



Discipline policy

May 2018

Policy principles

All employees are responsible for ensuring their behaviour meets the standards expected of them. The Civil Service Code, our conduct policy and our values outline the key principles of behaviour expected from all employees.

Separate policies and procedures cover attendance, performance management and other capability issues.

All cases of misconduct should be dealt with promptly, transparently, fairly and consistently.

Everyone involved in the discipline process is expected to:

- a) show respect for others
- b) work together to resolve the issue and
- c) Maintain confidentiality.

Scope of the policy

This policy and its related procedures apply to all employees, including those on probation and fixed term appointments.

Policy summary

Misconduct may have occurred where it is suspected or alleged that an employee has failed to meet acceptable standards of behaviour or conduct in any way. Where misconduct is proven, a range of penalties may be imposed, up to and including dismissal.

Key areas covered by this policy include:

- a) initial assessment, including levels of seriousness of misconduct
- b) informal and formal action
- c) investigations and meetings
- d) Decision-making (including penalties).



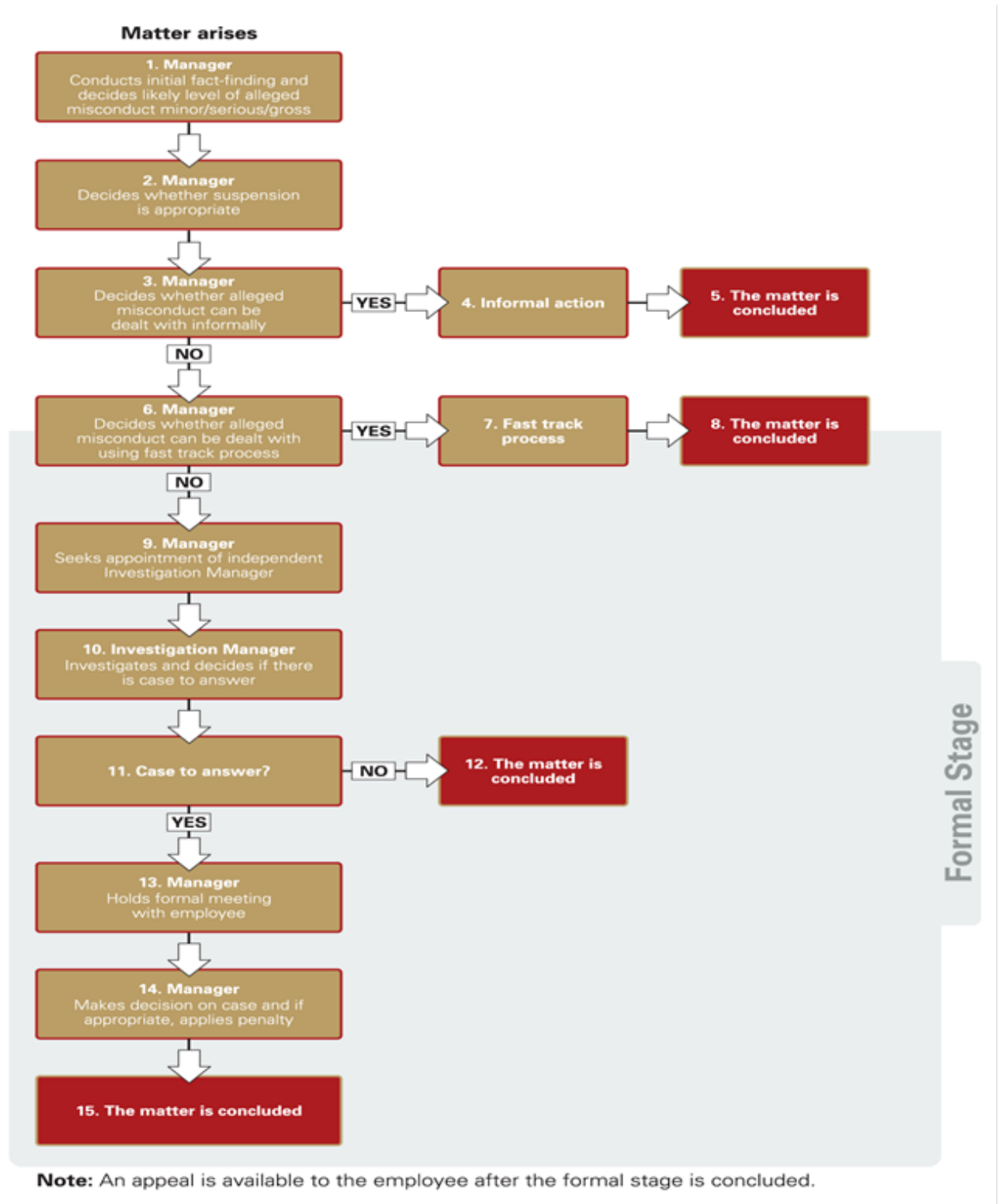
Discipline procedure

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Process Overview

A text of this flowchart version is available on page 12



Introduction

1. This document sets out the procedure to use when it is suspected or alleged that any employee has failed to meet acceptable standards of behaviour or conduct in any way. It should be read with the Discipline policy.
2. This procedure must be followed to ensure the statutory code of practice laid down by the Advisory, Conciliation and Arbitration Service (ACAS) is adhered to.
3. The *Discipline Advice* contains tips and templates for use throughout the process, including a Decision Manager's checklist. Additional support is also available through the '*Discipline Advice for Employees*' and the following '*How to*' guides:
 - Hold a formal discipline or grievance meeting
 - Investigate discipline and grievance cases
 - Assess the level of misconduct
 - Decide a discipline penalty.
4. All actions in this procedure should normally be taken within the set times. However, it is recognised that this is not always possible due to the complexity of the case or circumstances such as working patterns, shift working, annual leave, public holidays and/or employee absence or disability, in which case all actions should be carried out as soon as reasonably possible. The reasons for any delay should be recorded.
5. If the employee requires any reasonable adjustments to enable them to attend meetings or read correspondence they should inform the manager accordingly. Managers will need to put these adjustments in place before taking action.
6. A summary of the procedure is in the flowchart: *Process overview*.

Following the Procedure

7. In simple terms, alleged or suspected misconduct involves managers making a series of decisions according to the individual circumstances of the case. The manager must:

Decide the level of seriousness of misconduct
Decide whether removal from the workplace/suspension is appropriate
Decide whether matters can be dealt with informally or that formal action should proceed (including fast-track)
Have the matter investigated or gather facts
Inform the employee of the decision in writing and meet with the employee to discuss the allegations ensuring: <ul style="list-style-type: none">• the right to be accompanied• the opportunity to put forward mitigation

Decide whether the case is proven or not
Decide the appropriate penalty

8. The Decision Manager must always be at least one grade higher than the employee concerned. In most cases the employee's line manager will take on the role of Decision Manager.

Initial Assessment

9. There are two key initial decisions for the manager to make when misconduct is alleged or suspected:
- the likely level of seriousness
 - Whether the action warrants removal or suspension.

Deciding the level of seriousness of misconduct

10. The manager should decide what the seriousness of the misconduct is likely to be:

- minor misconduct
- serious misconduct
- Gross misconduct.

11. Examples of each are given in '*How to: Assess the level of the misconduct*'.

12. As soon as the manager is clear about the likely level of misconduct, they should advise the employee of:

- the likely penalty if misconduct is proven and
- The investigation that needs to be carried out.

Deciding whether to remove/suspend an employee

13. In serious cases of misconduct, suspension may be appropriate whilst the alleged misconduct is investigated. Managers should not use suspension as a penalty. It should be made clear to the employee that the suspension is not disciplinary action and does not assume any guilt on behalf of the employee being suspended. The suspension period should be as brief as possible and kept under regular review by the manager.

14. As suspension is a serious decision, their HR Business Partner should be consulted before any suspension action is taken. Circumstances when suspension may be appropriate could include where:

- there has been a serious breakdown in the relationship between the employee and the department
- there is a risk to other employees, property or customers

- There is a risk that the employee may tamper with evidence required for the investigation and/or influence witnesses.
15. Suspension may be appropriate immediately following an incident or later in the process; for example, at a point during or after the fact-gathering or investigation when evidence comes to light.
 16. Suspension will normally be with full pay. However managers need to take HR and legal advice on each individual case where it is proposed to suspend without pay as this is likely to constitute a breach of contract.
 17. Suspension should not be confused with management action to remove the employee from their current place of work; this removal may be required immediately following an incident in order to diffuse a conflict situation. An example of this type of management action might be instructing people to work in a separate area of the office or sending the employee(s) home for the rest of the day/shift to allow for a cooling-off period. The manager must be very clear with the employee that they are not being suspended and will be expected to return to work as normal the next working day/shift.

Informal Action

18. Instances where minor misconduct is identified may not require the manager to take formal action and the matter can be addressed quickly and informally through for example, a discussion about expectations and standards of behaviour or through counselling, training, coaching or mentoring.
19. However, managers should also advise employees that further misconduct may lead to formal action being taken in future. A record of all management action should be kept securely electronically and a copy given to the employee, and kept in line with the Records Retention Policy, after the matter has been concluded.

