



Ministry of Finance and the Public Service



DISCIPLINARY POLICY FOR PUBLIC BODIES

Ministry of Finance and the Public Service
Strategic Human Resource Management Division
Industrial Relations Unit
30 National Heroes Circle, Kingston 4

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*This policy is applicable to all employees in Public Bodies and may be adopted by any other
Public Sector organisation to aid in the administration of discipline.*

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Acknowledgement

The Ministry of Finance and the Public Service extends sincere appreciation to all the persons who have contributed to the development and finalisation of this Policy, including Chief Executive Officers, Heads of Departments and Human Resource (HR) Practitioners in the Central Government and Public Bodies; employee representatives in Trade Unions and Staff Associations; employees of the Ministry of Finance and the Public Service who reviewed the document at each stage and provided invaluable comments and suggestions.

It is hoped that the use of this Policy will meet its objective in providing a framework for consistent action in the administration of discipline resulting in improved relations between management and employees.



1

Rationale

Section 3 of the Labour Relations and Industrial Disputes Act, 1975 mandated the development of the Labour Relations Code which should include “practical guidance helpful in promoting good labour relations.”

The Labour Relations Code, 1976 sets out the guidelines for promoting good labour relations and outlines the principle of developing and maintaining good personnel management techniques designed to secure effective cooperation between workers and employers and to protect workers and employers against unfair labour practices. Section 22, stipulates the establishment of disciplinary procedures agreed on between management and worker representatives to ensure that fair and effective arrangements exist for dealing with disciplinary matters.

The Public Services Commission as one of five commissions of the Office of the Services Commissions (OSC) has the responsibility for the administration of discipline for Central Government employees only. For public offices, “the power to make appointments, to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission”. (Section 125 of the Jamaica Constitution, 1962).

In seeking to ensure that the administration of discipline is consistent with the rule of law, existing policies and practices, are guided by principles of natural justice, in particular, due process; hence, the OSC developed in 2011, the User Manual for the Administration of Discipline in Executive Agencies.

Disciplinary procedures should be agreed on between management and worker

In light of the foregoing and in line with harmonisation of HR policies and practices under Public Sector Reform, it became necessary for the development of standardised guidelines for other Public Bodies which are solely responsible for the management of staff, including hiring, disciplining and separating.

This policy is informed by the Labour Relations and Industrial Disputes Act; Labour Relations Code; Public Service Regulations, 1961; Staff Orders for the Public Service, relevant Acts and Regulations and is specific to Public Bodies who by virtue of their establishment do not receive oversight from the Office of the Services Commissions.

Organisations are encouraged to use this Policy when taking disciplinary action as a means of stimulating an employee to correct deficiencies, thus enabling satisfactory performance and conduct and prevent recurrence of similar acts by the same or other employees.

In order to improve efficiency, effectiveness and accountability, nothing in this policy prevents an organisation from implementing additional disciplinary measures that may

be required due to the unique nature of the operations. These additional measures must be agreed on in consultation with employees and employee representatives.

1.1 Policy Statements

In accordance with the Labour Relations Code, this policy:

- 1.1.1 Is to facilitate the employer's right to take corrective actions where there is a breach of the established Code of Conduct.
- 1.1.2 Is to ensure that breaches of the Code of Conduct are dealt with in accordance with agreed principles and guidelines.
- 1.1.3 Is to ensure that staff is aware of the:
 - a. Organisation's code of conduct
 - b. Procedures for the investigation of breaches of discipline
 - c. Authorised Officers/Administrators of the disciplinary process
 - d. Penalties for breaches of discipline.
- 1.1.4 Requires that disciplinary action is impartially administered in keeping with government's policies in order to promote to the fullest extent possible a harmonious relationship between employees and employers.
- 1.1.5 Requires all parties to take the necessary action to ensure the earliest possible corrections where there are breaches of discipline.

Relevant Acts, Regulations and Guidelines include laws establishing Public Bodies; Circulars and other policy instructions from the Ministry of Finance and the Public Service.

1.2 Objectives

The objectives of this policy are to:

- 1.2.1 Facilitate harmonious relationships between management and employees/employee representatives through effective communication to resolve and reconcile work-related problems.
- 1.2.2 Ensure that employees and employee representatives are aware of the organisation's code of conduct and the procedures that exist to administer discipline where breaches occur.
- 1.2.3 Provide a framework for prompt, consistent and fair action in those instances where employees infringe on the code of acceptable corporate, professional and social behaviour.
- 1.2.4 Give the employee the opportunity to be heard and the right to be accompanied by his/her representative(s).
- 1.2.5 Provide for a right of appeal, wherever practicable to a level of management not previously involved.



