

# **Agreed Disciplinary Procedure**

**Between**

**ESB and the ESB Group of Unions**

**For staff covered by the PCI Agreement**

**April 2017**

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## 1. Introduction

ESB acknowledges that, for the vast majority of staff, the question of disciplinary action never arises. The following procedure is set out to comply with the requirements of the Unfair Dismissals Acts and the Code of Practice on Grievance and Disciplinary Procedure (S.I. 146); and to ensure that where disciplinary action has to be taken it is exercised in a fair and consistent manner having due regard to the rights and responsibilities of all the parties concerned.

The continued well being and prosperity of ESB is dependant on all employee's fulfilling, in a spirit of trust, the obligations of their employment contract and the agreements particular to their category or to the staff as a whole.

The procedure for dealing with disciplinary issues must ensure that:

- Details of any allegation of misconduct are put to the employee concerned.
- The employee concerned is given the opportunity to respond fully to any such allegation of misconduct.
- The employee has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of the employee and any other relevant or appropriate evidence, factors or circumstances.

In the operation of this procedure:

- A Manager cannot lead a disciplinary hearing or decide on a sanction on a matter in which s/he has been involved in during the investigation.
- A Manager, cannot hear a disciplinary appeal on a matter which he has been previously involved in.
- Management and Trade Union Representatives on the Industrial Council cannot have had any prior involvement in the case.
- No new evidence will be introduced by ESB after an allegation has been formally made following an investigation.
- A Manager can decide on a disciplinary sanction up to and including dismissal. A decision to dismiss an employee shall be notified to the Board of ESB.

## **2. Counselling and Cautioning**

The immediate line manager will, in the normal course of their work, counsel and, where necessary, caution an employee in minor cases of misconduct, for example where performance, attendance, timekeeping etc. is below standard, without invoking the formal disciplinary procedures.

In these circumstances the immediate line manager will:

- Highlight the standards required of the employee.
- Investigate any possible problems which are identified.
- Put in place any solutions to aid the employee. This may include, where appropriate, giving the employee additional training, extra supervision or other forms of support to help achieve the required level of performance over a specific period of time.
- Verbally counsel if there is continued failure to meet the standards required, which will be recorded.
- Issue a written caution if the problems are still not addressed in a satisfactory manner.

Details of the cautioning meeting and follow up actions agreed shall be documented by the immediate line manager.

The formal disciplinary procedure commences where the above steps have failed or where a breach of discipline has occurred resulting in an allegation of misconduct against an employee.

## **3. Formal Disciplinary Procedure**

Where an employee's conduct or work performance does not meet the required standards despite counselling and cautioning, or where a suspected breach of discipline or performance is deemed sufficiently serious enough to bypass the counsel and caution stage of the procedure, the matter will be dealt with under the formal disciplinary procedure. The following non exhaustive list indicates the types of conduct that may lead the Company to invoke formal disciplinary procedures:

- a) Unauthorised absence,
- b) Poor timekeeping,
- c) Breach of leave policies,
- d) Sub standard work performance,
- e) Refusal to obey line management instructions,
- f) Unacceptable behaviour towards customers / colleagues.
- g) Breach of any Company Policy.

Where a matter is being dealt with under the formal disciplinary procedure, the details of the alleged misconduct will be recorded in writing by the immediate line manager and will be given to the employee concerned. The employee will have up to five working days to add his/her comments if s/he wishes before it is sent by the immediate line manager to the next level of management to arrange an investigation (if applicable) and/or a disciplinary hearing if required.

In a formal disciplinary matter, the employee concerned shall be given a copy of the disciplinary procedure and advised at the start that s/he has the right, during all phases of the formal disciplinary process, to the assistance and representation by their Trade Union or a work colleague if s/he wishes it.

### **3.1 Investigation Prior to Disciplinary Hearing**

When a suspicion or an allegation about an employee has arisen which is potentially serious enough to constitute misconduct, a formal investigation may be necessary to establish the facts and whether there is a case to answer. It should be noted that all cases of alleged misconduct may not require a formal investigation prior to a formal disciplinary hearing. Investigations are neutral actions and do not imply assumptions of guilt about any person. Any investigation meeting is held to establish the facts of a case and is not a disciplinary hearing.

Where an investigation is required, a member of management will be appointed as an Investigating Manager who will review the circumstances of the alleged misconduct. The employee against whom the allegation is made will be advised of the right to representation and will be provided with copies of all documentation prior to and on completion of the investigation process.

While an allegation is under investigation it may be necessary to reassign the employee as a precautionary measure to alternative work which may include a transfer of work location if practicable or in exceptional circumstances be sent home on full pay.

On completion of an investigation, the Investigating Manager will issue a written report of its findings and recommendations. The employee against whom the allegation is made will be provided with a copy of the investigation report. While the Investigation Manager may recommend the instigation of disciplinary proceedings, s/he can not recommend a disciplinary sanction.

