

DISCIPLINE POLICY

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POLICY SUMMARY

All employees of the Welsh Government (the WG) are expected to maintain high standards of conduct in keeping with our Terms and Conditions of Service and the Staff Code of Conduct, Civil Service Code, Security Rules and other Rules and Procedures notified to employees from time to time.

It is the WG's policy to take steps to manage misconduct through informal and/or formal measures depending on the nature of the misconduct. The purpose of our Discipline Policy is to encourage improved conduct where it is found to be unsatisfactory, to promote good employment relations and to ensure the fair and consistent treatment of all staff, through a straightforward and transparent process for dealing with alleged failures to comply with standards on conduct.

No disciplinary action will be taken until the alleged misconduct has been fully investigated. It is our policy that employees may be accompanied by their Trade Union Representative or a work colleague at all meeting/interview stages of the process.

The procedure set out in this policy is designed to follow the statutory Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and grievance procedures and, as such, **must** be followed to ensure compliance.

All our policies are fully inclusive of all staff regardless of age, marriage and civil partnership (both same sex and opposite sex), pregnancy and maternity, race, religion or belief, sex, sexual orientation, whether they have an impairment or health condition, are neurodivergent or use British Sign Language, their gender identity or gender expression. We acknowledge that the terms 'gender identity' and 'gender expression' are not protected characteristics as defined by the Equality Act 2010, however, we believe that Government policy which includes provision for those persons who identify within the 'trans' umbrella (rather than on the basis of binary gender) is a more inclusive approach and one which ensures the Welsh Ministers are in a position to comply with all their statutory duties related to equality and the promotion of well-being in Wales. If you have any feedback on the inclusivity of this policy, please email EqualityintheWorkplaceTeam@gov.wales

The Policy will be reviewed every two years, whenever a relevant change in legislation occurs or earlier if a need to make amendments is identified for other reasons.

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GUIDANCE AND PROCEDURES

ROLES AND RESPONSIBILITIES

Line managers are responsible for:

- ensuring that they and their staff are aware of the Codes, Rules and procedures on conduct;
- making clear the standard of conduct that the WG expects of staff and, where necessary, giving help and encouragement to employees to maintain the required standard;
- if an employee's conduct consistently fails to meet these standards, seeking advice about the appropriate course of action in such circumstances;
- taking prompt action and a considered approach where a member of staff's conduct gives cause for concern in accordance with this procedure;
- familiarising themselves with the policy and attending any relevant training to help them deal effectively with cases of alleged misconduct in accordance with this procedure;
- ensuring standards of fairness, objectivity and consistency in the treatment of employees involved in disciplinary cases;
- immediately informing the Head of Audit, Assurance & Counter Fraud or the Chief Security Officer as appropriate, if an employee's alleged misconduct might potentially mean they have committed a criminal offence;
- conveying the Investigating Officer's decision to the employee in person and in writing; and,
- liaising with the HR Case Adviser on making the arrangements for holding a formal disciplinary meeting if a member of their staff is charged with alleged misconduct.

All employees are responsible for:

- making themselves fully aware of the conduct expected of them and ensuring they observe this at all times;
- co-operating with investigations and meetings as required; and,
- behaving in a sensitive manner and maintaining confidentiality when involved in disciplinary matters.

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HR Case Advisers are responsible for:

- ensuring that line managers are aware of and understand the Discipline Policy and procedure;
- supporting and advising line managers who are initiating and taking action in disciplinary cases;
- advising employees who are the subject of a case on the application of the policy;
- making arrangements for any Welsh Language requirements to be met;
- signposting employees to sources of further assistance and support e.g. the Employee Assistance Programme, trade union representatives, if a member;
- appointing a Decision-Making Officer and, where necessary, an Appeal Officer and liaising with the line manager on making arrangements for the formal meetings under this procedure;
- ensuring that decisions are ratified by the appropriate HR senior manager in all cases where dismissal or downgrading is recommended; and,
- ensuring that witnesses are informed at the appropriate point in the process that the matter has been concluded.

Corporate Shared Service Centre is responsible for:

- responding to general queries on the policy including referral to other HR teams as appropriate.

Investigating Officers are responsible for:

- conducting a prompt investigation of the facts, in as thorough a manner as befits the seriousness of the matter;
- interviewing employees as necessary, giving them adequate warning and explanation of the matter under investigation, so they have time and the opportunity to prepare;
- maintaining confidentiality and impartiality throughout the investigation;
- immediately informing the Head of Audit, Assurance & Counter Fraud or the Chief Security Officer as appropriate if an employee's alleged misconduct might potentially mean they have committed a criminal offence; and;

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- producing a factual and unbiased report and deciding whether there is evidence of misconduct and therefore a case to answer.

Decision-Making Officers are responsible for:

- conducting disciplinary meetings in accordance with this procedure;
- taking advice from HR Case Advisers at each stage of the formal disciplinary and appeal procedure;
- immediately informing the Head of Audit, Assurance & Counter Fraud or the Chief Security Officer as appropriate if an employee's alleged misconduct might potentially mean they have committed a criminal offence;
- undertaking enquiries to resolve any doubts about the facts, so they can then make a disciplinary decision which is reasonable, taking into account all relevant factors after hearing all the evidence; and,
- acting impartially, independently and confidentially to ensure all parties are treated equally and fairly.

Appeal Officers are responsible for:

- exploring the reasons why the employee has appealed;
- considering carefully any new evidence;
- deciding whether or not to uphold the findings and disciplinary measures imposed by the Decision-Making Officer; and,
- acting impartially, independently and confidentially throughout.

APPLICATION OF THE GUIDANCE

1. Aims and key principles

- 1.1 All employees of the WG are expected to maintain high standards of conduct. The rules relating to conduct are set out in the WG's Terms and Conditions of Service and the Code of Conduct for Staff, the Civil Service Code, Security Rules and other Rules and Procedures notified to employees from time to time.
- 1.2 The purpose of the Discipline Policy is to encourage improved conduct where it is found to be unsatisfactory, to promote good employment relations and to ensure the fair and consistent treatment of all staff, through a straightforward

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and transparent process for dealing with alleged failures to comply with standards on conduct.

1.3 These overall aims are supported by the following key principles:

- Informal measures to resolve minor instances of misconduct will be taken before moving to the formal procedure;
- Informal measures will uphold the same principles of fairness, maintaining confidentiality, listening to what the member of staff has to say and ensuring any criticism is constructive and based on established facts, as apply to formal procedures;
- Potential disciplinary issues will be raised and dealt with promptly. Neither employees nor management will unreasonably delay any part of the procedure;
- No disciplinary action will be taken until the alleged misconduct has been fully investigated, unless all parties agree to the use of the fast track procedures where appropriate (see 6.46 to 6.53 below);
- If, following investigations, it is decided that there is a disciplinary case to answer, employees will be notified in writing of the nature of the allegations against them, provided with copies of any documentary evidence, witness statements or reports, and then invited to a meeting at which they will have an opportunity to respond to the allegations;
- During any meetings, employees will have the right to be accompanied by a colleague or trade union representative of their choice;
- Employees will not normally be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty will normally be dismissal without notice and without pay in lieu of notice;
- Employees have a right to appeal against **any** formal disciplinary penalty imposed upon them;
- All discipline matters will be dealt with in strictest confidence. Any breach of this confidentiality will in itself be regarded as a disciplinary matter;
- This Discipline Procedure must be followed, with all staff being treated equally and fairly, and, at each stage of the process, judgements must only be made on the basis of the facts. Failure to do so may invalidate proceedings;
- Once a disciplinary case has been concluded and internal rights of appeal exhausted, there will be no further reference to it, unless the case proceeds to an Employment Tribunal; and,

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- The procedure is designed to follow the statutory Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and grievance procedures and, as such, **must** be followed to ensure compliance.

2. Appropriateness of the Discipline Policy and procedures

- 2.1 The Discipline policy and these procedures should be used in most cases where conduct is unsatisfactory. However, depending on the circumstances of the case, other policies and related procedures may come into play, as follows:

Dignity at Work

- 2.2 The Dignity at Work Policy and related procedures focuses specifically on misconduct cases which involve issues of bullying or harassment. It may be that some cases initially raised under the Dignity at Work Policy are more appropriately dealt with under the Discipline or Grievance Policy and vice versa. On these occasions, the HR Case Adviser will confirm which is the more appropriate procedure to be used.
- 2.3 Generally, where an employee complains that they have been bullied or harassed, this will normally be dealt with under the Dignity at Work policy. If an employee reports that a colleague has bullied or harassed another member of staff, then this will generally be dealt with under the Discipline policy.

Underperformance

- 2.4 Line managers dealing with underperformance should refer to the Performance Management framework, Probation Policy or Underperformance Policy for further advice, as appropriate.

Grievance

- 2.5 In the course of a disciplinary case, an employee might raise a grievance that is related to the case. Where this happens, and depending on the circumstances, it may be appropriate to either suspend the disciplinary procedure for a short period until the grievance can be considered or to deal with both issues concurrently. Consideration might also be given, where possible, to bringing in another manager to deal with the grievance.

3. Welsh Language

In accordance with the Welsh Language Standards the following requirements will apply to the formal stage of the Discipline procedure.

The HR Case Adviser will ensure that employees who have allegations made against them are aware of their rights outlined below and that the requirements are met:

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- An employee has the right to respond in Welsh to any allegations made against them.
- If any meetings are organised with the employee who is alleged to have committed misconduct, the member of staff will be asked whether or not they wish to use Welsh at that meeting. If the individual wishes to use Welsh, we will confirm to the employee whether we will provide a simultaneous translation service from Welsh to English or conduct the meeting in Welsh.
- Any decision reached in relation to the allegations will be confirmed to the employee in Welsh if that member of staff:
 - responded in Welsh to allegations made against them
 - asked to use Welsh at a meeting about the allegations.

4. Support

- 4.1 On occasions, any party involved in a disciplinary matter may find the situation stressful or difficult and may want to talk things through in confidence with a professionally trained counsellor. Such support and counselling is available to WG employees through the Employee Assistance Programme. This provides free, independent and confidential support and information and can be accessed via the Vivup website or by telephoning 0800 023 9387.
- 4.2 The Occupational Health provider also provides support to individuals who may be experiencing personal well-being or health issues. Annex J contains further information.
- 4.3. Support and advice is also available to Union members from their relevant trade union.

5. Training

All managers administering a case will receive appropriate training in the use of the Discipline policy and procedure. This aims to ensure that the procedure is effectively and consistently applied and that managers can help their staff to understand the importance of satisfactory conduct. Investigating, Decision-Making and Appeal Officers will also receive training before carrying out their roles.

6. Mediation

Mediation is a process that complements formal arrangements for dealing with workplace concerns and complaints that have resulted in conflict or disputes. In discipline cases it is more appropriate to consider mediation to rebuild relationships after the discipline procedure has been concluded. Further details can be found in the Mediation Guidance.

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DISCIPLINARY PROCEDURE

1. Purpose of the procedure

1.1 This procedure sets out the steps to be taken when there is reason to believe that an employee has:-

- breached the WG's standards of conduct (including the WG Security policy, procedures and/or Handbook); and/or
- been negligent in or omitted to undertake their duties leading to a loss of trust and confidence, failed to obey a reasonable instruction, or carried out some other form(s) of misconduct; and/or
- by their behaviour, action or inaction, disrupted or damaged the performance or reputation of the WG, or any part of it.

1.2 This procedure is designed to deal consistently and fairly with disciplinary issues, while recognising that the circumstances which may give rise to disciplinary proceedings will be different in each case. The aim is to improve standards of behaviour amongst those whose conduct is unsatisfactory and to send a clear message to others that poor behaviour will not be tolerated.

2. Timescales

2.1 The ACAS Code of Practice does not prescribe precise timescales for disciplinary procedures, but it clearly states that, *"Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions."* It is therefore a requirement that all actions, whether formal or informal must be carried out as soon as possible and within a reasonable timescale.

2.2 The aim of the procedure is to resolve a disciplinary matter as fairly, consistently and speedily as possible. However, depending on the nature of the disciplinary issue and practical considerations, the timescales for the various actions within the procedure may vary from case to case.

2.3 A guide to what might represent reasonable timescales for the formal stage of the procedure is set out in the flowchart at Annex B which gives an overview of the process. This suggested timetable is intended to assist employees in gauging what the organisation believes is a reasonable timetable for actions to occur within the normal course of events as well as best practice advocated by ACAS. Should there be an issue meaning you wish to seek more time, please contact the Case Advisory Team who will consider the specific circumstances of your request.

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- 2.4 Obviously where it is possible to implement the actions within a shorter timescale without compromising the procedure, then this should be achieved. Similarly, if circumstances require a longer time to carry out actions effectively, then this is acceptable. What is most important is that all parties are clear about the expected timescales for particular actions and adhere to them as closely as possible. Wherever possible managers should expedite matters and aim to ensure that no party to a complaint, benefits or is disadvantaged from undue delays.
- 2.5 If at any time during the informal or formal stage of the procedure the employee is on leave or sickness absence then this will be taken into account in determining what is reasonable in terms of timescales.
- 2.6 If the employee is on long term sickness absence, the HR Case Adviser should be contacted for advice on a referral to the Occupational Health provider to determine whether the employee is fit to participate in the process. The employee will need to be aware of the referral, usually through their line manager contacting them to discuss the nature of the referral and the reasons for it. The referral may then be made by the line manager, Decision-Making Officer, Appeal Officer or the Case Advisory Team as appropriate.
- 2.7 If the employee is absent on a long term basis for any other reason, the manager handling the disciplinary case should consult the HR Case Adviser for guidance.

