



The Scottish Parliament  
Pàrlamaid na h-Alba

# Disciplinary Procedures

## Pròiseasan Smachdachaidh

*23 August 2018*



# Introduction

It is essential that certain standards of conduct, performance and attendance are maintained to protect the smooth running of the Scottish Parliament and the well-being of our members of staff. You are required to undertake your role in a professional manner and to conduct yourself in accordance with the rules, policies and procedures set by the SPCB as your employer.

The procedures set out in this section (“the Disciplinary Procedures”) and in the associated guidance apply only to sections 4.1 – 4.5 of the Staff Handbook, which set out the standards of conduct expected of you.

You are required to meet other standards set out in the Staff Handbook and these are:

- Standards of Performance (Section 6.3); and
- Standards of Attendance (Section 9.6).

The Disciplinary Procedures detail the action which will be followed should you digress from the standards of conduct expected by the SPCB, with a view to assisting you to satisfactorily improve your behaviour. You will find examples of behaviours which are normally regarded as misconduct and gross misconduct at Annex A and Annex B respectively. The Disciplinary Procedures do not form part of your contract of employment.

The procedures which will apply should you digress from the required standards of performance and attendance are set out in Section 6.3 and 9.6 of this Handbook respectively. Further guidance on the application of all three of these procedures can be found in the Guidance for Managers and Staff.

## Purpose

The Disciplinary Procedures are principally intended as an aid to good management and are designed to ensure that you are encouraged to improve if your standard of conduct is unsatisfactory. You should not, therefore, see them as being primarily punitive in nature, although particular circumstances may result in disciplinary sanctions being imposed. These procedures set out a clear framework to enable disciplinary matters to be dealt with in a fair and consistent manner and without undue delay.

The Disciplinary Procedures reflect the ACAS Code of Practice on Disciplinary and Grievance Procedures, relevant case law and recognised good practice.

# Introduction

## Application

The Disciplinary Procedures apply only to staff employed by the SPCB who have completed their probationary period satisfactorily. Separate Disciplinary Procedures exist if you are on probation and these are detailed in your letter of appointment and probation guidance for staff set out in the Guidance for Managers and Staff. If you are on secondment to the Scottish Parliament, you are required to comply with the principles set out in Section 4 of this Handbook. If you fail to maintain these standards, your parent organisation will be asked to investigate the matter; your secondment may be terminated; and you will normally return to your own organisation.

## Principles

The main principles governing the Disciplinary Procedures are that:

- where appropriate, attempts will be made to resolve matters informally in the first instance and guidance will be provided to help you to improve;
- no formal disciplinary action will be taken against you until the matter has been fully investigated and a Disciplinary Hearing has taken place;
- you will be advised of the nature of any complaint against you and be given the opportunity to put forward your case before any decision is made;
- in accordance with the Equality Framework, the SPCB will not discriminate in the application of these procedures in respect of age, disability, gender, race, nationality, ethnic or national origin, religion or belief, sexual orientation, trade union membership or lack thereof. Reasonable adjustments will be put in place, as appropriate, to support staff with a disability; at all formal stages of the Disciplinary Procedures, you will have the right to be assisted by a trade union representative or work colleague. You may not be accompanied by a legal adviser at any stage;
- disciplinary action will not be taken against a recognised trade union representative, relating to his or her role as a trade union representative, until the full-time official of the union concerned has been informed;
- you will not be dismissed for a first offence except in a case of gross misconduct when the sanction will normally be dismissal without notice or compensation in lieu of notice;
- all timescales stipulated in this policy and procedure may be varied by mutual consent;
- you will have the right to appeal against any disciplinary sanction imposed, in accordance with the procedures set out in Paragraph 18; and
- the SPCB reserves the right to invoke the procedure at any stage in the process and to miss out a step or steps in the process if it considers it appropriate in the circumstances. If this occurs, reasons will be given.

# Introduction

## Enquiries

If you have any enquiries about the Disciplinary Procedures, you should contact the Human Resources Office (ext. 86500).

