



**Isle of Man
Government**

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Public Services Commission Disciplinary Procedures

Office of Human Resources

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1. INTRODUCTION

The Disciplinary Procedure is designed to encourage employees to achieve and maintain the standards of conduct expected, in a manner which is consistent and fair.

2. SCOPE

- 2.1. This Disciplinary Procedure applies to individuals employed under the following terms and conditions:
 - a) Public Services Commission Civil Service,
 - b) Public Services Commission Manual And Craft Employees.
- 2.2. The Disciplinary Procedure applies to all employees including those on probation and bank, casual and relief who are employees, but does not cover agency staff¹.
- 2.3. The Office of Human Resources (OHR) and relevant Department, Board or Office Privacy Notices describe how personal information about an employee is collected and used during and after their working relationship within the Isle of Man Government and what legal basis there is for gathering and retaining that information in accordance with the Data Protection Act 2018 including the General Data Protection Regulation. For further details about the information collected and retention periods, please refer to the Office of Human Resources and relevant Department, Board or Office Privacy Notices which are incorporated in to this procedure by reference.
- 2.4. Information generated and collated during the application of these procedures maybe disclosed (appropriately redacted) as part of a Subject Access Request.
- 2.5. Courts and Tribunals may order disclosure of documents, irrespective of whether or not they are confidential. These will be redacted where permitted.
- 2.6. In order to comply with GDPR legislation, employees who wish their personal data to be shared with their union representative are required to provide written consent to OHR.

3. PURPOSE

The purpose of the Disciplinary Procedure is to:

- 3.1. Let employees know what is expected of them in terms of standards of conduct and behaviours and the likely consequences of failure to meet those standards;²
- 3.2. Provide managers with a framework and guidance to improve poor conduct and/or behaviours;

¹ See guidance notes which accompany these procedures

² Where appropriate, Employees should also be made aware of other policies which refer to standards of conduct and behaviour, e.g. Code of Conduct for Public Servants, Electronic Communications and Social Media Policy

- 3.3. Support the employee to achieve the expected standards of conduct and or behaviours.

4. KEY PRINCIPLES

The following principles will apply to the application of this procedure:

- 4.1. **Informal Resolution** - Managers are responsible for addressing conduct and behaviour issues as early as possible and for taking appropriate action. Where appropriate, steps will be taken to resolve issues on an informal basis without recourse to the formal procedure. If informal action does not bring about an improvement, or the misconduct is considered too serious to be classed as minor, the formal procedure should be followed.
- 4.2. **Investigation** – It is important to carry out necessary investigations of potential disciplinary matters before any formal disciplinary action is taken. Where an investigation is undertaken under another procedure (e.g. Fairness at Work) the contents of the investigation report will be used as part of this process.

The standard witness statement template should be used and this can be found at <https://hr.gov.im/media/1209/ioappendix-4c-witness-statement-oct-2020.pdf>

- 4.3. **Nature of allegations** – The employee against whom an allegation has been made shall be advised in writing of the nature of the allegations made against them and will be given the opportunity to state their case as part of the investigation before any decision is made as to whether or not disciplinary action is taken.
- 4.4. **First breach of discipline** -Dismissal will not be a sanction for a first breach of discipline except in the case of gross misconduct.
- 4.5. **Confidentiality** – All parties involved in these procedures must ensure that they maintain, as appropriate, the confidentiality of the process within and outside Government.

Any breaches, by any party may in themselves constitute a disciplinary offence.

- 4.6. **Involvement of Human Resources** – OHR is available to provide advice and support and will advise on precautionary suspension, investigation and the formal procedure, as required. OHR may also be consulted and may also be invited to attend meetings to advise on procedural matters and employment legislation. Managers and employees may seek advice from the OHR at any stage in the procedure.

- 4.7. **Timescales** - Whilst every endeavour will be made to comply with timescales, due to the complexity and / or specific circumstances of cases, timescales may be extended. In such circumstances the employee will be advised in a timely manner of the reasons for any delay.