1.3 Scope

This policy shall apply to all employees in Public Bodies excluding Executive Agencies, Central and Local Government.

1.4 Authority

This policy is guided by the principles outlined in the following:

- 1.4.1 The Labour Relations Code
- 1.4.2 The Labour Relations and Industrial Disputes Act
- 1.4.3 The Employment, Termination and Redundancy Payments Act
- 1.4.4 The Public Service Regulations, 1961
- 1.4.5 The Staff Orders, 2004
- 1.4.6 Relevant Acts, Regulations and Guidelines.

1.5 Implementation

Parent Ministries are required to be conversant with this Policy in order to assist Public Bodies under their purview in the implementation and use of this Policy.





Code of Conduct

The Public Service maintains that proper standards of personal and professional conduct of all its employees are necessary to achieving an orderly and efficient business process and to protect the employees, the Government's assets and its image. These standards are outlined in Chapter 4 of the Staff Orders for the Public Service and the organisations' HR Manual/Policies where applicable.

The standards of conduct and performance are not exhaustive; therefore an employee may not avoid disciplinary action because the standard of conduct or performance is not written down or referred to in this Policy or the organisation's HR Policy.

It is the responsibility of each Authorised Officer to ensure that terms and conditions of work and the behaviour expectations are communicated to all employees and made available at convenient locations to allow for easy access and reference.

Violation of any of the behaviour expectations and the organisation's policies and rules which result in damage or loss to the organisation could lead to disciplinary measures being taken.

The Human Resource Department (HR) or designated officer with responsibility for the human resource function is responsible for guiding the disciplinary process where it becomes necessary to take disciplinary action. However, where breaches fall within their level of authority, immediate supervisors are responsible for addressing behaviour and performance issues by taking the necessary action at the earliest possible time. Every effort should be made to resolve disciplinary issues on an informal basis without invoking the formal procedures.

Where the Code of Conduct and Schedule of Breaches and Disciplinary Penalties as outlined in this Policy requires adjustment to reflect the uniqueness of the organisation's operations, employees and employee representatives are to be consulted and the agreed changes submitted for ratification to the Ministry with Responsibility for Public Service.

Physical violence or threat of assault /violence is a Very Serious Offence.

Breaches of the Code of Conduct

It is not practicable to specify all offences for which the organisation may initiate disciplinary measures, therefore, any action that is against good professional conduct and/or which impacts negatively on the achievement of the organisation's objective can be considered for disciplinary action. Notwithstanding, the following breaches may be considered for disciplinary action.

Breaches of the code of conduct can be categorised as:



- a. Minor Offences
- b. Serious Offences
- c. Very Serious Offences

2.1 Minor Offences

These are offences for which an employee would not be dismissed on the first occurrence and for which advice and correction are the recommended actions. Corrective action for minor offences in which the facts are clear and undisputed is to be taken by the offending employee's immediate supervisor in accordance with the Schedule of Breaches and Disciplinary Penalties.

Minor offences include:

- a. Absence from duty during working hours without permission of the relevant senior officer for more than the approved time.
- b. Absence from work for one (1) day without permission except in cases where by reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence.
- c. Being late for work two (2) to four (4) times or up to four (4) hours per month without permission.
- d. Refusing to sign the attendance register.
- e. Loitering on the organisation's premises during working hours.
- f. Sleeping on the job.

2.2 Serious Offences

These are offences which can result in loss to the organisation and carry the minimum penalty of a written warning on the first offence. Serious offences include:

- a. Absence from work for two (2) to three (3) days without permission except in cases where by reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence.
- b. Failure or refusal to follow lawful work instructions.
- c. Being late for work five (5) or more times or in excess of four (4) hours per month without permission.
- d. Failure or refusal to adhere to the organisation's established policies and procedures
- e. Failure to report damage to the organisation's property under your care.
- f. Sexual activity on the organisation's premises.



- g. Disgraceful or {improper conduct} while acting in an official capacity whether on the physical compound or otherwise. **(See 2.4)**
- h. Soliciting or accepting a reward, gratuity or gift in connection with the discharge of duties. **(See Staff Orders for Public Service Sections 4.2.9 and 4.3)**
- i. Withholding information which may be detrimental to the organisation's operations.
- j. Use of the organisation's property for personal use without permission.
- k. Failure to bring to the attention of the organisation any action by another employee which may jeopardise the safety of others or brings the organisation into disrepute.
- l. Gambling on the organisation's premises or worksites.
- m. Misuse of internet, email and other facilities.

