

## CHAPTER 4

### DISCIPLINARY PROCEDURE

4.1 A disciplinary matter is where an officer's conduct or performance falls short of expected standards. An officer may not avoid disciplinary action merely because the standard of conduct or performance is not written down, or referred to in General Orders. Examples of misconduct may be categorised as follows:

- **Negligence**: Failure of an employee to exercise the skill and care expected of an officer performing the function in question.
- **Unreliability**: Failure to comply with job attendance requirements, for example, lateness, absenteeism or leaving the job early without reasonable justification.
- **Insubordination**: Refusal to obey a reasonable instruction given by or on behalf of a superior officer or deliberate disrespect shown to a superior officer. Non-compliance with a reasonable request from a superior officer would constitute a refusal.
- **Substance Abuse**: Being under the influence of or using any alcohol, illegal drugs or any other prohibited substance while on duty.
- **Interfering with the Rights of other Employees**: Behaviour likely to adversely affect the maintenance of discipline and good order within a department including but not limited to fighting, intimidation, verbal abuse, pernicious gossip, sexual harassment, lewd behaviour and practical jokes.
- **Ignoring Safety Procedures**: Failure to observe any recommended safety procedures (written or oral) whether or not resulting in the creation of a hazard to others.
- **Criminal Offences**: Including offences involving dishonesty, theft, assault, immoral acts and other offences for which an officer may be liable to a term of imprisonment.
- **Inappropriate Conduct** : Engaging in abusive behaviour, physical or verbal violence or any similar behaviour ; publication of nude or sexually explicit photos or other information on the internet in such a way that the officer may be identified.

- **Misuse or abuse of ICT:** Disclosure to another and/or sharing of username and/or password with another; any attempt to access files or directories that the officer is not authorized to access. (See also Section 10.9)

4.2 Misconduct also includes contravention of any of the other provisions of General Orders.

### **ORAL AND WRITTEN WARNINGS**

4.3 When a disciplinary matter arises, the Supervisor of the officer concerned should first establish the facts before recollections fade, taking into account and recording the statements of any available witnesses and noting and collecting any documentary evidence.

4.4 The Supervisor should then notify the Head of Department who will investigate as soon as reasonably practicable. Normally this would be within 7 days of the occurrence of the disciplinary matter but not before all the relevant evidence is available for discussion and consideration.

4.5 The Head of Department will make sure that the officers are present, are told of the case against them and are given the opportunity to state their own case.

4.6 The Head of Department will advise officers of their right to be accompanied by a fellow employee of their choice or be represented by the Anguilla Civil Service Association or some other Staff Association.

4.7 If the case against the officer is substantiated, the Head of Department is authorised under this procedure to give the officer an oral warning (see Appendix Form P/12).

4.8 If the case against the officer is substantiated and warrants more than an oral warning, or if the officer concerned already has a record of any oral warning less than twelve months old on file, the Head of Department is authorised under this procedure to give the officer a written warning (see Appendix Form P/13).

4.9 If the case against the officer is substantiated and warrants more than a written warning, the Head of Department shall immediately notify and forward to the Permanent Secretary all the relevant evidence.

4.10 If the Permanent Secretary agrees with the Head of Department's assessment of the case, then the Permanent Secretary shall give the officer a final written warning (see Appendix Form P/14). This is automatic if the officer concerned already has a record of a written warning less than twelve months old on file.

