

Disciplinary Policy & Procedure

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Name of policy being superseded (if applicable)	Disciplinary (v5 2016)
Related policies	Code of Conduct
Related SOPs	N/A
Related Guidance	Please refer to People Manager Hub: Managing Employee Situations Fairly
Equality Impact Assessment completed	Yes
Island Community Impact Assessment completed	No
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Team responsible for policy	HR
Policy owner contact details (email)	Luke.hopkin@sds.co.uk
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Policies should have a clear purpose and perform at least one of the following functions. Please identify all the functions this policy performs.	If statement applies, please mark with an X below
Outline how we allocate limited resources to deliver services or outcomes	
Outline how SDS adheres to legislation, statutory duty etc.	X
Ensure fair and consistent allocation of benefits	
Protect organisational assets, including data	
Define expectations around the employee/employer relationship	X
Other (please specify)	

Disciplinary Policy – Foreword

At SDS, as a publicly funded body which serves the people and businesses of Scotland, we must ensure that we carry out our duties with integrity, impartiality and efficiency. Each of us has a personal responsibility for our own behaviours and conduct, and the standards we work to are set out in the SDS Code of Conduct and underpinned by our values:

This policy complements the Code of Conduct by setting out the approach that SDS will take to managing allegations of misconduct. It reflects ACAS best practice and is designed to ensure all allegations of misconduct are dealt with promptly, fairly, openly, effectively and consistently. In particular, we will ensure colleagues who are subject of the allegations have the opportunity to tell their side of the story and we will ensure any decisions made are evidence based.

We recognise that for employees and managers, involvement in a Disciplinary Procedure can be difficult. We will ensure that those involved are made aware of the guidance and support available to them, and that disciplinary matters are dealt with as quickly as the specific circumstances allow whilst ensuring fairness.

Carolyn Anderson
Director of Human Resources

Disciplinary Policy & Procedure

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Disciplinary Policy & Procedure

1. Purpose of Policy

1.1. This policy outlines SDS' approach to managing misconduct.

1.2. It aims to:

- i. reinforce the expectation that all employees will maintain satisfactory standards of conduct throughout the course of their employment in line with the expressed terms in the SDS Code of Conduct; and
- ii. provide a consistent and reasonable approach for addressing allegations of misconduct, including gross misconduct.

2. Context

2.1. Skills Development Scotland (SDS) is a public body funded from public resources and accountable to the Scottish Government and the Scottish Parliament. Employees of SDS should carry out their duties with integrity, impartiality and efficiency. SDS is focused on our customers and employees and we value our people. Our success is dependent on both the quality of our services and the way in which they are delivered, and is underpinned by our values:

- i. We put the needs of our customers at the heart of all we do
- ii. We continuously improve to achieve excellence
- iii. We demonstrate self-motivation, personal responsibility and respect
- iv. We make use of our combined strengths and expertise to deliver the best outcomes.

2.2. We expect every employee to conduct themselves according to high professional and ethical standards and in a way that maintains our values.

2.3. Employees are expected to comply with terms expressed in the SDS' Code of Conduct in their day to day work, including their dealings with customers, colleagues and external organisations.

2.4. Where an employee's conduct falls short of these expectations, we expect them to work cooperatively with SDS to improve conduct. SDS will normally seek to resolve minor misconduct issues informally by providing support and guidance where appropriate to encourage improvement. SDS will utilise the formal disciplinary procedure where the alleged misconduct is more serious or where informal action does not provide a resolution or where there is repeated misconduct.

2.5. This policy and procedure reflects the ACAS Code of Practice on Disciplinary and Grievance Procedures.

2.6. This policy is distinct from the Performance Improvement Policy which is designed to deal with matters relating to poor performance. In addition, this policy should not be used for matters relating to poor attendance due to sickness, which should be dealt with under the Sickness Absence Management Policy.

2.7. This policy applies to employees of SDS including fixed term workers employed directly by SDS, whether full time or part-time. It does not apply to employees during their probationary period when any concerns in relation to conduct will be managed in line with SDS Probationary Guidelines. This policy does not apply to agency workers or self-employed contractors.

2.8. All those involved (e.g. managers; colleagues; companions) must treat as confidential any information shared with them under this policy.

