

Crown Office and Procurator Fiscal Service

Disciplinary Policy and Procedure

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1. Policy Statement

1.1 All Crown Office and Procurator Fiscal Service (COPFS) employees are expected to work within the rules and procedures of conduct and standards of performance that are set by the Service. Disciplinary procedures are used when an employee fails to observe the standards of COPFS.

1.2 As civil servants, all COPFS employees must meet the highest standards of behaviour and conduct both within and outwith the workplace. Unacceptable conduct outwith work, including at office parties or other work related social events may also be considered as warranting disciplinary action. Unacceptable conduct that might constitute gross misconduct includes the use of illegal drugs, harassment, violence, serious verbal abuse or assault of either another employee or a third party such as a member of the public.

1.3 The disciplinary procedures will be used to provide a framework for dealing with apparent shortcomings in conduct. Staff and managers should also refer to the [Attendance Management Policy](#) and [Poor Performance Policy](#) when dealing with these specific issues.

1.4 It may be appropriate to initiate formal disciplinary action where the employee's performance (either by act or omission) is such that the actual or potential consequences are or could be extremely serious. In most cases, the [Poor Performance Policy](#) will be applicable, but in cases where uncertainty exists the line manager must contact HR who will be able to offer advice on which policy is applicable.

1.5 The standards of conduct expected of all employees who work for COPFS can be found under the [Conduct](#) section of the Staff Handbook and in the [Civil Service Code](#). Details of the Service's rules on criminal convictions are also contained within the Disciplinary Procedure below.

1.6 Workers supplied by an Employment Agency are expected to abide by COPFS conduct rules, but are not subject to the disciplinary procedure.

2. Principles of Disciplinary Procedure

- There will be a fair and consistent approach to the enforcement of standards of conduct throughout the Service.
- Investigation of potential disciplinary matters will be dealt with promptly in order to establish the facts before any disciplinary action is taken.
- Information will be confidential to those directly involved in the disciplinary matter.
- Where possible, informal action will be taken in the first instance.
- Where formal action is required, employees will be informed in writing of the allegations against them and will be given the opportunity to challenge the allegations at a formal Hearing by asking questions, presenting evidence and, where applicable, by calling relevant witnesses, before a decision is made.
- Employees have the right to be represented by a Trade Union Representative or accompanied by a work colleague at any formal meetings and to seek advice from their Trade Union during all stages of the disciplinary process. Further guidance on the right to accompaniment can be found on the [ACAS website](#)
- Employees have the right to appeal against the decision and to receive an explanation for any penalty.
- The Disciplinary Policy and guidance is informed by the ACAS code of practice.

3. Roles and Responsibilities

Role	Responsibilities and remit
Employee subject to disciplinary proceedings	<ul style="list-style-type: none"> • To be familiar with the disciplinary policy and procedure • To meet with the Investigating Officer where appropriate • To attend disciplinary Hearings where these are necessary
Line manager (this is normally the employee's reporting officer)	<ul style="list-style-type: none"> • To be familiar with the disciplinary policy and procedure • To deal with misconduct issues and related disciplinary action informally on a day-to-day basis • To invoke the formal process where there are cases of repeated minor misconduct or one off instances of misconduct either through investigation, by acting as the Deciding Manager (see below for more information) or referring to a more senior manager where appropriate • To consult with HR for further advice on the most suitable approach to take prior to invoking formal procedures
Deciding Manager	<ul style="list-style-type: none"> • With HR, to appoint an Investigating Officer and to make a decision on whether there is a case of misconduct to answer • In cases of serious or gross misconduct the Deciding Manager must be graded at least Band E (admin manager) or Principal Depute (legal manager) • To chair formal Disciplinary Hearings • To act fairly and without bias in order to come to a decision based on the facts of the case • To contact HR to ascertain if any precedents have been set in the decisions of previous similar cases • To inform the employee of the outcome of the Hearing in accordance with the disciplinary procedure timescales • To come to a final decision on whether a disciplinary penalty is appropriate and the level of penalty to award • The Deciding Manager may be the line manager, but where this is the case they must not be involved in the investigation

Investigating Officer	<ul style="list-style-type: none"> • To find out the facts of the matter • To give sufficient time and focus to the investigation as these can be complex and lengthy • To provide a fair, unbiased and non-judgemental report of those facts to the Deciding Manager who will decide whether there is a case to answer • The Investigating Officer will not make a decision as to whether misconduct has been established – this is a decision for the Deciding Manager • The Investigating Officer must ensure that at least 2 working days written notice are given to anyone invited to an investigation interview. For part time employees, working days will mean those days at which they attend work.
Supporting Investigating Officer (where applicable)	<ul style="list-style-type: none"> • Assists the Investigating Officer in finding out the facts of the matter by taking notes and helping to prepare questions for any interviews • Assists in the completion of the investigation report where necessary
HR Representatives	<ul style="list-style-type: none"> • To provide advice and guidance to the line manager or Deciding Manager at the earliest opportunity • To provide assistance to the Deciding Manager in selecting an Investigating Officer • To provide information on precedents that have been set for similar cases in terms of decisions and/or penalties or any live warnings • To sit on the Disciplinary Hearing Panel in order to advise the Deciding Manager • To act fairly and without bias in order to advise the Deciding Manager • HR Managers will provide support in a number of ways, for example: guidance on whether to follow the informal or formal procedure and coaching managers on how to have 'difficult' conversations

