

INTRODUCTION

Disciplinary rules and procedures promote orderly employment relations, fairness and consistency in the treatment of individuals. The procedures described here will help ensure that the standards described elsewhere in the Conduct section are applied.

If for any reason you do not comply with the standards of conduct the Scottish Government expects of you, consideration will be given to whether to take disciplinary action against you. Our disciplinary procedures exist to ensure that all cases are handled consistently, fairly and impartially, and are based on principles of natural justice.

SCOPE & APPLICATION

Scope of Discipline

- Disciplinary procedures are used where problems of misconduct are related to behaviour. Problems which are work related will normally be dealt with under Less than Effective Performance procedures.
- Disciplinary procedures may be initiated irrespective of whether misconduct occurs in or outwith the workplace. In the latter case, action will normally only be taken where misconduct has a bearing on the officer's position as a Civil Servant. Criminal convictions in particular may be grounds for disciplinary proceedings.
- **Any member of staff who is arrested and refused bail, or charged with or convicted of any criminal offence must report the facts to the HR Shared Service Centre as quickly as possible.** Traffic offences for which the penalty has not included imprisonment or disqualification from driving need not be reported.
- Some examples of the types of misconduct which should, if appropriate, be dealt with under the disciplinary procedures are listed in Examples of Misconduct. **It is important to note that the list is for illustrative purposes only and that it is not exhaustive.** The seriousness of the misconduct will determine the penalty to be imposed (see Examples of disciplinary penalties)

Application of Disciplinary Procedures

- Disciplinary decisions concerning the Permanent Secretary will be taken by the Head of the Home Civil Service after consultation with the First Minister and, as appropriate, the Prime Minister. Decisions concerning officers in SCS band 2 and above with a minimum JESP score of 14, the Chief Executives of Agencies or the Heads of Associated Departments will be taken by the Permanent Secretary. These officers have the right of appeal to the Head of the Home Civil Service.
- The procedures set out in the attached Appendix - Disciplinary Procedures, will apply to all other staff who have completed their probation period (including Scottish Government staff on loan/secondment to other organisations) in the Scottish Government, its Agencies and Associated Departments. Staff on loan/secondment to the Scottish Government will be

subject to Scottish Government rules of conduct but will be dealt with under their own organisation's disciplinary procedures.

PRINCIPLES

Principles of disciplinary procedures

The principles governing the disciplinary procedures are that:

- disciplinary cases will be dealt with expeditiously but fairly. Procedures will be followed without discrimination, whether direct or indirect, on grounds of sex, marital/civil partnership status, age, race, ethnic origin, sexual orientation, disability, religion or belief, working pattern, employment status, gender identity (transgender), caring responsibility, or trade union membership, marital status, race, nationality, ethnic origin, sexual orientation, disability or religion;
- anyone accused of an offence of a disciplinary nature will be informed of the complaint against them;
- allegations of misconduct will be investigated before disciplinary action is taken;
- staff will be given the opportunity to state their case before any decisions are taken;
- staff have the right to be accompanied by a Trade Union representative or colleague during formal disciplinary meetings and hearings. (Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions. Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action may be called for, the meeting should be ended and a formal meeting arranged at which the member of staff will have the right to be accompanied.);
- no-one will be dismissed for a first disciplinary offence except in a case of gross misconduct when the penalty may be summary dismissal without notice or compensation in lieu of notice;
- everyone has the right to appeal against any disciplinary penalty imposed.

EXAMPLES OF MISCONDUCT

- Lateness for work.
- Failure to report absences before 10 am.
- Misuse of flexible working hours scheme.
- Breaches of security.
- Anti social behaviour - for example smoking in a non-designated area or being rude to a member of the public.
- Theft.
- Fraud.
- Deliberate falsification of any records.
- Misuse of official information or position.
- Discrimination on any grounds.
- Sexual and other harassment.
- Assault.

- Incapability through alcohol or being under the influence of or in possession of illegal drugs whilst at work or acting in an official capacity.
- Deliberate damage to Scottish Government property.
- Misuse of Scottish Government computer equipment and systems.
- Negligence which causes financial loss, damage to property or injury to people.
- Accepting or soliciting gifts or hospitality as an inducement to show favour.
- Refusing to obey a legitimate instruction.
- Insubordination.

This list is for illustrative purposes only: it is not exhaustive. The gravity of the misconduct will determine whether it is dealt with as a minor or serious offence.

EXAMPLES OF DISCIPLINARY PENALTIES

- Written reprimand.
- Forfeiture of one or more annual pay awards or a pay freeze for one or more future settlements.
- Monetary payment by way of a fine or restitution, in whole or in part, either for culpable loss or damage caused by the officer or for unauthorised absence from duty. Such payments may be recovered by deduction from pay with the individuals prior knowledge.
- Suspension from duty for a specific period with loss of pay.
- Ban for a specific period from applying for promotion.
- Move to a post in a lower pay range or band including removal of, or eligibility for, temporary responsibility supplement.
- Dismissal.

