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Conduct – Managing Behaviour: Disciplinary Policy

Document Owner Lesley Shearer

Document Approver Tom Uppington

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1 Using the correct policy – conduct or capability

- *Conduct – an employee's behaviour at work.*
  - *when the employee knows the rules, policy or procedure but doesn't adhere to them.*
- *Capability – an employee's ability to do the job to the required standard.*
  - *Performance issues may require additional support, training.*
  - *Absence, long term or unacceptable number of short-term absences, consider reasonable adjustments.*

Where possible, try to resolve any issues informally by taking all reasonable steps to support and improve an employee's performance and or behaviour.

If, following investigation, the issue is conduct, refer to the ***disciplinary procedure.*** *If capability, refer to the* ***performance management procedure*** *or* ***absence procedure.***

2 Policy Statement: Conduct - Behaviour

ALVANCE and SIMEC Hydropower Lochaber (the Company) is committed to providing a safe and fair working environment. It is necessary for the proper operation of the Company's business that we operate a disciplinary procedure.

The purpose of this disciplinary policy is to help us deal fairly and consistently with disciplinary issues and to ensure that you are aware of the process for handling such matters.

The Company will ensure that the policy compliances with relevant legislation.

Commencement and status of the policy

The following policy will supersede all previously issued policies and procedures relating to the management of disciplinary issues.

This policy applies to all employees of ALVANCE British Aluminium, SIMEC Lochaber Hydropower and JAHAMA estates.

This procedure does not apply during probationary period where performance, behaviour and attendance are reviewed prior to probation being formally signed off.

The policy does not confer any contractual rights on individual employees. The Company reserves the right to alter any of its terms at any time.

3 General Principles

While we may choose to deal with minor instances of misconduct informally, if a problem continues or we judge it to be sufficiently serious, the following procedure will apply.

Before making any formal disciplinary decision under this procedure, we will carry out the following steps:

- Investigations and any subsequent disciplinary meetings will be carried out promptly.
- Investigation meetings that result in disciplinary meetings will usually be carried out by two different people.

- Employees will be invited to attend both investigation meetings and disciplinary meetings in writing stating the alleged misconduct, the possible outcomes of the meeting, any relevant information, and the right to be accompanied by a trade union representative or a colleague. They will also be informed of the date, location, and time of the meeting and who be in attendance.
- At the hearing, the manager will explain the alleged behaviour concern and give the employee the opportunity to put forward their case in respect of the allegations made against them.

Employees have the right to appeal against any formal action taken against you under the procedure. See 'Appeals' below.

We may miss out stages of the procedure if we think this would be reasonable in the circumstances.

Depending on the circumstances, it may be appropriate to suspend an employee from work on full pay in order that an investigation can take place. Suspension on full pay does not amount to a disciplinary sanction and does not imply that any decision has already been made about the allegations.

Each stage of this procedure will be carried out without unreasonable delay.

If you have difficulty at any stage of the disciplinary procedure because of a disability, you should discuss the situation with your line manager or Human Resources as soon as possible.

4 Misconduct

The following are examples of behaviour which fall within the definition of 'misconduct':

- persistent bad time keeping (repeated lateness or early leaving).
- unauthorised, unreasonable, and/or repeated absence from place of work.
- unauthorised presence at work.
- abusive or disruptive behaviour.
- failure to maintain the required standards or behaviour.
- contravention of safety requirements
- failure to wear appropriate safety clothing, or using personal protective clothing provided.
- minor damage to Company property
- minor breach of Company rules.
- failure to clock in and out of work
- failure to observe Company procedures.
- failure to maintain standards of work reasonably expected.
- smoking in non-designated areas of the Company's premises.

The above list of misconduct *not* exhaustive. It illustrates the type of conduct that will normally merit a disciplinary sanction for a first offence, however offences are reviewed on a case-by-case basis following investigation.