2.9 Further guidance for managers on managing matters relating to allegations of misconduct is provided on the People Managers Hub area of Connect and in the SDS Code of Conduct. Managers may seek advice from the SDS HR Team regarding the application of this policy.

3. Policy Commitments

3.1. Employees are expected to:

- i. ensure that they are aware of and understand the standards of conduct expected of them (as set out in the SDS Code of Conduct and other associated policies and procedures) and seek further guidance if they are unclear;
- ii. adhere to the expected standards of conduct;
- iii. take an active part in meetings, both informal and formal, held under this policy;
- iv. work with their manager to address any conduct issues, including delivering on required improvements in conduct; and
- v. use and engage with any support / monitoring mechanisms put in place.

3.2. SDS is committed to:

- i. setting clear standards of conduct, explaining these standards to employees and supporting employees to achieve the standards set;
- ii. ensuring that good standards of conduct are acknowledged and encouraged;
- iii. managing an individual's situation sensitively and with due respect for privacy;
- iv. adopting a case-by-case approach, taking into account each employee's particular circumstances and modifying the disciplinary procedure where appropriate to do so (for example: in cases of disability or illness);
- v. providing employees, in most cases, with the opportunity to resolve minor conduct issues informally where appropriate and reasonable before progressing with the formal stages of this policy; and
- vi. dealing with alleged misconduct promptly and holding meetings, making decisions and confirming decisions without unreasonable delay, wherever possible, where formal action is required.

4. Definitions

4.1. The following definitions are used in this policy:

“Satisfactory standards of conduct/satisfactory conduct” means conduct/behaviour that meets the expected standards required by SDS and as set out in the SDS Code of Conduct.

“Misconduct/Unsatisfactory Conduct” means unprofessional, unethical or other conduct/behaviour that does not meet the expected standards of SDS and as set out by the SDS Code of Conduct.

“Formal Disciplinary Procedure” means the formal procedure used to manage unsatisfactory conduct and allegations of misconduct in a fair and consistent way.

“Suspension” is when SDS advises an employee not to attend work while an allegation of misconduct against them is investigated and a decision reached. Suspension is not a disciplinary sanction and does not imply that any decision has already been made about the allegations.

“Disciplinary Sanction” means a disciplinary warning applied as part of the formal Disciplinary Procedure.

“Fair” under this policy and procedure means that issues will be dealt with promptly, consistently, impartially; allow the employee to tell their side of the story and ensure a decision based on facts.

Disciplinary Procedure

5. Informal Discussions

5.1. In the first instance, managers will normally seek to resolve minor misconduct issues informally as part of their day-to-day management of employees. The formal procedure will be used for more serious concerns, where an informal discussion has not resulted in a satisfactory change of conduct/behaviour or where there have been further instances of misconduct.

5.2. Informal discussions should normally:

- i. clarify the expected standards of conduct/behaviour;
- ii. explain the nature of the concerns (providing specific examples as appropriate);
- iii. confirm the improvement required;
- iv. where appropriate, set targets for an improvement in conduct/behaviour and a time-scale for review; and
- v. explain the potential consequences of a failure to improve behaviour as required (e.g. formal disciplinary procedure).

5.3. The manager will provide clarity by confirming the action points in writing to the employee, e.g. via My Contribution. Both parties should retain any notes confidentially. The manager may offer advice, coaching or counselling, where they consider it appropriate. Where there is satisfactory improvement in conduct/behaviour, the matter will be considered to be resolved.

6. Formal Disciplinary Procedure

6.1. The formal disciplinary procedure will commence where:

- i. informal discussions have failed to sufficiently address a conduct/behaviour concern; or
- ii. conduct/behaviour concerns are sufficiently serious to justify taking formal action immediately.

6.2. SDS's Code of Conduct outlines behaviour which constitutes misconduct, including a (non-exhaustive) list of examples of gross misconduct.

6.3. If, on the conclusion of a grievance procedure misconduct issues have been raised or revealed, those matters may be referred for consideration under this policy and may be dealt with under this procedure, if appropriate in the circumstances.