3. Witnesses

- 3.1 Witnesses may be called upon to give evidence to establish the facts at any stage in the informal or formal procedure by either party. They may be required to attend an informal discussion, a formal disciplinary meeting, provide a written statement, be interviewed separately or any combination of these as the circumstances of the case demand. If a witness is invited to a formal investigation interview or disciplinary meeting, the nature and basis of the investigation will be explained to them in writing beforehand. Any information given by witnesses should be recorded in writing and they will be asked to check and sign this record to confirm its accuracy.
- 3.2 Although witnesses are not legally entitled to have a colleague or trade union representative present at any discussions or meetings, the WG allows witnesses to be accompanied at any stage of the disciplinary procedure.

4. Disciplinary allegations against Trade Union Representatives

- 4.1 Normal disciplinary standards apply to employees who are trade union representatives. Nevertheless disciplinary allegations must not be brought against a trade union representative until the senior line manager, or the HR Case Adviser has discussed the circumstances with the appropriate senior trade union representative or full-time official. The HR Case Adviser will routinely inform the Deputy Director HR Operations & Performance.

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- 4.2 Such early consultation may cause management to reconsider the need for disciplinary action if there are special factors arising from the employee's trade union work. Managers must take care to ensure that disciplinary action cannot be seen as an attack on the union's function.

5. INFORMAL STAGE - DEALING WITH MINOR MISCONDUCT

- 5.1 In the case of alleged or suspected misconduct of a relatively minor nature, the line manager and employee should seek to resolve the matter through informal discussions, advice or support. This should be done promptly as delay could be perceived as acceptance of misconduct.
- 5.2 Informal discussions with employees do not constitute formal disciplinary proceedings and therefore, an employee is not legally entitled to invite a trade union representative or colleague to attend such meetings. However, there may be occasions where an employee may ask to be accompanied and the line manager should allow this.
- 5.3 During any informal discussion, the line manager should explain the basis for their concerns, provide any evidence which has come to light and give the individual the opportunity to explain their actions or clarify the facts of the case. Knowledge of an underlying cause may help to identify the most appropriate course of remedial action to ensure that the employee's conduct returns to a satisfactory standard. As with formal disciplinary procedures, it is important that any informal warnings or action are based upon facts and evidence not unsubstantiated complaints or suspicions.
- 5.4 The line manager should listen carefully to what the employee has to say about the issue, as it may become clear that there is no evidence of misconduct and actions may have been misinterpreted. If this is the case, this should be made clear to the employee and the matter should not be referred to again.
- 5.5 If there is evidence of minor misconduct, the line manager should discuss and agree the improvements necessary, how they might best be achieved, by when and, if appropriate, what the line manager will do to help the individual to improve. A period of monitoring or regular reviews of progress may also be agreed, as appropriate to the circumstances. The line manager must also make clear to the employee that any further misconduct or failure to improve could lead to the formal procedure being implemented.
- 5.6 Informal discussions must be recorded by the line manager who should agree the note with the employee. The manager should keep a copy securely and in accordance with the Data Protection Policy¹ and also give a copy to the employee.
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- 5.7 The note will not form part of an employee's formal disciplinary record, but it may help the manager to decide, after consultation with the HR Case Adviser, whether the employee's subsequent pattern of conduct should lead to the formal disciplinary procedure being initiated. Informal records which have been kept for management purposes outside personnel files may be referred to subsequently when fresh potential breaches of discipline become the subject of formal disciplinary proceedings.
- 5.8 Following the informal discussion, the line manager should continue to monitor behaviour and provide advice and support where needed. These discussions and any further actions should be recorded with a copy being kept by the manager and employee.
- 5.9 If during an informal discussion it becomes obvious that the matter is potentially serious, the meeting should be adjourned. The employee should be advised that the matter will be investigated under the formal disciplinary procedure and that they will receive written confirmation of the allegations and the arrangements for a formal disciplinary meeting as soon as possible. If the alleged misconduct may mean that the employee has committed a criminal offence, the line manager must immediately inform the:
- Head of Audit, Assurance & Counter Fraud for cases of suspected fraud (see also paragraphs 7.6 to 7.9), or
 - Chief Security Officer for cases where other kinds of criminal activity is suspected.
- If the manager is in any doubt about whether the suspected misconduct is fraud, they must contact the Head of Audit, Assurance & Counter Fraud in the first instance who will either take action or provide advice on the next steps.
- 5.10 If line managers are in any doubt about whether an incident of misconduct should be dealt with informally, they should discuss the matter with their HR Case Adviser who will advise on the correct action.

6. THE FORMAL DISCIPLINARY PROCEDURE

- 6.1 The formal disciplinary procedure will only be initiated after discussion between the line manager and the HR Case Adviser.
- 6.2 This procedure will be invoked in circumstances where:
- Informal discussions have not resulted in the required improvement in conduct; or,
 - Misconduct is alleged to have taken place that warrants formal proceedings being instigated or,
 - Conduct remains unacceptable within the period specified in a previous written warning; or,

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- Serious or gross misconduct is alleged to have taken place.

Variation of duties and suspension from duty

- 6.3 Where an employee may be facing formal disciplinary action, the line manager may decide that it is appropriate to transfer the employee to alternative/restricted duties or to another post, until the procedure is concluded. In certain circumstances, it may be appropriate to suspend the employee (on pay) but it is important to note that this is not a disciplinary sanction nor does it indicate a presumption of guilt.
- 6.4 For detailed information on variation of duties and suspension, please refer to Annex D.

Establishing the facts

- 6.5 If a potential disciplinary matter arises, an appropriate manager or external investigator will be appointed by the HR Case Adviser to investigate the allegation(s). This officer will be at Management Band 1 or above and must have received training to carry out the role. Any exceptions to this must be agreed with the Head of the Case Advisory Team. A member of the IT Security team will be appointed to investigate cases of suspected IT abuse. If the employee has any concerns for valid reasons about the individual nominated to be the Investigating Officer, they should raise them with the HR Case Adviser. These concerns will be considered and, if necessary, another Investigating Officer will be appointed.
- 6.6 The Investigating Officer will establish the facts, collate evidence and, where appropriate obtain statements from relevant witnesses, and produce an unbiased, factual, written report. This Investigating Officer will be impartial and not directly involved in the alleged disciplinary matter. The nature and extent of the investigation will depend on the seriousness of the issue but in all cases will be carried out without unreasonable delay. The written report will also conclude whether or not there is a case to answer based on the evidence of the investigation.
- 6.7 The employee and relevant members of staff may be required to participate in the investigation to establish the facts, including attending an interview. If the employee or a member of staff is required to attend an interview, they will be informed in writing of the nature of the investigation and may be accompanied by a work colleague or trade union representative. The employee will be given enough notice of the meeting so that they have time to prepare. Anyone who is interviewed will be provided with a note of the interview and asked to sign it as a true record of the meeting.
- 6.8 If at any stage of the investigation, enquiries indicate that the employee's alleged misconduct may mean that they have committed a criminal offence, the Investigating Officer must inform immediately the:

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- Head of Audit, Assurance & Counter Fraud for cases of suspected fraud (see also paragraphs 7.6 to 7.9), or
- Chief Security Officer for cases where other kinds of criminal activity is suspected.

If the manager/officer handling the case is in any doubt about whether the suspected misconduct is fraud, they must contact the Head of Audit, Assurance & Counter Fraud in the first instance who will either take action or provide advice to the manager/officer on the next steps.

- 6.9 If, in the course of undertaking preliminary enquiries, the Investigating Officer needs to search office furniture, they should consult the HR Case Adviser. Searches should normally only be undertaken in the presence of the employee who has allegedly committed the misconduct. Where for any reason this is not practicable, the Investigating Officer must always be accompanied by a witness, normally the employee's trade union representative and/or the HR Case Adviser. Management has no authority to search personal belongings without the individual's consent. "Personal belongings" do not include desks, cupboards or lockers but does include private receptacles or personal property within them.
- 6.10 On completion of the investigation the Investigating Officer will forward their report to the HR Case Adviser.
- 6.11 If the report concludes there is no case to answer, the HR Case Adviser will contact the employee's line manager who will inform the individual of the decision in person and confirm this by letter. They will thank any witnesses for their participation and inform them that the matter has been concluded. If the subject of the complaint would like the witnesses to be made aware of the outcome of the investigation, the Case Advisor will also do so. The report should be filed in accordance with the Data Protection Policy, together with a note that the allegations were not upheld and that no action was taken against the individual. The HR Case Adviser may wish to consider at this stage whether the original allegations were vexatious or malicious.
- 6.12 If it is considered that there is a case to answer, the HR Case Adviser will liaise with the employee's line manager on the arrangements for a formal disciplinary meeting to take place and notify the employee as soon as practicable in writing in an Allegation Minute. A template copy can be obtained from the Case Advisory Team.
- 6.13 For more detailed guidance on conducting an investigation, please refer to Annex E.
- 6.14 In certain circumstances, it may not be necessary to conduct an investigation. Further information can be found at 6.46 to 6.53 below.

Arranging the Disciplinary meeting

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- 6.15 A Decision-Making Officer will be appointed by the HR Case Adviser and line management to chair and decide the outcome of the meeting. This person must not have had any prior involvement in the case, be at least Executive Band 2, be a minimum of one grade higher than the employee who is alleged to have committed the misconduct and must not be the employee's line manager. The Decision-Making Officer must have received training to carry out the role. If the employee has concerns for valid reasons about the individual nominated to act as Decision-Making Officer, they should raise these with the HR Case Adviser who will consider them and, if necessary, appoint another Decision-Making Officer.
- 6.16 Any disciplinary decisions and imposition of penalties for members of the SCS must be in accordance with the following guidelines:
- decisions relating to the Permanent Secretary, Directors General or their direct equivalents must be taken by the Head of the Home Civil Service after consultation with the First Minister and, as appropriate, the Prime Minister;
 - decisions relating to Directors must be taken by Director Generals; and;
 - decisions relating to Deputy Directors must be taken by a Director or Director General.

Notifying the employee of the disciplinary meeting

- 6.17 The arrangements for the meeting will be confirmed in writing to the employee by their line manager without unreasonable delay. These arrangements should give the employee enough time and information to allow them to prepare for the meeting. The letter will confirm:
- the allegation(s), setting out the supporting facts and evidence and enclosing copies of any documentary evidence, including the investigation report and witness statements;
 - the date, time, place of the meeting and the name of the Decision-Making Officer;
 - details of any witnesses the employer intends to call;
 - that after the meeting, the employee will have the opportunity to supplement the comments they make at the meeting in writing;
 - the employee's right to be accompanied by a trade union representative or colleague; and,
 - the disciplinary procedure which is being followed and details of where fuller information can be found.

Detailed guidance on drafting disciplinary allegations is set out in Annex F.

- 6.18 This letter and any relevant documents should be handed to the individual by the line manager (or other appropriate person) and the implications and possible consequences briefly explained. If the employee is on sickness absence or suspended from duty with pay, the line manager should arrange

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for the letter and any relevant documents to be sent to the employee's home address by special delivery. In the case of an employee on sickness absence, advice should be sought from the Occupational Health provider on whether the employee is fit to participate in the meeting, before issuing the letter. The employee will be told of this referral to the Occupational Health provider and the reason for it.

- 6.19 The employee is required to confirm their attendance at the meeting to the Decision-Making Officer as soon as possible, provide details of any witnesses they intend to call or of written witness statements they wish to submit, and advise whether or not they will be accompanied at the meeting and, if so, by whom.
- 6.20 Witnesses for either party should only be approached by the Decision-Making Officer or the employee to obtain witness statements or to confirm details for attendance at the meeting. Witnesses must not discuss the detail of the case with each other or with anyone else, whether or not legitimately involved in the disciplinary matter.
- 6.21 At all stages of the formal procedure, employees are entitled to be accompanied by a work colleague or a trade union representative.

Failure by the employee/accompanying person to attend the meeting

- 6.22 The employee is responsible for ensuring that the person they choose to accompany them is available to attend the meeting. If they are not available, the employee can propose an alternative time to meet, soon after the original meeting date.
- 6.23 If the employee or the person they have chosen to accompany them does not attend the meeting, it will be re-arranged as soon as possible and the employee will receive a further letter from the Decision-Making Officer confirming the revised arrangements. This letter will also advise that if the employee fails to attend the rescheduled meeting, and there is no valid reason for non-attendance, decisions may be made in their absence.
- 6.24 If the accompanying person does not attend the rescheduled meeting but the employee is in attendance, then the meeting will go ahead, unless there are exceptional circumstances.
- 6.25 Where an employee is repeatedly unable or unwilling to attend a disciplinary meeting, the Decision-Making Officer and the HR Case Adviser will need to consider all the facts and come to a reasonable decision on how to proceed. In reaching this decision, they will need to consult the employee's line manager and in some cases, the Occupational Health provider.
- 6.26 Considerations may include:
- the seriousness of the alleged disciplinary issue;

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- the employee's disciplinary record, general work record, experience, position and length of service;
- medical opinion as to whether the employee is fit to attend the meeting; and,
- how similar cases in the past have been dealt with.