# Disciplinary Procedures

Managers may seek advice about the Disciplinary Procedures from Human Resources at any time. However, managers must consult their HR representative for advice and guidance prior to taking any formal disciplinary action.

## Informal Stage

In cases of minor misconduct, the formal stages of the Disciplinary Procedures will not normally be initiated until you have been advised informally by your manager of your perceived shortcomings, counselled and/or coached on what you must do to improve, and given the opportunity to make such improvement(s).

You will find guidance on the process for dealing with issues through the informal stage in Guidance for Managers and Staff. The process involves an informal meeting to discuss areas of concern and to agree the action which requires to be taken to satisfactorily address matters. A note of the informal meeting is taken and a review period is set in which an improvement in conduct should be achieved. The informal approach does not constitute disciplinary action.

In cases where more serious misconduct is alleged or your conduct has not improved following attempts to resolve the matter with you on an informal basis, your manager will report the matter to the HR representative and action will be taken in accordance with Paragraph 5 of the Formal Stages of the Disciplinary Procedure

## Formal Stages

### **Stage 1 - Disciplinary Investigation**

Where your manager considers that formal action may be appropriate, a proper and thorough investigation of the facts will be undertaken. The Investigating Officer (who will normally be a representative from the Human Resources Office) will investigate the complaint against you as promptly as is reasonably practicable in the circumstances.

Before the investigation begins, you will be advised in writing by your manager that your conduct is being investigated and you will normally be invited to attend an investigatory interview by the Investigating Officer. You are entitled to be assisted at an investigatory interview by a trade union representative or work colleague. In accordance with Paragraph 17 you may be suspended, normally on full pay, whilst the investigation is carried out.

Following the investigation, you will be informed in writing whether the Head of Office/Group considers that the case merits progression to a Disciplinary Hearing. If there appears to be grounds for disciplinary action, you will be invited by the Head of Office/Group to attend a Disciplinary Hearing and you will be provided in advance with a written statement setting out the full details of the allegations against you, together with a copy of the investigatory report and any accompanying evidence.

# Disciplinary Procedures

## Formal Stages (Continued)

### Stage 2 - Disciplinary Hearing

A Disciplinary Hearing will be set up and you will be given a minimum of seven working days notice of the Hearing. At the Hearing, you may make oral and/or written representations and you will be entitled to be assisted by a trade union representative or work colleague. If the date and time of the Hearing are unsuitable for you and/or your companion, you can suggest an alternative date and time within seven working days of the date originally proposed. You must take all reasonable steps to attend the 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-Posts with Delegated Authority to Apply Sanctions. 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.

Having heard your representations, the Hearing Manager will adjourn to consider the evidence and to determine whether the disciplinary case has been made and, if so, whether a disciplinary sanction is appropriate. The sanctions which the Hearing Manager has the authority to impose are set out in Annex C - Disciplinary Sanctions. When a decision is made, the Hearing Manager (or where appropriate, the Head of Group) will reconvene the Hearing, on the same day if possible, and he or she will inform you of the decision, the reasons for the decision, the sanction where appropriate, and the procedures for lodging an appeal including details of the Assistant Clerk/Chief Executive (Appeal Manager) to whom any appeal should be addressed. You will receive confirmation of these details in writing normally within seven working days of the date on which you were informed of the decision.

# Disciplinary Procedures

## Formal Stages (Continued)

### Stage 3 - Appeal

If you wish to appeal the outcome of a Disciplinary Hearing, you must set out the reasons for the appeal in writing and submit it to the Appeal Manager within seven working days of the date of written confirmation of the decision.

You will be invited to attend an Appeal Hearing at which you may make oral and/or written representations. You may be assisted at the Appeal Hearing by a trade union representative or work colleague. You will be given a minimum of seven working days notice of the Appeal Hearing. If the date and/or time of the Appeal Hearing are unsuitable for you and/or your companion, you can suggest an alternative date and time within seven working days from the day originally proposed. You must take all reasonable steps to attend the Appeal Hearing.

