



DISCIPLINARY PROCEDURE

DOCUMENT VERSION CONTROL

Date	Author	Version	Status	Reason for Change
2007	SEStran	1.0	FINAL	Policy Adopted
May 2012	SEStran	1.1	FINAL	Adapted to comply with the Equality Act 2010
Oct 2017	SEStran	1.2	FINAL	Adoption of version control

Introduction

The Disciplinary Procedure applies to all SESTRAN employees. Its main aims are to promote fairness, equity and order in the treatment of individuals and in the conduct of employee relations. The Disciplinary Procedure helps SESTRAN to operate effectively and to set standards of conduct at work, helping to ensure all employees adhere to these standards and ensuring they are aware of the standards of behaviour expected of them. In addition the Procedure provides a fair and consistent method of dealing with alleged breaches of specified standards.

Generally, the Disciplinary Procedure assists SESTRAN in maintaining acceptable standards and conduct. It provides a method of dealing with any shortcomings in conduct or performance and can help an undisciplined or poorly performing employee to become effective again. The emphasis therefore is on encouraging improvement in employees and this is one of the overriding principles of the Procedure.

The Disciplinary Procedure ensures that SEStran employee relations operate within, and comply with, the legal framework of employment law: specifically, the Employment Rights Act 1996, the Employment Relations Act 2004 and the Employment Act 2008. It also complies with the ACAS Code of Practice on Disciplinary & Grievance Procedures and the Human Rights Act 1998.

General

Where time limits are referred to in the course of this procedure they may be varied by consent between the employee and SESTRAN.

SESTRAN allows employees to be accompanied at any disciplinary investigation meeting or hearing by a fellow worker or trade union official of their choice.

If an employee who is an accredited representative of a trade union recognised by SESTRAN is suspected of having committed a disciplinary offence, no action will be taken under this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until there has been the opportunity to discuss the matter with a full-time official of that trade union with the employee's consent.

Where an employee has a disability covered by the Equality Act 2010, any reasonable adjustments which require to be made to assist them to participate fully in the disciplinary process will be implemented.

Misconduct

Matters that SESTRAN views as amounting to disciplinary offences include (but are not limited to):

- persistent bad timekeeping;
- unauthorised absence;
- minor damage to SESTRAN property;
- failure to observe SESTRAN procedures;

- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager or supervisor;
- poor attendance.
- smoking in non-designated areas of SESTRAN's premises.

Gross misconduct

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and SESTRAN. In the event that an employee commits an act of gross misconduct, SESTRAN will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

Matters that SESTRAN views as amounting to gross misconduct include (but are not limited to):

- stealing from SESTRAN, members of staff or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records, reports, accounts, expense claims or self-certification forms whether or not for personal gain;
- sexual misconduct at work;
- fighting with or physical assault on members of staff or the public;
- deliberate damage to or misuse of SESTRAN's property;
- serious damage to SESTRAN's property;
- drunkenness or being under the influence of illegal drugs whilst at work;
- possession, custody or control of illegal drugs on SESTRAN's premises;
- serious breach of SESTRAN's rules, including, but not restricted to, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct that brings SESTRAN's name into disrepute; and
- discrimination or harassment of a fellow worker on the grounds of sex, marriage and civil partnership, age, race, ethnic origin, sexual orientation, disability, religion, gender reassignment and pregnancy and maternity.

Suspension

Where it is believed that the matter to be investigated involves serious misconduct, the employee may be immediately suspended from work on full pay and contractual benefits. If serious misconduct is not initially suspected or believed to have occurred, but during the course of an investigation the person conducting it reasonably forms the opinion that a serious breach of discipline may have occurred, the employee who is the subject of the investigation may then be suspended. Any decision to suspend will be

confirmed in writing within five working days and such written confirmation will state that the nature of the suspension is precautionary, not disciplinary, pending the outcome of the disciplinary proceedings.

Investigation

An appropriate manager will thoroughly investigate any matter that is reasonably suspected or believed to contravene any of SESTRAN's policies or rules or may otherwise be a disciplinary matter.

The employee will be informed as soon as possible of the nature of the allegations made against him/her and will be invited to attend an interview as part of the investigation process. They will also be advised as quickly as possible when the investigation has been concluded and of the resultant recommendation.

Normally the investigation will last for no longer than 20 working days. Where, in exceptional circumstances the investigation is to be extended beyond this timescale, the employee should be advised that this is the case, of the reasons for the extension and the revised timescale for completion.

Where the conclusion following investigation is that there is no need to proceed to a disciplinary hearing, the employee concerned should be advised of this as soon as possible in writing.

Disciplinary Hearing

Hearing arrangements

Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing.

