

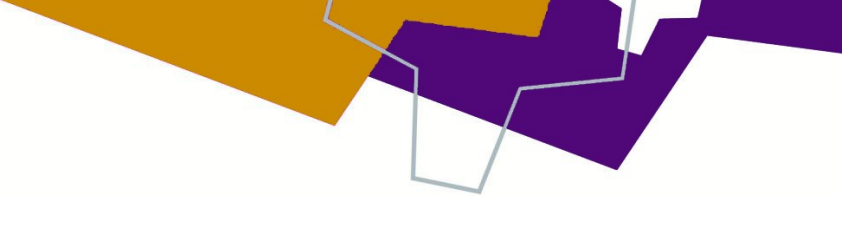


The Scottish Parliament
Pàrlamaid na h-Alba

Disciplinary Procedures - Guidance for Managers

Pròiseasan Smachdachaidh – Stiùireadh do Mhanaidsearan

19 December 2018



As a manager, you have responsibility for monitoring the conduct of staff and for ensuring that any conduct which falls short of the required standards set by the SPCB is dealt with early and in accordance with the SPCB's Disciplinary Procedures.

Disciplinary Procedures

Guidance for Managers – Staff Disciplinary Procedure

Introduction

Disciplinary Procedures are in place to:

- assist members of staff and management to maintain the standards of conduct required by the SPCB
- ensure that appropriate support is available to members of staff whose conduct falls below the requisite levels
- ensure that a clear framework is in place for managing matters of conduct as an aid to consistency, fairness and statutory compliance

Role of the Manager

As a manager, you have responsibility for monitoring the conduct of staff and for ensuring that any conduct which falls short of the required standards set by the SPCB is dealt with early and in accordance with the SPCB's [Disciplinary Procedures](#). Effective handling of disciplinary matters is important both in the interests of statutory compliance and in terms of positive employee and working relations.

It is important that you are able to distinguish between matters of conduct which are dealt with through the Disciplinary Procedures; issues relating to performance which you should manage in accordance with the [Unacceptable Performance Procedures](#); and issues relating to attendance which you should manage in accordance with the Unacceptable Attendance Procedures.

Standards of Conduct

You will find details of the standards of conduct which members of staff are required to meet in Section 4.1 – 4.5 of the [Staff Handbook](#). You will find some examples of behaviour which is normally regarded as misconduct and gross misconduct in Annex A and Annex B of the Disciplinary Procedures. You should be aware, however, that these lists are not exhaustive and if you have any doubts as to whether particular behaviour can reasonably be considered misconduct or gross misconduct, you should seek advice from the [Human Resources Enquiry Service](#) (ext. 86500).



Role of the Hearing Manager

The Hearing will normally be conducted by the Head of Office/Group of the relevant business area (the “Hearing Manager”). The Clerk/Chief Executive has delegated authority to all Heads of Group and to a number of Heads of Office who do not report to a Head of Group to impose sanctions up to and including dismissal. A list of posts to which such authority has been delegated is listed at Annex D. Heads of Office who report to a Head of Group have not been delegated such authority by the Clerk/Chief Executive. Such Heads of Office may, however, still undertake the role of Hearing Manager and have the authority to impose sanctions up to but not including dismissal. If the Hearing Manager does not have the authority to dismiss and considers that the correct sanction is dismissal, he or she must make a recommendation to dismiss to their Head of Group who will ultimately make the decision and, if appropriate, sign any letter of dismissal. If the Head of Office/Group has been previously involved, the Assistant Clerk/Chief Executive with line responsibility will take the decision. If that Assistant Clerk/Chief Executive is unavailable or has been previously involved, the case will be referred to another Assistant Clerk/Chief Executive nominated by the Human Resources Office. A representative from the Human Resources Office will also be present.

Role of the Head of Office/Group

The Head of Office/Group, will normally take the role of Hearing Manager and will be responsible for:

- hearing disciplinary cases within your business area
- deciding on any disciplinary sanction, up to and including dismissal (other than in circumstances where the Head of Office reports to a Head of Group who will ultimately have responsibility for any decision to dismiss)



Role of the Human Resources Office

The Human Resources Office will provide you with professional advice and guidance on the application of the SPCB's Disciplinary Procedures. Although there is no absolute requirement for you to seek advice from the Human Resources Office if the misconduct is minor and you intend to deal with it on an informal basis, the Human Resources Office will still be happy to provide you with support and guidance in taking the issue forward, for example, by reference to precedent in terms of what can and should not be dealt with informally. If the misconduct is more serious than that, however, you, as the manager, must instigate the formal procedures and inform your Head of Office/ Group that this is what you are doing. You must always consult the Human Resources Office before proceeding.