5 Gross Misconduct

The following are examples of behaviour which fall within the definition of 'gross misconduct':

- refusal to accept and act on reasonable instructions from a supervisor or other member of management.
- serious negligence that could, or does, result in unacceptable loss, damage, or injury.
- fighting, assault or threatening or bullying behaviour.
- Harassment, including sexual harassment or deliberate discrimination (i.e., discrimination on the grounds of sex, sexual orientation, race, disability, age, religion, or belief).
- theft, fraud, accepting or offering a bribe, falsification of company records or any dishonesty involving the company, its employees, customers, or authorised visitors, or attempts to commit such offences.
- deliberate and/or serious breach of any of our company policies.
- deliberate or reckless damage to property belonging to the company, its employees, customers, or authorised visitors.
- Intoxication by reason of alcohol or drugs, having alcohol or illegal drugs in your possession, custody, or control on company premises.
- unauthorised disclosure of confidential information.
- any action likely to endanger seriously the health and safety of the employee or any other person.
- any action or behaviour which could seriously damage the company's reputation.
- deliberately accessing Internet sites containing pornographic, offensive, or obscene material
- sexual harassment or other sexual misconduct at work
- deliberate and serious disregard of health and safety policies or procedures.
- fraudulent recording of time worked.
- premeditated sleeping on duty.
- persistent breach of Company Policy.
- falsification of a qualification that is a requirement of the employment of the employee or that results in financial gain.
- falsification of records or company documentation, whether for personal gain or not.
- conviction of a criminal offence that is relevant to the employee's employment.
- any behaviour that would be a criminal offence.

The above list of gross misconduct *not* exhaustive. It illustrates the type of conduct that will normally merit dismissal for a first offence. Other types of offence may also be treated as gross misconduct, depending on the seriousness of the particular facts.

Following investigation and a disciplinary hearing, if we are satisfied that you have committed gross misconduct, we will be entitled to dismiss you without notice or payment in lieu of notice.

6 Investigations

Any issue that is reasonably suspected or believed to contravene any of the Company's policies or rules or may otherwise be a disciplinary matter will be promptly and thoroughly investigated.

In all but exceptional circumstances, the employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

Depending on the circumstances of the case, if a secondary investigation has been carried out to establish what has happened, the evidence collected from this investigation may be used as a substitute for a disciplinary investigation. This will only be used in straight forward cases. If the case is complex another separate disciplinary investigation will be carried out.

There may be instances where suspension with pay is necessary while investigations are carried out. The Company has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work.

In most instances the employee will be invited to attend an investigatory interview prior to a disciplinary hearing, and will be informed at the outset that the interview is an investigatory interview. The Company reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing if there is an exceptional need to move quickly.

7 Conduct of meetings under the policy (including appeals)

All disciplinary meetings, including appeals, will be held at a reasonable time and place. If an employee is invited to attend a disciplinary meeting they must take all reasonable steps to attend. If, without good cause, they are persistently unable or unwilling to attend, we will hear the matter in their absence and decide an outcome based on the evidence available.

An appropriate level of management, usually together with a representative of HR, will conduct hearings. At the meeting, the manager or HR will explain the role of all those in attendance. The manager will then explain the reason for the meeting (as described in the invitation letter) and go through the evidence that has been gathered. The employee will be given the opportunity to respond in full. This will include time to ask questions and present evidence. If either party intend to call any witnesses, they must give advance written notice.

If any matters come to light during a disciplinary meeting which require further investigation, we may, at our discretion, adjourn a disciplinary meeting to enable us to investigate them.

8 Procedure in the event of an employee going off sick during a disciplinary process.

The Company aims to ensure that all matters relating to discipline are dealt with fairly and promptly and will, wherever possible, follow the disciplinary procedure. However, circumstances may arise when the ill health of an employee prevents the disciplinary procedure from being followed because the employee is too ill to participate in the investigation, adequately prepare for a hearing or attend the hearing itself. Where this is the case, the Company will act consistently with the following principles:

- The ill health of an employee will not usually be a ground for abandoning any ongoing disciplinary procedures.
- Where the absence is likely to be short, the Company will usually wait until the employee recovers and is able to take a full part in the process.
- When the absence is ongoing and it appears to the Company that the employee is likely to remain off sick for an extended period, the Company may require the employee to cooperate with the

occupational health department in determining whether he/she is sufficiently fit to take part in the disciplinary process or not.

