



## **Draft Disciplinary Procedure**

### **Our values**

- **Integrity**
- **Commitment**
- **Accountability**
- **Pride in what we do**
- **Listening and engaging**
- **Creativity and learning**

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## **1. PURPOSE**

The Disciplinary Procedure is designed to help all employees to achieve and maintain standards of conduct and to encourage and support relevant employees to improve as appropriate. Excellent conduct and high standards of behaviour are essential to ensure we have a confident and competent workforce that are equipped to help us to achieve the strategic objectives set out in our Strategic Plan and statutory objectives.

It is also essential that standards of employee conduct and behaviour are consistently maintained across the organisation for the safety and well-being of all employees. This procedure supports fair and consistent treatment of all employees while maintaining the standards of conduct expected and encouraging improvement where necessary.

Any minor misconduct will be dealt with informally. Where matters have not been resolved informally or when allegations have been received that requires investigation employees will be managed through this Disciplinary Procedure.

### **Misconduct**

The Disciplinary Procedure can be implemented at any stage if an employee's alleged behaviour is considered to be unreasonable or unacceptable. This is called misconduct. Examples of misconduct and gross misconduct can be found in Appendix E.

Discipline should not be confused with incapability. A lack of capability exists where no matter how hard an employee tries, he or she is simply unable to perform the job to the standard required. If during the process of following the Disciplinary Procedure it becomes apparent that alleged misconduct is attributable to capability (poor performance) this will be dealt with through Managing Performance at Work Guidelines. Where we believe poor performance is the result of deliberate negligence/insubordination (an act of wilfully disobeying one's superior), or where the employee has made serious errors we will use the Disciplinary Procedure.

## **2. SCOPE**

This procedure applies to all employees, including the Chief Executive and Executive Management Team members. It applies to alleged misconduct in and out of the workplace where the alleged behaviour is still in the course of the employment relationship e.g. at work related courses, conferences or meetings outwith normal working hours; social events or whilst working from home. The procedure also covers behaviour outside work which has a bearing on working relationships e.g. has an impact on the reputation of

the SSSC or on an employee's position with the SSSC or affects another employee or stakeholder of the SSSC.

### **3. MONITORING AND REVIEW**

The Human Resources Team and the Partnership Forum are responsible for monitoring this procedure. The procedure will be reviewed as a minimum on a three yearly basis making amendments as appropriate in consultation with managers, staff and ACAS Codes of Practice. Changes may be made to the procedure more regularly following consultation with the Partnership Forum and to take into account legislative changes as they happen or as the results of lessons learned.

### **4. GUIDING PRINCIPLES**

In operating this procedure the following principles will be followed as well as ensuring we comply with the ACAS Code of Practice:

#### **Fairness:**

- All parties must treat any information communicated to them in connection with an investigation or disciplinary matter as confidential. Involvement and awareness of the cases being dealt with under this procedure will be restricted appropriately.
- No disciplinary action will be taken without a full investigation being carried out and a formal disciplinary hearing being held. To make sure all cases are dealt with fairly and impartially, different parties will carry out the investigation and any subsequent disciplinary hearing.
- Employees have the right to be accompanied at formal stages of the disciplinary process by a work colleague or a Trade Union representative.
- At every stage of the process there will be no discrimination on the grounds of protected characteristics as listed in the Equality Act 2010.
- All employees will be treated fairly and consistently under this process and in particular if any employee requires specific support and assistance due to them having a protected characteristic they will be accommodated appropriately.

#### **Consistency:**

- No formal investigation will take place into alleged misconduct without full discussion with Human Resources and reference to this Disciplinary Procedure.
- All disciplinary hearings will have a member of Human Resources in attendance to provide advice and guidance.
- Other than in exceptional circumstances, no action in terms of a trade union representative will be taken until a full-time official has been informed.

- Where matters of governance are evident, appropriate advice will be sought from the Head of Legal and Corporate Governance.

**Reasonable timescales:**

- All disciplinary investigations into potential misconduct will be carried out without unreasonable delay.
- The timescales detailed in this procedure may be extended with the agreement of both parties and likely timescales discussed.

**Proportionate:**

- Informal action (section 6) will be used to resolve matters of minor misconduct, if appropriate.
- Where an employee resigns during the course of a disciplinary investigation, the investigation may still take place and the alleged misconduct referred to a professional body where relevant and appropriate, e.g. the Law Society of Scotland or other regulatory bodies.
- Where unsatisfactory conduct is found to be a result of ill health, or poor performance from a lack of ability, skill and/or experience then this should be dealt with through the SSSC's Maximising Attendance Policy or Managing Performance at Work Guidelines.
- Any outcome of the formal discipline procedure will be proportionate to the allegation and will take into account any mitigating circumstances.