Appeals will normally be heard by the Assistant Clerk/Chief Executive with line responsibility for the business area. A representative from the Human Resources Office will be in attendance to assist the Appeal Manager and provide procedural advice. If the Assistant Clerk/Chief Executive has been formally involved in any previous stage of the procedure, an alternative Appeal Manager will normally be nominated by the Human Resources Office if this is practicable. The member of staff will be told who the nominated alternative is when he or she is informed of the outcome of any formal meetings or Hearings held under this procedure.

Having heard your representations, the Appeal Manager will adjourn to consider the outcome of the appeal. The Appeal Manager may decide to:

- uphold the appeal; or
- dismiss the appeal; and/or
- uphold the disciplinary sanction; or
- impose a lesser disciplinary sanction.

When a decision is made, the Appeal Hearing will be reconvened, on the same day if possible, and you will be informed of the decision and the reasons for it. You will receive confirmation of these details in writing within seven working days of the Hearing. The decision of the Appeal Manager is final.

# Disciplinary Procedures

## Order of Events

Ordinarily the disciplinary process will follow the sequence outlined above. However, the SPCB reserves the right to invoke the procedure at any stage in the process where the circumstances are deemed sufficiently serious to merit this and to miss out a step or steps in the process if it considers it appropriate in the circumstances. If this occurs, reasons will be given.

## Suspension from Duty

If an allegation has been made that you may have committed a disciplinary offence, you may be suspended, normally with pay, from work while the investigation is carried out. This might be considered appropriate in cases where the alleged offence constitutes gross misconduct or where it is considered to be in your own best interests and/or the best interests of your business area. A decision to suspend you may be made at any time during disciplinary proceedings. You will normally be suspended automatically while allegations of gross misconduct are investigated.

Suspension from duty in these circumstances is not a disciplinary sanction and you will normally continue to receive full pay and contractual benefits during the period 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. Suspension will only apply for the length of time which is deemed strictly necessary and will be confirmed in writing.

## Criminal Proceedings

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

## Records

A record of any disciplinary action taken against you will be kept on your personal file within the Human Resources Office in accordance with the Data Protection Policy and will be expunged where appropriate after the specified time limit has elapsed.

## Monitoring and Review

The SPCB will review and monitor its Disciplinary Procedures on an ongoing basis, taking into account legislative requirements, recommendations and identified good practice.

# Examples

## Examples of Misconduct (Annex A)

- Persistent lateness without good reason.
- Failure to report absences before 10 a.m. or prior to shifts or rostered commitments.
- Unauthorised absence from work without good reason.
- Misuse of flexible working hours' system, e.g. not recording working time accurately.
- Minor breaches of security.
- Breach of conduct rules including the general standards of behaviour;
- Lobbying Members for any reason while at work (this includes trying to garner support for matters connected to your employment or your outside interests).
- Trying to seek support from your own MSP about anything connected with your own personal claims as a member of staff employed by the SPCB, for example, you may not ask your MSP to try to get you better working terms and conditions.
- Inappropriate behaviour, e.g. being rude to an MSP, a work colleague or a member of the public.
- Damage to the SPCB's property.
- Breach of any of the SPCB's Employment Policies (see Section 13 of the Staff Handbook and the Equality Framework).
- Refusal to co-operate in the SPCB's disciplinary procedures, including procedures for dealing with unacceptable performance and unacceptable attendance.
- Refusal to give consent to allow access to personal or private e-mails or files during the investigation of a suspected disciplinary offence or following any other reasonable request from management.
- Negligence which causes financial loss, damage to property or injury to people.
- Failure to report fraud or suspected fraud as soon as it is discovered or suspected.
- Failure to report to the Human Resources Office any criminal charge or conviction imposed on/ against you within 2 working days of knowing.
- Refusing to work in accordance with Health & Safety rules and procedures.
- Refusing to obey a legitimate instruction.
- Insubordination.
- Action which may bring the SPCB into disrepute.
- Breach of procurement policies.