Formal Action

20. In certain instances of minor misconduct, or where informal action has not prevented further minor misconduct from taking place, it may be necessary for the manager to proceed to the formal process. In all cases of alleged serious or gross misconduct the formal procedure must be followed.
21. At this stage, the manager should decide whether using the fast-track process is appropriate.
22. When the formal process has started, the Decision Manager should inform their HR business Partner that the process is underway. If the disciplinary case is then not resolved after 40 working days it is advisable for the case to be reviewed by their HR business partner. The purpose of the review is to ensure that everything is being done to progress the case, that the correct process is being followed and that there are no unnecessary delays.

Fast Track Process

23. A fast-track process may be appropriate in straightforward cases where the facts of the case are not in dispute.

24. In these cases a lengthy investigation and interviewing of witnesses is not necessary but a simple fact-gathering exercise should take place, with only the following discipline procedure steps required:
- a) A meeting with the manager who will take the role of Decision Manager, where evidence will be presented and the employee will have an opportunity to present their case and any mitigation. At this meeting the employee has the right to be accompanied by a trade union representative or work colleague
 - b) The Decision Manager will advise the employee of the decision and follow this up in writing, including an opportunity to appeal.
25. The fast track process can be stopped by the Decision Manager at any time if it is evident that the scope of the misconduct is broader than initially thought or that other employees may have been implicated in the alleged misconduct. The Decision Manager would then proceed to a full investigation.

Investigations

26. Some misconduct cases will need a formal investigation rather than just the simple fact-gathering that is suitable for the fast track process. This is likely to be the case where other parties must be involved, for instance security or fraud teams. The aim of the investigation is to collect the facts necessary to decide whether there is a case to answer or not. Managers may find the *'How to investigate'* and *'How to hold a formal meeting'* guides helpful.
27. Wherever practicable, different people should carry out the investigation and act as Decision Manager. Where the circumstances and complexity of the case are relatively straightforward and evidence is readily available, the manager may conduct the investigation. In such cases, the manager may exceptionally retain the role of the Decision Manager. The two processes must be kept separate and the manager should not make a decision until they have held the decision meeting. Where the case is more complex, for instance involving a bullying, harassment or discrimination claim, an independent Investigation Manager may be appointed. Advice should be sought from HR on this decision.
28. An independent Investigation Manager will:
- a) not decide if a case is proven or whether a penalty should be imposed but
 - b) Compile a written report for the Decision Manager, indicating whether they believe there is a case to answer or not.
29. The Decision Manager should check the report is reasonable and meets the terms of reference for the investigation. If not, the Decision Manager should specify in writing what they have found unsatisfactory and request further information they believe is required.
30. Where a manager conducts an investigation themselves, they will need to decide whether there is a case to answer or not.

Informing and meeting with the employee

31. If there is **no case to answer**, the Decision Manager must write to the employee to confirm the decision and that no meeting is necessary, enclosing a copy of the report and witness statements.
32. If there is **a case to answer**, the Decision Manager will need to take further formal action and should write to the employee who has been investigated within five working days of receiving the report, enclosing the report and witness statements, inviting them to a formal meeting to discuss the findings of the investigation.
33. The Decision Manager should:
 - a) give the employee at least five working days' notice of the meeting
 - b) Tell the employee they have the right to be accompanied by a trade union representative or work colleague. If the employee or their companion cannot reasonably attend the meeting, the employee should propose several new dates to the manager to allow the meeting to take place within five working days of the original meeting date. If the employee fails to engage or cooperate with meeting arrangements and/or fails to attend the scheduled or re-scheduled meeting, consideration of the discipline case will go ahead in their absence based on the available information
 - c) ask the employee if any specific requirements or adjustments need to be made to enable them to attend the meeting
 - d) Enclose the investigation report.
34. The Decision Manager should then meet with the employee to hear the case, arranging for a note-taker to be present at the meeting.
35. If an investigation shows clearly that the Decision Manager is implicated in the original allegation of misconduct the case must be referred to the next senior manager in the Decision Manager's management chain or to a suitable alternative manager, consulting your HR Business Partner as necessary.

Deciding the outcome

36. The Decision Manager must decide whether the alleged misconduct is:
 - a) proven or
 - b) Not proven.
37. The Decision Manager must notify the security and/or fraud team for any proven cases involving breaches of security, fraud or criminal matters. Where it is suspected that a criminal offence has been committed the advice of the security team should be sought in relation to notifying the police.
38. If someone is the victim of a criminal offence whilst at work (for example, they are assaulted by another employee at work or their personal belongings are stolen at work) then they have the right to contact the police, but should also inform the Associate Director of HR that this is what they intend to do as this may impact on any subsequent disciplinary action taken against an ORR employee as a result.

39. There is a distinction between major disciplinary offences that may be dealt with by ORR and those that may be criminal – if a case has been reported to the police as a criminal offence then ORR will apply this discipline policy if the alleged offender is an ORR employee, but will ensure that any internal investigation and subsequent action does not prejudice the outcome of any criminal proceedings.
40. You are required to inform HR if you are arrested or convicted of a criminal offence. Failure to do so will result in disciplinary action.
41. If the Decision Manager finds that a case of misconduct is **not proven** they must notify the employee and confirm that no further action will be taken. This should be confirmed in writing within five working days from the meeting. If suspended, the employee must return to work.

Mitigation

42. The Decision Manager should decide whether the case has been proven or not before taking mitigation into account.
43. If the case is proven, penalties should be decided after the individual has been given the opportunity to put forward any mitigating circumstances and providing evidence where available.

Deciding an appropriate penalty

44. Decision managers must ensure that penalties are appropriate to the level of seriousness of the offence, whether minor, serious or gross misconduct. The previous discipline record of the employee should be taken into account and consistency maintained with previous decisions wherever possible. Decision Managers may wish to consult HR on these issues.
45. Instances of minor misconduct do not necessarily merit a penalty.
46. Informal action is not a discipline penalty.
47. Penalties could be the following:
 - a) First written warning. Appropriate in some instances of minor misconduct, or when informal action has not stopped further instances of similar minor misconduct. Valid for a minimum of 12 months from notification.
 - b) Final written warning. Usually appropriate when another incident of minor misconduct occurs during the live period of a first written warning or when the misconduct is serious. Normally valid for a minimum of 12 months from notification, which could be extended exceptionally.
 - c) Dismissal. For gross misconduct or when another incident of misconduct occurs during the currency of a final written warning.
48. Alternatively the Decision manager is able to impose the following for any level of penalty depending on the level of seriousness of the offence;
 - Removal of benefits, including flexitime and working remotely.

- Restrictions on employment or additional management checks.
- Downgrading.
- Reduction in pay.
- Issue another final formal warning which can be 'live' for up to 24 months.
- Dismissal with or without notice.
- Any other remedial action to correct the situation.

49. The decision manager must hold the correct level of authority to impose the appropriate penalty

- a) First written warning: The manager
- b) Final written warning: A senior manager (grade C or above) in the employee's management chain
- c) Dismissal: A senior manager (grade A or above) in the employee's management chain

50. For repeated misconduct, penalties will normally follow in the above order, listed in paragraph 45. However the process is not sequential and, depending on the seriousness of the misconduct, a final written warning or dismissal may be an appropriate first penalty. The same type of offence may warrant a different penalty depending on its nature and impact; for instance, where an employee has failed to follow ORR procedure.

51. All penalties attract a right of appeal.

Informing the Employee of the Decision

52. The Decision Manager should normally make a decision within five working days of the meeting and immediately communicate this in writing to the employee.

Appeals

53. There is one right of appeal in this procedure. The employee must set out the grounds for appeal in writing and whether they are appealing against:

- a) procedural errors and/or
- b) the decision
- c) If new information/evidence is available.

54. Appeals on discipline matters must be heard, where this is possible, by someone senior to the person making the decision being appealed. If this is not possible due to operational circumstances or for some other reason, the appeal for warnings, but not dismissals, may be heard by a manager at the same level as the Decision Manager. The Appeal Manager should be impartial and independent of the original case wherever possible.

Employee's actions

55. Employees have five working days, from the date of receipt of the decision in which to send their written appeal to the Appeal Manager. The employee must then provide the following within 10 days of the decision date:
- a) make clear whether the appeal is against a procedural error and/or the decision
 - b) Clearly state their desired outcome.

Appeal Manager's Actions

56. The Appeal Manager will write to the employee, normally within five working days of receiving the appeal to confirm its receipt and to invite them to a meeting. They should write to the employee:
- a) giving at least five working days' notice of the meeting
 - b) Confirming the right to be accompanied by a trade union representative or work colleague.
57. At the meeting, the Appeal Manager should examine the decision-making process and the penalty given and decide whether these were reasonable. They should not reconsider the case in detail.
58. If new evidence is made available the Appeal Manager should consider the impact this may have on the final decision.
59. Normally within five working days of the appeal meeting, the Appeal Manager should decide and inform the employee whether their appeal has been upheld or rejected. The Appeal Manager should consult with HR before notifying the employee of the decision on the appeal.
60. The Appeal Manager's decision is final.