*Unwelcomed sexual
advance is a Very
Serious Offence!*

2.3 Very Serious Offences

These are violations which can result in considerable loss to the organisation and negatively impacts the organisation. Very serious offences can lead to dismissal on the first offence.

- a. Absence from work for more than four (4) days without permission except in cases where by reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence.
- b. Wilful misuse of organisation's resources leading to waste and loss in production and/or damage to the organisation's property
- c. Unauthorised removal of co-workers', organisation's or clients' property.
- d. Fraud.
- e. Physical violence or threat of assault or violence, e.g. fighting.
- f. Bullying or harassment of colleagues or clients, including sexual harassment.
- g. Sabotage or damage of the organisation's/co-workers' equipment or property.
- h. Wilfully endangering the safety and welfare of others which could/does result in injury or worse.
- i. Conviction of a criminal offence **(See 4.9)**
- j. Producing false testimonials and qualifications that led to employment, appointment or promotion.
- k. Use of obscene language to colleagues, managers/supervisors or clients.
- l. Committing any act which brings the organisation into disrepute.



- m. Divulging confidential or secret information to unauthorised persons.
- n. Attending work under the influence, using and/or distributing alcohol and/or illegal substances on the organisation's premises or worksites.
- o. Using your position in the organisation for personal gain and/or to obtain favours from clients.

2.4 USEFUL TIP

- *Where an employee's misconduct occurs off the premises but impacts negatively on the organisation, the employer is entitled to take disciplinary action against the employee. In these circumstances, the employer has to establish that it has a legitimate interest in the matter – i.e. the misconduct is disruptive to the organisation or affects its reputation/image.*

3

The Disciplinary Procedure

Any incident that breaches the code of conduct may be considered for disciplinary action. This incident may be an allegation reported by the Head of Department, supervisor or any employee or an occurrence where the facts are clear and undisputed such as persistent lateness. Where a behaviour that breaches the organisation's Code of Conduct is observed, employees are encouraged to report such breaches at the earliest possible time to ensure the organisation's ability to take corrective action in a timely manner. Alleged breaches may be dealt with using an informal or formal procedure.

3.1 Informal Procedure

- a. As part of the normal supervisory activities, immediate supervisors should keep employees up-to-date on the required standards.
- b. Minor offences up to the second occurrence should be dealt with by the immediate supervisor. The supervisor must speak to the employee in private or issue a written warning encouraging the required standards of behaviour or performance. Following a satisfactory outcome of the use of the informal procedure the matter will be considered resolved.
- c. The formal procedure should be invoked where the breach has been discussed with the employee informally **and:**
 - The issue has not been resolved and the problem persists
 - The recommended improvements in conduct are not displayed
 - Further information becomes available that makes the matter more serious.

Reports should accurately state date, time and location of violation.

3.2 Formal Procedure

Where the informal process has not resulted in improved conduct or where the alleged breach is so serious that the supervisor considers informal action to be inappropriate, formal action shall be pursued.

3.2.1 Reporting of a Breach

- a. Report of a breach should be submitted in writing to the immediate supervisor, Human Resource Manager or designated officer with



responsibility for HR, depending on the breach. Reports should accurately specify the offender(s), nature of the breach, the time, location, witnesses (if any) and any other initial and critical information.

- b. On receiving this report, HR should commence the disciplinary process within five (5) days.
- c. Where the facts of the alleged breach are not clear or are disputed and a formal investigation is required, the immediate supervisor/HR should write to the employee advising of the allegations received and an officer appointed to investigate the matter.

3.2.2 Examination of Reports

The reports and statements collected are then examined by HR. In an organisation where the staffing levels permit, an independent manager may be appointed to review statements and investigate the breach. However, it should be noted that the administration of discipline is the purview of HR.

3.2.3 Preliminary Investigation

The preliminary investigation seeks to establish the relevant facts surrounding the breach. Its scope and depth is dependent on the nature of the breach and should not be confused with the disciplinary enquiry. To ensure preservation of information and credibility of witness statements, the preliminary investigation should be conducted within seven (7) days of receiving the initial report of the alleged breach.

3.2.3.1 The preliminary investigation will include:

- a. Collecting witness statements and evidential documentation
- b. Talking to the witness and the accused employee, if necessary. In order to ensure transparency, the employee would have to consent to this meeting and be given the opportunity to have a representative. If the employee fails to attend the meeting, the preliminary investigation will continue with the collection of information from the relevant persons.
- c. Examining statements (where clarification is needed this should be immediately obtained from the individual who gave the statement) ensuring:
 - That all that is said including use of jargons, inappropriate language or patois, is clearly stated word for word as can be recalled
 - Accurate recording of dates, times and locations.
- d. Determining the policy, rule or regulation that was breached and the charge to be laid against the employee.