	<ul style="list-style-type: none"> • An HR Representative may also act as a note taker at the Disciplinary Meeting/Hearing and at the Appeal Hearing
The Appeal Manager	<ul style="list-style-type: none"> • To hear the appeal impartially • The Appeal Manager will be senior to the Deciding Manager • See Appeals section for more details
Companion or representative	<ul style="list-style-type: none"> • To represent or accompany the employee subject to disciplinary proceedings • The companion or representative can make an opening statement on the employee's behalf • Make submissions (agreed by the employee) on the employee's behalf • Seek and offer clarification on the employee's behalf; ask questions of witnesses (if appropriate) through the Chair on the employee's behalf • Take notes • Generally participate as fully as possible at formal meetings • The companion or representative cannot answer questions for the employee and if a manager asks the employee a direct question the employee cannot ask the companion or representative to answer on their behalf • The companion or representative cannot prevent a manager from explaining his or her case, and they cannot address the meeting or Hearing if the employee does not wish it
Witnesses	<ul style="list-style-type: none"> • To provide information as part of an investigation and may be requested to give a statement of fact and/or attend interviews as appropriate • When necessary, to attend Disciplinary Hearings as a witness called by either COPFS or the employee who is subject to disciplinary proceedings
Staff Welfare Officers and / or EAP service	<ul style="list-style-type: none"> • To provide support and assistance to employees and managers who make contact in relation to a disciplinary matter

Note taker	<ul style="list-style-type: none">• To prepare an accurate record of the Hearing capturing the key points• Treat information carefully and maintain confidentiality• Potential witnesses should not act as note takers
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4. Informal Process

4.1 Many disciplinary matters can be effectively dealt with informally, provided that the line manager does not delay in speaking to the employee.

4.2 Dealing promptly with misconduct does not mean dealing with it in haste, but tackling it without unnecessary delay. The effects of a delay could be that:

- The employee concludes that his or her conduct is acceptable
- The conduct in question develops into a habit
- A precedent is set
- Other employees begin to display the same type of behaviour; and
- The credibility and authority of the line manager are damaged

4.3 None of these outcomes is desirable. A delay in dealing with misconduct may ultimately mean that the Service has to deal with a matter that has escalated from a minor issue into a major problem.

4.4 It is important that issues relating to an employee's conduct are not saved up until the annual or six-monthly formal appraisal meeting.

4.5 By not taking action as soon as possible, managers may appear to be endorsing unacceptable behaviour. It is far better to have a quiet word with the employee and ensure the misconduct is addressed informally rather than allow the behaviour or actions to continue and potentially worsen. HR will help managers to look at different approaches to informal discussions with their employees. Where the line manager thinks the matter warrants a formal warning they must contact HR prior to discussion with the employee.

4.6 When holding an informal meeting the line manager should ask the employee to come to a private meeting room, explaining that an issue has arisen that needs face-to-face discussion or clarification. The purpose of the meeting will be three-fold, namely to:

- Make the employee aware of how and why his or her conduct is causing a problem, or the precise way in which the employee's behaviour has fallen short of what is required
- Establish the reason for the particular conduct or behaviour; and
- Seek agreement on how to ensure that the misconduct or inappropriate behaviour does not continue or recur

4.7 Because this type of meeting is informal, there is no right for the employee to be accompanied by a colleague or Trade Union Representative. However, the line manager will consider any reasonable request for the employee to be accompanied by a colleague or Trade Union Representative. In addition, the manager or the employee can contact HR or their Trade Union Representative if they would like advice on this process.

4.8 Despite the informality of the meeting, it is still a good idea for the line manager to set a date to review the employee's progress. This will communicate to the employee that the line manager is serious about what they have said and increase the likelihood that the employee will pay heed to it. For the same reason, a record of the meeting should be kept. The record should show:

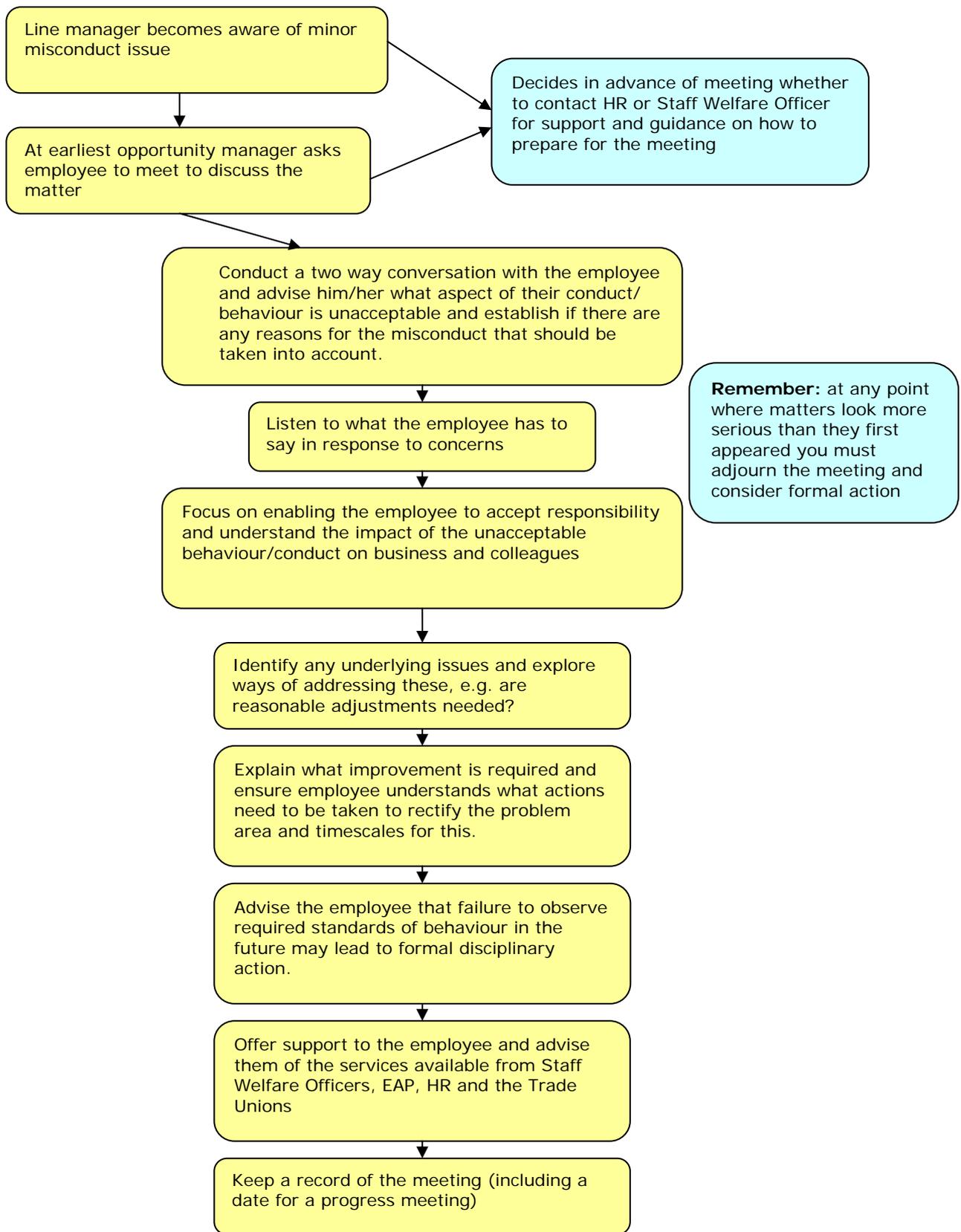
- The date, time and place of the meeting
- The key points discussed
- Any action points agreed; and
- The fact that there was no formal outcome, i.e. that the meeting was informal and no warning was issued

