1. **INTRODUCTION**

The key to any disciplinary process is to bring people up to the standard of conduct required by encouraging them to improve and to provide a consistent and fair means of dealing with serious breaches. Disciplinary procedures need to be applied carefully, sensitively and consistently.

The important principles of fairness, facilities for representation, and promptness apply to disciplinary procedures. Speed, not amounting to undue haste, is important and the notification of any penalty should quickly follow the offence. This is particularly so in dismissal cases if the decision is not to be shown as unfair.

These procedures and the information given at Regulations B1-15 must be followed by all managers involved in disciplinary matters.

2. **THE PROCEDURE**

The key steps to be used in dealing with any potential disciplinary matter are:

a) **INVESTIGATION - GATHERING THE FACTS**

A civil servant who is suspected of committing a disciplinary offence shall be made aware of the scope and possible conclusions of the investigation.

The Guidance notes – Role of the Investigating Officer & Model Investigation Report which can be found in the Civil Service Regulations Handbook, should be consulted.

It is essential that an investigation is undertaken to establish all relevant facts, statements and documents from witnesses and other persons are gathered promptly before the memory fades. This may include interviewing the suspected person if appropriate. The information obtained will then determine the method of dealing with the civil servant and will then form the basis of the line manager's case at future hearings and appeals. It is imperative to keep and have available, all records and relevant information and wherever possible, substantiated by further investigation.

Enquiries shall be discreet, especially when they are made of those other than the suspected person, but the reason for any questioning should be explained.

Special care must be exercised when taking statements from an informant making an allegation but who, fearing reprisals, wishes to protect his identity. In such circumstances, the advice of the HR Advisers in the Office of Human Resources should be sought by the investigating officer to ensure that an appropriate balance is maintained between the desirability of protecting the informant and providing a fair hearing for the suspected person.

In serious cases e.g. where the possibility of dismissal may arise (i.e. gross misconduct) or where there are grounds for doubt as to the appropriateness of the civil servant remaining at work while investigations proceed or pending criminal proceedings, precautionary suspension with pay, see Regulation B3 (g), must be considered. It should be remembered that a failure to suspend a civil servant with pay where an investigation into an allegation of gross misconduct is being carried out may prejudice future action. Further guidance on Suspension and selection of civil servants...
to investigate and hear allegations of serious misconduct can be found in the Civil Service Regulations Handbook.

Except where there are criminal proceedings (see paragraph 3 below), the suspension should not normally exceed 10 working days. (All managers must understand and be aware of their ability to suspend pending investigation - if you don't know, you must find out from your line manager. If a senior manager with the authority to suspend is not immediately available, the civil servant may have to be sent to his normal base while the senior manager is contacted, possibly by telephone). A model letter entitled, Precautionary Suspension from Duty, can be found in the Civil Service Regulations Handbook.

b) CONSIDERATION

Be clear about the facts. Is there sufficient evidence to suggest misconduct? Decide whether or not any further action is needed and determine whether the matter relates to discipline or capability/in-efficiency, see Regulation B41.

(i) No further action needed

If there is no evidence to substantiate the allegation then no further action should be taken. The civil servant should be informed immediately and all documentation must be removed from the civil servant's personal file.

(ii) Further action needed

If further action is required, it should either be: -

Informal Action - Advice and counselling - Refer to c) below.

Formal Action - Formal disciplinary action, following the procedures outlined in Annex B2 - Refer to d) below.

The person who conducts the investigation may also deal with any resultant disciplinary issues though there may be occasions when different people will be involved.

It is important is that no attempt should be made following the investigation to reach a conclusion until the full facts and submissions have emerged at the disciplinary hearing (or hearing).

c) INFORMAL ACTION

If the breach is sufficiently minor not to warrant entry into the formal disciplinary procedures, the civil servant should be seen informally and told of the breach. He should be asked for his comments and an explanation. Issue an Informal Oral warning, advising of the standard(s) required and of the consequences of a future breach i.e. entry into the formal disciplinary procedures. Make a note in the office daybook, diary or other appropriate place but do not enter on the civil servant's personal record.
d) FORMAL ACTION

Recognised Officials of the Recognised Staff Association.

