
Discipline Policy

Policy principles

All employees are responsible for ensuring their behaviour meets the standards expected of them. The Civil Service Code and the DWP Standards Of Behaviour policy outline the key principles of behaviour expected from all employees.

Separate policies and procedures cover attendance, performance management and poor performance issues.

All cases of misconduct should be dealt with promptly, transparently, fairly and consistently.

Everyone involved in the discipline process is expected to:

- show respect for others
- work together to resolve the issue and
- maintain confidentiality.

Scope of the policy

This policy and its related procedures apply to all employees, including those on probation, fixed term appointments and temporary workers.

Policy summary


Misconduct may have occurred where it is suspected or alleged that an employee has failed to meet acceptable standards of behaviour or conduct in any way. Where misconduct is proven, a range of penalties may be imposed, up to and including dismissal.

Key areas covered by this policy include:

- initial assessment, including levels of seriousness of misconduct
- informal and formal action
- investigations and meetings
- decision-making (including penalties).

Discipline Procedure

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Introduction

1. The primary purpose of the discipline procedures is to help and encourage employees to improve rather than just a way of imposing a punishment. This document sets out the procedure to use when it is suspected or alleged that any employee has failed to meet acceptable standards of behaviour or conduct in any way. It should be read with the Discipline policy.
2. This procedure must be followed to ensure the statutory code of practice laid down by the Advisory, Conciliation and Arbitration Service (ACAS) is adhered to.
3. The Discipline Advice contains guidance and templates for use throughout the process, including a Decision Maker's checklist and a summary of what employees can expect in formal disciplinary action. Additional support is also available through the following 'How to' guides:
 - Hold a formal discipline or grievance meeting
 - Investigate discipline and grievance cases
 - Deal with breaches of information security
 - Assess the level of misconduct and decide a discipline penalty.
4. Where necessary, managers should consult the [HR Expert](#) for advice.
5. All actions in this procedure should normally be taken within the set times. However, it is recognised that this is not always possible due to the complexity of the case or circumstances such as working patterns, shift working, annual leave, public holidays and/or employee absence or disability, in which case all actions should be done as soon as reasonably possible. The reasons for any delay should be recorded.
6. If the employee requires any reasonable adjustments to enable them to attend meetings, or read correspondence, they should inform the manager accordingly. Managers will need to put these adjustments in place before taking action.

7. A summary of the procedure is in the flowchart: [Process overview](#) .

[Accessible version of overview](#)

Following the procedure

8. In simple terms, alleged or suspected misconduct involves managers making a series of decisions according to the individual circumstances of the case. The manager must:

Decide the level of misconduct
Decide whether removal from the workplace/suspension/restriction of duties is appropriate
Decide whether matters can be dealt with informally or that formal action should proceed (including fast track)
Gather facts or, in specific circumstances, have the matter investigated
Inform the employee of the allegation in writing and meet with the employee to discuss the allegations ensuring: <ul style="list-style-type: none">• the right to be accompanied• the opportunity to put forward mitigation
Decide whether the case is proven or not
Decide the appropriate penalty

9. The Decision Maker must always be at least one grade higher than the employee concerned. In most cases the employee's line manager will take on the role of Decision Maker. In gross misconduct cases, because dismissal is a potential outcome, the Decision Maker must be at least SEO grade and should not be the person who conducted the investigation. See the [Decision Maker's Guide](#) for further advice and guidance.

Initial assessment

10. There are two key initial decisions for the line manager to make when misconduct is alleged or suspected:

- the likely level of seriousness
- whether the action warrants removal or suspension or restriction of duties.

Deciding the level of seriousness of misconduct

11. The line manager should decide in compliance with departmental guidance what the seriousness of the alleged misconduct is likely to be:

- minor misconduct
- serious misconduct
- gross misconduct.

12. Examples of each are given in '[How to Assess the level of the misconduct and decide a discipline penalty](#)' guide. Specific breaches of information security examples are in '[How to Deal with Breaches of Information Security](#)'

13. As soon as the line manager is clear about the likely level of the alleged misconduct they should advise the employee of:

- the likely penalty if misconduct is proven, and
- the investigation that needs to be carried out.

If, however, the suspected misconduct is internal fraud, the line manager must seek advice from [Internal Investigations](#) before speaking to the employee.

Deciding whether to suspend/remove an employee/restrict their duties

14. In serious cases of misconduct, suspension or restriction of duties may be appropriate whilst the alleged misconduct is investigated. Line managers should not use either as a penalty. It should be made clear to the employee that the suspension/restriction is not disciplinary action and does not assume any guilt on behalf of the employee being suspended / restricted. The period should be as brief as possible and kept under regular review by the line manager.

