

## PROPOSED AMENDMENT TO THE PSC Manual & Craft MOA 2015

<b>Ref:</b>	<b>PSC 15-129</b>
<b>Re:</b>	<b>M&amp;C MOA Appendix 7 (Disciplinary Procedures)</b>
<b>Proposal:</b>	<b>To amend the MOA in line with the harmonisation of the PSC CS and PSC M&amp;C Disciplinary Procedure</b>
Existing Regulation:	
<b>Disciplinary procedures</b> A) Aim   B) Scope   C) Principles   D) Procedure (a) Stage 1 - Oral warning   (b) Stage 2 - Written warning   (c) Stage 3 - Final written warning   (d) Stage 4 - Dismissal   (e) Gross Misconduct   (f) Suspension   (g) Recognised Trade Union lay officials   (h) Appeals   (i) Model procedure for use at hearing of appeals against dismissal or other serious disciplinary action	
<b>A) Aim</b>	
<ol style="list-style-type: none"><li>1. These procedures are concerned with emphasising and encouraging improvements in individual conduct. Their aim is to ensure that the standards of conduct, attendance and job performance expected of employees are observed by providing a method of dealing with alleged breaches and deficiencies in a manner which is consistent and scrupulously fair</li><li>2. <b>It is important that all employees should know what standards of conduct are expected of them</b> and it is important that disciplinary cases are considered against a full understanding of any relevant personal, domestic or social circumstances</li><li>3. <b>It is also important and a requirement of the Employment Act 2006 that staff are told who will be responsible for dealing with the different stages in the disciplinary procedures and to whom they can apply if dissatisfied with any discipline decision affecting them.</b> (For guidance, it is suggested that the immediate supervisor should deal with Stages 1 and 2; a more senior manager should deal with Stage 3; and an appropriate more senior officer designated by the Chief Officer (or the Chief Officer himself) should be responsible for Stage 4 and <b>all cases of gross misconduct</b>).</li></ol>	
<b>B) Scope</b>	
<ol style="list-style-type: none"><li>4. These procedures will apply to all Public Services Commission Manual and Craft Workers. In the interests of simplicity, the masculine pronoun is used throughout but the procedures apply equally to male and female employees</li></ol>	
<b>C) Principles</b>	
<ol style="list-style-type: none"><li>5. If a complaint is made against an employee he must be made aware of it and the investigation procedures that will follow When the investigation has been completed, the nature of the complaint should be confirmed (in writing) to the employee and he should be given the opportunity to reply to it, in writing if he so wishes.</li><li>6. No employee will be disciplined unless and until the complaint made against him has been fully investigated and the procedures followed</li></ol>	

7. At every stage in the formal procedure the employee should be advised of his right to be accompanied by a recognised union representative, shop steward or other representative during the disciplinary interview. If a complaint is proven, the employee should be given the opportunity to make a plea in mitigation before a penalty is awarded.
8. No employee should be dismissed for a first breach of discipline except in the case of gross misconduct (**see E below**) when the penalty may be summary dismissal without notice or payment in lieu of notice.
9. Where an allegation of **gross misconduct** is made against an employee consideration must be given to suspending the employee with pay (**see F below**.) while the matter is investigated. Normally, in such circumstances, the period of such suspension should not exceed 10 working days but it may be extended if it has been decided to await the decision of the Courts in relation to an alleged breach of the law.
10. An employee will have a right of appeal against any disciplinary penalty imposed to an individual or body higher than that taking the disciplinary action.
11. The procedure may be implemented **at any stage** if the employee's alleged misconduct warrants such action.
12. Where an employee is warned about his future conduct or performance he should be given a specified period in writing in which to meet the required standard and his conduct or performance (as the case may be) should be monitored carefully throughout that period.
13. Should any disciplinary action be reconsidered and effectively withdrawn, any written reference to it should be removed **from the employee's personal file** and the employee notified accordingly.