## **5. RESPONSIBILITY FOR CONDUCT AND DISCIPLINE**

We expect the highest standards of integrity and conduct from all employees. Employees must comply with the SSSC Code of Conduct for Employees.

It is the responsibility of all managers to challenge unacceptable behaviour at an early stage and to support improvement. It is the responsibility of all employees to challenge unacceptable behaviour through direct communication or to raise it with a line manager.

Executive and Operational Management Team members may suspend an employee on a precautionary basis pending an investigation into alleged misconduct. Advice should be obtained from HR before suspending an employee.

HR will provide procedural advice and guidance throughout the process, will keep all parties up to date, will ensure that everyone follows the Disciplinary Procedure and that all are aware of their rights and responsibilities. It is not the function of HR to make or unduly influence the final decision and outcome, which is the responsibility of the Disciplining Officer/Employment Appeals Sub Committee.

## **Witness Responsibilities**

Witnesses should not discuss the events being investigated with any other witnesses. Witnesses should ensure their evidence is factual and directly related to the matter under investigation. Witnesses are expected to attend meetings including the disciplinary hearing and any subsequent appeal hearing if requested to do so by management.

Witnesses can refuse to be a witness if requested by a fellow employee but must attend if asked by management. It is appreciated that being a witness can be difficult for some individuals. Witnesses should seek support from their line managers and/or HR if required. If a witness has a clear reason for not wanting to be identified or attend a hearing they should speak to the investigating or disciplining officer. In the case of whistleblowing we will, when asked to do so, try to preserve the witnesses' anonymity but this may not always be possible.

Any attendance will be within working hours and therefore witnesses should be at no financial detriment for attending the hearing i.e. they can claim their working time and any reasonable travel expenses.

## **6. INFORMAL ACTION**

Line managers have a responsibility to communicate with, develop and motivate staff and provide relevant training. In cases of minor misconduct the line manager should initially seek to advise, guide and support an employee on an informal basis to achieve an improvement, aiming to avoid using formal procedures. This can be through 1-2-1 meetings or informal discussions.

Informal action can include clarifying expectations, roles and responsibilities, providing training and development and putting in place mentoring and coaching support.

Mediation may be useful to help to restore relationships that have been adversely affected by these procedures. This is a voluntary process where a mediator helps two or more people in conflict to reach a resolution.

The mediator can be a member of the Human Resources team, an impartial internal employee or an independent third party.

Progress will be monitored by the line manager as part of an on-going performance management process and recorded appropriately by them within agreed performance management recording systems (development discussion).

This informal advice and support is not a formal disciplinary sanction and the employee will be assured of this.

The employee will also be advised in writing of the conduct and/or performance expected of them in the future; the support offered by the SSSC and of the possible consequences should the misconduct be repeated. This will be in line with what was agreed and discussed in the meeting.

## **7. FORMAL PROCEDURE**

### **INVESTIGATING POTENTIAL MISCONDUCT**

Where a manager has concerns they must first establish the initial facts directly with the employee and advise a senior manager. They must advise the employee of the process and what may potentially happen.

Employees are required to co-operate fully and promptly with any investigation, providing all relevant information they have that will assist the investigation and attending any meetings as required. If medically unfit to attend an investigatory meeting, then a medical certificate/fit note must be submitted to Human Resources. Having investigated all the facts, available information and witnesses, the Investigating Officer will prepare a report for the Disciplining Officer with recommendations based on the outcome of the investigation, e.g. deal with the matter informally or convene a disciplinary hearing.

If the manager is satisfied that the initial facts require further investigation they must discuss instigating any disciplinary investigation first with Human Resources. An Investigating Officer will be appointed (supported by Human Resources) and a Disciplining Officer identified to consider the outcome of the investigation and chair a disciplinary hearing if required. The officers should not have been directly or indirectly involved in the case, that is, they should not have been a witness to the alleged misconduct. In any event there should be no conflict of interest as this may jeopardise the perceived fairness of the investigation. If as a result of the assessment of the initial facts available, it is decided that further investigation is required under the Disciplinary Procedure the employee will be advised accordingly

If the allegations are serious and potentially fall under the scope of gross misconduct and subsequently could result in dismissal the Disciplining Officer will need to be a member of the Executive Management Team.

The employee can bring a work colleague or Trade Union representative with them to the investigation meeting. However, the meetings will not be unreasonably delayed to accommodate this, i.e. more than one reorganising of a date.

Other SSSC policies or guidelines may need to be considered as part of the investigation process e.g. fraud, ICT etc. Where criminal or fraudulent activities are alleged police and/or auditors may be involved or appointed to undertake an investigation. The Investigating Officer will be a point of contact and will have agreed updates and handover of relevant information and outcomes. See Appendix D for further details.