Record keeping

61. It is important that a written record is kept at all stages within the discipline process including any correspondence. Following conclusion of the process the Decision Manager should send electronic copies of the documents to HR. These will be kept on a confidential ORR discipline file, and will be stored separately from personal files, within the current document management system. The confidential ORR discipline file will be kept for 6 years after the end of the person's contract of employment with ORR.
62. Records must be marked official - Sensitive, kept securely and handled in line with ORR's record management policy. Please find more advice on the Information security pages and Record Retention Policy.
63. At all stages documentation should be managed in compliance with the requirements of the General Data Protection Regulation and Data Protection Act 2018.

Process overview – text version

Step 1. Manager conducts initial fact-finding and decides likely level of misconduct [minor/serious/gross]

Step 2. Manager decides whether suspension appropriate

Step 3. Manager decides whether alleged misconduct can be dealt with informally

Yes: go to step 4

No: go to step 6

Step 4. Informal action

Step 5. The matter is concluded

Step 6. Manager decides whether alleged misconduct can be dealt with using fast track process

Yes: go to step 7

No: go to step 9

Step 7. Fast track process

Step 8. The matter is concluded

Step 9. Manager seeks appointment of independent Investigation Manager

Step 10. Investigation Manager investigates and decides if there is a case to answer

Step 11. Case to answer?

Yes: go to step 13

No: go to step 12

Step 12. The matter is concluded

Step 13. Manager holds formal meeting with employee

Step 14. Manager makes decision on case and if appropriate, applies penalty

Step 15. The matter is concluded

Note: An appeal is available to the employee after the formal stage is concluded



How to investigate discipline and grievance cases

Introduction

1. *It is in the best interests of all parties for matters to be fairly and fully investigated and resolved quickly. This guide aims to help managers and Investigating Managers to conduct an effective fact-finding exercise. It should be read in conjunction with the *Discipline and Grievance Policy and Procedure*.*

Deciding who is the best person to investigate

2. The role of the Investigation Manager is to establish facts and gather evidence including witness statements, where appropriate.
3. Where it is not appropriate for a case to be dealt with using the fast track process, the line manager should seek the appointment of an independent Investigation Manager from their HR Business Partner. The independent Investigation Manager can be from the same line management chain but they will need to be impartial, and have no prior knowledge of the details of the case.
4. Points to consider when deciding if an independent Investigation Manager needs to be appointed:
 - Has the bullying, harassment or discrimination complaint been sent directly to the HR team [If so, an independent Investigation Manager is likely to be needed].
 - Is the manager somehow implicated in the circumstances of the case? If so, the manager should speak to their manager and/or contact HR team who could advise if an independent Investigation Manager should be appointed.
 - Does the line manager have a personal interest in any particular outcome of the case?
 - Is the manager aware of others being involved? If so, the manager may need to speak to another line manager and/or contact their HR Team who could advise if it may be better to appoint an independent Investigation Manager.
 - Are there any relevant wider issues, such as related misconduct by another team member? If so, the manager may need to speak to another manager and/or contact HR who could advise if it may be better to appoint an independent Investigation Manager.

Other points to consider

For discipline cases:

- Is the allegation of minor, serious or gross misconduct?
- Will witnesses need to be interviewed? If so, who?
- Did the line manager witness the misconduct? If not, who might need to be interviewed?
- Is the manager fully aware of the circumstances? If not, what would they like the investigation to clarify?
- Has an attempt been made to resolve this or similar misconduct before; either through formal or informal processes? If so, what was the outcome?

For grievances

- Has the same or similar grievances been raised before?
 - Are there any other similar grievances raised at the moment?
 - Does the grievance include any discrimination issues such as, for example, failure to provide reasonable adjustments?
5. During the course of the grievance investigation, it may become apparent that there is a discipline case to answer. If the grievance procedure investigation has established that there is a discipline case to answer, there is no need to start the discipline procedure investigation from the beginning. However, further investigation as part of the discipline procedure may be necessary.

If unsure about any of those points, the line manager may want to discuss with their countersigning manager or HR who will be able to advise.

How to investigate

6. The Investigation Manager will need to interview the employee concerned, appropriate witnesses (who are required to attend a meeting when called upon by an Investigation Manager) and obtain any other required evidence such as relevant correspondence.
7. The employee concerned has the right to be accompanied by a work colleague or a trade union representative. Witnesses have no right to be accompanied when giving statements but Investigation Managers will have discretion to decide when this would be appropriate, depending on the circumstances of each case.
8. The Investigation Manager should remind employees that:
- It is a formal investigation.
 - Their statements will be recorded in writing and used in making a decision on whether there is a case to answer or not.
 - They need to give a full and true account of the matter, which they will be asked to sign to confirm (although a signature is not required to proceed with the case).

- What they say will help you to draw conclusions from the investigation.
9. You should complete a report which includes the following information:
- The original reason for conducting the investigation.
 - A record of all information obtained from the employee and witnesses.
 - An account of the facts and/or relevant information signed and dated by the person being interviewed and countersigned by the Investigation Manager.
 - Any doubts about the evidence obtained or credibility of statements.
 - If proposed witnesses were not deemed necessary or relevant, reasons for this decision.
 - A copy of all of the evidence, statements and relevant documents.
 - A fully reasoned decision as to whether or not there is a case to answer (for discipline cases).
10. It is important to remember that the investigation report is a formal document and may be used at an Employment Tribunal as evidence. The report should be comprehensive, accurate and be an objective and fair assessment. For consistency it might be helpful to use the model Investigation Manager note template.

Who will see the investigation report?

11. In grievance cases, the employee who raised the grievance will see the grievance investigation report, including witness statements, where appropriate. Companions will also see the report, as will those managers included in the investigation or disciplinary meeting.
12. However, if there is a further investigation under the discipline procedure, the employee who raised the original grievance will not be informed about any details of the process, will not see the discipline investigation report or know the decision - this is personal and confidential to the person undergoing the discipline process.
13. The employee who is the subject of the discipline procedure will see the discipline investigation report including the witness statements, where appropriate.
14. Employees and managers need to be aware that:
- any confidential information in the report (such as names, dates of birth and addresses) will be redacted.
 - sharing the report with any person other than those with a legitimate reason, such as for example companions, would be viewed as serious misconduct.

Investigation Manager Note Template

Note of investigation	
Employee name:	
Grade/Competency:	
Role:	
Date investigation commenced:	
Investigation Manager	
Decision manager	
SUMMARY OF INVESTIGATION	
Details of allegation/complaint	
Evidence considered	
Witnesses interviewed and questions answered or statements obtained	
INVESTIGATION MEETING	
Meeting date	
Start time/Finish time	
Note taker	

All others attending	
Facts Discussed:	
DETAILS OF CONSIDERATION	
For discipline cases: Is there a case to answer? YES/NO	
Investigation Manager's signature	
Date:	



How to assess the level of the misconduct

Introduction

1. This 'How To' guide will help to steer managers through the early handling stages when deciding what level of action is appropriate to deal with a disciplinary matter. It should be read in conjunction with the *Discipline Policy and Procedure*.
2. Taking prompt and decisive action as soon as you become aware that a disciplinary matter needs addressing is in the best interests of ORR, the employee and where others are involved, the wider team.
3. Managers are reminded that not dealing with misconduct issues as soon as they occur, or you are made aware of them, is not acceptable in terms of your own performance as a manager and may imply an endorsement of unacceptable behaviour.

Assessing the appropriate level of action to take

4. It is important to be clear from the start what the likely level of action in cases of misconduct is to be. This will depend on a number of factors and individual circumstances and should not pre-empt the decision.
5. However you may find that, as an investigation proceeds, the level may change. You should then consider the case under the appropriate level.
6. Factors to consider when deciding the level of seriousness of misconduct:
 - a) The degree of the misconduct (e.g. physical violence towards others will be considered gross misconduct)
 - b) The impact on others
 - c) Damage to property (value may be a factor in deciding whether the misconduct is minor or gross)
 - d) Culpability
 - e) Intent
 - f) Breach of the Civil Service Code
7. You must be able to justify your decision for the course of action taken – whether or not the decision was reasonable in the given circumstances. If you are unsure about this, seek HR advice.

8. The following examples are intended to help you decide how best to deal with a case. It should be noted that examples listed are neither exhaustive nor mutually exclusive.

Minor Misconduct

9. Minor misconduct is defined as a minor breach of rules, for example:

- a) Poor time keeping.
- b) Minor safety violations.
- c) Failure to follow departmental policy/procedure e.g. failure to follow a reasonable instruction.
- d) Minor misuse of departmental assets such as phone/email.

Informal action

10. Most cases of misconduct that are first offences and minor in nature, such as the ones listed above, are often best dealt with informally. An off the record discussion is often all that is required to improve an employee's behaviour. Managers should:

- talk to the employee about the situation and ask them to explain their actions
- invite the employee to provide information about any relevant personal issues or health reasons that may have affected their behaviour
- remind the employee about the Employee Assistance Service.