6.4. If the employee feels unable to attend an investigation meeting/disciplinary/appeal hearing for a reason related to their health, they should inform the manager holding the investigation meeting/disciplinary/appeal hearing as soon as practicable. Consideration will be given to appropriate alternative arrangements according to the circumstances of the case.

6.5. Failure to attend a meeting where employee is unable or unwilling to attend an investigation meeting/disciplinary/appeal hearing without good cause will result in the investigation meeting/disciplinary/appeal hearing proceeding in the absence of the employee and a decision made on the information available.

7. Investigation

7.1. When it is alleged that an employees' conduct or behaviour has not met the required standard, a timely investigation will be undertaken to establish the facts.

7.2. The employee's manager or another appropriate person will be appointed to carry out the investigation ("Investigating Manager").

7.3. The amount of investigation required will depend on the nature of the allegations, will vary from case to case, and will be determined by the Investigating Manager. In the majority of cases the investigation will involve investigatory meetings being held with the employee facing the allegations, and any relevant witnesses.

7.4. The employee may be accompanied to an investigation meeting by a trade union representative or an SDS colleague (please see Appendix 1 for more information on Employee Representation).

7.5. Once the investigation has been completed, the Investigating Manager will decide if there is a case to answer. If the manager believes that there is a case to answer then they will recommend a disciplinary hearing be convened, if appropriate.

7.6. The Investigating Manager may recommend the suspension of an employee who has been accused of misconduct in order to protect the integrity of the investigation, to protect the employee from further allegations/misconduct and/or to protect SDS' customers/reputation/other SDS employees. A period of suspension is not a disciplinary sanction. Please see Appendix 2 for more information on suspension.

7.7. SDS reserves the right to search SDS' electronic and physical records and SDS' electronic and physical equipment (e.g. laptop, mobile phone, pedestal, locker, etc) during an investigation. Personal belongings will not be searched without an employee's consent.

7.8. In exceptional circumstances, where there is a genuine fear of reprisal, a witness may ask for their identity to be kept confidential and it will not be disclosed without the consent of the witness. If a situation arises where it is not possible to keep the witness' identity confidential there will be a discussion as to whether and how SDS can proceed.

7.9. Where it is alleged that an employee who is a trade union representative's conduct or behaviour has not met the required standard, SDS will notify the appropriate full-time official following notification of the employee and subject to the employee's consent.

8. The Disciplinary Hearing

8.1. If a disciplinary hearing is recommended then this will be heard and chaired by a different manager graded SDS6 or above (the "Hearing Manager"), who is not the Investigating Manager nor involved in the investigation. Employees have the right to be accompanied to a disciplinary hearing by either a trade union representative or an SDS colleague of their choice (see Appendix 1). HR will be available as a source of advice and guidance in all cases to enable fair and consistent use of the procedure. All disciplinary hearings where there is a risk of dismissal will be attended by an HR representative who will be present at the hearing in an advisory capacity. Any decisions that are made at the disciplinary hearing will be made by the Hearing Manager. A note-taker will normally be present.

8.2. The Hearing Manager will:

- i. give the employee at least 5 working days' notice of the hearing;
- ii. tell the employee the purpose of the hearing and that it will be held under the organisation's disciplinary procedure;
- iii. give the employee written details of the alleged misconduct;
- iv. provide the employee with a summary of relevant information gathered during the investigation (including copies of any relevant documents and witness' statements which will be used at the disciplinary hearing) not less than 5 working days prior to the hearing;
- v. explain the employee's right to be accompanied at the hearing by a trade union representative or a colleague; and
- vi. give the employee the opportunity to bring witnesses along to the hearing.

8.3. Where a witness' identity is to be kept confidential, SDS will give the employee as much information as possible while maintaining confidentiality.

8.4. The disciplinary hearing may be adjourned by the Hearing Manager at any time if they consider it necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment.

8.5. During the disciplinary hearing/appeal the employee/trade union representative/SDS colleague can request an adjournment to the meeting for a short period of time.

8.6. The Hearing Manager will decide:

- i. if misconduct has taken place and
- ii. what action/sanction will be taken.

8.7. The outcome of the disciplinary hearing will normally be communicated to the employee verbally in the first instance at least 5 working days of the conclusion of the disciplinary hearing (unless otherwise agreed).

