

EMPLOYEE RELATIONS POLICY

This policy provides a framework for dealing with all employee relations issues within Cafcass.

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Employee Relations Policy

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Section 1 - Introduction

Purpose and scope

1.1 This policy provides a framework for dealing with all employee relations issues within Cafcass. The policy is premised upon values and a culture of trust, mutual respect and a high engagement model of employee relations. The policy is underpinned by a commitment to co-operation and dialogue in order to maintain a supportive working environment for all staff, at all times.

1.2 When employee relations issues do arise, it is recognised that they should be dealt with expediently and with due consideration to the specific circumstances in each case. In this way it is hoped and anticipated that issues can be resolved quickly and at the most informal level possible. Maintaining effective employee relations is the responsibility of local management; early, focussed intervention through the line management arrangement should normally be regarded as the primary means for resolving employee relations issues.

1.3 This policy, which has been negotiated with Cafcass' recognised Trade Unions, sets out the formal procedures for resolving employee relations issues. However, Cafcass and the Trade Unions are fully committed to the early and informal resolution of all employee relations issues wherever possible, this policy therefore being predicated on that approach, with a view to achieving fairness and consistency.

1.4 This policy applies to all permanent and fixed-term Cafcass employees. Non-employed staff who are engaged by Cafcass (including Associate FCAs and Agency Workers) are not covered by this policy, but are still expected to adhere to Cafcass' standards of conduct and performance, including practice policies and requirements, as set out contractually or within any relevant procedures applicable to them.

1.5 The key to providing the best possible service to the Family Courts is to have an engaged and supported workforce. Cafcass is committed to treating all its employees with respect and will not tolerate discrimination, harassment, bullying or abuse in any form.

1.6 This policy combines a number of previously separate policies into a single integrated framework for managing and resolving employee relations issues. These former policies were: Performance and Conduct (including Discipline and Capability); Dignity at Work (Bullying and Harassment), and Grievance.

Key Principles

1.7 A consistent procedural approach will be adopted for employee relations issues wherever possible and appropriate. In other words, where employee relations issues can be seen to be inextricably linked, but have been raised or addressed as separate issues, it may be appropriate for such issues to be dealt with concurrently. For example, where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order that the grievance can be

dealt with. Equally, where the grievance and disciplinary cases are related it may be necessary and appropriate to deal with both issues concurrently.

1.8 All employees are entitled to be accompanied, either by a Trade Union representative (if they are a member of a recognised Trade Union) or by a work colleague, during any formal meeting or hearing convened under this policy. There is no statutory entitlement to accompaniment during informal meetings or meetings that form part of the normal line management arrangements; however, it may be that accompaniment can be agreed, if requested, where it is deemed by all parties to be appropriate and useful to achieving an expedient resolution. This will remain at the discretion of Cafcass as the employer.

1.9 In making arrangements for formal meetings / hearings to take place, every reasonable effort will be made by Cafcass managers and the Trade Unions to liaise and agree a mutually convenient date, at the earliest possible opportunity, to avoid delay.

1.10 A copy of this policy and any associated document(s) will be made available to an employee (or they will be signposted to the document on the Cafcass intranet) for their information and awareness should they become involved in any employee relations matter to which the policy pertains.

Other relevant Cafcass policies

1.11 Any performance concerns directly associated with an employee's ill-health, which result in periods of sickness absence, will be addressed under the Managing Attendance Policy until such time as satisfactory attendance has been restored.

1.12 Complaints made by children and families about the exercise of Cafcass' responsibilities to the Courts are dealt with under the Complaints Policy or the Complaints Policy for Children and Young People.

1.13 In dealing with complaints, Cafcass will distinguish between complaints which are about professional judgment, which is a matter for the Courts, and those which allege professional misconduct. Where a complaint alleges professional misconduct, the Complaints and Correspondence Team will send a copy of the response (i.e. the response to the complainant) to the line manager of the employee concerned, and a copy of the complaint file including details of the assessment, in order that the line manager may take appropriate further action if required; this could include a formal investigation under this Policy.

1.14 Cafcass has separate policies and procedures for addressing matters related to Whistle Blowing and Conflict of Interest.

Section 2 – Grievance

2.1 It is recognised that staff, or groups of staff, may at some time have problems or concerns with their work, working conditions or relationships with colleagues, which they wish to raise with management. This may include, for example, issues pertaining to: terms and conditions of employment; health and safety; working relationships; dignity at work; bullying, harassment, discrimination or victimisation.

2.2 Any employee, or group of employees, can choose to raise a grievance where they believe they have sufficient grounds for doing so, and will be expected to be able to provide some evidence to substantiate this. It will also be expected, in all instances that the employee set out their desired remedy, i.e. the measures they are seeking which would resolve their grievance. Resolution of the grievance will remain the primary focus of all parties throughout.

2.3 Grievances must be raised at the earliest possible opportunity and no later than three months after the date of the incident/event giving rise to the grievance (or after the last occurrence of the incident/event giving rise to the grievance, where there have been a series of associated incidents/events).

2.4 Wherever possible, grievances should be discussed informally in the first instance with the line manager with a view to an agreement to use mediation or some other appropriate means of addressing and resolving the issue. Where the line manager is the subject of the grievance, the matter should be dealt with in the first instance by a more senior manager. In these circumstances the senior manager may wish to consult with HR.

2.5 Where a grievance is raised by an employee in respect of changes to their work or working environment, consideration may need to be given to the appropriateness of further changes being made whilst the grievance is considered. Any decision about status quo will be made on the basis of critical service delivery needs, balanced against the impact of the changes upon the employee in question. If it is determined that status quo can and will apply in respect of work or working conditions, this will be the case from the point at which the grievance is formally lodged by the employee or their representative, until the grievance procedure is completed.

2.6 The status quo is defined as the existing arrangements in operation, agreed or customarily applicable prior to the raising of the grievance. Where a change requires formal consultation but has been implemented without such consultation having occurred, the status quo will be the arrangements that preceded that change. Where a change has been agreed with employees after appropriate consultation and a subsequent grievance is lodged, the change will be regarded as the status quo. Maintaining the status quo (for example an existing line management arrangement) may not be appropriate where issues involving bullying and/or harassment are alleged, or in exceptional circumstances where critical service delivery needs require the change to be implemented without delay.

2.7 Employees who wish to progress matters to the formal stage of the grievance process are required to provide as much detail as possible about the grounds for their grievance, using the Grievance Pro-forma attached to this policy. The purpose of this is to ensure that as much relevant information as possible is provided at the outset, to enable the process of resolution. Based on the information provided in the Grievance Pro-Forma, a formal investigation will be undertaken in line with the procedures described in Appendix 3, prior to a formal grievance meeting being convened.

2.8 It is expected that the Assistant Director or Head of Practice will be made aware of all formal grievances raised within their Service Area. In respect of any formal grievance citing alleged bullying and/or harassment, the Grievance Pro-forma will be submitted to the Assistant Director or Head of Practice in the first instance for their awareness and in order that they can ensure the appropriate level of scrutiny until the matter is resolved.

Formal Grievance Meeting

2.9 The purpose of a formal grievance meeting will normally be to establish the facts about an employee's grievance and to determine what (if any) action(s) may reasonably be taken to achieve a resolution.

2.10 A manager of appropriate seniority, outside of the line management relationship and who has not been involved in any informal attempts to resolve the grievance to this point will chair the grievance meeting. They will be advised by a member of the Human Resources team who will provide them with advice and guidance on procedural matters only. Any grievance relating to the Chief Executive Officer (CEO) should be submitted to the Chief People Officer in the first instance. If a grievance submitted in relation to the CEO is progressed to the formal stage, then it will be considered by the Chair of the Cafcass Board.

2.11 The Manager hearing the grievance will arrange with the employee and his/her representative (where applicable) for the meeting to take place within 10 working days after receipt of the grievance investigation report, provided to all parties. This deadline can be extended with the agreement of all parties. Where the employee is being represented by a Trade Union the date of the meeting will be agreed with the representative.