Normal disciplinary standards apply to lay officials of trade unions but no action should be taken against them beyond an informal oral warning. Refer to Regulation B5 before taking any Formal Action.

If, following the investigation, clear prima facie evidence is obtained and formal disciplinary action is required the allegation must be put fully in writing to the civil servant. A model letter can be found in the Civil Service Regulations Handbook, Formal disciplinary action required.

Remember that it is only an allegation at this stage and that no conclusions can be reached until all the evidence (oral and written) has been examined at the end of the disciplinary hearing. For this reason care should be taken in the framing of the allegation and no attempt should be made to use legal language. Merely state the facts concisely, indicate the evidence in broad terms and in particular, specify any rule that is alleged to have been broken. (Withholding information arising from the investigation may serve only to delay a conclusion to the formal hearing).

e) FORMAL DISCIPLINARY HEARING

(i) Before the disciplinary hearing

The purpose of the disciplinary hearing is to consider what disciplinary action, if any, is appropriate in all the circumstances. The person who will conduct the hearing should in writing, invite the civil servant, to attend the hearing advising of the date, time and venue advise him of the facts, giving details of the allegation(s) and of the evidence against him that he may be accompanied by a friend (who may be either a work colleague or a staff association representative), if he so wishes provide him with a copy of the Civil Service Disciplinary Procedures, (some of which are Annexes within the Regulations).

It is not necessary to call witnesses to the hearing for cross-examination but the suspected civil servant must be given copies of any witness statements.

A model letter Invitation to a Disciplinary Hearing, can be found in the Civil Service Regulations Handbook.

(ii) At the disciplinary hearing

Do not make any assumptions or reach any conclusions.

An internal disciplinary hearing should be conducted in an atmosphere that is as informal as possible and for this reason legal representation is inappropriate and to be discouraged except where the person concerned is a work colleague or attending on behalf of the staff association.

Explain the purpose of the hearing. Stating that it is not just to assume guilt and place the onus of proof on the alleged offender to prove his innocence.

Ask for a full explanation from the civil servant on the case against him.
If any new facts emerge during the hearing it may be adjourned for further investigation and then reconvened.

A record should be kept of the hearing but this need not be a verbatim transcript.

f) DECISION

When the hearing has been completed, adjourn to consider all the evidence. You must reconvene if you require more information or clarification about any point.

Once you have all the information, come to a clear view on the facts and, if they are disputed, decide on the balance of probability which version of the facts is true. In internal disciplinary proceedings the evidence need only be sufficient to provide reasonable grounds for believing the alleged offender to be guilty of the charge against him. (This is different in a court of law where guilt must be proved beyond reasonable doubt).

(i) Not Guilty

If it is considered that the civil servant is not guilty of the alleged offence, then he should be advised immediately of the decision and that no further action shall be taken. In addition, all records of the allegation, the investigation and the hearing should be removed from his personal file.

(ii) Guilty

The civil servant must be advised that the case against him has been proven and permitted to give a plea in mitigation before taking any further action.

g) MITIGATION

Before considering a penalty, the civil servant should be given the opportunity to make a plea in mitigation.

h) PENALTY

Each disciplinary case must be considered on its merits but ensure that the penalty is reasonable in all the circumstances and that it is within your limits of authority.

Take into account -

i) the gravity of the offence
ii) any guidance which may be available
iii) the penalty applied in any similar previous cases
iv) the civil servant's general record, position and length of service
v) any mitigating circumstances which might make it appropriate to lessen the severity of the penalty.

The penalties are listed at Regulation B7. (If the proposed penalty is outside your limits of authority refer the matter quickly to your immediate superior. If you are not sure of your limits of authority within the procedure find out from your immediate superior without delay). Inform the civil servant orally of the penalty and of his right of appeal.
i) **WRITTEN NOTIFICATION**

*Always* confirm the disciplinary penalty in writing, specifying the process for lodging an appeal. This must be done as soon as possible after the conclusion of the hearing.

j) **APPEALS**

A civil servant has a right of appeal against any disciplinary penalty, including dismissal and such appeal shall be dealt with speedily.

