

PROCEDURE FOR DEALING WITH BREACHES OF DISCIPLINE AND SUB-STANDARD WORK PERFORMANCE

PURPOSE AND SCOPE

Disciplinary rules and procedures promote fairness and equity in the treatment of employees and in the conduct of industrial relations. They help to ensure the safety and well-being of all employees and assist the Board to operate effectively. Rules set standards of conduct and performance 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 procedure should not be viewed primarily as a means of imposing sanctions. Where possible, it aims to encourage improvement in individual conduct and/or performance.

The procedure applies to all employees with the exception of the Bridge Manager who is covered by a separate but similar procedure.

RESPONSIBILITY FOR DISCIPLINE

Employees are responsible for their own conduct, standard of work and behaviour. They have a duty to conform with any rules laid down by the Board and to carry out any reasonable instructions from a manager or supervisor. The Bridge Manager is responsible for the management and discipline of the employees. A member of the Bridge Management Team may caution an employee when a minor infringement of the established standards of conduct or performance has been committed. Whilst this will not constitute formal disciplinary action and will not be recorded in any form, further misconduct or failure to achieve required standards of work will lead to formal action. In cases of formal disciplinary action, a member of the Bridge Management Team, has the right to warn, suspend without pay, withhold incremental progression, and demote or dismiss subject to an employee's right of appeal outlined below, after consultation with the Board's Personnel Department.

FORMAL DISCIPLINARY ACTION

When a member of the Bridge Management Team considers that it may be necessary to take formal action in respect of an employee, a Personnel Adviser will be contacted immediately and before a Disciplinary Hearing is arranged.

- **Investigation**

Before taking any disciplinary action, the member of the Bridge Management Team must be satisfied that the circumstances have been fully investigated and that all the facts have been gathered. The manager/supervisor may request assistance in this task from the Board's Personnel Department.

- **Suspension**

In exceptional cases, where remaining at work would worsen the situation or would hamper proper investigation, an employee accused of misconduct may be suspended on full pay for a limited period while the alleged offence is being investigated. This type of suspension is a neutral action to provide a cooling off period or to facilitate the investigation and no judgement or censure is implied.

- **Disciplinary Hearing**

If, after investigation, it is considered that a Disciplinary Hearing is necessary, the employee will be advised in writing of the date, time and venue of the Hearing, details of the allegation(s) being made, and of the right to be accompanied. The notification should contain sufficient information about the alleged misconduct or poor performance to enable the employee to prepare to answer the case or a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification. Sufficient notice of the date of the Hearing will be given and every effort will be made to hold the Hearing at the earliest possible opportunity. At the hearing, the employee concerned will be required to answer the allegations and give an explanation of events. The main purpose of the Hearing is to allow the individual the opportunity to state his/her case before any decision is made. The member of the Bridge Management team shall invite an officer from the Board's Personnel Department to be present at any formal hearing to provide advice.

Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause the hearing will go ahead in the employee's absence and a decision made on the evidence available in such circumstances. A written submission may be presented to the chair of the hearing for consideration or presented by a trade union representative or colleague.

- **Right to be Accompanied**

At a Disciplinary Hearing, or at a formal investigatory meeting following suspension, or where a statement is to be taken and responses recorded for possible reference at any subsequent disciplinary or appeal hearing, an employee has the right to be accompanied by a trade union representative, an official employed by a trade union or a fellow employee. An employee is not entitled to representation by any other party. Failure to recognise an employee's right of accompaniment may affect the admissibility of evidence obtained. It is the employee's responsibility to arrange the attendance of any such person.

If the trade union representative, official employed by a trade union or fellow employee cannot attend on a proposed date for a disciplinary hearing, the employee can suggest an alternative time and date so long as it is reasonable.

- **Witness/Documentary Evidence**

At the Disciplinary Hearing, both parties have the right to call witnesses and to produce documentary evidence. In cases where documentation is extensive and/or complex, the parties may agree to exchange relevant papers to save time and aid understanding. In any event, sufficient time to read and digest written information will be allowed. If requested, management will provide reasonable assistance, where possible, in accessing witnesses or relevant documents.

- **Penalties for misconduct/poor performance substantiated following a Disciplinary Hearing**

In the case of minor misconduct or performance problems, a member of the Bridge Management Team may choose to give an ORAL WARNING. However, as this is the first level of formal action, it will be confirmed in writing, stating the nature of the offence, the reason for the decision, the likely consequences of further misconduct or sub standard work and the right of appeal. Written confirmation of the warning will normally be received within 7 days of the Disciplinary Hearing. In normal circumstances, subject to satisfactory conduct/performance, such a warning will be disregarded for disciplinary purposes after a period of 6 months and the confirmation will contain a statement to that effect.

If the issue is sufficiently serious, a WRITTEN WARNING may be given setting out the nature of the offence, the reason for the decision, the likely consequences of further misconduct or sub standard performance, and the right of appeal. Written confirmation of the warning will normally be received within 7 days of the Disciplinary Hearing. In normal circumstances, subject to satisfactory conduct/performance, such a warning will be disregarded for disciplinary purposes after a period of 12 months and the warning will contain a statement to that effect.