Depending on the circumstances, managers from other departments may be appointed to these roles and in exceptional circumstances, external parties may be used.

In some instances we may wish to bring in an external consultant or parties to undertake the investigation, chair the disciplinary or appeal. In these instances we will ensure that our processes are followed and are conducted in line with ACAS codes of practice. If an external source is sought an internal contact will be appointed, usually a member of Human Resources will liaise with them.

A guide to carrying out a disciplinary investigation is attached at Appendix A.

### **Senior Management**

If the Chief Executive is subject to a disciplinary investigation, the Convenor will appoint a suitable Investigating Officer, who may be external to the organisation. If a formal hearing is required, the Disciplining Officer will normally be the Convenor. Human Resources advice may be sought from an external source.

If a Director is subject to a disciplinary investigation, the Chief Executive will appoint a suitable Investigating Officer who may be external to the organisation. If a disciplinary hearing is required the Disciplining Officer will normally be the Chief Executive but in exceptional circumstances a Council Member or someone external to the organisation may be asked by the Convenor to perform that role. Human Resources advice may be sought from an external source.

## **8. PRECAUTIONARY SUSPENSION**

Wherever possible, an employee will be supported to continue to be at work while the alleged misconduct is being investigated. However, precautionary suspension should be considered where the matter being investigated potentially amounts to gross misconduct or it is considered that if the employee remains at work it could worsen the situation, compromise the investigation and/or make it difficult to carry out the investigation.



Precautionary suspension should be discussed with Human Resources before any action is taken.

Precautionary suspension is not a disciplinary penalty. It is an option available that temporarily removes the employee from the workplace while disciplinary matters are investigated and the facts determined. Alternatives to suspension will be considered where possible e.g. transferring the employee temporarily to another department. Precautionary suspension is on full pay and should be for as short a period as possible.

If an employee is suspended, they will be notified verbally of the following by their manager which will be confirmed in writing and sent by recorded delivery:

- the reason/s for the suspension
- that the employee must not contact other SSSC employees or access the SSSC's premises or documents, including remotely, without the prior consent of the manager who made the decision to suspend them
- that the employee must attend all meetings as part of the investigatory process
- that regular reviews of the suspension will take place and appropriate contact will be made regularly with the employee
- that they will be kept updated on the progress of the investigation
- if the employee is medically unfit to attend meetings then the suspension will be lifted and they will be regarded as unfit for work and required to submit medical certificates certifying themselves as unfit
- that arrangements may be made for the employee to return equipment for the duration of the suspension period and that all network accounts may be disabled
- that the SSSC will take account of the need for the employee to prepare for any investigation or disciplinary hearing and make contact with any witnesses they require as part of that defence
- that during the period of precautionary suspension the employee will remain on full pay

The suspension period will normally be as long as it takes to complete the investigation. The SSSC will make sure that periods of suspension are for as short a period as possible.

## **9. DISCIPLINARY HEARING**

Unless otherwise agreed, employees will be given at least 14 calendar days written notice of a hearing date, advised of the nature of the allegation(s) and given copies of any evidence that the management case intends to rely on at the hearing.

At the disciplinary hearing both management and employee will have the right to call witnesses. It is the employee's responsibility to arrange for any witnesses that they wish to call and to produce any documentary evidence that they intend to rely on. They must provide details of both to Human Resources 5 calendar days before the hearing date.

A guide for managers on conducting a formal disciplinary hearing is attached at Appendix B.

## **10. DISCIPLINARY OUTCOME**

The following sanctions will be considered in response to the allegations being found to be fully or partly substantiated. The employee will be notified of the outcome of the hearing and of their right to appeal as soon as possible after the hearing has been concluded. They will normally receive the decision in writing no later than 14 calendar days from the date of the hearing.

Where the allegations are not substantiated the employee will be notified as above and the Disciplining Officer will also give consideration as to whether mediation, counselling and/or additional support is required to support the employee.

In cases where it is found that there is no case to answer reference to the investigation will be removed from the employee's personnel record.

A decision to dismiss can only be taken by a member of the Executive Management Team.

### **10.1 Informal Action**

Where informal action is the appropriate response, the Disciplining Officer will advise the employee of this. The Disciplining Officer will discuss appropriate informal support with the employee's line manager in accordance with section 6 of this procedure.

### **10.2 Formal Verbal Warning**

If an employee's conduct does not meet acceptable standards they will normally be given a formal verbal warning. This should set out the nature of the misconduct and the change in behaviour required. The warning should also inform the employee that further formal warnings may be considered if there is no sustained satisfactory improvement or change.