5. RIGHT TO BE ACCOMPANIED

- 5.1. At each stage of the formal process, including the investigation interview, the employee should be advised of their right to be accompanied by a work colleague or trade union/staff association representative when invited to any meetings or hearings.³
- 5.2. There is no right to be accompanied by a legal representative other than in cases where the allegation is such that in addition to the risk of dismissal, the employee would also be at risk of being prohibited from working within their profession or with young or vulnerable people.
- 5.3. It is the employee's responsibility to arrange for a work colleague or trade union/staff association representative to attend meetings/hearings with them and to ensure that the person they choose to accompany them is available to attend such meetings.
- 5.4. Reasonable adjustments may be needed for an employee with a disability (and possibly for their companion if they are disabled). For example the provision of a support employee with knowledge of the disability and its effects.

In some cases, it might be appropriate, with the agreement and involvement of the employee, to seek professional medical advice or guidance as to how the disciplinary process can proceed fairly.

6. THE PROCEDURE

6.1 INFORMAL PROCEDURE

- 6.1.1 Line managers and supervisors should develop and foster trusting relationships with their employees to enable them to discuss freely any issues that arise.
- 6.1.2 As soon as it is identified that an employee's conduct or behaviour(s) may be falling below the required standards, the issue should be discussed and addressed as soon as possible by informal one-to-one discussions between the employee and their line manager without using the formal procedure. The employee should also be given an opportunity to give any reasons for the alleged issue/shortfall. An informal oral warning may be issued at this stage and a note of this kept on the employee's file.
- 6.1.3 If informal discussions are not successful in bringing the employee's conduct/behaviour up to the required standard, or if the allegation is of a more

³ See guidance notes for detailed guidance on the Right to be Accompanied

serious nature⁴, then formal Disciplinary Procedures should commence. Alleged Gross misconduct must be dealt with via the formal disciplinary procedures.

- 6.1.4 The format of the investigation will depend upon the nature of the allegation(s). A template for an Investigation Report is contained on the OHR website: <https://hr.gov.im/media/1452/roleininvestigatingoffmodelin.pdf>
- 6.1.5 The Investigating Officer conducting the investigation should have no previous direct involvement in the matter, although they may have been aware of its existence.

6.2 FORMAL PROCEDURE

- 6.2.1 Where the investigation report concludes that there is insufficient evidence to support the allegation(s) made, the employee should be advised in writing that no further action will be taken under the Disciplinary Procedures in respect of the alleged offence(s).
- 6.2.2 Where a formal allegation of gross misconduct is made in writing, it is essential that an investigation is undertaken to establish all relevant facts and whether there are grounds for the matter to proceed to a disciplinary hearing. The investigation should also identify any possible mitigating circumstances which should be taken into consideration.
- 6.2.3 Where the investigation report concludes that there is sufficient evidence to support the allegation, a disciplinary hearing must be convened. If a hearing is convened, the individual should receive a copy of the investigation report.
- 6.2.4 The employee must be informed in writing of the specific nature of the allegation, the relevant policy⁵ / procedure / code / legislation that applies, the scope of the investigation and possible next steps following completion of the investigation. The manager receiving the allegation (the Designated Manager) will advise the employee as to who will be responsible for dealing with the different stages of the Disciplinary Procedure, or any other actions taken instead to encourage and support the employee.

6.3 PRECAUTIONARY SUSPENSION⁶

- 6.3.1 This section does **not** apply where an employee is suspended as a disciplinary penalty.
- 6.3.2 Precautionary Suspension is a neutral act and should not be seen as an indication of the outcome of an investigation, hearing or appeal.

⁴ Such as alleged Gross Misconduct

⁵ For example Code of Conduct for Public Servants, Fairness at Work Policy, Whistleblowing Policy and Electronic Communications and Social Media Standards and Guidelines. For a comprehensive list see <https://hr.gov.im/policies-procedures-codes-guidance-and-forms/>

⁶ Detailed guidance in respect of suspension can be found in the guidance notes which accompany these procedures

6.3.3 Suspension should never be an automatic approach for a manager when dealing with a potential disciplinary matter.

Most disciplinary procedures will not require suspension. An employee will usually be able to continue doing their normal role while the matter is investigated.