- 4.11 If on receiving the statements and documentary evidence the Permanent Secretary is of the opinion that the case warrants more than a final written warning, then the Permanent Secretary shall immediately notify the Governor of the case against the officer and forward to the Governor all the relevant evidence.
- 4.12 If the Governor agrees with the Permanent Secretary's assessment of the case, then the Governor shall refer the matter to the Public Service Commission. This is automatic if the officer concerned already has a record of a final written warning less than twelve months old on file.
- 4.13 Subject to the Public Service Commission Regulations, the Public Service Commission will make sure that officers are present, are told of the case against them and are given the opportunity to state their own case. All relevant evidence will be presented at the hearing, including statements from any witness whether given in writing or in person. Officers will have the opportunity to question witnesses, to make representations concerning any written statements considered and to call witnesses or present written evidence in support of their case.
- 4.14 Subject to the Public Service Commission Regulations, the Public Service Commission will advise officers of their right to be accompanied by a fellow employee of their choice or a member of the Anguilla Civil Service Association or Staff Association.
- 4.15 It is the duty of all officers to notify Supervisors of all cases where they are aware that misconduct or performance below expected standards by another officer may have taken place.
- 4.16 Heads of Department, Permanent Secretaries and the Governor may initiate disciplinary actions under any of the procedures outlined in this section irrespective of whether or not a disciplinary issue has been notified to him by the Unit Manager.

## **DISCIPLINARY PROCEDURE/SENIOR OFFICERS**

- 4.17 Where a disciplinary matter involves a Head of Department (other than the Attorney General), the Permanent Secretary will assume responsibility for action under the relevant procedures in this chapter.
- 4.18 Where the disciplinary matter involves a Permanent Secretary, or the Attorney General, the Governor will assume responsibility for action under the relevant procedures in this chapter.
- 4.19 Where disciplinary proceedings are about to be instituted against an officer and where the Governor is of the opinion that the public interest requires that such officer should immediately cease to do his/her job then that officer may be suspended from duty by the Governor and be permitted to receive such emoluments as the Governor may decide but not less than half.
- 4.20 If disciplinary proceedings against officers result in no disciplinary action being taken, those officers shall be entitled to the full amount of any emoluments they would have received but for the suspension.
- 4.21 If the proceedings result in any punishment other than dismissal (excluding oral or written warnings), the officers shall be allowed such emoluments (if any) as the Governor may decide.

## **RECORD OF WARNINGS**

- 4.22 A record of all oral warnings and details of all disciplinary action taken in the form of written warnings should be given to the officer on the recommended form, a copy of which should be forwarded to Public Administration to be placed on the file of the officer. The recommended forms for recording and issuing warnings are available from Public Administration.
- 4.23 A warning will cease to count against an officer and will be deemed to have expired if there is no further misconduct or performance below expected standards during the twelve month period immediately following such warning, however, such written warnings will remain on the officer's file and will be taken into account in any further disciplinary action considered by the PSC.
- 4.24 Public Administration shall keep records of all disciplinary procedures, action taken and warnings given. Subject to the Public Service Commission Regulations, officers who have been or who are still subject to disciplinary hearings or disciplinary action under the procedures of this Chapter shall be entitled to free copies of or to be allowed access to any documentary evidence relied upon.

## **CRIMINAL OFFENCES**

- 4.25 Where there is reason to believe that a disciplinary matter might also constitute a criminal offence, then the matter must be brought to the attention of the Permanent Secretary Public Administration who may, on the advice of the Attorney General, report the matter to the Police.
- 4.26 Any action taken by the Police, or any criminal proceedings instituted in any court, against an officer shall not remove the right to take disciplinary action against such officer upon any grounds arising out of the criminal charge under the procedures in this chapter.
- 4.27 An officer convicted of a criminal offence involving dishonesty, fraud, immoral behaviour or any other serious offence for which an officer is liable to a term of imprisonment, shall be dismissed from the Public Service with immediate effect.
- 4.28 Criminal or civil proceedings can be initiated against officers at any time irrespective of the disciplinary procedure.

## **PURPOSE OF DISCIPLINARY PROCEEDINGS**

- 4.29 All oral warnings should be confirmed in writing and be considered for the purpose of improving the performance or conduct of an officer found to have committed a minor infringement of expected standards. The officer should be advised that the warning constitutes the first stage of the disciplinary procedure: provided, however, that failure to give such advice shall not of itself render such oral warning or any subsequent disciplinary proceedings a nullity.
- 4.30 All written warnings should be considered for the purpose of improving the performance or conduct of an officer found to have committed a second minor infringement of expected standards within twelve months of an oral warning. A written warning may also be issued where there has not been an oral warning, if there has been a more serious infringement that does not warrant a final warning with dismissal being the next step.