### **10.3 First Written warning**

If the issue is sufficiently serious a first written warning will be issued. This will set out the reason(s) for the warning and, where appropriate, the nature of the required improvement in conduct. It will also state that further misconduct may result in a final written warning or dismissal.

### **10.4 Final written warning**

More serious or further misconduct after a first written warning has been given may warrant a final written warning being issued. This will set out the reason(s) for the warning and, where appropriate, the improvement in conduct required. It will also state that any further misconduct is likely to result in dismissal.

Repetition of the original misconduct, or similar but different misconduct, will require consideration as to the level of sanction to be issued i.e. the first instance of misconduct which would warrant a first warning may now, on repetition, warrant a final warning on the basis that the employee is repeating behaviour that they know and understand is regarded as misconduct by the SSSC.

### **10.5 Dismissal**

Further misconduct of a similar or different nature may result in dismissal if a written warning (first or final) is still live on the employee's file. The Disciplinary Procedure would need to be followed before this decision is reached.

### **10.6 Summary Dismissal**

Certain offences will be regarded as gross misconduct (see Appendix E for definitions) which will normally warrant dismissal without notice (or payment in lieu of notice) or pay in lieu of holidays, despite the absence of previous warnings. The employee will be entitled to pay in lieu of statutory holiday entitlement accrued under The Working Time Regulations 1998.

An employee will not normally be dismissed for a first offence unless gross misconduct has been established.

### **10.7 Other or additional sanctions**

Any warning can be supplemented by applying additional disciplinary sanctions as action short of dismissal, for example:

- demotion without protection of pay
- exclusion from the flexible working hours scheme
- incremental pay increase and/ or annual leave increase withheld

## **11. DURATION OF WARNINGS**

Warnings will be disregarded for disciplinary purposes after the following periods of satisfactory conduct.

- Formal Verbal Warning 6 months
- First Written Warning 12 months
- Final Written Warning 18 months

All warnings will be considered as spent for disciplinary purposes after the timescale indicated above. However, whilst the sanction cannot be taken into consideration for future cases, the subject of a lapsed warning can be considered in future cases when the same or similar misconduct is committed again.

## **12. APPEALS AGAINST DISCIPLINARY WARNINGS**

Should an employee wish to appeal against a formal disciplinary warning they must do so, in writing, within 14 calendar days of receiving written confirmation of the formal action.

Appeal letters must specify the grounds of the appeal under one or more of the following headings:

- severity of the action taken
- failure to adhere to the agreed Disciplinary Procedure. The nature of the failure and its significant impact on the appellant should be identified
- new evidence has become available

Where an appeal is lodged, this will not delay the implementation of any disciplinary sanction although these may be amended or revoked as a result of the appeal process.

A manager who has not been previously involved in the case will hear the appeal. This will normally be a senior manager, advised by a Human Resources representative. The Disciplining Officer responsible for the original disciplinary decision will attend the appeal hearing to present the reasons for their decision.

Outcomes of the appeal hearing can be:

- The appeal is upheld and the disciplinary sanction removed.
- The appeal is partially upheld and a different disciplinary sanction is substituted.
- The appeal is not upheld and the disciplinary sanction remains.
- The appeal is not upheld and the disciplinary sanction is increased.

The employee will be notified of the outcome of the appeal hearing as soon as possible after the hearing has been concluded.

The decision of the appeal panel is final.

### **13. APPEAL AGAINST DISMISSAL**

Appeals against dismissal must be submitted to the Head of Human Resources within 14 calendar days of receipt of the written record of the decision to dismiss, and will be heard by the Employment Appeals Sub Committee of the SSSC's Resources Committee. The Employment Appeals Sub Committee procedure is attached at Appendix C.

Appeals will be heard as soon as possible after their receipt by the Head of Human Resources or appropriate Senior Manager. The appellant (employee) will be advised of the right to be represented at the Employment Appeals Sub-Committee and to call any witnesses.

Notice will be given of the date and time of the appeal hearing in writing at least 14 calendar days in advance, unless otherwise mutually agreed.

Should the appellant fail to appear on the date and time of the appeal and provide no good reason why they cannot attend, the Appeals Sub-committee will dismiss the appeal.

In all events, the decision of the Appeals Sub-committee is final.

## **APPENDIX A - GUIDANCE FOR CARRYING OUT A DISCIPLINARY INVESTIGATION**

The purpose of a disciplinary investigation is to ensure that all of the facts are fully explored and to collect all relevant information, including any mitigation, to allow the investigating officer to make an informed decision about what did or did not happen. A representative from Human Resources will advise and guide managers throughout the investigation.

As Investigating Officer you will discuss terms of reference so you understand the detail of what you are being asked to look at, whether a recommendation is required and who you should report to.

