



Local Disciplinary Policy and Procedure

Introduction

This policy and procedure is applicable to all Officers of the Authority. The Chief Executive is responsible for the management of the Authority and for the discipline of members of staff. The primary purpose of disciplinary action is to ensure fairness and order, to encourage any necessary improvement in an employee's work or conduct. In this connection the following procedure will apply where an employee's work or conduct warrant disciplinary action.

In respect of the Chief Executive, any disciplinary action taken shall be dealt with under this policy and the appropriate procedure to follow is attached at Appendix 1 of this procedure.

Minor conduct issues and informal action

Minor conduct issues will often be addressed through informal discussion with the employee's Line Manager. In such cases, the procedure set out in this Policy will not be followed. The Authority may make a note of the discussion, which will be placed on the employee's personnel file for future reference but will not issue a formal warning.

If the employee's conduct does not improve (and in any case, where the Authority believe it appropriate to do so), the formal process will be followed.

General

- (i) An employee shall be entitled to be accompanied and represented by his/her trade union or a work colleague of their choice at any interview at any stage of the procedure. His/her attention shall be drawn to that facility.
- (ii) The trade union or colleague shall be given the opportunity to consult with the employee in private prior to or at any stage during the procedure. Your colleague or union representative can, if you prefer, explain the key points of your case to the meeting and can respond on your behalf. You can also confer with them during the meeting. However, they must not answer

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questions put directly to you or try to prevent us asking questions or outlining our arguments.

Investigation and Hearing

Stage 1 (Verbal Warning) - The employee will be given notification of the requirement to attend a disciplinary meeting, they will be given the opportunity to be accompanied by their trade union representative or a work colleague. However, A Stage 1 warning may be given immediately, if appropriate, and the warning confirmed by letter.

Stage 2 (Written Warning)– The employee will be given 5 days notification of the requirement to attend a Stage 2 disciplinary meeting, in writing, stating the reason they have been asked to attend the meeting. The employee will be given the opportunity to be accompanied by their trade union representative or a work colleague.

Stage 3 (Final Written Warning) – The employee will be given 5 days notification of the requirement to attend a Stage 3 disciplinary meeting, in writing, stating the reason they have been asked to attend the meeting. The employee will be given the opportunity to be accompanied by their trade union representative or a work colleague.

- (i) Where an employee's work or conduct are such as to appear to warrant disciplinary action, the Section Manager or Officer nominated for that purpose should interview the employee concerned and, if satisfied that disciplinary action is warranted issue a warning to the employee.
- (ii) Warnings should be given only after the employee has been interviewed and has been given the opportunity to state their case in the presence of his/her trade union representative if they so desire.
- (iii) A Stage 1 warning may be given verbally and will be confirmed in writing. Any warning issued should identify the nature of the complaint and any implication there from and register the fact that the employee has been notified of the serious nature of the offence.
- (iv) The further commission of an act warranting disciplinary action may result in a further warning, which according to the circumstances, may be a final warning. The employee's attention must be drawn to the issue of a final warning, and to the facility available to the employee to arrange for his trade union representative to be present at the interview.

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Any final warning must be confirmed in writing as soon as possible after the interview has taken place. The letter should stipulate the nature of the complaint, the improvement in work or conduct expected, the probable result of failure to meet the desired standard, and the right of the employee to appeal.

Details of all formal recorded warnings will be entered on the employee's personal file.

A Stage 1 (Verbal Warning) warning will be placed on the employee's personal file for a period of six months. Provided that no further misconduct occurs within a specified period of six months from the date of the warning letter, the warning will be taken off the employee's file.

A Stage 2 (Written Warning) warning will be placed on the employee's personal file for a period of twelve months. Provided that no further misconduct occurs within a specified period of twelve months from the date of the warning letter, the warning will be cancelled and taken off the employee's file.

A Stage 3 (Final Written Warning) warning will revert to a written warning after twelve months and will be cancelled and taken off the employee's file after a further twelve months, provided that no further misconduct occurs within the twelve months from the date of the warning letter. If an employee receives a Stage 3 warning there may also be an accompanying recommendation from the relevant Director for dismissal, the employee will be notified of this fact. This would require the employee to attend a dismissal hearing with the Chief Executive.

If, after receiving a Stage 3 warning there is further misconduct, there may be the potential for dismissal. This would require attendance at a dismissal hearing with the Chief Executive, the employee will be notified of this fact.

Where it proves necessary to issue warnings over successive Stages the above sequence will normally be followed.

However, depending upon the seriousness of the situation, it may be appropriate to move immediately to a later Stage of warning with its associated sanction.

Gross Misconduct

- (i) Gross misconduct is misconduct of such a nature that the Authority is justified in no longer tolerating the continued presence of the employee who commits an offence of gross misconduct.
The following list gives examples of what we would normally regard as gross misconduct. This list is not exhaustive and should be referred to as a guide.