15. Restriction of duties may be appropriate where the nature of the allegation is such that it is unsafe to allow the employee to continue in their current work role as it may suggest that DWP is condoning the practice or allowing the employee scope to re-offend. For example, in an allegation of computer misuse consideration should be given to withdrawing computer access. If the alleged misconduct relates to harassment, consideration should be given to temporarily transferring the alleged offender.

16. As suspension is a serious decision, an HR Expert should be consulted before any suspension action is taken. Internal Investigations should be consulted for advice on whether suspension is appropriate where internal fraud is suspected. Circumstances when suspension may be appropriate could include where:

- there has been a serious breakdown in the relationship between the employee and the department
- there is a risk to other employees, property or customers
- there is a risk that the employee may tamper with evidence required for the investigation and/or influence witnesses.

17. Suspension may be appropriate immediately following an incident or later in the process; for example, at a point during or after the fact-gathering or investigation when evidence comes to light.

18. Suspension will be with full pay.

19. Suspension should not be confused with management action to remove the employee from their current place of work; this removal may be required immediately following an incident in order to diffuse a conflict situation. An example of this type of management action might be instructing people to work in a separate area of the office or sending the employee(s) home for the rest of the day/shift to allow for a cooling-off period. The line manager must be very clear with the employee that they are not being suspended and will be expected to return to work as normal the next working day/shift.

Informal action

20. Instances where minor misconduct is identified should normally not require the line manager to take formal action. The matter may be addressed quickly and informally through, for example, a discussion about expectations and standards of behaviour or through advice, training, coaching or mentoring.

21. However, line managers should also advise employees that further misconduct may lead to formal action being taken in future. A note of all line management action should be kept securely either electronically or in hard copy and a copy given to the employee. The best way of doing this is for the manager to send the employee a brief summary of the conversation to their DWP email address marked as private, also stating that the matter has been dealt with informally.

Formal action

22. In certain instances of minor misconduct, or where informal action has not stopped further minor misconduct from taking place, it may be necessary for the line manager to proceed to the formal process. In all cases of alleged serious or gross misconduct, the formal procedure must be followed.

23. Managers should normally seek advice from the HR Expert in all cases relating to breaches of information security.

24. Further guidance on deciding the level of alleged misconduct can be found in '[How to: Assess the level of misconduct and decide a discipline penalty](#)'. If the misconduct relates to information security more guidance can be found in '[How To deal with breaches of information security](#)'

25. At this stage, the line manager should decide whether or not using the fast track process, described in paragraph 27 below, is appropriate. Most cases should fall within fast track. Given the resource requirement, time delay and potential disruption of formal investigations, they should be undertaken only when it is necessary because facts are unclear or evidence is contradictory.

26. When the formal process has started, the Decision Maker should inform their line manager that the process is underway. If the disciplinary case is then not resolved after 40 working days the Decision Maker should inform their line manager that it is advisable for them to review the case. The purpose of the review is to ensure that everything is being done to progress the case, that the correct process is being followed and that there are no unnecessary delays.

Fast track process

27. A fast track process should be appropriate in most cases – i.e. those that are straightforward, where the evidence is readily available and the facts of the case are not likely to be in dispute.

28. The fast track process should **never** be used for misconduct cases which could result in dismissal. This is likely to be the case where there is alleged gross misconduct.

29. In fast track cases, a simple fact-gathering exercise should take place with only the following discipline procedure steps required:

- the allegations being put to the employee in writing, together with a brief description of the evidence
- a meeting with the line manager who will take the role of Decision Maker, where evidence will be presented and the employee will have an opportunity to present their case together with any mitigation; at this meeting the employee has the right to be accompanied by a trade union representative or work colleague and 5 days' notice will be given
- the line manager will decide whether or not there are reasonable grounds that the specific offence alleged against the employee in the discipline letter is proven. They will advise the employee of the decision and follow this up in writing, this will include an opportunity to appeal.

30. The fast track process may need to stop if it becomes evident at any time that the scope of the misconduct is broader or more complex than originally thought. Line Managers may not deal with any [cases in which they are implicated](#). Countersigning managers, or another independent manager must take charge of the investigation process in these circumstances.

31. Further guidance on when it is appropriate for line managers to use the fast track process can be found in the [Discipline Advice Q4](#).

Investigation process

32. Some misconduct cases will need a formal investigation rather than just the simple fact-gathering that is suitable for the fast track process. The aim of the investigation is to collect and record the facts necessary to decide whether there is a case to answer or not. Managers may find '[How to: Investigate discipline and grievance cases](#)' helpful.