6.27 If it is decided that a decision will be made in the employee's absence on the basis of the evidence available, the employee will be informed of this decision and of any penalty in writing by the Decision-Making Officer as soon as reasonably practicable.

Disciplinary Meeting

6.28 The purpose of the disciplinary meeting is to:

- resolve any outstanding questions or disputes about the facts of the case, by discussing the evidence and supporting information and giving the employee the opportunity to comment;
- give the employee the opportunity to respond to the allegations made against them, and to ask them whether the alleged misconduct took place or if they have an explanation for these actions;
- give the employee the opportunity to explain any mitigating factors or special circumstances which should be taken into account; and,
- provide the Decision-Making Officer with sufficient information and evidence on which to base a decision.

6.29 The meeting is conducted by the Decision-Making Officer and an HR Case Adviser is present to advise on procedure and take a note of the proceedings.

6.30 The person who accompanies the employee may address the meeting to put the employee's case, respond on their behalf to any views expressed, ask questions of witnesses and confer with the employee during the meeting. However, they do not have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent management from explaining their case.

6.31 At the meeting, the case against the employee is outlined and witnesses may be called or other evidence presented which may include written statements in support of the allegations. The employee will be expected to answer questions in order to clarify the issues and may question or comment on the information presented.

6.32 The employee will be invited to set out their case and address the allegations that have been made. They may also ask questions, present evidence, call relevant witnesses or present written witness statements and question or comment on any information, including that provided by witnesses.

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- 6.33 If it becomes clear during the meeting that the employee has provided an adequate explanation or that there is no real, plausible evidence to support the allegation, the meeting will be brought to a close.
- 6.34 If new facts emerge during the course of the meeting, it may be necessary to adjourn the meeting to investigate them and reconvene at a later date.
- 6.35 If during the meeting, it becomes apparent that the alleged misconduct may mean that the employee has committed a criminal offence, the Decision-Making Officer must immediately following the meeting contact the:
- Head of Audit, Assurance & Counter Fraud for cases of suspected fraud (see also paragraphs 7.6 to 7.10), or
 - Chief Security Officer for cases where other kinds of criminal activity is suspected.

If the Decision-Making Officer considers that the suspected misconduct in any way may be fraudulent or involve fraud, they must contact the Head of Audit, Assurance & Counter Fraud in the first instance who will either take action or provide advice to the Decision-Making Officer on the next steps.

- 6.36 The Decision-Making Officer will forward a note of the meeting to the employee. If the employee agrees that it is a fair and accurate record of proceedings, they should sign and date the note and return it to the Decision-Making Officer as soon as possible. If the employee is unable to agree the record, effort should be made to include any reasonable amendments and resolve any remaining points of difference. If areas of disagreement about the record remain, the note will be marked as not agreed and the proposed amendments will be attached to it, so that they can be taken into account before any decision is made.

Decision-Making

- 6.37 Once the meeting note has been returned, the Decision-Making Officer will consider all the evidence, decide if misconduct has occurred and, if so, whether disciplinary or any other action would be justified. The Decision-Making Officer may delay making the decision to provide an opportunity for reflection and proper consideration or to undertake a fuller enquiry, particularly if there is any dispute about the facts. However, this must be undertaken as quickly as possible and must not unnecessarily delay the communication of the decision to the employee.
- 6.38 If the allegations are not substantiated the employee will be informed, in writing, without delay. The HR Case Adviser will also inform any witnesses of the outcome of the investigation, if the employee has requested this.
- 6.39 If the allegations are substantiated, the Decision-Making Officer will decide whether a disciplinary penalty is appropriate and what form it should take. In

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doing so, they will take advice from the HR Case Adviser on the outcomes of similar cases. The Decision-Making Officer has to have reasonable grounds for believing the allegations before they can uphold the complaint against the employee. The decision on an appropriate penalty(ies) or sanction(s) will be theirs alone.

- 6.40 In coming to a decision, it is important that the severity of the penalty or other action is proportionate to the degree of the misconduct committed, bearing in mind the need to act reasonably in all the circumstances. Factors which might be taken into account include, the extent to which standards have been breached; penalties which have been imposed in similar cases in the past; the employee's general work record and disciplinary record, including whether they are subject to any current warnings; their level of responsibility and length of service; whether any training, support or adjustments to the work might be needed in addition to, or instead of, a penalty and any special circumstances which might make it appropriate to adjust the severity of the penalty.
- 6.41 The decision will be set out in writing. The written notification will specify:
- the aspects of the allegations which have been upheld;
 - what disciplinary penalty, if any, is being imposed;
 - the likely consequences of any further misconduct; and,
 - the timescale and process for lodging an appeal.
- 6.42 The employee will be invited to a further meeting by the Decision-Making Officer to be handed this decision letter. They have the right to be accompanied by a trade union official or colleague and to discuss the content of the letter if they wish or simply to receive the letter and read it later. If the employee declines to attend this meeting, the decision letter will be delivered by other means and they will be required to formally acknowledge receipt.
- 6.43 Where the employee is on sickness absence, the Decision-Making Officer should seek advice from Occupational Health before advising the employee of their decision.
- 6.44 The HR Case Adviser will also thank any witnesses for their participation and advise them that the matter has been concluded.
- 6.45 Detailed guidance on the disciplinary meeting and decision-making is contained in Annex G.

Early Resolution Disciplinary Procedure

- 6.46 An Early Resolution Procedure may be used in agreed situations to reduce complexity and unnecessary stress. In these situations both sides must agree that the case can proceed swiftly to an agreed outcome.
- 6.47 The Procedure may only be used:

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- Where employees have self reported an incident and adhered to a stated policy, e.g. the Security Policy
- for incidents/ misconduct which would normally result in an informal (verbal) or first written warning to allow for matters to be dealt with in a timely manner; and,
- where the employee has admitted in full all allegations made against them.

However, employees should be aware that the WG reserves the right to undertake a full formal disciplinary procedure if it believes the circumstances require one. See paragraph 6.53.

6.48 The Early Resolution Procedure is **not suitable** for:

- a) Circumstances where there is potential gross misconduct;
- b) Cases of repeat misconduct where the employee has already received an informal (verbal) or first written warning;
- c) Any matters that include a safeguarding issue, any possible criminal acts or behaviour or fraud/financial impropriety; or,
- c) situations where an employee does not accept in full all allegations made against them.

6.49 Where it would appear that an Early Resolution Procedure may be applicable, the manager, HR Case Adviser, the employee and their trade union representative **must consent in writing by completing the Early Resolution consent form**.

6.50. This process does not require the appointment of an Investigating Officer or submission of a full investigation report. A Decision-Making Officer will be appointed, and an Early Resolution Decision Meeting should be held as soon as possible after consent to proceed has been received from all parties. Any delay to the procedure should be for exceptional circumstances only. The Early Resolution Meeting is the opportunity for the employee and trade union representative or companion to put forward comments, statements and explanations, including any mitigating circumstances. No other witnesses will be called. The outcome of the Early Resolution Meeting must be recorded by the HR Case Adviser on iShare and confirmed in writing to the employee. Any outcome must be agreed by all parties which means that there is no appeal once agreement is reached.

6.51 It is **not acceptable** for a manager to actively seek new evidence with the sole intention of making an Early Resolution Procedure ineligible, or for an employee to opt for the Early Resolution Procedure with the sole intention of

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preventing other potential misconduct coming to light. In either of these situations, the individual acting in this way may be subject to (further) disciplinary action.

- 6.52 No manager may be involved with the Early Resolution of any cases in which they are implicated.
- 6.53 Even in cases where the employee, the manager and the trade union representative are content to move to the Early Resolution Procedure, the WG reserves the right to undertake the full formal disciplinary procedure, including investigation, depending on the circumstances of the case. Such a decision must be agreed by the Deputy Director of HR, following discussion with the relevant trade union representative(s), and recorded alongside any Early Resolution consent form already completed.

Deciding the Disciplinary Penalty

First Written warning

- 6.54 If an employee's conduct does not meet acceptable standards but is not so serious as to merit more severe sanction, they may be issued with a first written warning. Depending on the circumstances, examples of behaviour which might result in a first written warning include but are not limited to:-
- Single absence without authorisation and without good cause;
 - Minor timekeeping offences e.g. repeated arrival after core start time or departure within core hours;
 - Occasional excessive personal telephone calls;
 - Minor breaches of health and safety, security or the Security Policy;
 - Occasional rudeness, insolent behaviour or poor attitude;
 - Deliberate failure to notify line management of time and location of working,
 - Deliberate failure to notify line management of sickness impacting on intended working hours or medical appointments during intended working hours;
 - Deliberate failure to attend a team or performance meeting with line management as arranged without good reason;
 - Deliberate failure to work contracted working hours, unless in accordance with the maximum debit hours permitted under flexible working hours arrangements;
 - Deliberate failure to consider and select candidates for advertised jobs on a location neutral basis;
 - Deliberate failure to agree in advance arrangements which would generate an overtime payment or to deliberately arrange working hours in order to generate an overtime payment;
 - Deliberately advising a line manager of a non-existent business reason to attend another office in order to claim travel and subsistence; and,

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- Deliberately refusing a request to work flexibly when there are no business reasons for doing so;
- Persistent breaches of social distancing regulations and arrangements in the workplace;
- Persistent breaches of the [WG Clean Workspace Policy](#).

6.55 The warning must specify the misconduct found; the change in behaviour required; the period allowed for improvement; any action agreed by the line manager to aid improvement and how long the warning will remain current. It should also advise that a final written warning or dismissal may be considered if there is further misconduct or a failure to make the required improvement. The employee will be asked to sign and return a copy of the warning to confirm receipt. They will also be advised of their right of appeal against the disciplinary decision and / or penalty.

6.56 A copy will be kept on the employee's personnel file on iShare subject to appropriate protections. The warning will lapse for disciplinary purposes after 6 months, subject to satisfactory conduct. The employee will be informed accordingly.

Final Written Warning

6.57 If the employee's misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This may occur where the employee's actions have, or are liable to have, a serious or harmful impact on the organisation.

6.58 A final written warning may also be given where an employee's conduct remains unsatisfactory within the period specified in an earlier formal warning, or if further examples of misconduct are committed.

6.59 Prior to issuing a final written warning in these circumstances, a full investigation will take place in accordance with the Discipline procedure.

6.60 Examples of behaviour which might result in a final written warning being issued include but are not limited to:

- Repeated or further unauthorised absence from work without good cause;
- Persistent lateness or poor punctuality;
- Breach of health and safety or security rules;
- Unauthorised possession of potentially dangerous or noxious substances in work;
- Negligent acts or omissions that lead to a loss of trust and confidence;
- Serious breaches of confidence;
- Excessive use of telephone for personal use;
- Breaches of the IT security systems including a failure to comply with virus checking procedure (see paragraph 7.7);
- Breaching Procurement Rules;

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- Breach of internal or external recruitment processes and/or a breach of the Civil Service Recruitment Principles
- Failure to comply with the WG's Smoke Free Policy
- Repeated deliberate failure to notify line management of time and location of working
- Repeated deliberate failure to notify line management of sickness impacting on intended working hours or medical appointments during intended working hours;
- Repeated deliberate failure to attend a team or performance meeting with line management as arranged without good reason;
- Repeated deliberate failure to work contracted working hours, unless in accordance with the maximum debit hours permitted under flexible working hours arrangements;
- Repeated deliberate failure to consider and select candidates for advertised jobs on a location neutral basis;
- Repeated deliberate failure to agree in advance arrangements which would generate an overtime payment or to repeatedly deliberately arrange working hours in order to generate an overtime payment; and,
- Repeatedly deliberately advising a line manager of a non-existent business reason to attend another office in order to claim travel and subsistence.

6.61 The warning must specify the misconduct found; the change in behaviour required; the period allowed for improvement; any action agreed by the line manager to aid improvement and how long the warning will remain current. It must also inform the employee of the consequences of further misconduct or a failure to make the required improvements within this timescale, for instance, that it may result in some other contractual penalty, such as downgrading or dismissal. The employee will be asked to sign and return a copy of the final written warning to confirm receipt. They will also be advised of their right of appeal against the disciplinary decision and/or penalty.

6.62 A copy of the warning will be kept on the employee's personnel file on iShare. It will lapse, for disciplinary purposes after 12 months, subject to satisfactory conduct, although in exceptional circumstances the period may be longer. The employee will be informed accordingly.

Remaining in post until warning expires

6.63 During the period that any written warning is in place, the employee is not permitted to apply for another WG post or any secondment or loan opportunity. They must remain in the post they held at the time of issue of the written warning until it expires unless the post they held at the time of the warning was of time limited duration.

Additional Penalties

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- 6.64 In certain circumstances, the Decision-Making Officer may feel it appropriate to award an additional penalty or penalties as well as issuing a warning, depending on the type of misconduct committed. These additional penalties may be applied immediately at the same time as the written warning or be conditional and come into force only if further misconduct occurs. Where any additional penalty is applied, this should be explained to the employee in writing, confirming the reasons for this and the right of appeal.
- 6.65 The range of disciplinary penalties which may be applied to supplement a formal warning include:-
- pay increments being withdrawn or withheld;
 - suspension for a specific period without pay;
 - downgrading (including consequent loss of pay);
 - transfer to another work area;
 - repayment of any monies improperly claimed or owed to the organisation;
 - removing access to the internet and the external e-mail facility;
 - monitoring an individual's e-mail traffic over a set period of time; and,
 - withdrawing permission to work flexibly from an office of the employee's choosing or at home for reasons of personal preference.
- 6.66 Unless the employee makes it clear that they do not wish to appeal, implementation of a penalty short of dismissal will be deferred for 5 working days, and if the individual does appeal, pending the outcome of the appeal. If the appeal is not upheld, the effective date of the penalty will be the date the original decision is communicated to the employee.