- 3.2.3.2 HR examines the evidence of the preliminary investigation. Based on the alleged breach, the information collected and the Code of Conduct HR determines if there is either:
- a. No Cause to Discipline
 - b. Cause to Discipline
- 3.2.3.3 **If *No Cause to Discipline***
HR writes to the employee advising that no action will be taken.
- 3.2.3.4 If it has been established that there is ***Cause to Discipline***:
- a. HR writes to the employee outlining:
 - The breach
 - The charge(s)
 - The intent to take action. HR should ensure that the notification clearly indicates whether the action will be not with a view to dismissal or with a view to dismissal as outlined in the Schedule of Disciplinary Breaches and Penalties
 - The deadline to submit written response
 - That if no response is received within the required time, the penalty will be effected as stipulated by the Schedule of Disciplinary Breaches and Penalties.
- 3.2.3.5 The employee shall provide a written response to the charge(s) within ten (10) working days.
- 3.2.3.6 In the written response the employee may:
- a. Attach any statements from witnesses.
 - b. Indicate whether or not he/she would prefer to have the matter reviewed on the basis of the response and witness statements or to have a disciplinary enquiry. If no indication is made it will be presumed that the written response should be used to determine the outcome.
- 3.2.3.7 If the employee admits in writing to the facts giving rise to the charges(s) it shall not be necessary to hold a disciplinary enquiry. However, a meeting with the employee and his/her representative should be held before effecting any penalty.
- 3.2.3.8 If the employee does not provide a response within the required time the disciplinary penalty should be effected according to the Schedule of Disciplinary Breaches and Penalties.

Employees must be given an opportunity to respond to allegations.



3.3 USEFUL TIPS

It is useful to consider the following before deciding to investigate or during the investigation:

- *Has the organisation made provision for the staff to be aware of the policy?*
- *Is the policy accessible to all employees?*
- *Has the organisation enforced rules and standards consistently?*
- *Has HR/Investigating Officer remained uninvolved emotionally during the process?*
- *What are the facts surrounding the case?*
- *Has enough evidence been obtained?*
- *Has the employee been allowed to give his/her account of the infraction?*
- *Has the matter been thoroughly investigated?*
- *Has the investigation been fair, objective and timely?*



3.4 Disciplinary Enquiry

The Disciplinary Enquiry is to be held where;

- the employee responds in writing disputing the evidence presented
- the employee requests an enquiry into the matter
- there is doubt, ambiguity or uncertainty, or
- the preliminary investigation establishes that there is a case to answer.

No documentary evidence shall be used against an employee unless he/she has been given access to the information!

3.5 Disciplinary Penalty

If an employee admits to a charge or on the conduct of the disciplinary enquiry a charge is upheld and the employee has not appealed then the penalty is to be applied as prescribed by the Schedule of Disciplinary Breaches and Penalties.

3.6 Appeal

Where the Authorised Officer/Disciplinary Committee has recommended a penalty for an employee, the employee may appeal the decision in accordance with Chapter 8 of this Policy.

3.7 POINTS TO NOTE

- 3.7.1 All employees have a responsibility to notify supervisors or managers of cases where they are aware that misconduct by another employee has or may have taken place.
- 3.7.2 Where charges have been brought against an employee he/she **must** be given an opportunity to respond to the allegations.
- 3.7.3 If the drafting of charges cannot be adequately addressed internally, then the assistance of the Parent Ministry/Attorney General should be sought.
- 3.7.4 Where disciplinary proceedings with a view to dismissal have been initiated, the employee may be interdicted from duty (*See Chapter 5*).
- 3.7.5 **Under no circumstance should an employee be sent on vacation leave pending the outcome of an investigation or enquiry. If it is necessary that the employee be removed from the position/organization to facilitate the conduct of the investigation then the employee should be transferred or interdicted.**
- 3.7.6 During the disciplinary process communication should be maintained with the employee.
- 3.7.7 All matters should be handled with the strictest confidence to protect the reputation of the employee, the process and the organisation.
- 3.7.8 No report from disciplinary proceedings should be placed on an employee's file before it is discussed with him/her.
- 3.7.9 Where the complexity and specific circumstances of a case, necessitates the extension of timelines, the employee should be advised of the reasons for any delay.

No employee should be sent on vacation leave pending the outcome of an investigation.





Disciplinary Penalties

An employee against whom a disciplinary charge has been established may receive one of the following penalties:

- a. Verbal warning
- b. Written warning
- c. Final Written Warning
- d. Suspension
- e. Dismissal.