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- a Serious breaches Authority policy
- b Bullying or physical violence
- c Fraud, theft, or any act of dishonesty
- d Continued absence without leave
- f Malicious misuse of any of our procedures, for example, if you make up allegations when taking out a grievance against someone
- g Serious negligence or carelessness, particularly if it leads to us losing trust and confidence in you
- h Serious health and safety breaches
- i Serious breaches of data protection legislation or our [Data Protection Policy]
- j Serious and/or intentional damage Authority property
- k Unlawful harassment including sexual harassment or discrimination
- l Viewing, receiving, or sending anything that breaches our [Bullying & Harassment Policy] or our [Equal Opportunities Policy]
- m Knowingly accessing websites containing offensive, obscene, or pornographic material
- n Misuse of internal email, external email or other internet and computer-based facilities, including the storage and/or transmission of obscene, illicit, or undesirable material
- o Serious insubordination or refusal to obey management instructions
- p Serious breaches of confidence
- q Covertly recording your colleagues or any management (or other) meeting where the participants do not know you are recording
- r Being under the influence of, or possessing, illegal drugs
- s Being under the influence of alcohol
- t Conduct that violates common decency, or engaging in behaviour that might bring the Company's name into disrepute

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- (ii) For offences of suspected or alleged gross misconduct, immediate suspension will normally apply, followed by dismissal without notice if the offence is established and there are no acceptable mitigating circumstances.

Sickness absence during the disciplinary process

Should the employee be absent due to sickness once notified of a disciplinary investigation meeting or disciplinary hearing, they will be paid under the sick pay rules set out in our Sickness Absence Policy (which may not involve being paid full pay depending on the length of the sickness absence.). The employee's right to Statutory Sick Pay is unaffected.

If the employee is unable to attend a disciplinary hearing due to sickness, the Authority will offer a new date for the hearing. However, if the employee is unable to attend a hearing within what is a reasonable period of time, then the Authority will look at alternative ways of conducting the hearing. This may involve conducting the hearing by phone or virtually, inviting the employee to send written submissions or asking a colleague to attend on the employee's behalf.

The Authority reserves the right to proceed with a disciplinary hearing if the employee fails to attend or conduct the meeting via other means.

Suspension

- (i) An employee may be suspended from duty on normal pay by the Chief Executive either: -
- to enable investigations to be made where the possibility of serious disciplinary action arises; or
 - where there are grounds for doubt as to the advisability of the employee continuing work pending criminal investigations or prosecution.

In the event of it being adjudged that the employee is not blameworthy, the suspension from duty shall be terminated.

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- (ii) Where an employee is suspended from duty, they will have the facility to suggest witnesses to be interviewed or evidence to be reviewed by the investigator.
- (iii) If the employee is adjudged blameworthy, the Chief Executive shall have discretion to decide whether the offence is such as to warrant dismissal or to allow the employee to resume his/her duties after a warning as to their future conduct. The employee shall have the right to be represented in stating their case either in verbally or in writing.
- (iv) If the employee is dismissed, they shall be allowed to retain any such sum already paid to them as suspension allowance during the period of suspension from duty together with any holiday pay due to them at the date of their suspension from duty. If pre-approved holidays fall during a period of suspension, they will still count as holiday leave and will be deducted from your holiday entitlement as normal.

Dismissal

The Chief Executive has delegated powers to: -

- (i) Dismiss an employee where previous warnings have been ineffective or for gross misconduct; and
- (ii) Exercise the powers of discipline and dismissal of all employees.

Appeal

An employee has a right to appeal against formal disciplinary action other than dismissal. Appeals for actions other than dismissal will be heard by either the next management level or a /Director.

In the case of any warning Stage where there is potential for dismissal, the employee will have the right of appeal to the Chief Executive.

If the Chief Executive dismisses, the employee has a right of appeal to the Appeals Committee.

In the case of any Stage 3 warning issued by the Chief Executive there is a right of appeal to the Appeals Committee.

Should an employee be issued a Stage 3 warning, and their conduct or behaviour warrant further action, the Manager may recommend dismissal. The manager will be

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required to produce a report stating their grounds for recommending dismissal. The employee will be required to attend a dismissal hearing with the Chief Executive.

This right of appeal must be exercised in writing to the Chief Executive, within five working days of receipt of the warning or notification of termination of employment.

Review of Action

- (i) In those cases where an employee is in receipt of a Stage 3 (final written) warning, and the employee's conduct has been such as to warrant no further disciplinary action being taken for a period of one year from the date of the original offence, the disciplinary action shall be reduced to a Stage 2 warning. Thereafter the situation shall be reviewed after twelve months and if no further disciplinary action has been necessary within that period, the warning shall be expunged from the employee's record.
- (ii) All Stage 2 (written) warnings shall have a review period of one year, after which time if no further disciplinary offence has been committed, they shall be expunged from the employee's record.
- (iii) All Stage 1 (verbal) warnings shall have a review period of six months, after which time if no further disciplinary offence has been committed, they shall be expunged from the employee's record.
- (iv) The results of all reviews of disciplinary action shall be communicated to the employees concerned in writing by the Chief Executive.