- Any employee who is signed off as sick during a period of suspension will have his/her suspension rescinded until such time as he/she becomes fit for work.
- If, after consultation with the occupational health, it appears to the Company that the employee is fit to take part in the disciplinary process, the process will continue, although the Company may at its discretion also take special measures to accommodate the employee (e.g., considerations to venue, location, timing, etc).
- Where it appears that the employee is not fit to take a full part in the standard disciplinary procedure, the Company will consider holding the disciplinary process in the employee's absence.

9 Right to be accompanied in formal hearings

In any formal disciplinary hearings under this policy, including appeals, the employee has a statutory right to be accompanied by a colleague or trade union official.

A companion is allowed reasonable time off from their duties without loss of pay, but nobody is obliged to act as a companion if they do not wish to do so. If the chosen companion is unavailable at the time a meeting is scheduled and will not be available for more than 5 working days afterward, the company may request that an alternative companion is chosen.

The companion may address the hearing to put forward the employees' case, sum up the case or provide context as required. He or she may confer with the employee during the hearing but does not have the right to answer questions on their behalf.

Neither the employee nor their companion will be allowed to electronically record any meeting held under this disciplinary policy, except in exceptional circumstances and with the company's prior express agreement. Any breach of this provision will result in disciplinary action.

10 Warnings and dismissal

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing.

There is no requirement to issue a verbal warning before a written warning, or a first warning before a final warning. Warnings will be issued depending on the nature and/or severity of the misconduct.

11 Verbal Warning

Where, at the conclusion of the disciplinary hearing, the manager decides to issue such a verbal warning, he or she will inform the employee of the following:

- The nature of the misconduct that has led to the warning;
- That it is the first stage of the Company's disciplinary procedure;
- The action or improvement (if any) which he or she requires of the employee;
- If appropriate, the timescale for implementing any such action;
- The consequences for the employee of not implementing required action or of further misconduct;
- When the warning will cease to have effect, subject to satisfactory conduct. This will normally be after six months but a longer period may be stated in exceptional cases; and of the right of appeal.

All of these matters will be confirmed to the employee in writing.

12 First written warning

The Company may issue a First Written warning if:

- The required improvement is not achieved within any timescale stated in the verbal warning; or
- Further misconduct takes place during the period of a verbal warning, whether or not involving a repetition of the conduct which was the subject of the first warning; or
- The seriousness of the misconduct merits it, regardless of whether a verbal warning has already been issued.

Where, at the conclusion of the disciplinary hearing, the manager decides to issue a first written warning, the employee will be informed of the following:

- the nature of the misconduct that has led to the warning.
- the action or improvement (if any) which is required of you.
- if appropriate, the timescale for taking any such action.
- the consequences if you do not take the required action or if there is further misconduct.
- when the warning will cease to have effect, subject to satisfactory conduct This will normally be after six months, but a longer period may be stated in exceptional cases.
- the right of appeal.

All these matters will be confirmed in writing.

13 Final written warning

The company may issue a final written warning if:

- the required improvement is not achieved within the timescale stated in the first written warning.
- further misconduct occurs while a first warning is still in effect, whether involving a repetition of the conduct which was the subject of a previous warning or not.
- the seriousness of the misconduct merits it, regardless of whether we have issued any previous warnings.

Where, at the conclusion of the disciplinary meeting, the manager decides to issue a final written warning, the employee will be informed of the following:

- the nature of the misconduct that has led to the final warning, including any warning(s) which have been considered.
- the action or improvement (if any) which is required of you.
- if appropriate, the timescale for implementing any such action.
- the fact that this is a final warning and that the next stage of the procedure will be dismissal.
- when the warning will cease to have effect, subject to satisfactory conduct. This will normally be after twelve months, but a longer period may be stated in exceptional cases.
- the right of appeal

All these matters will be confirmed in writing.