#### **D) Procedure**

14. Except in the case of minor faults or incidents, which should be dealt with **informally and promptly**, usually by the immediate supervisor or line manager, the following formal procedure will be used:

##### **(a) Stage 1 - Oral warning**

If the conduct or performance of an employee has been found not to meet acceptable standards, the employee should be seen by his supervisor or first-line manager, accompanied by a recognised union representative or other representatives, if he wishes, and given the opportunity to give an explanation;

If the complaint is proved, the employee:

- should be given a formal **oral warning** by the appropriate supervisor and advised of the reason for it
- may be informed of the reason for the warning in writing if the employee requests it
- should be advised that it is the **first stage** of the disciplinary procedure

- should be advised of his right of appeal, the right to be accompanied if he wishes by a recognised union representative or other representatives, how to make it and to whom
- should be told that a record will be kept of the oral warning; that his conduct and performance will be monitored; and also told of the period of satisfactory conduct and performance after which the warning will be disregarded for disciplinary purposes
- should be advised that the commission of a similar act, or of a subsequent different offence, may result in further disciplinary

**(b) Stage 2 - Written warning**

If the alleged offence is a serious one, or there is a repetition of an earlier offence, or a further offence is alleged to have been committed during the currency of an earlier oral warning, the employee should be seen by his supervisor or first-line manager (or other more senior manager, if appropriate), accompanied by a recognised union representative or other representative, if he wishes, and given the opportunity to give an explanation

If the complaint is proved, the employee:

- should normally be given a **written warning** by the appropriate manager specifying the reasons for it, details of the complaint, the improvement required and over what period of time his conduct and/or performance will be monitored and the improvement will be expected
- should be advised in writing that this is the **second stage** of the disciplinary procedure and that action under the third stage will be considered if there is no satisfactory improvement within the above timescale
- should be advised of his right of appeal, how to submit it and to whom, and his right to be accompanied by a recognised union representative or other representatives, if he wishes, at any appeal hearing
- should be told that a copy of the written warning will be kept on his personal file and told also of the period of satisfactory conduct and performance after which it will be disregarded for disciplinary purposes

**(c) Stage 3 - Final written warning**

If there continues to be a failure to improve and conduct or performance is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, or if the conduct is sufficiently serious to warrant dismissal (even though it may not come under the heading of gross misconduct) but there may be strong mitigating circumstances, the employee should be seen by an appropriate senior manager, accompanied by a recognised union representative or other representative, if he wishes, and given the opportunity to give an explanation.

If the complaint is proved, the employee:

- should be given a **final written warning** (which may also be the first written

warning) by the manager including the reasons for it and details of the complaint, should be told that his conduct and/or performance will be monitored, and informed that failure to demonstrate a satisfactory improvement within a reasonable specified period will lead to dismissal (ie the fourth stage of the disciplinary procedure)

- may be suspended **without pay as a disciplinary penalty** for up to a maximum of 5 working days in addition to a final written warning, (but the likely effect of such a suspension on the employee should be considered carefully before this course is decided upon)
- should be advised of his right of appeal, the right to be accompanied by a recognised union representative or other representatives, if he wishes, how to make it and to whom
- should be told that a copy of the final written warning (and a note of any other penalty imposed) will be kept but that, in the case of the warning, it will be disregarded for disciplinary purposes after a specified period of satisfactory conduct and performance

#### **(d) Stage 4 - Dismissal**

If the conduct or performance continues to be unsatisfactory or the employee still fails to meet the prescribed standards in spite of the warning(s) given he should be seen by the Chief Officer or an appropriate senior manager designated by him, accompanied by a recognised union representative or other representatives, if he wishes, and given the opportunity to give an explanation. If on examination of the facts the complaint is proved, the officer dealing with the matter will consider any mitigating circumstances advanced and may inform the employee that one or more of the following disciplinary penalties will be imposed:

- a final written warning (unless one has been given under Stage3)
- monetary payments, either by way of a fine or by way of restitution (in whole or in part) of loss or damage caused by the employee
- suspension without pay
- dismissal, the reasons for this decision and the date on which employment will be terminated

The employee should be advised of his right of appeal, the right to be accompanied by a recognised union representative or other representatives, how to make it and to whom it should be addressed

This decision will be confirmed in writing.