### **As Investigating Officer, your responsibilities are to:**

- Consider an investigation plan which sets out the parameters, areas you need to consider and timescales.
- Gather all the relevant facts promptly or as soon as is practicable.
- Establish the exact nature of what has happened/what the employee is alleged to have done, the circumstances surrounding this and why it has occurred.
- Summarise your findings in an investigation report and recommend whether or not the allegations should be considered at a disciplinary hearing.
- Be thorough, objective and fair.
- Present your report, the supporting evidence and witnesses at a disciplinary hearing and answer questions as required.
- Attend any subsequent appeal hearing as a witness if required.
- Keep a timeline of contact with all parties involved and where delays are caused by either party record these along with the reasons

### **In carrying out an investigation you must:**

- Make sure the investigation is carried out within reasonable timescales as possible.
- Decide how best to conduct the investigation. This will depend on the complexity of the case e.g. in some circumstances a witness statement will suffice, in others you may need to meet with witnesses to have a full discussion.
- Talk to the employee(s) at a suitable point to establish the full facts, take a statement and keep notes from the meeting.
- Talk to other staff/individuals that are involved to establish the full facts at the appropriate time in the investigation. Take statements from witnesses and keep notes of investigatory meetings.
- Gather any other relevant information from appropriate sources including relevant policies and procedures and advice from other SSSC officers e.g. Head of Legal and Governance, Head of Finance. Remain impartial and objective, do not make assumptions.

- An investigation should include evidence which is exculpatory; this means evidence favourable to the employee in determining that the allegation(s) are not substantiated.
- Compare statements and notes and attempt to resolve any discrepancies.
- Maintain confidentiality at all times.
- If external parties are involved you must agree regular contact with them and agree a formal handover of recommendations and outcomes.

### **Preparation:**

- Plan your investigation before you begin – consider what information you need to gather, plan the questions you need to ask.
- Templates for statements, letters and reports are available from Human Resources, so consider the layout and content of these at an early stage in your preparation.
- The order in which you meet witnesses and the employee will depend on what information you gather.
- You can meet with them more than once if necessary.
- Plan where to hold the investigation meetings - a private place free from interruptions.
- Take notes of key points raised at the meetings. The notes do not need to be verbatim, but you should prepare a statement of the evidence given and send a copy of the statement to the employee/witness following the meeting. Ask them whether the statement is an accurate reflection of their discussion with you and if they have anything to add. Both you and the employee should sign the agreed statement.
- Where the employee/witness provides alternative notes of the meeting both versions should be included in the evidence supporting your investigation report.
- Agree format, contact and handover with any external parties involved.

### **Meet the employee:**

- Encourage the employee to have someone with them as a support. This should be a work colleague or Trade Union representative unless otherwise agreed with Human Resources. Ensure that the employee understands the issues/concerns that you are investigating and ask them for an initial response.
- Use open questions to gain information and clarify the issues. Summarise and check your understanding of what has been said.

### **Meeting Witnesses:**

At the outset, explain that you are conducting a disciplinary investigation as part of the disciplinary procedure and that as a witness you need a statement from them. Explain to them that they may be called to further meetings as a management witness.

Ensure witnesses understand that confidentiality must be maintained at all stages of the investigation and afterwards.

Ask the witness to provide clarification or information on the incident/behaviour. Use open questions to gain information. Always check your understanding of what has been said. Without leading the witness, encourage them to concentrate on the main issues.

Gather all other evidence and information that is relevant and which will substantiate information provided by witnesses and/or the employee. Keep copies to use as supporting documentation.

Make witnesses aware that should the outcome of the investigation result in a Disciplinary Hearing they will be required to attend the hearing and potentially any subsequent appeal hearing to answer questions relating to their statement. Advise them that they may be questioned on their statement by the Disciplining Officer and the other parties present at the hearing. Witnesses will only be present for the relevant part of the Disciplinary/Appeal Hearing and will not be advised of the outcome of the hearing.

Witnesses can seek support from their line manager and/or Human Resources if required. Advise the employee and any witnesses of the support available from the Employee Assistance Programme (EAP)

Some witnesses maybe reluctant to provide evidence, as an Investigating Officer you should explore why an employee is reluctant and try to provide reassurance where you can. Should a witness have a clear reason for not wanting to be identified or attend a hearing to give evidence, you should contact Human Resources for advice.

Where you do not believe a legitimate reason has been given you should remind the employee that failure to attend a meeting may be viewed as refusing to obey a reasonable request.

You may decide it is not necessary to interview every witness; a written and dated statement may suffice. If so, you need to be sure that you have all the information you require. You can always re-interview witnesses to ensure there are no areas of confusion or unanswered questions.