2.12 The employee will make all reasonable efforts to attend the meeting. In the event that the employee is unable to attend the meeting on the date proposed, the chair will rearrange the meeting for another date, normally within 10 working days of the original meeting date.

2.13 If the employee fails without good reason to attend the re-arranged meeting, no further dates will be offered.

2.14 The procedure for a formal grievance meeting will be as follows:

2.14.1 The manager chairing the meeting will introduce the meeting and invite those present to introduce themselves and confirm their respective roles. The chair will then explain the purpose of the meeting and how it will be conducted;

2.14.2 The chair will confirm that the meeting is being conducted as part of Cafcass' formal grievance procedure and that a written record of the meeting will be made and shared with all parties present;

2.14.3 The chair will invite the employee to state their case, i.e. the circumstances that have led to the grievance being raised, the precise detail of the grievance and why they feel aggrieved (the grounds for the grievance). The employee may do this personally, or the employee's representative (if they have elected to be represented) may do this on their behalf.

2.14.4 The employee will refer to any documentation on which they are seeking to rely. The chair will refer to any written evidence that has been gathered in the course of any investigation that has taken place, including the consideration of witness statements where appropriate;

2.14.5 The chair may ask the employee (and any witnesses who may be available) questions about the circumstances of the grievance in order to establish all the relevant facts, background and circumstances;

2.14.6 At any point during the hearing, the chair may adjourn the proceedings and reconvene at a later date if it appears necessary or desirable to do so, including for the purpose of gathering further information or investigating any allegations made;

2.14.7 Once all the evidence has been heard, the chair will summarise the key points of the meeting and invite the employee or their representative to make a final statement should they so wish. The chair will then inform the employee as to when a decision will be made about the outcome of the grievance and confirmed in writing;

2.14.8 The chair will inform the employee that if the grievance is not upheld they will have the right to appeal against the outcome of the grievance meeting if they are not satisfied with it, and that this will be confirmed to the employee in writing as part of the formal grievance meeting outcome within 10 working days. This timescale can be extended with the agreement of all parties.

Formal Grievance Appeal Meeting

2.15 The purpose of a formal grievance appeal meeting will normally be to consider an employee's grounds for appealing the original decision regarding his/her grievance and to determine whether or not Cafcass should amend its decision.

2.16 In order to lodge an appeal against the outcome of the original grievance meeting, the employee must write to the Chief People Officer, no later than 10 working days following the date on which they received written notification of the outcome.

2.17 In lodging an appeal, the employee is required to set out the detailed grounds of appeal using the Appeal Pro Forma attached to this policy, setting out their precise basis for appealing the outcome of the original grievance meeting.

2.18 Arrangements will be made for the appeal meeting to take place as soon as possible after receipt of the appeal pro forma and in any case no longer than 10 working days after receipt. This deadline can be extended with the agreement of all parties. The appeal meeting will be chaired by an appropriate senior manager, who has had no previous involvement in the procedure.

2.19 The procedure for a formal grievance appeal meeting will be as follows:

2.19.1 The manager chairing the appeal meeting will introduce the meeting and invite those present to introduce themselves and confirm their respective roles. The chair will then explain the purpose of the appeal meeting and how it will be conducted;

2.19.2 The chair will state that the appeal meeting is being conducted as part of the formal grievance procedure and confirm that a written record of the meeting will be made and shared with all parties present;

2.19.3 The chair will invite the employee to state their case, i.e. the specific grounds for appealing the original decision regarding their grievance, what outcome they are seeking and why. The employee may do this personally, or the employee's representative (if they have elected to be represented) may do this on their behalf;

2.19.4 The employee will refer to any documentation on which they are seeking to rely. The chair will refer to any written evidence that has been gathered in the course of any investigation that took place into the original grievance and (if applicable) following the submission of the appeal, including the consideration of witness statements where appropriate;

2.19.5 The chair may ask the employee (and any witnesses who may be available) questions about the circumstances of the grievance to establish all the relevant facts, background and circumstances;

2.19.6 At any point during the meeting, the chair may adjourn the proceedings and reconvene at a later date if it appears necessary or desirable to do so, including for the purpose of gathering further information or investigating any allegations made;

2.19.7 Once all the evidence has been heard, the chair will sum up the key points of the appeal meeting and will then inform the employee as to when a decision will be made about the merits of their appeal and what action will be taken to resolve or otherwise deal with the grievance if his/her appeal is upheld;

2.19.8 The chair will inform the employee that there is no further right of appeal against the outcome and that this will be confirmed in writing to the employee as part of the formal grievance appeal meeting outcome within 10 working days. This timescale can be extended with the agreement of all parties.

Grievances of former employees

2.20 If a former employee of Cafcass wishes to raise a grievance, they may do so by writing to their former line manager (or their former senior line manager if more appropriate) no later than 3 months after their last date of employment with Cafcass.

2.21 The Grievance procedure outlined in this policy will not automatically apply to grievances raised by former employees of Cafcass. Upon receipt of a grievance from a former employee, the appropriate Cafcass manager will consider the issues raised and determine how the grievance is to be progressed and responded to. Where practicable, the former employee may be invited to a meeting as part of the process of seeking to resolve the grievance. If this is not practicable, or where there is agreement to do so, the grievance may be responded to by way of correspondence only. There will be no recourse for a former employee to appeal against the outcome of their grievance.

Section 3 – Dignity at Work

3.1 Cafcass is committed to supporting, developing and promoting equality, diversity and inclusion across every aspect of organisational practice and in the services it provides. Cafcass aims to establish an inclusive culture, free from any form of discrimination and based upon the values of dignity and respect (towards and between all employees). Central to this is the belief that all staff are entitled to be treated with dignity and respect at work.

3.2 Acts of bullying, harassment, discrimination and/or victimisation are unacceptable forms of behaviour and will not be tolerated. We will treat any such behaviour, where it is shown to exist, as misconduct and deal with it as such. Where bullying and/or harassment is related to an individual's protected characteristic (as defined in the Equality Act 2010[1]), this may also constitute a criminal offence for which an individual or group may be held personally liable.

3.3 Cafcass has a duty of care to protect the health, safety and wellbeing of all its employees, which it takes very seriously. The Health and Safety at Work Act (1974) places a statutory duty upon all employers in this regard, which includes a duty to take all reasonable measures to protect employees from the effects of bullying and harassment.

3.4 Harassment and/or bullying can have a devastating effect on the victim. Individuals can suffer fear, anxiety and stress, which can cause or exacerbate physical or mental illness, detrimentally affect performance, affect individual and/or team morale, increase absenteeism and even lead to resignation and high workforce turnover. Hence where harassment and/or bullying are alleged, Cafcass will take all necessary and appropriate steps to address such concerns.

3.5 Definitions of Harassment and Bullying

3.5.1 **Harassment** - is unwanted conduct affecting the dignity of individuals and groups. It can occur through a single explicit incident or may be sporadic or persistent. Harassment has the purpose or effect of violating the individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

3.5.2 **Bullying** - may be defined as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, insult or injure the recipient. The misuse of power can be linked to issues such as race, gender, disability, and/or linked to positions of seniority within an organisation.

[1] The Equality Act 2010 designates the following as protected characteristics: Age; Disability; Gender Reassignment; Marriage and Civil Partnership; Pregnancy and Maternity; Race; Religion or Belief; Sex; Sexual Orientation

3.6 Examples of Bullying and Harassment

3.6.1 Examples of **Bullying** are as follows (this list provides examples of behaviour that may constitute bullying and is not exhaustive)

a) Persistent unwarranted criticism;
b) Shouting at or otherwise humiliating someone in public or private;
c) Deliberately isolating people by ignoring or excluding them;
d) Spreading malicious rumours about an individual;
e) Inappropriate personal comments;
f) Threatening behaviour or physical violence;
g) Any other behaviour which is with the intention of causing humiliation, or undermining an individual's dignity or self-respect.