This list is for illustrative purposes only: it is not exhaustive

DISCIPLINARY PROCEDURES

Minor offences

- Line managers should deal with minor misconduct as part of day to day management responsibilities. In some cases there may be significant underlying reasons for a change in conduct. For example coming in late may be due to domestic problems. Therefore, in all cases it is important to establish the facts and consider whether the matter should be dealt with informally or under the formal disciplinary procedures. The HR Shared Service Centre is available to offer advice in individual cases and should always be consulted when the matter is to be dealt with formally.
- Line managers must keep notes of any oral warnings and copies of any written warnings that they issue under the formal disciplinary procedures. They must copy written warnings to the HR Shared Service Centre. The need for retention of written warnings will be reviewed after 6 months.

Serious offences

Serious Disciplinary Offences (Including Gross Misconduct)

Where an allegation of misconduct is more serious, or where minor offences are repeated after warnings, line management must immediately consult the Human Resources Shared Service Centre (HRSSC) who will appoint an HR Professional Advisor to advise on the appropriate steps to take and the management of the case.

Serious disciplinary offences will be dealt with promptly and in the following manner:

- where the facts are not clear an independent investigating officer (not previously involved in the complaint against the officer) will be asked to make investigations. The investigating officer should be at least Band B level.
- before an investigation begins, the member of staff concerned will be advised in writing by the investigating officer that he or she is being investigated, of his or her right to remain silent and of his or her right to be accompanied by a Trade Union representative or colleague;
- these investigations may include interviewing staff, including the officer concerned, and may also include a search of Scottish Government property including desks and cupboards etc. Where any search is being undertaken in the course of a disciplinary investigation, it will be undertaken by at least 2 people. Where any search involves a search of accommodation ordinarily occupied by the officer concerned, it will normally be conducted in the presence of the officer. Only exceptionally, or where the officer has consented in writing, will the search be carried out in the officer's absence. Personal belongings will not be searched without the officer's consent;
- the investigating officer will report the facts in writing to the appointed HR Professional Advisor, for a decision on whether there is a case to be answered;
- if it is decided that there is no case to answer, the officer against whom an allegation has been made, and where appropriate, the officer making the complaint, must be informed of this in writing. A decision not to proceed with disciplinary action in cases of alleged serious fraud, other than where the individual is being prosecuted, will be taken by the Permanent Secretary, or the Registrar General or Chief Executive of an Agency, as appropriate, after consultation with one of The Scottish Ministers;
- if it is decided that disciplinary action should be taken the HR Professional Advisor will provide the officer with a written statement setting out the facts and details of the charge;
- the officer will be invited to submit a written reply to the charge within a reasonable time (normally 10 working days). This should include any relevant personal, domestic or social circumstances;
- a Disciplinary Panel will be convened. A hearing will be arranged during which the officer may make oral representations;
- the Disciplinary Panel will be chaired by a line manager from Band C or above who has had no previous involvement in the complaint against the officer and who is one level higher than the individual concerned. An HR Professional Advisor with no previous involvement in the case will also be a member of the Panel. The officer who is the subject of the complaint will be entitled to be accompanied by a Trade Union representative or colleague;
- the Disciplinary Panel will decide whether or not the disciplinary charge is well founded, and if so, what penalty is appropriate;

- where possible the Disciplinary Panel will inform the officer of their decision, the reasons for the decision and, where appropriate, any penalty, at the conclusion of the hearing. The officer will receive confirmation of these details in writing together with the procedures for lodging an appeal;
- where the Disciplinary Panel cannot give a decision immediately, the officer will be informed in writing by the Panel as quickly as possible of the decision, the reasons for the decision, the penalty where appropriate and the procedures for lodging an appeal;

Penalties & suspension

Disciplinary Penalties

There is no set tariff of penalties for particular offences. In cases of gross misconduct the penalty will normally be summary dismissal without notice or compensation in lieu of notice.

Suspension from Duty

The person exercising disciplinary powers may suspend from duty an officer who has been accused of a disciplinary offence or who is under criminal investigation. They may also decide to withhold pay wholly or in part during the suspension. Where it is decided that pay should continue it will be paid at the basic pay rate (i.e. that which would be paid during the first 6 months of sickness absence). Decisions to suspend staff with or without pay may be made at any time during the disciplinary procedure or criminal investigation. Suspension will normally be automatic while allegations of gross misconduct are investigated.

Criminal proceedings & appeals

Criminal Proceedings

Disciplinary action may be taken in parallel with criminal proceedings concerning the same circumstances.

Appeals

- All staff have a right of an internal appeal against a disciplinary penalty, including dismissal, and will be informed of the procedures to follow. The officer appointed to hear the appeal will be from the Senior Civil Service.
- Staff who are dismissed will be informed if they are eligible to appeal to the Civil Service Appeal Board (CSAB) and the procedures they should follow (see Appeals and Grievances).

Records of Disciplinary Proceedings

- A full record of disciplinary proceedings which have resulted in a finding against the officer charged with the disciplinary offence will be placed in the officer's career folder and kept by the HR Shared Service Centre.

- Any written warnings given by line management and passed to the HR Shared Service Centre will not normally be taken account of in any subsequent disciplinary hearings after a lapse of 12 months.
- With the exception of serious offences no account will be taken of an earlier offence and any subsequent disciplinary proceedings after a lapse of 5 years. Where an earlier offence is considered serious enough to be taken into account in any subsequent disciplinary action, the officer concerned will be notified.
- No record of any hearsay or unsubstantiated allegation will be kept on an officer's career folder.