8.8. The employee will also receive written confirmation of the outcome, which will explain the reasons for the decision. Where a disciplinary sanction is applied the employee will be advised of:

- i. the nature of the misconduct/reason for the sanction;
- ii. their right of appeal (including where to send the appeal and timescales for doing so); and

where a warning is issued:

- iii. the improvement or change in behaviour required;
 - iv. where appropriate, the timescale within which the employee is to improve;
 - v. the consequences of any repetition of misconduct or failure to improve conduct to an acceptable standard;
 - vi. the fact that the warning will be recorded on their employee record or
- where the employee is dismissed:*
- vii. the date on which employment will terminate; and
 - viii. the period of notice or payment in lieu of notice (if applicable).

9. Appeals

9.1. Employees have the right to appeal any formal decision taken at a disciplinary hearing.

9.2. Appeals should be lodged in writing to the relevant individual named in the outcome letter within 5 working days from the date of the outcome letter and should set out the specific grounds of appeal and provide any supporting materials in which they intend to rely on in their appeal.

9.3. An appeal hearing will usually be chaired by a manager at a level above the original decision-maker.

9.4. At the appeal stage, the appeal hearing manager will have the power to withdraw, alter, or confirm the original decision. An appeal will not lead to a higher level of sanction for the employee.

9.5. Appeals will be held without unreasonable delay and will normally be scheduled within 5 working days and held within 10 working days of the receipt of the written appeal.

9.6. Once a decision is made this will normally be confirmed in writing within 5 working days of the appeal hearing, stating the reasons for the decision.

9.7. The decision at an appeal hearing is final and employees have no further right of appeal.

10. Disciplinary Sanctions

10.1. The following levels of disciplinary sanction will be available to the Hearing Manager:

Written Warning – Level 1

10.2. A written warning – level 1 will usually be appropriate for a first act of misconduct where there are no live written warnings on the employee's disciplinary record. The warning will not normally be taken into account for disciplinary purposes after 12 months, subject to satisfactory conduct during this time.

10.3. A copy of the written warning – level 1 shall be retained on the employee's employee record in line with HR Retention periods.

Written Warning – Level 2

10.4. A written warning – level 2 will usually be appropriate where:

- i. there is already a live first written warning for misconduct on the employee's disciplinary record; or
- ii. the misconduct is sufficiently serious to warrant a written warning- level 2 even though there are no live warnings for misconduct on the employee's disciplinary record and/or this is the first offence.

10.5. A written warning – level 2 will not normally be taken into account for disciplinary purposes, subject to satisfactory conduct, 12 months after the date on which the written warning – level 2 was issued.

10.6. A copy of the written warning – level 2 shall be retained on the employee's employee record in line with HR Retention periods.

Final Written Warning

10.7. A final written warning will usually be appropriate where:

- i. there is already a live written warning for misconduct on the employee's disciplinary record; or
- ii. the misconduct is sufficiently serious to warrant a final written warning even though there are no live warnings for misconduct on the employee's disciplinary record and/or this is a first offence.

10.8. The final written warning will normally be disregarded for disciplinary purposes, subject to satisfactory conduct, 12 months after the date on which the final written warning was issued. However, in exceptional circumstances, depending on the seriousness and nature of the misconduct, this period may be extended.

10.9. A copy of the final written warning shall be retained on the employee's employee record in line with HR Retention periods.

Action Short of Dismissal

10.10. Where misconduct is sufficiently serious to justify dismissal; the Hearing Manager may at their discretion (on an exceptional basis) consider alternative action short of dismissal.

10.11. Where action short of dismissal is proposed the employee will, be provided with written confirmation of:

- i. the action to be taken;
- ii. how it is to be implemented;
- iii. the reason for the action;
- iv. the date on which it will come into force (if appropriate); and
- v. information on the employee's right to appeal.

10.12. Action short of dismissal may be used in conjunction with a written warning.

Dismissal

10.13. Dismissal will usually be appropriate where:

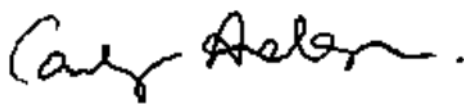
- a) there is already a live final written warning for misconduct on the employee's disciplinary record; or
- b) the employee has committed an act of gross misconduct justifying dismissal.