3.7 Legitimate and constructive fair criticism of an employee's performance or behaviour at work is not bullying.

3.8 Examples of **Harassment** are as follows (this list provides examples of behaviour that may constitute harassment and is not exhaustive)

a) Violence or threat of violence;
b) Harassment of a sexual nature, or linked to gender/gender reassignment;
c) Unwanted physical contact, sexual advances or innuendo;
d) Verbal abuse, including threats, derogatory name calling, insults, ridicule or belittling of an individual;
e) Using humour to put another person or group of people down, for example, telling jokes that are sexist, racist or about an individual's sexual orientation;
f) Spreading malicious lies or making insulting comments;
g) Display or circulation of abusive or offensive materials, for example by email or on the internet, or on a whiteboard;
h) Sending offensive text messages;
i) Ostracism or exclusion from normal conversation in the work environment, or from social events;
j) Intrusion by pestering, spying or stalking;
k) Coercion, such as pressure to subscribe to a particular political or religious belief.

3.9 Harassment frequently involves a display of power, which undermines, intimidates or degrades the victim. Harassment is determined by the perception of the person who believes they are being harassed. In some cases, a single instance will constitute harassment.

3.10 Further guidance and advice for employees and employers relating to bullying and harassment, including the form which both can take, may be found on the ACAS website.

3.11 Who might Harass and/or Bully?

Employees can be harassed or bullied by peers, subordinates and managers. Harassment and bullying can also occur between people of the same sex, sexuality, race, religion or belief etc. In practice however, there are often differences (actual or perceived) between the harasser and the victim. In addition, experience shows that the risk of harassment is increased for employees who are, or are perceived to be, less powerful in the workplace.

Informal Resolution of concerns

3.12 It is hoped that the overriding principle of this policy, in terms of informal resolution in the first instance, can be adhered to wherever possible when dealing with any grievance relating to alleged bullying and/or harassment.

3.13 If you believe you are being harassed and/or bullied you should do the following:

3.13.1 Tell someone else about it, but ideally your line manager. If the behaviour you are experiencing is from your manager, then you can speak to their line manager or alternatively to a member of the Human Resources team or a Trade Union representative (if you are a member). If you are feeling uncomfortable about a situation and are not sure if it is harassment or bullying, it will normally help to talk to someone about it;

3.13.2 Keep a written record of the offending behaviour. Write down the dates, times and places when events occurred and what was said or done. If anyone else witnessed any of the instances make a note of whom it was.

3.13.3 Make it clear to the person who you believe is harassing or bullying you that their behaviour is unwelcome and that you want it to stop. In most cases, once the person knows that her/his behaviour is unwelcome, they will stop.

3.14 Where a case is resolved informally no written records will be kept on the complainant's personnel file or that of the person(s) being complained about, nor will any disciplinary action be taken against the person(s) complained about.

3.15 Outcomes that may be achieved in cases where concerns are resolved informally include:

a) A letter of apology;
b) A face to face apology;
c) A mediated solution regarding the future working relationship;
d) A request for the working environment to be changed;
e) Relocating the complainant if this is their wish. (N.B. the person being complained about cannot be relocated without their consent at the informal stage).

Formal procedure

3.16 Any employee, or group of employees, has the right to raise a formal grievance in respect of alleged bullying and harassment. Such a grievance will be addressed in accordance with the formal procedures set out in Section 2 and Appendix 3 of this policy.

3.17 In line with paragraph 2.7 of this policy, any employee who wishes to progress matters to the formal stage of the grievance process in respect of alleged bullying and harassment is required to provide as much detail as possible about the grounds for their grievance, using the Grievance Pro-forma attached to this policy. The purpose of this is to ensure that as much relevant information as possible is provided at the outset, to enable the process of resolution. Based on the information provided in the Grievance Pro-Forma, a formal investigation will be undertaken in line with the procedures described in Appendix 3, prior to a formal grievance meeting being convened.

Counter Allegations

3.18 Where, following a complaint of bullying or harassment against an individual, that individual then makes a counter allegation against the complainant, the investigating officer will consider the counter allegation as part of their investigation of the initial complaint.

Responsibilities with regards to Dignity at Work

3.19 Responsibilities of Managers – In seeking to prevent dignity at work complaints from arising and in order to deal with them quickly and effectively when they do arise, managers have a responsibility to ensure the following:

3.19.1 A work environment that is free from any discrimination, bullying and/or harassment;

3.19.2 Any such behaviour is swiftly and resolutely challenged / addressed;

3.19.3 Any complaints about the infringement of an individual's dignity at work are treated seriously; any evidence is obtained and promptly assessed so that appropriate action can be taken as soon as possible if required;

3.19.4 Appropriate support is in place for all members of staff affected by complaints, including those against whom a complaint has been made, whilst requisite investigations are undertaken; this should include alternative arrangements for line management where this is deemed appropriate and feasible by Cafcass as the employer;

3.19.5 Attempts are made to resolve complaints at the lowest appropriate level of formality, contingent upon the circumstances;

3.19.6 Timelines set out in the procedures are observed, unless there is agreement by both the employee and Cafcass to set them aside;

3.19.7 Any task, action or outcome from a formal or informal resolution procedure is properly implemented, monitored and/or reviewed, where the manager is tasked with doing this. It is recognised that normal working relationships may take some time and careful management to be rebuilt following a formal or informal resolution procedure. It is anticipated that the resolution procedure will address the necessary steps to be taken post-procedure in terms of conciliation. However, managers need to be mindful of their role in this and may need to consider whether a meeting is required with the relevant employees (involving HR and Trade Union colleagues as necessary and appropriate) in order to look at, for example:

a) The need for ongoing / future review
b) Specific Learning and Development / Training
c) Internal / external support mechanisms to facilitate positive working relationships

3.19.8 No form of victimisation is allowed to occur following the outcome of an informal or formal resolution to concerns around bullying and/or harassment. Victimisation occurs when a person is treated less favourably than another person because s/he has referred to or has asserted their rights under a relevant statutory provision / protected characteristic, or has raised a complaint under Cafcass procedures. This would include anyone raising a complaint or bringing a claim under the legislation/procedures, acting as a witness in any procedures brought by another employee, or being involved in Trade Union activities.

3.19.9 No pressure is exerted on an individual to raise a formal complaint where they have no desire to do so. However, it is the responsibility of a manager to take appropriate steps if they witness bullying or harassing behaviour towards an employee, or if such behaviour is independently witnessed and reported to them by another employee.

3.20 Responsibilities of all Employees – Employees have a responsibility to:

3.20.1 Ensure that they challenge discrimination, bullying and/or harassment, and report such behaviour to their line manager (or another line manager if appropriate) in order to promote an inclusive and safe working environment;

3.20.2 Be aware of their own behaviour and conduct and the impact that it can have on others in the workplace;

3.20.3 Talk in confidence to any colleague who may wish to discuss their concerns about being bullied or harassed and encourage them to follow the guidance and processes outlined in this policy.

Bullying and Harassment by service users

3.21 Cafcass is committed to ensuring a safe working environment for its staff, who provide difficult front-line services and who need to work in an atmosphere and environment that is respectful (to and by all concerned) and free from any form of harassment, abuse or violence. It is recognised that on occasions the Complaints process can be used to bully and/or harass Cafcass employees; Cafcass adopts a zero-tolerance approach to any such abuse of the complaints procedure. Cafcass will not tolerate acts of bullying and/or harassment, or any other form of abusive behaviour towards its employees by children and families, stakeholders or any other member of the public. Notices to this effect will be displayed in each Cafcass office, for the attention of all staff and visitors. Guidance on dealing with any issues of bullying, harassment or other types of abusive and/or threatening behaviour can be found on the Cafcass intranet, within the Guidance on Managing Unacceptable Behaviour.

