



Disciplinary Policy and Procedure

Date published	Version	Changes made by
April 2009	1	HR/Sarah Carter
December 2010	1.1	HR/Sarah Carter
January 2019	1.2	HR/Lesley Gollan

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1.0 Policy Statement

1.1 All Crown Office and Procurator Fiscal Service (COPFS) employees are required to work within the rules and procedures of conduct and standards of performance that are set by the Service. Disciplinary procedures may be used when an employee fails to observe the standards of COPFS. The standards of conduct expected of all employees who work for COPFS can be found under the [Standards and Conduct](#) section of the Staff Handbook and in the [Civil Service Code](#).

1.2 As civil servants, all COPFS employees must meet the highest standards of behavior and conduct both within and outwith the workplace. Unacceptable conduct outwith work, including social events (e.g. office parties), may also be considered as warranting disciplinary action. Unacceptable conduct includes, but is not limited to, the use of illegal drugs, harassment, violence, serious verbal abuse or assault of either another employee or a third party.

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

1.4 Minor misconduct issues may usually be dealt with by Reporting Officers, however it may be appropriate to initiate formal disciplinary action where the employee's actions (either by act or omission) are such that the actual or potential consequences for COPFS are, or could be, extremely serious. In cases where uncertainty exists over whether informal or formal action is required the Reporting Officer must contact HR who will be able to offer advice on which action may be applicable.

1.5 These disciplinary procedures apply to all COPFS employees. Workers supplied by an Employment Agency are expected to adhere to COPFS conduct rules, but are not subject to COPFS disciplinary procedure.

2.0 Principles of Disciplinary Procedure

- There will be fair and consistent management of standards of conduct throughout COPFS;
- Investigation of potential disciplinary matters will be dealt with promptly in order to establish the facts before any decision to progress to a disciplinary hearing is taken;
- Information will be restricted and confidential to those directly involved in the disciplinary matter;
- Where appropriate, informal action may 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 and state their case at a formal Hearing;
- 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 receive an explanation for any penalty imposed and to appeal against that decision;
- This Disciplinary Policy and Procedure is informed by the *ACAS Code of Practice on Discipline and Grievance*.

3.0 Informal Process

3.1 Many disciplinary matters can be effectively dealt with informally by line management.

3.2 Allegations of misconduct should be dealt with promptly. 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 their 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 Reporting Officer are damaged.

3.3 The Reporting Officer should first meet informally with the employee to discuss the matter. When holding an informal meeting the Reporting Officer should invite the employee to a private location where they can explain that an issue has arisen that needs face-to-face discussion or clarification. The purpose of the meeting will be to:

- Make the employee aware of the alleged conduct or behaviour and how and why their conduct or behaviour is cause for concern;
- Establish the facts and reason(s) for the particular conduct or behaviour; and
- Seek agreement on how to ensure that the conduct or behaviour is improved.

3.4 In informal meetings there is no statutory right for the employee to be accompanied. 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.

3.5 Despite the informality of the meeting, afterwards the Reporting Officer must set a date to review the employee's progress with the conduct or behaviour that caused concern. If appropriate, a note-taker can be present. An agreed record of the meeting should be kept.

3.6 It may be necessary to offer support and it might be helpful to remind the employee of the services of our Employee Assistance providers [HelpEAP](#)

3.7 If, during the discussion, it appears that the matter may be more serious than first anticipated, the Reporting Officer must adjourn the meeting and advise the employee that the matter will be continued under formal proceedings. They must then make contact with HR. It is imperative that this step is taken as the employee must be afforded their right to representation during any formal meetings.

4.0 Formal Process

Allegation of Misconduct

4.1 Where formal disciplinary action is being considered Reporting Officers must contact HR and seek advice.

4.2 Where 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 the Reporting Officer may be in a position to conduct a short fact-finding investigation themselves, without the need to appoint an Investigating Officer. Before proceeding, this must be discussed with HR. (Some examples of potential misconduct are listed at Appendix F). In these circumstances HR will not attend the hearing but will provide support and advice to the Deciding Manager via telephone and e-mail.