10.14. If an employee is dismissed for gross misconduct, they will not receive notice of termination or any payment in lieu of notice.

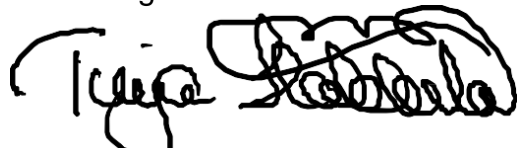
10.15. SDS reserves the right to impose sanctions at any level depending on the circumstances of the case. For example, a final written warning may be issued in respect of a first offence if justified by the nature and/or seriousness of the misconduct. Other than in cases of gross misconduct, an employee will not normally be dismissed for a first offence.

10.16. Where an individual is absent from SDS due to sick leave, maternity, paternity, parental, shared parental, adoption leave, special leave (paid or unpaid), career break, secondment or sabbatical, any live hearings/warnings/sanctions will be suspended and resumed when the employee returns to work.

Disciplinary Policy jointly agreed:

SDS		
Print Name	Signature	Date
Carolyn Anderson		7/6/19

Unison		
Print Name	Signature	Date
Derek Cheyne		7/6/19

PCS		
Print Name	Signature	Date
Tinja Hakkila		06/06/19

Appendix 1

1. Employee Representation

A1.1. There is no right to representation at informal discussions. Informal discussions should normally take place between the employee and their manager only.

A1.2 Employees have the right to be accompanied to a disciplinary/appeal hearing by either a trade union representative or an SDS colleague of their choice. Employees may (if they wish) be accompanied to an investigation meeting by either a trade union representative or an SDS colleague.

A1.3. The employee should confirm their companion's identity to the manager conducting the investigation meeting/disciplinary/appeal hearing at least one day before it is due to take place.

A1.4. The trade union representative/SDS colleague is entitled to address the investigation/disciplinary/appeal hearing to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The trade union representative/SDS colleague does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

A1.5. The employee must take all reasonable steps to attend the investigation meeting/disciplinary/appeal hearing.

A1.6. Investigation

- i. If the employee is unable to attend an investigation meeting at the time specified the employee should inform the manager holding the meeting as soon as practicable, who may seek to agree an alternative time.
- ii. If the employee's chosen trade union representative/SDS colleague cannot attend an investigation meeting at the time specified, the employee should arrange for an alternative trade union representative/SDS colleague to support them where possible.

A1.7. Disciplinary/Appeal Hearing

- i. If the employee or their companion is unable to attend a disciplinary/appeal hearing at the time specified the employee should inform the manager holding the meeting as soon as practicable, who will seek to agree an alternative time.
- ii. The alternative time should be no more than 5 working days from the original meeting date. If the companion cannot attend the re-scheduled disciplinary hearing/appeal meeting, the employee should arrange for an alternative companion to support them where possible.

Appendix 2

2. Suspension

A2.1. An employee who is accused of misconduct may be suspended from work on full pay to protect the integrity of an investigation into the alleged misconduct, to protect the employee accused of misconduct from further allegations/misconduct and to protect SDS' customers/reputation/other SDS employees. Any decision on suspension will be made on a case by case basis and based on the circumstances of the case. A period of suspension is not a disciplinary sanction.

A2.2. All suspensions should be authorised by the Head of HR and will be confirmed to the individual in writing. This written notification will detail the employee's rights and responsibilities during the period of suspension. These may vary depending on the circumstances of the case but will normally cover the following points:

- Duration of the suspension
- Arrangements for contact between the organisation and employee during the period of suspension
- Access to SDS premises, equipment and systems during the period of suspension.
- Contact with specific colleagues involved in the disciplinary procedure during the period of suspension
- Availability for meetings and hearings during the period of suspension
- Arrangements for the regular review of suspension

A2.3. It should be noted that SDS also reserves the right to suspend any employee who is under criminal investigation. Where an employee is under criminal investigation disciplinary sanctions will not be automatically applied. Each situation will be considered individually on the basis of whether it is reasonable for SDS to support continued employment. SDS reserves the right to proceed with an investigation/hearing without having to wait for the outcome of the criminal proceedings where the alleged conduct has implications for the individual's employment.