Key Contacts

3.22 **Trade Unions** - Trade union representatives are able to offer support and advice to any of their members who may have a concern about possible bullying and/or harassment. Cafcass encourages all trade union members who may have such concerns at any time to speak to their trade union representatives. Cafcass will continue to work in partnership with its trade unions to maintain a working environment and culture characterised by inclusion, dignity and respect.

3.23 Cafcass is committed to working in partnership with the Trade Unions to raise awareness and tackle any issues of bullying and harassment that might arise. It is recognised that stress in the workplace can contribute to a break down in dignity and respect; Cafcass and its Trade Union partners are committed to continued joint-working and consultation to address ways of tackling and avoiding work-related stress.

3.24 **Human Resources** - Any employee who is concerned about possible bullying and/or harassment by or towards another colleague, is encouraged to speak to their line manager in the first instance. However, they can, should they so wish, also raise their concerns with their local HR colleague, who will be able to provide advice and support, as well as ensure that appropriate further steps are taken to address the situation. The HR Contact list is available via the Cafcass intranet.

Section 4 – Performance Capability

Overview

4.1 Maintaining acceptable and effective standards of performance amongst all staff is crucial in ensuring that a high quality of service is provided to children and families at all times. Cafcass will encourage and support staff to achieve their best possible performance at work. Where performance is perceived to drop below the expected standard this will normally be raised informally with the employee concerned by the relevant manager at the earliest opportunity, with a view to identifying the reasons for this and putting supportive remedial measures in place as swiftly as possible. In most circumstances performance issues should be addressed and resolved through the normal performance management processes, including day-to-day situational supervision, regular performance and learning review (PLR) and the use of supervision tools in line with the relevant supervision policies and guidance.

4.2 Where there are serious and/or long-term performance concerns, Cafcass reserves the right to address these concerns in a Formal Procedure. The employee concerned has the right to be represented at all stages of this procedure by a Trade Union representative or accompanied by a work colleague and shall be advised of this at every stage in the procedure.

Formal Procedure

4.3 The Line Manager will arrange a formal meeting with the employee concerned at the earliest opportunity, once the decision has been made to progress matters to the formal stage of the procedure. At this point it will be expected that efforts will be made to identify a mutually convenient date for the formal meeting, when the employee is able to be represented by either a Trade Union representative or work colleague.

4.4 The employee will be invited by letter to attend the meeting; the letter will also set out the specific detail of the performance concerns to be addressed. The evidence to substantiate these performance concerns will also be provided and the employee notified of their right to be accompanied by a chosen colleague or Trade Union representative.

The objective of the formal meeting will be for the manager to:

4.4.1 Explain precisely which required standards of performance have not been met and in what way, and provide evidence to support this assessment;

4.4.2 Provide an opportunity for the employee to respond to what is regarded as the below-standard performance and to ask the manager any questions they may have about the situation;

4.4.3 Discuss supportive remedial measures with the employee, such as additional training, mentoring or supervision;

4.4.4 Set agreed targets for improvement, a realistic timescale for their achievement and a date for a formal review meeting at the end of the improvement period (this will normally be a period of between 4 and 6 weeks);

4.4.5 Implement a Performance Improvement Plan (PIP) that will detail the specific, measurable, achievable, realistic and time-bound (SMART) objectives to be achieved by the employee and the timescales in which these improvements need to be achieved. The PIP will also set out the evidence that it has been agreed will be required to show that the employee's performance has improved;

4.4.6 Decide the specific support that will be given to the employee during the formal improvement period e.g. any specific training and development, coaching and/or mentoring required.

4.5 The performance of the employee will be monitored and reviewed by the appropriate manager regularly throughout the formal improvement period, in line with the provisions of the PIP. The employee has a shared responsibility, with support from their Trade Union representative where necessary and applicable, to bring to the attention of their manager any issue(s) which arise during the improvement period if they believe these may impact upon their ability to achieve the improvement objectives. Such issues must not be left unstated by the employee until the end of the improvement period.

4.6 Depending on the circumstances it may be necessary, during the formal improvement period, for the manager to convene a further interim meeting with the employee to discuss and agree adaptations or amendments to the detail of the PIP if there is an objective justification for this. This may also be appropriate where the employee or their Trade Union representative has raised any issues that require consideration during the formal improvement period.

4.7 At the formal review meeting, the manager will consider the performance of the employee throughout the formal improvement period, taking into account all evidence which has been gathered. The employee will have a full opportunity to contribute to this meeting and to make their case in respect of their performance, perceived level of improvement and any other issues they regard to be relevant.

4.8 At the end of the meeting the manager will decide on one of the following courses of action:

4.8.1 End the formal procedure and return to normal performance management arrangements;

4.8.2 Extend the formal improvement period and redefine the details of the PIP if required;

4.8.3 Convene a formal performance capability hearing to consider the employee's continued employment.

Formal Performance Capability Hearing

4.9 A Formal Performance Capability Hearing will be convened after attempts have been made to restore effective performance through the application of the formal performance procedure and where the employee's manager believes that there is no realistic prospect of the expected improvement in performance being achieved within a further 4 weeks of the end of a formal improvement review period.

4.10 The manager will prepare a detailed report, which they will present to the hearing, outlining the detail of the performance concerns, the measures taken to address these concerns and the reasons for bringing the matter to a formal hearing. The report will be shared with the employee no later than 10 working days in advance of the Formal Performance Capability Hearing, in line with the procedures set out at Appendix 1.

4.11 The procedures for a Formal Performance Capability Hearing are consistent with the general procedures for a formal hearing set out in Appendix 1.

4.12 An employee can appeal the outcome of a Formal Performance Capability Hearing. Again, any such appeal will be considered in line with the procedures set out in Appendix 1.

Section 5 - Disciplinary Procedure

Overview

5.1 Misconduct may be defined as any conduct and/or behaviour, by an individual or group, which is unacceptable and/or improper and which falls beneath the expected standards of professional conduct and/or behaviour within Cafcass. A non-exhaustive list of examples of misconduct and gross misconduct is set out at Appendix 2 of this policy. Consideration must also be given to whether conduct or behaviour has infringed any applicable rules on professional standards of conduct laid down by relevant regulatory bodies e.g. Social Work England (SWE).

5.2 Disciplinary procedures may be instigated by an appropriate manager, following an initial assessment of the seriousness of the alleged misconduct. Instigation of formal procedures will normally only be necessary where informal attempts to address and improve unacceptable conduct and/or professional behaviour have been unsuccessful, or in more serious cases where immediate formal intervention is deemed necessary.

5.3 In assessing whether a particular incident should be regarded as misconduct, the nature of the conduct/behaviour, its circumstances and its consequences will be considered. If there is a case of alleged misconduct and it is decided that informal resolution is not appropriate, then the disciplinary procedure should be followed and an investigation should be initiated

5.4 No employee may be dismissed for a first breach of this policy, except in the case of gross misconduct.

5.5 At every formal stage in the procedure, employees will be advised in writing of the detail of the concern or allegation against them and will be given a full opportunity to respond. A copy of this section of the policy must be made available to employees entering any formal stage of the procedure. Formal procedures must be conducted by the appropriate level of management. Advice should be sought from Human Resources prior to the instigation of formal procedures.

5.6 Where disciplinary action is being considered against an employee who is a Trade Union representative the normal disciplinary procedure should be followed. However, no action should be initiated until the circumstances of the case have been discussed with a relevant paid official of that Trade Union.

Investigation

5.7 Where allegations of misconduct or unprofessional behaviour arise, it is important that steps are taken as quickly as possible to investigate the circumstances, prior to any decisions being taken about disciplinary action. The scope of any investigation will be dependent upon the detail and seriousness of the alleged misconduct or unprofessional behaviour and on the extent to which the allegations and any known facts of the case are disputed by the employee.

Where a formal investigation is required, it will be undertaken in line with the procedures set out in Appendix 3. The purpose of an investigation is purely to gather information and to summarise this in the form of a report which will make recommendations about next steps and whether there is a case to answer.

