

Disciplinary Policy

18 February 2021

Document governance and management

Document owner/author/lead	Director of Finance and Resources
Version number	8
Current version referred for approval to	Council 18 th February 2021
Date of next review	February 2024
Date of equality impact assessment (mandatory)	11 November 2020
Date of privacy impact assessment (if required)	N/A
Date of environmental impact assessment (if required)	N/A

Change log – for minor changes to spellings, sentences etc. Use when policy is not being put forward for approval.

Officer name	Date of change	Description of change	Confirm upload of revised document

Contents

1. Introduction	5
2. Principles.....	7
3. Roles and responsibilities	8
3.1 Council	8
3.2 Executive Management Team	8
3.3 Operational Management Team	9
3.4 Line manager	9
3.5 Staff	9
3.6 Witness responsibilities	9
3.7 Human Resources	10
4. Policy.....	11
5. Procedure.....	12
5.1 Informal action	12
5.2 Formal action	12
5.3 Precautionary suspension	14
5.4 Disciplinary hearing	15
5.5. Disciplinary outcome.....	15
5.6. Duration of warnings	16
5.7. Appeals against disciplinary warnings	17
5.8. Appeals against dismissal	18
6. Further information	19
6.1 Learning and development.....	19
6.2 Sources of support	19
6.3 Related documents.....	19
Appendix 1 – Guidance for carrying out a disciplinary investigation	20
Appendix 2 – Guidance on conducting a formal disciplinary hearing	25
Appendix 3 – Procedure to be followed by the Employment Appeals Panel	28
Appendix 4 – Special circumstance	30

Appendix 5 – Examples of misconduct and gross misconduct.....	32
--	-----------

1. Introduction

Purpose

The Disciplinary Policy and 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 policy 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 require investigation, employees will be managed through this Disciplinary Procedure.

Scope

This policy applies to all temporary and permanent Scottish Social Services Council employees, including the Chief Executive and Executive Management Team (EMT) members. This policy does not apply to social service employers, workers or social work students.

It applies to alleged misconduct in and out of the workplace where the alleged behaviour is still in the course of the employment relationship eg at work related courses, conferences or meetings out-with normal working hours, social events or whilst working from home.

The procedure also covers behaviour outside work which has a bearing on working relationships, eg 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.

Definitions

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 5.

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 the Capability Policy.

Where we believe poor performance is the result of deliberate negligence/insubordination (an act of wilfully disobeying reasonable management instructions), or where the employee has made serious errors, we will use the Disciplinary Procedure.

Legislation

- Employment Rights Act 1996
- Employment Relations Act 1999
- Data Protection Act 2018
- General Data Protection Regulation (2016/679 EU)
- ACAS code of practice on disciplinary and grievance procedures, and related guidance
- ACAS guidance on disciplinary and grievance procedures during the coronavirus pandemic

Data protection

When dealing with misconduct, we will process any personal data collected in accordance with our data protection policy. In particular, we will record only the personal information required and keep the information only for as long as necessary.

<https://ssscdundee.sharepoint.com/sites/Intranet/Policies%20and%20procedures/Strategy%20and%20Performance/Data%20Protection%20Policy%20Oct%202018.pdf>

A written record of all meetings conducted under this procedure will be made. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the capability procedure.

In particular, data we collect as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure.

Monitoring and review

Human Resources and the Partnership Forum are responsible for monitoring and implementing this policy to make sure that it is being fairly and consistently applied and that the stated principles and values are being met. We will review this policy every three years (or earlier should legislation change) and make amendments as appropriate in consultation with the Partnership Forum. Minor amendments will be outlined in the change log and the version control updated. Major changes will follow the consultation cycle – Equality Impact Assessment; Operational Management Team; Partnership Forum; Executive Management Team and where appropriate Council.

2. Principles

Policy specific

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

- 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
- Where matters of governance are evident, appropriate advice will be sought from the Legal and Corporate Governance.
- 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, eg 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 Capability Policy and Procedure.
- Any outcome of the formal discipline procedure will be proportionate to the allegation and will take into account any mitigating circumstances.

When applying this policy and procedure, we expect our staff and our managers to treat each other with dignity and respect by acting in accordance with our organisational values.

Recognition and respect for others

- We treat each other with kindness and respect and value the contribution every member of staff makes.
- 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 under the Equality Act 2010, they will be accommodated appropriately.

Working together

- We recognise the value of positive and constructive involvement and participation from the trade unions. The commitment to partnership working is confirmed in the Partnership Agreement and is integral to the development and maintenance of harmonious employee relations.
- Employees have the right to be accompanied at formal stages of the policy by a work colleague or a trade union representative. We will allow support at the informal stages where appropriate.
- 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.