Dismissal

- 6.67 An employee will normally be dismissed in the following circumstances:
- where the misconduct is deemed to be gross misconduct (misconduct that is so serious it would normally result in dismissal if upheld); or,
 - where the misconduct is sufficiently serious as to destroy the essential mutual trust and confidence between employee and employer; or ,
 - if there is no satisfactory improvement within the period of a final written warning; or
 - if further misconduct occurs during the period when a final written warning is in force.

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6.68 Some examples of serious offences likely to be deemed gross misconduct and liable to result in dismissal include, but are not limited to:

- theft, fraud, deliberate falsification of records (including time sheets and travel and subsistence claims);
- giving false information in any job application;
- physical violence or threatening behaviour;
- deliberate or reckless behaviour causing serious damage to property;
- serious harassment or bullying;
- serious negligence which might cause unacceptable loss, damage or injury;
- serious or persistent insubordination;
- serious breach of health and safety rules;
- bringing the WG into disrepute, including publicly criticising Ministers or their policies and leaking information in a way which damages the image and reputation of the WG;
- deliberately deceiving or attempting to deceive any Senedd Member or Committee;
- failure to respect confidential information or a breach of the Official Secrets Act;
- abuse of the WG's computer systems and programmes, including internet and e-mail systems, including the deliberate viewing or downloading of pornographic images or deliberately attempting to view or download such images; abuse or misuse of social networking sites or blogging and trawling through iShare without any business justification or authority (see the Security policy for guidance and examples of gross misconduct);
- deliberate malpractice, deception or falsification of documents;
- acceptance of any bribe, inducement or reward for personal gain or for the benefit of a third party in return for an unauthorised act or transaction;
- acts of incitement or actual acts of discrimination on the grounds of gender, sexual orientation, gender reassignment, marriage or civil partnership, race, colour, disability, age, religion or belief, ethnic or national origin or other personal characteristics including same sex marriage;
- significantly negligent acts or omissions that lead to a loss of trust and confidence; and,

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- serious examples of the types of misconduct listed in the previous section “Final Written Warning” which may also be grounds for dismissal.
- 6.69 A case of potential fraud should only be treated as a gross misconduct offence when investigation shows that there was a clear intention to defraud.
- 6.70 Any decision to dismiss or downgrade an employee will be referred, with the Decision-Making Officer’s recommendations, via the HR Case Adviser for ratification by the appropriate senior manager. Dismissal or downgrading decisions must be ratified by the:
- Director General, COOG for employees at SCS Band 2
 - HR Director, for employees at SCS Band 1 and Executive Band 1
 - Deputy Director, HR Operations & Performance, for employees at Executive Band 2 and below.
- 6.71 If the dismissal is the result of a failure to improve behaviour to the required level within the specified time period or an escalation of penalties, notice may be given or pay in lieu of notice.
- 6.72 In the case of gross misconduct, dismissal is effective on the day the penalty is issued if delivered in person, or 3 days from the date of the penalty letter if it has to be posted, in which case it must be sent by special delivery.
- 6.73 The WG must apply, where appropriate, the rules that apply to the recovery of losses to public funds on dismissal and to the forfeiture of superannuation benefits in respect of dismissal for certain criminal offences. These rules are set out in the Terms and Conditions of Service.
- 6.74 The Decision-Making Officer will confirm the reasons for the dismissal in writing and advise the employee of their right of appeal.

Appeals

- 6.75 If the employee does not agree with the outcome determined by the Decision-Making Officer, they may lodge an appeal against the decision. The appeal must be for genuine, legitimate and objective reasons. Examples of such reasons might be that new evidence has come to light or the undue severity or inconsistency of the penalty.
- 6.76 The employee must appeal within 5 working days of receiving the disciplinary decision, although an extension may be agreed in certain circumstances.
- 6.77 The decision will be reviewed by a more senior level of management than the Decision-Making Officer. This person is known as the Appeal Officer and will be appointed by the HR Case Adviser. The Appeal Officer will be at least Executive Band 1, will have received training to carry out their role and will not have had any prior involvement in the case. The name of the Appeal Officer will be confirmed to the employee by the Decision-Making Officer and if, the

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employee has concerns for valid reasons about the individual nominated, they should raise these with the HR Case Adviser in their letter of appeal. These concerns will be considered by the HR Case Adviser who will arrange to appoint another Appeal Officer, if necessary.

- 6.78 Individuals in the categories below have a right of appeal to the Head of the Home Civil Service:
- Permanent Secretary, Directors General and their direct equivalents; and,
 - Directors.
- 6.79 The grounds for appeal should be set out in writing and sent to the appointed Appeal Officer.
- 6.80 The HR Case Adviser must ensure that all papers relating to disciplinary decisions and proceedings are made available to the Appeal Officer.
- 6.81 The employee will receive a letter from the Appeal Officer inviting them to a meeting to present their appeal as soon as possible after the letter of appeal is received. The employee will have the right to be accompanied by a work colleague or trade union official.
- 6.82 The employee must confirm their attendance and the name of the person who will be accompanying them to the meeting. The accompanying person's role will be the same as for disciplinary meetings (see paragraph 6.30).
- 6.83 The appeal meeting will be conducted by the Appeal Officer. An HR Case Adviser will attend the meeting to advise on procedural matters and take a note of the meeting.
- 6.84 At the appeal, the employee will have the opportunity to explain why they are dissatisfied and set out the grounds for their appeal in more detail. The Appeal Officer will require the employee to answer questions in order to gain a fuller understanding of their complaint.
- 6.85 The Appeal Officer will forward a note of the meeting to the employee. If the employee agrees that it is a fair and accurate record of proceedings, they should sign and date the note and return it to the Appeal Officer as soon as possible. If the employee is unable to agree the record, effort should be made to include any reasonable amendments and to resolve any remaining points of difference. If areas of disagreement about the record remain, the note will be marked as not agreed and the proposed amendments will be attached to it, so that they can be taken into account before any decision is made.
- 6.86 Depending on the circumstances and the nature of the misconduct, the Appeal Officer may either:

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- uphold the original decision and penalty; or
- not uphold the original decision and penalty; or
- uphold the original decision but reduce the penalty.

6.87 The outcome of the appeal, including reasons for the decision will be relayed in writing by the Appeal Officer as soon as possible after the appeal. The Appeal Officer's decision is final.

7. Handling particular types of disciplinary cases

Allegations of a Criminal nature

- 7.1 If at any stage of the procedure, enquiries reveal that a criminal offence may have been committed, the manager/officer handling the case must immediately contact the:
- Head of Audit, Assurance & Counter Fraud for cases of suspected fraud (see also paragraphs 7.6 to 7.9), or
 - Chief Security Officer for cases where other kinds of criminal activity is suspected.
- 7.2 If the manager/officer handling the case considers there is any possibility that the suspected misconduct is fraudulent or may involve fraud, they must contact the Head of Audit, Assurance & Counter Fraud in the first instance who will either take action or provide advice to the manager/officer on the next steps.
- 7.3 The Head of Audit, Assurance & Counter Fraud or the Chief Security Officer will consider reporting the case to the police and liaise with the manager/officer handling the case and the HR Case Adviser as appropriate. The HR Case Adviser will also liaise with the employee's line manager as necessary.
- 7.4 In cases of suspected fraud, the Head of Audit, Assurance & Counter Fraud will liaise with the Chief Security Officer who will take action regarding any vetting or security issues.
- 7.5 The WG is not required to delay implementing this Discipline Procedure whilst any criminal proceedings are ongoing. Where criminality is suspected, and the police are likely to pursue early intervention (search or arrest), immediate consultation with the Head of Audit, Assurance & Counter Fraud or the Chief Security Officer as appropriate may assist both criminal and disciplinary investigations and avoid any contamination of either the Discipline or Fraud procedure. The Counter Fraud & Corruption Response Plan can be found at [Fraud \(sharepoint.com\)](#)

Allegations of fraud

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- 7.6 If an individual resigns during any investigation (formal or informal), which might result in a finding of internal fraud, the investigation, along with any disciplinary action that may result from it, should continue and be brought to a timely conclusion.
- 7.7 If there are any circumstances in which consideration is being given to closing an internal investigation, the case must be escalated via the Whistleblowing Panel to the Permanent Secretary. In line with section 4.5.8 of the [Civil Service Management Code](#), a decision **not** to proceed with disciplinary action in cases of serious fraud (other than where the employee is being prosecuted) may only be taken by the Permanent Secretary, who will inform the relevant Minister.
- 7.8 If someone is dismissed for an offence of fraud or dishonesty which meets the definition under the UK Government Internal Fraud Policy (or who resigns and in investigation concludes that they were guilty and would have been dismissed for this if they had not already left), their name, national insurance number and date of birth is placed on the Internal Fraud Database (IFD) for a period of five years and they will be ineligible to re-enter the civil service in that time period. The definitions include dishonest or fraudulent conduct, in the course of employment in the Civil Service with a view to gain for the employee or another person. Further information about the definitions of Internal Fraud in Government can be found at Annex L along with the Government Internal Fraud Policy Fair Processing Notice.
- 7.9 Anyone applying for a Civil Service post will be checked against the IFD by Civil Service Resourcing. Anyone included on the IFD will be refused employment unless they can demonstrate exceptional circumstances. This approach is intended to manage the very real risks that individuals who have been found to commit fraud pose to the whole public sector because of risks to the integrity of the Civil Service and repeat behaviour.

Allegations about abuse of WG IT systems

- 7.10 The procedure to be followed will be the same as for all other disciplinary cases with the following exceptions:
- in the vast majority of cases, the Investigation Report will be produced by the IT Security Team;
 - additional information may be sought to supplement this Investigation Report if required and a separate Investigation Officer will be appointed by the HR Case Adviser as and when appropriate;
 - for staff below the SCS:
 - the Decision-Making Officer will be duly authorised to carry out the role by the Corporate Services Director and decisions will be ratified by the Deputy Director, Expert Services and People;

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- the Appeal Officer will usually be the Corporate Services Director,
- for SCS staff, the decision-making process will be as set out in paragraph 6.16.

8. Record Keeping

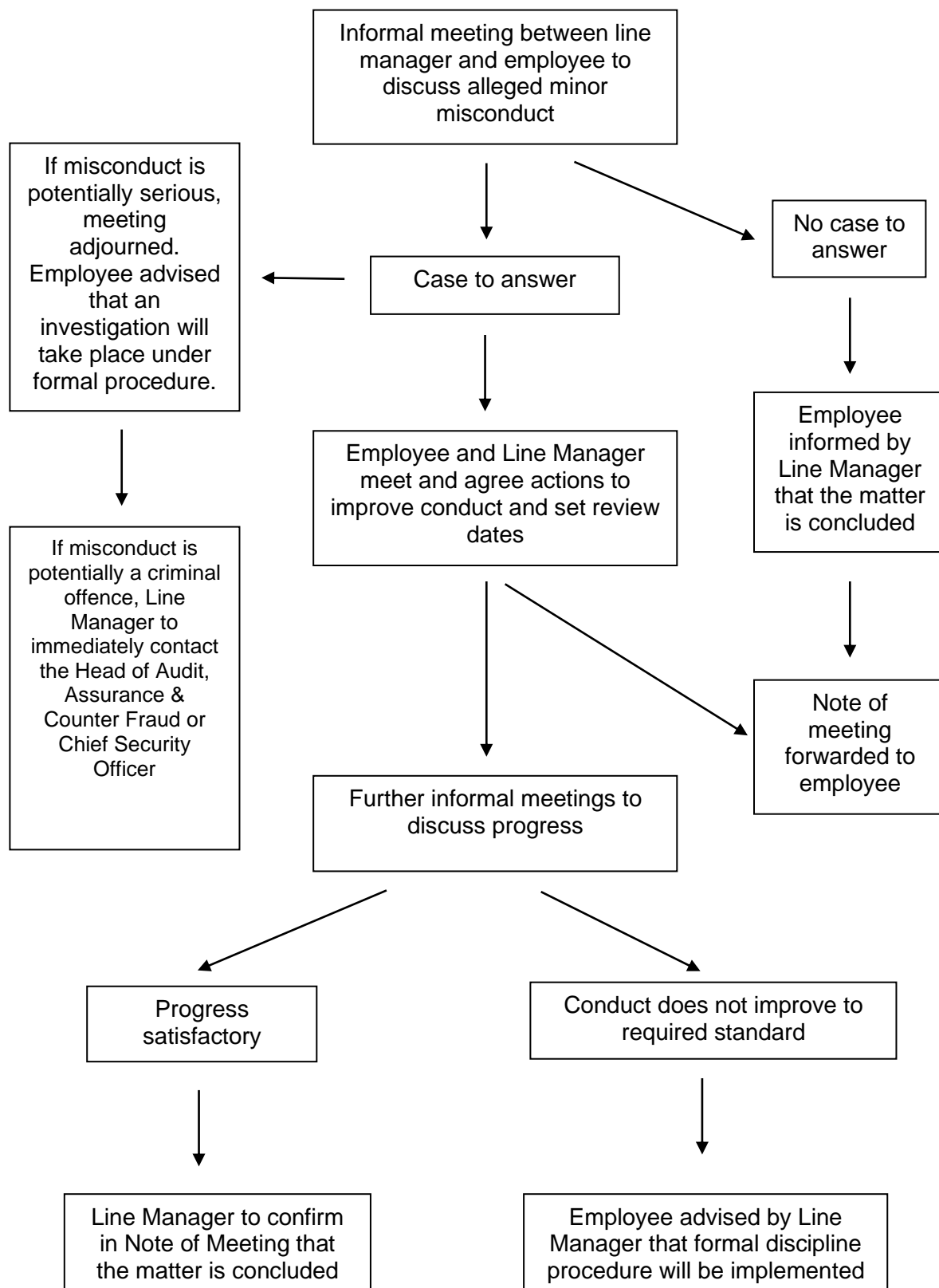
- 8.1 Confidential records regarding the disciplinary matter will be kept by the Case Advisory Team and retained in accordance with the Data Protection Act 2018. All originals and copies of records (hard copy and electronic) must be forwarded to the Case Advisory team for confidential retention or destruction of duplicate copies. All electronic records held by officers involved in a case must be deleted. All parties involved in the disciplinary matter will have been given the opportunity at the appropriate point to check the accuracy of any written information, appropriate to their involvement in the disciplinary case.