5.8 On receipt of the Investigating Officer's report, if the employee's senior line manager considers that there is a case to answer of misconduct, a disciplinary hearing will be convened. If the employee's senior line manager, however, considers that there is no case to answer, then s/he will write to the employee to advise her/him of this and to confirm that no disciplinary action will be taken, that the case will be closed forthwith and that no reference to these proceedings will be retained on the employee's personal file.

5.9 There may be certain, specific circumstances where the need for a full formal investigation (and potential subsequent hearing) can be avoided by the issuing of an agreed disciplinary sanction (up to but not including dismissal), where this option is accepted by all parties as a suitable means of resolving the matter in question. Advice must **always** be sought from HR (who will liaise with the appropriate Trade Union representative where the employee is a member of a Trade Union) before any discussion is held with an employee on the possibility of agreeing a sanction without any hearing / investigation etc. This will only be an appropriate option in a limited number of scenarios. Where the employee is a member of a Trade Union, it is vital that a representative of that Trade Union will be notified of the proposal to issue an agreed sanction at the earliest possible stage, in order that they can provide support and advice to their member as required.

It is expected that the level of any agreed disciplinary sanction applied via the above route will take into account, as a form of mitigation, the acceptance of an agreed sanction by the individual, whereby this acceptance clearly reflects their recognition and contrition regarding the misconduct in question, and a desire to resolve matters swiftly and move forward positively.

It is not expected that the agreed sanction option will become routine as an alternative to the formal investigation process. The agreed sanction route may not be used for the same individual more than once.

It is crucial that the agreed sanction route reinforces the importance of learning and reflection in dealing with issues of misconduct, in the same way that the formal

investigation route does; this can help to prevent further occurrences of the same or similar misconduct. To this end the number of cases and appropriate detail of the issues resolved via the agreed sanction route will be recorded on iTrent in order to facilitate reporting to ensure that option is being utilised effectively and proportionately.

Suspension

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

5.11 There may be occasions when it is necessary and appropriate to suspend an employee, either at the outset or during the course of an investigation or subsequent disciplinary process[2]. In such circumstances the employee will be suspended on full pay. Any decision to suspend an employee will be taken by a Senior Manager at Head of Practice level or above.

5.12 The following may give rise to consideration of suspension (this list is not exhaustive):

5.12.1 Alleged misconduct so serious that it may constitute Gross Misconduct, which could lead to dismissal; and/or

5.12.2 Where there is a potential risk if the employee were to remain in the workplace. This may include (but is not limited to) a risk to the employee themselves, other employees, service users and/ or any stakeholder of Cafcass. Such a risk could, for example, be associated with health, safety, wellbeing, safeguarding, organisational reputation or financial risk; and/or

5.12.3 The course of an investigation and / or another formal process may be prejudiced or hindered by the continued presence of the employee in the workplace; and/or

5.12.4 Where illegal or other acts committed (or allegedly committed) outside of the workplace give rise to concerns regarding an employee's honesty or integrity, their suitability to work in a social care or children's safeguarding capacity, or where these acts have the potential to bring Cafcass into serious disrepute.

5.13 Any period of suspension will be kept to an absolute minimum. Suspension will only be imposed after careful consideration and will be reviewed regularly in order to ensure that it remains necessary; the suspended employee will be kept informed regarding the continued need for their suspension and the reasons for this. Any

[2] There may be other circumstances where suspension is deemed necessary and appropriate, e.g. on personal or collective Health, Safety and Wellbeing grounds or in respect of serious performance incapability, in which case the provisions of this section will apply accordingly.

suspension will be imposed without prejudice to the outcome of any subsequent investigation or process and is not a form of disciplinary action.

5.14 Where suspension of a Trade Union representative becomes necessary, a paid official of the relevant Trade Union will be notified, before the suspension takes effect. The suspension of a Trade Union representative is a serious step and should normally only be undertaken following consultation with a senior member of the Human Resources Team, i.e. Chief People Officer or HR Manager, and/or the Cafcass National Director of Operations.

5.15 The suspended employee will be written to as soon as possible after the suspension has taken effect, setting out the reason(s) for the suspension and the next steps in the procedure to follow. A copy of the letter of suspension will be sent to the Chief People Officer.

5.16 During any period of suspension, the suspended employee must treat the matter in the strictest confidence and will be required to refrain from all of their Cafcass duties. They should not discuss the situation leading to their suspension with any colleagues. The suspended employee will not be allowed to enter any Cafcass premises during the course of their suspension, unless they have the express permission of their senior line manager or another appropriate senior manager to do so. It will be normal practice for a suspended employee also to have their IT and Cafcass mobile phone accounts temporarily suspended for the duration that they remain suspended. Where this occurs, supervised access to the IT system may subsequently be necessary and will be provided to the suspended employee, where they need to acquire information directly relevant to the disciplinary proceedings for preparation of their case. If such information can be accessed on their behalf by another appropriate Cafcass employee, and forwarded to them, then this option should be explored in advance of supervised access to the IT system being agreed.

5.17 An employee who is suspended will be expected to make themselves available to attend any meetings in relation to an on-going investigation or subsequent disciplinary process, including any formal disciplinary hearing that may be convened.

5.18 If, during any period of suspension, an employee wishes to make a new request for annual leave in order to take a holiday, they must contact their line manager in the normal manner in order to do so. Any annual leave arrangements which have already been booked and authorised previously, but that fall during a period of subsequent suspension, will usually be honoured by Cafcass. If an employee wishes to cancel any such pre-booked leave, rather than utilise it during a period of suspension, they have the option to do so. If an employee becomes ill during a period of suspension, they must notify their line manager in the usual way. Any period of sickness will override suspension and must therefore be accurately recorded on iTrent.

5.19 Any employee who is suspended remains bound by the terms of their contract of employment in relation to undertaking any other work outside of Cafcass. The normal expectation will be that an employee who is suspended will not undertake any other form of employment outside of Cafcass for the duration that they remain suspended. If, however, an employee does wish to undertake any other form of work during a period of suspension, they will be required to inform Cafcass of this prior to commencing that work, in order that any conflict of interest or potential risk (to the employee or to Cafcass as an organisation) can be properly assessed and managed in the usual way.

5.20 Where the suspended employee has been appointed either by or for the Court as a Family Court Adviser, Cafcass may take the additional steps, as set out in Appendix 4 of this policy, to notify the court of the situation.

5.21 It might be necessary for Cafcass to notify SWE, at the point of suspension, if allegations of misconduct which form the grounds for suspension satisfy the SWE standards of acceptance for a fitness to practise referral and if registration of the SWE is a requirement of the employee's post. Advice will be sought by Cafcass from the SWE, prior to making any fitness to practise referral, in order to ensure that any such referral (and the timing of it) is appropriate. If, after suitable consideration of the circumstances and advice received from SWE, such a referral is not deemed appropriate at the point of suspension, Cafcass shall retain the right to make a referral at any subsequent point in the procedure, as necessary and appropriate. Any fitness to practise referral to SWE regarding a Cafcass employee will only be made following consultation with a senior member of the Human Resources Team, i.e. Chief People Officer or HR Manager, and/or the Cafcass National Director of Operations.

Representation

5.22 In line with the general provisions of this Policy, employees are entitled to be represented at all stages of this formal procedure by a Trade Union representative, or supported by a work colleague should they so wish; they will be advised of this in writing at each stage of the procedure. It will not be appropriate for an employee to be accompanied by a work colleague who may also be interviewed as part of the investigation or who may become the subject of parallel or related proceedings.

5.23 Cafcass will not be responsible for bearing any costs incurred by an employee in seeking or obtaining their right to representation or advice.

5.24 All reasonable efforts will be made by Cafcass to engage with an employee's Trade Union or work colleague in order to agree the date, time and suitable location for any formal meeting/ hearing.

5.25 Should an employee's Trade Union representative or chosen work colleague be unavailable to attend a formal meeting or hearing the employee shall have the right to

request that the meeting / hearing should be re-arranged at a later date, normally within 10 working days of the original date.