Accept responsibility and accountability

- The timescales detailed in this procedure may be extended with the agreement of both parties and likely timescales discussed.
- Act in a fair and consistent way being open and honest about any performance issue.
- Respecting confidentiality and only sharing information, as appropriate, with relevant postholders
- Deal with issues kindly, sensitively and showing compassion.
- All disciplinary investigations into potential misconduct will be carried out without unreasonable delay
- Informal action will be used to resolve matters of minor misconduct, if appropriate.

3. Roles and responsibilities

3.1 Council

People management policies which include any of the following are reserved for the Council.

- Associated additional costs that are not contained within the current budget.
- Any proposed fundamental change to terms and conditions of employment.
- Where the Council has a clearly defined role to play.

Council is accountable for:

- approving this policy and procedure
- making sure the structure of the organisation is fit for purpose to deliver objectives
- making sure that the application of this policy does not breach any statutory requirement placed upon the SSSC
- making sure that the Chief Executive and EMT have in place appropriate and up to date policies and procedures for the effective management of staff
- making sure those policies and procedures are applied fairly and in accordance with the law
- hearing and deciding on the merits of any appeals made under this policy.

3.2 Executive Management Team

The EMT is responsible for:

- the implementation of the policy and to create a culture in which staff can flourish through interesting and rewarding work
- delegating responsibilities related to the policy to Operational Management Team (OMT) and line managers
- making sure that managers and staff receive appropriate development, support and training to implement the policy appropriately
- making sure that the application of this policy and procedure does not breach any statutory requirement placed upon the SSSC
- ensuring that changes to people management policies not retained for the specific approval of the Council are reported to the Council on a quarterly basis for endorsement

- suspending an employee on a precautionary basis pending an investigation into alleged misconduct and obtaining advice from HR before suspending an employee
- decisions to dismiss can only be taken by a member of the EMT.

3.3 Operational Management Team

The OMT is responsible for:

- making sure their managers and staff are aware of the processes to be followed within this policy and procedure
- making sure that employees are treated consistently and fairly, being mindful of the needs of the organisation as well as that of the individual
- suspending an employee on a precautionary basis pending an investigation into alleged misconduct and obtaining advice from HR before suspending an employee.

3.4 Line manager

The line manager is responsible for:

- acting in a fair and consistent way, being open and honest about conduct
- always acting promptly to deal with any misconduct on the part of their employees
- dealing with issues kindly, sensitively and showing compassion
- respecting confidentiality and only sharing information, as appropriate, with relevant postholders
- considering our responsibilities under the Equality Act (2010) and, where appropriate, make reasonable adjustments for any individual who may have a disability or other protected characteristic
- considering any health impact and considering supports such as occupational health.

3.5 Staff

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

3.6 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 trade union rep, 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, ie they can claim their working time and any reasonable travel expenses.

3.7 Human Resources

Human Resources is responsible for:

- updating this policy and procedure in line with the agreed schedule, or as changes occur, to comply with employment and other pertinent legislation, best practice and the SSSC people strategy
- developing this process and procedure collaboratively to meet legal and business requirements
- keeping all parties up to date, and will ensure that everyone follows the Disciplinary Procedure and that all are aware of their rights and responsibilities
- developing template letters, forms and guidance
- offering advice on how to apply the disciplinary policy and procedure
- making sure the process is followed in line with the policy and procedure
- reminding employees and managers of their responsibilities under the policy and procedure, if required
- No formal investigation will take place into alleged misconduct without full discussion with HR and reference to this Disciplinary Procedure.
- All disciplinary hearings will have a member of HR in attendance to provide advice and guidance.
- monitoring use of the policy and processes and reporting any non-compliance to Heads of Department/Directors
- 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 Panel
- Provide Council with an overall picture of number of suspensions and the duration in the HR Annual Report.

4. Policy

We operate a disciplinary policy and procedure to ensure the proper operation of our business and the health and safety of our employees. We will apply the following procedure in all instances where management regards disciplinary action as necessary, other than in cases of minor misconduct where an informal warning may be appropriate.

We reserve the right to implement the procedure at any stage as set out below taking into account the alleged misconduct. Employees will not ordinarily be dismissed for a first disciplinary offence.

We will provide advance written notice to employees of the case against them.

The time limits outlined in this procedure may be varied by agreement.

Unsatisfactory job performance related to capability or termination of employment for reasons other than misconduct (for example redundancy) should be dealt with through other appropriate procedures.

