

## **Disciplinary : Policy and Procedure**

SLT responsibility:	Director of Human Resources, Organisation Development & Marketing		
Applies to:	<ul style="list-style-type: none"> <li>• All RNN Group Employees</li> <li>• National Fluid Power Centre Employees</li> <li>• RES Employees</li> </ul>		
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Related documents:	<ul style="list-style-type: none"> <li>• Grievance Policy &amp; Procedure</li> <li>• Capability Policy &amp; Procedure</li> <li>• Suspension Policy</li> <li>• Appeals Policy</li> <li>• The role of companion statement</li> <li>• Supportive Measures Statement</li> <li>• Formal Hearing Procedure</li> </ul>		
<b>EQUALITY IMPACT ASSESSMENT</b>			
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## **1 Scope and purpose**

- 1.1 This policy and procedure shall apply to all employees other than “designated senior post holders” as defined in the Corporation’s Articles of Governance.
- 1.2 The policy and procedure will be applied in accordance with the Articles of Government of the Corporation and in accordance with the Advisory, Conciliation and Arbitration Services (ACAS) Code of Practice, ‘Disciplinary and Grievance Procedures’, last updated April 2015 and the Union Recognition Agreement. It also takes into account European and UK legislation.
- 1.3 The policy and procedure aims to help and encourage employees to achieve acceptable standards of conduct at work, prevent re-occurrence of misconduct and ensure that a fair and consistent approach is taken in relation to disciplinary action.
- 1.4 This policy and procedure does not form part of the employee’s contract of employment and so the right is reserved to depart from it where appropriate.

## **2 General Principles**

- 2.1 **Misconduct** is identified as unacceptable, wrongful, improper or unlawful conduct / behaviour motivated by premeditated or intentional purpose or by indifference to the consequences of the act / acts. **Gross misconduct** is behaviour, on the part of an employee, which is so bad that it destroys the employer/employee relationship. Please see Disciplinary Procedure and Guidance for examples of misconduct / gross misconduct.
- 2.2 Minor lapses from acceptable standards of conduct will usually be dealt with informally by the employee’s line manager who will inform the employee of the consequences. A file note will be recorded by the line manager and maintained for not more than 6 months.
- 2.3 If informal discussions are not appropriate or if, despite informal discussions the employee’s conduct does not meet acceptable standards, an investigation should be conducted. This will be carried out promptly and without unreasonable delay. No disciplinary action will be taken against an employee until a fair and proper investigation has taken place.
- 2.4 An employee who is accused of gross misconduct or gross negligence may be suspended from work whilst the alleged offence is investigated. Please see Suspension Policy for further information.
- 2.5 Any safeguarding complaint against a member of staff will be dealt with in line with Keeping Children Safe in Education Guidance. Complaints should be made to the HR Director or Safeguarding Lead without delay, the investigation process is referred to further in this policy. There is a legal requirement for colleges to make a referral to the DBS where they remove an individual from regulated activity (or would have removed an individual had they not left), and they believe the individual has:
  - engaged in relevant conduct in relation to children and/or adults,
  - satisfied the harm test in relation to children and/or vulnerable adults; or
  - been cautioned or convicted of a relevant (automatic barring either with or without the right to make representations) offence.Any complaints received will be dealt with in conjunction with the Safeguarding Lead / Deputy and by following the DBS referral guidance. If a referral to LADO is required, this will be made by the Safeguarding Lead / Deputy.
- 2.6 In the interest of ensuring disciplinary matters are resolved promptly and without undue delay, time limits are given for appropriate stages as listed below. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended, ideally by mutual agreement. Due regard will be given to the personal circumstances of all parties involved in the process. There will be no judgement of issues until matters have been fully considered.

- 2.7 No formal disciplinary penalty or other sanctions will be imposed without a disciplinary hearing, unless otherwise agreed by all parties. No employee will be dismissed for a first offence, other than in cases of gross misconduct, when the penalty may be dismissal without notice or without payment in lieu of notice.
- 2.8 All employees have the right to be accompanied at formal disciplinary stages by a trade union representative or work colleague of their choice. (Please refer to the role of companion procedure for future details).
- 2.9 Although normal disciplinary standards will apply to employed trade union representatives, no disciplinary action should be taken until the circumstances of the case have been discussed with a trade union official.
- 2.10 All information at any stage, whether written or verbal, must be treated as confidential information by all parties, unless agreement to vary this is reached between the relevant Union(s) and the individual concerned.
- 2.11 An employee will have the right to appeal against any formal disciplinary penalty imposed using the Appeals Policy.

### **3 Disciplinary stages**

There are different stages to the disciplinary process at the formal level.