33. The line manager would normally carry out the investigation unless one of the following three circumstances apply.

- **Fraud/Dishonesty** – Managers should consult Internal Investigations in all cases involving alleged internal fraud, dishonesty or other serious wrongdoing. Internal Investigations will either assume responsibility for the case or give advice. See paragraphs 34-36 below
- **Sensitivity/Complexity** – Managers should consult the HR Mediation & Investigation Service if a non-fraud case appears to be particularly sensitive or complex. The HR Mediation and Investigation Service will either assume responsibility for investigating severe, complex or particularly sensitive cases or give advice. See paragraph 37 below.
- **Other** – A line manager may appoint an independent investigator of equivalent or higher grade to them for other local reasons, for example if they are currently unable to devote time to an investigation due to leave or work demands but another manager can undertake it. These are matters for local decision.

34. If any aspect of the case involves allegations of fraud, advice must be sought from Internal Investigations. Internal Investigations will investigate cases where there is evidence or information supporting a suspicion of serious internal fraud. They may also investigate misconduct cases which are sufficiently serious and where the likely outcome is a final written warning or dismissal, so this covers cases at the higher end of serious misconduct or gross misconduct.

35. The [Internal Investigations Guide for Managers and Staff](#) provides advice, including examples of the types of cases they will investigate such as:

- internal fraud and corruption
- false claims for travel and subsistence allowance
- recruitment irregularities
- working whilst absent on sick leave

36. A more comprehensive list is available in Appendix 1 of the Guide for Managers and Staff and managers are encouraged to ring Internal Investigations for advice if at all in doubt on 0114 240 8745.

37. HR Mediation and Investigation Service will investigate cases where the facts are unclear, the case is not appropriate for Internal Investigations and there is potential for serious or gross misconduct involving:

- Disciplinary matters which are too severe, complex or sensitive for management to deal with
- Harassment or bullying
- Discrimination on the grounds of gender, race, disability, age, gender reassignment, religion or belief, sexual orientation, pregnancy/maternity

Referral to HR Mediation and Investigation is done via [form H3](#) .

38. HR Mediation and Investigation Service or Internal Investigations will:

- not decide if a case is proven or whether a penalty should be imposed, but
- compile a written report indicating whether or not they believe there is a case to answer.

39. The Decision Maker should check the report is reasonable and that it meets the requirements of the investigation. If not, the Decision Maker should specify in writing what they have found unsatisfactory and request any further information they require.

Advice is available for anyone undertaking an investigation in '[How to: investigate discipline and grievance cases](#)'.

Informing and meeting the employee

40. Once an investigation is concluded, the next step is for the Decision Maker to decide, on the basis of all the evidence, whether or not there is a case to answer.

41. If there is **no case to answer**, the Decision Maker must write to the employee to confirm the decision and say that no meeting is necessary. A copy of the report and witness statements should be enclosed. The manager must not release third party information contained in the reports, such as staff numbers and NI numbers. A [redaction checklist](#) will help managers decide what is relevant

42. If there **is a case to answer**, the Decision Maker will need to take further formal action and should write to the employee who has been investigated within five working days of receiving the report and invite them to a formal meeting to discuss the findings of the investigation. The final decision will be taken and notified to the employee after the meeting.

43. The Decision Maker should:

- give the employee at least five working days' notice of the meeting
- tell the employee they have the right to be accompanied by a trade union representative or work colleague. If the employee or their companion cannot reasonably attend the meeting, the employee should propose several new dates to the manager to allow the meeting to take place within five working days of the original meeting date. If the employee fails to engage or cooperate with meeting arrangements and/or fails to attend the scheduled or re-scheduled meeting, consideration of the discipline case will go ahead in their absence based on the available information
- ask the employee if any specific requirements or adjustments need to be made to enable them to attend the meeting
- enclose the investigation report and witness statements. The manager must not release third party information contained in the reports, such as staff numbers and NI numbers. A [redaction checklist](#) will help managers decide what is relevant
- arrange for a note-taker to attend the meeting

44. If an investigation shows clearly that the Decision Maker

- is implicated in the original allegation of misconduct,
- was the sole witness of the alleged misconduct or
- was the subject of the alleged misconduct,

the case must be referred to the next senior manager in the Decision Maker's line management chain, or to a suitable alternative manager of at least the same grade as the Decision Maker, consulting the HR Expert as necessary.

Deciding the outcome

45. The Decision Maker must decide whether there are reasonable grounds that the specific offence alleged against the employee in the Discipline letter is, in their genuine belief:

- proven, or
- not proven

46. Further guidance on deciding the appropriate penalty can be found in '[How to: Assess the level of misconduct and decide a discipline penalty](#)' and for information security cases, in '[How to: Deal with breaches of information security](#)'. The [Decision Maker's Guide](#) contains guidance on how to consider the evidence.

47. If the Decision Maker finds that a case of misconduct is **not proven**, they must notify the employee and confirm that no further action will be taken. This should be confirmed in writing within five working days from the meeting. If suspended, the employee must return to work.