Exemptions

The procedures outlined in this section relate only to disciplinary matters and do not apply to situations where notice is given to probationary or temporary employees and to employees engaged on a short-term contract with less than twelve months' service.

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ANNEX 1

In relation to Disciplinary action, additional provisions must be undertaken in relation to the appropriate procedure to follow with regards to disciplinary action against the Chief Executive of the Authority.

Application

This process applies to the Chief Executive. It contains the principal elements of the Authority's own disciplinary policy and procedure but deals with the circumstances of the post of Chief Executive and the unique relationship that this places the post holder in with the Authority. The employer in the case of the Chief Executive is the Authority and the application of MWDA's disciplinary policy and procedure sets out the role of elected members in the process and supporting officers.

A standing committee should be in place, referred to in this document as the Investigating and Disciplinary Committee, with specific terms of reference to undertake the actions provided for in the procedure.

The committee should consist of a panel of three elected Authority Members, which are representative of three separate District Councils (to be known as Investigating and Disciplinary Committee). The terms of reference for the panel are to include:

- To undertake the role of an Investigatory and Disciplinary panel
- To appoint a mutually agreed Independent Investigator to undertake an investigation and to determine the terms, remuneration and working methods of the person appointed
- To suspend the Chief Executive.
- To negotiate and agree a financial settlement with the Chief Executive in the event of the mutual termination of the contract of employment
- To undertake any disciplinary action involving the Chief Executive, including consideration of the report by the mutually agreed Independent Investigator.

Arrangements will be put into place to provide advice to the Investigating and Disciplinary Committee which may be source internally or from an external advisor.

Allegations and Complaints

Where allegations are made regarding the work or conduct of the Chief Executive, these will be considered by the Monitoring Officer in consultation with the Chairperson of the Committee. This will provide a filter to avoid the Investigating and Disciplinary Committee dealing with any trivial matters or issues that are more appropriate to be dealt with under a service complaints procedure.

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The outcome of this initial consideration could be that the allegations are:

- Dismissed as trivial or without foundation
- Can be dealt with informally
- Could result in disciplinary action if proved and refer the matter to the Investigating and Disciplinary Committee

Where the allegation/issue regarding the work or conduct of the Chief Executive appear to warrant disciplinary action, the Monitoring Officer should conduct the preliminary investigation and produce a report for the Investigating and Disciplinary Committee.

The Chief Executive should be informed in writing of the allegations and allowed the opportunity to submit evidence and appear at any hearing before a decision is made by the Investigating and Disciplinary Committee to take the matter further.

If the allegation is of a more serious nature or may result in disciplinary action or dismissal, the Investigating and Disciplinary Committee in consultation with the Monitoring Officer may commission further investigation or engage a mutually agreed independent investigator or ACAS, who will make a full report to the Investigating and Disciplinary Committee.

Suspension

The Chief Executive may be suspended for the purpose of investigating the alleged misconduct occasioning the action. Any such suspension must be on normal pay.

The Investigating and Disciplinary Committee will have the power to suspend the Chief Executive for the purpose of investigating the alleged misconduct. The Monitoring Officer in consultation with the Chairperson of the Committee will have the authority to suspend the Chief Executive in emergency situations.

Procedure

The Chief Executive will receive not less than 5 working days written notice of the meeting of the Investigating and Disciplinary Committee. Before the meeting, the Chief Executive has the right, if so requested, to receive further details of the complaint made and/or to a postponement of the meeting for a jointly agreed period not exceeding 14 days. The Chief Executive may circulate a written statement to the Investigating and Disciplinary Committee before the meeting.

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As a result of the hearing, and on examination of the report by the Statutory Officer or the Independent Person, the Investigation and Disciplinary Committee can –

1. Exonerate the Chief Executive
2. State its opinion as to whether the evidence it has obtained supports any allegation of misconduct against the Chief Executive
3. Determine the disciplinary action (if any) or range of actions which appear appropriate to take against the Chief Executive. The appropriate course of action will be drawn from the following list: -
 - Recorded verbal warning
 - Written warning
 - Final written warning
 - Suspension (on half or no pay for a specified period)
 - An invitation to resign or accept retirement
 - Dismissal with notice
 - Summary dismissal in the case of gross misconduct

The final decision will be given to the Chief Executive in writing within five working days.

If a warning is given, it should tell the Chief Executive –

- The Level of improvement required
- The date by which it is to be achieved
- What will happen if it is not
- How to appeal

The Chief Executive has a right to appeal to the Appeals Committee for any disciplinary action short of dismissal and to the full authority in the case of dismissal.

The decision of the Authority shall be final.

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