#### **3.1 Investigation Stage**

- 3.1.1. A management representative, who has had no involvement at any stage in the case, prior to the investigation, will normally carry out the investigation. Their role is to establish the facts, taking into account the statements of the employee themselves, witnesses and any other relevant evidence available. They will be supported by a HR Advisor. Any investigation will be balanced and establish the facts in relation to the allegations. In some instances (where the circumstances of the case are relatively simple or the main facts are already clear) an investigation interview with the employee may not be required. In such cases the disciplinary hearing will be the first and final stage of an investigation.
- 3.1.2 The employee will be notified of the investigatory meeting in writing or verbally and will be advised at this point of the right to be accompanied by a Trade Union representative or work colleague. The employee will also be asked to identify if they require any reasonable adjustments at the meeting, which will be considered (and wherever possible) supported.
- 3.1.3 When being invited to an investigation meeting the employee will be informed of the reason for the investigation but will only be given brief details of the allegations.
- 3.1.4 Where the individual fails to attend an investigatory meeting, they will be invited to a rearranged meeting and will be informed that if they do not attend that interview (or submit a statement of their case by the date of that meeting) the investigation will be concluded without their statement.
- 3.1.5 Once the investigation has been carried out, the investigating officer will decide whether there are sufficient grounds for holding a disciplinary hearing. The employee will then be advised of the outcome of the investigation by the Investigating Officer or relevant HR Advisor. If the Investigating Officer is not the employee's line manager then the line manager will be informed of the outcome of the Investigation.

### 3.2 **Disciplinary Hearing Stage** (Please see Formal Hearing Procedure for detail)

- 3.2.1 If, after concluding the investigation it is decided to hold a disciplinary hearing, then at least 5 working days before the hearing, the employee will be informed in writing of the nature of the complaint and of the alleged conduct and details of the disciplinary hearing, along with any evidence to be discussed at the hearing.
- 3.2.2 If the employee wishes to call relevant witnesses to the hearing, they should arrange this themselves and advise the HR Representative of this at least 2 days in advance of the hearing and identify which witnesses they intend to rely upon. The employee will be informed prior to the hearing if RNN Group intends to call relevant witnesses. All witnesses (employed by RNN Group) will be given paid time off work to attend.

If the employee is suspended and unable to make contact directly, they should contact the HR representative to discuss this.

RNN Group reserves the right to refuse to allow / make a witness available for questioning at the hearing, where this is considered appropriate to do so i.e. character witnesses, with no prior involvement in the matter.

- 3.2.3 Any supportive measures required will already have been requested and organised as per the supportive measures statement (if applicable) in order to enable the employee to participate effectively. The Chair will confirm this at the start of the hearing.
- 3.2.4 Any other documentation the employee intends to refer to at the hearing should be exchanged at least 2 working days before such hearing.
- 3.2.5 At the disciplinary hearing, the employee will be given an opportunity to state his/her case (see formal meeting guidance sheet for details of format ) and will have the right to be accompanied by a Trade Union representative or work colleague of their choice. The purpose of the disciplinary hearing is to establish whether or not the allegation of misconduct / gross misconduct is substantiated.
- 3.2.6 If the chosen representative of the employee is unavailable on the date of the hearing, the employee may delay the date of that hearing once up to 5 working days to enable the chosen representative to attend. This is, however, negotiable under extenuating circumstances, for example if the representative is unavailable due to annual leave and no other workplace representative/official is not available in their place.
- 3.2.7 If the employee fails, without good reason, to attend the disciplinary hearing or where the employee fails to attend a hearing after it has been re-arranged RNN Group may conduct the hearing in the employee's absence. Prior correspondence will indicate that the hearing may go ahead in the employee's absence should they fail to attend and a decision made in their absence.
- 3.2.8 Management representatives are authorised to Chair hearings/cases and issue warnings up to final written warning stage of the process. Cases at Potential dismissal stage must be chaired by a member of the Senior Leadership Team (SLT). Cases must be chaired by an officer who has had no previous involvement in the case, or involvement in the investigation.
- 3.2.9 Outcomes will usually be notified verbally to the employee within 5 working days and in writing within 10 working days.

### 3.3 **Appeal Stage**

- 3.3.1 If the employee is not satisfied with the outcome of a disciplinary hearing, he or she may appeal. Any such appeal must be submitted in writing, setting out the full grounds for the

appeal (see Appeals Policy for further guidance), and sent to the HR and OD Director within 8 working days of receipt of the disciplinary decision.

3.3.2 The Appeal Policy will then will be followed.

#### **4 Other Circumstances**

4.1 In the vast majority of cases, it should be possible by using any or all of the measures outlined in the supportive measures statement (see document) to conduct a fair disciplinary process in which the employee fully participates. However, there may be exceptional circumstances when the employee will not be able to attend a disciplinary hearing, whatever measures are taken.