The records kept will detail:-

- the complaint against the employee;
 - the employee's defence;
 - findings made and details of action taken (if any);
 - a record of the reasons for the action that was taken;
 - whether there was an appeal, and if so, the outcome;
 - any grievances raised during the case;
 - notes of any formal meetings; and,
 - any wider subsequent developments. For example, a review of bullying and harassment procedures or a need for additional training for all line managers.
- 8.2 Copies of any meeting records will be given to the parties concerned. However, on occasions, data protection considerations may mean that the organisation is not able to release the full information.

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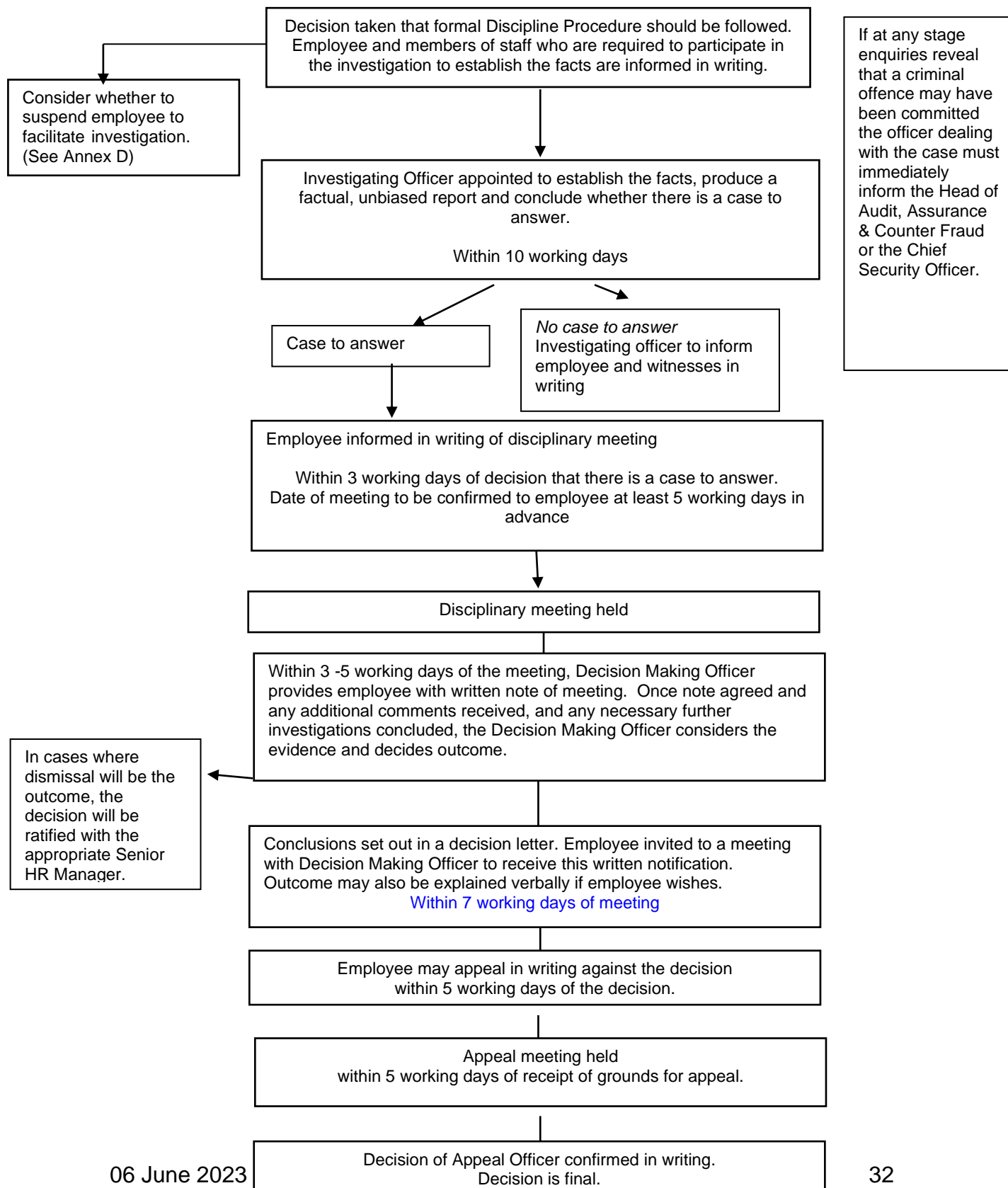
ANNEX A - INFORMAL STAGE OF DISCIPLINE PROCEDURE



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ANNEX B - FORMAL STAGE OF DISCIPLINE PROCEDURE

The timescales shown in the flowchart below are an indication of reasonable timings within the normal course of events. They are not prescriptive and the timing for each stage may vary from case to case. (The only exception is the 5 working days which employees have to lodge an appeal). What is most important is to avoid unnecessary delay.



COMMON TYPES OF MISCONDUCT: ADVICE FOR LINE MANAGERS

1. Unexplained/unauthorised absence from work

- 1.1 If an employee is unexpectedly absent from work and does not telephone to explain the reason for not attending work, it is the line manager's responsibility to find out why. You may need to involve the Occupational Health provider in these circumstances.
- 1.2 Depending on the circumstances, it may be appropriate to invoke the informal or formal discipline procedure.

2. Poor timekeeping

- 2.1 Whenever an employee does not comply with the rules relating to timekeeping, the line manager should seek an explanation and take into account any mitigating circumstances. Examples of timekeeping problems might be flexi deficit in breach of the Flexible Working Hours (FWH) Agreement or other such breaches of FWH (see paragraph 4 below). Poor timekeeping and absenteeism might be attributable to domestic or health problems and the Occupational Health provider may need to be consulted if someone persistently offends. If informal discussions to warn the employee that their timekeeping is not acceptable do not result in improvement, the formal Discipline Procedure should be invoked.

3. Refusal to obey a reasonable instruction

- 3.1 There must be an element of wilful disobedience for this to be a disciplinary offence. You must establish that the instruction was reasonable and, in particular, that the task fell within the employee's job description or what is reasonable for their grade. You should try to find out the reason for the refusal before determining whether the formal procedure would be appropriate. You will be able to avoid disciplinary action altogether if you can persuade the employee that it is not in their interest to continue to refuse to do the task. They should be left in no doubt that they could be disciplined if they do not comply with a reasonable management instruction.
- 3.2 If an employee not only refuses to obey an instruction but is also deliberately disrespectful to a senior colleague in the process, then misconduct may be alleged.

4. Abuse of the Flexible Working Hours Agreement

- 4.1 It is important to distinguish between the way that the flexible working hours arrangement is designed to be used and deliberate abuse of it. For instance, where employees accumulate significant amounts of credit beyond the carried forward limit, formal disciplinary action is not

appropriate. In these circumstances, the line manager should discuss the reasons for the excessive credit with the employee and aim to address the issues which gave rise to the situation. On the other hand, any abuse which attempts to gain credit for time not worked is a disciplinary offence.

VARIATION OF DUTY/SUSPENSION FROM DUTY

1. Where an employee may be facing formal disciplinary proceedings, the line manager in consultation with the HR Case Adviser may decide that it is appropriate to transfer the employee to alternative/restricted duties or to another post. This may be whilst the investigation is ongoing or until the procedure is concluded.
2. This change should be discussed with the employee and the reasons for the change to duties given. If as a result of this temporary change, the employee is managed by another manager, the current manager should discuss and agree with the HR Case Adviser, what, if anything, the temporary line manager should be advised about the particular circumstances of the transfer. Any information given will be restricted to what is necessary to protect the organisation and the individual concerned and must be treated in the strictest of confidence.
3. In certain circumstances, consideration should be given to a period of suspension with pay whilst an unhindered fact finding exercise is conducted. Such a suspension should only be imposed after careful consideration. In the interests of the organisation and the employee, it should be for the shortest time necessary to allow the investigation to be carried out and reviewed to ensure it is not unnecessarily protracted. The suspension should be for up to 10 days initially and it should be made clear that the suspension is not considered a disciplinary sanction.
4. The main circumstances in which suspension as a precaution should be used are:
 - to facilitate a thorough investigation;
 - to "*take the heat out*" of a situation;
 - where the allegation is so serious that remaining at work would be unreasonable; or,
 - where there is strong evidence that the position of trust between employer and employee has broken down.

Decision to suspend

5. Only a manager of Executive Band 2 or above can take the decision to suspend an employee, after consultation with the HR Case Adviser. The manager may want to seek the view of the Investigating Officer before making the decision. If the Investigating Officer considers that an employee's presence is detrimental to the pursuance of their enquiries, consideration should be given to moving the employee to an alternative role or to another area of the organisation. If this is not considered appropriate, then the employee should be suspended. The Investigating Officer should confirm to the line manager if a stage is reached in their investigations when the employee's presence at work

would not impede the case. The line manager should make arrangements for the employee to return to work.

Advising the employee of the suspension

6. When a decision is made to suspend an employee, the suspending manager must inform the employee at once and follow it up in writing. The Case Advisory Team can provide a template letter. The suspending manager must also ask the employee to hand in:

- their security and car pass for safekeeping and to ensure that they do not enter the building when not authorised to do so;
- their laptop and any other work equipment that they may have, for example mobile phone;
- their WG Procurement Card.

The suspending manager must also request that IT Security suspends the individual's IT account for the period of the suspension and advises the Finance Compliance Manager to cancel the WG Procurement Card.

The above should be carried out in a discreet, calm manner to respect the dignity of the employee and to be sensitive to the effect on colleagues and other members of staff.

7. They should also be advised that they should not contact any member of staff in the WG without the approval of the investigating Officer. The employee may either contact the Investigating Officer directly or ask the HR Case Adviser to contact them on their behalf if they wish to contact another employee. This action is to protect the individual from suggestions that they may have been able in some way to prejudice the investigation whilst under suspension.
8. These measures are designed to protect the employee, but they should not prevent the employee from being able to prepare their case. Where an individual requires access to an office to meet their representative or to use the IT system, the line manager should consult the Investigating Officer and the HR Case Adviser to consider whether it is appropriate to allow the employee to do this or whether alternative arrangements can be made to assist the employee.
9. Where the employee involved is on sickness absence, suspension action should always be postponed until they are fit to return to work. However, the line manager (after consultation with the Occupational Health provider) should write to the employee advising them that they should not contact any member of staff in the WG without the approval of the Investigating Officer and request that they return any work property or equipment in accordance with paragraph 6 above. The line manager must also make arrangements to suspend the individual's IT account and to cancel the WG Procurement Card if the individual holds one.

10. Although suspension is not a disciplinary sanction, if an employee considers that the decision to suspend is unfair, they may set out their grounds for believing this in writing within three working days of receipt of the letter confirming suspension to the:
- Deputy Director, HR Operations & Performance for employees below SCS
 - HR Director for SCS members.

Line Manager

11. If the period of suspension is likely to be more than a few weeks (which should only be necessary due to a continuing police investigation) the line manager, if not directly involved in the investigation, should keep in touch with the suspended employee. If the line manager is directly involved, then the HR Case Adviser and/or next senior line manager should be assigned to do this. The employee should not feel cut off from the WG whilst suspended as a precaution and they should be allowed reasonable access to their place of work, under suitable supervision, in order to prepare for an investigation interview or to compile their defence for a disciplinary meeting.
12. The suspended employee should also receive regular updates via the HR Case Adviser on how the investigation is progressing and when the matter is likely to be resolved. Depending on the complexity of the case a timescale should be drawn up and adhered to. The suspended employee should not be made to feel that they are being punished or ostracised from the organisation.
13. If the suspension continues for more than two months, the need for suspension must be reviewed and alternative arrangements explored. It may be possible for the employee to return to work but in another building. At this stage of the process the allegations are still not proven, and the employee has not been found guilty of wrongdoing. It is not acceptable for an employee to be suspended for more than three months. The WG has a duty of care and suspension can cause serious health problems if continued for a long period of time.