4.3 Where a formal investigation is required in order to establish the facts of the matter, the Reporting Officer will liaise with HR, who will arrange for the organisation to appoint an Investigating Officer and provisionally appoint a Deciding Manager. HR will arrange for the organisation to set out terms of reference for the Investigating Officer.

4.4 The employee may be informed verbally of the allegation in the first instance but this must be followed up in writing. This letter is sent out as soon as possible by the Investigating Officer outlining the allegation(s) and the next steps of the investigation process.

4.5 Following receipt and consideration of the investigation report, the Deciding Manager may conclude that a Disciplinary Hearing should be arranged. The Disciplinary Hearing panel will consist of the Deciding Manager, an HR representative and a note taker. Some examples of misconduct are listed at Appendix F.

Allegation of Serious or Gross Misconduct

4.6 Gross misconduct is a serious breach of contract. It includes misconduct which, in COPFS' opinion, is likely to prejudice COPFS' business or reputation or seriously or irreparably damages the working relationship and trust between employer and employee meaning that summary dismissal (dismissal without notice or pay in lieu of notice) will normally result.

4.7 Where serious or gross misconduct is alleged, consideration should be given to suspending the employee but only after discussion with HR. See Appendix A for manager's suspension checklist.

5.0 Suspension from Duty

5.1 The decision to suspend an employee will normally be made by a manager at minimum administrative Band E or Principal Depute grades. The decision on whether or not to suspend **must always** be based on advice from HR.

5.2 Where it has been deemed necessary to suspend an employee from duty the Reporting Officer must meet with the employee to inform them of the terms of their suspension and follow this up in writing as soon as possible. Managers may wish to be accompanied at the suspension meeting should take advice on this from HR.

5.3 At the meeting it should be made clear that suspension is not a disciplinary penalty and that full pay and benefits will continue to be paid throughout the suspension period. The employee should be given the opportunity to arrange representation, however this should not be allowed to unduly delay the suspension meeting. Suspension from duty does not imply that any decision has been taken about the alleged misconduct.

5.4 Examples where suspension should be considered are:

- 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.

5.5 Suspension will usually last from the onset of the investigation to consideration of the Investigating Officers report if it is found that there is no 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 ensuring that it lasts only as long as is necessary and appropriate keeping it as short as possible.

5.6 During any period of suspension the employee must not attend their place of work, or any work-related events, other than for the purpose of attending disciplinary proceedings, including investigatory interviews.

5.7 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.

5.8 The services of our Employee Assistance Providers [HelpEAP](#) are available to suspended employees.

5.9 The Reporting Officer must maintain regular contact (ideally weekly) with the suspended employee to keep them updated, however this can be agreed as part of the suspension process.

6.0 Investigation

6.1 The purpose of an investigation is to establish a fair and balanced view of the facts relating to disciplinary allegations before a decision is made whether to proceed with a disciplinary hearing. The terms of reference of the investigation will be explained to the Investigating Officer by HR See also Appendix E.

6.2 The investigation will be thorough, concise, factual, and timely in line with the prescribed timescales outlined in paragraph 10.

6.3 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 or opinions to influence the investigation of the employee's conduct.

Investigatory Meeting with the Employee or Witnesses

6.4 The employee and relevant witnesses may be invited to attend an investigatory, or fact finding, meeting with the Investigating Officer. [Investigative meetings are solely for the purpose of fact-finding.]The Investigating Officer may have a supporting officer or a note taker in attendance to allow them to concentrate on finding out the facts of the matter during the meeting.

6.5 After the investigatory meeting is concluded with the employee or witness, a written statement summarising the information will be prepared and sent to the employee or witness to agree, sign and return.