The Human Resources Office has a formal role in relation to disciplinary issues and is responsible for:

- providing you with professional advice and guidance on how to manage the case through the procedures
- providing you with advice on precedents which you will have to take into account before moving forward to the next stage
- ensuring that you operate within the scope of statutory requirements and the ACAS Code of practice on Disciplinary and Grievance Procedures which underpin the SPCB's Disciplinary Procedures
- carrying out the investigation into the alleged complaint on your behalf
- being in attendance where the Hearing Manager decides that suspension pending investigation is appropriate
- providing the Hearing Manager with a report of the findings arising from the investigation and any necessary associated paperwork, e.g. a letter inviting the member of staff to a Disciplinary Hearing
- co-ordinating the provision of any formal legal advice which might be considered necessary depending on the individual circumstances of the case

The ACAS Code of Practice on Disciplinary and Grievance Procedures

The SPCB's Disciplinary Procedures reflect the requirements of the [ACAS Code of Practice on Disciplinary and Grievance Procedures](#). The Code of Practice sets out principles for handling difficult situations in the workplace and provides practical guidance to assist both employers and employees. Employment tribunals will take the Code of Practice into account in making any relevant decisions. An unreasonable failure by an employer to follow this Code will result in an employment tribunal having the power to increase any compensatory award by up to 25%. It is essential, therefore, that you follow the correct procedures and you should contact your HR Adviser for advice if you have any doubt whatsoever about which procedures you should be using.



Rights of Employees

An employee has a statutory entitlement to be accompanied by a trade union representative or a work colleague (although not someone from outwith the organisation) to meetings at any stage of the formal disciplinary process.

A member of staff also has a right to appeal against any sanction which is taken against him or her.

Informal Stage

You should always consider whether any case of misconduct should be dealt with informally. This is normally the best way to get issues resolved and you will find that this is often all that is required to improve the conduct of a member of staff. If you are unsure whether it would be appropriate to deal with the case on an informal basis, you should contact the Human Resources Office for advice and notify your Head of Office/Group. This informal stage will normally be conducted by the member of staff's direct line manager.

The purpose of using an informal approach is to help you to:

- manage issues at source
- resolve issues early
- avoid any escalation of difficulties
- facilitate appropriate changes in conduct
- minimise the potential for conflict
- prevent further or more serious instances of misconduct.

Using the informal approach is very much an aid to good management practice and will help you to protect and build on the day-to-day working relationship you have with members of your staff. The informal approach will allow you to:

- draw to the member of staff's attention areas where you consider he or she is not meeting the required standards of conduct
- encourage the member of staff to recognise that a problem exists
- help the member of staff to take ownership of the problem
- allow the member of staff to contribute to discussion on how the necessary improvements can be achieved
- provide the member of staff with the opportunity to improve
- support him or her to address the matter satisfactorily

You should note that taking this informal approach does not constitute disciplinary action and you should ensure that an informal meeting does not appear to turn into a formal disciplinary situation.



The Informal Process

In taking the informal approach, you should:

a) prepare:

- review any evidence you have as to areas where you consider that the member of staff is not meeting the required standards of conduct and consider the support you can make available to him or her
- consider whether your expectations of the member of staff are fair and reasonable and if there are any potential factors which may have affected his or her conduct
- make arrangements to conduct the discussion in private with the member of staff and ensure that you will not be interrupted
- keep the process as confidential as possible
- provide the member of staff with reasonable advance notice of the meeting and brief him or her on the areas you wish to explore in discussion so that he or she has the opportunity to prepare

b) conduct an informal discussion:

- conduct the discussion in a positive, sensitive and encouraging manner
- outline your concerns to the member of staff, referring to any evidence of areas where you consider the member of staff has not met the required standards
- focus on standards of conduct, remain calm and in control of the meeting and do not allow the discussion to become personal
- allow the member of staff to explain and listen carefully to what he or she has to say. Establish if any underlying problems exist which are contributing to his or her behaviour at work (for example, health concerns, a disability of which you were previously unaware, personal problems, interpersonal difficulties etc.). Take any such mitigating factors into account in determining an appropriate way forward and in particular, in considering the level and nature of support the member of staff will require
- agree with the member of staff what action should be taken to overcome the difficulty and the support you will provide
- make arrangements to review the member of staff's conduct after a suitable period (normally 3 months will be reasonable but this may be longer or shorter depending on the nature of the issue causing concern and any mitigating circumstances in determining an appropriate timescale)
- assure the member of staff that this is not a Disciplinary Hearing but that formal disciplinary action may follow if he or she does not achieve a satisfactory improvement in his or her conduct
- conclude the meeting by summarising the key points agreed and convey your confidence in the member of staff's ability to make the necessary improvements



c) follow-up:

- make a note of the discussion and provide the member of staff with a copy as early as possible – afford the member of staff the opportunity to comment on the accuracy of the note and take account of any such comments
- provide the member of staff with regular feedback and encouragement in relation to his or her conduct – acknowledge any positive changes in behaviour
- ensure that you provide support as agreed to facilitate changes in behaviour
- carry out a review of conduct with the member of staff in accordance with the timescale you agreed with him or her at the outset

If the informal process has resulted in a satisfactory improvement in conduct, acknowledge this and inform the member of staff that you now consider the issue closed.

If, however, a satisfactory improvement has not been realised, or if you consider that the conduct is too serious to be dealt with through the informal approach then you should seek advice from the Human Resources Office about initiating the formal stages of the [Disciplinary Procedures](#).

Formal Disciplinary Procedures

THE RIGHT TO REPRESENTATION

Whilst the statutory requirement is to allow a member of staff to be accompanied during the formal disciplinary process, the SPCB affords staff a higher level of representation by allowing them to be assisted. Assisted means that the person who attends with the complainant may:

- put the member of staff's case
- sum up the member of staff's case
- respond on the member of staff's behalf to any view expressed at a Disciplinary or Appeal Hearing

Management does, however, retain the right to ask the member of staff questions directly and to expect a direct answer. A refusal to answer questions can, itself, constitute a disciplinary offence. You should ask the member of staff to let you know in advance whether he or she intends to be assisted and if so, by whom.

Investigation

A representative from the Human Resources Office normally undertakes the role of investigating an alleged case of indiscipline. The overriding principles of any disciplinary investigation are that the Investigating Officer will

- inform the member of staff, in writing, of the full details of the allegation against him or her and the reasons why that is not acceptable
- ascertain the facts of the case through meetings with the member of staff and any witnesses if applicable
- assess the severity of the alleged misconduct and advise the Head of Office/Group whether or not there is a need for the matter to progress to a formal Disciplinary Hearing

If the Investigating Officer advises the Head of Office that there is no need for the matter to progress to a Disciplinary Hearing, he or she will discuss with you and the member of staff any recommendations he or she has as to any further action which may be required to conclude the matter satisfactorily. The Investigating Officer will confirm the outcome of these discussions to you and the member of staff in writing.

The Disciplinary Hearing


The Hearing will normally be conducted by the Head of Office/Group of the relevant business area (the "Hearing Manager"). The Clerk/Chief Executive has delegated authority to all Heads of Group and to a number of Heads of Office who do not report to a Head of Group to impose sanctions up to and including dismissal. A list of posts to which such authority has been delegated is listed at Annex D. Heads of Office who report to a Head of Group have not been delegated such authority by the Clerk/Chief Executive. Such Heads of Office may, however, still undertake the role of Hearing Manager and have the authority to impose sanctions up to but not including dismissal. If the Hearing Manager does not have the authority to dismiss and considers that the correct sanction is dismissal, he or she must make a recommendation to dismiss to their Head of Group who will ultimately make the decision and, if appropriate, sign any letter of dismissal. If the Head of Office/Group has been previously involved, the Assistant Clerk/Chief Executive with line responsibility will take the decision. If that Assistant Clerk/Chief Executive is unavailable or has been previously involved, the case will be referred to another Assistant Clerk/Chief Executive nominated by the Human Resources Office. A representative from the Human Resources Office will also be present.