### **Gathering evidence:**

In gathering your evidence you need to ensure that you cover evidence not only that supports the allegations but also includes evidence which does not support the allegations. You should consider:

- What does the evidence reveal?
- Are there any doubts over the credibility and reliability of the evidence?
- Is the evidence supported or contradicted by the evidence already collected?
- Does it suggest any further evidence should be collected?



## **Preparing an investigation report**

Once the investigation is complete, a report must be produced, which should go to the nominated Disciplining Officer with your recommendations. This report will be included in the documentation used at any subsequent disciplinary hearing.

Your report should be clear, concise and presented in a logical format as follows:

### **Introduction**

- Background to the case, the areas of concern and potential allegations.
- How the investigation was carried out.
- Who was interviewed.
- What evidence was considered.
- What statements and evidence are attached to the report.
- Any other sources of information that may have been accessed.

### **Statement of case**

- Present the information that you have gathered as a sequence of events cross referencing to documents/statements within the appendices as appropriate.
- Which facts have been established and which facts have not.
- Whether there are any mitigating factors to consider.
- Set out the employee's explanation of what happened.
- Highlight the salient points from witness statements.
- Highlight the main points from the evidence that support your recommendation below

### **Recommendations**

- Deal with each allegation separately.
- State what you recommend happens in relation to each allegation and why, cross referencing to the evidence, you have considered reaching your conclusion.
- Whilst you should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory, you will need to decide whether, on the balance of probabilities; you could justifiably prefer one version of the matter over another and explain why.
- Copies of all documents collected and referred to in the report should be included and clearly referenced.

### **Recommendations unrelated to the investigation matter**

- During an investigation you may identify other issues that, whilst outside the scope of the investigation, may require action. You should note what other matters may require further action and report these to the Disciplining Officer in a separate document.

## APPENDIX B

### GUIDANCE ON CONDUCTING A FORMAL DISCIPLINARY HEARING

#### Preparation for the hearing

- Letter detailing allegation(s) and other evidence to be tabled on the day to go to the employee 14 calendar days prior to the hearing.
- Make sure there are rooms available for the employee and their representative to use before the hearing starts, during any adjournments and at the end when the Disciplining Officer is deliberating.
- If there are witnesses for both sides - make sure enough separate rooms are available for them to use.

#### In the Hearing

##### Introduction by Disciplining Officer

- Explain to the employee and their representative that this is a formal disciplinary Hearing in accordance with the SSSC's Disciplinary Procedure to address the allegations detailed in the letter of allegation.
- Introduce those present and explain the role of each person e.g. Disciplining Officer will be chairing the proceedings, Human Resources representative to provide advice, Investigation Officer(s) attending to present their report.
- Clarify - if the employee is accompanied and if the representative/companion is presenting the employee's case, or attending only to accompany the employee
- The representative cannot answer questions on an employee's behalf.
- Clarify that if the employee is not accompanied, that they understand their right to be represented/accompanied.
- Explain how the rest of the hearing will run.
- Verbatim minutes of the meeting are not taken, a summary of the meeting will be produced but parties are responsible for their own notes.

##### How the hearing will run:

- **The Disciplining Officer** will read out the allegations and ask the employee if they wish to make any initial comment before the Investigating Officer presents their report. The Disciplining Officer will check if the employee is in agreement with proceeding with the hearing.
- **Investigating Officer** will then present their report, refer to any supporting documentary evidence and call any relevant witnesses as they work through their investigation report.
- **Management witnesses** – called in to the hearing at the relevant points in the investigation report - the Investigating Officer will introduce the witness and ask questions which highlight the relevant evidence.
- **The employee** (or their representative) will have the opportunity to ask questions of the management witnesses first.
- **Disciplining Officer**/Human Resources representative will ask questions.

- **Management witnesses** will withdraw from the hearing once all questions have been asked –
- **Investigating Officer** will remain in the hearing.
- **Employee** (or their representative) will then present their case in response to the Investigating Officer's report, presenting relevant evidence and calling any relevant witnesses.
- **Employee** (or their representative) will ask relevant questions of their witnesses to support their case.
- **Investigating Officer** will then ask questions of the employee and any witnesses.
- **Disciplining Officer and Human Resources representative** will then ask questions of the employee and their witnesses.
- **Employee's witnesses will withdraw** from the hearing once all questions have been asked.
- Although the above order is generally followed as a standard process, the **Disciplining Officer** may ask questions at any time and witnesses may be recalled if necessary

#### **Summing Up:**

- Investigating Officer will sum up their case first.
- Employee or their representative will sum up their case second.