4.2 RNN Group aims to ensure that all matters relating to disciplinary action are dealt with fairly and promptly and will, wherever possible, follow the principles set out. However, circumstances may arise when the ill health of an employee prevents the disciplinary process from being followed because the employee is too ill to participate in the investigation, or is unable to adequately prepare for a hearing or attend the hearing itself. Please see Disciplinary Procedure and Guidance for further information in these cases.

#### **5 Holding the Hearing in the employees absence**

5.1 RNN Group believes that, in the vast majority of cases, it should be possible by using any or all of the measures outlined in the supportive measures statement to conduct a fair disciplinary process in which the employee fully participates. However, there may be exceptional circumstances when the employee will not be able to attend a disciplinary hearing, whatever measures are taken.

5.2 In such circumstances, RNN Group reserves the right to proceed with a disciplinary hearing in the employee's absence, although full consideration will be given as to whether or not this is necessary in the circumstances.

5.3 Where this is the case, the employee and their representative will be informed of the time and location of the hearing and will remain free to attend. The representative will be free to attend, even if the employee is not present.

5.4 Outcomes will usually be notified verbally to the employee within 5 working days and in writing within 10 working days.

5.5 The employee will be given a full opportunity to appeal against any decision in accordance with the Appeal Policy.

#### **6 In the Event an employee goes off sick during the disciplinary process**

6.1 RNN Group aims to ensure that all matters relating to disciplinary action are dealt with fairly and promptly and will, wherever possible, follow the principles set out in this procedure. However, circumstances may arise when the ill health of an employee prevents the disciplinary process from being followed because the employee is too ill to participate in the investigation, or is unable to adequately prepare for a hearing or attend the hearing itself.

Where this is the case, RNN Group will act consistently with the following principles:

- The ill health of an employee will not usually be grounds for abandoning any ongoing disciplinary process.
- Where the absence is likely to last a week, RNN Group will usually wait until the employee recovers and is able to take a full part in the process.
- When the absence is ongoing and it appears to RNN Group that the employee is likely to remain off sick for an extended period, RNN Group may require the employee to attend

an appointment with Occupational Health to assist in determining whether or not they are sufficiently fit to take part in the process.

- Any employee who is signed off as sick during a period of suspension will have their suspension rescinded until such time as they becomes fit for work but may not be eligible to Occupational Sick Pay. Pay will resume when they are fit to return to work (which may include during suspension). In reaching such a decision, account will be taken of the nature of the individual's condition and of any disability (where relevant medical advice may be sought).
- If, following consultation with Occupational Health, it appears to the RNN Group that the employee is fit to take part in the disciplinary process, the process will continue, although the RNN Group may, at its discretion, also take any of the steps listed in the "supportive measures statement".
- Where it appears that the employee is not fit to take part fully in the standard disciplinary process, RNN Group will consider taking any of the supportive measures set out in RNN Groups Supportive Measures Statement in order to enable the employee to participate effectively.

## **7 Management of grievances raised during the disciplinary process**

- 7.1 A grievance or complaint specifically about the disciplinary process will be dealt with in the course of the disciplinary by the employee raising the matter either in the disciplinary hearing or on appeal.
- 7.2 Where a grievance is about the circumstances that led to the disciplinary process being initiated, rather than raise a grievance about the disciplinary process itself, in most cases this will be dealt with in the course of the disciplinary hearing or on appeal. In exceptional circumstances where the allegations made by the employee are so serious that it would be manifestly unreasonable to proceed with the disciplinary hearing, RNN Group will postpone the disciplinary process while the grievance is considered.
- 7.3 Even where the grievance is considered during the disciplinary proceedings, it may remain unresolved at the conclusion of the disciplinary process. For example, an issue of alleged bullying may remain even though RNN Group may have accepted that there were mitigating circumstances to be taken into account and decided not to issue a disciplinary warning. If this is the case, the grievance process will normally commence to consider the grievance in full.
- 7.4 In such cases that the grievance is unrelated to disciplinary issues it will normally be dealt with in parallel. Only in exceptionally rare circumstances where the grievance is so serious that it may overshadow or interfere with the disciplinary process will the disciplinary hearing be postponed in order to hear the grievance.
- 7.5 If an employee has already lodged a grievance and the grievance process is ongoing when RNN Group commences disciplinary proceedings relating to the same issue, RNN Group will run the disciplinary and grievance processes in parallel. The details of the grievance may be raised at any disciplinary hearing, so far as they are appropriate to the hearing.

## **8 Warnings / Sanctions**

- 8.1 It is possible that the outcome determines that there is no case to answer to and so no formal action should be taken. In such cases there may be the requirement to complete training or development activity.
- 8.2 ***First Written Warning – 6 months duration***

May be given if:

- (i) the employee commits a minor act of misconduct

- (ii) conduct does not meet acceptable standards

### 8.3 **Second Written Warning - 9 months duration**

May be given if:

- (i) the employee commits a serious act of misconduct;
- (ii) the employee fails to comply with a formal first written warning;
- (iii) or despite having been given a formal first written warning as the result of misconduct, the employee commits a further offence of misconduct.