Child protection or Criminal Proceedings

5.26 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 investigation where appropriate. Advice from Human Resources should always be sought regarding such matters, before any steps are taken, in order to ensure that any internal Cafcass investigations or processes do not compromise or otherwise adversely affect such external investigations, nor prejudice any individuals concerned.

5.27 While involvement in the above, outside the context of Cafcass employment, 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 their work within Cafcass.

Disciplinary Hearing

5.28 If the Senior Line Manager decides that a disciplinary hearing is necessary, arrangements shall be made to convene the hearing, which shall be chaired by another appropriate senior manager who has had no involvement in the process to that point. If a possible outcome of the hearing is dismissal, the Chair shall be an appropriate senior manager with authority to dismiss; the list of those post holders is set out in Appendix 2.

5.29 Once the date for the hearing has been set, the Chair of the hearing (or the Human Resources colleague supporting the Chair) shall write to the employee to confirm that they are required to attend. This letter shall set out in detail the allegations that are to be considered at the hearing. The letter shall either be accompanied by the documents to be considered at the hearing, or shall confirm that these documents will be sent to the employee by the deadlines set out in Appendix 1.

5.30 The hearing shall be conducted in line with the procedure for a formal hearing set out in Appendix 1.

5.31 The outcome of the formal disciplinary hearing shall be notified in writing to the employee by the deadlines set out in Appendix 1.

5.32 An employee may appeal the outcome of a formal disciplinary hearing.

Witnesses

5.33 It will be the responsibility of both the relevant manager and the employee concerned to identify to the Investigating Officer any witnesses who may be able to contribute to the investigation, so that that the Investigating Officer can contact these witnesses and obtain statements from them at the earliest opportunity. The Investigating Officer will also have the prerogative to determine for themselves any

other person(s) whom they deem relevant to their enquiries and who shall be contacted as a potential witness as part of the investigation.

5.34 Witnesses may be required to attend in person any investigatory meetings or disciplinary hearing that is convened and should be notified of this, in writing, by the Investigating Officer.

5.35 Where a witness is not an employee of Cafcass, it is recognised that they cannot be compelled to attend a Hearing. In these circumstances, it is expected that the individual shall be interviewed and a statement taken by the Investigating Officer.

5.36 Where children or vulnerable adults are identified as witnesses, the Investigating Officer should seek appropriate professional advice as necessary regarding the process of evidence collection in sensitive cases. Children and vulnerable adults will not be required to attend any disciplinary hearings.

Appeals

5.37 In order to lodge an appeal against the outcome of a formal disciplinary hearing, the employee must write to the Chief People Officers, no later than 10 working days following the date on which they received written notification of the outcome.

5.38 In lodging an appeal, the employee is required to set out the detailed grounds of appeal using the Appeal Pro Forma attached to this policy. The appeal will not normally lead to a re-hearing of the case, but will be focused on the specific grounds of appeal and will involve a review of the outcome of the original hearing.

5.39 Arrangements shall be made for the appeal hearing to take place as soon as possible after receipt of the appeal pro forma and in any case no longer than 10 working days after receipt. That may be extended with the agreement of all parties. The appeal hearing will be chaired by an appropriate senior manager, who has had no previous involvement in the procedure.

5.40 If the employee is unable to attend a properly convened appeal hearing and steps to facilitate their involvement have been unsuccessful, the Chair of the appeal may choose to hear the case in her/his absence,

5.41 In addition to the documentation presented to the original disciplinary hearing, the Chair of the appeal hearing shall also consider statements of case, which shall be submitted by both the employee and the Chair of the original disciplinary hearing. Both parties shall submit their statements of case to the Chair of the appeal hearing no later than five working days before the date of the hearing. The statement shall include the facts of the case; for the Chair of the original disciplinary hearing this will include the basis for their determination. For the employee this will mean an explanation of their grounds of appeal and, where appropriate, any mitigating circumstances they wish to highlight. The appeal pro forma alone shall not be considered sufficient to constitute the employee's statement of case.

5.42 Any decision about the admissibility of new evidence for consideration at an appeal hearing will rest solely with the Chair of the appeal hearing, whose determination will be final.

5.43 The outcome of the appeal hearing will be notified in writing to the employee by the deadline set out in Appendix 1.

Version	Summary of Changes	Date
1.1	Updated terminology and language. Weblinks repaired/updated	June 2024

APPENDIX 1 – Formal Hearing and Appeals Procedures (Disciplinary and Performance Capability)

General principles

1. Once the need for a formal hearing / appeal has been determined, arrangements shall be made for it to take place without undue delay. **A minimum of 15 working days' notice** will be provided for any formal hearing. The date for the hearing will be agreed with the Trade Union representative in line with the overarching principles of this policy.

2. All papers for consideration at a formal hearing / appeal will be disseminated as soon as practicable, but **not later than 10 working days** in advance of the hearing.

3. The employee should provide a copy of any additional documentation, upon which they intend to rely, **no later than 5 working days** in advance of a formal hearing / appeal. This should not normally introduce new information which has not previously been presented during the proceedings, unless this information was not previously available.

4. Notes will be taken and will be shared with all parties who were in attendance at the hearing / appeal, as soon as possible following its conclusion. Notes will normally be shared **no later than 15 working days** after the hearing / appeal, unless agreed otherwise.

5. An adjournment to another date may be requested at any point during the hearing / appeal by any of the parties present and it will be a matter for the Chair to consider and agree to the adjournment, and also to determine the appropriate duration. Any such adjournment is only envisaged as being necessary in exceptional circumstances and the decision of the Chair is final regarding any requested adjournment. The Chair may, at their discretion, adjourn the hearing so that further evidence can be produced or specific matters investigated. Any party may request and be granted a short break / period of respite during a formal hearing.

6. The outcome of any formal hearing / appeal will normally be notified to the employee in writing **no later than 10 working days** following the conclusion of the hearing. The employee shall also be notified of their right of appeal where applicable

7. If the 10 working day deadline for notification of the outcome needs to be extended for any reason (e.g. unplanned absence of the chair due to unforeseeable circumstances or because information needs to be clarified by the Chair before a decision can be reached), then the Chair shall inform the employee of a new deadline, which should be within 30 days of the hearing in most circumstances.

Formal Hearing

8. The hearing will be chaired by a manager of appropriate seniority (given the circumstances of the matter to be considered) who has had no prior involvement in the process.

9. The Chair will be advised by a member of the Human Resources team, who will be present throughout the hearing in order to provide any advice or guidance on procedural matters only. They will not be present in any decision-making capacity.

10. It will be for the Chair, in advance of the hearing, to confirm the identity of any witnesses to be called by either the Investigating Officer / Manager presenting the management case or the employee and to ensure that they have been contacted to confirm their availability to attend the hearing.

11. The arrangements for the hearing will be confirmed to the employee in writing by the Chair and will include the following:

    11.1 The, date, time and location of the hearing;

    11.2 The specific detail of the issues / allegations that have been investigated or performance concerns that will be considered during the hearing;

    11.3 The entitlement to be represented by either a Trade Union representative or work colleague;

    11.4 An inquiry as to whether any reasonable adjustments or special considerations are required for those who will be in attendance (e.g. hearing loop)

    11.5 The identity of all who will be attending, including who will be presenting the case on behalf of Cafcass and who will be chairing the hearing;

    11.6 Confirmation of any witnesses who will be attending;

    11.7 Whether dismissal is a possible outcome.

12. The format for the hearing will be as follows:

    12.1 The Chair will oversee introductions from those present, ensure that everyone is able / willing to proceed and confirm whether any requested reasonable adjustments have been provided.