Mitigation

48. The Decision Maker should decide whether the case has been proven or not before taking mitigation into account.

49. If the **case is proven**, penalties should be decided after the employee has been given the opportunity to put forward any mitigating circumstances and after providing evidence of mitigation where available. More advice on mitigating factors can be found in [How to: Assess the level of misconduct and decide a discipline penalty](#).

Deciding an appropriate penalty

50. Decision Makers must ensure that penalties are appropriate to the level of seriousness of the offence, whether minor, serious or gross misconduct.

51. Instances of minor misconduct do not necessarily merit a penalty.

52. Informal action is not a discipline penalty.

53. Penalties could be the following:

- First written warning. Appropriate in more serious instances of minor misconduct, or when informal action has not stopped further instances of similar minor misconduct. Valid for 12 months from notification. Managers will need to check the employee's RM record to ensure there is not an existing 'live' disciplinary penalty given before a further act of misconduct which may mean a Final Written Warning is appropriate.
- Final written warning. Usually appropriate when another incident of minor misconduct occurs after a first written warning has been given and is still live or when the misconduct is serious. Normally valid for 12 months from notification, which could be extended exceptionally following advice from the HR Expert.
- Dismissal. For gross misconduct or when another incident of misconduct occurs after a final written warning has been given and is still live. The HR Expert must be consulted if dismissal is being considered for advice on consistency of decision making.
- Downgrading can be considered as an alternative to dismissal. The employee must sign a declaration that they agree to accept the downgrading. (Such as the employee declaration in [Model letter 9](#)). Downgrading can only be considered if a post in the lower grade is available.

See [How To Assess the level of misconduct and decide a discipline penalty](#) for further advice.

54. For repeated misconduct, penalties will normally follow in the above order. However, the process is not always sequential and, depending on the seriousness of the misconduct, a final written warning or dismissal may be an appropriate first penalty. The same type of offence may warrant a different penalty depending on its nature and impact; for instance, where an employee has failed to follow departmental procedure.

55. All penalties attract a single right of formal challenge through an 'appeal'.

56. In cases where the Departmental Trade Union Side has serious concerns that either the process followed or the decision is fundamentally flawed in individual cases, they may put the issue to DWP HR Specialist Services for advice on how the case could be remedied.

Additional Sanctions


57. Additional sanctions can be imposed if necessary, but only with the final written warning. Guidance on additional sanctions can be found in [Advice Q28](#).

Informing the employee of the decision

58. The Decision Maker should normally make a decision within five working days of the meeting and immediately communicate this in writing to the employee. In dismissal cases, the date of dismissal is the date the employee is made aware of the decision. See [Advice Q29](#) for further guidance.

59. If an employee has committed an act of gross misconduct they can be dismissed [without notice](#). If the dismissal is as a result of repeated acts of minor or serious misconduct notice should be given.

Recording Decisions


60. Decisions must be recorded on the [Decision Maker Template](#)  and retained with the other paperwork as a record of the decision rationale. If Internal Investigations did the investigation, managers should also notify them of the decision outcome.

61. All formal discipline action must also be recorded on RM on the Disciplinary screen via Manager Self Service. The Manager will need to select the level of misconduct; the primary reason, the secondary reason and the penalty. The manager will need to add a new record for each penalty so that the option to record an appeal against each penalty is available on RM.

62. RM includes the option of 'Oral Warning' which is obsolete under this policy and should not be selected. Managers should only select either

- Written Warning, (which will equate to the First Written Warning in this policy)
- Final Written Warning
- Dismissal with notice
- Dismissal immediate

63. If the decision was to downgrade as opposed to dismissal, managers should select Final Written Warning and then complete the 'Additional Sanctions' field to record 'Demotion, Downbanding or Downgrading.' Managers also need to complete form [DWP DG1](#) and refer it to the Employee Service Centre via service request. More details on RM action can be found on the [Discipline Job Aid](#)

64. If termination action is required, the manager must complete a [DWP TERM1](#)  and refer it to the Employee Service Centre via service request.

Appeals

65. There is one right of formal challenge in this procedure through an 'appeal'. The employee must set out the grounds for appeal in writing and whether they are appealing against:

- procedural errors; and/or
- the decision, including cases where new information/evidence has been raised that may change the outcome of the original decision.

66. Appeals on discipline matters must be heard, where this is possible, by someone senior to the person who made the decision being appealed. If this is impossible due to operational circumstances, or for some other reason, the appeal for warnings but not dismissals may exceptionally be heard by a manager at the same level as the Decision Maker.

