

DISCIPLINARY POLICY

INTRODUCTION

Disciplinary rules and procedures are necessary for promoting orderly employment relations as well as ensuring fairness, consistency and transparency in the treatment of employees. They also enable Tayside Contracts to operate effectively. Rules set standards of conduct at work; procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them.

This policy is in accordance with the 2015 Acas Code of Practice on Disciplinary and Grievance procedures.

As far as reasonably practicable, Tayside Contracts will assist you to achieve acceptable standards of conduct by bringing to your attention rules of the workplace and by providing the necessary training to assist you in undertaking your work effectively and safely. Our Employee Code of Conduct and various employment policies outline the standards of behaviour that are expected from all employees.

This policy should not be viewed primarily as a means of imposing sanctions. Where possible, it aims to encourage improvement in individual conduct.

SCOPE OF POLICY

The policy applies to all Tayside Contracts employees with the exception of the Managing Director who is covered by a separate, albeit similar, procedure.

Concerns in relation to capability will be dealt with in accordance with either the Performance at Work Policy or the Sickness Absence Management Policy.

PRINCIPLES

The Managing Director is ultimately responsible for the management and discipline of Tayside Contracts' employees. The Managing Director, or nominated representative, has the right to warn, dismiss, withhold incremental progression, reduce grade, or apply other disciplinary sanctions, subject to an employee's right of appeal, outlined below. It is the responsibility of the Managing Director, or nominated representative, to ensure that the following principles are complied with:

- The alleged misconduct will be discussed with you by your manager in the first instance and it is their responsibility to decide if a full disciplinary investigation is warranted. Where the misconduct is considered to be of a minor nature it may not necessarily be appropriate for a full disciplinary investigation to be carried out. In these circumstances, you may be issued with Improvement Note detailing what improvements are required and what is expected of you in the future. However, persistent acts of minor misconduct will progress to a formal investigation/hearing, when previous attempts to address these on an informal

basis have been unsuccessful. Examples of misconduct that are likely to progress to investigation are provided in Appendix 1.

- There is no legal right to be accompanied at the investigation stage. However, you will be offered the opportunity to be accompanied by a Trade Union representative or work colleague wherever practicable. The investigation proceedings will not be unduly delayed due to their unavailability.
- The investigation will be carried out by two Investigating Officers. Only after a full investigation will a recommendation be made by the Investigating Officers as to whether the case should progress to a full Disciplinary Hearing or not.
- If, after investigation and the completed investigation report has been submitted, it is considered that a Disciplinary Hearing is necessary, you will be advised in writing of the date, time and venue of the Hearing, the allegations being made, witnesses being called, documentary evidence being presented and of your right to be accompanied and to call your own witnesses. The letter will also advise you that if the allegation/allegations against you are substantiated, a formal disciplinary sanction will be issued, which may include dismissal.
- A copy of the Disciplinary Policy and Procedure will be enclosed with the letter asking you to attend the Disciplinary Hearing, along with a copy of the investigation report and any documentary evidence.
- Every effort will be made to hold the Hearing at the earliest possible opportunity and you will receive at least 7 calendar days' notice of the date of the Hearing.
- The Disciplinary Hearing is held to allow a panel (usually a manager and a representative from HR Services) to hear your evidence (i.e. for you to state your case and provide any mitigating factors), as well as the evidence against you, in order to decide if misconduct has occurred.
- At the Disciplinary Hearing, you have the right to be accompanied or represented by a Trade Union representative or work colleague. It is your responsibility to arrange the attendance of your representative. There is no entitlement to be accompanied by any other representative, including family members at the Hearing.
- At the Disciplinary Hearing you will be given the opportunity to call and question witnesses and/or to produce documentary evidence (i.e. present your case).
- If you are unable or fail to attend a Disciplinary Hearing it will be rearranged on the first occasion. If you fail to attend the rearranged Hearing, or if you cannot provide a reasonable explanation for why you cannot attend the rearranged Hearing, a decision will be made in your absence based on the evidence available at that time.
- Depending on the nature and seriousness of the misconduct, it is not necessary to progress from one level to the next in the scale of disciplinary sanctions. For example, it is possible for a final written warning to be issued without a written warning having previously been issued. You will not normally be dismissed for a first offence unless gross misconduct has been established.

- You have the right of appeal against all formal disciplinary sanctions.
- While warnings will be disregarded after specified time periods if you are continually being managed through the Disciplinary Policy your employment history will be considered and a different level of action may apply.