Accompaniment at Investigatory Meetings

6.6 Although there is no statutory right for an employee to be accompanied at an investigatory meeting, at its discretion, COPFS will consider requests from any employee under investigation to be accompanied at such meetings, reserving the right to refuse this as they deem appropriate. Where this is allowed, employees may only be accompanied by either a fellow worker or Trade Union Official.

The Investigation Report and Outcome

6.7 At the conclusion of the investigation, the Investigating Officer will prepare a report for the Deciding Manager.

6.8 The Deciding Manager will review the report, recommendations and supporting documentation and decide whether or not a Disciplinary Hearing should be arranged.

6.9 Where it is considered that a Hearing should be arranged, the employee will be given full details in writing by the Deciding Manager of the case against them (including relevant documentation such as the investigation report, appendices and witness statements), will be informed of the potential consequences and will be invited to attend a Disciplinary Hearing. They will also be informed of their statutory right to be accompanied by a fellow worker or Trade Union official.

7.0 Criminal Convictions

7.1 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 their Reporting Officer 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.

7.2 The Reporting Officer should immediately report the criminal charge to a senior manager and HR. An HR representative will advise on whether further action is required and whether to proceed immediately with disciplinary action or await the outcome of any criminal proceedings, if appropriate.

7.3 Line management with support from HR will make a decision on whether or not to proceed with or halt the disciplinary action pending criminal investigation and whether it is appropriate 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

7.4 The individual concerned must keep their Reporting Officer fully 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, and also provide evidence of this to their Reporting Officer. Further consideration will then be given as to what disciplinary action is appropriate.

7.5 When individuals face criminal charges but these are dropped or they are found not guilty, or where an individual is convicted of a criminal offence and given an immediate prison sentence that prevents their attendance at work they may still be subject to COPFS' Disciplinary Procedure.

8.0 Disciplinary Hearing

8.1 The Disciplinary Hearing should be conducted in line with the Order of Proceedings as outlined at Appendix G.

8.2 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.

8.3 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). The employee or their representative may also request an adjournment.

8.4 After the Hearing has concluded, the Deciding Manager is required to decide whether there are reasonable grounds to uphold the allegation(s) and, if so, whether a disciplinary penalty is appropriate. In making the decision, the HR Manager must take into account any mitigating factors and whether there are any relevant live warnings. Where the decision is made that a disciplinary penalty is appropriate, it is necessary for the Deciding Manager to decide what that should be.

8.5 All matters relating to criminal charges (primarily against employees but including charges against family and close friends of employees), malpractice, unethical behavior and security breaches will be considered by the Professional Standards Committee. Where appropriate, the Professional Standards Committee will refer allegations to local line management for further investigation as described in COPFS Disciplinary Policy.

8.6 In cases where allegations have previously been referred to the Professional Standards Committee and to ensure all relevant factors have been taken into account, the Deciding Manager must consult Professional Standards Committee in advance of any final decisions being made about the course of action to be taken.

9.0 Type of Penalty

9.1 Any penalty given will take into account any relevant circumstances. The penalty for any form of misconduct that does not result in dismissal will normally be a first written warning or a final written warning. 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 could lead to dismissal.

- A First Written Warning will remain active for disciplinary purposes for up to 6 months, except where subsequent conduct giving rise to disciplinary proceedings takes place within that 3 or 6 month period.
- A Final Written Warning will remain active for disciplinary purposes for 12 months, except where subsequent conduct giving rise to disciplinary proceedings takes place within that 12 month period then this timescale may be extended. .

- Dismissal / Summary Dismissal

If, on completion of the investigation and disciplinary hearing, the Deciding Manager is satisfied that misconduct has occurred that is sufficiently serious, including gross misconduct, the Deciding Manager may decide to dismiss the employee. Where gross misconduct has occurred, the result will normally be summary dismissal (dismissal without notice or pay in lieu of notice). The Deciding Manager must consider any mitigating circumstances and the individual's previous service record before reaching a decision to dismiss.