Holding a disciplinary hearing in an employee's absence will be a last resort. It may be an option if the employee has persistently failed to attend scheduled hearings for no good reason.

This procedure does not set out defined timescales, which will inevitably vary with the facts of each case. What matters is that the employee is given adequate time in which to demonstrate improved performance before further action is taken. We will balance this need for time with the need to resolve an issue and also avoid the additional stresses that are caused when an employee is placed under additional supervision for an extended period. Where timescales are referenced these are as a guide only.

Counter Fraud Service (CFS), in partnership with the SSSC will work actively to promote an anti-fraud culture, the aim being that employees, contractors, consultants and others will come to regard fraud as unacceptable. Further information can be found in the Counter Fraud, Bribery and Corruption Framework and the Financial Crime Action Plan ([Link to be inserted once available](#)).

We will not tolerate fraud. Employees found to be committing fraud or corrupt acts face dismissal under the disciplinary process. Employees and any other parties suspected of committing fraud or corrupt acts will have their cases referred to the police when this is in the public interest.

Staff may use the CFS Reporting Line 08000 151628 (powered by Crimestoppers) or report their suspicions (anonymously if desired) through the CFS Website www.cfs.scot.nhs.uk. Alternatively staff may choose instead to contact the charity "Public Concern at Work" on 0207404 6609 or via their website – www.pcaw.co.uk, or free, confidential phone line, 0800 008 6112 who would offer the employee advice on how to proceed.

5. Procedure

5.1 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 HR 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.

5.2 Formal action

5.2.1 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 HR. 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, eg 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 HR. An investigating officer will be appointed (supported by HR) 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 EMT.

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, ie more than one reorganising of a date.

Other SSSC policies or guidelines may need to be considered as part of the investigation process, eg 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 4 for further details.

We will not tolerate fraud. Employees found to be committing fraud or corrupt acts face dismissal under the disciplinary process. Employees and any other parties suspected of committing fraud or corrupt acts will have their cases referred to the police when this is in the public interest.

The SSSC has devised in collaboration with Counter Fraud Services, a Financial Crime Action Plan which provides detailed fraud and corruption response arrangements to enable any information gained or allegations made to be properly and effectively dealt with. The plan explains how any fraud allegations will be dealt with and who is responsible for their investigation. Further information can be found in the Counter Fraud, Bribery and Corruption Framework and the Financial Crime Action Plan ([Link to be inserted once available](#)).

Where employees have committed a fraudulent or corrupt act consideration will be given in each case to determine whether any prosecution is undertaken at the same time as internal disciplinary processes are undertaken. So called "parallel action" will be undertaken wherever possible and this is in the public interest.

In all cases where it is in the public interest, criminal or civil action will be taken by the SSSC in collaboration with the police CFS as appropriate.

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 HR will liaise with them.

A guide to carrying out a disciplinary investigation is attached at Appendix 1.

5.2.2 Senior management

If the Chief Executive is subject to a disciplinary investigation, the Convener 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 Convener. HR 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 Convener to perform that role. HR advice may be sought from an external source.

5.3 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 HR 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 eg 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 EMT/OMT manager which will be confirmed in writing and sent by recorded delivery.

- The reason/s for the suspension.
- 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.
- The employee must attend all meetings as part of the investigatory process.
- Regular reviews of the suspension will take place and appropriate contact will be made regularly with the employee.
- 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.
- Arrangements may be made for the employee to return equipment for the duration of the suspension period and all network accounts may be disabled.
- 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.
- During the period of precautionary suspension, the employee will remain on full pay.
- Council will be informed of any staff on suspension (anonymised), the duration and the rationale for the duration.

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. Suspensions will be reviewed on a monthly basis.

5.4 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 HR five calendar days before the hearing date.

A guide for managers on conducting a formal disciplinary hearing is attached at Appendix 2.

5.5. 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. A note of the disciplinary hearing will be shared with relevant parties involved.

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 EMT.

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.

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.

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.

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, ie 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.

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.

Summary dismissal

Certain offences will be regarded as gross misconduct (see Appendix 3 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.

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 (flexi time)
- incremental pay increase withheld.

5.6. 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.

5.7. Appeals against disciplinary warnings

If an employee feels that a disciplinary warning is unfair, then they may appeal in writing, stating the grounds of appeal, to the Director of Finance and Resources who will work with HR to allocate the case and arrange a hearing within seven calendar days of the date on which they were informed in writing of the decision. A member of the Executive Management Team would write to the Chief Executive. Grounds of appeal include those listed below:

- New evidence has come to light since the hearing which may have an impact on the decision.
- An issue with the process and procedure followed.
- The decision was too severe or inappropriate in the circumstances.