#### **(e)Gross Misconduct**

15. An employee may be summarily dismissed without notice or payment in lieu of notice by the Chief Officer or a senior manager designated by him in cases constituting gross misconduct. The following list, which is not exhaustive, contains examples of actions which will normally be regarded as gross misconduct:

- Fighting and violent behaviour (including assault on another person)
- Deliberately ignoring instructions given with regard to the health and safety at work rules and thereby endangering own or another's physical well-being

or risking unacceptable loss or damage

- Obscene behaviour
- Intoxication induced by alcohol or drugs (not prescribed by a medical practitioner) while on duty or liable to be called for duty
- Fraud (including fraudulent clocking offences and falsification of records)
- Wilful damage, or unauthorised use of the employers' property
- Stealing property belonging to the employer or another employee
- Wilful disobedience of reasonable instructions
- 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. An offence of unlawfully possessing a controlled drug will be deemed in all cases to be an offence of such a nature

The above list is not intended to be exclusive or exhaustive.

16. Where it is alleged an employee has committed an act of **gross misconduct** he may be suspended from work on full pay by an appropriate senior manager while the matter is fully investigated. (The period of suspension on pay should not normally exceed 10 working days but may be extended if the decision of the Courts is relevant to an alleged breach of the law).

**(f) Suspension**

17. Where an employee has been suspended **with pay** while an investigation is conducted (but not where the suspension is in the nature of a disciplinary penalty):

- the suspension will be terminated and the employee shall receive all monies to which he would have been entitled but for the suspension (excluding overtime) in the event of it being adjudged that the employee was not blameworthy
- if the employee is adjudged blameworthy but is allowed to continue in employment, the employer will have discretion whether to make up the wages paid during the period of suspension to the level of earnings he would have achieved (excluding overtime) had he not been suspended
- if the employee is dismissed, he will not be entitled to wages other than the sum (if any) due up to the date of suspension but will be allowed to retain any sum already paid to him as an allowance during the period of suspension

**(g) Recognised Trade Union lay officials**

18. Normal disciplinary standards apply to the conduct and performance of recognised union lay officials as to other employees, but no disciplinary action beyond an informal oral warning should be taken against them until the circumstances of the case have been discussed by management with a senior trade union representative or full-time official of the recognised trade union.

## **(h) Appeals**

PSC M&C 15-001 22.09.2015

19. An employee has a right of appeal against any disciplinary decision against him. An appeal for a disciplinary sanction short of dismissal will be heard by an authority higher than that which took the decision or by the Chief Officer or an Appeals Committee appointed by the Department, Board or Office concerned. The Chief Officer may authorise another senior officer to hear the appeal either sitting alone or with 2 other appropriate managers. In the case of an appeal against dismissal from the Public Services Commission, an employee shall have a right of appeal in accordance with paragraph 19A below

- a. 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 combination thereof), than the one in which the employee is deployed.

The Appeal Panel will be drawn from separate lists of 'hearing officers' maintained by the Secretary of the Commission and comprising:

- i. A list of persons to act as Panel Chair, who must be graded Senior Executive Officer or above (and equivalent)
- ii. A list of persons occupying management roles within Government
- iii. A list of persons occupying any role within Government, serving on the panel to provide an independent perspective.

Persons appointed to the lists of 'hearing officers' may self-nominate or, with their consent, be nominated by a third party.

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.

20. Appeals must be lodged **in writing within 3 working days** of the oral warning being given or the date of the written notification of other penalties except in the case of appeals against dismissal where the appeal must be lodged in writing within 5 working days.

21. The person or body considering the appeal may determine the procedure to be followed at the hearing but a model procedure which may be used or modified is attached at Section I below.

22. At the appeal hearing particular attention should be paid to any new evidence that was not available earlier and the parties should be given the opportunity to comment on it. It may be appropriate in some cases for the hearing to be adjourned to allow for such evidence to be investigated or for the matter to be referred back to the manager against whose decision the appeal has been lodged.