9.2 The employee will be advised of the reason for any penalty applied, that it constitutes part of the disciplinary procedure and informed of their right of appeal. Where possible the employee will be informed of the decision on the day of the hearing. A record will be kept and placed on the employee's file by HR and destroyed when the appropriate time limit has expired.

9.3 In some circumstances warnings may be extended for longer than the stated periods in paragraph 9.1. If this is the case the employee will be advised accordingly. When deciding upon a penalty, the Deciding Manager should not normally take into account an **expired** warning for the disciplinary offence.

9.4 Employees with a live disciplinary warning will not be eligible for promotion, temporary promotion or level transfer for the duration of the warning period.

9.5 Where the Deciding Manager considers that an additional or alternative 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 provide the Deciding Manager with this information as required.

9.6 As well as the penalties outlined in paragraph 9.1, other options include but are not limited to:

- Freeze on future pay progression for a specified period;
- Bar on future annual (cost of living) pay awards for a specified period;
- Removal from the Flexible Working Hours system and placing on conditioned hours;
- 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, either permanently or for a specified period (where the current post attracts additional pay or allowances, these would not be preserved);
- Removal of additional pay or allowances;
- Transfer to another role or location.

10.0 Timescales

10.1 The timescales set out below for guidance must be adhered to wherever possible, but may be extended to take account of 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. Any extensions to timescales will be communicated in writing to all concerned as soon as possible.

10.2 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 ideally be completed within **20 working days**. This timescale may be extended if necessary.

- **Allegation.** Within **10 working days** of the conclusion of the investigation, the Deciding Manager will consider the report and decide whether or not a Disciplinary Hearing is to be called, then write to the employee informing them that either there is no case to answer or that a Disciplinary Hearing will be called. A copy of this letter should also be sent to the employee's Reporting Officer.
- **Hearing** The Disciplinary Hearing will normally take place no later than **10 working days** from the date of the Disciplinary Invite letter. A note of the Hearing will be made and a copy sent to the employee within **5 working days**. This note will not be verbatim and the employee can propose amendments within **5 working days**.
- **Decision** The deciding manager will write to the employee within **10 working days** of the Hearing concluding, advising of the outcome reached. On the day of the Hearing, 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 **5 working days** of receipt of the disciplinary decision letter. The Appeal Hearing will normally be held within **10 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 within **10 working days** after the Hearing.

10.3 Where possible, all outcome letters should be e-mailed. In the case of part-time workers or those not currently attending their workplace, their letter should also be sent to their home address. Where letters are mailed to home addresses, proof of posting must be obtained however, in all cases COPFS will assume receipt three working days after posting. A copy of the outcome letter will be sent to the appropriate Head of Business Management.

10.4 The Deciding Manager or Appeal Manager will advise the employee in writing if for any reason it is not possible to comply with these timescales and advise them as soon as reasonably practicable of any amended timescales.

11.0 Record Keeping

11.1 A confidential record of all meetings and interviews in relation to both informal and formal meetings must be kept. 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.

11.2 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 even electronically of any penalties or warnings.

11.3 HR will maintain a confidential disciplinary register of all cases resulting in a penalty to serve as a precedent register to inform future cases. This register is confidential to HR. This will enable HR Representatives to provide the Disciplinary Panel with information pertinent to any disciplinary case in order to aid consistency of approach when dealing with disciplinary matters.

12.0 Confidentiality

12.1 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 could potentially damage the integrity of the process and may lead to disciplinary action for those responsible

13.0 Appeals

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

13.2 In all cases, the Appeal Manager will be senior to the Deciding Manager.

13.3 It is important that the Appeal Manager has had no prior involvement in the case. HR will arrange for the organisation to appoint the Appeal Manager. If new matters are raised in an appeal, further investigation may be required.

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.
- The appeal manager **cannot** increase any penalty applied

13.4 Following the Appeal Hearing and outcome, there is no further right of appeal.

14.0 Absence from Work

14.1 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.

14.2 If anyone involved in a Disciplinary [or Appeal] 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

14.3 If, during the disciplinary process, the employee becomes absent due to ill health, it may 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.