More serious, or further misconduct or unacceptable performance, may warrant a FINAL WRITTEN WARNING. Such a warning will set out the nature of the offence, the reason for the decision, a statement that any further misconduct or sub standard work will lead to dismissal, and the right of appeal. Written confirmation of the warning will normally be received within 7 days of the Disciplinary Hearing. In normal circumstances, subject to satisfactory conduct/performance, such a warning will be disregarded for disciplinary purposes after a period of 15 months and the warning will contain a statement to that effect.

It is also possible to supplement the above warnings by applying other disciplinary sanctions including withholding incremental progression, demotion or suspension without pay. Warnings for poor performance will provide an opportunity to improve and reach the required standard of work, with suitable support, where appropriate.

Repeated misconduct or sub standard work may result in DISMISSAL and this will be confirmed by a letter setting out the nature of the offence, the reason for the decision to dismiss, and the right of appeal. Written confirmation of dismissal will normally be received within 14 days of the Disciplinary Hearing.

Depending on the nature and seriousness of the offence, it is not necessary to progress from one level to the next in the scale of penalties. For example, it is possible for a Final Written Warning to be issued without a Written Warning having previously been issued. Furthermore, certain very serious offences will be regarded as gross misconduct or negligence and will normally warrant dismissal without notice (or pay in lieu of notice) even in the absence of previous warnings. This is termed SUMMARY DISMISSAL. Summary dismissal for gross misconduct or negligence will however only take place after an investigation to establish all of the facts, a Disciplinary Hearing being held to hear any explanations and consideration being taken of the employee's previous record and length of service. An employee will not be dismissed for a first offence unless gross misconduct or negligence has been established.

For information, and in accordance with ACAS advice, the following list, which is not exhaustive, provides examples of offences which are normally regarded as gross misconduct: theft or fraud; physical violence or bullying; deliberate and serious damage to Board property; serious misuse of an organisation's property or name; deliberately accessing internet sites containing pornographic, offensive or obscene material; serious insubordination; unlawful discrimination or harassment; bringing the organisation into serious disrepute; serious incapability at work brought on by alcohol or illegal drugs; causing loss, damage or injury through serious negligence; a serious breach of health and safety rules; failure to disclose a personal financial interest in a contract or proposed contract with the Board; unauthorised acceptance of any fee or reward accepted in connection with work and a serious breach of confidence.

PARTICULAR CASES

- **Time Limits for Warnings**

As stated, in normal circumstances, subject to satisfactory conduct/performance, warnings will be disregarded for future disciplinary purposes after the specified times. There may however, be occasions where an employee's conduct/performance is acceptable throughout the period a warning is in force but deteriorates very soon thereafter. If a pattern emerges or there is evidence of abuse, the employee's total disciplinary record will be borne in mind in deciding how long any current warning should last and the level of action to be taken in respect of subsequent offences. This will be specified in the written confirmation of the warning.

Exceptionally, there may be circumstances where the misconduct is so serious - verging on gross misconduct - that it cannot realistically be disregarded for future disciplinary purposes. In such circumstances it will be made clear that the final written warning may never be disregarded. After a period of 3 years, an employee may request the Bridge Manager to review whether it is appropriate for the final written warning to be disregarded. The grounds of the request will be lodged in writing and responded to within 14 days in writing by the Bridge Manager. The Bridge Manager's decision is final.

- **Criminal Charges or Offences**

In the event of an employee being charged with or found guilty of a criminal offence, the case will be thoroughly investigated, considered on its merits, and if appropriate dealt with in accordance with this procedure.

- **Disciplinary Action against Employees who are Trade Union Officials**

Normal disciplinary standards are expected of an employee who is a trade union official. However, no formal disciplinary action will be taken against such an employee until the circumstances of the case have been discussed with a full time official of the employee's trade union.

RIGHT OF APPEAL

An appeal may be lodged against formal disciplinary action, and employees have the right to be accompanied by a trade union representative or fellow employee at any appeal hearing. Employees should detail the grounds of their appeal in writing.

When implementing disciplinary action, the manager/supervisor will advise the employee of the right of appeal. This right, if required, must be exercised in writing to the Clerk of the Joint Board within 14 days of receiving written confirmation of the disciplinary action. Appeals against any warnings will be heard by the Bridge Manager or nominated Senior Officer.

Appeals will be heard by the Bridge Manager or a senior officer nominated by the Clerk to the Board within 14 days of receipt of the appeal. In the case of appeals against dismissal or punitive action such as demotion, if the Bridge Manager or nominated senior officer does not uphold the appeal, there will be a final right of appeal to the Tay Road Bridge Joint Board Appeals Sub Committee of elected members which will be conducted in accordance with the relevant National Agreement. Employees wishing to exercise this right must do so in writing to the Clerk to the Board within 14 days of receiving written confirmation of the decision of the Bridge Manager or nominated senior officer not to uphold the first appeal. Such cases will normally be heard by the Tay Road Bridge Joint Board Appeals Sub Committee within 3 months of the appeal being lodged and ideally within a month.

The decision reached at an Appeal Hearing, by the Tay Road Bridge Joint Appeals Sub Committee in the case of a dismissal or by the Bridge Manager or nominated senior officer in respect of any other disciplinary action, is final and will be confirmed in writing. In the event of any disciplinary action being reconsidered and withdrawn, any written reference to the action and to the disciplinary proceedings will be deleted and the employee will be advised in writing accordingly.

Any right to make a claim to an employment tribunal is unaffected by this procedure