### **3.2 Disciplinary Hearing**

Where it is considered that there is a disciplinary case to answer, a disciplinary hearing will be held by a Disciplinary Hearing Manager. Before a decision is made regarding a disciplinary sanction, all relevant facts will be assembled and carefully considered by the

Disciplinary Hearing Manager at the disciplinary hearing. The Disciplinary Hearing Manager shall give the employee concerned a full opportunity to state his/her own version fully, and to have representations made on their behalf by their Trade Union Representative or a work colleague.

The Disciplinary Hearing Manager shall endeavour to confirm the decision in writing within five working days of the disciplinary hearing together with the reasons for the decision and advising of the rights of appeal under the procedure outlined in this document.

A disciplinary sanction shall not be enforced while a case is under appeal.

### **3.3 Stages in the Formal Disciplinary Procedure**

While the formal disciplinary procedure will normally be operated on a progressive basis, in the event that a serious case of misconduct is upheld, the Disciplinary Hearing Manager may bypass earlier stages of the formal disciplinary procedure and apply a disciplinary sanction commensurate to the nature and seriousness of the misconduct. The factors to be taken into consideration when deciding upon the stage of a formal disciplinary sanction to be applied are:

- the nature and seriousness of the misconduct;
- the employee's current disciplinary and service record;
- special mitigating circumstances which might make it appropriate to adjust the severity of the sanction.

#### **Stage One – First Written Warning**

An employee whose conduct/performance falls below the required standards will normally be issued with a First Written Warning for a period of six months. The First Written Warning will give details of the misconduct, the improvements required, the timescale for improvement and the right of appeal.

The employee will be advised that the warning constitutes the first stage of the formal disciplinary procedure and failure to improve within the timescale may result in further disciplinary action under the appropriate stage of the formal disciplinary procedure.

A record of the First Written Warning will remain on the employee's personnel file for a period of two years but will be disregarded for disciplinary purposes after six months provided that the Company is satisfied with the employee's conduct/performance.

#### **Stage Two – Second Written Warning**

If the employee fails to make the necessary improvements within the required timescale, or where the misconduct is regarded as more serious, the employee will be issued with a Second Written Warning for a period of twelve months. The Second Written Warning will

give details of the misconduct, the improvements required, the timescale for improvement and the right of appeal.

The employee will also be advised that failure to improve within the required timescale may result in further disciplinary action under the appropriate stage of the formal disciplinary procedure.

A record of the Second Written Warning will remain on the employee's personnel file for a period of two years but will be disregarded for disciplinary purposes after twelve months provided that the Company is satisfied with the employee's conduct/performance.

### **Stage Three – Final Written Warning**

If the employee fails to make the necessary improvements within the required timescales, or where the misconduct is regarded as more serious, the employee will be issued with a final written warning for a period of eighteen months. The Final Written Warning will give details of the misconduct, the improvements required, the timescale for improvement and the right of appeal.

The employee will be advised that failure to improve within the required timescale or further misconduct may lead to dismissal under Stage Four of the formal disciplinary procedure.

A copy of the Final Written Warning will remain on the employee's personnel file for a period of two years but will be disregarded for disciplinary purposes after eighteen months provided that the Company is satisfied with the employee's conduct/performance.

### **Other Disciplinary Sanctions**

In the circumstances where the misconduct is serious, the Company may impose other disciplinary sanctions in conjunction with a formal Warning, which may include but not limited to the following:

- Suspension with or without pay,
- Transfer,
- Withholding/Withdrawal of increments/payments,
- Withholding/Withdrawal of concessions or allowances.
- A period of warning greater than eighteen months.

### **Stage Four – Dismissal**

Failure by the employee to respond to the terms of the previous formal warnings or further misconduct of any kind will lead to a disciplinary hearing under Stage Four of the Formal Disciplinary Procedure. In a case where a disciplinary sanction of dismissal is a possible

outcome, the Formal Disciplinary Hearing will be conducted by a Disciplinary Hearing Panel comprising of two Senior Managers<sup>1</sup>.

The Disciplinary Hearing Panel shall endeavour to confirm the decision in writing within five working days of the disciplinary hearing together with the reasons for the decision and advising of the rights of appeal under the procedure outlined in this document.

### **3.4 Persistent Offenders**

In the case of employees that persistently reoffend within a short time of the expiry of the warning or who have a record of persistent breaches of conduct, irrespective of the timelines outlined above, the Company reserves the right to enter them at the same level of warning as they had previously incurred, rather than reverting to the beginning of the disciplinary procedure.

## **4. Summary Dismissal for Gross Misconduct**

In the event of gross misconduct the Company reserves the right to dismiss an employee summarily (without notice or payment in lieu of notice).