4.1 Verbal Warning

A verbal warning may be given for breaches as indicated in the Schedule of Disciplinary Breaches and Penalties. The supervisor should ensure that the discussion with the employee outlines the expected behaviour that was violated and recommendations for improvements. A note of this warning should be kept by the supervisor and only be sent to the HR Department where further action is necessary for the same offence.

4.2 First Written warning

A written warning may be given for repeated minor offences or as prescribed by the Schedule of Disciplinary Breaches and Penalties. It should describe:

- a. The performance or work violations in specific detail
- b. The expected performance improvement within a specified period of time
- c. The consequences to the employee if the infraction is not corrected.

Prior to issuing a written warning, the immediate supervisor should hold a discussion with the employee to ascertain the circumstances that led up to the offense. The written warning, in effect, is to place the incident on record, confirming the discussion with the employee.

In order to be effective, warning letters should be prepared to fit the circumstances of each case and should be given within ten (10) working days of the breach or knowledge thereof. *(See Appendix 9.9).*



4.3 Final Written Warning

An employee may receive Verbal warning, written warning, suspension or dismissal for violating the organisation's Code of Conduct

This is given where discussions and the first written warning has not resulted in the required improvements in conduct. As with the first written warning, the final written warning should clearly outline the violation, the expected improvements, the deadline for improvement and consequences, if no improvement. It should be clearly indicated that this notification is the Final Warning.

4.4 Suspension

This is a penalty arrived at subsequent to due process and is where an employee is removed from duty without pay for a period not exceeding three months. The violations warranting suspension are outlined in the organisation's Schedule of Disciplinary Breaches and Penalties.

4.5 Dismissal

This is the involuntary termination of an individual's employment with the organisation and is initiated by the employer. In an effort to preserve natural justice, an employee should be afforded an opportunity to present his/her case, (if he/she so elects) before the penalty of dismissal is effected.

- 4.5.1 A decision of dismissal should be taken where:
 - a. The full warning procedure has been observed, or
 - b. The employee admits in writing to the charge which bears a penalty of dismissal (*See 3.2.3.7*)
 - c. It is established after investigation and a disciplinary enquiry that the employee is guilty of an offence for which the penalty is dismissal.
- 4.5.2 All dismissals for disciplinary breaches shall be done in accordance with this Policy.
- 4.5.3 Dismissal is to be with effect from a date agreed by management.
- 4.5.4 Employees on interdiction are to be dismissed with effect from the date of the decision to impose a penalty or soon thereafter.
- 4.5.5 The employee is entitled to all salary and vacation leave earned up to the effective date of the dismissal.



- 4.5.6 There is no payment in lieu of notice to an employee dismissed according to this Policy.
- 4.5.7 The Authorised Officer is the only officer within the organisation that has the authority to dismiss any employee of the organisation.
- 4.5.8 If the Authorised Officer is satisfied that owing to illness or other reasonable cause the employee was prevented from reporting for duty, replying to disciplinary charges or attending a disciplinary enquiry, then dismissal should not be exercised without giving the employee an opportunity to present his/her case.

4.6 Administration of Penalties

Penalty	Authority
Verbal Warning	Immediate Supervisor
First Written Warning	Immediate Supervisor
Final Written Warning	Head of Department / Head of HR
Suspension	Head of HR / Disciplinary Committee
Dismissal	Authorised Officer

4.7 Application of Disciplinary Penalties

Offence	Minor Offences	Serious Offences	Very Serious Offences
1st	Verbal warning	First or Final written warning	Final written warning, Suspension or dismissal
2nd	First written warning	Final written warning	Suspension or Dismissal
3rd	Final written warning	Suspension	Dismissal
4th	Suspension	Dismissal	
5th	Dismissal		



4.8 Validity of Warnings

Disciplinary action should be applied to an individual and not to a group.

Where the disciplinary process has been duly administered and the attendant penalty is served by an employee, such a penalty should not be used in determining the outcome of any subsequent disciplinary action unless it is the same offence and has occurred during the time frame as outlined below. If a valid warning exists against an employee when he/she is found guilty of an offence, the existing warning may be taken into account when the disciplinary penalty is being imposed.