4.9 See the section on Record Keeping for details of what records to keep locally.

4.10 It may be necessary to offer support and remind the employee of the services of the [Staff Welfare Officers](#) and the [Employee Assistance Programme](#).

4.11 If during the discussion it appears that the matter may be more serious than anticipated, the line manager must adjourn the meeting and advise the employee that the matter will be continued under formal proceedings. It is important that this step is taken as the employee has a right to representation during any formal meetings.

Flowchart 1: Informal Process Flowchart



5. Formal Disciplinary Process

5.1 From time to time line managers may need to consider formal disciplinary action. Where this is the case, line managers must in the first instance contact HR and seek advice.

5.2 Before formal action can be decided upon, an investigation will normally be required in order to establish the facts of the matter. The nature of the allegation (i.e. whether it is misconduct, serious misconduct or gross misconduct) will dictate the approach taken to arrange the investigation. The manager making the decision in the formal disciplinary procedure is called the Deciding Manager. The Deciding Manager may be the line manager, but where this is the case they must not be involved in the investigation other than to direct the Investigating Officer and explain the remit of the investigation. In cases of serious or gross misconduct the Deciding Manager must be graded at least Band E (admin manager) or Principal Depute (legal manager).

5.3 The employee may be informed verbally of the allegation, but must also be informed in writing of the allegation of misconduct and that an investigation will take place. This letter is sent out as soon as possible by the Investigating Officer.

Allegation of Misconduct

5.4 Where there is repeated misconduct and informal action has not achieved the effect of improved behaviour/conduct or there are one off instances of misconduct that require little investigation because the facts of the matter can be clearly demonstrated. E.g. unauthorised absence, abuse of the flexi system, etc, the line manager will usually be in a position to conduct a short fact finding investigation or may appoint someone else to do this on their behalf.

5.5 In this sort of case, the Deciding Manager will usually make the decision alone without an HR Representative in attendance at the Hearing. There may also be a note taker in attendance.

5.6 This process is not suitable when:

- Witnesses are likely to be called by either party; or
- Dealing with cases of alleged serious or gross misconduct

Allegation of Serious or Gross Misconduct

5.7 In circumstances where it appears the disciplinary allegation concerns serious or gross misconduct, the Deciding Manager (minimum Band E admin manager or Principal Depute legal manager) will contact HR for assistance in appointing an Investigating Officer. If, following the investigation, the Deciding Manager decides that there is a case to answer a Hearing will be conducted by a panel which usually consists of the Deciding Manager and an HR representative. There may also be a separate note taker in attendance.

