h) Where possible, the employee and his/her representative and the presenting manager will be recalled and told of the Appeal Chair's decision. The final decision will be notified in writing to the employee, his/her representative and the presenting manager, as soon as possible and preferably within 5 working days. The decision on an appeal against dismissal will also be reported to the Board.

## APPENDIX 2

### Conduct Policy Guidelines

The following are examples of misconduct and gross misconduct that could lead to an employee being disciplined under the Performance and Conduct Procedure. This list is for illustrative purposes and are neither exclusive nor exhaustive. In addition there may be other offences of a similar gravity that will constitute gross misconduct or misconduct, which are not listed.

#### 1 Misconduct

Examples of misconduct, which could result in a Performance and Conduct Hearing following a full investigation, can include:

- Frequent lateness
- Poor performance
- Verbal abuse of a fellow employee, client or member of the public
- Harassment or discrimination on the 'discriminatory grounds' (see Cafcass Diversity Policy)
- Breach of confidentiality
- Failure to carry out a reasonable instruction
- Carelessness in the use of equipment and/or insufficient regard for the safety of others
- Charge of criminal offence where relevant to the employee's role
- Breaches of Cafcass policies and procedures.

#### 2 Gross Misconduct

Any act of misconduct, if serious enough, may constitute gross misconduct. Gross misconduct is generally regarded as misconduct serious enough to destroy the employment contract between employer and employees and make any further working relationship and trust impossible.

In addition to serious acts of misconduct, examples of specific behaviour that might lead to dismissal for gross misconduct are:

- Theft, fraud and deliberate falsification of records, expense accounts, timesheets, etc.
- Acts of violence including the physical assault or threat of assault of a fellow employee, client or member of the public

- Serious bullying or harassment
- Deliberate damage to property
- Serious insubordination
- Misuse of the organisation's property or name
- Bringing the employer into serious disrepute
- Serious incapability whilst on duty brought on as a result of being under the influence of alcohol or illegal drugs
- Serious negligence, which causes or might cause unacceptable loss, damage or injury
- Serious infringement of health and safety rules
- Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).
- Charge of a criminal offence that is relevant to the employee's performance or contract of employment.
- Misuse of Public Office
- Serious breaches of Cafcass Policies and Procedures

As indicated earlier this list is not intended to be exhaustive.

### **3 Child Protection and Criminal Investigation**

- 3.1 Where an employee is involved in a child protection investigation, police investigation or criminal proceedings, Cafcass reserves the right to conduct its own separate internal action where appropriate. Advice from Human Resources should always be sought regarding such matters.
- 3.2.1 While involvement in the above outside the context of work will not automatically lead to formal disciplinary action, the manager of the employee involved will consider the gravity and nature of the act and its effect on the employee's suitability for his/her work within Cafcass.

**Appeal Form**

**Cafcass APPEAL AGAINST FORMAL ACTION**

**Important:**

**If you wish to appeal against the formal action being taken against you, you must fill in this form and send it to .....**

Within 10 working days of the date of the letter confirming the decision of the Performance and Conduct Hearing.

1. What formal disciplinary action is being taken against you?

.....

2. Why are you appealing against this?

.....

.....

(continue on separate sheet if necessary)

3. Your name: .....

Address: .....

.....

Telephone No: (work) ..... (Home) .....

Job title and grade: .....

Region: .....

4. Who (if anyone) is representing you in this case?

Name of work place colleague or trade union representative:

.....

(Union or organisation): .....

Address: .....

.....

Telephone No: .....

5. Please confirm any dates when you are not available to attend a Hearing over the next 20 working days.

.....

***You should talk to your representative if you have one before completing this form.***

## APPENDIX 4

### **Managers with The Authority To Dismiss**

Authority to dismiss is vested in the post not the person. The following posts have the ability to dismiss employees normally within their area(s) of responsibility. The Director of Human Resources and Organisational Development should always be made aware of a decision to dismiss before this is implemented.

The list is attached for guidance purposes only and is correct as at May 2010.

- Board Chair
- Chief Executive
- Members of the Corporate Management Team

## APPENDIX 5

### **Monitoring And Application To The Court In Cases Affecting Children's Guardians**

Cafcass is responsible for protecting the interests of vulnerable children and adults involved in the Court system. It must be able to act quickly in order to protect the interests of these vulnerable individuals.

Some employees may, in the course of their normal duties, be appointed by the Court as a Family Court Advisor in a relevant case ("a Children's Guardian"). This is subject always to the discretion of the Court.

In the event that Cafcass becomes concerned about the performance, conduct or capability of an Children's Guardian to carry out his/her role to the requisite standards, Cafcass reserves the right, pending the outcome of any disciplinary process to:

- Inform the judge and/or clerk to the justices having case management responsibility for each of the cases to which the Children's Guardian has been appointed.
- Apply to the Court to suspend the Children's Guardian from all or some of the cases in which the Children's Guardian is appointed;
- Refuse to allocate any further work to the Children's Guardian in accordance with any applicable policy until the concerns over the Children's Guardian's performance, conduct or capability have been investigated in full under the applicable policy.

Prior to the applications set out above being made by Cafcass and determined by the Court, Cafcass reserves the right to exercise its discretion to suspend the Children's Guardian in accordance with the terms of Cafcass' Performance and Conduct Policy and Procedures.

In the event that the Court does not agree to any application made by Cafcass to suspend the Children's Guardian from all or some of the cases in which the Children's Guardian has been appointed, or does not agree to any other terms and conditions required by Cafcass in order to supervise the Children's Guardian's work effectively, or considers that it is not appropriate for the Court to comment on such matters, Cafcass reserves the right to alter the Children's Guardian's reporting line, increase the Children's Guardian's reporting obligations and/or take such steps as it considers necessary to supervise the Children's Guardian's work and protect the interests of the service.

Any action taken by Cafcass in accordance with this Appendix will be a neutral act and will not amount to a disciplinary sanction.

The Children's Guardian's Head of Service, or a member of CMT or another senior manager will have power to suspend the Children's Guardian, impose

conditions on the Children's Guardian's work and/or apply to the Court on the grounds set out above.

If the Children's Guardian has a bank contract with Cafcass under the Cafcass Bank Scheme and the allegation(s) of misconduct arise(s) from an assignment under this bank contract, Cafcass reserves the right to suspend the Children's Guardian from his or her bank contract as well as from his or her duties under the main employment contract (on application to the Court where necessary) if it deems it necessary to do so.

Whenever Cafcass has notified the relevant judge and/or clerk to the justices that there is a possible performance, conduct or capability issue with an Children's Guardian, Cafcass will also notify the relevant judge or clerk that the matter is resolved.