### **(i) Model procedure for use at hearing of appeals against dismissal or *other serious disciplinary action***

23. The person or body considering an appeal against dismissal or other serious

disciplinary action may determine the procedure to be followed at the hearing but the following model procedure may be used or modified:

- a. The person or body considering an appeal shall be given the power to determine the appeal. Where a Committee is appointed it will normally comprise 3 persons none of whom have had any previous knowledge of, or involvement in handling, the case
- b. The employee shall be given notice in writing at least 7 working days in advance of the time and place of the hearing and shall be allowed to be represented by a companion (who may be a work colleague, a recognised union representative or shop steward) of his choice and shall be enabled to call witnesses and produce documents relevant to his defence at the hearing. He may also be advised in advance of the hearing of the procedure to be used at the hearing
- c. The representative of the employing authority shall put the case in the presence of the appellant and his companion and may call witnesses
- d. The appellant (or his companion) should be given the opportunity to ask questions of the employing authority's representative on the evidence given by him or any witnesses whom he may call
- e. The person hearing the appeal (or the Committee) may ask questions of the employing authority's representative and witnesses
- f. The appellant (or his companion) should put his case in the presence of the employing authority's representative and should be allowed to call such witnesses as he wishes
- g. The employing authority's representative should have the opportunity to ask questions of the appellant and his witnesses
- h. The person hearing the appeal (or the Committee) may ask questions of the appellant and his witnesses
- i. The employing authority's representative and the appellant (or his companion) should have the opportunity to sum up their case if they so wish
- j. The employing authority's representative and the appellant (and his companion) and any witnesses should be asked to withdraw
- k. The person hearing the appeal (or the Committee) with the person appointed to act as Secretary, should deliberate in private only recalling the employing authority's representative 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
- l. The person hearing the appeal (or the Committee) should announce the decision to the parties personally or in writing as may be determined [unless for special reasons the person hearing the appeal (or the

Committee) only has the power of recommendation to the employing authority in which case a report will be submitted to the authority and the parties so advised]

#### Proposed Regulation:

#### **Disciplinary procedures**

~~A) Aim | B) Scope | C) Principles | D) Procedure~~

~~(a) Stage 1— Oral warning | (b) Stage 2— Written warning | (c) Stage 3— Final written warning | (d) Stage 4— Dismissal | (e) Gross Misconduct | (f) Suspension | (g) Recognised Trade Union lay officials | (h) Appeals | (i) Model procedure for use at hearing of appeals against dismissal or other serious disciplinary action~~

#### **~~A) Aim~~**

- ~~1. These procedures are concerned with emphasising and encouraging improvements in individual conduct. Their aim is to ensure that the standards of conduct, attendance and job performance expected of employees are observed by providing a method of dealing with alleged breaches and deficiencies in a manner which is consistent and scrupulously fair~~
- ~~2. **It is important that all employees should know what standards of conduct are expected of them** and it is important that disciplinary cases are considered against a full understanding of any relevant personal, domestic or social circumstances~~
- ~~3. **It is also important and a requirement of the Employment Act 2006 that staff are told who will be responsible for dealing with the different stages in the disciplinary procedures and to whom they can apply if dissatisfied with any discipline decision affecting them.** (For guidance, it is suggested that the immediate supervisor should deal with Stages 1 and 2; a more senior manager should deal with Stage 3; and an appropriate more senior officer designated by the Chief Officer (or the Chief Officer himself) should be responsible for Stage 4 and **all cases of gross misconduct**).~~

#### **~~B) Scope~~**

- ~~4. These procedures will apply to all Public Services Commission Manual and Craft Workers. In the interests of simplicity, the masculine pronoun is used throughout but the procedures apply equally to male and female employees~~

#### **~~C) Principles~~**

- ~~5. If a complaint is made against an employee he must be made aware of it and the investigation procedures that will follow. When the investigation has been completed, the nature of the complaint should be confirmed (in writing) to the employee and he should be given the opportunity to reply to it, in writing if he so wishes.~~
- ~~6. No employee will be disciplined unless and until the complaint made against him has been fully investigated and the procedures followed~~
- ~~7. At every stage in the formal procedure the employee should be advised of his right to be accompanied by a recognised union representative, shop steward or other representative during the disciplinary interview. If a complaint is proven, the employee~~

should be given the opportunity to make a plea in mitigation before a penalty is awarded

