**Disciplinary Procedure**

**To be read in conjunction with:**

● **Introduction to Disciplinary and Capability Procedures**

● **‘Managing People Problems – Guide for Managers’**

**Produced in consultation and negotiation with Trade Unions representatives (1990)**

**Includes:**

1. Rules about conduct p. 2 2. Managerial (informal) action p. 2 3. Disciplinary investigations p. 2 4. Suspension from work p. 3 5. Disciplinary hearings p. 3 6. Disciplinary action p. 4 7. Confirmation of Disciplinary Action p. 5 8. Appeals p. 5 9. Miscellaneous provisions - Trade Union officials p. 6

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**For more information, including guidance, model letters and forms, please refer to RBK’s intranet page on Disciplinary and Capability.**

The aim of this procedure is to provide a framework for dealing with problems which arise as a result of an employee's conduct. The general principles which underpin it are set out separately in the Introduction to Disciplinary and Capability Procedures: they will apply to disciplinary problems in all their aspects. It should be noted that where conduct problems are found to have arisen due to lack of capability, they will be addressed through the Capability Procedure.

1. **Rules About Conduct**

Acts of misconduct are likely to lead to formal action under the disciplinary procedure, the severity of which will depend on the type of misconduct:

● Misconduct: the majority of acts of misconduct may not normally be sufficiently serious to warrant consideration of dismissal without previous warning but may nevertheless, if substantiated, warrant disciplinary action of a lesser nature.

● Gross misconduct: these are offences which are sufficiently serious to merit consideration of dismissal for the first offence. Employees should be clear that by committing gross misconduct they put themselves at risk of dismissal without notice or pay in lieu of notice.

For a full list of examples of both misconduct and gross misconduct, please refer to the Misconduct page on the intranet.

2. **Managerial (Informal) Action**

In the course of the normal management process it is good practice to bring any shortcomings in conduct to the attention of employees at an early stage. Sometimes this will result in formal action in other cases formal action will be inappropriate. Where such informal discussions take place the employee should be advised that any further misconduct will be considered within the formal stages of this procedure and may lead to formal disciplinary action. A diary or file note will be made.

If the nature of the misconduct is sufficiently serious or if more serious matters come to light during informal discussions, the misconduct may merit consideration under the formal disciplinary procedure from the outset.

3. **Disciplinary Investigations**

An investigation may be required to establish whether or not there is a case to answer in a formal disciplinary hearing. The nature and scale of disciplinary investigations will depend on the seriousness and complexity of the alleged offence. It may be necessary to take statements from witnesses. This investigatory stage should be conducted promptly. Investigations will normally be carried out by the employee's immediate manager. However, in cases of alleged serious misconduct it may be appropriate for investigations to be carried out at a higher level. It may be necessary to suspend an employee from work during a period of investigations (see 4. Suspension From Work). Investigations will normally involve a formal investigatory meeting. Prior to an investigatory meeting, the employee will be informed of the nature of the concerns to which he/she will be asked to respond, with representation, at the meeting.

Disciplinary Procedure p.2/6

The organisation processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with General Data Protection Regulation (GDPR) and data protection policies, in particular, data collected 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. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the organisation's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

4. **Suspension From Work**

**4.1. Suspension, as a precautionary, not a punitive measure**

This would normally be considered:- a) when further time is required to undertake more detailed investigations in a matter

which could, if substantiated, result in dismissal. b) when a hearing has been convened which could result in the dismissal of an employee. c) where the continued presence at work of the employee pending the outcome of an

inquiry into alleged misconduct or the results of criminal proceedings would reasonably be considered to be contrary to the best interests of the Council and/or the employee in relation to his/her colleagues.

**4.2. Pay during period of suspension**

A suspended employee will usually receive normal rates of pay during the period of suspension. The grounds on which pay may be withdrawn during the suspension are:- a) where an employee has failed to assist with enquiries or to attend meetings with

management in the course of disciplinary investigations, and/or b) postponed or failed to attend hearings without good reason.

The authority to suspend an employee and, where applicable, to withdraw pay during a period of suspension is vested in the relevant Director or other Chief Officer/senior manager in conjunction with the Head of Human Resources (HR) or their representative. The decision to suspend and, where applicable, to withdraw pay will be notified in writing to an employee.

5. **Disciplinary Hearings**

Where the possibility of disciplinary action arises a disciplinary hearing will be convened.

**5.1. Responsibility for Conducting Hearings** A disciplinary hearing for a first or second offence would normally be conducted by a manager who has not already had cause to interview the employee and possibly hear explanations in the course of disciplinary investigations.

Where the nature of the alleged breach is sufficiently serious to warrant, if substantiated, a final warning, the hearing would normally be conducted by a Chief Officer or other senior manager. A representative of the Head of HR will attend hearings at this level.

Disciplinary Procedure p.3/6

Hearings where dismissal is a possible outcome i.e. in cases where there is a further allegation of misconduct after a final warning or an alleged act or omission amounting to gross misconduct, will always be convened and conducted by the relevant Director or nominated Chief Officer assisted by the Head of HR or other senior representative of the Head of HR.

**5.2. Arrangements for Hearings** Where a formal disciplinary hearing is necessary, the employee will receive written notification, at least two working days in advance, of the requirement to attend and the nature of the issues to be considered. The employee will be advised of his/her rights both to be accompanied by a representative and to support his/her case with written representations. The employee will be advised of the procedure for the conduct of the hearing.

In cases where dismissal is a possible outcome of the hearing, the employee will be given reasonable notice of the hearing, normally between five and ten working days. The investigating officer will prepare a written report for consideration at the hearing setting out the circumstances of the case.