Suspension should usually only be considered if there is a serious allegation of misconduct and:

- the employee is at risk by other employees, or customers,
- working relationships have severely broken down,
- the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation,
- there is a risk to other employees, property or customers,
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

6.3.4 The decision to precautionary suspend will be taken by a Senior Manager⁷ after consultation with OHR. Any suspension must be followed up in writing to the employee after they are notified of the suspension.

6.3.5 The employee has the right to be accompanied at any suspension meeting.⁸

6.3.6 Suspension should not continue for any longer than necessary and should be reviewed on a regular basis to ensure it remains an appropriate course of action.

6.3.7 A suspension may not take place initially due to the risk assessment at the time but can be enacted later during the disciplinary process.

6.3.8 During any suspension period there must be regular monitoring of the progress of the investigation and contact with the employee will be maintained by their line manager/or agreed person.

6.3.9 The employee must be provided with a point of contact during their period of suspension.

6.3.10 Any suspected financial irregularities should be reported to the Director of Advisory Audit.

6.3.11 Suspension should be kept under regular review and may be extended if a decision is taken to await the decision of a court of law in relation to an alleged breach of the law, or where it is impractical to conclude a full investigation and/or arrange a disciplinary hearing within this period of time.

⁷ PSC CS Grade SEO/Pay band 25 or equivalent and above and that the individual has the delegated authority to suspend an employee.

⁸ See guidance notes for further details

- 6.3.12 Suspension can be lifted at any time and disciplinary action at a lower stage can still take place. Should a suspension be lifted this must be confirmed in writing to the individual.
- 6.3.13 Managers need to ensure that employees are fully aware of the services of Staff Welfare.

6.4 CRIMINAL OFFENCES

- 6.4.1 If a PSC employee is arrested, charged with, or found guilty of any criminal offence they must report the matter to their Head of Department without delay. An exception is a traffic offence for which the penalty did not include imprisonment or the suspension of his driving licence.
- 6.4.2 A clear distinction must be drawn between allegations which may lead to criminal proceedings⁹ and those which, although so serious that they may constitute gross misconduct and lead to the dismissal of the offender, are not of a criminal nature.
- 6.4.3 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the organisation (examples can be found in Appendix 1). In the event that an employee is found to have committed an act (s) of gross misconduct, the Accounting Officer (or delegate) will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.¹⁰
- 6.4.4 In any case, where preliminary enquiries give grounds for believing that a criminal offence may have been committed, or if there is any doubt about whether a possible criminal offence has been committed, the advice of the Attorney General and OHR must be sought immediately. The Secretary of the Public Services Commission and/or Accounting Officer, as appropriate, should be informed and if public funds are involved the Director of Audit Advisory Division should also be notified¹¹.
- 6.4.5 Any other allegations should be investigated and dealt with using the disciplinary procedures providing no evidence is forthcoming during the investigation that a criminal offence may have been committed. If it appears that a criminal offence may have been committed in addition to the alleged disciplinary offence which is being considered then, after consultation with the Attorney General, the disciplinary offence may be dealt with and the employee informed that the question of prosecution will be considered independently. Conversely it may be necessary to suspend disciplinary proceedings until such time as criminal investigations/proceedings are completed.
- 6.4.6 Where the investigation report concludes that there is insufficient evidence to support the allegation(s) made, the employee should be advised in writing that no

⁹ Eg Safeguarding issues

¹⁰ Although the employer may be justified in dismissing an employee without notice following an incident of gross misconduct, the employer should first investigate the circumstances thoroughly and carry through a disciplinary procedure before it reaches any conclusion that the employee is guilty of gross misconduct. If an employer fails to do this, the dismissal is likely to be unfair, irrespective of the seriousness of the employee's misconduct.

¹¹ [See Isle of Man Government Financial Regulation FPN A.03](#)

further action will be taken under the disciplinary procedures in respect of the alleged offence(s).