14.4 Where an employee fails to attend an Occupational Health appointment, a new Hearing date will be set by the Deciding Manager and the Hearing will proceed.

14.5 If the employee fails to attend the re-arranged Hearing, the Deciding Manager may proceed in the employee's absence and a decision will be made on the evidence available. Employees will be informed where this is to be the case.

15.0 Application for Transfer, Promotion, TP or TRS

15.1 Where a live disciplinary warning exists an employee will not be considered eligible for promotion, level transfer, TP or TRS. Where they are yet to hear the outcome of a disciplinary investigation or hearing, the announcement of a recruitment outcome may be placed 'on hold' until this is known

16.0 Whistleblowers

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

16.2 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.

16.3 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.

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

17.0 Further Guidance

17.1 If you can't find the guidance you require please contact HR for further support. In addition, managers and employees can contact the Employee Assistance Programme on 0800 032 9849 or their Trade Union for support and advice.

Appendix A Roles and Responsibilities

Role	Responsibilities and remit
<p>Employee</p>	<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.
<p>Reporting Officer</p> <p>(this is normally the employee's Reporting Officer)</p>	<ul style="list-style-type: none"> • To be familiar with the disciplinary policy and procedure; • To deal promptly with all misconduct issues; • To deal informally with cases of <i>misconduct</i>; • To invoke the formal process where there are cases of <i>repeated misconduct</i> or one off instances of more <i>serious misconduct</i>, consulting with HR for further advice on the most suitable approach .
<p>Deciding Manager</p> <p>(In cases of <i>serious</i> or <i>gross misconduct</i>, the Deciding Manager must be graded at least Band E (for administration employees) or Principal Depute (for legal employees)</p>	<ul style="list-style-type: none"> • To chair formal Disciplinary Hearings; • To contact HR to ascertain details of decisions in previous similar cases; • To act fairly and without bias in order to come to a decision based on the facts of the case as outlined in the report and supporting documents; • To inform the employee of the outcome of the Hearing in accordance with the disciplinary procedure timescales, and also to inform the employee's Reporting Officer • To come to a final decision on whether a disciplinary penalty is appropriate and what level of penalty is appropriate; • To communicate with and notify HR prior to outcome letter being issued; • Where possible, the Deciding Manager will be independent of the line management chain. • The Deciding Manager <u>must not</u> be involved at any stage of the investigation.