Formal action

11. However, some instances of minor misconduct should be dealt with formally from the outset and may warrant a first formal warning, for example:

- breaches of information security that are accidental, genuine errors where reasonable care was taken and where there is no criminal act; no known harm or distress caused and no reputational damage or cost to the department
- minor breaches of the Civil Service Code such as inappropriate behaviour on social media sites or in public where the department may be identified.

Serious Misconduct

12. Serious misconduct will require formal management action, but is not of itself serious enough to amount to gross misconduct in the case of a first offence; for example:

- Repetition of minor misconduct which the employee has already been warned about either formally or informally.

- Failure to follow departmental policy/procedure e.g. serious insubordination.
- Serious misuse of departmental assets such as phone/email.
- Serious breach of ORR's IT acceptable use policy.
- Certain instances of bringing the department into disrepute, e.g. being drunk and disorderly in a situation where your employer may be identified.
- Unauthorised disclosure of official information such as press leaks (with low impact).
- Smoking in buildings.
- Failure to follow reasonable instructions.
- Exceeding level of authority with negative impact on the business.
- Offensive personal behaviour e.g. verbal abuse to colleague.
- Failure to secure sensitively marked documents (with low impact).
- Vexatious or malicious grievances.

Gross Misconduct

13. Gross misconduct is serious enough to destroy the working relationship between the employee and employer and its likely sanction is dismissal. The following are examples but this list is not exhaustive.

- Serious incapability whilst on duty brought on by alcohol or illegal drugs. Please refer to the ORR Health & Safety, Conduct and Capability Policy.
- Significant or continued theft, corruption or fraud.
- Physical violence or threatening behaviour including more serious cases of bullying, harassment and discrimination.
- Significant breach of security.
- Leaks of confidential information to the media or social networking sites.
- Significant breach of health and safety rules.
- Certain instances of bringing the department into disrepute e.g. posting defamatory statements about the department/colleagues/customers/ ministers on social networking sites.
- Unauthorised disclosure of official information such as press leaks (with high impact).
- Failure to secure protectively marked documents (with high impact).
- Falsification of records.
- Gross negligence.
- Insubordination resulting in significant impact – e.g. reputational damage.
- Causing major loss, damage, or injury through serious negligence.
- Deliberate and gross misuse or damage to departmental property.

- Repeated or persistent failure to follow reasonable instructions.
- Significant or repeated breach of the Civil Service Code.
- Very offensive behaviour.



How to hold a formal discipline or grievance meeting

Introduction

This guide is to help Decision Managers conduct meetings with employees. It explains the difference between informal and formal meetings and gives practical guidance on what to do. The guide can be used for both discipline and grievance matters, although some specific issues relating to each are identified.

The differences between informal and formal meetings

Informal	Formal
<ul style="list-style-type: none">• It applies to minor misconduct or grievance matters.• It is part of day-to-day management action.• An informal note must be kept by the manager.• Does not allow the employee the right to be accompanied.• Outcomes must be communicated to the employee, in writing but informally i.e. by email rather than a formal letter.	<ul style="list-style-type: none">• Must be organised for all serious and gross misconduct matters, normally including cases of repeated misconduct• Must be organised for all serious grievance matters, including cases of bullying, harassment and discrimination• Does not need to be preceded by informal action.• It is fully documented and is formally recorded by a note taker.• Allows the employee the right to be accompanied by a colleague or trade union representative.• Employee always informed in writing about the outcome.

Formal meetings (including appeal meetings)

Before the meeting: preparation

Step 1	<p>Write to the employee using Model Letter 3 from <i>Section 2 in Discipline Advice</i>.</p> <p>Attach a copy of the Investigation Report, ensuring that any confidential information (such as names, dates of birth and addresses) has been redacted.</p> <p>Note: You should make it clear in writing to the employee that sharing the report with any person other than those with a legitimate reason would be viewed as serious misconduct.</p> <p>Clarify that the attendance of any witnesses should be agreed with you in advance and will only be accepted in exceptional circumstances i.e. where it is relevant for fair consideration of all evidence.</p>
Step 2	<p>Arrange for a note-taker to attend the meeting (who should be reminded of the need for confidentiality).</p>
Step 3	<p>Ask the employee if they require any reasonable adjustments to enable them to attend the meeting and/or read correspondence; and inform them of their right to be accompanied.</p> <p>Note: If the employee or their companion cannot attend, the employee will need to suggest another date within a further five working days, on which they are both available.</p>
Step 4	<p>Make sure you have all of the statements, evidence and facts ahead of the meeting. This should also include:</p> <ul style="list-style-type: none">• relevant personal information• the employee's discipline or grievance record including current warnings. You may need to contact HR to access this.• other relevant documents.
Step 5	<p>Consider the structure of the meeting and what kind of questions you will need to ask. Avoid using closed questions requiring a Yes or No answer unless this will help you get specific information you need.</p>

At the meeting: conducting the meeting

Step 1	<p>Introduce all present and explain that the meeting is to discuss a discipline/grievance matter and will be conducted with a written record being kept. Explain that the meeting will be used to establish the facts of the case and determine if any further action will be taken. Inform everybody when a</p>
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	<p>decision is likely to be given - the same day after the adjournment or within the five working days from the meeting.</p> <p>Remind every one of the need to respect confidentiality and that any breaches of confidentiality could result in disciplinary action.</p>
Step 2	Explain the alleged misconduct/grievance, cover the relevant evidence and summarise the Investigation Report.
Step 3	<ul style="list-style-type: none"> a) Allow the employee to ask questions and present evidence; b) Establish facts wherever possible; c) Clarify points to ensure everything is understood; d) Use open questions to encourage more information; e) Use precise, closed questions where specific information is needed; f) Avoid leading questions, e.g. Were you provoked? g) For discipline cases: h) Establish whether the member of staff accepts that they have done something wrong or not; i) Ask if there is any factual explanation for the alleged misconduct.
Step 4	<p>At any point during the meeting an adjournment can be requested. If doing so, go to a separate room from the employee and their companion. Meetings should normally reconvene on the same day where possible.</p> <p>Reasons to adjourn may include (this is not exhaustive):</p> <ul style="list-style-type: none"> a) the employee would like to consult with their companion b) the employee is distressed and cannot continue c) for comfort breaks d) in exceptional circumstances, you deem further enquiries are necessary (normally it will be better in such cases to adjourn at the end of the meeting with a continuation at a later date).
Step 6	<p>After the questioning and discussion</p> <ul style="list-style-type: none"> a) summarise the main points of the case; b) allow the employee to say anything else they would like to add; c) inform the employee when you will make your decision; and d) make sure that you have all the relevant facts and information before you adjourn.

After the meeting: making a decision and informing the employee Discipline Appeal Meetings Before the appeal meeting: Preparation

Step 1	<p>Adjourn the meeting to allow consideration before making a decision.</p> <p>Although it is important to let the employee know of your decision as soon as possible, it is also important to take time to consider your decision. Writing down your reasons and justifying the decision will help to make sure your decision is the correct one.</p> <p>Note: Even in a case with a clear outcome, where adjournment is not required to make a decision, you should adjourn for a period to ensure proper consideration has been given.</p> <p>When reaching a decision in discipline cases, if the decision is that the employee is guilty, you must hold a genuine belief on reasonable grounds that the employee has committed misconduct. You will need to be satisfied, having considered all the evidence that the misconduct has occurred.</p> <p>You should give full consideration to the employee's answers to your questions and any mitigation.</p>
Step 2	<p>Inform the employee of the decision (where this is possible) and/or confirm when the employee can expect to receive the decision in writing (usually within five working days) enclosing the notes of the meeting using the appropriate letter from Model Letters 4-7 from <i>Discipline Advice</i>.</p> <p>The decision letter will include:</p> <ul style="list-style-type: none">a) a note of the meetingb) the decision takenc) Information about the right to appeal and where to send it.

Discipline Appeal Meetings

Before the appeal meeting: Preparation

Step 1	<p>Write to the employee using Model Letter 10 from Section 2 of the <i>Discipline Advice</i>. You should also:</p> <ul style="list-style-type: none">• check that you have all relevant documentation• read the grounds for appeal• carefully review the investigation report• obtain and carefully review notes of the disciplinary/grievance meeting and the decision letter and the reasons given for the decision• consider whether the procedure has been properly followed
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	<ul style="list-style-type: none"> consider the fairness of the decision, including any new evidence, if this is the grounds for appeal.
Step 2	Arrange for a note-taker to attend the meeting (who should be reminded of the need for confidentiality).
Step 3	<p>Ask the employee if they require any reasonable adjustments to enable them to attend the meeting and/or read correspondence; and inform them of their right to be accompanied.</p> <p>If the employee or their companion cannot attend, the employee will need to suggest another date within a further five working days, on which they are both available.</p>
Step 4	Consider the structure of the meeting and what kind of questions you will need to ask. Avoid using closed questions requiring a Yes or No answer, unless this will help you to get the specific information you need.