- 6.4.7 Where criminal offences have an impact on the ability of the individual to undertake their role (eg removal of driving licence following drink driving charge for which driving is essential for the role) it may be appropriate to commence capability procedures.

6.5 DISCIPLINARY HEARING

- 6.5.1 The purpose of the hearing is to consider if the case is supported and what disciplinary sanction, if any, is appropriate when all of the evidence of the case has been heard.
- 6.5.2 It is the commissioning manager's decision to proceed to a hearing based on findings of the investigation report.
- 6.5.3 For all hearings which may lead to dismissal,¹² the initial hearing will be heard by a panel of three managers (or at least a minimum of two in exceptional cases) who are at least grade SEO/Pay band 25 (or equivalent) or above and who normally must be at least two grades higher than the person appearing before the hearing. No more than two managers on the panel can be from the same Government Department, Board or Office, and at least one must always be an independent representative from a different Government Department, Board or Office.

When inviting an employee to attend a hearing regarding an allegation of (gross misconduct) the employee must be made aware that an outcome could be summarily dismissal without notice or pay in lieu of notice in cases constituting gross misconduct.

The employee must be provided, at least 5 working days in advance, with all documentation relating to the allegation and the investigation and offered the opportunity to provide further information relevant to the hearing.

- 6.5.4 The employee should be advised that they can call witnesses, however the Hearing Officer should be made aware of any witnesses to be called prior to the hearing.
- 6.5.5 During the hearing the employee will be given the opportunity to give an explanation, answer questions and offer details of any mitigating circumstances.
- 6.5.6 If any new facts emerge during the hearing, the hearing may be adjourned for further investigation and then reconvened. Once all the evidence has been presented, the hearing should be adjourned whilst the Panel make a decision.

¹² Gross Misconduct and stage 3 hearings

6.5.7 It is a matter for the hearing officer to determine how to conduct the hearing. It is the hearing officer who will decide who they wish to hear from in evidence and in similar vein who or should not be present when that evidence is taken. In a situation of a vulnerable witness it will be the hearing officer who will decide acting reasonably, irrespective of the view of the Respondent or union representative, what protection to afford the vulnerable witness. The Hearing Officer must be mindful of finding a balance between protecting a vulnerable witness and allowing for a fair hearing for the employee.

6.5.8 Circumstances under which hearing may be held in employee's absence:

Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the hearing officer, after seeking the advice of OHR, should make a decision based on the evidence available. Therefore, the Hearing officer should investigate the employee's reason for non-attendance, and reschedule the meeting at least once, however it may be necessary to reschedule on further occasions, depending on the circumstances.

Should the hearing officer determine that the hearing should go ahead, they should advise the employee that there is no alternative but to make a decision based on the evidence available in their absence.

6.5.9 Vulnerable witnesses

Where cases are of a sensitive nature, arrangements should be put in place such as separate rooms being made available (this maybe at different ends of the building or on different floors).

6.5.10 Hearing Venues

Where cases are of a sensitive nature, Hearing Officers should ensure that the hearing venue provides sufficient space between both parties and any witnesses.

Hearing officers, where they believe it is appropriate, may put additional measures in place to ensure the wellbeing of all parties.

6.5.11 Remote Hearings

Where it is not possible to hold a face-to-face meeting/hearing, disciplinary meetings/ hearings may be held remotely. Management must ensure that employees have access to the necessary technology for participating in the process. Such hearings will not affect the rights of the employee, and management must ensure that the procedure remains fair and reasonable.

6.5.12 Recording of Hearings

Employees and any person acting on their behalf, are not normally permitted to record electronically any meetings/hearings held as part of the disciplinary process. [This is to encourage openness and full participation by all parties during meetings/hearings] Any breach of this provision may lead to disciplinary action, up to and including dismissal.

However, in certain limited circumstances, management may permit meetings/hearings to be recorded electronically (for example where it is a reasonable adjustment for an employee with a disability). Where management permit the meeting/hearing to be recorded electronically, management will take responsibility for making the recording.

6.6 DECISION AND PENALTIES/SANCTIONS

6.6.1 Each disciplinary case must be considered on its merits. The penalty, if any, should be reasonable in all the circumstances.