5.8 This process is appropriate where:

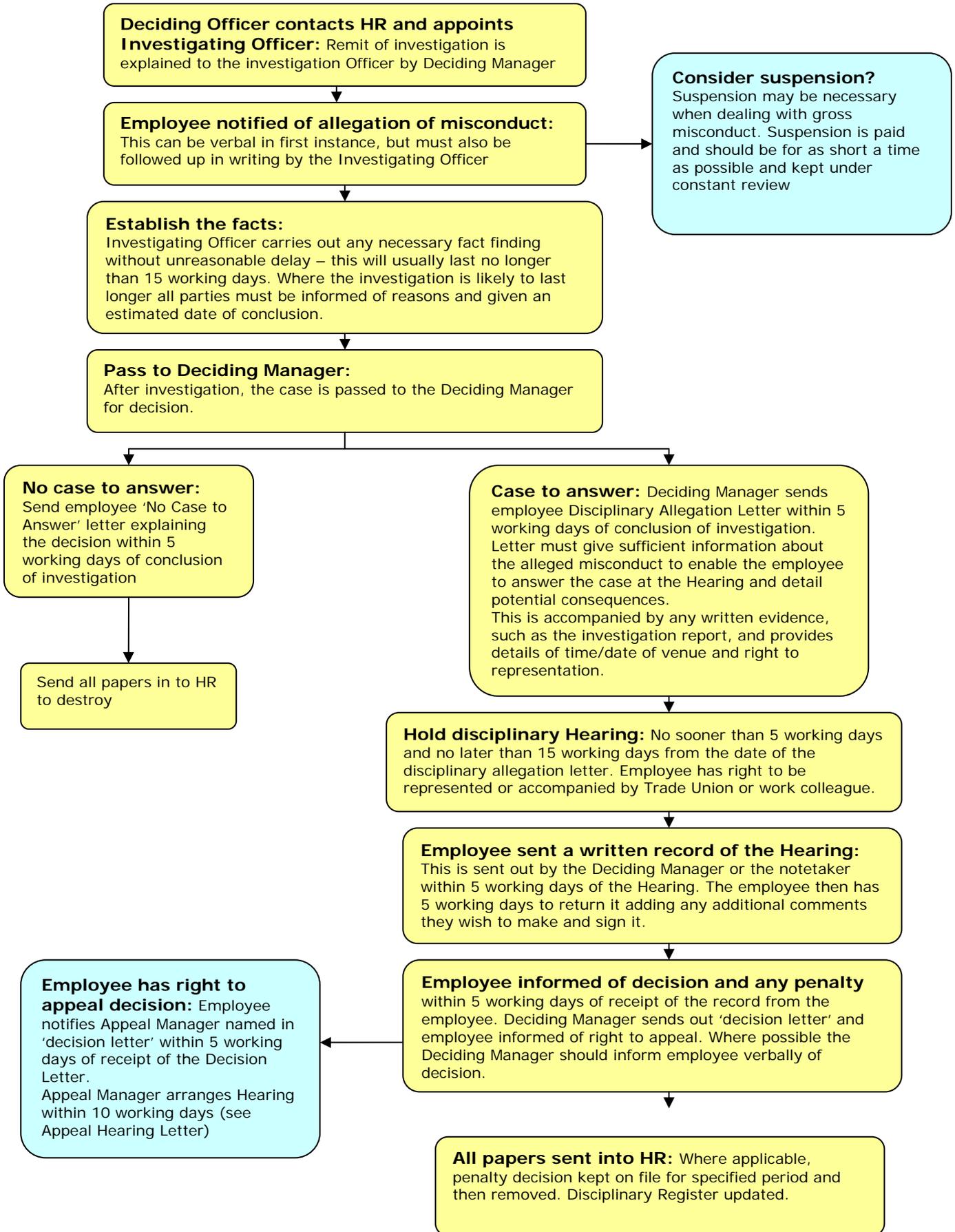
- Further investigation is required to ascertain the facts of the allegation and these are not readily obtainable by the line manager; and/or
- Either party intends to call witnesses

5.9 This process is not suitable when dealing with:

- Cases of minor misconduct that have so far only been dealt with informally
- One off instances of misconduct where the line manager can ascertain the facts of the matter without recourse to an in-depth investigation, for example abuse of the flexi system which can be readily verified

5.10 Where gross misconduct is alleged, consideration should be given to suspending the employee. See the section on Suspension and the Suspension Checklist for more details.

Formal Action Flowchart



6. Suspension

Managers must always seek advice from HR before suspending an employee.

6.1 Sometimes it may be necessary to consider suspending an employee from duty. This is not a disciplinary penalty and will be on full pay. Suspension in these circumstances does not imply that any decision has been taken about the alleged misconduct.

6.2 The decision to suspend an employee will normally be made by a senior manager at minimum Band E or Principal Depute grade. This decision **must** be based on advice from HR.

6.3 If the manager and HR decide that suspension is appropriate, the senior manager will meet with the employee to inform him or her of the terms of the suspension and follow this up in writing. See the manager's suspension checklist for more details.

6.4 Suspension must be seriously considered in the following cases:

- If the case to be investigated is thought to involve gross misconduct (see examples of types of misconduct)
- Cases where the continued presence of the individual may obstruct investigation
- To prevent tampering with evidence
- To remove the employee from a potentially risky or sensitive situation for their own protection
- The presence of the employee at work may be contrary to public or COPFS interests
- Where service users and/or colleagues are considered to be at risk of intimidation, bullying or harassment

6.5 Suspension may last from the onset of the investigation until the conclusion of the investigation if there is not a case to answer, or if the case progresses to a

Disciplinary Hearing, when the outcome of that Hearing is known. However, each case of suspension will be kept under regular review with a view to keeping it as short as possible.

6.6 During any period of suspension the employee must not attend his or her place of work other than for the purpose of attending disciplinary proceedings, including investigatory interviews.

6.7 Any employee suspended from duty should initially be informed verbally and a follow up letter must be issued to them confirming the terms of the suspension.

6.8 It is important that the employee is kept informed of progress and of the probable length of suspension. Where criminal investigation is underway it may be that suspension will last for a longer period of time. In any case, employees on suspension must be kept informed of any change to the probable length of suspension.

Suspension from duty – a checklist for line managers

If considering suspending an employee the line manager should first contact a senior member of the management team to discuss the circumstances	<input type="checkbox"/>
The line manager or a senior manager should then contact HR for further guidance	<input type="checkbox"/>
If the decision to suspend is agreed, HR will issue a letter of suspension by email to the line manager who must sign the letter and give to the employee	<input type="checkbox"/>
Where possible, the letter should be given and explained to the employee at a meeting. The decision that has been made should be explained fully to the employee. This also allows the employee a chance to make comments or ask questions	<input type="checkbox"/>
If the letter is not given at the time of the verbal notification of suspension, this must be sent immediately thereafter to the employee's home address	<input type="checkbox"/>
Line managers should ensure that the correct contact information (address, home or mobile number and personal e-mail address) is held to keep in touch with the employee. This should be provided to HR to allow payslips and other correspondence to be issued to the employee's home address if needed.	<input type="checkbox"/>
It is important to make the employee aware that an investigation will take place and they will be kept informed of progress in relation to the suspension.	<input type="checkbox"/>
Ask employee to return security passes and access keys	<input type="checkbox"/>
The employee must be advised that suspension is not disciplinary action being taken against them; it is a measure being taken while an investigation is underway. Each suspension may be for different reasons and so different exceptions will apply and need to be explained.	<input type="checkbox"/>
It is important to make the employee aware that they are still entitled to support from Staff Welfare and the EAP whilst they are suspended.	<input type="checkbox"/>
Please note, this is especially important should the employee be distressed about the suspension. If they appear to be distressed it may be necessary to consider organising transport for the employee to get home. The line manager should let welfare or HR know if they are seriously concerned about the employee's wellbeing.	<input type="checkbox"/>
Managers should be aware that the Staff Welfare service and the EAP also provide a managerial consultancy service offering support for line managers through this process.	<input type="checkbox"/>
The employee may also wish to contact their union representative if they are a member of the union	<input type="checkbox"/>
Line manager, with support from HR, must assign a separate Investigation Officer to start the investigation	<input type="checkbox"/>

7. Investigation Guidance

7.1 Before an investigation into a disciplinary allegation begins, HR must be informed by the Deciding Manager that an investigation is planned in order to support the Investigating Officer and ensure that the action taken is appropriate to the allegation.