8. No employee should be dismissed for a first breach of discipline except in the case of gross misconduct (**see E below**) when the penalty may be summary dismissal without notice or payment in lieu of notice
9. Where an allegation of **gross misconduct** is made against an employee consideration must be given to suspending the employee with pay (**see F below**.) while the matter is investigated. Normally, in such circumstances, the period of such suspension should not exceed 10 working days but it may be extended if it has been decided to await the decision of the Courts in relation to an alleged breach of the law.
10. An employee will have a right of appeal against any disciplinary penalty imposed to an individual or body higher than that taking the disciplinary action
11. The procedure may be implemented **at any stage** if the employee's alleged misconduct warrants such action
12. Where an employee is warned about his future conduct or performance he should be given a specified period in writing in which to meet the required standard and his conduct or performance (as the case may be) should be monitored carefully throughout that period
13. Should any disciplinary action be reconsidered and effectively withdrawn, any written reference to it should be removed **from the employee's personal file** and the employee notified accordingly.

#### **D) Procedure**

14. Except in the case of minor faults or incidents, which should be dealt with **informally and promptly**, usually by the immediate supervisor or line manager, the following formal procedure will be used:

##### **(a) Stage 1 — Oral warning**

If the conduct or performance of an employee has been found not to meet acceptable standards, the employee should be seen by his supervisor or first-line manager, accompanied by a recognised union representative or other representatives, if he wishes, and given the opportunity to give an explanation;

If the complaint is proved, the employee:

- should be given a formal **oral warning** by the appropriate supervisor and advised of the reason for it
- may be informed of the reason for the warning in writing if the employee requests it
- should be advised that it is the **first stage** of the disciplinary procedure
- should be advised of his right of appeal, the right to be accompanied if he wishes by a recognised union representative or other representatives, how to make it and to whom
- should be told that a record will be kept of the oral warning; that his conduct

and performance will be monitored; and also told of the period of satisfactory conduct and performance after which the warning will be disregarded for disciplinary purposes

- should be advised that the commission of a similar act, or of a subsequent different offence, may result in further disciplinary

#### **(b) Stage 2 – Written warning**

If the alleged offence is a serious one, or there is a repetition of an earlier offence, or a further offence is alleged to have been committed during the currency of an earlier oral warning, the employee should be seen by his supervisor or first line manager (or other more senior manager, if appropriate), accompanied by a recognised union representative or other representative, if he wishes, and given the opportunity to give an explanation

If the complaint is proved, the employee:

- should normally be given a **written warning** by the appropriate manager specifying the reasons for it, details of the complaint, the improvement required and over what period of time his conduct and/or performance will be monitored and the improvement will be expected
- should be advised in writing that this is the **second stage** of the disciplinary procedure and that action under the third stage will be considered if there is no satisfactory improvement within the above timescale
- should be advised of his right of appeal, how to submit it and to whom, and his right to be accompanied by a recognised union representative or other representatives, if he wishes, at any appeal hearing
- should be told that a copy of the written warning will be kept on his personal file and told also of the period of satisfactory conduct and performance after which it will be disregarded for disciplinary purposes

#### **(c) Stage 3 – Final written warning**

If there continues to be a failure to improve and conduct or performance is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, or if the conduct is sufficiently serious to warrant dismissal (even though it may not come under the heading of gross misconduct) but there may be strong mitigating circumstances, the employee should be seen by an appropriate senior manager, accompanied by a recognised union representative or other representative, if he wishes, and given the opportunity to give an explanation:

If the complaint is proved, the employee:

- should be given a **final written warning** (which may also be the first written warning) by the manager including the reasons for it and details of the complaint, should be told that his conduct and/or performance will be monitored, and informed that failure to demonstrate a satisfactory improvement within a reasonable specified period will lead to dismissal (ie the fourth stage of the disciplinary procedure)

- may be suspended **without pay as a disciplinary penalty** for up to a maximum of 5 working days in addition to a final written warning, (but the likely effect of such a suspension on the employee should be considered carefully before this course is decided upon)
- should be advised of his right of appeal, the right to be accompanied by a recognised union representative or other representatives, if he wishes, how to make it and to whom
- should be told that a copy of the final written warning (and a note of any other penalty imposed) will be kept but that, in the case of the warning, it will be disregarded for disciplinary purposes after a specified period of satisfactory conduct and performance