6.6.2 **Allegation Unsupported / No case to answer**

If it is found at the hearing that there is no case to answer, then the allegation is discharged. This should be conveyed to the individual in writing within 5 working days of the hearing.

6.6.3 **Allegation Upheld**

If it is found at the hearing that there is a case to answer, any mitigating circumstances will be considered and the employee will be issued with an appropriate penalty/sanction, which may be one of the following:

a) Oral Warning

In the case of minor misconduct the first warning will normally be an oral warning.

b) Written Warning

Where an oral warning has been ineffective or where the alleged misconduct is more serious, it may be appropriate to give a written warning.

c) Final Written Warning

Where previous warnings have been ineffective and misconduct continues, or the nature of the offence is of a serious nature a final written warning may be given or other action short of dismissal may be taken, as set out below. Warnings need not be sequential, i.e. a written warning does not need to be given before a final written warning can be considered.

6.6.4 **Other penalties short of dismissal**

For example:

- a) Stoppage of a future increment, or forfeiture of an increment already earned where appropriate, may be considered as an alternative penalty or in addition to another penalty;

- d) An employee who is dismissed for gross misconduct (examples can be found in Appendix 1) may be dismissed without notice or payment in lieu of notice with effect from the date of the decision being communicated.

6.7 APPEALS

- 6.7.1 Employees who have had any disciplinary action taken against them have the right of appeal.
- 6.7.2 The following are examples of grounds for appeal:
 - a) The original hearing was in some way procedurally unfair;
 - b) The penalty imposed was excessive in relation to the conduct issue;
 - c) New information of a material nature has come to light after the original hearing.
- 6.7.3 When lodging an appeal, the employee should state:
 - a) The grounds of appeal; and
 - b) Whether they are appealing against the finding that they committed the act/s of misconduct, or against the level of disciplinary penalty imposed.
- 6.7.4 Appeals, stating the grounds upon which they are based, must be submitted by the employee in writing within 5 working days of the date of the written confirmation of the warning, dismissal or other penalty.¹⁵
- 6.7.5 The purpose of the appeal hearing is to review the decision of the Hearing Officer / Panel, where the employee has grounds for requesting this.
- 6.7.6 An appeal for a disciplinary sanction short of dismissal will be heard either by a senior manager or panel (a Chair and not more than 2 appropriate managers) more senior in authority than those who took the original decision. If all senior officers have had previous involvement in the decision, the appeal must be sent to the Accounting Officer who will appoint another Senior Manager to hear the appeal (either alone or with 2 other appropriate senior managers who have had no previous involvement in the decision being appealed against).
- 6.7.7 Appeals against dismissal shall be notified to the Secretary of the Commission who will arrange for it to be heard by a Panel of three persons, comprising Government employees from a different Department, Board or Office (or a combination thereof), than the one in which the employee is deployed.
- 6.7.8 The Chair of the disciplinary hearing panel/hearing officer will present the Department's case to the Appeal Panel.
- 6.7.9 The Appeal Panel will be drawn from separate lists of "hearing officers" maintained by the Secretary of the Commission and comprising:-

¹⁵ There may be extenuating circumstances where it is appropriate to extend this time frame

- 6.7.9.1 A list of persons to act as Panel Chair, who must be a member of the PSC or Chief Executive
- 6.7.9.2 A list of persons occupying management roles within Government;
- 6.7.9.3 A list of persons occupying any role within Government, serving on the Panel to provide an independent perspective.
- 6.7.10 Persons appointed to the lists of "hearing officers" may self-nominate or, with their consent, be nominated by a third party. Any concerns regarding potential or perceived conflicts of interest should be raised with the Secretary of the Commission acting on the delegation of the PSC to arbitrate and determine such issues, in advance of a hearing and not on the day of the hearing where possible. The Appeal Panel may, at its discretion, seek independent legal advice should it consider this necessary when considering the appeal. The Appeal Panel will, in all cases, be advised by a representative of the Office of Human Resources.
- 6.7.11 All panel members must have completed Independent Appeal Hearing training prior to participating as a panel member.
- 6.7.12 The Appellant shall be given notice in writing at least 5 working days in advance of the time and place of the hearing and shall be allowed to be accompanied by a work colleague or a recognised trade union/staff association representative and shall be entitled to call witnesses and produce documents relevant to their appeal at the hearing.
- 6.7.13 Management should not rely on an appeal to correct earlier failings in the disciplinary process, although a fair appeal may help managers avoid findings of unfair dismissal against them.