Pay on suspension

14. During suspension, the employee will receive pay, defined as that which would be paid during the first six months of sickness absence. This includes all allowances the employee is receiving (provided the individual continues to meet the relevant criteria) except travel related payments e.g. excess fares.

GUIDANCE ON CONDUCTING AN INVESTIGATION

1. It is essential that the facts of any alleged misconduct are established before proceeding with disciplinary action. An appropriate officer (known as the Investigating Officer) will be asked to undertake this important task, where appropriate, obtaining statements from relevant witnesses and reviewing documentary evidence. Without an objective examination of the facts a disciplinary case cannot be substantiated.
2. The amount of information gathered should be reasonable and a sense of proportion is very important. A "*full investigation*" does not mean that "*no stone is left unturned*". It means that the level of enquiry is reasonable in the circumstances and is undertaken so that decisions can be made appropriately.

Investigating Officer

3. The Investigating Officer will maintain confidentiality at all times. Their role is to conduct an investigation and to produce a factual, objective and unbiased report which concludes on the balance of probabilities whether or not there is a case to answer i.e. that based on the evidence, it is reasonable to conclude that the alleged misconduct took place. Where facts are disputed the report will make this clear and will provide whatever conflicting evidence has been gathered, without comment on the credibility of witnesses.

Interviewing the employee concerned

4. The Investigating Officer may interview the employee suspected of misconduct. The distinction between meetings under the Disciplinary Procedure and investigation interviews should be made clear. The investigation interview should purely be to establish and understand the facts of the situation. The interviewee will be informed in writing, in advance of the interview, of the nature of the suspected problem and its basis, including details of any accusation that has been made and of any evidence which has come to light, to enable them to make an informed response and if necessary to locate and present relevant evidence.
5. Statutory rights of accompaniment do not apply to the investigation interview. Nevertheless, it is the WG's policy that the employee may be accompanied by their trade union official or work colleague. The Investigating Officer should ensure that the employee is informed of this before the interview.
6. If a serious offence comes to light while the suspected employee is on leave, they may be recalled at the discretion of a senior line manager (Executive Band 2 or above), after consultation with their HR Case Adviser, or an explanation requested by post. If the employee is on

sickness absence, advice should be sought from the Occupational Health provider to determine the most appropriate course of action.

Searching Desks

7. If during the course of their enquiries, an Investigation Officer needs to search desks or cupboards, they should consult the relevant HR Case Adviser. Searches should normally only be undertaken in the presence of the employee concerned. Where for any reason this is not practicable, the searcher must always be accompanied by a witness, normally the employee's Trade Union representative (if they are a trade union member) and/or the HR Case Adviser. Management has no authority to search personal belongings without the individual's consent. "Personal belongings" do not include desks or lockers but do include private receptacles or personal property within them.

Searching IT Equipment

8. If a potential breach of the Security Policy is suspected, the Departmental Security Unit will be instructed to investigate, in line with the Procedure set out in those Rules. Such investigations may involve seeking reports which detail what has been accessed, received, sent or stored by individuals. This includes usage of email, H drives, P drives, C drives and internet usage. The investigation may also include a physical inspection of any of the above.
9. Access to an employee's system will only be made where there is a reasonable suspicion that a breach of the rules exists, and then only to the extent necessary to confirm that such a breach has or has not occurred. Once an investigation has been completed, the investigators will remove any access they may have had. The employee will be informed that such access has taken place and the reasons for it, at an appropriate time in the investigation. The relevant HR Case Adviser must give authorisation to the Information Security team before any investigation is undertaken.

Interviewing Witnesses

10. The Investigating Officer must explain the nature and basis of the investigation (in writing) beforehand to those they intend to interview as witnesses. Although witnesses are not legally entitled to have a colleague or trade union representative present at any discussions or meetings, the WG allows witnesses to be accompanied at investigation meetings and at any other stage of the disciplinary procedure.

Written statements

11. A written statement will be drafted following each interview and the employee or witness will be asked to sign and date this to confirm its accuracy. If the employee or witness is unable to agree the record, effort should be made to include any reasonable amendments and to resolve any remaining points of difference. If areas of disagreement

about the record remain, the note will be marked as not agreed and the proposed amendments will be attached to it, so that they can be taken into account before any decision is made.

Producing a Report

12. Following their investigation, the Investigating Officer is required to produce a factual, unbiased report and present it to the HR Case Adviser. This report should include an assessment of and conclusions on whether or not the facts support the allegation(s) raised against the individual and make clear where any facts are disputed or remain unproven due to lack of evidence. It should also conclude whether: the investigation has shown that there is a case to answer and if the formal Discipline Procedure should be invoked.

DRAFTING FORMAL DISCIPLINARY ALLEGATIONS

1. A minute setting out allegations against an employee should:

- define the allegation(s);
- set out the facts to support the allegation(s) and list and provide copies of any documentary evidence, including witness statements and the Investigation Report;
- refer, where possible, to the precise rule(s) it is alleged has/have been breached;
- indicate, where the allegations are of a sufficiently serious nature or in cases of alleged serious IT abuse, that they could potentially amount to gross misconduct which could lead to dismissal;
- inform the employee that a disciplinary meeting will be held, provide details of the date, time, place, and the name of the Decision-Making Officer;
- inform the employee that, after the meeting, they may make a written response, to supplement the comments and observations which they will make at the meeting;
- inform the employee that they may be accompanied at the meeting by a Trade Union representative or colleague.

A template can be obtained from the Case Advisory Team.

Informing the employee of disciplinary allegations against them

2. Wherever possible, and provided this does not cause unreasonable delay, the Allegation Minute should be handed to the employee in a face to face meeting, about which they should be notified in advance and at which they should be offered the opportunity to be accompanied by a Trade Union representative or a colleague. This arrangement should not be adopted if the employee indicates that they do not wish to attend such a meeting. The line manager will hand the allegation minute to the employee with any supporting documentation and ask whether they would like them to explain its content and seek to answer any questions about procedures that the individual raises. The line manager will keep such discussion to a minimum.

GUIDANCE ON CONDUCTING THE DISCIPLINARY MEETING

The disciplinary meeting

1. An employee who is required to attend a disciplinary meeting should be provided with details of the date, time and place of the meeting, together with the name of the Decision-Making Officer who will conduct it and the HR representative who will attend to take a note of proceedings and provide procedural advice if required.
2. The employee should be given enough advance notice to enable them to prepare their case. The suggested timing for this is at least 5 working days before the meeting.
3. The employee has a right to be accompanied at the meeting by a trade union representative or colleague and should advise the Decision-Making Officer in advance of who will accompany them. If the employee's chosen companion is not available to accompany them on the scheduled date, they can propose an alternative reasonable time shortly after the original meeting date. The suggested timing for this is normally within 5 working days of the original date.
4. If the employee refuses to attend a meeting, the HR Case Adviser should emphasise in writing that the meeting is in the employee's interest and encourage them to attend. If the employee is determined not to attend a decision will, as a last resort, have to be made by the Decision-Making Officer without the employee presenting their case to the meeting. This should be made clear to the employee.

Decision-Making Officer

5. The Decision-Making Officer should:-
 - be at least one grade higher than the employee concerned;
 - be at least Executive Band 2 or above;
 - not be the immediate line manager; and,
 - not have had prior involvement in the case.

Preparing for the meeting

6. The Decision-Making Officer should ensure that they:
 - have assembled all the relevant documentary evidence relating to the case including other relevant information such as the employee's disciplinary record;

- are fully familiar with the Discipline policy and this procedure, and with any WG rules, codes of conduct or policies which it is alleged have been breached and have copies to hand at the meeting; and,
- have provided the employee with copies of all documentary evidence with the letter setting out the allegations.

Purpose of the meeting

7. The purpose of the meeting is to:-
 - assess the evidence to see whether it supports the disciplinary allegations;
 - resolve any doubts or conflicts about the facts; and
 - ensure that the case for management and the case for the employee is presented as fully as possible, so that the decision is based on as thorough a discussion of the facts and evidence, as is reasonable to the circumstances of the case.
8. The HR Case Adviser will assist the Decision-Making Officer and take a record of the meeting. The HR Case Adviser will brief the Decision-Making Officer and any witnesses on the procedure to be followed. The Decision-Making Officer should be provided with a copy of all the documentation relevant to the consideration of the case and a copy of the Discipline Policy and Procedure.

Witnesses

9. The Decision-Making Officer must tell the employee the names of any witnesses who may be called to attend the meeting. The Decision-Making Officer should not refuse to hear any witnesses called by the employee without good reason.

Conduct of the meeting

10. The meeting should be conducted in a formal, polite and constructive atmosphere. A disciplinary meeting can undoubtedly be a stressful situation for an employee and the Decision-Making Officer should make every effort to put them at ease. It is recommended that the meeting be conducted as follows.
11. The Decision-Making Officer will:-
 - Introduce those present, briefly explain the purpose of the meeting and set out the proposed format;
 - Introduce and explain the role of the accompanying person;
 - Confirm that the employee has received a copy of all documentary evidence;

- Read out the allegation(s) against the employee and the supporting evidence. Establish whether the employee understands this;
 - Invite the employee's comments on each separate allegation and the evidence that supports it;
 - Ask the employee if they have any explanation for the alleged misconduct or if there are any special circumstances to be taken into account;
 - Invite the employee to ask questions, present evidence or call witnesses. They should also be invited to question witnesses called by management. Any questions which the employee or their representative wish to put to the witnesses should be addressed through the Decision-Making Officer. Exceptionally the Decision-Making Officer may agree that a witness may give evidence in a different room;
 - Summarise the evidence given by each witness before they leave;
 - Make every effort to resolve conflicts of evidence by asking questions at the time. Points of contention which remain unresolved should be clearly recorded;
 - Summarise the proceedings before asking the employee if they have any final comments; and,
 - Close the meeting by thanking the employee for attending and advise that a record of the meeting will be sent to them for agreement and to their representative before a decision is reached.
12. If the employee produces fresh documentary evidence in support of their case, the Decision-Making Officer should ask for the originals to be provided. Statements made by witnesses during the meeting which contain new material not recorded in previous written statements are to be recorded in writing and signed by the persons concerned. If new facts emerge, an adjournment may be appropriate, for example, if new evidence suggests additional witnesses need to be called or further investigation of the facts is required. Consideration may be given to adjourning the meeting whilst all parties have time to consider the new evidence. The meeting should then be reconvened.
13. The meeting may also be adjourned for refreshment breaks (and should be if it is likely to be lengthy) or if there is a need for either the employee or the Decision-Making Officer to confer. Facilities should be made available for the employee and their accompanying person should they wish to confer in private.
14. If the employee becomes rude or aggressive during the meeting, the proceedings should be suspended for a 'cooling off' period. If the

employee reports for a meeting apparently unwell or under the influence of drugs or alcohol, the meeting should be postponed and reconvened as soon as possible. The record of the meeting should state the reasons for the postponement.

After the meeting

15. The HR Case Adviser will be responsible for preparing a record of the meeting. The Decision-Making Officer should be sure it includes all the relevant points made during the meeting by all parties. A copy of this record will be sent to the employee for agreement and signature, to confirm that it is a fair and accurate record of the meeting.
16. If the employee is unable to agree the record, effort should be made to include any reasonable suggested amendments and to resolve any remaining points of difference. If areas of conflict remain, the employee should attach their comments to the record of the meeting and return it to the HR Case Adviser. The proposed amendments will be attached to, and submitted with, the record of the meeting so that they can be taken into account before a decision is made.

Decision

17. When the record of the meeting has been agreed or otherwise, the Decision-Making Officer should produce a written report with the support of the HR Case Adviser, which should comprise:-
 - an assessment of all the evidence considered at the meeting, including any points that have been raised in mitigation; if the employee has refuted the charge, a conclusion as to whether there are reasonable grounds for believing the charge i.e. on the basis of the presented evidence it is reasonable to believe that the charge is proven, with reasons for this conclusion;
 - a decision as to the appropriate disciplinary penalty where the charge is considered proven, or the employee has accepted the charge; and,
 - any recommendations for additional training and/or support that should be undertaken.
18. Each case must be looked at on its own merits and any relevant circumstances taken into account. The decision should take account of the employee's disciplinary record, including current warnings (details of which should already have been obtained from the HR Case Adviser); any mitigating factors put forward by the employee and the HR Case Adviser's advice on the penalty which would be consistent with practice in similar cases. Advice should be sought from the Occupational Health provider where there are mitigating personal or health factors which should be taken into account.
19. The Decision-Making Officer's decision should be objective, factual, and consideration given only to the subject matter of the charge.

20. Any allegations which are not directly concerned with the charge itself, or unproven suspicions of other offences, must not be taken into account. Similarly, when considering the effects of a criminal conviction on an employee's career, no other allegations or suspicions of other offences should be considered.
21. If new evidence comes to light which the employee has not seen, even after the meeting, copies should be sent to the employee and their accompanying person for comment and the meeting reconvened if necessary.
22. Any decision to dismiss or downgrade an employee will be referred, with the Decision-Making Officer's recommendations, via the HR Case Adviser for ratification by the appropriate PSG senior manager. Dismissal or downgrading decisions must be ratified by the:
 - Director General, COOG for employees at SCS Band 2
 - HR Director for employees at SCS Band 1 and Executive Band 1
 - Deputy Director, HR Operations & Performance, for employees at Executive Band 2 and below.