In conducting a Disciplinary Hearing, you should:

a) Liaise with the Investigating Officer to set up the Disciplinary Hearing

The representative from Human Resources will provide you with a letter which you should use to invite the member of staff to attend the Disciplinary Hearing. The letter will inform the member of staff:

- what it is that he or she is alleged to have done wrong
- the reasons why this is not acceptable
- the purpose of the Hearing
- of his or her right to be assisted at the Hearing by a trade union representative or work colleague



When you issue the letter you should attach a copy of the investigatory report, any witness statements (anonymised only if strictly necessary) and/or other relevant evidence. In certain circumstances (for example to protect a witness), it might be appropriate to withhold certain information from the member of staff. The Investigating Officer will advise you if he or she thinks that this might be necessary.

You should give the member of staff the opportunity to forward any further papers for your consideration. You should ask the member of staff to let you know in advance if he or she intends to be accompanied at the Hearing and if so, by whom.

The Investigating Officer will:

- send a copy of all of the relevant documentation to the person accompanying the member of staff
- arrange an appropriate private venue for the Hearing
- make any catering arrangements

If the member of staff is unable to attend the Hearing, for example, because his or her companion cannot attend on a proposed date, the member of staff may suggest another date so long as it is reasonable and is not more than seven working days after the date proposed for the original Hearing.

b) Prepare thoroughly

Thorough preparation is vital to ensure that the Hearing is conducted in a logical and reasoned manner and that the outcome is fair and based on consideration of all available facts and evidence. It is difficult to predict in advance the course a Hearing may take but it is useful to set some broad parameters within which you will conduct proceedings.

In advance of the Disciplinary Hearing, you should ensure that you:

- have sought all the clarification you need following receipt of the Investigating Officer's report
- seek professional advice and guidance from the Human Resources Office
- are familiar with the SPCB's Disciplinary Procedures
- consider in detail the investigatory report received from the Investigating Officer
- consider in detail any additional papers submitted by the member of staff and give thought to possible explanations which may be offered
- consider the member of staff's disciplinary record and any other relevant data relating to the member of staff such as his or her career record
- focus on factual information and avoid pre-judging the situation
- be prepared to deal with a high level of emotion, for example, anger and/or distress
- contact, in advance, any witnesses you may wish to interview and ask them to make themselves available – the Investigating Officer can assist you by providing a template letter for this purpose
- make sure any arrangements are put in place to support staff who may require particular assistance to attend the Hearing, for example, in relation to a disability or particular communication needs
- allow adequate time for the Hearing, plan how you will structure the Hearing and consider the main points which need to be made. A typical structure is outlined below. It is useful to have this structure with you at the Hearing as you can refer back to this if there is a need to refocus discussions



Suggested Framework for Conducting a Disciplinary Hearing

Introduction

- Introduce all parties present and explain the role of each individual.
- Outline the purpose of the Hearing i.e. to determine the facts and decide whether a disciplinary sanction should be given in accordance with the SPCB's Disciplinary Procedures in relation to the particular circumstances.
- Outline the proposed structure of the Hearing.
- The Human Resources Office representative will take a note of the Hearing for you but you may also wish to take some notes of your own to ensure that all of the points raised are captured.

Management Case and Questions

- Confirm with the member of staff that he or she has received a copy of the Investigating Officer's report and ask what his or her response is to it.

Member of staff Case and Questions

- Allow the member of staff (or his or her representative) the opportunity to present his or her response to allegations of misconduct and to explain any extenuating circumstances.
- Use open questions to encourage the member of staff to speak. If the member of staff is non-communicative and refuses to put forward his or her version of events, explain that you would like to take account of his or her explanation in reaching a decision, but that you will be unable to do so if none is provided.
- Check your understanding of what you have heard from time to time by summarising points that are being made to you.

Witness Statements


- Adjourn the Hearing if you wish to clarify with any person further or if you need to speak to any other witnesses not previously identified as such.
- If it is an existing witness, refer to the statement he or she has previously provided in relation to the matter and ask questions to elicit further information or to confirm the veracity of information presented by other members of staff.
- Allow the member of staff who is the subject of the case the opportunity to review any of the additional information provided.