Every point of appeal must be addressed and comprehensively responded to in the decision letter.
- 6.7.14 A model procedure for use at the hearing of disciplinary appeals can be found at Appendix 2.

7. DISCIPLINARY ACTION TAKEN AGAINST ACCOUNTING OFFICERS

- 7.1 Where a complaint is made against an Accounting Officer who is a PSC civil servant, provisions of these procedures will apply as appropriate, subject to the following specific modifications:-
 - i. An investigation in accordance with the procedures may be carried out only by an independent person (which can include a senior PSC employee from a different Department, Board or Office) appointed by the Public Services Commission for that purpose;
 - ii. If, following an investigation, it is determined that formal action is required a disciplinary hearing will be conducted by a panel of at least 3 members of the Public Services Commission;

- 7.2 Appeals against a disciplinary penalty shall be considered by a panel of 3 persons appointed by the Chief Minister for that purpose and conducted in accordance with the PSC Independent Appeal provisions.

8 DISCIPLINARY ACTION TAKEN AGAINST MEMBERS OF RECOGNISED TRADE UNIONS

- 8.1 The required standards regarding conduct, attendance and performance apply equally to officials of recognised trade unions. However, no disciplinary action beyond a formal oral warning should be taken against such an official until the circumstances of the case have been discussed in general terms by an appropriate manager with a senior trade union representative or full-time official of the recognised trade union.
- 8.2 In respect of the recognised Trade Unions for PSC employees, the Secretary of the PSC should also be informed.

9. RELATIONSHIP OF DISCIPLINARY PROCEDURE WITH OTHER PROCEDURES

- 9.1 The Disciplinary Procedure deals with an employee's conduct and should not be confused with the Capability Procedure which relates to the skills, aptitudes, mental or physical health or attendance at work of an employee. A clear distinction must be drawn between lack of skill or ability and misconduct. The latter normally involves a measure of wilfulness for which some form of action under the Disciplinary Procedure may be appropriate.
- 9.2 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance.
- Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.
- 9.3 Sometimes an employee may raise a grievance, or complaint, connected to the case during the course of a disciplinary procedure. In these circumstances the case should continue in parallel and any issues should be raised through either the Grievance or Fairness at Work procedures. If the Grievance or Fairness at Work complaint is upheld then the disciplinary process may take this into consideration. In some cases the grievance may recommend that the disciplinary process is not progressed and where the procedures are running concurrently, any dismissal should not occur before any outstanding grievance or complaint connected to the disciplinary is concluded. This should only be relevant if there is a direct link between the disciplinary and the grievance/complaint.

10. RETENTION OF DOCUMENTATION

- 10.1 Confidential records of any Disciplinary Procedures and the outcomes will be kept by the Office of Human Resources in accordance with its document retention procedure.

11. PSC FAST TRACK DISCIPLINARY PROCEDURES

- 11.1 It may be appropriate, on occasions, to use the PSC Fast Track Disciplinary Procedure. The Fast Track Procedure applies to PSC employees, employed under PSC Civil Service, PSC Manual & Craft and PSC NTNSP terms and conditions. However, this procedure can only be applied when an employee consents to its use.

<https://hr.gov.im/media/1880/psc-fast-track-disciplinary-procedure-final.pdf>

- 11.2 The Fast Track Disciplinary Procedure is designed for use in cases of alleged misconduct that do not constitute gross misconduct and therefore dismissal would not be considered as a potential penalty. In such cases, when the employee does not wish to contest the allegations, the employee may opt to have their case dealt with by way of this Fast Track process.