7.2 The remit of the investigation will be explained to the Investigating Officer either in writing or verbally by the Deciding Manager.

The Investigation Procedure

7.3 Depending on the circumstances of the investigation the facts of the matter may be relatively easy to establish and may not require a protracted investigation, for example when HR or IS Division records can provide the relevant information. Alternatively investigations may be more complex and require information from the employee under investigation and/or witnesses.

7.4 As a general guide, in investigating an employee's alleged misconduct, the Investigating Officer will:

- Examine any relevant written records and reports
- Where necessary, talk privately and in confidence to any employees who may have evidence relating to the employee's alleged misconduct or who may have been witness to any relevant incident, and produce an accurate written summary of any such evidence
- Where necessary, conduct an investigatory interview with the employee, making sure that the employee knows that the purpose of the interview is to establish the facts and that the interview is not in itself a disciplinary procedure

7.5 It is of paramount importance that the Investigating Officer takes an objective and balanced view of any information that comes to light, and avoids allowing personal views, opinions, and likes or dislikes to influence the investigation of the employee's conduct.

Investigatory Interview with the Employee or Witnesses

7.6 The employee and relevant witnesses may be invited to attend an investigatory, or fact finding, interview with the Investigating Officer. The Investigating Officer may have a Supporting Investigating Officer or a note taker in attendance to allow him or her to concentrate on finding out the facts of the matter during the interview.

7.7 Where an investigatory interview is held with the employee or witnesses, the Investigating Officer and/or Supporting Investigating Officer will, on completion of the interview, produce a written statement summarising the information given. This will include statements from witnesses and will then form part of the investigation report which is sent to the employee under investigation prior to any disciplinary Hearing.

Accompaniment at Investigatory Meetings

7.8 The statutory right to be accompanied by a fellow worker or Trade Union official does not apply to interviews that are purely investigatory in nature. Despite this, COPFS will consider any request from an employee under investigation to bring a colleague or union representative along to any investigatory interview (although COPFS may, at its discretion, refuse to agree to this).

The Investigation Report

7.9 At the conclusion of the investigation, the Investigating Officer will prepare a report for the Deciding Manager who will, with advice from HR, decide whether or not there is a case to answer. The report must cover the following areas:

- Background of the case, including how the allegation came to light
- The Allegation(s)
- Investigation method
- Findings and analysis of evidence, including what evidence is corroborative or contradictory
- Any further information
- A summary of the findings of fact – no personal opinion on the matter

- Appendices, including witness statements, any correspondence between the Investigating Officer and the employee or witnesses and any other relevant information

7.10 The completed report must be sent to the Deciding Manager who will decide whether there is a case to answer.

7.11 Ultimately, the investigation report and appendices (including any witness statements) will be sent to the employee prior to any Disciplinary Hearing if there is a case to answer.

8. Decision to Instigate Formal Action

8.1 The Deciding Manager makes the decision as to whether there is a case to answer. As soon as possible after the conclusion of the investigation (usually within five working days of the conclusion of the investigation), the Deciding Manager will inform the employee in writing as to whether disciplinary action will be taken.

8.2 Where it is decided to instigate disciplinary action, the employee will be given full details in writing of the case against him or her, including any other written evidence such as the investigation report and any appendices and will be invited to attend a Disciplinary Hearing.

9. Examples of Potential Misconduct

Misconduct

9.1 Examples of misconduct include:

- Failure to follow reasonable instructions
- Minor breaches of COPFS policies and/or the Civil Service Code
- Wilful negligence
- Poor timekeeping
- Misuse of any flexible working hours system
- Minor breaches of Health and Safety procedures
- Rudeness or discourtesy to colleagues, the public or other COPFS customers

- Minor security breaches, for example not locking cabinets or PCs
- Anti-social behaviour

9.2 This list is not exhaustive and only gives an indication of the types of offence that may be considered as misconduct. The nature of the allegation will depend on the individual circumstances of the case.

Serious Misconduct

9.3 Examples of serious misconduct include:

- Creating a hostile environment
- Misuse of official information or position
- Negligence leading to minor loss, damage or injury to COPFS, its employees or customers
- Refusing to follow reasonable instructions
- Serious breaches of COPFS policy and/or the Civil Service Code
- Unauthorised absence
- Breaches of Health & Safety procedures
- Failure to report bankruptcy or insolvency to COPFS Management
- Repeated instances of misconduct, not necessarily related
- Conduct liable to bring COPFS into disrepute
- Significant loss of public money or property or injury to people for which the employee is responsible
- Being under the influence of alcohol or drugs while on official duty in contravention of the [Drug and Alcohol policy](#)
- Unauthorised discussion of official matters with external parties

9.4 This list is not exhaustive and only gives an indication of the types of offence that may be considered serious misconduct. The nature of the allegation will depend on the individual circumstances of the case.

Gross Misconduct

9.5 Gross misconduct is defined as an act that destroys or irretrievably damages the bond of trust that exists between the employer and employee, meaning that

summary dismissal (dismissal without notice or pay in lieu of notice) will generally result.