14 Dismissal

The company may dismiss an employee if:

- the required improvement is not achieved within the timescale stated in the final written warning.
- further misconduct occurs while a final written warning is still in effect, whether involving a repetition of the conduct which was the subject of a previous warning or not.
- it is reasonably believed that you have committed an act of gross misconduct.

Unless dismissal is for gross misconduct, the employee will be dismissed with notice.

A decision to dismiss will be taken by the manager conducting the disciplinary hearing. The employee will be informed of the following:

- state the reason for your dismissal.
- state, where applicable, the length of notice you are being given.
- state the date on which your employment will terminate.
- inform you of your right to appeal.

These matters will be confirmed in writing.

In exceptional circumstances, if the manager and employee agree, the employee may be transferred or demoted instead of dismissal. If so, the employee may also receive a final warning.

15 Appeals

If the employee is dissatisfied with a disciplinary decision that has been taken, they can appeal against that decision. Appeals should be in writing, setting out the reasons for the appeal, and should be delivered to the manager detailed on the letter within five working days of the disciplinary decision. The employee may then be invited to an appeal meeting which will normally take place within seven working days of receipt of the appeal (shift dependant). The company reserve the right to review the information without holding a formal meeting. If the employee is appealing against dismissal and the appeal is subsequently upheld, they will normally be treated as having continued in employment pending the hearing of the appeal and will be reinstated with back pay. However, if the appeal is not successful, the original date of dismissal will stand.

Employees have the right to be accompanied to an appeal hearing by a fellow worker or a trade union official.

The appeal hearing may be a complete re-hearing of the matter, or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the managers discretion depending on the circumstances of the case.

Wherever possible, the appeal will be heard by someone more senior than the person who took the decision to take disciplinary action. If this is not practicable, the appeal will be heard by another manager who has not previously been involved in the matter. The employee will be told the outcome of the appeal, wherever possible within five working days and confirmed in writing. Following the appeal, we may either confirm the original decision; revoke the original decision; or substitute a different penalty. This decision will be final.

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16 Confidentiality, data protection and record keeping.

We aim to deal with disciplinary matters sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or a disciplinary matter.

Conducting disciplinary investigations and hearings under this procedure involves us processing the personal data of the employees concerned. We use this personal data to investigate and deal with conduct issues. Our legal grounds for doing so are that it is necessary:

- to comply with our legal obligations (e.g., to conduct disciplinary proceedings fairly, ensure a safe working environment, etc.).
- for performance of the employment contract (i.e., to enforce employees' obligations not to commit misconduct and to perform their duties to an acceptable standard).
- in our legitimate interests to deal effectively with disciplinary matters, whether you are the subject of them or are otherwise connected to the issues raised.
- in the public interest, for the prevention or detection of crime (e.g., where suspected workplace misconduct may also amount to criminal conduct).

Special category data[1] and data about criminal convictions or offences may occasionally need to be processed under this disciplinary procedure – for example, where alleged misconduct involves bullying/abuse based on race or sexual orientation, or where a person involved in the procedure requires reasonable adjustments to accommodate a disability. Our additional legal grounds for using such data are that this is necessary: to exercise legal rights/comply with legal obligations in relation to employment; to establish, exercise or defend legal claims; or in the public interest for the prevention or detection of crime.

Where we take witness statements from employees with information about the conduct in issue as part of the investigations under this procedure, such statements will be treated confidentially and will only be shared with individuals who need to be involved in the disciplinary process. This will ordinarily be: HR; the person/people conducting investigations; and the managers conducting any formal disciplinary hearing or appeal. In addition, witness statements may be shared with the employee whose conduct is the subject of disciplinary proceedings, to enable them to prepare for the hearing and respond to the allegations against them.

Information regarding how long records is held are detailed in our privacy notice.