APPENDIX 1 – ACTS WHICH CONSTITUTE GROSS MISCONDUCT

A PSC employee may be summarily dismissed without notice or payment in lieu of notice by the Public Service Commission in cases constituting gross misconduct. The following list, which is not exhaustive, contains examples of actions which may be regarded as gross misconduct. This list is not intended to be fully comprehensive, or inclusive of all matters which might lead to dismissal or disciplinary action under the terms of the Disciplinary Procedure:-

- a) Stealing from the organisation, members of staff or the public and other offences of dishonesty;
- b) Fraud (including fraudulent clocking offences, falsification of records, accounts, expense claims, self-certification forms, and qualifications that are a stated requirement of the employee's employment or results in financial gain to the employee);
- c) Sexual misconduct at work;
- d) Obscene behaviour;
- e) Fighting with or physical assault, or threats of the same, on members of staff or the public;
- f) Bullying, harassment /victimisation and or inappropriate behaviour
- g) Wilful damage to, misuse of, or negligence in respect to the organisation's property, facilities or equipment, or unauthorised use of the same;
- h) Intoxication induced by alcohol or illegal drugs (not prescribed by a medical practitioner) while on duty or liable to be called for duty;
- i) Criminal conviction arising from an offence committed within or outside of normal working hours and where the offence is of a nature so as to render the employee unsuitable for the type of work employed or unacceptable to other employees;
- j) An offence of unlawfully possessing controlled or illegal drugs will be deemed in all cases to be an offence as described in h) above;
- k) Serious breach of the organisation's rules, including, but not restricted to, health and safety rules, rules on computer use, Data Protection rules, Breach of Financial Regulations;
- l) Discrimination or harassment of a fellow employee on the grounds of gender, sexual orientation, race, disability, age, religion or belief;
- m) Deliberately ignoring health and safety at work rules and thereby endangering own or another's physical well-being, or risking unacceptable loss or damage;
- n) Conduct by word or deed detrimental to the public service;
- o) Wilful disobedience of reasonable instructions;
- p) Deliberate unauthorised disclosure of confidential information obtained by virtue of employment; e.g. tenders, medical records, staff references etc. except where these are 'protected disclosures';
- q) Where proven harassment, discrimination or bullying amounts to gross misconduct¹⁶

¹⁶ The aim of any action or procedure is to bring about an improvement in behaviour, however dismissal without notice, after investigation and hearing, may be appropriate where proven harassment, discrimination or bullying amounts to gross misconduct.

APPENDIX 2 – MODEL PROCEDURE FOR USE AT THE HEARING OF DISCIPLINARY APPEALS

The person or body ("the appellate body") considering an appeal against a disciplinary penalty (other than dismissal) shall use the following model procedure which may only be modified if there are good reasons for doing so:-

The appellate body shall have power to determine the appeal. Where a Committee is appointed it will comprise not more than 3 persons none of whom have been involved in handling the case previously.

The officer ("the appellant") shall be given notice in writing at least 5 working days in advance of the time and place of the hearing and shall be allowed, if they wish, to be accompanied by a "friend" of their choice (who may be either a work colleague or a staff association representative) and shall be enabled to call witnesses and produce documents relevant to their defence in advance of or at the hearing. The appellant may also be advised in advance of the hearing of the procedure to be used at the hearing.

The manager against whose decision the appeal has been lodged ("the manager") shall be given at least 5 working days notice in writing of the time and place of the hearing and may be advised of the procedure to be used at the hearing.

At the hearing, the manager shall put the case in the presence of the appellant (and their friend) and may call witnesses.

The appellant (assisted by their friend) should be given the opportunity to ask questions of the manager on the evidence given by them or any witnesses who they may call.

The appellate body may ask questions of the manager and any witness(es).

The appellant (assisted by their friend) should put their case in the presence of the manager and should be allowed to call such witnesses as they wish.

The manager should have the opportunity to ask questions of the appellant and their witness(es).

The appellate body may ask questions of the appellant and their witness(es).