The chair person of the hearing will be responsible for the hearing arrangements, including:

- (a) giving the employee a minimum of five working days' advance notice of the hearing;
- (b) telling the employee the purpose of the hearing and that it will be held under SESTRAN's Disciplinary Procedure;
- (c) giving the employee written details of the nature of his/her alleged misconduct;
- (d) providing to the employee all documentation which will be referred to in the case against the employee (which should include any relevant statements taken during the course of the investigation) not less than two days in advance of the hearing;
- (e) advising the employee of their right to be accompanied at the hearing.

Where the employee is unable to attend a disciplinary hearing and provides an acceptable reason for failing to attend, the hearing will be adjourned to another day. The chairperson will comply with a) above in respect of giving notice of the rearranged hearing. Unless there are special mitigating circumstances, if the employee is unable to attend the rearranged hearing it

will take place in the employee's absence. The employee may nominate a fellow worker or trade union official who may attend in such circumstances and will be allowed the opportunity to present the employee's case in their absence. The employee will also be allowed to make written submissions in such a situation.

Hearing Process

A disciplinary hearing will normally be conducted by an independent manager, who may be advised, where appropriate, by a Human Resources Adviser and/or Legal Adviser.

The manager responsible for the investigation of the disciplinary offence(s) shall not be a member of the panel. They will however present the findings of the investigation to the hearing, so act as Presenting Officer.

The employee will be entitled to be given a full explanation of the case against him/her and be informed of the content of any statements provided by witnesses, or any other information provided in support of management's case. The employee will also be entitled to state his/her case in response to management's case and put forward an explanation of his/her conduct and/or mitigating factors.

The chairperson may adjourn the disciplinary proceedings if it appears 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. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

As soon as possible after the conclusion of the disciplinary proceedings, the chairperson will convey their decision to the employee which will include advising them what disciplinary action, if any, is to be taken. The decision may be conveyed to the employee in person but must also be confirmed in writing within 5 working days of the hearing date. This written confirmation will:

- Set out the nature of the offence committed;
- Inform of the likely consequences of any further disciplinary action being taken, eg, whether this could result in dismissal if a final written warning has been given;
- Notify the employee of their right of appeal under this procedure. Advising that the appeal should be submitted to the Partnership Director within 10 working days of receipt of the confirmation letter.

Disciplinary Outcomes

Where, following a disciplinary hearing, the chair person establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

(a) Where a minor offence or offences have been committed, a recorded **oral warning** may be given that remains 'live' for a period of **6 months**. During this period, the warning may be relied upon in the event of further misconduct on the part of the employee.

(b) Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a recorded oral warning that remains 'live', the employee will receive a **first written warning**. The employee should be informed that the warning will remain 'live' for a period of **12 months**. During this period, the warning may be relied upon in the event of further misconduct on the part of the employee.

(c) Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the chairperson decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains 'live', a **final written warning** may be given. This warning will remain 'live' for a period of **18 months**.

(d) Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given under (c) above, the employee may be **dismissed with notice** or with pay in lieu of notice.

(e) Where it is established that an employee has committed an act of **gross misconduct**, the employee may be **summarily dismissed**, ie, the employee will not be entitled to be given notice, or paid in lieu of notice. They will however be entitled to payment for outstanding annual leave at the date of termination.

(f) Where a final written warning is given to an employee under (c) above, the chairperson may also impose on the employee:

- (i) disciplinary suspension without pay for a maximum of 4 weeks;
- (ii) demotion/transfer to a job of a lower status.

The foregoing sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

Appeal

Notification of Appeal

An employee may appeal against any disciplinary sanction imposed against him/her. This appeal must be made within 10 working days of receipt of the letter confirming the outcome of the disciplinary hearing. The notification of appeal should detail:

- (a) the grounds of appeal; and

(b) whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

Appeal Arrangements

All arrangements will be put in place by the Appeal Chairperson.

The appeal should be heard by a manager or Partnership Member not previously involved with the disciplinary process.

Appeals hearings will normally be held within 20 working days of receipt. A Human Resources Adviser and/or Legal Adviser may be present at the appeal hearing as required. The employee will be given at least 5 working days' notice of the date of the appeal.

The case for management will be presented by the chairperson of the original disciplinary hearing. The investigating officer may be presented as a witness for management's case.

The chairperson of the appeal will consider cases presented before them by the chairperson of the original hearing and the employee and/or their representative.

Appeal Outcome

The chairperson must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether to uphold the disciplinary sanction. Their decision will be one of the following:

- Uphold the employee's appeal
- Uphold the employee's appeal in part
- Not to uphold the employee's appeal

In considering the decision they will also decide on the effect this has on the disciplinary action taken by the chairperson of the original hearing and therefore the recommendation as to whether this decision needs to be amended.

Upon completion of the appeal, the chairperson will convey his/her decision to the employee and will confirm this in writing within 5 working days of the hearing date. The decision at the appeal is final.

Where an appeal lies against a dismissal the decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given by the panel. If the panel's decision was to dismiss the employee summarily without notice, SESTRAN will be under no obligation to pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand.

Review

This policy will be reviewed annually, to take account of developments within SESTRAN and legislative requirements.