NOTE – Normal disciplinary standards are expected of you if you are a Trade Union shop steward. However, no Disciplinary Hearing will be convened against you until the circumstances of the case have been discussed with a full time official of your Trade Union.

ROLES AND RESPONSIBILITIES

The Role of Your Representative/Companion

As stated above you have the right to be accompanied or represented by a Trade Union representative or a work colleague at a Disciplinary Hearing. While there is no legal right to be accompanied at an investigation you will be offered the opportunity to be accompanied by a Trade Union representative or work colleague wherever possible.

Your representative or companion can address the Disciplinary Hearing on your behalf. They can put forward your case or assist you to do so. They can question witnesses on your behalf and help you to sum up your case as well as responding to any view expressed at the Hearing on your behalf. Your representative can confer with you and address the Hearing at any point. However, your representative may not answer any questions directly asked of you.

Your representative or companion should not be someone who is involved in the incident leading to the Hearing, or who is likely to be required to provide their own evidence as a witness.

The Role of Managers and Supervisors

All managers/supervisors who undertake investigations and disciplinary hearings should have been given full training.

In misconduct cases, where practicable, different managers/supervisors should carry out the investigation and Disciplinary Hearing. This will usually mean that your immediate line manager conducts the investigation and a different, or more senior manager chairs the hearing

The manager/supervisor Chairing the Disciplinary Hearing is part of the decision-making panel, along with the second manager/HR representative. However, if the panel cannot reach agreement the Chair's decision is final.

In certain circumstances the Chair will be the sole decision maker, although guidance with regards to reasonableness, consistency and fairness can be discussed with the second manager/HR representative. If these circumstances are to apply you will be informed of this in the letter asking you to attend the Disciplinary Hearing.

The Role of HR Services

A representative from HR Services may be appointed as an Investigating Officer, where they will actively participate in the investigation and be involved in the decision-making process about whether or not to recommend that a formal Disciplinary Hearing is convened.

A representative from HR Services will attend the Disciplinary Hearing, in most cases as part of the decision-making panel. In certain circumstances the HR representative will only be there to provide professional advice on the application of policies/procedures and employment law. If this is to be the case you will be informed of this in the letter asking you attend the Disciplinary Hearing.

The HR Services representative may ask questions and seek clarification from witnesses throughout the Hearing regardless of whether or not they are part of the decision-making panel.

SUSPENSION

Normally you will continue to work during an investigation. However, if you are suspected of serious misconduct, you may, in certain circumstances, be suspended on full pay for a limited period while the alleged misconduct is being investigated.

Alternatives to suspension should always be considered, e.g. transferring to another work location, prior to a decision to suspend being taken. Any period of suspension must be kept to a minimum.

Suspension must not be used as a punitive measure in its own right and when considering whether or not to suspend an employee, HR Services must be consulted by the manager, preferably beforehand or as soon as possible after the suspension has been carried out.

The decision to suspend does not always need to be made at the outset and may only be appropriate as the investigation progresses. A suspension can also be lifted as the investigation progresses if it is established that the misconduct is not as serious as first suspected, allowing you to return to work, even if disciplinary action is still a possibility.

During any period of suspension you must remain available and contactable during your normal working hours and attend meetings as appropriate. Further guidance regarding suspension is available from HR Services if required.

CRIMINAL CHARGES OR OFFENCES

You must notify your line manager as soon as practicable if you have been convicted of a criminal offence, are being investigated for, or have been charged with a criminal offence.

A criminal charge or offence will not necessarily be treated as an automatic reason for disciplinary action. The main consideration will be whether the offence, or alleged offence, is one that makes you unsuitable for the type of work you undertake or damages the reputation of Tayside Contracts. Each case will be thoroughly investigated, considered on its merits, and thereafter dealt with in accordance with this policy.

DISCIPLINARY SANCTIONS

The type and duration of sanction applied will depend on the seriousness of the misconduct. Mitigating factors will always be considered when deciding on which sanction to apply.

- **Improvement Note**

A supervisor/line manager may caution you when a minor infringement of the established standards of conduct has been committed. It is important that all problems of this nature are fully discussed and that appropriate support is provided with the objective of encouraging improvement in your conduct, through the use of informal advice, guidance and counselling.

An Improvement Note may be issued at any stage of the process, including before, during or after the investigation and the matter will not continue to a Disciplinary Hearing. In these circumstances the Improvement Note will be recorded on a pro-forma, detailing future expectations/noting the improvement required.