Regulations **B12 - 15** detail the right of appeal and the procedures for submitting an appeal.

k) **RECORDS**

Keep a confidential record of the disciplinary action taken for future reference and indicate to the civil servant how long the record will be kept on his personal file.

**Administration**

In the interests of consistency, all formal warnings (written and oral) should be kept on file normally for 12 months and then disregarded **for disciplinary purposes** if there has been no repetition, but this may be extended to 18 months in the case of a final written warning. Exceptionally, if the circumstances warrant it, a longer period could be appropriate.

**Monitoring**

As the purpose of a disciplinary procedure is not to be punitive but to ensure that civil servants achieve and maintain the standards of conduct expected of them, improvement should be actively encouraged and progress should be monitored regularly, being discussed with the civil servant.
THE CIVIL SERVICE DISCIPLINARY PROCEDURES - FLOWCHART

This flowchart is only intended to give an overview of the disciplinary procedures which are given in full at Section B of the Civil Service Regulations. The letters in brackets relate to the relevant part of the disciplinary procedures contained within Annex B2 to which you MUST refer.

INVESTIGATION 2 (a)
An Investigation must be conducted to gather all the facts.

CONSIDERATION 2 (b)
Are the facts clear? Is there sufficient evidence to suggest misconduct?

YES

INFORMAL ACTION 2 (c)
Formal procedures not required

NO

FORMAL ACTION 2 (d)
If the civil servant is an official of the Recognised Staff Association, firstly refer to Reg B5.

Do not reach any conclusions.
Amended March 2008 – Amendment No 08-001

FORMAL DISCIPLINARY HEARING 2 (e)
Arrange and conduct a disciplinary hearing.

Do not reach any conclusions

DECISION 2 (f)
Are there reasonable grounds for believing that the officer is guilty of the alleged offence(s)?

NOT GUILTY

2 (f)(i)
Advise civil servant orally and in writing

GUilty

MITIGATION 2(g)
Allow a plea in mitigation

PENALTY 2(h)
Make sure that you have the authority to give the chosen penalty.

WRITTEN NOTIFICATION 2(i)
Advise in writing of the penalty and his right to appeal

APPEALS 2(j)
The appeal procedure is detailed at B12 - 15 of the Civil Service Regulations.

RECORDS 2(k)
Keep a confidential record of the action taken

NO FURTHER ACTION 2 (b)(i)
Advise civil servant that there is no evidence and no further action will be taken.

Refer to Regs B41 – B57

Is there a capability issue?

YES

NO
3. CRIMINAL OFFENCES WITHIN OR OUTSIDE OF EMPLOYMENT

a) In all such cases, managers should read the Guidance Note, *Criminal Proceedings* in the Civil Service Regulations Handbook. You may also wish to seek advice from a HR Adviser in the Office of Human Resources.

b) These should not be treated as automatic reasons for dismissal regardless of whether the offence has any relevance to the duties and responsibilities of the civil servant. The main considerations should be whether the offence is one that makes the individual unsuitable for his type of work, unacceptable to other civil servants, or his continued employment would be damaging to the reputation of the department in which he works.

c) A civil servant should not be dismissed solely because a criminal charge against him is pending or because he is absent from work through having been remanded in custody.

d) However, where a criminal charge has been preferred, the Accounting Officer is not obliged to await the outcome of the prosecution before taking action which is fair and reasonable in all the circumstances and provided a proper investigation can be carried out, it is usually better to deal with the disciplinary matter rather than await the outcome of criminal proceedings which may be protracted.

e) Where a serious case against a serving civil servant is being heard in a criminal court, the Accounting Officer should arrange, wherever practicable, for an appropriate officer to be present in court as an observer so that he can produce a report for use in any subsequent internal disciplinary proceedings.

f) When a civil servant is acquitted of a criminal charge or when, a prosecution is abandoned, subsequent disciplinary proceedings should not seek to prosecute the same offence.

**FURTHER ADVICE**

The HR Advisers in the Office of Human Resources are available to provide advice and guidance to managers on the operation of the disciplinary procedures.

Please do not hesitate to seek immediate help or advice if you need it at any stage of the procedures.