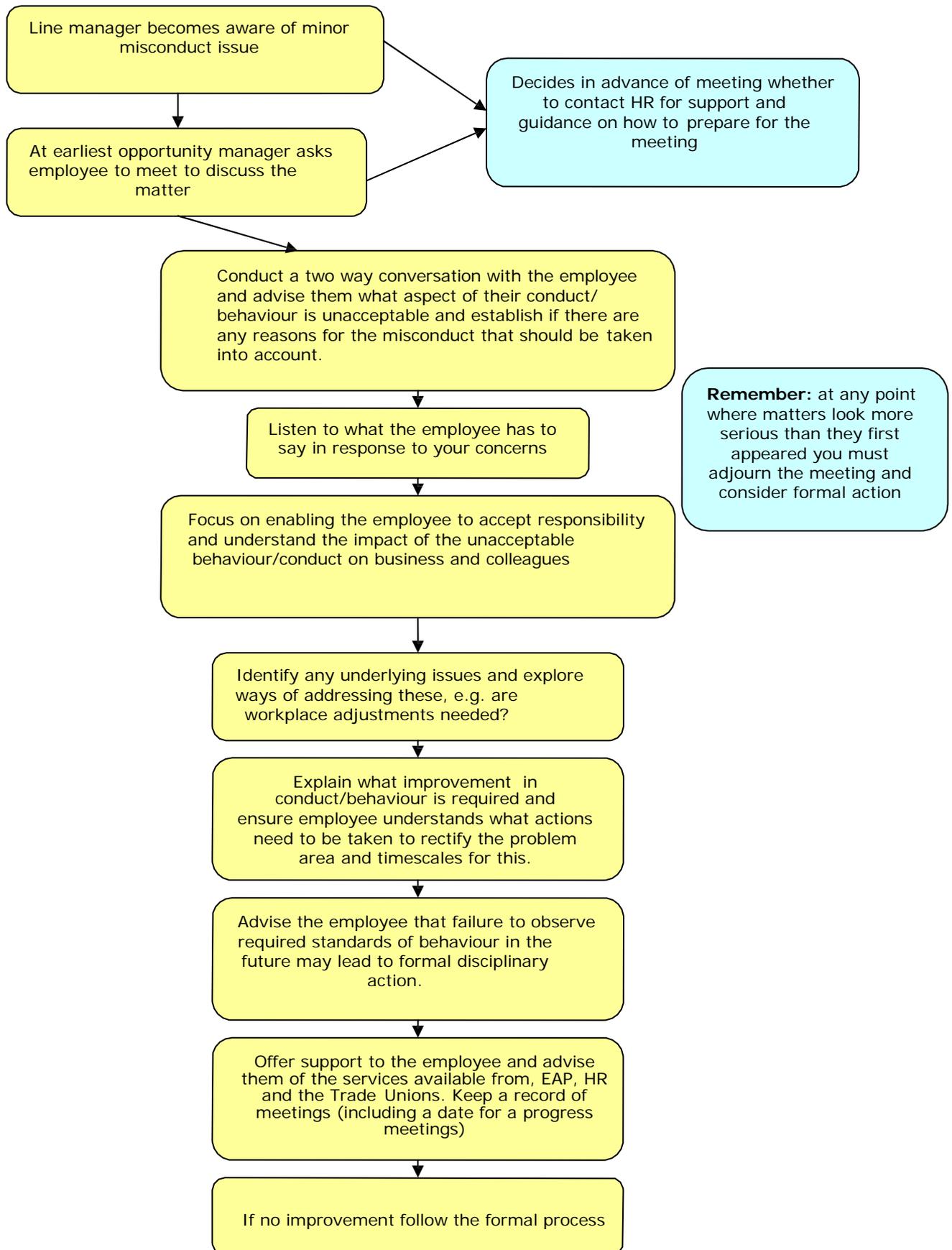
<p>Investigating Officer</p>	<ul style="list-style-type: none"> • To partner with HR to define questions that will establish the facts of the matter; • To provide a fair, unbiased and non-judgmental report of those facts to the Deciding Manager; • To provide an assessment of the evidence available and make recommendations to the Deciding Manager on whether formal action, informal action or no further action should be taken; • To give sufficient time and focus to the investigation; • Provide a copy of the investigation report to HR; • Ensure notes of all meetings and statements are agreed and signed by interviewees;
<p>Supporting Officer / Note Taker</p> <p>(NOTE: Potential witnesses <u>must not</u> act as note takers)</p>	<ul style="list-style-type: none"> • Assists the Investigating Officer by taking and preparing notes of meetings, interviews and witness statements; • Assists in the preparation of the investigation report where necessary; • To prepare an accurate record of the Disciplinary Hearing capturing the key points; • Treat information carefully and maintain confidentiality.
<p>HR</p>	<ul style="list-style-type: none"> • To agree with the Deciding Manager the terms of reference for the Investigating Officer • To provide professional advice and guidance to the Reporting Officer or Deciding Manager; • To partner with the HBM to select an Investigating Officer; • To provide details of decisions in previous similar cases; • To provide information on whether the employee has any relevant live warnings; • To sit on the Disciplinary Hearing Panel, where appropriate, in order to provide technical advice to the Deciding Manager; • To act fairly and without bias in order to advise the Deciding Manager.