67. The Appeal Manager must not be the Decision Maker, the Decision Maker's line manager or the employee's Countersigning Manager **unless everyone agrees that they can be**. Appeal Managers must be demonstrably independent in that they or their line manager must not have been previously involved in the case so that they are able to take an objective viewpoint.

Guidance on the Appeal Manager's considerations can be found in the [Decision Maker's Guide section 7](#).

Recording Appeals on RM

68. If the appeal is against a dismissal decision, the Appeal Manager must notify the employee's manager so that they can record the appeal on RM. A [RM job aid](#) details the process for recording appeals against dismissal decisions.

69. If the appeal is against any other action, e.g. the issue of a warning, the manager should select 'update' and record it on RM on the same record as the warning. An [RM job aid](#) details the process for recording appeals against warnings.

Employee's actions

70. Employees have 10 working days from the date of receipt of the decision in which to send their written appeal to the Appeal Manager. The employee:

- must make clear whether the appeal is against a procedural error and/or the decision
- should provide new information or evidence if this is the reason for the appeal
- must clearly state their desired outcome.

Appeal Manager's actions

71. The Appeal Manager will write to the employee normally within five working days of receiving the appeal to confirm its receipt and to invite them to a meeting. They should write to the employee:

- giving at least five working days' notice of the meeting
- confirming the right to be accompanied by a trade union representative or work colleague.

72. At the meeting, the Appeal Manager should examine the decision-making process and the penalty given and decide whether these were reasonable. They should not reconsider the case in detail. If there is evidence that correct procedures have not been followed, the Appeal Manager must seek justification for this from the Decision Maker.

73. If new evidence is made available the Appeal Manager should consider any impact this may have on the final decision. The Appeal Manager should consult the HR Expert if necessary before making a decision.

74. Normally within five working days of the appeal meeting, the Appeal Manager should decide and inform the employee whether their appeal has been upheld or rejected. An appeal decision should not result in an increase in penalty.

75. The Appeal Manager's decision is final.

Record keeping

76. It is important that a written record is kept at all stages within the discipline process. Following conclusion of the formal process the Decision Maker should send copies of the documents to the Employee Service Centre.

77. Records must be protectively marked, kept securely and handled in line with [DWP HR Retention Schedule](#)

78. At all stages, documentation should be managed in compliance with the requirements of the Data Protection Act 1998.

79. Records of First Written and Final Written warnings should not be retained on RM after the 12 month period is over if there is no further Disciplinary action. To remove a warning from RM, managers must complete form [DWP DEL/DIS](#) and send it to Employee Shared Services via service request.

Transitional Arrangements

80. If managers are in the middle of action under the old process on 14 October 2013, they must complete the investigation using that policy. Discipline penalties applied on or after 14 October 2013 should use the new policy. If an employee already has an oral warning this will remain live until it expires. If a final written warning has been given under the old policy and is in the second year of the penalty period, it will remain live but the line manager will consider whether it should be deemed as spent should further misconduct occur.

Process overview – text version

Matter arises

Step 1. Manager conducts initial fact-finding and decides likely level of misconduct [minor/serious/gross]

Step 2. Manager decides whether suspension/restriction of duties appropriate

Step 3. Manager decides whether alleged misconduct can be dealt with informally

Yes: go to step 4

No: go to step 6

Step 4. Informal action

Step 5. The matter is concluded

Step 6. Manager decides whether alleged misconduct can be dealt with using fast track process or is straightforward and does not need referring to HR Mediation and Investigation Service or Internal Investigations

Yes: go to step 7

No: go to step 9

Step 7. Fast track process/Manager investigation

Step 8. The matter is concluded

Step 9. Manager undertakes an investigation or refers to HR Mediation and Investigation Service or Internal Investigations or local appointee

Step 10. The manager, HR Mediation and Investigation Service or Internal Investigations investigate and decides if there is a case to answer

Step 11. Case to answer?

Yes: go to step 13

No: go to step 12

Step 12. The matter is concluded

Step 13. Manager holds formal meeting with employee or refers to independent manager of at least SEO if potential outcome is dismissal

Step 14. Manager or independent manager makes decision on case and if appropriate, applies penalty

Step 15. The matter is concluded

Note: An appeal is available to the employee after the formal stage is concluded.

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Q1. How will cases be monitored to ensure that they are resolved as soon as possible?

It is advisable that each case is reviewed by the Decision Maker's line manager if it is not resolved after 40 working days. This is to ensure that everything is being done to progress the case, the correct process is being followed and that there are no unnecessary delays. To ensure that this review is carried out within the prescribed timeframe, managers should inform their line manager as soon as they start the formal discipline process and remind them if it is not resolved within 40 days.

Q2. What happens if the manager handling the discipline case unexpectedly becomes absent from/leaves work?

Short absences are part of the everyday working environment. If the absence becomes long-term or is permanent, the countersigning manager may arrange for another manager to take over handling the discipline case.