An Improvement Note may also be the outcome of a Disciplinary Hearing, along with recommendations for further training, or other guidance and counselling. In these circumstances the Improvement Note will be recorded by way of a letter, which will detail future expectations and note the improvement required.

- **Written Warning**

If the misconduct is sufficiently serious, you may be issued with a written warning at the conclusion of the Disciplinary Hearing. Written confirmation of the outcome of the Disciplinary Hearing including the reason for the decision, the likely consequences of further misconduct and the right of appeal will normally be sent to you within 7 calendar days of the Disciplinary Hearing.

A record of the written warning will be kept but, subject to satisfactory conduct, the warning will be disregarded for disciplinary purposes after a period of 9 months.

- **Final Written Warning**

Serious acts of misconduct, or acts of further misconduct, may warrant the issue of a final written warning. Written confirmation of the outcome of the Disciplinary Hearing including the reason for the decision, a statement that any further misconduct will lead to dismissal and the right of appeal, will be sent to you normally within 7 calendar days of the Disciplinary Hearing.

A record of the final written warning will be kept but, subject to satisfactory conduct, the warning will be disregarded for disciplinary purposes after a period of 15 months.

- **Action Short of Dismissal**

In exceptional circumstances where dismissal has been the decision of the Panel, other sanctions can be considered and applied as an alternative to dismissal. The sanction will be applied in conjunction with a final written warning.

If you do not agree to the additional sanction being applied then the original decision of the panel will stand and the outcome will be dismissal.

The following sanctions may be considered:

- Withholding incremental progression
- Demotion (no more than 2 grades but retaining the same hours of work)
- Extending the normal time limit of the sanction
- Transferring to an alternative work location

If the decision is to transfer you to a different location or you are demoted, every possible effort will be made to find you an alternative role within 7 days. The hearing will be adjourned to allow the panel to make enquiries into vacant alternative roles. Should no alternative be found, the Disciplinary Hearing will be reconvened and an alternative sanction will be applied or the original decision to dismiss will apply.

Written confirmation of the outcome of the Disciplinary Hearing including the reason for the decision, a statement that any further misconduct will lead to dismissal and the right of appeal, will be sent to you normally within 7 calendar days of the Disciplinary Hearing. Subject to satisfactory conduct, a final written warning will be disregarded after a period of 15 months, but the alternative sanction may remain in place (e.g. if you were transferred to an alternative location you will likely remain at that location).

- **Dismissal**

Repeated misconduct will normally result in dismissal and this will be confirmed by a letter setting out the reason(s) for the decision to dismiss and your right of appeal. Written confirmation of the dismissal will normally be sent to you within 14 calendar days of the Disciplinary Hearing.

- **Summary Dismissal**

Certain offences are regarded as gross misconduct which will normally warrant dismissal without notice (or pay in lieu of notice) despite the absence of previous warnings. This is termed 'summary dismissal.' Examples of actions that are generally regarded as gross misconduct are provided in Appendix 1.

The decision to dismiss will be confirmed by a letter setting out the reason(s) for the decision and your right of appeal against the decision. Written confirmation of the dismissal will normally be sent to you within 14 calendar days of the Disciplinary Hearing.

RIGHT OF APPEAL

An appeal may be lodged against the above formal disciplinary sanctions. In accordance with the principles of fairness and natural justice, a different panel will be involved at each stage of the Disciplinary Procedure.

When delivering the outcome of the Disciplinary Hearing, the Chair will advise you of the right of appeal (if appropriate) and the person to whom the appeal should be addressed. Should you wish to exercise this right this must be done in writing within 14 calendar days of receiving written confirmation of the outcome of the Disciplinary Hearing.

All appeals will be heard in the first instance by the Managing Director or nominated representative, along with a second manager, or HR representative and the outcome of the appeal will be confirmed in writing within 14 calendar days of the date of the Hearing.

At an Appeal Hearing you have the right to be represented or accompanied by a trade union representative or a work colleague of your choice. It is your responsibility to arrange the attendance of your representative.

A member of the original panel, or a HR representative, will present the case in support of their original decision at all internal Appeal Hearings.

After all the evidence has been presented to the panel the Appeal Hearing will be adjourned in order for the panel to consider the evidence and make their decision, which will be one of the following:

- 'That the grounds of the appeal have been substantiated and the appeal is upheld'.
- 'That the grounds of the appeal have been substantiated in part and the appeal upheld to the extent that'
- 'That the grounds of the appeal have not been substantiated and the appeal is not upheld'.