Conveying the decision

23. Once the Decision-Making Officer has made their decision and set this out in full in writing, the employee should be notified without unreasonable delay. The employee will be invited to a meeting to receive the written notification of the decision and again will have the right to be accompanied by a trade union official or colleague, but they may choose not to attend and opt to receive the decision in writing only.
24. If the employee declines to attend a further meeting, this will be recorded.
25. The Decision-Making Officer should avoid arranging notification of their findings and the penalty to an employee on sickness absence without first seeking the advice of the Occupational Health provider.

EMPLOYEE'S RIGHT TO BE ACCOMPANIED AT A DISCIPLINARY MEETING

The right

1. All employees have a right, in accordance with the Employment Relations Act 1999, to be accompanied by a fellow worker (i.e. another WG employee) or trade union official where they are required to attend formal disciplinary meetings.

A disciplinary meeting

2. For the purposes of this right, disciplinary meetings are defined as meetings that could result in:-
 - a formal warning being issued to an employee (i.e. a warning that will be placed on the employee's record);
 - the taking of some other disciplinary action (such as demotion or dismissal);
 - the confirmation of a warning or some other disciplinary action (such as an appeal meeting).
3. Informal discussions and investigatory meetings are not formal disciplinary meetings and do not attract the statutory right for an employee to be accompanied. However, it is the WG's policy that employees should have the opportunity to be accompanied at these meetings by a colleague or a trade union representative, if they request it.

Choosing a companion

4. The companion may be:-
 - a fellow employee
 - a full-time official employed by a Trade Union, or a lay Trade Union official, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary meetings. Certification may take the form of a card or letter.
5. An employee may choose an official from any Trade Union to accompany them at a disciplinary meeting, regardless of whether that union is recognised by the WG.

6. Fellow employees or trade union officials do not have to accept a request to accompany an employee, and they should not be pressurised to do so.
7. An employee of the WG who has agreed to accompany a colleague is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This includes the meeting and time for the companion to familiarise themselves with the case and confer with the employee before and after the meeting.

Applying the right

8. Before the meeting takes place, the employee should tell the employer who they have chosen as a companion, when they confirm their attendance at the meeting.
9. The companion has a legal right to address the meeting to put the case for the employee, respond on behalf of the employee to any view expressed at the meeting and confer with the employee but does not have a right to answer questions on the employee's behalf. The companion may ask questions and participate as fully as possible in the meeting. However, they may not address the meeting if the employee does not wish it, answer questions on their behalf or prevent the employer from explaining their case.

CONDUCTING THE APPEAL MEETING

At the appeal meeting, the Appeal Officer will:

- Introduce those present to each other, explaining their presence if necessary;
- Explain the purpose of the meeting, how it will be conducted and the powers the Appeal Officer has;
- Ask the employee to set out the reasons for their appeal;
- Pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to explain their position;
- Once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision;
- Inform the employee of the results of the appeal and the reasons for the decision, confirm it in writing and make it clear that the decision is final.

SUPPORT SERVICES FOR EMPLOYEES

1. If an employee claims there are mitigating personal or health factors which should be taken into account, they should be offered the opportunity to meet a representative of the Occupational Health provider. The WG would be failing in its duty as a good employer if it did not seek to establish as much as possible about the circumstances before taking disciplinary decisions.
2. In all disciplinary cases where the employee puts forward ill health or difficult domestic circumstances in mitigation, the HR Case Adviser should seek a report from Occupational Health before the disciplinary decision is reached.
3. The role of the Occupational Health provider in all cases is a purely advisory one. The intention is to ensure that as much relevant information as possible is known to management, so that the decision-making process may be conducted from as well informed a standpoint as possible. It is also important that welfare and/or health assistance is given as soon as possible, where an employee's circumstances could be helped.
4. Where it is clear that an Occupational Health report or a medical report will be necessary before the outcome of a disciplinary case can be reached, early action should be taken to obtain the report to avoid delays at a later stage.
5. Support and counselling is also available to individuals and their families through the Employee Assistance Programme. This provides a free, independent and confidential support and information service and can be accessed via the Vivup website or by telephoning 0800 023 9387.

CRIMINAL CONVICTIONS AND POLICE CAUTIONS

1. An employee who is arrested or is given a Police caution or is charged to appear before a criminal court must report the facts to their line manager who must pass the information on to their Deputy Director or above (as appropriate). Failure to do so can result in disciplinary action. This does not apply to traffic offences unless an official car was involved, or unless the available penalty for the relevant offence includes imprisonment or disqualification from driving, either because of the seriousness of one offence or through an accumulation of penalty points.
2. The Deputy Director (or relevant more senior officer) must arrange for an appropriate manager to be present in court as an observer. The observer must produce a report to provide background information for use in any subsequent internal disciplinary proceedings.

After the court appearance

3. When an employee is found guilty of an offence by any criminal court, their Deputy Director, supported by a HR Case Adviser, should consider the court observer's report. The employee will also be asked to report on the outcome of the court appearance if they have not done so already. The HR Case Adviser must also contact the Chief Security Officer to discuss the impact of the criminal conviction and any vetting considerations which might affect the employee's continued employment. The Deputy Director, supported by a HR Case Adviser, must then decide whether the employee's conviction should be regarded as:-
 - A private-life conviction; or
 - A conviction which impinges on the employer/employee relationship.

Private life convictions

4. If a conviction has, in the reasonable opinion of the WG, no direct or indirect bearing on any aspect of the employee's suitability for employment with the WG, the Deputy Director (in consultation with a HR Case Adviser) should inform the employee that details of the conviction will be held on their iShare Personnel file for a period not exceeding that set out in the Rehabilitation of Offenders Act 1974. The information will be retained on the employee's personnel file on iShare.

Convictions which may impinge on employer/employee relationship

5. Examples of such convictions may include:-

- Convictions for offences against the WG or their contractors;
 - Offences committed against employees of the WG or contractors, contracted staff or tenants in some offices;
 - Offences which, either by their nature or by the fact that the individual has offended on previous occasions, may in the reasonable opinion of the WG make the individual unsuited for continued employment with it, or for continued employment in their present grade or position;
 - Offences committed while on duty or on official premises;
 - Convictions for dishonesty or fraud;
 - Convictions involving violence or sexual offences;
 - Offences which result in custodial sentences;
 - Any other convictions which are serious enough to question the member of staff continuing as a civil servant, taking into account the employee's position, duties and responsibilities.
6. When the Deputy Director in consultation with a HR Case Adviser decides that the employee's conviction may impinge on the employer/employee relationship, they must:-
- Inform the employee that it is necessary to consider the effect of the conviction on their service with the WG;
 - Invite the employee to attend a meeting accompanied, if they so wish, by a Trade Union Representative or colleague. The meeting must be conducted in accordance with Annex G of this procedure.
7. The purpose of the meeting is not to reconsider guilt or innocence. These are judgements already made by the court and it is important that the WG is not seen to be going over the ground again. Instead the meeting will only be concerned with the effect of the conviction on the employee's ability to continue performing their current duties and their ability to remain in employment with the WG. The meeting will involve considering whether the offence calls into question the employee's fitness for the job (and whether dismissal or removal to other work is appropriate); or whether the employee should simply be informed about the serious view taken of the conviction (coupled with a warning about future conduct). The employee will be informed of the outcome of the meeting in writing.
8. It will be open to the Decision-Making Officer to form a judgement on whether the conviction has any bearing or impact on the employee's employment with the WG and discuss this further with the HR Case Adviser.

Imprisonment

9. As soon as it is known that an employee has received a custodial sentence, legal advice will be taken by the HR Case Adviser on whether the contract of employment may have been frustrated or repudiated.
10. If frustration of contract is not applicable, the normal procedure outlined above for considering the effect of a conviction will be followed (albeit that the matter may be dealt with through correspondence). Before any letters are sent to the employee, the HR Case Adviser should contact the prison governor to explain the WG's position and to establish whether the employee could attend a meeting outside the prison or, if suitable facilities could be provided, inside the prison. The HR Case Adviser should also ask whether it would be possible for a Trade Union Representative or colleague to visit the employee to help prepare for the meeting. If the prison governor will not allow the employee to attend a meeting, the employee will be invited to forward any representations in writing. The employee may also nominate a Trade Union representative or colleague to present any points they wish to make at the meeting.

Police Cautions

11. The way police cautions are handled will depend on whether the caution was for a work-related offence or not. The Deputy Director, supported by the HR Case Adviser will consider whether the caution should be considered as a private-life caution, or a caution which impinges on the employer/employee relationship.

Cautions for work-related offences

12. In these cases, a caution following a police interview provides strong evidence which may justify internal disciplinary action. The normal disciplinary process will be invoked, including further investigation if necessary. A copy of the caution, with the formal record of the interview and any other police evidence provided to the WG will be attached to the allegation minute which is sent to the employee.

Cautions for incidents not related to work

13. These will be treated like a private life conviction.

Security Vetting

14. Employees who receive a police caution or conviction are advised that in the circumstances outlined below, this may be taken into account in determining their suitability for future, alternative roles within the WG. Certain roles within the WG require a higher level of security vetting. If an employee is considered for such a role and a security check reveals information, this will be considered by the Chief Security Officer in

assessing their suitability for the role and may exclude the employee from further consideration for the role.

- **Baseline Personal Security checks** will show any unspent convictions (unspent as defined by the Rehabilitation of Offenders Act – the Act).
- **National Security checks** will declare all cautions and convictions including any spent convictions as defined by the Act.
- **Disclosure and Barring Service Checks** will declare:
 - Standard Check - spent and unspent convictions, cautions, reprimands and final warnings.
 - Enhanced Check - the same as the standard check plus any additional information held by local police that's reasonably considered relevant to the role being applied for.
 - Enhanced with list checks - this is like the enhanced check, but includes a check of the DBS Barred Lists which show whether or not an individual is registered on a list which bars them from working with children and/ or vulnerable adults.

Handling information

14. The WG complies fully with its obligations under the Data Protection Act 2018 and other legislation regarding the safe handling, use, storage, retention and disposal of information about criminal cautions and convictions.

INTERNAL FRAUD IN GOVERNMENT – DEFINITIONS

If a civil servant is dismissed for any of the following activities, they should expect to have their details placed on the Internal Fraud Database and be banned from re-joining the Civil Service for five years:

1. Dishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person;
2. For employees of DWP only, this includes dishonest or fraudulent conduct relating to benefits, even if not connected with employment; and
3. For employees of HMRC only this includes dishonest or fraudulent conduct relating to tax duties, contributions or payments administered by HMRC even if not connected with employment.
4. For employees of Home Office only, this will also include dishonest or fraudulent conduct relating to immigration, passport, asylum or nationality matters even if not connected with their employment.

This also applies where a civil servant has already left and an investigation leads to the conclusion that they were guilty of one of these activities and would have been dismissed for this if they had not already left.

Below are some examples of types of activity which could qualify as Internal fraud. Please note that the list is not exhaustive and may also include attempted activities.

N.B. When considering the list please bear in mind that the key elements are **dishonesty or fraud in employment* with a view to gain** – if these elements are not present the definition of internal fraud is not met and the employee's details should not be placed on the database. For example, someone who did not realise they should have disclosed a conflict of interest has not committed misconduct involving fraud or dishonesty; and someone who misuses IT systems in order to cause difficulties or indulge their curiosity, but doesn't have any financial motive, is also not committing misconduct involving fraud or dishonesty. The latter might be dismissed for misconduct but their details would not be placed on the database. *There are exceptions for HMRC and DWP employees to the requirement that the conduct be in the course of employment – see items 2 and 3 in the list of activities above.

Main Categories and examples of activity

Fraud & Theft:

- Theft or misappropriation of cash
- Theft or misuse of official assets
- Benefit or tax fraud
- Assisting benefit or tax fraud
- Processing fraudulent documents or claims
- Dishonest staff club irregularities
- Dishonest purchasing and procurement irregularities
- Dishonest recruitment/promotion irregularities

- Falsifying information on recruitment/promotion applications
- Knowingly obtaining or receiving salary, allowances, overtime, leave, flexitime, travel and subsistence payments to which the employee is not entitled
- Dishonest accounting irregularities

Bribery & Corruption:

- Bribing an official
- Bribing a foreign official
- Offering, promising, requesting or accepting a bribe
- Facilitating a bribe of another
- Agreeing to accept a bribe

Misuse of Computer (IT policy) & data breaches:

- Misuse of IT for gain
- Unauthorised disclosure of sensitive or privileged information for gain
- Dishonest manipulation of data/systems for gain
- Falsifying business records for gain
- Misuse of software/malware for gain
- Facilitation of third party access for gain
- Unauthorised disclosure of personal or commercial data for gain
- Unauthorised alteration to customer or commercial data for gain

Conditions of Service:

- Not disclosing a conflict of interest, for gain
- Abuse of position for gain
- Failure to declare criminal charges or convictions

GOVERNMENT INTERNAL FRAUD POLICY

1. Government Internal Fraud Policy – Fair Processing Notice

This paper is for use by departments that are involved in the Cabinet Office led initiative to improve the Civil Service response to misconduct by staff, which involves fraud or dishonesty. Departments have agreed to share with the Cabinet Office (CO) personal data about staff who, following an investigation, have been found to have committed misconduct falling within the relevant definition and who, in consequence, have been dismissed, or would have been dismissed, had they not resigned or left for other reasons during or after the investigation.