At the appeal meeting: conducting the meeting

Step 1	<p>Introduce all present and explain that the purpose of the appeal meeting is to examine the decision-making process and the penalty given/proposed solution, depending on whether it is a discipline or grievance case appeal. Explain that the purpose of the meeting is not to re-consider the case in detail.</p> <p>Explain that you will inform the employee about your decision in writing, within five working days from the meeting. Make it clear that your decision is final and that there is no further right of appeal.</p> <p>Remind everyone of the need to respect confidentiality and that any breaches of confidentiality could result in disciplinary action.</p>
Step 2	Summarise the reasons for the appeal.
Step 3	<p>During the meeting:</p> <ul style="list-style-type: none"> ask the employee to explain their appeal ask for clarification on any points that are unclear highlight any new evidence which has come to light as a result of the appeal explore the issues ask the employee if they have anything they wish to say, including any mitigation they want you to take into account.
Step 4	<p>At the end of the meeting:</p> <ul style="list-style-type: none"> explain that you will make a decision based on all the available

	<p>evidence</p> <ul style="list-style-type: none"> • ask if there is anything the employee would like to add or if they have any questions • confirm that you will send a letter giving your decision with your reasons within five working days • confirm that your decision is final and that there is no further right of appeal.
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After the Appeal meeting: making a decision and informing the employee

Step 1	<p>Although it is important to let the employee know of your decision as soon as possible, it is also important to take time to consider your decision.</p> <p>Writing down your reasons and justifying the decision will help to make sure your decision is the correct one.</p> <p>You may need to seek HR advice, if you feel you need help with the process or decision-making.</p>
Step 2	<p>Inform the employee of the decision whenever possible within five working days from the appeal meeting, enclosing the notes of the meeting using the appropriate letter: Model Letter 11 from <i>Discipline Advice</i>.</p> <p>The decision letter will include your decision and the reasons for it.</p>

Conduct of employees and their representatives at formal meetings

1. At the start of the meeting you should remind everyone of the need to maintain confidentiality and it should be made clear that unauthorised disclosure of information is likely to be regarded as serious misconduct.
2. Employees need to ensure that they behave in the way that is expected of them. Employees have the right to invite a trade union representative or work colleague to attend meetings with them but not to be otherwise represented, e.g. by a friend, relative or legal representative.
3. When invited by an employee, colleagues and trade union representatives may fully participate in meetings, provided they do not answer the manager's questions on behalf of the employee.
4. Witnesses will not normally attend discipline or grievance meetings but managers will have discretion to decide if this would be appropriate, depending on the circumstances of each case.

5. Where the conduct of any participants in the meeting is disruptive or inappropriate you should adjourn the meeting and reconvene after a reasonable interval.
6. The Employee has a right to appeal against this decision as long as they do so in writing within 10 working days. Any appeal should be addressed to the appeal manager. A copy of the meeting notes should be enclosed as part of the decision letter for misconduct. If the employee has any comments on these notes they must provide these to the Appeal Manager in writing, together with the appeal. If there is no response from the employee within 10 days the record will be taken to be agreed.

How to deal with an employee's failure to attend a meeting

7. Employees are required to attend the meeting that they are invited to and should take all reasonable steps to attend the meeting. If an employee fails to attend a meeting:
 - You should consider the reasonableness of the circumstances for the employee failing to attend the meeting;
 - Other than in exceptional circumstances, for example, a genuine emergency, only one rearrangement should be granted. This should be within 5 working days of the time originally proposed. The employee should propose new dates based on their own and their companion's availability.
 - Where there is a second failure to attend a meeting, a decision can be made on the available evidence in the absence of the employee, and the employee informed of the decision in writing.
 - This will apply equally where the employee's companion is unable to attend a meeting and the employee decides not to attend on their own.



Discipline Frequently Asked Questions

Q1. How will cases be monitored to ensure that they are resolved as soon as possible?

It is advisable that each case is reviewed by a senior manager if it is not resolved after 40 working days. This is to ensure that everything is being done to progress the case, the correct process is being followed and that there are no unnecessary delays. To ensure that this review is carried out within the prescribed timeframe, managers should inform HR as soon as they start the formal discipline process.

Q2. What happens if the manager handling the discipline case unexpectedly becomes absent from/leaves work?

Short absences are part of the everyday working environment. If the absence becomes long-term or is permanent, the countersigning manager may arrange for another manager to take over handling the discipline case.

Q3. How should managers treat other personal issues?

Managers should consider any known temporary or permanent outside factors, such as personal issues that may have affected the employee and which the employee is prepared to share. Managers should remind the employee about available support such as Employee Assistance service (EAS).

Q4. Who can be an Independent Investigation Manager?

The independent Investigation Manager can be from the same line management chain but they will need to be impartial, and have no prior knowledge of the details of the case. or have any personal interest in the outcome. The Investigation Manager should act impartially and independently throughout the investigation. However in circumstances where impartiality is not possible then a manager outside of the management chain should be the Investigation Manager.

Q5. In what circumstances is it appropriate to use the fast track process and how should it be conducted?

A fast track process may be appropriate in straightforward cases where the evidence is readily available and the facts of the case are not likely to be in dispute, for example in cases where:

- a number of people have witnessed alleged misconduct, so accounts of events are likely to be similar

- facts are easily documented, for example unacceptable behaviour that is recorded in writing such as abusive emails or flexi-time abuse.

Line managers will conduct fact gathering, compile the evidence and consider the facts of the case.

It is not appropriate to use the fast track process where:

- the manager could be reasonably perceived to be somehow implicated in the original decision or the circumstances of the case
- the manager could be reasonably perceived as having a personal interest in any particular outcome of the case or being biased
- other parties, such as customers, are involved in the discipline case
- other internal parties are involved in the discipline case, such as security or fraud teams
- there is an allegation of bullying, harassment or discrimination
- the allegation involves media interest and could negatively impact on the department's reputation.

In such cases the manager should seek the appointment of an independent Investigation Manager.

The fast track process may be appropriate to use in most cases of minor misconduct and some cases of serious misconduct. It should not be used where there is alleged gross misconduct which may result in dismissal.

Q6. What happens if the manager dealing with the case moves to another job during the discipline process?

Wherever possible, the process will continue with the manager who started it as they know the facts of the case best.

If this is not possible, the manager must ensure a thorough handover of the case to the new manager, including all notes and other relevant documentation. Once the handover is complete, the new manager should arrange to meet with the employee quickly to make sure that the discipline process is not disrupted.

If the new manager is not in place at the time, the employee's countersigning manager may appoint somebody else to take over the case.

Q7. How do managers ensure employees receive important written communications?

Managers are advised to retain proof that written communications have been sent to, and where appropriate, received by, the employee. Email communications often provide this facility as standard. In the case of communications by post, the use of mail tracking services is recommended.

Q8. How do managers treat unlawful behaviour outside the workplace?

The employee must inform their line manager if they are arrested and refused bail or convicted of any criminal offence. If the offence committed relates specifically to the Civil Service Code, ORR Values or the Equality and Diversity policy, the line manager will need to consider formal discipline action.

The following should be considered:

- the bearing on the employee's suitability to continue to undertake their job in the Civil Service or their relationship with their colleagues, the department or customers; not whether they are guilty under criminal law
- whether the conduct is serious enough to warrant disciplinary action
- that a decision will be made on the evidence available if the employee is unable or refuses to cooperate with the investigation, in cases where the discipline procedure has been instigated an employee who is required to drive as part of their duties are convicted by the police for a driving offence, it is likely that the misconduct will be considered as serious, due to the impact on their role.
- where an employee is detained or imprisoned, managers may wish to consider whether in the light of the needs of the department, continuation of employment is possible and/or appropriate
- Where the employee is unable to continue in their current role, for example due to the loss of a driving licence, whether an alternative role is available and/or appropriate.

Managers may consult HR for advice, for instance to establish whether the detention has resulted in a breach of the employment contract. Legal advice should be sought on individual cases.

Q9. What about inappropriate behaviour outside the workplace?

If behaviour, including misuse of social media, is likely to bring ORR into disrepute, then it can be considered as a potential act of gross misconduct. An example might be employees seen to be ridiculing customers of the ORR.

Q10. What are the implications for cases involving security breaches, fraud or criminal matters?

Any alleged misconduct involving breaches of security, loss or other compromise (including 'leaks') of official and/or personal information or criminal matters should be reported immediately to the ORRs security team. Fraud, corruption and irregularity should be reported to the Information Manager, in Corporate Operations.

An internal security investigation may need to be completed before the misconduct process can be implemented in order to establish the full circumstances. Under these circumstances, it is possible that the security investigation report will inform the misconduct process. In such cases, it may not always be necessary to carry out a further investigation.

Q11. How do managers deal with repeated or persistent misconduct?

Repeated or persistent misconduct may result in a higher penalty than that given before e.g. what merited a first warning is likely to merit a final warning if repeated. However, where the repeated or

persistent misconduct is of a minor nature Decision Managers should be careful when considering dismissal and seek HR advice.

Q12. What if an employee is on loan or secondment?

Employees on loan or secondment will normally be dealt with under ORR Discipline policy. However, it is important to check the loan/secondment agreement as other arrangements may apply

Q13. What happens if an employee resigns before the disciplinary process is concluded?