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

# Examples

## Examples of Gross Misconduct (Annex B)

- Serious breach of security.
- Theft.
- Fraud.
- Deliberate falsification of any records, including deliberate abuse of the time and recording system.
- Abuse of official information or position.
- Discrimination or harassment on ground of sex, sexual orientation, race, religion or belief, disability, age or any other grounds referred to in the Equality Framework.
- Assault.
- Being under the influence of and/or incapacity through alcohol whilst at work or on Parliament premises or acting in an official capacity.
- Being under the influence of, taking, possessing or selling illegal drugs, or any drugs (except over-the-counter remedies) which have not been prescribed to you on medical grounds, whilst at work or on Parliament premises or acting in an official capacity.
- Selling prescription drugs whilst on duty or on parliament premises or acting in an official capacity.
- Deliberate damage to the SPCB's property.
- Serious breach of conduct rules.
- Negligence which causes serious financial loss, damage to property or injury to people.
- The intentional viewing or downloading of pornographic or other derogatory, defamatory, obscene or inappropriate material from internet or e-mail systems.
- Serious breach of Health & Safety rules and procedures.
- Serious breach of any of the SPCB's Employment Policies (see section 13 of the Staff Handbook and the Equality Framework).
- Deliberately making a false or malicious disclosure or carrying out any of the other acts listed as giving rise to disciplinary action under the Public Interest Disclosure Policy.
- Knowingly giving false information or deliberately omitting relevant information on a job application form or curriculum vitae or any other document or report.
- Performing, arranging or carrying out work or activity which could be considered to be in serious conflict with or which adversely affects in any way the SPCB's interest, for example, being a member of a lobbying group, leaking information or running a business from the office.
- Conviction for a criminal offence which is related to your employment.
- Accepting or soliciting gifts or hospitality as an inducement to show favour.
- Deliberate misuse of procurement and corporate credit cards.
- Serious breach of procurement policies.
- Serious action that may bringing the SPCB into disrepute.

This list is not exhaustive and other offences, if they are considered to be serious enough, may be regarded as gross misconduct. Any act of gross misconduct will normally result in the termination of your employment.

# Disciplinary Sanctions

## Disciplinary Sanctions (Annex C)

The level of the sanction imposed will depend upon the nature of the misconduct. In exceptional circumstances, disciplinary sanctions applied under this procedure may be referred to after they have elapsed. It will be a matter for the adviser at a Disciplinary or Appeal Hearing to indicate to the Hearing Manager or Appeal Manager whether such exceptional circumstances arise in any particular case. It will be for the Hearing Manager or Appeal Manager to decide whether or not to take that into account when deciding on an appropriate sanction.

You have the right of appeal against any disciplinary sanction imposed. You should bear in mind, however, that the SPCB reserves the right to invoke the procedure at any stage in the process and to miss out a step or steps in the process if it considers it appropriate in the circumstances. If this occurs, reasons will be given. Any act of gross misconduct will normally result in the termination of your employment.

## Posts with the Designated Authority to Apply Sanctions (Annex D)

- Clerk/Chief Executive
- Assistant Clerk/Chief Executive
- Solicitor to the Scottish Parliament
- Head of Office, Chief Executive's Office
- Principal Private Secretary to the Presiding Officer
- Head of Communications and Research Group
- Head of Chamber and Reporting Group
- Head of Committees and Outreach Group
- Head of Human Resources and Security Group
- Head of Security
- Head of Financial Resources
- Head of Business Information Technology and Broadcasting Group
- Head of Facilities, Events, Exhibitions and Visitor Services Group

In relation to the Clerk/Chief Executive and the Assistant Clerk/Chief Executives, a nominated member of the SPCB will have the authority to dismiss and any appeals against such a decision will be made to the Presiding Officer.

# Disciplinary Procedures (English only)

***For further information contact:***

*HumanResources@parliament.scot*

*0131 348 6500*