Summary

- Summarise the main points after both sides have been explored and questioning has been completed.

Conclusion

- Ask the member of staff (and his or her representative) if there is anything additional they wish to say before drawing the Hearing to a close.
- Advise the member of staff when he or she can expect to be informed of your decision.



c) Conduct the Hearing in an appropriate manner

- ensure that the layout of the venue is appropriate
- focus on facts and corrective action - do not allow the discussion to detract from the key issues
- keep an open mind until you have heard the full response
- adjourn the Hearing if you reach a point where you need advice on how to deal with the Hearing, to check a point of fact (perhaps speak to a witness) or as a means of calming high emotions
- be alert to the need for comfort breaks
- do not discuss other members of staff who may be subject to disciplinary proceedings relating to the same circumstances – focus on the particular circumstances relating to the member of staff who is subject to the Hearing
- ensure that a factual and objective note of the Hearing is taken by the Human Resources Office representative

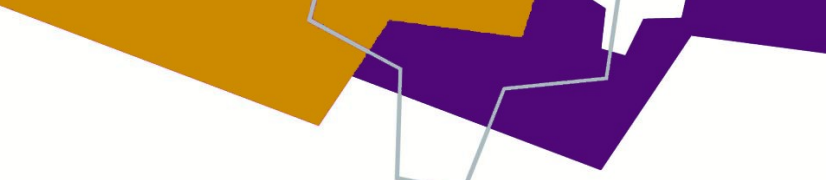
d) Reach a decision and determine if a disciplinary sanction is appropriate

On concluding the Hearing, take time to reflect and to properly consider your decision. If it is possible, you (or where appropriate, your Group Head) should try to inform the member of staff of your decision on the same day as the Hearing. However, it is more important that you arrive at the correct conclusion and it is perfectly reasonable for you to take longer to arrive at your decision. If you are unable to make a decision on the day of the Hearing, you should let the member of staff know when you think you will be able to do so. You should inform the member of staff of your decision as soon as reasonably possible after the Hearing and advise him or her of the right to appeal.

It is important that you carefully weigh up the facts with which you have been presented. If you find it difficult to decide between two conflicting versions of events, providing you have given both parties the opportunity to address the fact that there are conflicting versions, you should make a judgement based on the balance of probabilities and your reasonable belief as to which version depicts a true picture of events.

If on the balance of evidence, you conclude that a disciplinary sanction is appropriate, consider which level of sanction should be applied. Any sanction you decide upon should be proportionate to the offence and reasonable in the circumstances. You should normally act within the framework of disciplinary sanctions provided in Annex C of the SPCB's Disciplinary Procedures. In reaching your decision you should consider:

- any previous disciplinary record which may indicate a pattern of behaviour
- the attitude of the member of staff, for example, remorse and willingness to improve may be taken into account as well as any other potential mitigating factors
- the professional advice from the Human Resources Office representative who will have knowledge of precedent within the organisation and developing case law



Remember that any decision to dismiss a member of staff must be based on ‘a genuine belief on reasonable grounds after a reasonable investigation’ that the member of staff has committed misconduct. This is in line with employment tribunal guidelines.

If the alleged offence cannot be substantiated or if the misconduct is of a very minor nature, you might decide that no formal disciplinary sanction is necessary. In such circumstances, you may wish to make recommendations as to other measures which may be taken to support the member of staff to realise improvements in his or her conduct: for example, that the manager conducts informal counselling and/or coaching if this has not already happened.

e) Communicate your decision

When you communicate your decision to the member of staff, you should:

- reconvene the Disciplinary Hearing
- be accompanied by the Human Resources Office representative who attended the Disciplinary Hearing
- allow the member of staff to be accompanied by his or her trade union representative or a work colleague
- provide the reasons underpinning your decision to the member of staff
- be as specific as possible about any improvements that require to be made to avoid any doubt on behalf of the member of staff as to what is expected
- detail any support, training or guidance which will be given as well as mechanisms for monitoring progress
- be clear as to details of any sanction which is to be applied, for example, the length of any warnings;
- always inform the member of staff of his or her right to appeal your decision

Your verbal decision must be confirmed in writing to the member of staff within seven working days of the Hearing. You will be provided with an appropriate draft from the Human Resources Office representative who has supported you during the process.