#### **(d) — Stage 4 — Dismissal**

If the conduct or performance continues to be unsatisfactory or the employee still fails to meet the prescribed standards in spite of the warning(s) given he should be seen by the Chief Officer or an appropriate senior manager designated by him, accompanied by a recognised union representative or other representatives, if he wishes, and given the opportunity to give an explanation. If on examination of the facts the complaint is proved, the officer dealing with the matter will consider any mitigating circumstances advanced and may inform the employee that one or more of the following disciplinary penalties will be imposed:

- a final written warning (unless one has been given under Stage 3)
- monetary payments, either by way of a fine or by way of restitution (in whole or in part) of loss or damage caused by the employee
- suspension without pay
- dismissal, the reasons for this decision and the date on which employment will be terminated

The employee should be advised of his right of appeal, the right to be accompanied by a recognised union representative or other representatives, how to make it and to whom it should be addressed

This decision will be confirmed in writing.

#### **(e) — Gross Misconduct**

15. An employee may be summarily dismissed without notice or payment in lieu of notice by the Chief Officer or a senior manager designated by him in cases constituting gross misconduct. The following list, which is not exhaustive, contains examples of actions which will normally be regarded as gross misconduct:

- Fighting and violent behaviour (including assault on another person)
- Deliberately ignoring instructions given with regard to the health and safety at work rules and thereby endangering own or another's physical well-being or risking unacceptable loss or damage
- Obscene behaviour

- ~~Intoxication induced by alcohol or drugs (not prescribed by a medical practitioner) while on duty or liable to be called for duty~~
- ~~Fraud (including fraudulent clocking offences and falsification of records)~~
- ~~Wilful damage, or unauthorised use of the employers' property~~
- ~~Stealing property belonging to the employer or another employee~~
- ~~Wilful disobedience of reasonable instructions~~
- ~~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. An offence of unlawfully possessing a controlled drug will be deemed in all cases to be an offence of such a nature~~

The above list is not intended to be exclusive or exhaustive.

16. Where it is alleged an employee has committed an act of **gross misconduct** he may be suspended from work on full pay by an appropriate senior manager while the matter is fully investigated. (The period of suspension on pay should not normally exceed 10 working days but may be extended if the decision of the Courts is relevant to an alleged breach of the law).

#### **(f) Suspension**

17. Where an employee has been suspended **with pay** while an investigation is conducted (but not where the suspension is in the nature of a disciplinary penalty):

- a. ~~the suspension will be terminated and the employee shall receive all monies to which he would have been entitled but for the suspension (excluding overtime) in the event of it being adjudged that the employee was not blameworthy~~
- b. ~~if the employee is adjudged blameworthy but is allowed to continue in employment, the employer will have discretion whether to make up the wages paid during the period of suspension to the level of earnings he would have achieved (excluding overtime) had he not been suspended~~
- c. ~~if the employee is dismissed, he will not be entitled to wages other than the sum (if any) due up to the date of suspension but will be allowed to retain any sum already paid to him as an allowance during the period of suspension~~

#### **(g) Recognised Trade Union lay officials**

18. Normal disciplinary standards apply to the conduct and performance of recognised union lay officials as to other employees, but no disciplinary action beyond an informal oral warning should be taken against them until the circumstances of the case have been discussed by management with a senior trade union representative or full time official of the recognised trade union.

## **(h) Appeals**

PSC M&C 15-001 22.09.2015

~~19. An employee has a right of appeal against any disciplinary decision against him. An appeal for a disciplinary sanction short of dismissal will be heard by an authority higher than that which took the decision or by the Chief Officer or an Appeals Committee appointed by the Department, Board or Office concerned. The Chief Officer may authorise another senior officer to hear the appeal either sitting alone or with 2 other appropriate managers. In the case of an appeal against dismissal from the Public Services Commission, an employee shall have a right of appeal in accordance with paragraph 19A below~~

~~a. 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 combination thereof), than the one in which the employee is deployed.~~

~~The Appeal Panel will be drawn from separate lists of 'hearing officers' maintained by the Secretary of the Commission and comprising:~~