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 HR 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 employee will be notified of the outcome of the appeal hearing as soon as possible after the hearing has been concluded. A note of the hearing will be shared with the parties involved.

If an employee raises any new matters during the appeal, the SSSC may need to carry out further investigations. If any new information comes to light, the employee will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the appeal hearing.

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

The decision of the appeal hearing is final.

5.8. Appeals against dismissal

Appeals against dismissal must be submitted to the Head of Human Resources or appropriate senior manager within 14 calendar days of receipt of the written record of the decision to dismiss and will be heard by the Employment Appeals Panel (Appeals Panel) by three Council Members. The Appeals Panel procedure is attached at Appendix 3.

Appeals will be heard as soon as possible after their receipt by the Head of Human Resources or appropriate senior manager. The employee will be advised of the right to be represented at the Appeals Panel and to call any witnesses.

A member of HR and the chair of the disciplinary hearing will be present as well as any relevant witnesses, if required. The employee can bring a work colleague or a trade union representative to the appeal hearing for support.

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 employee fail to appear on the date and time of the appeal and provide no good reason why they cannot attend, the Appeals Panel will dismiss the appeal.

In all events, the decision of the Appeals Panel is final.

A hearing may be adjourned if we need to gather any further information or consider matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The potential outcomes of the appeal are below:

- 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 employee will be informed in writing of the final decision as soon as possible, usually within seven days of the appeal hearing. There will be no further right of appeal.

6. Further information

6.1 Learning and development

To support the fair and consistent application of this policy, we will ensure full awareness and understanding of the issues relating to disciplinary for managers by incorporating training on this policy within line management development programmes and ensure that all managers have participated in such a programme.

6.2 Sources of support

- The Employee Assistance Programme
- Unison or other trade union representative
- ACAS
- Human Resources
- Occupational Health

6.3 Related documents

- Code of Conduct
- Maximising Attendance
- Alcohol and Drugs Misuse
- Corporate Health and Safety
- Capability
- Whistleblowing Policy
- Development Discussion Process
- Learning and Development
- Counter Fraud, Bribery and Corruption Framework
- Financial Crime Action Plan

Appendix 1 – 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 HR 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.

Carrying out an investigation

- Make sure the investigation is carried out within as reasonable timescales as possible.
- Decide how best to conduct the investigation. This will depend on the complexity of the case eg 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 eg Head of Legal and

Corporate 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 HR, 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 HR. 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 HR if required. Advise the employee and any witnesses of the support available from the Employee Assistance Programme (EAP).
- Some witnesses may be reluctant to provide evidence and 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 HR 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 2 – 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 eg disciplining officer will be chairing the proceedings, HR 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. A note of the hearing will be shared with all relevant parties involved.

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**/HR 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 HR 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 into 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 HR 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 HR 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 3 – Procedure to be followed by the Employment Appeals Panel

The Employment Appeals Panel (Appeals Panel) of the Council 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 relevant 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 Appeals Panel 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 Appeals Panel.
- 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 Appeals Panel 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 Appeals Panel.
- Witnesses may be recalled by either side or by the Appeals Panel 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 Appeals Panel will then deliberate in private in the presence of officer/s appointed to assist them.
- If the Appeals Panel can reach a decision on the day, both parties will be called back in and advised of the outcome.
- If the Appeals Panel is 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 Code of Corporate Governance, the Appeals Panel 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 eg issue a final written warning, unpaid suspension
- uphold the previous disciplinary decision of dismissal.

Note

Where an appeal against dismissal is substantiated and the Appeals Panel 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 Appeals Panel is final.

Appendix 4 – 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, Bribery and Corruption Framework and Financial Crime Action Plan (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 investigating officer 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.

IT security policy

If a line manager has reason to believe that the potential misconduct has impacted on or compromised IT security, then the appropriate head of department 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 5 – 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 timekeeping.
- 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 IT 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 that is contradictory to the Code of Conduct or the SSSC Codes of Practice.
- 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 that is contradictory to the Code of Conduct or the SSSC Codes of Practice.
- Serious breach of confidence.
- Serious misuse of the organisation's property or name.



Scottish Social Services Council
Compass House
11 Riverside Drive
Dundee
DD1 4NY

Tel: 0345 60 30 891
Email: enquiries@sssc.uk.com
Web: www.sssc.uk.com

If you would like this document in a different format, for example, in larger print or audio-format, or in another language please contact the SSSC on 0345 60 30 891.

We promote equality by removing unlawful and unfair treatment on the grounds of any protected characteristic wherever possible.

© Scottish Social Services Council 2021