The purpose of this paper is to set out the principles about Fair Processing Notices (FPNs), which departments will follow. The initiative will or might involve the processing of personal data by participating departments and by the CO and Civil Service Resourcing (CSR). Departments will provide the CO with information about relevant staff and their misconduct, and the CO will input that information into its database, the Internal Fraud Database (IFD). It will share some of this information with CSR and departments that administer their own provisional offers, via a second database which it will use to conduct the pre-employment screening. This database will be held and maintained by

CO and access will be granted to limited, nominated employees within CSR and departments that administer their own provisional offers. It will include a DoB, name and NINO. CSR and departments that administer their own provisional offers will share information about applicants found to be included on the IFD with the CO. Further information about what data will be shared, by whom, when and for what purpose is set out in greater detail in the MoU. Data protection law requires employers to provide staff with certain information about how their personal data is being or will be used. This information is generally provided in a Fair Processing Notice – FPN.

This paper sets out the points at which certain information should be given to staff and by whom, and provides some suggested wording for the FPN at each stage.

The Internal Fraud Policy, and this paper, applies only to civil servants (including those on fixed term contracts) or applicants to a participating department in the civil service.

2. When should a Fair Processing Notice be issued, and by whom?

An FPN should be provided to the following categories of staff at the stages described:-

- a. By CSR to applicants to the civil service, as one aspect of pre-employment screening following a successful interview.
- b. By departments to existing staff.
- c. By departments to staff who are undergoing disciplinary proceedings involving allegations of fraud or dishonesty.
- d. By departments to former staff who are being investigated for fraud or dishonesty after leaving the civil service.
- e. By departments to staff found by the investigation panel or decision maker to have committed misconduct involving fraud or dishonesty, with dismissal being the consequent sanction.
- f. By departments to staff who resign or leave the civil service for other reasons prior to a conclusion by the investigation panel or decision maker that dismissal would have been the appropriate sanction.

Further details, and recommended FPNs for each of these categories, are given below.

3. Recommended wording

The Cabinet Office recommends that FPNs should be provided using the text below, although this can of course be adapted by departments. A short version may be issued to staff directly for example with a link to the longer version on your intranet. For applicants the FPN will be included in the letter alongside details of other pre-employment checks.

Applicants to the Civil Service

From (date), CSR (or team which conducts pre-employment checks) is to provide an FPN to all new applicants after they have been successful at interview. These candidates will be informed that, as one aspect of pre-employment screening, their personal details – name, National Insurance

Number and date of birth - will be checked against the CSR Extract IFD and that anyone included on the Internal Fraud Database will be refused employment unless they can demonstrate exceptional circumstances.

CSR (or team which conducts pre-employment checks) will also include the FPN wording advising of the check against the extract IFD in the advert for employment for departments.

CSR (or team which conducts pre-employment checks) will, on behalf of the vacancy holder, inform applicants when they are refused employment because of their inclusion in the IFD.

Following success at interview- the following wording should be issued:

"From (date) (the department) started providing the Cabinet Office with information about employees who have been dismissed for fraud or dishonesty offences. This information is the individual's name, date of birth, national insurance number and a general description of the relevant misconduct. This also applies to employees who resign or otherwise leave but who, because of an adverse decision by the investigation panel or decision maker, would have been dismissed for fraud or dishonesty had they continued in employment.

The Cabinet Office input this information onto a database - the Internal Fraud database (IFD). It shares with Civil Service Resourcing (CSR) (or dept team which conducts pre-employment checks) the name, date of birth and national insurance numbers of the staff included on the IFD. Where an applicant to a department is successful in interview, CSR (or dept team which conducts pre-employment checks) will, as part of its pre-employment screening (on behalf of vacancy holders), check his or her details against the information it received from the Cabinet Office. Any applicant who is included in the IFD will be refused employment.

This information will be retained by the Cabinet Office on the IFD for a period of five years from the date of dismissal (or the date employment ended). CSR (or team which conducts pre-employment checks) will share with the Cabinet Office the outcome of its checks for monitoring and analysis purposes. The CO will use this information for research on the prevention and detection of fraud. This will not be shared outside CO and CSR (or dept team which conducts pre-employment checks) except on an anonymised basis.

The types of fraud/dishonesty covered by this process are defined by the CO as follows:

1. Dishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person;
2. For employees of DWP only, this includes dishonest or fraudulent conduct relating to benefits, even if not connected with employment; and
3. For employees of HMRC only this includes dishonest or fraudulent conduct relating to tax duties, contributions or payments administered by HMRC even if not connected with employment.

4. For Home Office employees only this includes dishonest or fraudulent conduct relating to immigration, passport, asylum or nationality matters even if not connected with employment.

If you are notified that you are included on the IFD and believe that there has been an error in the inclusion of your data and you wish to make an appeal please contact the CO email box Internal.Fraud@cabinetoffice.gov.uk. This does not affect your right to appeal against your dismissal”.

Existing staff

An FPN should be provided by departments to all existing staff, whether or not they are currently subject to disciplinary proceedings. This could for example be done by a notice on the intranet.

As soon as practicable this wording should be sent to existing staff:

“From (date) (department) will provide the Cabinet Office with information about employees who are dismissed for fraud or dishonesty offences. This information will be the individual’s name, date of birth, national insurance number and a general description of the relevant misconduct. This will also apply to employees who resign or otherwise leave but who, because of an adverse decision by the investigation panel or decision maker, would have been dismissed for fraud or dishonesty had they continued in employment.

The Cabinet Office will input this information onto the Internal Fraud Database (IFD). It will share with Civil Service Resourcing (CSR) (or dept team which conducts pre-employment checks) the name, date of birth and national insurance numbers of the staff included on the IFD. Where an applicant to a participating department is successful in interview, CSR (or dept team which conducts pre-employment checks) will, as part of its pre-employment screening (on behalf of vacancy holders), check his or her details against the information it received from the Cabinet Office. Any applicant who is included will be refused employment.

This information will be retained by the Cabinet Office on the IFD for a period of five years from the date of dismissal (or the date employment ended). CSR (or team which conducts pre-employment checks) will share with the Cabinet Office the outcome of its checks for monitoring and analysis purposes. The CO will use this information to ensure that checks are being carried out correctly, and for research on the prevention and detection of fraud. This will not be shared outside CO and CSR (or dept team which conducts pre-employment checks) except on an anonymised basis.

The Cabinet Office definition of internal fraud is as follows:

1. Dishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person;
2. For employees of DWP only, this includes dishonest or fraudulent conduct relating to benefits, even if not connected with employment; and
- 3 For employees of HMRC only this includes dishonest or fraudulent conduct relating to tax duties, contributions or payments administered by HMRC even if not connected with employment”.

4. For Home Office employees only this includes dishonest or fraudulent conduct relating to immigration, passport, asylum or nationality matters even if not connected with employment.

Staff who are undergoing disciplinary proceedings involving fraud or dishonesty

An FPN should be given by departments to staff who undergo disciplinary proceedings involving fraud or dishonesty which could lead to dismissal – or, if they leave before a conclusion is reached, to a finding that they were guilty and would have been dismissed had they not already left.

This is an FPN to staff who are undergoing disciplinary proceedings involving fraud or dishonesty, which could lead to dismissal:

“Because there is a possibility that the disciplinary process you are undergoing could lead to your dismissal, I need to give you some information about the Cabinet Office Internal Fraud database (IFD).

The misconduct alleged against you appears to fall within the Cabinet Office definition of internal fraud. The full definition is as follows:

1. Dishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person;
2. For employees of DWP only, this includes dishonest or fraudulent conduct relating to benefits, even if not connected with employment; and
3. For employees of HMRC only this includes dishonest or fraudulent conduct relating to tax duties, contributions or payments administered by HMRC even if not connected with employment.
4. For Home Office employees only this includes dishonest or fraudulent conduct relating to immigration, passport, asylum or nationality matters even if not connected with employment.

If, as a result of the disciplinary process, I conclude that you have committed misconduct involving fraud or dishonesty and that dismissal is the appropriate sanction, your details will be sent to the Cabinet Office for inclusion on their IFD.

These details would then be kept on the IFD for five years from the date of dismissal. Civil Service Resourcing (or team which conducts pre-employment checks) check the IFD when applicants for Civil Service posts are successful at interview, as part of their recruitment screening checks. Your inclusion on the IFD would mean you would be banned from employment in a participating department during the five-year period.

I am giving you information about the IFD at this stage so that you are fully aware of the possible consequences of the current process, but obviously this does not mean that I have come to any conclusion yet about the alleged misconduct or what the appropriate sanction would be if the misconduct were proven.”

Former staff who are being investigated for fraud or dishonesty after leaving employment

An FPN should be given by departments to staff who have left employment but where an investigation may continue following their departure.

The following wording should be included in the letter informing the individual that the investigation is to be continued:-

“Because the allegations against you which I am investigating could constitute internal fraud, I need to give you some information about the Cabinet Office Internal Fraud database (IFD).

The Cabinet Office definition of internal fraud is as follows:

1. Dishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person;
2. For employees of DWP only, this includes dishonest or fraudulent conduct relating to benefits, even if not connected with employment; and
3. For employees of HMRC only this includes dishonest or fraudulent conduct relating to tax duties, contributions or payments administered by HMRC even if not connected with employment.
4. For Home Office employees only this includes dishonest or fraudulent conduct relating to immigration, passport, asylum or nationality matters even if not connected with employment.

If, as a result of my investigation, I conclude that you have committed misconduct including fraud or dishonesty and that dismissal would have been the appropriate sanction if you had still been in our employment, your details will be sent to the Cabinet Office for inclusion on their IF database.

These details would then be kept on the IFD for five years from the date upon which the decision was taken that dismissal would have been the appropriate sanction. Civil Service Resourcing (or team which conducts pre-employment checks) check the IFD when applicants for Civil Service posts are successful at interview, as part of recruitment screening checks. Your inclusion on the IFD would mean you would be banned from employment in a participating department during the five-year period from the decision date.

You will have the right to appeal against the decision that you were guilty of internal fraud. If the appeal overturns the decision of dismissal, your details will be removed from the IFD.

I am giving you information about the IFD at this stage so that you are fully aware of the possible consequences of the current investigation, but obviously this does not mean that I have come to any conclusion yet about whether you have committed misconduct involving fraud or dishonesty”.

Staff found by investigation panel to be guilty of misconduct involving fraud or dishonesty, with consequent sanction of dismissal

The following wording should be included in the letter notifying the employee of the dismissal decision:

“Because you are being dismissed as a result of conduct which is covered by

the Cabinet Office's definition of internal fraud, details of your dismissal will be sent to the Cabinet Office for inclusion on their database of civil servants dismissed for internal fraud (the Internal Fraud database or IFD).

The definition of internal fraud is:

1. Dishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person;
2. For employees of DWP only, this includes dishonest or fraudulent conduct relating to benefits, even if not connected with employment; and
3. For employees of HMRC only this includes dishonest or fraudulent conduct relating to tax duties, contributions or payments administered by HMRC even if not connected with employment.
4. For Home Office employees only this includes dishonest or fraudulent conduct relating to immigration, passport, asylum or nationality matters even if not connected with employment.

The details which will be sent to the Cabinet Office are:

- Your name
- Your date of birth
- Your National Insurance number
- Brief description of the type of misconduct
- Date of dismissal

These details will be kept on the IFD for five years from the date of dismissal. Civil Service Resourcing (or team which conducts pre-employment checks) check the IFD when applicants for Civil Service posts are successful at interview, as part of recruitment screening checks. Your inclusion on the IFD means you will be banned from employment in a participating department during the five-year period”.

Staff who resign or leave for other reasons, and following their departure there is an adverse conclusion by investigation panel

Wording to be used where a former employee who is found to have committed misconduct involving fraud or dishonesty as defined and who would have been dismissed if they had not already resigned or left for other reasons is set out below. This is to be included in letter notifying them of the decision. (For information about the process to use prior to reaching the decision, please see the [Manager Guidance].)

“Because I have concluded that you have committed misconduct involving fraud or dishonesty which is covered by the Cabinet Office's definition of internal fraud, details of this will be sent to the Cabinet Office for inclusion on their database of civil servants dismissed (or who would have been dismissed if they had not already left) for internal fraud (the Internal Fraud database or IFD).

The definition of internal fraud is:

1. Dishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person;
2. For employees of DWP only, this includes dishonest or fraudulent conduct

relating to benefits, even if not connected with employment; and

3. For employees of HMRC only this includes dishonest or fraudulent conduct relating to tax duties, contributions or payments administered by HMRC even if not connected with employment.

4. For Home Office employees only this includes dishonest or fraudulent conduct relating to immigration, passport, asylum or nationality matters even if not connected with employment.

The details which will be sent to the Cabinet Office are:

- Your name
- Your date of birth
- Your National Insurance number
- Brief description of the type of misconduct
- Date you left the department

These details will be kept on the IFD for five years from the date you left the department. Civil Service Resourcing (or team which conducts pre-employment checks) check the IFD when applicants for Civil Service posts are successful at interview, as part of recruitment screening checks. Your inclusion on the IFD means you will be banned from employment in a participating department during the five-year period“