    12.2 The Chair will then explain the procedure that will be followed;

12.3 The Investigating Officer / Manager presenting the management case will be invited to present their report, calling any witnesses as necessary at the appropriate point;

12.4 At the conclusion of the presentation of case, the employee or their representative will be invited to question the Investigating Officer / Manager presenting the management case or any of their witnesses;

12.5 The Chair may also question the Investigating Officer / Manager presenting the management case;

12.6 The employee (or their representative) will then be invited by the Chair to present their case, including calling any witnesses who have attended at their request;

12.7 At the conclusion of the employee's presentation of case, the Investigating Officer / Manager presenting the management case will be invited to question the employee (or their representative) and any of their witnesses;

12.8 The Chair may also question the employee (or their representative) and any of the witnesses;

12.9 The Chair will determine if any of the witnesses will be required further and otherwise the witnesses shall be released;

12.10 The Chair shall determine if an adjournment is required at this stage, before first the Investigating Officer / Manager presenting the management case and then the employee (or their representative) are invited to summarise their case and make any closing statements. No new information should be introduced at this stage;

12.11 After both closing statements the Chair will adjourn the hearing until they issue a decision.

13. With regards to formal disciplinary hearings, evidence will not usually be provided to the Chair about the employee's disciplinary record which is unrelated to the allegations under consideration or where previous sanctions have expired. However, the Chair may consider such evidence where previous disciplinary issues relate to such significant matters as safeguarding or child protection in particular.

14. The Chair will deliberate in private. They may recall the Investigating Officer / Manager presenting the management report and/or the employee in order to clarify any points of uncertainty on evidence already given. They may also consult with the HR colleague in respect of any procedural matters. If such recall is necessary,

all parties will be required to re-enter the room whilst the Chair acquires the necessary clarification.

15. The Chair will need to carefully consider the evidence presented and be satisfied that a thorough investigation and assessment of all available evidence has taken place; hence in most cases it is expected that the Chair will, after an adjournment, call all parties back to confirm that the outcome of the hearing will be provided in writing.

16. In conveying the outcome of the hearing, the Chair may make it clear that they reserve the right to 'recall' the employee concerned to a further formal hearing at some point in the future, during the period in which any formal warning remains 'live', where there is reason to do so (e.g. any further concerns relating to an employee's conduct arise, whether they are directly linked to the issues addressed by the warning or not)

Appeal Hearing

17. Any appeal hearing will be chaired by a different manager of appropriate seniority, who has had no prior involvement in the process to that point.

18. The appeal hearing will constitute a review of the decision reached as an outcome of the original hearing; it will not normally constitute a re-hearing of the case. In cases where either a final written warning or dismissal was the outcome of the original hearing, the Chair of that hearing will be expected to be in attendance in person at the appeal hearing, unless it is agreed that this will not be the case. In all other cases it will not be a requirement for the Chair of the original hearing to be present in person at the appeal hearing.

19. The Chair of the appeal hearing will be advised by a member of the Human Resources team, who will be present throughout in order to provide any advice or guidance on procedural matters only. They will not be present in any decision-making capacity.

20. It will be for the Chair, in advance of the appeal hearing, to confirm the identity of any witnesses to be called by either the Chair of the original hearing or the employee and to ensure that they have been contacted to confirm their availability to attend the hearing.

21. The arrangements for the appeal hearing will be confirmed to the employee in writing by the Chair and will include the following:

    21.1 The, date, time and location of the appeal hearing;

    21.2 The purpose of the appeal hearing;

21.3 The entitlement to be represented by either a Trade Union representative or work colleague;

21.4 An enquiry as to whether any reasonable adjustments or special considerations are required for those who will be attending (e.g. hearing loop)

21.5 The identity of those who will be attending;

21.6 Confirmation of any witnesses who will be attending

22. The format for the appeal hearing will be as follows:

22.1 The Chair will oversee introductions from those present, ensure that everyone is able / willing to proceed and confirm whether any reasonable adjustments have been requested by anyone present in order to facilitate the hearing.

22.2 The Chair will then explain the procedure for the hearing;

22.3 The employee (or their representative) will present their statement of case, making representations based on their grounds of appeal;

22.4 The Chair of the original hearing (if present), and the Chair of the Appeal may then question the employee on any points of clarification;

22.5 The Chair of the original hearing (if present) will present their statement of case; alternatively the Chair of the appeal will confirm that all present have had the opportunity to read the statement of case submitted by the Chair of the original hearing;

22.6 The employee (or their representative) may then question the Chair of the original hearing, or respond to the statement of case submitted by them;

22.7 The Chair of the appeal will determine if an adjournment is required at this stage, before the employee (or their representative) and then the Chair of the original hearing (if present) are invited to summarise their case and make any closing statements. No new information or evidence may be introduced at this stage that has not already been presented during the appeal hearing to this point;

22.8 After both closing statements the Chair of the appeal will adjourn, pending their deliberations and determination of the outcome.

23. The Chair of the appeal will deliberate in private (their HR support remaining with them to provide advice and guidance on procedural matters only). They may recall

the employee or Chair of the original hearing (if present) in order to clarify any points of uncertainty on evidence already given. If such recall is necessary, all parties will be required to re-enter the room whilst the Chair acquires the necessary clarification from either party.

24. The Chair of the appeal will need to carefully consider the evidence presented; hence in most cases it is expected that the Chair will, after an adjournment, call all parties back to confirm that the outcome of the hearing will be provided in writing.

25. The outcome of the appeal is final within these procedures and there is no further recourse to appeal within Cafcass.

APPENDIX 2 – Examples of Misconduct and List of Formal Disciplinary Outcomes

MISCONDUCT AND GROSS MISCONDUCT

The following are examples of misconduct and gross misconduct which could result in a formal investigation and potentially a formal disciplinary hearing. This list is for illustrative purposes and is neither exclusive nor exhaustive. There may be other examples of conduct or behaviour, possibly constituting misconduct or gross misconduct, which are not listed.

1. Misconduct

1.1 Infringement or breach of health and safety rules.

1.2 Refusal to carry out a reasonable instruction that is consistent with the employee's contract of employment;

1.3 Frequent lateness

1.4 Verbal abuse of a fellow employee, client or member of the public

1.5 Harassment or discrimination

1.6 Breach of confidentiality

1.7 A Charge of a criminal offence (as opposed to a conviction) cannot in itself constitute misconduct. Where this has a relevance to and/or a direct impact upon the employee's role, however, the situation may need to be investigated.

1.8 Breach of Cafcass policies and procedures (depending on the nature and circumstances of the breach).

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 (as outlined above), examples of specific behaviour that might lead to dismissal for gross misconduct are as follows:

2.1 Wilful or deliberate behaviour by an employee that either seriously undermines or is inconsistent with the continuation of the contract of employment;

2.2 Theft, fraud and deliberate falsification of records, expense accounts, timesheets, etc.

2.3 Acts of violence including the physical assault or threat of assault of a fellow employee, client or member of the public.

2.4 Serious bullying or harassment

2.5 Deliberate damage to property

2.6 Serious insubordination

2.7 Misuse of Cafcass' property or name

2.8 Bringing Cafcass into serious disrepute

2.9 Serious incapability whilst on duty brought on as a result of being under the influence of alcohol or illegal drugs

2.10 Serious negligence, which causes or might cause unacceptable loss, damage or injury

2.11 Serious infringement or breach of health and safety rules that causes serious and imminent risk to the health and safety of a person(s), or the reputation of Cafcass or any of its stakeholders;

2.12 Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).

2.13 Conviction for a criminal offence that has implications for the employee's profession, role or contract of employment.