The report will be sent to the employee by the Director/Chief Officer. The employee will normally receive a copy of the report at least five working days prior to the hearing. The employee will be given the right to send in written representations prior to the hearing and will be notified of his/her right to be accompanied by a representative. The employee will also be notified of the procedure for the hearing in advance.

**5.3. Procedure for Conducting Hearings** The procedure for the conduct of the disciplinary hearing will be based on the principle that an employee should be given an opportunity to hear the allegations(s) made against him/her and have the fullest opportunity to present his/her case with the assistance of a representative. The manager/Director conducting the hearing will normally ask the employee and his/her representative to withdraw while he/she considers his/her decision. The manager/Director will make a judgment based on the facts presented at the hearing as to whether a breach in the conduct rules has taken place. If a breach is substantiated he/she will decide what disciplinary action is appropriate.

6. **Disciplinary Action**

Disciplinary action for a substantiated breach of the disciplinary rules includes written warnings or dismissal depending on an employee’s previous disciplinary record and/or the seriousness of the misconduct. For more information on disciplinary warnings and dismissal, including related considerations such as expiry of warnings and notice in case of dismissal, please refer to the Formal Disciplinary Action page on the intranet.

Under the Procedure the Council also reserves the right to take a range of actions in addition to a formal warning or as an alternative to more serious disciplinary action depending on the circumstances of the case. These penalties may include withholding annual pay increments or other pay supplements, demotion for a specified or unspecified period or transfer to an alternative job or location with or without a reduction in the contractual rate of pay. RBK recognises that where it is necessary in the best interests of the individual and/or the service, for a transfer to take place, it will not be practicable to advertise - internally or externally - a post identified as suitable for transfer. To do so would preclude the possibility of any such transfer.

Disciplinary Procedure p.4/6

In considering disciplinary action factors to take into account will be any previous action under these Procedures, including any current action under the Capability Procedure; the gravity of the issue; the need to maintain standards and act consistently. Mitigating factors such as length of service and an otherwise good record will also be considered.

7. **Confirmation Of Disciplinary Action**

Employees will normally be notified of the outcome of disciplinary hearings orally at the conclusion of the hearing. Where this is not possible employees will be notified orally or in writing no later than five days after a decision has been reached. All disciplinary action will be confirmed in writing. The letters will state the details of the nature of the offence, the fact that disciplinary action has been taken and the reasons for this. Any specific requirements of future conduct and the consequences of any further disciplinary action will, be stated. The letter will also advise the employee of his/her right of appeal against the decision.

Should an employee be dismissed the letter will state the reasons for the dismissal and will inform the employee of his/her right of appeal to the Appeals Committee of the Council.

Subject to the outcome of any appeal, the Council reserves the right to notify any relevant professional body where misconduct has been substantiated and dismissal has taken place.

8. **Appeals**

Employee may appeal against disciplinary action. The appeal is to be submitted by the employee in writing, stating the grounds for their appeal, within 10 working days of receipt of formal written notification of disciplinary action, in all cases (ie for warnings and dismissals).

Appeals will be heard a different manager or by a panel, that will have different scope for action, depending on the circumstances:

● **Appeals against disciplinary action** They will normally be heard by a higher level manager than conducted the disciplinary hearing and who has not had previous involvement with the particular disciplinary proceedings. Where the Director has heard the case arrangements will be made for an alternative Director to consider the appeal. Appeal hearings will be attended by the Head of HR or their representative who should also have had no prior involvement in the case.

In cases where a disciplinary warning has been issued, the manager considering the appeal shall have the discretion to reduce the life of the warning from 24 to 12 months. This discretion may be appropriate in cases where, while there were grounds for formal action, there were circumstances which made it appropriate to lessen the severity of the penalty. Where action other than a disciplinary warning has been taken, the manager considering the appeal shall have the scope within the appeal to reduce the sanction imposed.

● **Appeals against dismissal** They are conducted by an Appeals Committee of the Council advised by the Head of HR or their representative. The appeal is to be submitted by the employee in writing within 10 working days of receipt of formal written notice of termination of employment.

The Appeal Committee may confirm, amend or reject the decision to dismiss. In cases where notice pay has expired prior to the appeal, if the appeal is allowed, it would be open to the Sub-Committee to either reinstate the employee (i.e. maintain continuous service) or re-engage (i.e. there would be a gap in service). The latter option would be used by the

Disciplinary Procedure p.5/6

Sub-Committee in cases where, while there were grounds for allowing the appeal, the employee's conduct was deemed to warrant some formal action short of dismissal. The options set out in section 6 e.g. withholding increments, transfer or demotion together with scope to commute dismissal to a final warning, are also available to the Sub-Committee where action short of confirmation of dismissal is deemed appropriate.

In all cases, appeals will generally be conducted as a review of the original decision. Exceptionally appeals may be conducted as a re-hearing where:-

● either side has additional relevant material to introduce which was not available at the hearing, and the existence of which could not reasonably have been known or foreseen at the time of the hearing;

● the Head of HR or their representative advises that there was a procedural defect at the original hearing which is capable of rectification by a re-hearing.

9. **Miscellaneous Provisions - Trade Union Officials**

Disciplinary action against a trade union official which includes departmental representatives and stewards, can lead to a serious dispute if it is seen as an attack on the union's functions. No formal disciplinary action will be taken against a trade union representative until the circumstances of the case have been discussed with a full-time official of the Union concerned.

Disciplinary Procedure p.6/6