You should also provide a copy of the note of the Disciplinary Hearing to the member of staff concerned and ask him or her to check and confirm that the note is a true record of the Hearing. The member of staff may suggest amendments to the note if he or she considers this necessary or to indicate disagreement. It will be for the Hearing Manager to determine the final version.

Appeals Process

If you are responsible for hearing an appeal against the outcome of a Disciplinary Hearing, the Human Resources Office representative will provide you with a comprehensive brief.

Suggested Further Reading / Support

- ACAS Code of Practice on Discipline and Grievance
- ACAS E-Learning Module: Discipline

Annex A

Suspension from Duty and Other Matters

Suspension from duty on full pay pending the outcome of disciplinary proceedings is a measure which should only be applied where the situation genuinely demands it. Not all circumstances will necessitate this course of action and it is important that each case is considered carefully on its own merits. Although suspension should generally be considered the exception rather than the norm, it will normally be applicable automatically in cases of alleged gross misconduct.

If a decision is made to suspend a member of staff pending the outcome of disciplinary proceedings, the Hearing Manager will:

- inform the member of staff of the decision to suspend and the reasons for that decision
- inform the member of staff that suspension from duty is not in itself a disciplinary sanction and should not be taken as an inference of guilt
- inform the member of staff what impact, if any, the suspension will have on pay and other contractual provisions
- withdraw the security pass and inform the member of staff that he or she will only be permitted controlled and limited access to the Parliamentary campus to meet his or her representative to prepare his or her case
- allow the member of staff the opportunity to collect personal belongings and escort him or her from the building
- immediately notify the Head of Security and the Head of BIT in order that access to the building and business information technology are suspended
- suspend only if it is necessary to protect the best interests of the member of staff, the organisation, other staff, to prevent any adverse impact on the conduct of proceedings and/or to protect witnesses
- suspend only for the period of time which is strictly necessary
- provide the member of staff with regular feedback on progress of the case

The Hearing Manager will be accompanied by a representative from the Human Resources Office when notifying a member of staff of suspension.

In very exceptional circumstances, pay may be withdrawn during a period of suspension. This may occur, for example, where circumstances outwith the control of the SPCB such as criminal proceedings or police investigation impact on the progress of our internal Disciplinary Procedures, thereby leading to a necessarily protracted period of suspension.

The Human Resources Office representative will provide you with a standard letter which should be used to confirm a decision to suspend on full pay.



Criminal Offences

If a member of staff has been charged with, or convicted of, a criminal offence whilst in our employment, this does not necessarily justify disciplinary action or dismissal. As an employer, our main concern in such a scenario is the impact the conduct of a member of staff has on his or her employment with the SPCB and you must seek advice from the Human Resources Office if you become aware of such a situation. The Human Resources Office representative will take account of the nature of the alleged offence and the nature of the role of the member of staff within the SPCB.

6. Criminal proceedings and disciplinary action can progress in tandem. The outcome of any criminal investigation will not necessarily exempt the member of staff from any disciplinary action. An investigation will be conducted internally by the designated Human Resources Office representative who will determine if it is reasonable based on the facts of the case for the matter to proceed to a formal Disciplinary Hearing.

Keeping Records

It is important, and in the interests of both management and the member of staff, that you keep written records during the disciplinary process. You should include:

- the nature of the alleged misconduct
- a copy of the investigatory report and all accompanying documentation
- a note of the Disciplinary Hearing
- the outcome of the Disciplinary Hearing and the reasons for action taken
- whether there was an appeal and, if so, the outcome
- a note of any grievances raised during disciplinary proceedings
- any subsequent developments

You should pass all records to the designated Human Resources Office representative who will store them on the member of staff's personal file. The records will be treated as confidential and retained in accordance with the Data Protection Act 1998, which gives members of staff the right to request and have access to certain personal data. A record of disciplinary sanctions imposed will be expunged from personal files in accordance with the timescales detailed in Annex C of the Disciplinary Procedures.

Other

Throughout the process you should be mindful that support is available from the Confidential Counselling and Information Service to yourself, the affected member of staff, the witnesses, or anyone else affected by the case if dealing with the situation is causing personal stress.

Disciplinary Procedures - Guidance for Managers

For further information contact:

HumanResources@parliament.scot

0131 348 6500