<p>The Appeal Manager (appointed by HR representative with input from HBM)</p>	<ul style="list-style-type: none"> • To hear the appeal impartially; • The Appeal Manager must be senior to the Deciding Manager.
<p>Employee Representative (In accordance with ACAS Code of Practice 1 – Disciplinary and grievance procedures, this must be either a colleague or recognised trade union representative)</p>	<ul style="list-style-type: none"> • To represent or accompany the employee who is subject to disciplinary proceedings; • Where the Employee Representative is not an employee of COPFS, they must provide evidence that they are certified by their union as being competent to accompany a worker to a disciplinary Hearing; • Address the hearing to put and sum up the employees case but not if the employee does not wish it; • To respond on behalf of the employee to any views expressed at the Hearing and to confer with the employee during the Hearing; • To seek and offer clarification on the employee’s behalf, including asking questions of witnesses (if appropriate)but cannot answer questions on the employees behalf; • The employees representative cannot prevent the employer from explaining their case.
<p>Witnesses</p>	<ul style="list-style-type: none"> • To provide information as part of an investigation and to give a signed statement of fact and attend interviews • When necessary, to attend Disciplinary Hearings as a witness called by either COPFS or the employee who is subject to disciplinary proceedings
<p>Employee Assistance Programme (EAP)</p>	<ul style="list-style-type: none"> • Can provide information and assistance on a range of topics See their website at Help EAP

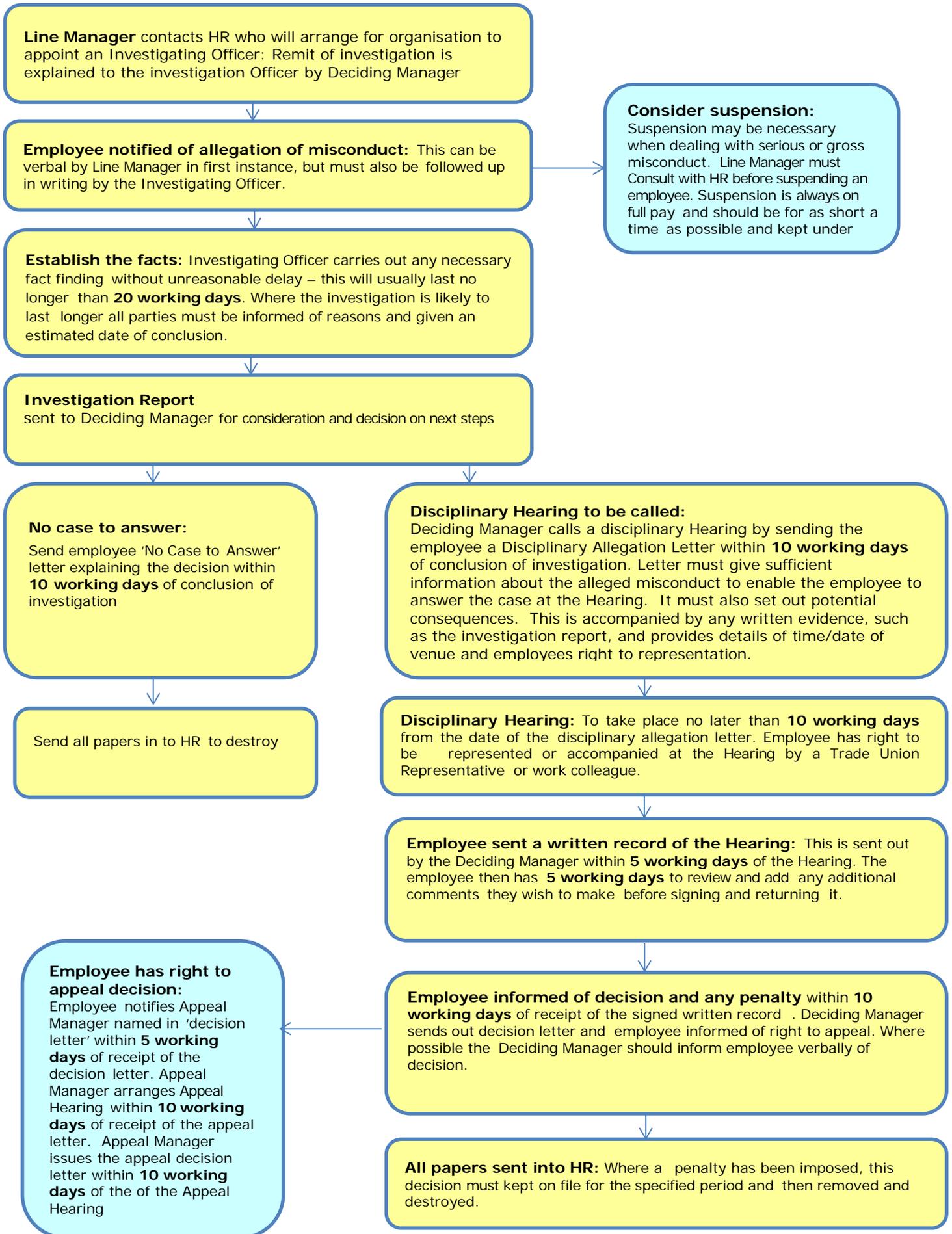
Appendix B: Suspension from duty – a checklist for Reporting Officers