### 8.4 **Final Written Warning - 12 months duration**

May be given to the employee if:

- (i) the employee commits a serious act of misconduct;
- (ii) the employee fails to comply with a second written warning;
- (iii) despite having been given a second written warning as the result of misconduct, the employee commits a further offence of misconduct;
- (iv) the employee's misconduct, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant a final written warning.

**Any level of written warning** will give the reason for the warning, the improvement required and the time limit within which such improvement must be achieved.

**A first and second written warning** will also state that, if the employee commits a further offence of misconduct during the period specified in the warning, further disciplinary action will be considered.

**A final written warning** will state that if the employee commits a further offence of misconduct, during the period specified in the warning, employment may be terminated.

**Any level of written warning** will advise the employee of the right of appeal in accordance with the Appeals Policy.

A copy will be placed on the employees HR file, for the time period specified, then it will be considered spent and shall be removed from the HR record at that point.

### 8.5 **Dismissal**

The Chair, (having had regard for mitigating factors presented by the employee, representative of Trade Union or work colleague) may give notice of dismissal to the employee if:

- (i) the employee fails to comply with a final written warning;
- (ii) the employee commits a severe act of misconduct or negligence;
- (iii) or despite having been given a final written warning as the result of misconduct, the employee commits a further offence of misconduct

*There are alternatives to dismissal that may be considered where appropriate. It may be that a final written warning is extended in length or that a person is moved to a less senior / responsible role.*

After the disciplinary hearing any notice of dismissal will be in writing and will specify the reasons for dismissal, the date on which the employment will end and the right of appeal against the dismissal in accordance with the Appeals Policy.

The Chair may summarily dismiss the employee if, on completion of the disciplinary hearing it is established that the employee has been guilty of gross misconduct or gross

negligence. Such dismissal will be without notice or payment in lieu of notice and will be confirmed to the employee in writing, specifying the reasons for the dismissal and the right of appeal in accordance with the Appeals Policy.

## **9 Examples of Misconduct**

The following examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure:

- Repeated lateness and poor timekeeping including taking of excessive breaks which are unauthorised.
- Unauthorised absence from work, or abuse of the policies related to absence from work.
- Misuse of RNN Group property.
- Failure to maintain acceptable standards of interpersonal behaviour i.e. rudeness, swearing or being verbally abusive.
- Failure to follow reasonable manager instructions
- Failure to meet agreed reasonable deadlines
- Failure to take reasonable care of RNN Group property, goods or vehicles.
- Use of RNN Group facilities / equipment for personal reason without seeking manager's permission
- Inappropriate / unprofessional behaviour (verbal or written)
- Breach of trust or confidence
- Recording of meetings with RNN Group staff without their express permission
- Breach of or failure to follow RNN Group policies or procedures.

Persistent offences of misconduct may ultimately lead to the termination of employment.

## **10 Examples of Gross Misconduct**

The following offences are examples of Gross Misconduct which are normally regarded as grounds for summary dismissal:

- Theft or unauthorised removal or possession of any property or facilities belonging to the RNN Group, or to any employee or student.
- Serious damage deliberately sustained to RNN Group property, goods or vehicles.
- Serious misuse of the RNN Group's property, goods vehicles or name.
- Reckless handling of personal data.
- Dishonesty, fraud including deliberate falsification of registers, reports, salary, accounts, timesheets, expense claims, absence forms, or other RNN Group documents.
- Bribery or corruption.
- Refusal to carry out duties or reasonable instructions or to comply with RNN Group rules.
- Serious acts of insubordination.
- Serious negligence/incompetence which causes unacceptable loss, damage or injury.
- Incapability as a result of being intoxicated by reason of alcohol or illegal drugs.
- Physical violence or bullying, dangerous or threatening / intimidatory conduct.
- Violation of the RNN Group's rules and procedures concerning health and safety at work.
- Violation of the RNN Group's rules and procedures concerning safeguarding.
- Sexual, racial or other harassment of another employee or a student.
- A criminal offence, (whether it is committed during or outside the employee's hours of work for the RNN Group) which may adversely affect the RNN Group's reputation, affect the ability of the employee to continue to work in their role, or the employee's suitability for the type of work they are employed by RNN Group to perform.
- Conduct, whether inside or outside of the employee's work which is likely to bring the RNN Group into disrepute.
- Deliberate access to internet sites containing pornographic, offensive or obscene material, including the circulation of such materials.
- Serious breach of trust or confidence.

The above examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.