Gross misconduct is behaviour which, if proven, is serious enough to justify the termination of the employment contract and make any further working relationship and trust between the employee and the Company impossible. The following non-exhaustive list provides examples of conduct which will be considered to be gross misconduct by the Company:

- a) Serious breach of the company's safety rules; actions which endanger fellow employee's and/or customer's safety,
- b) Assault.
- c) Wilful damage, unauthorised disposal and /or misuse of Company's property,
- d) Serious abuse of the Company's IT system and policies,
- e) Serious breach of the Company's policies,
- f) Being under the influence of alcohol and/or drugs during a working period,
- g) Theft and/or Dishonesty,
- h) Doing work on one's own account for others, which conflicts with the interests of ESB or involves abuse of relationship with the public as an ESB staff member,
- i) Disclosure of Confidential Information,
- j) Falsification, concealment or distortion of company information, documents and records,
- k) Theft of electricity or any unauthorised interference with ESB metres or time switches.
- l) Transgression of Company rules such as involvement by staff in any outside commercial interest, without express permission in writing from the Company or any conflict of

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<sup>1</sup> A senior manager for the purposes of the Disciplinary Procedure is defined as Senior Manager Level One and/ or Level Two.



interest or possible conflict of interest, by the employee in relation to a customer, and/or his family or relatives.

At any stage of the Formal Disciplinary Procedure but most particularly, where there is an allegation of gross misconduct, a decision may be taken in exceptional circumstances to suspend the employee on full pay pending the outcome of any investigation and/or disciplinary process.

The suspension will be confirmed in writing within five working days and will set out the grounds on which the decision to suspend has been taken. Such suspension will only be imposed after careful consideration and will be reviewed to ensure that it is not unnecessarily protracted. The decision to suspend an employee on full pay is a neutral act and is not a disciplinary sanction but merely an aid to assist an investigation.

During the period of suspension employees may have access withdrawn to any of the Company's premises, IT and communication systems and any other such conditions the Company may decide.

In line with the Formal Disciplinary Procedure, the employee will receive the details of the alleged gross misconduct, and will be given an opportunity to respond. In all cases of alleged gross misconduct, a full investigation as detailed in section 3.1 of the Formal Disciplinary Procedure will be conducted to establish the facts. On submission of the investigation report a disciplinary hearing may be convened under Stage Four of the Formal Disciplinary Procedure.

In the event that an allegation of gross misconduct is upheld, the Company reserves the right to dismiss an employee summarily (without notice or payment in lieu of notice).

## **5. Appeal**

A decision by a Disciplinary Hearing Manager/Panel to impose a formal disciplinary sanction may be appealed by the employee concerned, either directly or through their Trade Union representative, to the Human Resources Manager of the relevant Business Unit.

The appeal must be lodged within five working days of the decision being made known to the employee. It must be in writing and must specify the grounds of the appeal which may relate to the disciplinary sanction or process followed or both.

Human Resources will appoint an Appeals Manager or an Appeals Panel (in a case of dismissal). Appeals against any formal disciplinary action will be heard by Manager(s) at the same or a higher level than the Manager(s) who made the original decision where ever possible, but invariably by personnel not involved in the case.

The appeal hearing will be arranged within ten working days of the appeal request. The appeal hearing is not a rehearing of the original disciplinary hearing, but rather a

consideration of the specific grounds of appeal. The Appeals Manager/Panel will therefore confine the appeals hearing to the specific grounds of appeal rather than reconsider the whole matter afresh.

Normally the employee with their representative will attend the appeal hearing. However in some cases it may be appropriate for the Appeals Manager/Panel, where clarification is required, to invite those connected to the case under consideration to attend the appeal hearing.

At the appeal hearing the documentary evidence made available at the original disciplinary hearing will be made available for reference purposes. The purpose of the appeal hearing is not a reconsideration of all matters. It is the responsibility of the employee to state the basis of the appeal and bring to the attention of the Appeals Manager/Panel all relevant documentary evidence that should be considered. Based on the appeal case presented and the associated evidence, the Appeals Manager/Panel may either: uphold the grounds for appeal, reject the grounds for appeal, or amend the disciplinary sanction. The Appeals Manager/Panel shall endeavour to confirm the decision in writing within five working days of the appeal hearing together with the reasons for the decision.

If the decision on the appeal is not acceptable to the employee a referral by the employee's Trade Union may be lodged to the Industrial Council within five days of the appeal decision for a recommendation where appropriate.

Pending the outcome of the appeal hearing, disciplinary action will not be taken. Where a decision to dismiss has been made by the Disciplinary Hearing Panel, the employee may or may not be suspended on full pay pending the conclusion of the appeals process.

## **6. Right of Representation**

An employee may be represented by a work colleague, or a Trade Union Representative at any meeting/hearing in the formal disciplinary procedure. An employee may not be represented by any other person or body unconnected with the Company.

## **7. Note Taking**

All meeting/hearings relating to the formal disciplinary procedure will be recorded using a neutral person taking notes. A copy of the notes will be provided to the employee on request. Under no circumstances may any person party to the Disciplinary Procedure electronically record any disciplinary meeting/hearing.