- ~~i. A list of persons to act as Panel Chair, who must be graded Senior Executive Officer or above (and equivalent)~~
- ~~ii. A list of persons occupying management roles within Government~~
- ~~iii. A list of persons occupying any role within Government, serving on the panel to provide an independent perspective.~~

~~Persons appointed to the lists of 'hearing officers' may self-nominate or, with their consent, be nominated by a third party.~~

~~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.~~

~~20. Appeals must be lodged **in writing within 3 working days** of the oral warning being given or the date of the written notification of other penalties except in the case of appeals against dismissal where the appeal must be lodged in writing within 5 working days.~~

~~21. The person or body considering the appeal may determine the procedure to be followed at the hearing but a model procedure which may be used or modified is attached at Section I below.~~

~~22. At the appeal hearing particular attention should be paid to any new evidence that was not available earlier and the parties should be given the opportunity to comment on it. It may be appropriate in some cases for the hearing to be adjourned to allow for such evidence to be investigated or for the matter to be referred back to the manager against whose decision the appeal has been lodged.~~

### **(i) Model procedure for use at hearing of appeals against dismissal or other serious disciplinary action**

~~23. The person or body considering an appeal against dismissal or other serious disciplinary action may determine the procedure to be followed at the hearing but~~

~~the following model procedure may be used or modified:~~

- ~~a.—The person or body considering an appeal shall be given the power to determine the appeal. Where a Committee is appointed it will normally comprise 3 persons none of whom have had any previous knowledge of, or involvement in handling, the case~~
- ~~b.—The employee shall be given notice in writing at least 7 working days in advance of the time and place of the hearing and shall be allowed to be represented by a companion (who may be a work colleague, a recognised union representative or shop steward) of his choice and shall be enabled to call witnesses and produce documents relevant to his defence at the hearing. He may also be advised in advance of the hearing of the procedure to be used at the hearing~~
- ~~c.—The representative of the employing authority shall put the case in the presence of the appellant and his companion and may call witnesses~~
- ~~d.—The appellant (or his companion) should be given the opportunity to ask questions of the employing authority's representative on the evidence given by him or any witnesses whom he may call~~
- ~~e.—The person hearing the appeal (or the Committee) may ask questions of the employing authority's representative and witnesses~~
- ~~f.—The appellant (or his companion) should put his case in the presence of the employing authority's representative and should be allowed to call such witnesses as he wishes~~
- ~~g.—The employing authority's representative should have the opportunity to ask questions of the appellant and his witnesses~~
- ~~h.—The person hearing the appeal (or the Committee) may ask questions of the appellant and his witnesses~~
- ~~i.—The employing authority's representative and the appellant (or his companion) should have the opportunity to sum up their case if they so wish~~
- ~~j.—The employing authority's representative and the appellant (and his companion) and any witnesses should be asked to withdraw~~
- ~~k.—The person hearing the appeal (or the Committee) with the person appointed to act as Secretary, should deliberate in private only recalling the employing authority's representative 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~~
- ~~l.a. The person hearing the appeal (or the Committee) should announce the decision to the parties personally or in writing as may be determined [unless for special reasons the person hearing the appeal (or the Committee) only has the power of recommendation to the~~

~~employing authority in which case a report will be submitted to the authority and the parties so advised]~~

[Please use this link to access the PSC Harmonised Disciplinary Procedure](#)

[Last amendment October 2020 – Amendment No 15-129](#)

Agreed and authorised by:

Signed on behalf of  
Prospect

*M. C. Hesel*

Date: *28/10/2020*

Signed on behalf of Unite  
the Union

*S. Husam*

Date: *28/10/2020*

Signed on behalf of the  
Commission

*[Signature]*

Date: *28/10/2020*

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**For Office of Human Resources Use Only**

**Instruction for implementation:**

Passed to Bryan Douglas

By Ruth Hickey

Date 29/10/2020

**An IOM Government All Staff Notice prior to implementation is\* / ~~is not~~\* required (\*please delete as appropriate)**

Signed [Signature]  
**Head of Industrial Relations and Policy Section**

**Date MOA updated:**

Website [Signature]

Date 30-10-2020

Previous PSC MOA amendment reference (if any) :	
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<u>Notes/Special Instructions:</u> Communication to Pay Sections required
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