Penalty	Validity Period
Verbal Warning	Six (6) months
First Written Warning	One (1) year
Final Written Warning	Six (6) months
Suspension	Six (6) months

4.9 Criminal Proceedings

- 4.9.1 Where criminal proceedings have been instituted in any court against an employee, proceedings for his/her dismissal upon any grounds arising out of the criminal charge shall not be taken until after the court has given judgment and the time allowed for an appeal from the judgment has expired.
- 4.9.2 Where an employee after conviction has appealed, proceedings for his dismissal shall not be taken until after the withdrawal or determination of the appeal.
- 4.9.3 An employee acquitted in any court of a criminal charge shall not be dismissed or any other penalty instituted by the organization in respect of the charge of which he/she has been acquitted. However, the employee may be dismissed or a penalty imposed in respect of any other charge arising out of his conduct in the matter unless such other charge is substantially the same as that in respect of which he/she has been acquitted.
- 4.9.4 If an employee is convicted in any court of a criminal charge, the Disciplinary Committee may consider the relevant proceedings of that court. If the Committee is of the opinion that the employee ought to be dismissed or subjected to some lesser penalty in respect of the offence of which he has been convicted, the Committee may recommend the dismissal or other punishment of the employee without the institution of any disciplinary proceedings, i.e. without conducting an internal investigation and enquiry.



- 4.9.5 An employee convicted of a criminal charge and sentenced to imprisonment shall not receive any emoluments after the date of such conviction.
- 4.9.6 Criminal charges or convictions outside employment should not generally be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that by its nature makes the employee unsuitable for continued employment with the organisation.

4.10 USEFUL TIPS

It is useful to consider the following when determining the penalty to impose?



- *How serious is the breach?*
- *Was the employee advised of the rule in advance?*
- *Is there documentary evidence supporting similar disciplinary problem in the past by this employee?*
- *Has the employee been made aware of the consequences of the behaviour?*
- *Does the behaviour impede the organisation's daily operations?*
- *Was the employee provoked?*
- *Does the penalty under consideration fit the breach?*

4.11 POINTS TO NOTE

- 4.11.1 No supervisor has the right to implement a disciplinary penalty without referring to the Disciplinary Policy.
- 4.11.2 The penalty imposed should be consistent with the nature and gravity of the infraction, frequency of its occurrence and the attitude of the employee to the offence that was committed.
- 4.11.3 Only one penalty may be imposed for each instance of a breach of discipline.
- 4.11.4 Disciplinary action should not be imposed if there is insufficient or incorrect information/evidence or where the matter is based on speculation and not facts.
- 4.11.5 Disciplinary action should be applied to an individual employee and not to a group. If more than one employee is involved, the penalty shall be based on the facts and the appropriate procedure applied to match the offence for each employee.
- 4.11.6 The immediate supervisor of the offending employee is responsible for taking action for offences that warrant verbal or

4.11 POINTS TO NOTE

- written warning. After a written reprimand has been issued and the staff member engages in the offending action another time, then the immediate supervisor is responsible for making recommendations to the head of HR for further actions to be taken in accordance with this Policy.
- 4.11.7 Where a supervisor fails to take action against an employee and the failure to do so results in a biased treatment of the offending employee, threatens the stability of the work environment or weakens the organisation's position to take action against other employees; then the supervisor is liable to have disciplinary action taken against him/her.
- 4.11.8 A supervisor may be liable for disciplinary action where he/she excessively penalises an employee in a manner which is not supported by the action or presumed offence or is not in accordance with this Policy or the organisation's code of conduct.
- 4.11.9 Reports must be kept of all disciplinary charges, action taken and disciplinary penalty instituted.
- 4.11.10 Where the disciplinary enquiry has been conducted and it is proven that a temporary employee is guilty of the charge, the Authorised Officer may forthwith dismiss him/her. **(See 3.2.3.7)**
- 4.11.11 During the contractual term, all contract officers will be subject to the provisions of this Policy and their contracts for the administration of discipline.





Removal from Office to Facilitate Investigation

Depending on the allegation of misconduct reported, it may be necessary to remove an employee from the immediate work area to conduct the investigation. This removal may be in the form of a temporary transfer or interdiction/suspension with pay or part thereof. Suspension/interdiction should not be done without considering and discussing alternatives and should be for the shortest possible time.

Removing an employee from office should not be used unless it is extremely necessary and should not be seen as a penalty but as a measure to ensure that the public interest is served and the investigations are carried out in a manner with the least likelihood of interference.

Interdiction should only be used when extremely necessary!

5.1 Removing an Employee for Investigation Purposes

An employee may be removed where:

- 5.1.1 A breach of discipline is considered to be serious that the employee's presence on the job may interfere with the investigation process.
- 5.1.2 The outcome of disciplinary proceedings is pending.
- 5.1.3 Disciplinary proceedings have been or are about to be instituted 'with a view to dismissal'.
- 5.1.4 An employee has been or is about to be charged with a criminal offence.