Where an employee resigns during the course of a disciplinary process, the process should be continued to conclusion while the employee is serving their notice. The Decision Manager should hold the decision meeting, make the decision and send copies of the documents to HR to be placed on the employee's personal HR file. The record will state that the employee resigned but the disciplinary decision will be recorded for future reference.

If the process cannot be concluded before the employee's departure, the employee will be informed that the process will continue in their absence and invited to attend the disciplinary meetings, if they wish.

If there is enough evidence to conclude the process in the employee's absence, it should be concluded in a normal way, as described above. If a disciplinary penalty is imposed, it will be recorded on the employee's personal HR file for reference and they will be notified in writing, including their right to appeal.

If there isn't enough evidence to conclude the process, the process will be stopped due to lack of evidence. This should be recorded by the Decision Manager and the appropriate information put on the employee's personal HR file explaining that they were subject to a discipline process which could not be concluded due to the lack of evidence, owing to the employee's departure

Q14. How are investigations carried out by external consultants to be managed?

In some cases an external consultant may be asked to conduct an investigation. Any such investigation will be overseen by representatives of line management and follow ORR procedure.

Q15. How can shift worker's attendance at meetings be managed?

Where the working patterns of the parties involved in a discipline meeting make it difficult to hold the meeting during standard working hours, arrangements should be made with management to facilitate the individual's attendance.

Q16. What happens if the employee becomes absent from work?

If for example a person is unfit to attend work this does not necessarily mean that the discipline case cannot progress. This will depend on the nature of the employee's absence. An Occupational Health Service (OHS) referral may be of benefit; but, where the OHS report proves difficult to obtain, managers should consider other ways to progress the discipline case, for example communicating by telephone, meeting at a neutral place or location near the employee's home, or inviting the employee to submit a written statement. However, wherever possible and appropriate, cases should be progressed and resolved quickly. It would normally not be necessary to wait for the OHS report. The manager should speak to HR if a referral is required.

Where either a disability or long term health condition is a factor, managers should allow for reasonable adjustments to be put in place, and to take effect, before reassessing the position.

Q17. What happens when an employee is suspended?

Suspended employees may need to be escorted from the premises and asked to surrender security passes or any other means of entry to official property. It is important to remember however that suspension is not a penalty. In most cases suspension will be with full pay.

Suspended employees must ensure they are contactable during normal working hours and will be required to attend meetings and interviews which are part of the discipline process. They must respond to any reasonable management instruction and follow normal attendance/sick procedures if unfit to attend work. They must also seek line manager permission before taking any annual leave.

Employees are reminded of the availability of the Employee Assistance Service (EAS).

Q18. Who can accompany an employee to a formal meeting?

Employees have a statutory right to be accompanied by a companion where the discipline meeting could result in disciplinary action. A chosen companion may be a work colleague, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their trade union as being competent to accompany an employee.

The companion cannot be a friend or relative unless they are also a colleague. Neither can they be a legal representative.

If there is a reasonable adjustment in place that includes the employee being supported in meetings, this must be extended to discipline meetings.

To exercise the statutory right to be accompanied employees must make a reasonable request. It would not normally be reasonable for an employee to insist on being accompanied by a companion whose presence would prejudice the discipline meeting.

Q19. What is the companion's role?

The companion is allowed to:

- a) put forward and sum up the employee's case
- b) respond on behalf of the employee to any views expressed at the meeting
- c) confer with the employee.

The companion does not have a right to:

- a) answer questions posed by management on the employee's behalf
- b) address the meeting if the employee does not wish it

- c) prevent the employee from explaining their case.

Q20. What are the responsibilities of a witness?

A witness is responsible for:

- a) maintaining confidentiality
- b) providing truthful and comprehensive statements and answers
- c) attending meetings with the manager conducting the investigation
- d) volunteering information which they feel may be relevant to the investigation
- e) reporting any attempts to influence their statement to the manager conducting the investigation
- f) informing their line manager of their role and possible impact on work and/or attendance.

Q21. Can the identity of a witness be withheld?

In the interests of fairness it is important that witnesses identify themselves. However, in exceptional circumstances the identities of individuals can be withheld; for instance, where there is a genuine fear of serious risk to personal safety.

The fact that a member of staff making an allegation, or a witness, simply does not wish to be identified will not be sufficient cause to withhold identity.

Even where it is agreed that identity can be withheld it is not possible to guarantee anonymity should the case progress to Employment Tribunal.

Q22. Who will be able to see a witness statement?

A witness statement will be attached to the investigation report and will be provided to the employee who is the subject of the discipline procedure. This is to ensure openness and transparency in the investigation process. Companions will also see the report, as will those managers included in the investigation or disciplinary meeting.

Q23. Can witnesses attend the discipline meeting?

Witnesses would not normally attend discipline meetings.

Q24. Do witnesses have the right to be accompanied at the discipline meeting?

There is no right for witnesses to be accompanied when giving statements. However, managers will have the discretion to decide when this would be appropriate based on the merits of the case. It is important to consider all relevant evidence.

Q25. If a witness feels intimidated what can they do?

The witness should speak to the Investigation Manager. Any attempt to intimidate or interfere with witnesses to an investigation will normally be regarded as serious misconduct, whoever the alleged

perpetrator is. If any report of this is made to the Investigation Manager during the course of an investigation they will inform the line manager of the allegations immediately.

Q26. What if an employee is serving overseas?

All employees based overseas will ultimately be under the authority of the Head of Post at the Mission in which they serve. The ORR reserves the right to withdraw any employee if it has reasonable grounds for considering that the employee and/or any member of their family assigned with them is putting the security, efficiency or reputation of the Post at risk.

Q27. Can an employee facing a discipline procedure seek advice from the Employee Assistance Service?

Yes, if stress or anxiety is affecting them during the process, they may contact the Employee Assistance Service.

Q28. What happens if the discipline procedure is started as a result of a grievance raised against another employee or manager? Who gets to see the investigation report including witness statements?

If the grievance procedure investigation has established that there is a discipline case to answer, there is no need to start the discipline procedure investigation from the beginning. However, further investigation as part of the discipline procedure may be necessary.

The employee who raised the grievance will see the grievance investigation report, including witness statements, where appropriate. Companions will also see the report, as will those managers included in the investigation or disciplinary meeting.

However, if there is a further investigation under the discipline procedure, the employee who raised the original grievance will not be informed about any details of the process, will not see the discipline investigation report or know the decision - this is personal and confidential to the person undergoing the discipline process.

The employee who is the subject of the discipline procedure will see the discipline investigation report including the witness statements, where appropriate.

Employees and managers need to be aware that:

- any confidential information in the report (such as names, dates of birth and addresses) will be redacted.
- sharing the report with any person other than those with a legitimate reason, such as for example companions, would be viewed as serious misconduct.

Q29. How should cases involving disciplinary allegations against an employee who is a trade union representative be treated?

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

Q30. How can I be certain about the effective date of termination when dismissing an employee for gross or repeated serious misconduct?

A dismissal is effective only when communicated to the employee. To be certain that the employee is aware of the dismissal; the manager can inform them face to face that they have been dismissed. But there are occasions when this will not be possible and when the dismissal will be communicated in writing. In these cases the effective date of termination is the date the employee reads the letter or has a reasonable opportunity of reading it. It is not the date the decision was made or the letter was written, posted or delivered. However, the employee can reasonably be expected to be available to receive communications following the disciplinary meeting and should not deliberately avoid reading the letter.

Whilst it is reasonable to expect a letter to be read upon receipt there are instances when this will not happen, for example if the employee is on holiday or in hospital. If dismissing by letter with or without notice managers should do the following:

- Check and record in writing, at the disciplinary meeting, whether the employee has planned holiday or other absence in the foreseeable future.
- Confirm the employee's availability to receive the decision in writing by post.
- Discuss with the employee any alternative arrangements that need to be made so they can communicate the decision as soon as possible.
- Arrange for the dismissal letter to be hand delivered where practicable, preferably requiring the employee's signed acceptance of receipt.
- Telephone or email the employee to check that the letter has been received.

Decision Manager's checklist

Use the following checklist to help you follow the discipline process properly.

You should:

- Identify the level of misconduct and decide whether to take informal or formal action and consider if suspension would be appropriate
- If taking formal action, decide if fast track is appropriate
- Notify the employee accordingly (**Model letter 1**)
- If using the fast track, gather the necessary facts yourself
- If not using the fast track, arrange for an independent Investigation Manager to carry out investigation
- Consider the investigation report carefully, including associated documents such as witness statements
- Decide whether there is a case to answer and notify the employee?
- Invite the employee to a meeting and notify them of their right to be accompanied (**Model letter 4**)
- Ensure somebody is assigned to take notes at the meeting and that the employee investigated is notified of their presence
- Give the employee the opportunity to present their case and put forward mitigation for consideration, including evidence
- Advise the employee of your decision in writing and notify them of their right of appeal (**Model letters 5-9**)

And after the process, you should:

- Keep a record of all papers in line with principles

Model Letter 1 - Informing employee about investigation on their alleged misconduct

Official – Sensitive

Date

[Name and location of employee]

Dear

Investigation

I am writing to advise you that [*name of Investigation Manager*] has been appointed to investigate (or I am investigating*) [*insert full details of the alleged incident to be investigated including severity of conduct i.e. minor, serious, gross*].