Q3. How should managers treat other personal issues?

Managers should consider any known temporary or permanent outside factors, such as personal issues that may have affected the employee and which the employee is prepared to share. Managers should remind the employee about available support such as the [Employee Assistance Programme](#)

Q4. In what circumstances is it appropriate to use the fast track process and how should it be conducted?

A fast track process may be appropriate where the evidence is readily available and the facts of the case are not likely to be in dispute, for example in cases where:

- a number of people have witnessed alleged misconduct, so accounts of events are likely to be similar
- facts are easily documented, for example unacceptable behaviour that is recorded in writing such as abusive emails or false recording of flexi.

Line managers will conduct fact gathering, compile the evidence and consider the facts of the case.

It is not appropriate to use the fast track process where:

- the line manager could be reasonably perceived to be somehow implicated in the original decision or the circumstances of the case
- the line manager could be reasonably perceived as having a personal interest in any particular outcome of the case or being biased
- third parties, such as customers, are involved in the discipline case
- the case is appropriate for Internal Investigations or HR Mediation Investigation Service
- there is an allegation of bullying, harassment or discrimination
- the allegation involves media interest and could negatively impact on the department's reputation
- the allegation amounts to gross misconduct and may result in dismissal.

Where the case is not suitable for the line manager to investigate, they should seek the advice of HR Mediation Investigation Service or Internal Investigations as appropriate. If the case is not appropriate for the line manager to investigate only because the line manager is implicated, it can be investigated by another manager in the line management chain.

Q5. What happens if the manager dealing with the case moves to another job during the discipline process?

Wherever possible, the process will continue with the manager who started it as they know the facts of the case best.

If this is not possible, the manager must ensure a thorough handover of the case to the new manager, including all notes and other relevant documentation. Once the handover is complete, the new manager should arrange to meet with the employee quickly to make sure that the discipline process is not disrupted.

If the new manager is not in place at the time, the employee's countersigning manager may appoint somebody else to take over the case.

Q6. How do managers ensure employees receive important written communications?

Managers are advised to retain proof that written communications have been sent to, and where appropriate, received by, the employee. Email communications often provide this facility as standard. In the case of communications by post, the use of mail tracking services is recommended.

Q7. How do managers treat unlawful behaviour outside the workplace?

The employee must inform their line manager if they are arrested and refused bail or convicted of any criminal offence, as per the Standards of Behaviour policy.

If the offence committed relates specifically to the Civil Service Code/Standards of Behaviour policy, or otherwise merits action because of its employment implications, the line manager will need to consider formal discipline action.

The following should be considered:

- the bearing on the employee's suitability to continue to undertake their job in the Civil Service or their relationship with their colleagues, the department or customers; not whether they are guilty under criminal law
- whether the conduct is serious enough to warrant disciplinary action
- that a decision will be made on the evidence available if the employee is unable or refuses to cooperate with the investigation, in cases where the discipline procedure has been instigated
- where an employee is detained or imprisoned, managers may wish to consider whether in the light of the needs of the department, continuation of employment is possible and/or appropriate
- where the employee is unable to continue in their current role, for example due to the loss of a driving licence, whether an alternative role is available and/or appropriate.

Managers may consult HR for advice, for instance to establish whether the detention has resulted in a breach of the employment contract. Legal advice should be sought on individual cases.

Q8. What about inappropriate behaviour outside the workplace?

Inappropriate behaviour outside of the workplace that may represent a breach of the Civil Service Code or the Standards of Behaviour policy and/or is likely to bring the department into disrepute could be classed as misconduct. An example might be inappropriate use of social media.

Q9. What are the implications for cases involving security breaches, fraud or criminal matters?

Any alleged misconduct involving breaches of security, loss or other compromise (including 'leaks') of official and/or personal information or criminal matters should be reported immediately to the [departmental security team](#).

Fraud, corruption and serious irregularity should be reported to [Internal Investigations](#).

An investigation may need to be completed before the misconduct process can be implemented in order to establish the full circumstances of the alleged misconduct. Under these circumstances, it is probable that the security investigation report will inform the misconduct process. In such cases, it may not always be necessary to carry out a further investigation.

Q10. How do managers deal with repeated or persistent misconduct?

Repeated or persistent misconduct may result in a higher penalty than that given before, for example what merited a first warning is likely to merit a final warning if repeated following the formal issue of a previous warning. However, where the repeated or persistent misconduct is of a minor nature Decision Makers should be careful when considering dismissal and seek advice from the HR Expert to discuss whether dismissal is a proportionate response.

Q11. What if an employee is on loan or secondment?