The manager and the appellant (assisted by his friend) should have the opportunity to sum up their case if they so wish. The manager and/or the appellant may ask for a short adjournment before summing up, if either wish.

The manager and the appellant (and any friend) and any witness(es) should be asked to withdraw.

The appellate body with the person appointed to act as Chair to the hearing should deliberate in private, only recalling the manager and the appellant to clear any points of uncertainty on evidence already given. (If recall is necessary both parties should return notwithstanding only one is concerned with the point giving rise to doubt).

The appellate body should announce the decision to the parties personally wherever possible and should confirm in writing.

The decision of the appellate body will be final.

APPENDIX 3 – AVOIDING DISCRIMINATION WHEN HANDLING DISCIPLINARY ISSUES

This section looks at how managers can make sure they are not discriminating unlawfully in handling disciplinary issues in the workplace, either formally or informally.

A. DISCIPLINARY PROCEDURES AND CRITERIA

The procedures must be applied fairly, in accordance with employment law, and avoid unlawfully discriminating directly or indirectly against people with protected characteristics.

As a reminder, the nine protected characteristics under Equality legislation are: disability, pregnancy and maternity, age, religion or belief, race, marriage and civil partnership, gender reassignment, sex, sexual orientation.

B. DISCIPLINARY PROCEDURES AND DISABILITY

Under the Equality Act 2017 a person has a 'disability' if the employee has a physical or mental impairment that has a substantial and long-term adverse impact on her or his ability to carry out normal day-to-day activities.

The Equality Act 2017 requires the employer to make 'reasonable adjustments' where:

- an employer's provision, criteria or practices put a disabled person at a 'substantial disadvantage' compared with a person who is not disabled;
- an employer's premises have physical features which puts a disabled person at a substantial disadvantage;
- a disabled employee will be put at a substantial disadvantage if they are not provided.

This also means that if there is something arising in consequence of a disability, the employer must take this into account. For example, taking disciplinary action for someone losing their temper, if that arose as a result of a disability, such as severe pain caused by cancer, may be discriminatory. Discrimination can occur if the employer knows, *or ought to have reasonably known*, about the disability.

Any hearings or meetings connected with this procedure should be conducted in such a way as not to disadvantage an individual with a protected characteristic, such as disability. For example, allowing someone with a learning disability to be accompanied by a friend who does not work with them, or allowing someone with a stammer sufficient time to express themselves.

An employee who is not able to take their own notes of a meeting due to a physical or mental impairment that prevents them from doing so may ask for an audio recording of the meeting as an alternative, however managers should refer to the guidance notes that accompany this policy¹⁷

¹⁷ See guidance for additional information

C. DISCIPLINARY PROCEDURES AND MATERNITY

There is nothing to prevent an employer taking disciplinary action against an employee during pregnancy or maternity leave provided that care is taken to avoid discrimination and that the disciplinary action is appropriate in all the circumstances. The action must not be taken for a reason related to pregnancy, childbirth or absence on maternity leave and an employee absent on maternity leave must not be disadvantaged.

If an employee's performance at work during pregnancy is affected by pregnancy-related sickness or tiredness during pregnancy, it would be discriminatory to take disciplinary action against her. Any pregnancy-related sickness absence should be recorded separately on an employee's sickness record and should not be taken into account for disciplinary purposes.

If a disciplinary hearing is held, due consideration should be given to any difficulties the employee may have in attending the hearing, particularly if she is on maternity leave, and if the individual is unwell, it would be necessary to wait.

Any action taken which disadvantages a breast-feeding employee outside of the maternity period could be classed as sex discrimination, so the employer must make reasonable adjustments in such instances.

D. DISCIPLINARY PROCEDURES AND OTHER PROTECTED CHARACTERISTICS

In applying the disciplinary procedures, managers should take care to ensure that they are not discriminating against people with other protected characteristics. Examples include:

- Ensuring who have a poor command of English, have access to an interpreter if necessary.
- Applying the procedures equally to people of all ages and not making assumptions about conduct and/or behaviour dependent on age.

If in doubt, advice should always be sought from the Office of Human Resources.