If considering suspending an employee the Reporting Officer should first contact a senior member of the management team to discuss the circumstances	<input type="checkbox"/>
The Reporting Officer 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 Reporting Officer 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"/>
Reporting Officers 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 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 Reporting Officer should let HR know if they are seriously concerned about the employee's wellbeing.	<input type="checkbox"/>
Managers should be aware that EAP also provide a managerial consultancy service offering support for Reporting Officers 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"/>

Appendix C: Informal Process Flowchart



Appendix D: Formal Process Flowchart



Appendix E The Investigation Procedure

The investigation will be thorough, concise, factual, and timely in line with the prescribed timescales. As a general guide, in investigating an employee's alleged misconduct, the Investigating Officer will:

- Examine any relevant written records and reports;
- 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;
- Ensure witnesses are made aware that statements will be made available to the employee;
- Ensure that all witnesses receive at least two working days' notice before any investigation interview;
- Ensure that all statements are signed and advise all interviewees that their statement will be used in evidence.

Appendix F: Examples of Potential Misconduct

The following lists of examples are not exhaustive and only give an indication of the types of offence that may be considered misconduct, serious misconduct or gross misconduct. The nature of the allegation will depend on the individual circumstances of each case.

Misconduct

- Failure to follow reasonable instructions;
- Minor breaches of COPFS policies and/or the Civil Service Code;
- Negligence;
- Poor timekeeping;
- Minor 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.

Serious Misconduct

- 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;
- Being under the influence of alcohol or drugs while on official duty in contravention of the **Drug and Alcohol Policy**;
- 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;
- Unauthorised discussion of official matters with external parties.

Gross Misconduct

Examples of gross misconduct include:

- Major 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' property, including 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 whilst on duty (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 their 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.

Appendix G Order of proceedings for a Disciplinary Hearing

1. 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.
2. 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.
3. 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.
4. 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.
5. The Deciding Manager will fully explain 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.
6. 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.
7. 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.
8. 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.
9. 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

10. 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.
11. 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.
12. 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.
13. The Deciding Manager will sum up the key points of the Hearing and offer the employee the opportunity to sum up their case.
14. The Deciding Manager will inform the employee on when a decision will be made on whether to impose a disciplinary penalty.
15. The Deciding Manager will inform the employee that they will have the right to appeal against any disciplinary penalty imposed on him/her.
16. If a decision is to be made on the day of the Disciplinary Hearing, the Deciding Manager will adjourn the Hearing for a short time in order to consider all of the information that has been presented before re-convening to inform the employee of the outcome. If a decision cannot be reached during the adjournment, the Deciding Manager will reconvene the Hearing to inform the employee they will be notified in writing of the outcome.
17. If a decision is not to be made on the day, the Deciding Manager will close the Hearing.