Employees on loan or secondment will normally be dealt with under the policy applicable in the department/organisation they are loaned/seconded to, unless the misconduct related to their originating employer/Department. However, it is important to check the loan/secondment agreement as other arrangements may apply

Q12. What happens if an employee resigns before the disciplinary process is concluded?

Where an employee resigns during the course of a disciplinary process, the process should be continued to conclusion while the employee is serving their notice. The Decision Maker should hold the decision meeting, make the decision and send copies of the documents to Employee Services. The record will state that the employee resigned but the disciplinary decision will be recorded for future reference.

If the process cannot be concluded before the employee's departure, the employee will be informed that the process will continue in their absence and invited to attend the disciplinary meetings, if they wish.

If there is enough evidence to conclude the process in the employee's absence, it should be concluded in the normal way, as described above. If a disciplinary penalty is imposed, the manager will need to send a service request to Employee Service Centre to have their RM record amended. The former employee will be notified in writing, including their right to appeal.

If despite exhausting all avenues there isn't enough evidence to conclude the process, the process will be stopped due to lack of evidence. This should be recorded by the Decision Maker and the appropriate information sent to Employee Services Centre explaining that they were subject to a discipline process which could not be concluded due to the lack of evidence, owing to the employee's departure.

Q13. How can a shift worker's attendance at meetings be managed?

Where the working patterns of the parties involved in a discipline meeting make it difficult to hold the meeting during standard working hours, arrangements should be made with line management to facilitate the individual's attendance.

Q14. What happens if the employee becomes absent from work?

Being unfit to attend work does not necessarily mean that the employee is unfit to attend the discipline meetings. This will depend on the nature of the employee's illness. An [Occupational Health Service](#) (OHS) referral may be of benefit, but where the OHS report proves difficult to obtain, managers should consider other ways to progress the discipline case, for example, communicating by telephone, meeting at a neutral place or location near the employee's home or inviting the employee to submit a written statement. Wherever possible and appropriate, cases should be progressed and resolved quickly.

Where either a disability or long term health condition is a factor, managers should allow for reasonable adjustments to be put in place, and to take effect, before reassessing the position.

Q15. What happens when an employee is suspended?

Suspended employees may need to be escorted from the premises and asked to surrender IT Smart cards, security passes or any other means of entry to official property. It is important to remember however that suspension is not a penalty. Suspension from work will always be with pay unless the employee is taking unauthorised absence. See [DWP Standards of Behaviour policy](#) for further guidance on unauthorised absence.

Suspended employees must ensure they are contactable during normal working hours and will be required to attend meetings and interviews which are part of the discipline process. They must respond to any reasonable management instruction and follow normal attendance/sick procedures if unfit to attend work. They must also seek line manager permission before taking any annual leave.

Employees are reminded of the availability of the [Employee Assistance Programme](#) (EAP).

Q16. Who can accompany an employee to a formal meeting?

Employees have a statutory right to be accompanied by a companion where the discipline meeting could result in disciplinary action. A chosen companion may be a work colleague, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their trade union as being competent to accompany an employee. They cannot be a friend, relative (unless they are also work colleagues) or legal representative.

If there is a reasonable adjustment in place that includes the employee being supported in meetings, this must be extended to discipline meetings.

Q17. What is the companion's role?

At the meeting, the companion is allowed to:

- put forward and sum up the employee's case
- respond on behalf of the employee to any views expressed at the meeting
- confer with the employee.

The companion does not have a right to:

- answer, on the employee's behalf, any questions posed by management
- address the meeting if the employee does not wish it
- prevent the employee and/or manager from explaining their case.

Q18. What are the responsibilities of a witness?

A witness is responsible for:

- maintaining confidentiality
- providing truthful and comprehensive statements and answers
- attending meetings with the manager conducting the investigation
- volunteering information which they feel may be relevant to the investigation

- reporting any attempts to influence their statement to the manager conducting the investigation
- informing their line manager of their role and possible impact on work and/or attendance.

Q19. Can the identity of a witness be withheld?

In the interests of fairness it is important that witnesses identify themselves. However, in exceptional circumstances the identities of individuals can be withheld; for instance, where there is a genuine fear of serious risk to personal safety.

The fact that a member of staff making an allegation, or a witness, simply does not wish to be identified will not be sufficient cause to withhold identity.

Even where it is agreed that identity can be withheld it is not possible to guarantee anonymity should the case progress to Employment Tribunal.

Q20. Who will be able to see a witness statement?

A witness statement will be attached to the investigation report and will be provided to the employee who is the subject of the discipline procedure. This is to ensure openness and transparency in the investigation process. Companions will also see the report, as will those managers included in the investigation or disciplinary meeting.

Q21. Can witnesses attend the discipline meeting?

Witnesses would not normally attend discipline meetings, though managers have discretion to permit them.