5.2 Serving a Removal from Office Notification

- 5.2.1 An employee should be notified in writing of removal from duty (*See 9.7*). The notice should be effective from the date on which it is served.
- 5.2.2 An employee who has been removed from duty for investigation purposes shall be deemed to be properly served if the notification:
 - a. Is sent in a prepaid, registered letter properly addressed and posted to the address on record
 - b. Is sent by a bearer/courier and there is a signature of receipt.



5.3 Responsibility of an Employee Removed from Office

An employee who is removed from duty:

- 5.3.1 Shall give to the Authorised Officer an address at which he/she can be found.
- 5.3.2 Shall not leave the island without the prior permission of the Authorised Officer.
- 5.3.3 Shall be available, if required, to return to work.

5.4 Salary and Allowances

- 5.4.1 Based on the nature and circumstances of the charge, employees may be removed from duty with pay or part thereof. The amount is determined by the circumstances of the allegations/charge, i.e. the more serious the charge the less is paid. The general principle is that an employee should not be paid less than half salary. However, if the charge involves an allegation of fraud or misappropriation of public funds or property, the proportion may be as low as quarter.
- 5.4.2 All allowances to which the employee is entitled (applicable to the substantive position) should be paid. The allowances that can be paid are those which are not linked to the actual performance of duty.
- 5.4.3 An employee on interdiction/suspension is not entitled to earn vacation leave. There is also no provision for an employee to be paid salary in lieu of vacation for the period during which he/she was removed from office for investigation purposes.
- 5.4.4 Where disciplinary/criminal proceedings against an employee removed from duty results in exoneration, the full salary withheld should be paid within two (2) months or at the earliest time possible.
- 5.4.5 Where the proceedings result in any punishment other than dismissal, the employee shall be allowed such salary of the amount withheld, as recommended by the Authorised Officer/Disciplinary Committee.
- 5.4.6 Where disciplinary proceedings result in an employee who has been removed from duty being found guilty and dismissal is the penalty, the dismissal should be effective from the date of conviction or the date the decision to impose a penalty or soon thereafter. The employee is only entitled to salary and allowances that were due as at that date.
- 5.4.7 If an employee who has been removed from duty appeals the decision taken then the interdiction/suspension should continue until the appellate body has taken a decision on the matter.

An employee on interdiction is not entitled to earn vacation leave!!



5.5 POINTS TO NOTE

- 5.5.1 There are some Public Bodies which have adopted the term Interdiction as used in Central Government and can continue to do so. However, suspension with pay or part thereof to facilitate the investigation is also acceptable
- 5.5.2 All references to suspension in this chapter are for investigation purposes and not to be regarded as a penalty
- 5.5.3 Under no circumstance should an employee be sent on vacation leave pending the outcome of an investigation or enquiry. If it is necessary that the employee be removed from the organization to facilitate the conduct of the investigation then the employee should be interdicted or suspended with pay.
- 5.5.4 If the employee elects to apply for vacation leave before being removed from office, the employee may be permitted to proceed on this leave.
- 5.5.5 Where the nature of the investigations would be more objectively conducted with the absence of the employee and it is not necessary to interdict or suspend with pay, then a temporary transfer may be considered





Disciplinary Committee

Each organisation should have a Disciplinary Committee that manages disciplinary and grievance issues. In the absence of a Disciplinary Committee or for organisations where staffing levels may prevent the operation of multiple committees, an existing HR or Performance Management Appraisal System (PMAS) Committee should be equipped to adequately deal with these issues.

The Committee is appointed by and answerable to the Authorised Officer.

6.1 Composition

The committee should be comprised of no less than three (3) persons with each member capable of making valuable contribution to the meetings and the decisions. Persons recommended for comprising the Committee are:

- a. Legal Officer
- b. Industrial Relations Representative
- c. Employer Representative
- d. Employee Representative

The chair of the committee should be a member of the legal profession with the appropriate expertise and should not have been involved in any preceding activity relevant to the case being considered.

To avoid any actual or perceived subjectivity in the conduct of an enquiry or review any member of the Committee personally involved in the case is to be recused and another person of similar capacity appointed.

6.2 Purpose

The overall purpose of the Committee is to:

- 6.2.1 Conduct all disciplinary meetings subject to this Policy.
- 6.2.2 Make the necessary recommendations in relation to the case examined.
- 6.2.3 Arrive at a resolution in a timely manner.
- 6.2.4 Ensure that the rights of all parties are protected.
- 6.2.5 Ensure that nothing is done that might prejudice the outcome of the meetings.



- 6.2.6 Ensure that no arbitrary judgment is made regarding the likely outcome of the meetings.
- 6.2.7 Adhere to the disciplinary procedures as outlined in the policies applicable to the organisation.