9.6 Examples of gross misconduct include:

- Serious breaches of COPFS policy and/or the Civil Service Code
- Theft
- Fraud
- Fighting or assault
- Bribery (giving and receiving)
- Unauthorised entry to computer records or deliberate falsification of records, including the abuse of any IT system
- Bringing COPFS into disrepute
- Malicious whistle-blowing
- Deliberate or reckless damage to COPFS' equipment, computer systems or buildings
- Inability to perform job duties through being under the influence of alcohol or drugs, or the unauthorised consumption of alcohol or drugs on COPFS premises. See the [Drug and Alcohol Policy](#) for more details
- Serious breach of COPFS Health and Safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to COPFS, its employees or customers
- Conviction of a criminal offence, whether on official duty or not, that makes the employee unsuitable or unable to carry out his or her duties
- Actions which destroy or damage the relationship of trust and confidence between the employee and COPFS
- Serious act of insubordination
- Bullying, harassment or discrimination
- Serious breach of trust or confidentiality
- Misuse of procurement cards
- Breach of the Official Secrets Act 1989
- Unauthorised use or disclosure of official information acquired in the course of duty
- Repeated serious misconduct
- Having a complaint of professional negligence or misconduct upheld by the relevant body

- Deliberate leaking of official information to an external party

9.7 This list is not an exhaustive one and only gives an indication of the types of offence that may be considered gross misconduct. The nature of the allegation will depend on the individual circumstances of the case.

10. Criminal Convictions

10.1 Because of the nature of COPFS business, a strict approach is taken in relation to criminal convictions. Conviction of a crime or offence is at the very least serious misconduct and is likely to lead to disciplinary action being taken. An employee who is arrested and charged with any criminal offence, served with an indictment or a summary criminal complaint on any criminal charge, or who accepts a fiscal or other direct measure penalty must tell his or her line manager as soon as possible. The exception is traffic offences for which the penalty does not include imprisonment or disqualification from driving. Disciplinary action is likely to be taken against any individual who fails to report an arrest or conviction.

10.2 The line manager should immediately report the criminal charge to a senior manager and HR. An HR Manager will advise on whether further action is required and whether to proceed immediately with disciplinary action or await the outcome of any criminal proceedings. Line management with support from HR will make a decision on whether or not to halt the disciplinary action pending criminal investigation and whether to suspend the employee. In deciding what action is appropriate, line management will take into account whether the offence:

- Would make it inappropriate or impossible for the individual to remain in the employment of COPFS
- Has a negative impact on the business of COPFS or the Civil Service, or
- Has a negative impact on the public perception of COPFS or Civil Service

10.3 The individual concerned must keep his or her line manager informed of developments in the criminal case by reporting, for example, if the case against

them is dropped or if they are subsequently convicted and any penalty imposed. Consideration will then be given to whether disciplinary action is appropriate.

10.4 When individuals face criminal charges but these are dropped, or they are found not guilty, they may still be subject to COPFS' Disciplinary Procedure. This is particularly the case when the possible criminal charge relates to an alleged offence committed in the workplace or at a work related social event.

10.5 Where an individual is convicted of a criminal offence and given an immediate prison sentence that prevents their attendance at work, they are likely to be summarily dismissed on the grounds of gross misconduct.

11. Order of Proceedings for a Disciplinary Hearing

11.1 In most cases where serious or gross misconduct has been alleged, the disciplinary panel should set aside enough time to consider the evidence and to reach a conclusion. The time set aside will be dependent on the number of witnesses that are likely to be called (if any) and the particulars of the case.

11.2 A potential order of proceedings for a Disciplinary Hearing might be:

- The Deciding Manager will introduce the Hearing, and explain its purpose and how it will be conducted. The purpose of the Hearing will normally be to establish the facts and determine, on conclusion of the Hearing, whether COPFS has proper grounds to take disciplinary action against the employee and, if so, the level of such disciplinary action.
- The parties present at the Hearing introduce themselves and confirm their respective roles. The employee will be entitled to be represented by a Trade Union official or accompanied by a fellow worker.
- The Deciding Manager will state that the Hearing is being conducted as part of the COPFS disciplinary procedure, and confirm that a written record of the Hearing will be taken and made available to all parties.
- In cases where witnesses are called, both COPFS and the employee will give at least two days notice to the other of the names of any witnesses they

intend to call on their behalf. The Deciding Manager will state whether any witnesses have been asked to give evidence at the Hearing, and if so, who they are.

- The Deciding Manager will fully explain COPFS' case, i.e. the employee's alleged or suspected misconduct or other circumstance leading to the possibility of disciplinary action being taken against them. All the relevant facts will be put to the employee, with specific examples of relevant incidents being given where possible.
- Where evidence has been obtained from third parties in the form of written statements, either the statements themselves or a redacted statement will be given to the employee in advance of the Hearing along with any other written evidence. COPFS reserves the right, however, to conceal the identity of the parties who provided this evidence if it thinks it is necessary or appropriate to do so.
- Witnesses called by either COPFS or the employee will be called into the Hearing and asked to state their evidence in front of the parties.
- The employee or their representative will be allowed a full opportunity to raise points and ask questions through the Deciding Manager about any information provided by witnesses and to question the Deciding Manager on COPFS' case.
- The Deciding Manager will question the employee on their evidence and raise points about any information provided by witnesses. Although the employee may confer with their representative at any time during the Hearing on request, the Deciding Manager has the right to ask the employee personally to answer any questions put to him/her, although the employee may of course refuse to answer.
- The employee will be allowed a full and fair opportunity to state their side of events; explain their conduct and state any mitigating factors. They may do this personally, or the employee's representative (if they have elected to be represented) may do this on their behalf.
- The Deciding Manager will take into account any mitigating factors put forward by the employee when subsequently making a decision about whether or not to impose a disciplinary penalty, and the level of any such penalty.