2.14 Misuse of Public Office

2.15 Serious or repeated breaches of Cafcass Policies and Procedures (depending on the nature and circumstances of the breach)

FORMAL DISCIPLINARY OUTCOMES / SANCTIONS

When deciding upon the appropriateness of a disciplinary sanction, the Chair of the hearing / appeal should bear in mind the range of reasonable responses. Factors which might be relevant include the extent to which standards of conduct and/or professional behaviour have been breached, any precedent that exists, the employee's disciplinary record (any unspent disciplinary sanctions should only be looked at after the Hearing has taken place and a decision should only be taken on the breached sanction), and any mitigating factors that may have a bearing on the sanction to be applied. The following disciplinary sanctions may be applied and their duration will be commensurate with ACAS guidelines. These are not necessarily

sequential; dependent upon the circumstances of the case, any one of the following sanction may be applied:

a) **First Written Warning** - a first written warning will remain on the employee's record for a maximum of three months. The written confirmation of the warning will be contained in the letter conveying the outcome of the formal disciplinary hearing. 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) **Second Written Warning** – if further allegations of misconduct or unprofessional behaviour are proven against an employee who has a live first written warning or in cases where the misconduct or behaviour is deemed sufficiently serious, then a second written warning may be issued which will remain on the employee's record for a maximum of six months from the date of issue. The written confirmation of the warning will be contained in the letter conveying the outcome of the formal disciplinary hearing. 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.

c) Final Written Warning - if allegations of misconduct or unprofessional behaviour are proven against an employee who has a live second written warning or in cases where the misconduct or behaviour is deemed sufficiently serious then, a final written warning may be issued. The warning will remain on the employee's record for a maximum of 12 months. In certain circumstances involving serious misconduct, the warning may be retained on file for a specified longer period, up to a maximum 24 months. The Chair of the hearing will specify the reasons for such a determination in the outcome letter conveying the sanction, which may, for example, relate to a finding in respect of safeguarding or child protection.

d) **Other Disciplinary Sanction –** other reasonable and appropriate action e.g. temporary or permanent transfer to a lower graded post, or another work location, may be imposed in conjunction with a written or final written warning, subject to the circumstances of each particular case. The Chair of the hearing will specify the reasons for such a determination in the outcome letter conveying the sanction.

e) Dismissal with Notice – for cases where a final warning is still live and another incident of misconduct occurs, an employee may be dismissed with contractual notice or pay in lieu of contractual notice. This will normally be based on there being a correlation between the nature and / or incidents of misconduct.

f) Dismissal without Notice – Where gross misconduct has been proven, summary dismissal (without notice or pay in lieu of notice) may be imposed, even where this is the first disciplinary offence.

Suspension

In disciplinary cases involving alleged gross misconduct, if an employee is not suspended from employment during the investigatory or subsequent disciplinary process, Cafcass shall retain the right to dismiss that employee if a disciplinary hearing finds gross misconduct has occurred and imposes summary dismissal as the appropriate sanction.

Recording of Warnings

All formal warnings will be recorded securely on iTrent and a copy of the formal outcome letter retained on the employee's personal file. Warnings will cease to be 'live' following the end of the specified period.

Warnings relating to Safeguarding / Child Protection matters

Where the warning relates to a child protection issue, the warning will remain on the file at the end of the 'live' period and may be referred to and taken into consideration if a similar concern arises. It may also be shared with another safeguarding agency and referred to in a reference for a potential employer, in accordance with our agency safeguarding responsibilities.

Managers with authority to dismiss

The following post holders will be authorised to Chair hearings where a possible outcome is dismissal. The list is for guidance purposes only:

- Chair of the Board
- Chief Executive Officer
- Members of the Corporate Management Team (CMT)
- Assistant Directors / Designated Senior Managers

The Chief People Officer should always be consulted regarding a decision to dismiss, before it is implemented.

APPENDIX 3 – Procedure and Scope of Investigations (including Disciplinary, Grievance and Dignity at Work issues)

1. Where the need for a full investigation is established, the employee's manager or senior line manager will appoint an impartial Investigating Officer, who will be an appropriate level of manager outside of the employee's line management relationship. The Investigating Officer will have had no prior involvement in the matter to be investigated.

2. The remit of the Investigating Officer will be to establish the facts and gather any evidence that may exist in relation to the matter being investigated. In order to achieve this, the Investigating Officer shall:

    2.1 Establish contact with the employee(s) concerned and make arrangements to conduct an investigatory meeting with them at the earliest opportunity;

    2.2 Ask specific questions of the employee in relation to the conduct allegations / grievance issues that have been raised and provide the employee with an opportunity respond / explain as fully as they wish to;

    2.3 Make arrangements to complete investigatory meetings with any witnesses in order to gather relevant information or evidence;

    2.4 Ensure that the notes of their investigatory meetings are transcribed within a reasonable timeframe and are shared in draft form with the employee and any witnesses, for the purposes of accuracy;

    2.5 Ensure that any relevant information that may be held in documentary or electronic format (e.g. mobile telephone records, iTrent, email communications etc.) is gathered.

3. The purpose of any investigatory meeting is purely to gather information, and does not constitute a formal hearing. The role of the Investigating Officer is to establish whether there is a case of misconduct to answer at a formal hearing. No sanction can be applied as a direct result of the investigation process itself.

4. Similarly, in the case of a grievance investigation, it is not the role of the investigating officer to determine whether the grievance should be upheld or not; this will be the remit of the Chair of the formal grievance meeting. The role of the Investigating Officer is to gather all relevant information pertaining to the grievance, as far as possible, and summarise this in their investigation report.

5. An employee may be represented during an investigatory meeting, either by a Trade Union representative or a work colleague. Advice may be provided to the Investigating Officer by a member of Human Resources.

6. In order that the Investigating Officer can produce an accurate and balanced report, no employee should unreasonably withhold any information which may relate to the conduct allegation(s) or grievance.

7. Where witnesses are to be interviewed who are not employees of Cafcass, the opportunity to observe this interview shall be offered to the employee's Trade Union representative or work colleague, providing that the external witness is in agreement with this. Alternatively, external witnesses may be invited to submit a written statement to the investigating officer. If, having observed the interview between the investigating officer and the external witness, the employee's Trade Union representative or work colleague wishes to raise any necessary points of clarification, they should do so separately with the investigating officer, who will then be able to determine if they need to address these points with the external witness. It will be for the Chair of a formal hearing to assess the relative weight to be attached to evidence provided by external witnesses.

8. The Investigating Officer will produce a report setting out the findings of the investigation, including the written record of all investigatory meetings and witness statements or other documentary evidence.

9. In the case of a disciplinary investigation, the Investigating Officer will be required to make a recommendation as to whether or not the investigation has identified any misconduct or behaviour for which there is a case to answer. If the investigation finds that there is a case to answer, the report will recommend that a formal disciplinary hearing be convened.

10. In the case of a grievance investigation, where no misconduct is alleged or identified, the Investigating officer may make recommendations regarding potential resolutions to the grievance or the outcome being sought by the employee, for consideration by the Chair of the formal grievance meeting.

APPENDIX 4 - Monitoring and Application to the Court in Cases Affecting Children's Guardians

Cafcass is responsible for protecting the interests of vulnerable children involved in the Court system. It must be able to act swiftly if it becomes necessary to raise issues about an employee.

Some employees may be appointed by the Court as a Children's Guardian. This is a personal appointment and subject to the direction of the Court. In the event that Cafcass becomes concerned about the conduct, professional behaviour or performance capability of a Children's Guardian to carry out their role to the requisite professional standards, Cafcass reserves the right, pending the outcome of any appropriate investigatory process to:

- Apply to the Court to terminate the appointment of the Children's Guardian in all or some of the cases in which the Children's Guardian is appointed, and also to reallocate to a new Guardian;
- Refuse to allocate any further work to the Children's Guardian until the concerns over their conduct, professional behaviour or performance capability have been investigated in full under the applicable policy.

Cafcass reserves the right to exercise its discretion to suspend the Children's Guardian in accordance with the terms of Cafcass' Employee Relations Policy and Procedures pending any application being made to the court and will inform the court and the other parties of the intention to make such an application.

If the Court refuses the application to terminate the appointment of the children's guardian , Cafcass reserves the right to alter the Children's Guardian's reporting line, increase the 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 and service users.

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

The relevant Assistant Director, Head of Practice, or a member of CMT (or another senior manager) will have power to suspend the Children's Guardian, impose conditions on the 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.