The purpose of the investigation is to gather and present evidence. The investigation report will show whether, on the balance of probability, there is a case to answer.

Relevant witnesses will normally be interviewed and statements obtained where appropriate. If there are a large number of witnesses, it will be for the Investigation Manager (or *I) to decide which witnesses to interview.

[*Name of Investigation Manager*] (or I*) will be in touch with you shortly to arrange a date when they (or I*) can interview you (at which you will have a right to be accompanied by a work companion or trade union representative). If you would like to name any witness to [*name of the Investigation Manager*] (or me*) at this meeting please do so.

Any information that emerges from this investigation might be used in any misconduct proceedings against you. If it is decided to instigate discipline action, the procedures outlined in the discipline policy will be followed. The Investigation Manager's (or my*) report and any other information used in determining whether to proceed with misconduct/discipline action, will be made available to you.

Yours sincerely

Decision Manager

Model Letter 2 – Meeting invite to witness / person making allegation

Official – Sensitive

Date

[Name and location of employee]

Dear

Investigation meeting invite

I am writing to advise you that I have been appointed to investigate (or I am investigating*) [*the alleged incident to be investigated*].

You have been named as a witness / *you have made the allegation against [*the person being investigated*]. I would like to interview you so that I can find out what you think happened. Your co-operation in this matter would help my inquiries and investigation report. The meeting will take place on [*date and time*] at [*location*].

Please let me know as soon as possible or at least three working days prior to the meeting, if you require any special arrangements or if you need any particular accommodation requirements to enable you to attend the meeting.

If you cannot reasonably attend the meeting, you should propose a new date to allow the meeting to take place within five working days of the original meeting date.

Any information that comes to light during my investigation might be used in misconduct/discipline proceedings. The record of our meeting, which will form part of my overall investigation report, will be made available to [*name(s) of person(s) under investigation*].

This investigation is confidential and should not be discussed with anyone unless it is necessary to do so in connection with the discipline procedure (e.g. you can tell your line manager you are being interviewed).

Yours sincerely

Investigation Manager

Model Letter 3 - Meeting invitation to person being investigated

Official - Sensitive

Date

[Name and location of employee]

Dear

Investigation meeting invitation

I am writing to advise you that I have been appointed to investigate [*the alleged incident to be investigated*].

It has been alleged that you [*the alleged incident to be investigated*] and I should like to interview you so that I can find out what happened. Your co-operation in this matter will greatly assist my inquiries and will inform my investigation report. The meeting will take place on [*date and time*] at [*location*].

You have the right to be accompanied by a trade union representative or work colleague. If you or your companion cannot reasonably attend the meeting, you should propose a new date to allow the meeting to take place within five working days of the original meeting date. If you do not do this, or fail to attend the re-arranged meeting, consideration of the [*discipline/*misconduct case*] will go ahead in your absence based on the available information.

Please let me know as soon as possible, or at least three working days prior to the meeting, if you or your companion require any special arrangements or if you need any particular accommodation requirements to enable you to attend or participate in the meeting.

If you or your companion cannot reasonably attend the meeting, you should propose a new date to allow the meeting to take place within five working days of the original meeting date.

It is essential that you do not discuss this matter with anyone other than your trade union representative or accompanying work colleague.

The record of my meeting with you, which will form part of my overall investigation report, will be made available to you.

Yours sincerely

Investigation Manager

Model Letter 4 - Decision meeting invite

Official – Sensitive

Date

[Name and location of employee]

Dear

Discipline decision meeting

I am writing to inform you that you are required to attend a formal meeting under the ORR Discipline procedure.

The formal meeting will consider the allegation/s that you [*describe conduct that fell short of expected behaviour*] when you [*describe incident and date/s*].

(If appropriate*) The report of [*insert name of Investigation Manager*]'s investigation into your alleged [*insert details of incident*] which took place on [*insert date/s*] has been sent to me to consider whether misconduct/discipline action should be taken. I enclose a copy of this report which may only be shared with your designated companion. Sharing it with other individuals may be viewed as serious misconduct.

At the end of the meeting I will decide what further action to take. The allegations concerning [*insert details of behaviour*] may result in [*insert penalty/penalties being considered*]. OR As you are presently under [*insert existing penalty*] the meeting may result in [*insert penalty/penalties being considered**].

For gross misconduct or where dismissal is a possibility:

I must make you aware that the allegations concerning [*insert details of behaviour*] represent gross misconduct offences. The meeting may therefore result in your dismissal without notice or payment in lieu of notice. Or, as you are presently under a final written warning for misconduct the meeting may result in your dismissal.

For all letters:

The meeting is on [date] at [time] at [location]. [Note: always give at least five working days' notice]. Also attending will be [Insert if note-taker to be present, giving name if known]. He/she will record our discussion.

You have the right to be accompanied by a trade union representative or work colleague. If you or your companion cannot reasonably attend the meeting, you should propose a new date to allow the meeting to take place within five working days of the original meeting date. If you do not do this, or fail to attend the re-arranged meeting, consideration of the [discipline/*misconduct case] will go ahead in your absence based on the available information.

Please let me know as soon as possible or at least three working days prior to the meeting, if you or your companion requires any special arrangements or if you need any particular accommodation requirements to enable you to attend the meeting.

Witnesses would not normally attend discipline meetings. However, I may consider allowing them to attend if necessary. Please inform me as soon as possible or at least three working days prior to the meeting of any witnesses you wish to call. The number of witnesses should be kept to a minimum and I will have then have to decide the final number and relevance of requested witnesses and their attendance.

Yours sincerely

Decision Manager

Model Letter 5 - First written warning for misconduct

Official – Sensitive

Date

[Name and location of employee]

Dear

First written warning

I am writing to confirm the outcome of your meeting with me on [insert date] to discuss the misconduct case brought against you.

We discussed your alleged behaviour [details of misconduct] during the meeting and you claimed that [insert details of employee's response].

I have carefully considered all the circumstances including (the results of the investigation) and/or your representations.

Either:

In view of your acceptance that you [insert details of misconduct]

Or: The investigation has concluded that you [insert details of misconduct]

I find the misconduct case substantiated and therefore issue you with a first written warning. This warning will remain live on your file for 12 calendar months from this letter's date; that is until [insert date]. Should you commit another act of misconduct within this time, you may receive a final written warning, or if gross misconduct, save in exceptional circumstances, you may be dismissed without notice and without pay in lieu of notice. It is therefore very important that you improve your standard of conduct and behaviour to that expected of all staff and act professionally at all times.

You have a right to appeal against this decision as long as you do so in writing within 10 working days. Any appeal should be addressed to [Insert name of the Appeal Manager].

A copy of the meeting notes is enclosed. If you have any comments on these notes please provide them to the Appeal Manager [insert name] in writing, together with your appeal. If they have not heard from you by [insert date] the record will be taken to be agreed.

Yours sincerely

Decision Manager

Enc: Notes of meeting

Model Letter 6 - Final written warning for misconduct/serious misconduct

Official – Sensitive

Date

[Name and location of employee]

Dear

Final written warning

I am writing to confirm the outcome of your meeting with me on *[insert date]* to discuss the (serious) misconduct case brought against you.

We discussed your alleged behaviour *[details of misconduct]* during the meeting and you claimed that *[insert details of employee's response]*.

I have carefully considered all the circumstances including (the results of the investigation) and/or your representations.

Either: In view of your acceptance that you *[insert details of misconduct]*

Or: The investigation has confirmed that you *[insert details of misconduct]*

I find the misconduct case substantiated and therefore issue you with a final written warning. This warning will remain live on your file for [12 months or, exceptionally up to a maximum of 24 months] from this letter's date; that is until *[insert date]*. Should you commit another act of misconduct within this time, you are likely to be dismissed, or if gross misconduct, save in exceptional circumstances, you will be dismissed without notice and without pay in lieu of notice. It is therefore very important that you improve your standard of conduct and behaviour to that expected of all staff and act professionally at all times.

You have a right to appeal against this decision as long as you do so in writing within 10 working days. Any appeal should be addressed to *[insert name of the Appeal Manager]*.

A copy of the meeting notes is enclosed. If you have any comments on these notes, please provide them to the Appeal Manager in writing, together with your appeal. If they have not heard from you by *[insert date]* the record will be taken to be agreed.

Yours sincerely

Decision Manager

Enc: Notes of meeting

Model Letter 7 - Dismissal for repeated misconduct

Official – Sensitive

Date

[Name and location of employee]

Dear

Dismissal for repeated misconduct

I am writing to advise you that a decision has now been taken regarding your employment with ORR.

[Insert history if repeated misconduct]. On [date] you were given a first written warning that you had failed to meet the standards of conduct expected of ORR members of staff. On [date] you were given a final written warning following a further failure to maintain acceptable standards of conduct. You were also informed that if your conduct fell below these standards again you were likely to be dismissed.

