



# Capability Procedures Policy

## **Policy Review**

The responsibility of reviewing and maintaining this policy is Craig Dembicki (Managing Director). This policy will be reviewed annually.

Start date of policy: **19<sup>th</sup> February 2015**

Last review date: **22nd July 2018**

Date of next review: **22<sup>nd</sup> July 2019**

Signed

Date: 22nd July 2018

A handwritten signature in black ink, appearing to read "Craig Dembicki", is written over a white background.

Craig Dembicki  
Managing Director  
Education 1st

## **Purpose**

Education 1st recognise that during employment with us staff capability to carry out duties may change. This can be for a number of reasons, the most common ones being:

- The job changes over a period of time
- There are changes in personnel
- Health reasons

## **Job changes and General capability issues**

- 1) If the nature of the job changes or if Education 1st have general concerns about the ability to perform the job, Education 1st will try to ensure that staff understand the level of performance expected and that staff receive adequate training and supervision. Concerns regarding staff capability will normally first be discussed in an informal manner and staff will be given time to improve.
- 2) If the standard of performance is still not adequate, staff will be warned in writing that a failure to improve and to maintain the performance required could lead to dismissal. Education 1st will also consider the possibility of a transfer to more suitable work if possible.
- 3) If there is still no improvement after a reasonable time and Education 1st cannot transfer staff to more suitable work, or if the level of performance has a serious or substantial effect on our organisation or reputation, staff will be issued with a final warning that they will be dismissed unless the required standard of performance is achieved and maintained.
- 4) If such improvement is not forthcoming after a reasonable period of time, staff will be dismissed with the appropriate notice.

## **Personal circumstances and Health issues**

- 1) Personal circumstances may arise which do not prevent staff from attending for work but which prevent staff from carrying out the normal duties (e.g. a lack of dexterity or general ill health). If such a situation arises, Education 1st will normally need to have details of the medical diagnosis and prognosis so that Education 1st have the benefit of expert advice. Under normal circumstances this can be most easily obtained by asking their own doctor for a medical report. The permission is needed before Education 1st can obtain such a report and Education 1st will expect staff to co-operate in this matter should the need arise. When Education 1st have obtained as much information as possible regarding the condition and after consultation with staff, a decision will be made about the future employment with us in the current role or, where circumstances permit, in a more suitable role.
- 2) There may also be personal circumstances which prevent staff from attending work, either for a prolonged period(s) or for frequent short absences. Under these circumstances Education 1st will need to know when Education 1st can expect the attendance record to reach an acceptable level. This may again mean asking their own doctor for a medical report or by making whatever investigations are appropriate in the circumstances. When Education 1st have obtained as much information as possible regarding the condition, and after consultation with staff, a decision will be made about the future employment with us in the current role or, where circumstances permit, in a more suitable role.

## **Short service staff**

Education 1st retain discretion in respect of the capability procedures to take account of the length of service and to vary the procedures accordingly. If staff have a short amount of service outlined in employment contracts, staff may not be in receipt of any warnings before dismissal.

## **Procedures**

### **A) INTRODUCTION**

- 1) It is necessary to have a minimum number of rules in the interests of the whole organisation.
- 2) The rules set standards of performance and behaviour whilst the procedures are designed to help promote fairness and order in the treatment of individuals. It is our aim that the rules and procedures should emphasise and encourage improvement in the conduct of individuals, where they are failing to meet the required standards, and not be seen merely as a means of punishment. Education 1st reserve the right to amend these rules and procedures where appropriate.
- 3) Every effort will be made to ensure that any action taken under this procedure is fair, with staff being given the opportunity to state the case and appeal against any decision that staff consider to be unjust.
- 4) The following rules and procedures should ensure that:
  - a) The correct procedure is used when requiring staff to attend a disciplinary hearing;
  - b) Staff are fully aware of the standards of performance, action and behaviour required of staff;
  - c) Disciplinary action, where necessary, is taken speedily and in a fair, uniform and consistent manner;
  - d) Staff will only be disciplined after careful investigation of the facts and the opportunity to present the side of the case. On some occasions temporary suspension on contractual pay may be necessary in order that an uninterrupted investigation can take place. This must not be regarded as disciplinary action or a penalty of any kind;
  - e) Other than for an "off the record" informal reprimand, staff have the right to be accompanied by a fellow employee at all stages of the formal disciplinary process;
  - f) Staff will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct; and
  - g) If staff are disciplined, staff will receive an explanation of the penalty imposed and staff will have the right to appeal against the finding and the penalty.

### **B) DISCIPLINARY RULES**

It is not practicable to specify all disciplinary rules or offences that may result in disciplinary action, as they may vary depending on the nature of the work. In addition to the specific examples of unsatisfactory conduct, misconduct and gross misconduct shown in this handbook, a breach of other specific conditions, procedures, rules etc. that are contained within this handbook or that have otherwise been made known to staff, will also result in this procedure being used to deal with such matters.

### **C) RULES COVERING UNSATISFACTORY CONDUCT AND MISCONDUCT**

(These are examples only and not an exhaustive list.)