The officer should be advised that the written warning constitutes the second stage of the disciplinary procedure: provided, however, that failure to give such advice shall not of itself render such written warning or any subsequent disciplinary proceedings a nullity.

- 4.31 All final written warnings should be considered for the purpose of improving the performance or conduct of an officer found to have committed a second minor infringement of expected standards within twelve months of a written warning, or a more serious infringement that does not warrant dismissal.

The officer should be advised that the final written warning constitutes the third and final stage of the disciplinary procedure and that if the misconduct or performance below expected standards continues within twelve months of the final warning, that the officer is liable to be dismissed: provided, however, that failure to give such advice shall not of itself render such final written warning or any subsequent disciplinary proceedings a nullity.

- 4.32 When in accordance with the Public Service Commission Regulations a disciplinary matter receives the attention of the PSC, the PSC may recommend to the Governor other disciplinary penalties such as:
- dismissal
  - demotion,
  - reduction in salary,
  - suspension with reduced pay,
  - withholding of increment,
  - surcharge for any loss to Government by the officer's negligence or misconduct,
  - a fine,
  - transfer

#### **WHEN DISMISSAL SHOULD BE CONSIDERED**

- 4.33 Dismissal should always be considered when an officer commits a disciplinary offence, where the officer has:
- (a) committed a second infringement of expected standards of conduct or performance within twelve months of a final warning;
  - (b) accumulated two or more expired warnings;
  - (c) committed gross misconduct;
  - (d) committed gross negligence.

#### **INCREMENT DEFERRED**

- 4.34 The procedure and circumstances under which increments are deferred are defined below:-
- a) Where a Head of Department considers that on account of unsatisfactory service or conduct, an increment should not be awarded on the date it is due, the Head of Department (via the Permanent Secretary) will submit at least one month in advance of that date to the Permanent Secretary, Public Administration a report giving detailed reasons together with a recommendation as to

whether the increment should be deferred. The matter shall be referred to the Public Service Commission which shall recommend to the Governor whether the increment shall be awarded on the date due or whether it be deferred.

- b) Increment deferred – An increment will normally be deferred for disciplinary reasons or in cases where the poor quality of work or conduct justifies this deferral. Deferment of an increment means that the officer cannot be considered for the award of an increment for a period of six months but not exceeding one year from the date on which the increment was deferred. If and when an increment which was deferred is granted, only one increment will be awarded and the date of award will become the officer's new incremental date.
- c) The Government shall refer to the Public Service Commission for its recommendation in any case where it is recommended by a Head of Department that the increment of an officer should be deferred or restored. If, after consulting the Public Service Commission, the Governor directs that an officer's increment be deferred, the case will be kept under review by the Head of Department who shall submit in due course a recommendation to the Governor if and when he considers that the improvement in the officer's work or conduct justifies payment of the increment. The Governor shall then again refer the matter to the Commission for its recommendation.
- d) An officer serving on probation whose probation period is extended beyond the date on which the officer is due for an increment shall not be paid an increment until his/her appointment has been confirmed. In such cases the date of confirmation will determine the new incremental date.
- e) An officer whose increment is deferred must be informed in writing of the action which has been taken and the reason for it.

#### **DISCIPLINARY PROCEDURE AGAINST POLICE, PRISON OFFICERS AND FIRE OFFICERS**

- 4.35 Disciplinary procedure against police officers below the rank of Gazetted Officer is governed by the provisions of the Anguilla Police Act, as amended; and for Prison Officers, below the rank of Superintendent of the Prison, disciplinary procedure is governed by the Prison Rules. Additionally, disciplinary procedure against fire officers is governed by the Fire Regulations.

## **DELEGATION OF POWERS**

- 4.36 The Governor, after consultation with the Public Service Commission, may delegate, by regulations in the Gazette, to any public officer the power to make appointment to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices, provided that the officers concerned shall have the right of appeal to the Governor. Where public officers exercise the power delegated to them under this General Order, they shall report the matter and the action taken by them to the Governor.