#### **Adjourning the Hearing to consider the evidence:**

- The Disciplining Officer will then ask the Investigating Officer, employee and their representative, to leave the room while they consider all the evidence presented and, where possible, come to a decision.
- Once the Disciplining Officer has come to a decision, the hearing will be reconvened and the employee and their representative will be asked to come back in to the hearing to be advised verbally of the decision and their right of appeal.
- Written confirmation of the decision will be given to the employee as soon as possible after the hearing but no later than 14 calendar days from the date of the hearing.
- If it is **not** possible to come to decision on the day, the employee and their representative will be informed verbally of the likely timescales involved and that follow up arrangements will be confirmed in writing as soon as possible.
- Ask the employee/representative to confirm that they understand the process outlined above.

#### **Advising the employee of the outcome:**

In advising the employee of their decision, the Disciplining Officer should cover the following areas with support from the Human Resources Representative.

- Remind all present of the nature of the allegations/offences as detailed in the letter of allegation.
- Summarise the main points of the discussion, the evidence put forward and main arguments made by both sides.

- The mitigating circumstances that they have taken into account in the decision making process.
- That they have taken into account any previous warnings that the employee may have received and which are still current.
- Ask the employee if he/she has anything further to say.
- Advise them of their right of appeal and to whom they should write and the timescales they should follow.

### **General Principles to be followed throughout**

- The representative is allowed to address the hearing to put forward and sum up the employee's case and can confer with the employee during the hearing. The representative /companion **cannot** answer questions on the employee's behalf.
- During the hearing, either side may request an adjournment to confer privately and consider the evidence presented or to carry out further investigation where new evidence is introduced. If significant new facts emerge, the Disciplining Officer considers adjourning the hearing to provide both sides with enough time to investigate these fully and reconvene at a later date.
- Listen carefully and give the employee time to present their answer.
- If a particular witness cannot/is unable to attend, consider proceeding on the basis of a written statement.
- If a grievance is raised during the hearing that relates to the allegations, consider whether the disciplinary hearing should be suspended until the grievance can be considered, as the resolution of the grievance may affect the nature of the allegations to be considered.
- Where an employee fails to attend a hearing and provides no explanation, the Disciplining Officer and Human Resources Representative can proceed with the hearing in the employee's absence based on the evidence available on the day.
- A Trade Union representative may present a case on the employee's behalf where an acceptable reason has been given as to why the employee cannot attend the hearing in person. The employee must also provide written confirmation that they are in agreement with their Trade Union representative presenting their case in their absence.

## **APPENDIX C**

### **PROCEDURE TO BE FOLLOWED BY THE EMPLOYMENT APPEALS SUB-COMMITTEE**

The Employment Appeals Sub Committee of the Council's Resources Committee will normally comprise of a minimum of three, and a maximum of five Council Members, drawn from a pool of all Council Members. The Chair will be appointed by the Convener.

A note of the meeting will be produced and shared with all parties.

#### **The Chair should:**

- Carry out introductions – confirm members of the panel and explain their roles.
- Advise on logistics – toilets, fire alarm, breaks, and adjournments.
- Confirm representation with the employee. If the employee is not represented then confirm with them that they are happy to continue without representation. Confirm if any witnesses are being called from either side.
- Confirm why the meeting has been convened – formal appeal hearing against dismissal in accordance with the Disciplinary Procedure.
- Confirm the grounds of appeal as contained in the employee's letter of appeal.

#### **Process**

- The appellant, or their representative, will present their case first, calling witnesses as required as they progress through the presentation of their case.
- The management representative can ask questions of the appellant and of any witnesses.
- The Sub-committee can then ask any questions of the appellant and of any witnesses.
- The appellant, or their representative, can ask further questions of their witnesses to make points of clarification arising from the questions from the management representative and/or members of the Sub-committee.
- The management representative will present their case next calling witnesses as required when progressing through the presentation of their case.
- The appellant or their representative can ask questions of management and any witnesses.
- The Sub-committee will then ask questions of the management representative and any witnesses.
- The management representative can ask further questions of their witnesses to make points of clarification arising from the questions from the appellant and/or members of the Sub-committee.
- Witnesses may be re-called by either side or by the Sub-Committee if clarification is required on any point of the case.

**Presentation of appeals**

- The appellant will present their case first followed by the management representative.
- The management representative, the appellant and his/her representative will then withdraw. The Sub-committee will then deliberate in private in the presence of officer/s appointed to assist them.
- If the Sub-committee can reach a decision on the day, both parties will be called back in and advised of the outcome.
- If the Sub-committee are unable to make a decision on the day, they should advise the hearing that the outcome will be delivered in writing. within 14 calendar days of the date of the hearing.

