

## SUSPENSION AND SELECTION OF CIVIL SERVANTS TO INVESTIGATE AND HEAR ALLEGATIONS OF SERIOUS MISCONDUCT

There have been developments in the application of employment law in respect of serious misconduct cases in recent years which effect the use of suspension and the selection of officers to both investigate and hear allegations of serious misconduct.

Details of current good practice in respect of these areas are set out below. This is general guidance and should be read in conjunction with the disciplinary procedures applying to the employee against whom the allegation has been made. If there is any conflict between the general guidance and the procedures further information and advice is available from the Office of Human Resources.

### **SUSPENSION - SUSPECTED GROSS MISCONDUCT**

In cases of suspected gross misconduct it is normal practice to immediately suspend the employee pending investigation and a formal hearing if the investigation justifies this being held. Generally this has been applied on the basis of "if in doubt suspend" on the grounds that the suspension: -

- is precautionary only and does not prejudge the outcome of the disciplinary process;
- it confirms that the alleged misconduct is unacceptable to the employer and dismissal could be an appropriate penalty if it is found that the employee has committed the offence and there are no mitigating circumstances which warrant a lesser penalty being applied;
- it removes the employee from the workplace so that he/she does not have the opportunity to interfere with records relevant to the investigation or to work with other staff who may provide evidence in respect of the allegations.

In recent cases locally and in the UK there have been complaints from staff representatives that immediate suspension was not justified and caused the employee unnecessary stress. Generally these are in cases where the subsequent disciplinary process has resulted in no formal action being taken after the disciplinary investigation; or have identified that the alleged offence was not one of gross misconduct.

In such cases it has been argued that: -

- a brief preliminary investigation would have established that suspension was not justified; or
- on balance, the risk to the employer of continued employment and the evidence available did not warrant suspension.

Case law and the ACAS Code confirm that suspension is not required in every case. And that it is not appropriate, save in obvious cases, to draw an inference that the offence was not serious simply because the employee was not suspended.

Suspension from duty can be stressful and can contribute towards an officer being certified as being unfit for work due to stress related illness. Clearly this should be avoided wherever possible and managers are advised to consider the facts of the case carefully before formally suspending an employee under the provisions of the disciplinary procedures. Issues to be considered include:-

- What rule is the employee alleged to have broken?
- Is it clear that the allegation is one of gross misconduct?
- Has the employee been made aware of the rule?
- What explanation has the employee given for the action? *Note: An explanation can usually be sought to determine whether formal disciplinary proceedings should commence although, in some cases (e.g. alleged fraud against the employee) it may be not be appropriate to conduct a preliminary interview. This is a preliminary discussion only, if it is decided that a formal investigation is required the officer must be advised of this, the allegation against him/her and a further interview held to obtain information for the investigation report.*
- What evidence is readily available in respect of the allegation which may assist in making the decision? For example witnesses, rules and procedures; documents relating to the allegation (e.g. time sheets) etc.
- Is there a risk of the misconduct being repeated if the employee is allowed to remain at work? If so could the employee be allocated other duties or restricted duties pending the outcome of the investigation?
- Is there a risk of the employee amending or destroying evidence relevant to the alleged offence or seeking to influence potential witnesses if he remains at work?

It will normally be possible to remove the employee from the work place for a short period without the use of formal suspension to allow time for the above issues to be considered, or for advice to be sought. For example send the employee home if the incident involves an emotional outburst or he/she appears to be under the influence of alcohol or drugs (making suitable arrangements for their welfare depending on the degree of incapacity); or to an office away from the normal place of work. If the employee goes home the absence can be dealt with as some form of leave (annual, flexi, special or sick leave if they are ill) on their return.

If it is decided that the employee should be suspended he/she should be advised of the suspension, the reason for it and any terms applying during the period of suspension. The decision should be confirmed in writing. A copy of a [model letter](#) for use in such cases is attached. **If it becomes evident during the course of the subsequent investigation that the allegation is not one of gross misconduct the suspension should be lifted immediately.** This would not preclude the investigation continuing and disciplinary being taken if a disciplinary offence which does not justify dismissal is found to have been committed. The employee should be given written confirmation that the suspension is being lifted and of what further action is to be taken (e.g. no action or further investigation/hearing into an allegation of misconduct which is not gross misconduct).

**If it is decided that the employee should not be suspended but the subsequent investigation provides evidence that suspension is appropriate he/she should then be suspended in the normal way** pending the outcome of the investigation and any subsequent hearing.

## **INVESTIGATION AND HEARING**

Where there is an allegation of serious misconduct it is recommended that, where possible:-

- The investigation is conducted by an officer who is **not** directly involved in the management of the employee against whom the allegation has been made (e.g. the line manager or his/her manager).

NOTE: This is designed to avoid any challenge that the manager may not be impartial. This can arise if the manager was a witness or has other information relevant to the investigation (e.g. whether the employee had been made aware of the rules, information on previous conduct etc) or if the manager has previously taken action (e.g. capability procedures), which may be claimed to have influenced his/her conduct of the investigation.

- The Officer hearing the case should not be: -
- the investigating officer; **or**

NOTE: This is designed to avoid any challenge that the officer hearing the case cannot be impartial because he/she has conducted the investigation and concluded that there is sufficient evidence to justify a hearing.

- an officer who is directly involved in the management of the employee concerned.

NOTE: for the same reasons that they should not investigate the allegation

The above does not apply in dealing with minor instances of misconduct where the facts of the case are not in dispute (e.g. persistent poor timekeeping) where it is appropriate for line managers to conduct both the investigation (which is likely to be brief and the evidence conclusive) and the hearing. Notes on the [Role of the Investigating Officer](#) can be found in the Civil Service Handbook.