Q22. Do witnesses have the right to be accompanied when being interviewed?

There is no right for witnesses to be accompanied when giving statements, other than in serious fraud/dishonesty cases being investigated by Internal Investigations. However, managers will have the discretion to decide when this would be appropriate based on the merits of the case. This does not mean that accompaniment should be routinely refused. There may be instances where an employee could give their evidence better if they have support. It is important to consider all relevant evidence.

Q23. If a witness feels intimidated what can they do?

The witness should speak to the Investigation Manager. Any attempt to intimidate or interfere with witnesses to an investigation will normally be regarded as serious misconduct, whoever the alleged perpetrator is. If any report of this is made to the Investigation Manager during the course of an investigation they will inform the line manager of the allegations immediately.

Q24. Can an employee facing a discipline procedure seek support from the Employee Assistance Programme?

Yes, employees may contact the [Employee Assistance Programme](#) for support, for instance if stress or anxiety is affecting them.

Q25. If the employee appeals against a Final Written Warning, and then commits further misconduct, would their appeal need to be decided before the case was referred to a Decision Maker?

Yes, unless the further misconduct is an act of Gross Misconduct. Otherwise, the appeal decision would need to be made before the case was considered for dismissal. The outcome may have an impact on the dismissal decision. Failure to attend a properly arranged meeting without good reason would not prevent consideration of the dismissal. If the dismissal case is due to an act of Gross Misconduct, the appeal outcome will be immaterial and the dismissal should not be delayed.

Q26. What happens if the discipline procedure is started as a result of a grievance raised against another employee or manager? Who gets to see the investigation report including witness statements?

If the grievance procedure investigation has established that there is a

discipline case to answer, there is no need to start the discipline procedure investigation from the beginning. Relevant evidence gathered during a grievance case can also be used in a discipline investigation. However, further investigation as part of the discipline procedure may be necessary.

The employee who raised the grievance will see the grievance investigation report, including witness statements, where appropriate. Companions will also see the report, as will those managers included in the investigation or disciplinary meeting.

However, if there is a further investigation under the discipline procedure, the employee who raised the original grievance will not be informed about any details of the process, will not see the discipline investigation report or know the decision - this is personal and confidential to the person undergoing the discipline process.

The employee who is the subject of the discipline procedure will see the discipline investigation report including the witness statements, where appropriate.

Employees and managers need to be aware that:

- any confidential information in the report (such as names, dates of birth and addresses) will be [redacted](#) by the Decision Maker.
- sharing the report with any person other than those with a legitimate reason, such as for example companions, would be viewed as serious misconduct.

Q27. How should cases involving disciplinary allegations against an employee who is a trade union representative be treated?

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement. If the disciplinary action is connected with the employee's TU activity, seek advice from the HR Expert.

Q28. What additional sanctions can be imposed?

Additional sanctions can be imposed if necessary, but only with the final written warning. The manager must decide how long the additional sanction lasts. Additional sanctions are:

- Compulsory transfer (always considered in cases of proven harassment)
- Withdrawal of internet access (in all cases this would be for 12 months)
- Ban on promotion and TDA
- Withdrawal of flexitime
- Downgrading

Q29. What is the date of termination when dismissing an employee for gross or repeated serious misconduct?

The effective date of termination is the date the employee is told they are being dismissed, or reads the letter or has a reasonable opportunity of reading it. It is not the date the decision was made or the date the letter was written, posted or delivered. However, the employee can reasonably be expected to be available to receive communications following the disciplinary meeting and should not deliberately avoid reading the letter. A manager cannot be expected to know for certain the date the employee will read the letter, so for practicable purposes, the date of dismissal should be stated as the next working day after the letter is sent. If the manager knows the employee will be unavailable, for example if the employee is on holiday or in hospital they should adjust the dismissal date accordingly.

What employees can expect in formal disciplinary action

Not to be dismissed for a first offence or without notice unless the offence is a single act of gross misconduct
A full and fair investigation into any allegations of misconduct made against them
5 working days' notice of any formal disciplinary interview, being given details of the alleged misconduct
The invitation will be in writing and will state the alleged misconduct
To be allowed a reasonable amount of time during working time to prepare their case
To be accompanied and represented by a TU rep or departmental colleague when formal disciplinary action is being taken against them
To be able to choose an alternative date for a formal meeting if their TU rep is unable to attend, as long as it is at a reasonable time and within 5 working days of the original
To be able to request that the interview is adjourned if appropriate
If they choose to remain silent when interviewed a decision will be made on the basis of the evidence against them
To receive a copy of any investigation report
To be able to state their case before a decision is made
To receive a copy of the interview notes which they can check and amend, but not to delay the process by doing so
To be able to appeal against a formal warning, dismissal or downgrading