Under the Scheme of Delegation to Committees, the Sub-committee is authorised to:

- Uphold the appeal in full and reinstate the employee from the date of their dismissal.
- Uphold the appeal in part reinstating the employee but specifying certain conditions to their decision e.g. issue a final written warning, unpaid suspension.
- Uphold the previous disciplinary decision of dismissal.

**Note**

Where an appeal against dismissal is substantiated and the Sub-committee vary the summary dismissal issued at the disciplinary hearing, the appellant shall be deemed to have been reinstated to the SSSC with effect from the date of the dismissal. The decision of the Sub-committee is final.

## **APPENDIX D – SPECIAL CIRCUMSTANCE**

Where cases are complex and involve different processes such as those mentioned below the investigating officer will hold regular case reviews with all involved parties.

### **Preventing Fraud Procedure**

Line managers have a primary responsibility for preventing and detecting improprieties including fraud and corruption. All members of staff are required to follow the Counter Fraud and Corruption Framework (available on the intranet or from the Finance team) if they suspect that there is any financial or non-financial irregularity (or any circumstance suggesting the possibility of irregularity) affecting the financial procedures, cash, stores or other property of the SSSC.

In these cases, it is possible that auditors will be appointed to investigate these matters; the IO and fraud investigator will have regular formal contact and will agree a formal review of findings and recommendations.

### **Criminal charges or convictions**

If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. Managers should take advice from HR in these instances.

The manager will need to establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for the type of work or damages the reputation of the SSSC. An employee should not be dismissed solely because of absence from work as a result of being remanded in custody.

Some workplace disciplinary offences may also be criminal offences such as theft, fraud, or sexual offences. In these instances, there may be a duty to inform the police and/or appropriate professional/regulatory body – even if no action is taken. Advice from HR should be sought before disciplinary proceedings are embarked on. The accountable officer must be informed if the case involves financial irregularities.

Some matters may warrant a criminal investigation, if criminal proceedings do commence, we may decide that the investigation must be put on hold.

## **ICT Security Policy**

If a line manager has reason to believe that the potential misconduct has impacted on or compromised ICT security, then the appropriate Head of or a Director must be notified for advice and guidance.

## **Overlapping Grievance/Dignity at Work and Disciplinary Cases**

Where an employee raises a related grievance or dignity at work concern during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance or dignity at work. However, it may be appropriate to deal with both issues concurrently. HR will advise how to proceed should an overlap of procedures occur.

## **Sickness**

Where an employee is unwell, the investigation should continue, if possible. If the employee is not well enough to participate in the process then we will need to refer the employee to Occupational Health. The purpose of the referral is to get a timescale for any potential delays and to assess whether the employee needs additional support to help them participate in the process. In this situation it may be necessary to delay the investigation or reschedule a hearing because an employee is unwell. If there is no clear timescale and it is no longer considered reasonable to continue to delay taking action then HR should be advised before taking any action.

Where there are delays due to sickness absence case reviews will be held which include the disciplining officer and HR representative to ensure that absences are managed sympathetically and rigorously.



## **APPENDIX E – EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT**

### **Misconduct**

The following list provides examples of offences which are normally regarded as misconduct. This list is not exhaustive.

- Breaches of the Employee Code of Conduct
- Poor time-keeping
- Absence from work without reasonable cause or authorisation or failure to comply with absence reporting procedures
- Negligence or carelessness in carrying out duties.
- Refusal to carry out reasonable instructions
- Minor misuse of SSSC property or resources
- Minor breaches of safety regulations
- Minor misuse of IT/Internet/email/telecommunications

### **Gross Misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the SSSC. The following list, gives examples of behaviour which will normally be regarded as gross misconduct. This list is not exhaustive.

- fraud or theft
- falsification of records including timesheets
- false declaration of experience, qualifications or professional registration
- deliberate damage to SSSC property
- physical violence or assault
- bullying, harassment and/or discrimination
- serious negligence
- serious insubordination
- significant disregard for a reasonable management instruction or repeated refusal to carry out a management instruction which is within the individual's capabilities and which is in the interests of the SSSC
- serious breach of corporate or financial governance processes and procedures
- breach of confidentiality of SSSC information including information relating to stakeholders, registrants and education and training providers
- inappropriate use of email, telephones or the internet that is a serious breach of the SSSC's ICT Security Policy
- submitting false medical certification
- Incapability at work brought on by alcohol or drugs
- comments made on social media platforms such as Facebook or Twitter which could bring the reputation of the SSSC into disrepute
- inappropriate behaviour at work
- behaviour outside work which has a damaging impact on the reputation of the SSSC, the employee's own position with the SSSC or affects another employee or stakeholder of the SSSC
- serious breach of confidence
- serious misuse of the organisations property or name