Staff will be liable to disciplinary action if staff are found to have acted in any of the following ways:

- a) Failure to abide by the health and safety rules and procedures including transport protocols ;
- b) Smoking in designated non-smoking areas;
- c) Consumption of alcohol on the premises;
- d) Persistent absenteeism and/or lateness;

- e) Unsatisfactory standards or output of work;
- f) Rudeness towards children and students, members of the public or other employees, objectionable or insulting behaviour, harassment, bullying or bad language;
- g) Failure to devote the whole of the time, attention and abilities to our business and its affairs during the normal working hours;
- h) Unauthorised use of e-mail and internet including failure to comply with Education 1<sup>st</sup> 's ICT Acceptable Use policy;
- i) Failure to carry out all reasonable instructions or follow our rules and procedures;
- j) Unauthorised use or negligent damage or loss of our property;
- k) Failure to report immediately any damage to property or premises caused by staff;
- l) If the work involves driving, failure to report immediately any type of driving conviction, or any summons which may lead to the conviction;
- m) Loss of driving licence where driving on public roads forms an essential part of the duties of the post:

#### **D) SERIOUS MISCONDUCT**

- a) Where one of the unsatisfactory conduct or misconduct rules has been broken and if, upon investigation, it is shown to be due to the extreme carelessness or has a serious or substantial effect upon our operation or reputation, staff may be issued with a final written warning in the first instance.
- b) Staff may receive a final written warning as the first course of action, if, in an alleged gross misconduct disciplinary matter, upon investigation, there is shown to be some level of mitigation resulting in it being treated as an offence just short of dismissal.

#### **E) RULES COVERING GROSS MISCONDUCT**

Occurrences of gross misconduct are very rare because the penalty is dismissal without notice and without any previous warning being issued. It is not possible to provide an exhaustive list of examples of gross misconduct. However, any behaviour or negligence resulting in a fundamental breach of contractual terms that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct. Examples of offences that will normally be deemed as gross misconduct include serious instances of:

- a) Theft or fraud;
- b) Physical violence or bullying;
- c) Deliberate damage to property;
- d) Deliberate acts of unlawful discrimination or harassment;
- e) Possession, or being under the influence, of illegal drugs at work; and
- f) Breach of health and safety rules that endangers the lives of, or may cause serious injury to, employees or any other person.

(The above examples are illustrative and do not form an exhaustive list.)

**F) DISCIPLINARY PROCEDURE**

a) Disciplinary action taken against staff will be based on the following procedure:

OFFENCE	FIRST OCCASION	SECOND OCCASION	THIRD OCCASION	FOURTH OCCASION
UNSATISFACTORY CONDUCT	Formal verbal warning	Written warning	Final written warning	Dismissal
MISCONDUCT	Written warning	Final written warning	Dismissal	
SERIOUS MISCONDUCT	Final written warning	Dismissal		
GROSS MISCONDUCT	Dismissal			

- b) Education 1st retain discretion in respect of the disciplinary procedures to take account of the length of service and to vary the procedures accordingly. If staff have a short amount of service staff may not be in receipt of any warnings before dismissal.
- c) If a disciplinary penalty is imposed it will be in line with the procedure outlined above, which may encompass a formal verbal warning, written warning, final written warning, or dismissal, and full details will be given to staff.
- d) In all cases warnings will be issued for misconduct, irrespective of the precise matters concerned, and any further breach of the rules in relation to similar or entirely independent matters of misconduct will be treated as further disciplinary matters and allow the continuation of the disciplinary process through to dismissal if the warnings are not heeded.

**G) DISCIPLINARY AUTHORITY**

The operation of the disciplinary procedure contained in the previous section, is based on the following authority for the various levels of disciplinary action. However, the list does not prevent a higher level of seniority, in the event of the appropriate level not being available, or suitable, progressing any action at whatever stage of the disciplinary process.

**ALL EMPLOYEES**

Formal verbal warning	Manager/Director
Written warning	Manager/Director
Final written warning	Manager/Director
Dismissal	Manager/Director

**H) PERIOD OF WARNINGS**

- 1) Formal verbal warning

A formal verbal warning will normally be disregarded for disciplinary purposes after a three month period.

2) Written warning

A written warning will normally be disregarded for disciplinary purposes after a six month period.

3) Final written warning

A final written warning will normally be disregarded for disciplinary purposes after a twelve month period.