I am writing to confirm the outcome of your meeting with me on [insert date] to discuss the misconduct case brought against you.

We discussed your alleged behaviour [details of misconduct] during the meeting and you claimed that [insert details of employee's response].

I have carefully considered all the circumstances including (the results of the investigation) and/or your representations.

Either: In view of your acceptance that you [insert details of misconduct]

Or: The investigation has concluded that you [insert details of misconduct]

After considering all the relevant factors—it has been decided that your employment with ORR is being terminated and your last day of service is [date decision to dismiss was made]. You are entitled to [insert number of weeks' notice] weeks' notice and you will be paid in lieu of notice. You are not required to attend work during this time. A further letter will be sent to you covering issues such as your obligations under the Official Secrets Act and payment for any untaken annual leave.

You have a right to appeal against this decision as long as you do so in writing within 10 working days. Any appeal should be addressed to [insert name of the Appeal Manager] and copy sent to your HR Business Partner.

A copy of the meeting notes is enclosed. If you have any comments on these notes please provide them to the Appeal Manager in writing together with your appeal. If they have not heard from you by [insert date] then the record will be taken to be agreed.

Yours sincerely

Decision Manager [with authority to dismiss]

Enc: Notes of meeting

Model Letter 8 – Dismissal for gross misconduct

Official – Sensitive

Date

[Name and location of employee]

Dear

Dismissal for gross misconduct

I am writing to confirm the outcome of your meeting with me on *[insert date]* to discuss the gross misconduct case brought against you.

We discussed your alleged behaviour *[details of gross misconduct]* during the meeting and you claimed that *[insert details of employee's response]*.

I have carefully considered all the circumstances including (the results of the investigation) and/or your representations.

Either:

In view of your acceptance that you *[insert details of gross misconduct]*

Or: The investigation has concluded that you *[insert details of misconduct and reasons for coming to the decision, including details of all mitigating factors*]*

After considering all the relevant factors, it has been decided that your employment with ORR has been terminated. This will take effect immediately, without notice and without pay in lieu of notice. Therefore your last day of service is *[insert date decision was made]*. A further letter will be sent to you covering issues such as your obligations under the Official Secrets Act.

You have a right to appeal against this decision as long as you do so in writing within 10 working days. Any appeal should be addressed to *[insert name of the Appeal Manager]*.

A copy of the meeting notes is enclosed. If you have any comments on these notes please provide them to the Appeal Manager in writing together with your appeal. If the Appeal Manager has not heard from within 10 working days the notes of the meeting will be taken to be agreed by you.

Yours sincerely,

Decision Manager [with authority to dismiss]

Enc: Notes of meeting

Model letter 9 - Downgrading for gross misconduct

Official - Sensitive

Date

[Name and location of employee]

Dear

Downgrading for gross misconduct

I am writing to confirm the outcome of your meeting with me on *[insert date]* to discuss the gross misconduct case brought against you.

We discussed your alleged behaviour *[details of gross misconduct]* during the meeting and you claimed that *[insert details of employee's response]*.

I have carefully considered all the circumstances including (the results of the investigation) and/or your representations.

Either: In view of your acceptance that you *[insert details of gross misconduct]*

OR: The investigation has concluded that you *[insert details of misconduct and reasons for coming to the decision, including details of all mitigating factors]*

The ORR is entitled to terminate your employment with immediate effect on the grounds of your gross misconduct but after considering all the relevant factors, I have decided to offer you the option to accept a downgrading as an alternative to dismissal.

Should you accept, this will take effect from *[insert the date]* and will be a permanent change to your terms and conditions of employment. HR will write separately to you about the changes that this will entail and will seek your formal consent and confirmation to the changes to your terms and conditions of employment.

Should you choose not to accept the penalty of downgrading, you will be dismissed with immediate effect, without notice and without pay in lieu of notice.

You have a right to appeal against this decision as long as you do so in writing within ten working days. Any appeal should be addressed to *[insert name of the Appeal Manager]*.

A copy of the meeting notes is enclosed.

Yours sincerely

Decision Manager *[with authority to dismiss]*

Enc: Notes of meeting

Model Letter 10 - Appeal invitation Letter

Official – Sensitive

Date

[Name and location of employee]

Dear

Invitation to appeal meeting

I am writing to invite you to a discipline appeal meeting to discuss [*specify issue*].

I will meet you on [date, time and location]. At the meeting you have the right to be accompanied by a trade union representative or a work colleague. You will need to let me know who they are prior to the meeting.

If you or your companion cannot reasonably attend the meeting, you should propose a new date to allow the meeting to take place within five working days of the original meeting date. If you do not do this, or fail to attend the re-arranged meeting, consideration of the appeal will go ahead in your absence based on the available information. [*Insert if note-taker to be present, giving name if known.*] He/she will record our discussion.

The purpose of the meeting is to examine the decision-making process and decide whether these were reasonable. It is not a full re-hearing of your case.

I will decide whether your appeal will be upheld or not. Be prepared to put to me any points and evidence you feel should be taken into consideration when reaching my decision.

Please let me know as soon as possible or at least three working days prior to the meeting, if you or your companion requires any special arrangements or if you need any particular accommodation requirements to enable you to attend the meeting.

Yours sincerely

Appeal Manager

Model Letter 11 - Appeal decision

Official – Sensitive

Date

[Name and location of employee]

Dear

Appeal decision

You appealed against the written warning/final written warning/notice of dismissal/summary dismissal confirmed to you in writing on [date of letter].

Further to the appeal meeting held on [insert date of appeal meeting] I am now writing to advise you of/confirm the decision on your appeal.

Either:

Your appeal was not upheld and the original decision taken by the decision manager stands. [Include further explanation if appropriate].

This decision is final.

OR:

Your appeal was upheld. Accordingly the [specify penalty] is being revoked and I can assure you that your employment prospects within ORR will not be affected*. [include further explanation if appropriate] However all details of the process will be kept securely as part of your confidential ORR discipline file.

For successful dismissal appeals*

Your appeal was upheld. You will be re-instated to your position as [insert grade/name of position] with immediate effect without loss of pay. ORR will disregard any break in continuity in your employment for all contractual and other purposes and you will not lose seniority.

All letters

I enclose the notes of the appeal meeting.

Yours sincerely

Appeal Manager

Enc: Notes of meeting

Model letter 12 - Informing employee where there is no case to answer

Official - Sensitive

Date

[Name and location of employee]

Dear

Discipline decision

I am writing to inform you that the investigation into your alleged misconduct [*insert details of incident*] which took place on [*insert date/s*] has concluded. I have carefully considered all the circumstances including [*the results of the investigation*] and/or your statement and have decided that there is no case to answer. No further action will be taken.

I enclose a copy of the investigation report, including witness statements for your information.

Thank you for your co-operation during the investigation.

Yours sincerely

Decision Manager

Enc: Investigation Report

Model letter 13 - Informing employee where allegations are not proven

Official - Sensitive

Date

[Name and location of employee]

Dear

Discipline decision

I am writing to confirm the outcome of your meeting with me on *[insert date]* when we discussed the misconduct case brought against you.

We discussed your alleged misconduct *[details of misconduct]* during the meeting and you claimed that *[insert details of employee's response]*.

I have carefully considered all the circumstances including the results of the investigation and your representations at the meeting. I have decided that the allegation has not been proven and that misconduct has not occurred. Therefore, I will take no further action.

A copy of the meeting notes is enclosed.

Thank you for your co-operation during the investigation.

Yours sincerely

Decision Manager

Enc: Notes of meeting

Model letter 14 - Notice of suspension with pay

Official - Sensitive

Date

[Name and location of employee]

Dear

Notice of suspension

I am writing to confirm our conversation, that in view *of the circumstances of your case/*of the seriousness of the alleged offence you are to be suspended from duty with pay from [date of conversation] *pending investigation into your alleged misconduct / * consideration of your alleged criminal offence.

It is important for you to note that suspension is neither an assumption of guilt nor a disciplinary penalty. It will not prejudice the outcome of the investigation.

I will review this decision at regular intervals.

You will remain an employee of the Department and must continue to comply with the Departments Standards of Behaviour. The normal rules regarding annual leave and sick leave continue to apply during your suspension.

You will continue to receive pay while suspended and are expected to remain available for duty during your normal working hours and to co-operate with the investigation.

The investigation taking place is confidential and should not be discussed with anyone except your companion during this period.

If you have any queries please do not hesitate to contact me.

Yours sincerely

Decision Manager

Model letter 15 – Cessation of suspension

Official - Sensitive

Date

[Name and location of employee]

Dear

Cessation of suspension

You are currently on a period of suspension from duty with pay pending *investigation into your alleged misconduct / *consideration of your alleged criminal offence.

I am writing to inform you that this current period of suspension, which commenced on the [insert date of commencement] will end on [insert date].

You are expected to resume normal duty on [insert date/time of commencement]. If there are any reasons why you may not be able to attend at this time, can you please contact me as soon as possible.

Please report to [insert name] on your arrival.

If you have any further queries please do not hesitate to contact me.

Yours sincerely

Decision Manager