The Appeal Hearing will normally be reconvened for you to be given the Panel's decision, which will then be confirmed by a letter setting out the decision and the reason(s) behind it and, if applicable, your further right of appeal against the decision. Written confirmation of the decision will normally be sent to you within 14 calendar days of the Appeal Hearing.

Further Right of Appeal

Should an appeal against dismissal not be upheld by the Managing Director or nominated representative you may submit a further and final appeal by writing to the Managing Director within 14 calendar days of receipt of written confirmation of the outcome of the initial appeal. The Managing Director will arrange for this final appeal to be heard by an Appeals Sub-Committee, comprising of elected members of Tayside Contracts' Joint Committee.

This right of appeal to an Appeals Sub-Committee only applies to dismissals, there is no further right of appeal in respect of all other disciplinary sanctions.

At an appeal to be heard by the Appeals Sub-Committee you have the right to be represented or accompanied by a trade union representative or a work colleague of your choice. It is your responsibility to arrange the attendance of your representative.

A representative from HR Services will present Tayside Contracts' case in those appeals heard by the Appeals Sub-Committee.

After all the evidence has been presented the Hearing will be adjourned for the members of the Appeals Sub-Committee to consider the matter make their decision, which will be one of the following:

- 'That the grounds of the appeal have been substantiated and the appeal is upheld'.
- 'That the grounds of the appeal have been substantiated in part and the appeal upheld to the extent that'
- 'That the grounds of the appeal have not been substantiated and the appeal is not upheld'.

Where practicable the Sub-Committee's decision will be announced at the conclusion of the Hearing and will be confirmed in writing, within 5 working days. There is no further right of appeal against a decision of the Appeals Sub-Committee.

RELATED POLICIES

The Disciplinary Policy links to the following policies, which can be found on the intranet, from your line manager and from the HR Admin Team:

- Employee Code of Conduct
- Performance at Work Policy
- Sickness Absence Management Policy
- Grievance Policy
- Bullying and Harassment Policy

The above list is not exhaustive.

CONSULTATION

Tayside Contracts' recognised Trade Unions have been fully consulted on this employment policy.

POLICY REVIEW

The Disciplinary Policy will be reviewed at three yearly intervals, or as required by legislative changes.

DATA PROTECTION LEGISLATION

Tayside Contracts respects the privacy of our employees, any personal data processed during the application of this policy will be in line with Data Protection Legislation. Further information on how we may process personal data for the purpose of applying this policy can be found in our Privacy Notice.

Should you have any queries or require further clarification regarding any aspects of this policy or related policies please contact, HR Services on 01382 812721 or employment.policies@tayside-contracts.co.uk

If you would like this document translated into another language or in another format such as audio or large print then please contact Angie Thompson, Equalities and Communications Manager on 01382 834165 or angie.thompson@tayside-contracts.co.uk

EXAMPLES OF MISCONDUCT

The following lists, which are not exhaustive, provide examples of the type of misconduct that will normally lead to an investigation being carried out.

Gross Misconduct

The following actions are examples of the type of action/activity normally regarded as gross misconduct:

- Theft
- Fraud, e.g. fraudulent claims for expenses, business mileage or flexitime
- Deliberate falsification of records
- Fighting
- Physical assault, violence or bullying
- Deliberate and serious damage to Tayside Contracts property
- Deliberate accessing of internet sites containing pornographic, offensive, discriminatory or unlawful material
- Serious acts of insubordination
- Unlawful discrimination or harassment
- Committing serious criminal offences
- Bringing Tayside Contracts into serious disrepute
- Breach of the Substance Misuse Policy
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of the Child Protection Regulations
- A serious breach of Tayside Contracts' Employee Code of Conduct
- A serious breach of the Data Protection Policy
- A serious breach of confidence
- Failure to disclose a personal financial interest in a contract or proposed contract with Tayside Contracts
- Unauthorised use or removal of Tayside Contracts property or resources or information
- Theft or wilful damage to Tayside Contracts property or resources or property and information
- Refusal to fulfil contractual obligations/carry out reasonable instructions
- Any action whether at work or elsewhere which undermines the implied term of mutual trust and confidence upon which every contract of employment relies.

Misconduct

The following actions are examples of actions/activities that are normally regarded as misconduct:

- Minor breaches of the Employee Code of Conduct
- Poor timekeeping
- Breaching Tayside Contracts' Smoking Policy
- Absence from work without reasonable cause/authorisation, or failure to comply with the absence reporting procedure
- Minor breaches of health and safety rules