- The Deciding Manager will sum up the key points of the Hearing and offer the employee the opportunity to sum up their case.
- The Deciding Manager will inform the employee on when a decision will be made on whether to impose a disciplinary penalty.
- The Deciding Manager will inform the employee that they will have the right to appeal against any disciplinary penalty imposed on him/her.
- The Deciding Manager will close the Hearing.

11.3 At any point during the Hearing, the Deciding Manager may adjourn the proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information).

12. Making the Decision After the Hearing

12.1 The Deciding Manager is required to decide whether there are reasonable grounds to uphold the allegation of misconduct and, if so, whether a disciplinary penalty is appropriate such as issuing a warning and/or other penalty. In making the decision, the Deciding Manager must take into account any mitigating factors and whether there are any earlier warnings that have not expired. Where the decision is made that a disciplinary penalty is appropriate, it is necessary for the Deciding Manager to decide what level of warning should be issued and whether any other penalty is appropriate.

13. Type of Penalties

13.1 There is no definitive system for assigning particular penalties to particular offences. Any actions taken will take into account any relevant circumstances. However, the penalty for any form of misconduct that does not result in dismissal will normally include either a recorded verbal warning or a written warning of an appropriate level. Where a written warning is given the employee will be advised that instances of repeated misconduct are likely to result in a more severe penalty, and ultimately could lead to dismissal.

13.2 The employee will be advised of the reason for the written warning, that this warning constitutes part of the disciplinary procedure and of his or her right of appeal. A record will be kept of the warning and placed on the employee's file.

- A recorded verbal warning will normally remain active for disciplinary purposes for 3 months, except where subsequent conduct giving rise to disciplinary proceedings takes place within that 3 month period.
- A written warning will normally remain active for disciplinary purposes for 6 months, except where subsequent conduct giving rise to disciplinary proceedings takes place within that 6 month period.
- A final written warning will normally remain active for disciplinary purposes for 12 months, except where subsequent conduct giving rise to disciplinary proceedings takes place within that 12 month period.

13.3 In exceptional circumstances the warnings may remain active for longer than these stated periods if there is sufficient evidence to justify this and the employee is advised accordingly. When deciding upon a penalty, the line manager should not take into account an **expunged** warning for the disciplinary offence.

13.4 It will normally be the case that employees with a live disciplinary warning will be ineligible for promotion, temporary promotion or substitution for the duration of the warning period. See the Resourcing Toolkit for further information.

13.5 Where the Deciding Manager considers that an additional disciplinary penalty is appropriate, a number of options are available to them depending on the nature of the misconduct. The penalty will reflect the level of misconduct and all the relevant circumstances. This decision will take into account the views of the Disciplinary Panel and any precedents that have been set for previous, similar cases of misconduct; HR will supply the Deciding Manager with this information.

13.6 Among the options are:

- Pay freeze on future incremental pay rises for a specified period
- Bar on future pay awards or bonus payments for a specified period
- Loss or restriction of access to the internet
- Removal from the Flexible Working Hours system

- Monetary payments by way of fines or by way of restitution (in part or in whole), either for culpable loss or damage caused by the employee or their unauthorised absence from duty; such payments may be recovered by deduction from pay
- Downgrading for a specified period, after which the individual will be eligible for consideration for promotion. Downgrading includes removal from a post attracting additional pay or allowances
- Dismissal

13.7 This list is not an exhaustive one and only gives an indication of the types of penalties that may be considered.

14. Summary Dismissal for Gross Misconduct

14.1 If, on completion of the investigation and the full disciplinary procedure, the Deciding Manager is satisfied that gross misconduct has occurred, the result will normally be summary dismissal. The Deciding Manager must still consider any mitigating circumstances and the individual's previous service record before reaching a decision to dismiss.

15. Timescales

15.1 The timescales set out below must be adhered to wherever possible, but may be extended to take account of part time working patterns to ensure sufficient time for the employee or others to prepare for any meetings. Timescales may also be extended by management where there are good reasons, for example the need for further investigation, the lack of availability of employees, witnesses or Trade Union representatives, or the need to seek additional information in order to make an informed decision.

<p>Any extensions to agreed timescales must be communicated in writing to all concerned as soon as possible.</p>
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15.2 The timescales applicable to each step of the process are:

- **Investigation.** Before the investigation takes place, the Investigating Officer must write to the employee and inform them that the allegation is being investigated further. The investigation should normally be completed within **15 working days**. If the investigation is going to take longer, this must be communicated in writing to all those concerned, stating reasons for the delay. Further updates must be provided at regular intervals, with an estimated date of conclusion. Where necessary, external Investigating Officers may be appointed.
- **Allegation.** Once the investigation has been completed, the Deciding Manager will decide whether or not to proceed with a disciplinary allegation. In either event, he or she will write to the employee informing them of his or her decision within **5 working days of the conclusion of the investigation**. A copy of this letter (the Disciplinary Allegation letter) should also be sent to the line manager and HR for information.
- **Hearing and Decision.** The Disciplinary Hearing will normally take place no sooner than **five working days** and no later than **15 working days from** the date of the Disciplinary Allegation letter. A record of the Hearing will be produced within **five working days** and made available to the employee. The employee has **five working days** from the date of receipt of the record of the Hearing to sign and return it to the Deciding Manager, adding any additional comments they wish to make. Once the Deciding Manager has the record of the Hearing, he or she will prepare a report with their decision and any penalty within **five working days from the date of receipt of the record**. In addition, the Deciding Manager should, whenever possible, verbally inform the employee of the decision reached.
- **Appeal.** Any appeal against a disciplinary penalty decision must be made in writing within **five working days** of receipt of the disciplinary penalty letter. The appeal Hearing will normally be held within **ten employee working days** of receipt of the appeal. The Appeal Manager will, whenever possible, verbally

inform the employee of the decision reached and confirm this decision in writing no later than **five working days** after the Hearing.