## **I) GENERAL NOTES**

- 1) If staff are in a supervisory or Managerial position then demotion to a lower status at the appropriate rate may be considered as an alternative to dismissal except in cases of gross misconduct.
- 2) In exceptional circumstances, suspension from work without pay for up to five days as an alternative to dismissal (except dismissal for gross misconduct) may be considered by the person authorised to dismiss.
- 3) Gross misconduct offences will result in dismissal without notice.
- 4) Staff have the right to appeal against any disciplinary action.
- 5) Education 1st reserve the right to allow third parties to chair any formal hearing. Staff agree to permit us to share any relevant sensitive data where it is necessary for the purposes of that hearing.
- 6) Staff have the right to lodge an appeal in respect of any capability/disciplinary action taken against staff.
- 7) If staff wish to exercise this right staff should apply either verbally or in writing to the person indicated in the individual Statement of Main Terms of Employment.
- 8) An appeal against a formal warning or dismissal should give details of why the penalty imposed is too severe, inappropriate or unfair in the circumstances.
- 9) The appeal procedure will normally be conducted by a member of staff not previously connected with the process so that an independent decision into the severity and appropriateness of the action taken can be made.
- 10) If staff are appealing on the grounds that they have not committed the offence then the appeal may take the form of a complete re-hearing and reappraisal of all matters so that the person who conducts the appeal can make an independent decision before deciding to grant or refuse the appeal.
- 11) Staff may be accompanied at any stage of the appeal hearing by a fellow employee of the choice. The result of the appeal will be made known to staff in writing, normally within five working days after the hearing.
- 12) It is important that if staff feel dissatisfied with any matter relating to the employment staff should have an effective means by which such a grievance can be aired and, where appropriate, resolved.
- 13) Nothing in this procedure is intended to prevent staff from informally raising any matter staff may wish to mention. Informal discussion can frequently solve problems without the need for a written record. However, if staff wish to raise a formal grievance staff should normally do so in writing from the outset.
- 14) Staff have the right to be accompanied at any stage of the procedure by a fellow employee who may act as a witness or speak on the behalf to explain the situation more clearly.
- 15) If staff feel aggrieved at any matter relating to the work (except personal harassment, for which there is a separate procedure following this section), staff should first raise the matter with the person specified in the

Statement of Main Terms of Employment, explaining fully the nature and extent of the grievance. Staff will then be invited to a meeting at a reasonable time and location at which the grievance will be investigated fully. Staff must take all reasonable steps to attend this meeting. Staff will be notified of the decision, in writing, normally within ten working days of the meeting, including the right of appeal.

- 16) If staff wish to appeal staff must inform a Director within five working days. Staff will then be invited to a further meeting, which staff must take all reasonable steps to attend. As far as reasonably practicable, the Company will be represented by a more Senior Manager than attended the first meeting (unless the most Senior Manager attended that meeting).
- 17) Following the appeal meeting staff will be informed of the final decision, normally within ten working days, which will be confirmed in writing.
- 18) Anyone who feels that they are being harassed or bullied in any form can use this procedure.

If a female employee has been harassed they should be asked if they want to have a woman as an investigating officer; equally if a male employee has been harassed they should be asked if they want to have a male as an investigating officer.

Employees who complain of racial harassment should be asked if they want to have an ethnic minority officer as the investigating officer.

At any stage of the procedure employees have the right to contact the Operations Manager for advice/support.

At any stage of the procedure disciplinary action may be taken in line with the Education 1st's Code of Conduct and Disciplinary Rules.

Victimisation arising from the making of a complaint may be subject to disciplinary action under the company's disciplinary procedure. If an employee raises a complaint under the complaints Policy maliciously then disciplinary action may be taken against him/her.

When dealing with complaints of harassment, the aim should be to use the informal procedure in the first instance. However in extremely serious cases of harassment the formal procedure would be invoked immediately.

In certain situations, it may be possible to seek a resolution of the problems through mediation between the parties, if they agree to it.

### INFORMAL PROCEDURE STAGE 1

- 1.1 If an employee is being harassed he or she can choose to follow the informal options given below:-
  - A written Harassment Complaint
  - A direct approach to the subject of a complaint, or
  - An approach to that person through a third party.
2. Written Harassment/Bullying Complaint:

The employee can make a complaint in writing and provide it to their line manager. In the letter the employee will be able to indicate whether or not they want the complaint pursued under the informal or the formal harassment procedure, or if they just want the complaint to be noted. All employees making a complaint of harassment/bullying are advised to put them in writing.
3. Direct approach:

The employee can choose to approach the alleged harasser or bully either in person or in writing, outlining that the behaviour is unacceptable, and the harassment or bullying must stop. The alleged harasser/bully must be told that failure to do so will lead to a formal complaint being made.

- 3.1 If the employee decides to approach the harasser/bully direct it is strongly recommended that they should be accompanied. If the approach is made in writing the complainant should keep a copy of the correspondence
  - 3.2 A direct approach is more likely to be effective in cases where the alleged harasser or bully is genuinely unaware of the effect of their behaviour.
4. Approach through a third Party  
The employee may ask a third party e.g. a colleague or their trade union representative to approach the harasser or bully about their behaviour and the impact it has on them. It should be explained that their behaviour is unacceptable and must be stopped.
  - 4.1 The employee is advised, to keep a note of the incident(s). This should include the date, time and location of the incident(s) and the way in which it has affected them, such as causing them to change their pattern of work or social life. Names of any witnesses should also be recorded.
  - 4.2 If the complainant remains dissatisfied because the problem is unresolved following the informal procedure s/he should consider making a formal complaint.
  - 4.3 Any Action taken under this stage should be recorded by the complainant.