15.3 In all cases, COPFS assumes receipt **three working days** after the date of a letter. For part time workers their letter should be sent to their home address.

15.4 COPFS will advise the employee if for any reason it is not possible to comply with these timescales.

16. Record Keeping

Local Record Keeping

16.1 Managers must keep a confidential record of all meetings and interviews in relation to both informal and formal meetings. It is important that accurate notes are taken during meetings and that, at the end of formal meetings, these are agreed (either by e-mail or signed and dated) with the employee as soon as possible after the meeting has taken place. This ensures that all parties know exactly what was discussed and what actions were agreed at any given time.

16.2 Records should show:

- The date, time and place of the meeting
- The key points discussed
- Any action points agreed; and
- The fact that there was no formal outcome, e.g. that the meeting was informal and no warning was issued; or
- That a warning was issued and details of this

16.3 Where formal action is taken all papers must be sent in to HR for central record keeping as outlined below. Managers must not keep local records of any penalties or warnings that have expired.

Central Record Keeping

16.4 A file containing all documents relating to the disciplinary case must be submitted to HR upon completion of the case.

16.5 HR will maintain a confidential disciplinary register of all cases of misconduct resulting in a penalty to serve as a precedent register to inform future cases.

16.6 This register is confidential to HR. HR Managers will be able to provide the Disciplinary Panel with information pertinent to any disciplinary case in order to aid consistency of approach when dealing with disciplinary actions and it will contain the following information:

- Pay bands of all employees involved, including those co-ordinating the disciplinary action
- Length of service of the employee disciplined
- Nature of misconduct
- The actions taken and the reasons for it
- The date the action was taken
- Whether an appeal was lodged
- Any subsequent developments
- The date upon which any disciplinary action lapses

17. Confidentiality

17.1 All parties, including the employee subject to disciplinary proceedings and any witnesses, have a responsibility to maintain confidentiality during and after the process. A breach of confidence to those with no role in the disciplinary procedure can potentially damage both COPFS' and the individual's reputation.

18. Appeals

18.1 Employees have the right to appeal any formal decisions by submitting written grounds of appeal to the Appeal Manager named in the decision letter.

18.2 In cases resulting in action other than dismissal, the Appeal Manager will be senior to the original decision maker and, where appropriate, be part of the Line Management Chain.

It is important however that the Appeal Manager has had no prior involvement in the case therefore it may be necessary to seek a manager from a different office or location. Details of the Appeal Manager will be contained within the decision letter sent out to the employee. Managers who are unsure of who to name as the Appeal Manager should contact HR for guidance.

18.3 In cases of dismissal, the employee may normally appeal to the HR Director. Where the original decision to dismiss was made by the HR Director or where the employee is senior to the HR Director, the appeal against dismissal will be heard by the Deputy Chief Executive or another appropriate senior manager who is appointed to hear the appeal on their behalf.

18.4 The Appeal Manager can decide to:

- Uphold the decision and the penalty that was imposed
- Uphold the decision but reduce the penalty, or
- Overturn the original decision.

18.5 See details of appeal timescales.

18.6 Following the Appeal Hearing there is no further COPFS internal right to appeal, however in certain circumstances employees may be eligible to apply to the [Civil Service Appeal Board](#) for further appeal or finally to an Employment Tribunal.

19. The Civil Service Appeal Board (CSAB)

19.1 For further details on eligibility for appealing to the Civil Service Appeal Board please visit their website: www.civilserviceappealboard.gov.uk

20. Absence from Work

20.1 If an employee is absent at any stage of either the investigation or disciplinary proceedings, this does not mean that the process is automatically halted.

20.2 If anyone involved in the Hearing is unable to attend work due to sickness or any other reason, it may be appropriate to reschedule the Hearing to another convenient date; however emphasis will be placed on concluding the matter as quickly as possible. The Deciding Manager will take into account the following factors when deciding a new date:

- The nature of the absence
- The length of period of absence
- Whether it is practical to proceed

20.3 If the employee is absent due to long term sickness it will be appropriate to refer the matter to COPFS' Occupational Health Provider for medical advice on whether the employee is fit to attend the Hearing. If Occupational Health are satisfied that the employee is fit to attend, a new Hearing date will be arranged. If the employee fails to attend the Hearing on the new date the Deciding Manager may proceed in the employee's absence. Where an Occupational Health appointment has not been kept by the employee, a new Hearing date will be set by the Deciding Manager and the Hearing may proceed if the employee fails to attend on this date too.

21. Application for Transfer or Promotion

21.2 Where a live disciplinary warning exists, an employee will not normally be considered eligible for level transfer or promotion (unless a transfer to another office forms part of the penalty).

21.1 Employees under investigation or who have yet to hear the outcome of a Disciplinary Hearing are still eligible to apply for level transfer or promotion opportunities. The line manager and countersigning officer should complete the relevant sections of the application form stating whether or not the application is supported on the basis of the employee's skills and knowledge. The disciplinary investigation must not be taken into account at this stage.

22. Whistleblowers

22.1 Whistleblowing can be defined as raising concerns about misconduct within an organisation, or giving information (usually to the authorities) about illegal and underhand practices.

22.2 The Public Interest Disclosure Act 1998 makes it unlawful to discipline whistleblowers, even when they are proved wrong, if their belief that something was wrong was reasonable when they disclosed it.

22.3 Disciplinary penalties, including dismissal, may be imposed where an employee makes, or causes to be made, false or malicious allegations to an outside organisation, particularly to the media.

22.4 COPFS has a [Whistleblowing Policy](#) which all employees should familiarise themselves with.

23. Further Guidance

23.1 If you can't find the guidance you require please contact [HR](#) for further support. In addition, managers and staff can contact the [Employee Assistance Programme](#) on 0800 587 5670 or the [Staff Welfare Officers](#) and the [Trade Unions](#) for support and advice.