6.3 Responsibilities

In carrying out all its responsibilities the Committee must act:

- 6.3.1 In accordance with the:
 - a. statutory requirements
 - b. rules governing conditions of service and the relevant Statutes and Acts.
 - c. Disciplinary Policy for Public Bodies.
- 6.3.2 In partnership with the Union Representatives.
- 6.3.3 In a manner that displays respect for each other, equity, justice and an observation of the Government's core values and confidentiality.

HR should advise the employee charged in writing of the date, time and location of the Disciplinary Enquiry.





Disciplinary Enquiry

The disciplinary enquiry gives the organisation an opportunity to objectively consider all the evidence of an allegation against an employee, arrive at a decision and take the appropriate action.

The disciplinary enquiry also facilitates the opportunity for the employee to present their case to the investigating team (HR or Disciplinary Committee).

If the disciplinary enquiry is to be conducted:

- a. The employee is to be advised that he/she will be permitted to appear before the Disciplinary Committee at the time, date and place communicated.
- b. The employee is to be provided with copies of all documentary evidence that shall be used against him/her.
- c. The employee shall be given an opportunity to question the witnesses to be examined.
- d. The employee is permitted to submit his/her own documentary evidence.
- e. During the course of the enquiry, if further charges are disclosed and the Authorised Officer/Disciplinary Committee thinks it fit to proceed against the employee upon such grounds, the employee is to be furnished with the written charge and the same steps taken as those prescribed in respect of the original charge.

The Preliminary Investigation is not the same as the Disciplinary Enquiry.

Where an infraction is greater than a Minor Offence, it may be necessary for the Disciplinary Committee to review the case and recommend the action to be taken.

7.1 Disciplinary Enquiry Participants

The enquiry is most important to the employee charged. It is a private affair and only the following persons should be present in the room during the Enquiry:

- a. The employee charged
- b. The witness(es) (for the organisation and/or employee)
- c. Representative of the employee
- d. Investigating officer
- e. The main employees of the organisation involved in the process for e.g. HR
- f. Records Clerk
- g. Steno Writer



Where it is not possible to employ the services of a Steno Writer, the necessary arrangements should be put in place to ensure that the meeting can be recorded and the transcript prepared.

7.2 Before the Enquiry

7.2.1 Human Resource Department/Designated Officer with responsibility for HR

- a. Schedules the meeting time at a date convenient to committee members, the organisation and the employee charged within fourteen (14) days of the response from the employee.
- b. Communicates in writing to the employee charged the date, time and place of the enquiry.
- c. Prepares and submits the file to the Chairman of the Committee for the naming of witnesses to attend the enquiry.
- d. Writes committee members and the employee confirming the date and submitting brief including relevant statements, charges and reports.
- e. Advises witnesses on behalf of the organisation of the meeting and the requirement to appear.
- f. Provides copies of, or give permission to inspect any documents to be used in support of the charges at least ten (10) working days before the hearing.
- g. Arranges for verbatim notes to be taken or recorded.

7.2.2 Employee Charged

- a. Ensures that witnesses on his/her behalf (if any) attend the enquiry
- b. If such witnesses are in the Public Service, the employee (charged) should make an application to the supervisor of the witness who shall allow the employee (witness) time to attend the enquiry.

7.3 Location of the Enquiry

7.3.1 Human Resource Department/Designated Officer with responsibility for HR

- a. Identifies the most suitable location to conduct the Enquiry (which must be private).
- b. Makes the necessary arrangements for the conduct of the enquiry in accordance with established organisational procedures. (e.g. serving of refreshment; parking arrangements for committee members, employee charged and witnesses and notifying the receptionist/security of persons who will be in attendance).

7.4 Representation at the Enquiry

7.4.1 The Organisation

The organisation is entitled to be represented by an employee or an attorney-at-law. Where the employee has chosen to use a legal representative the organisation should ensure that it retains an attorney-at-law.

7.4.2 Employee Charged

- a. The employee shall be entitled to be represented by a competent individual of their choice such as:
 - i. A public officer
 - ii. An attorney-at-law or
 - iii. An accredited representative of a trade union or staff association recognised as representing the category of staff to which the employee is affiliated.
- b. Where the employee charged has chosen to utilise the services of an attorney-at-law this shall be at their own expense regardless of the outcome of the matter.
- c. The employee charged should advise the organisation at least five (5) working days prior to the date of the enquiry, of the name and profession of their representative.

7.5 At the Enquiry

- a. The Chairman shall read the charges.
- b. The organisation shall present its evidence in support of the charges, including witness(es).
- c. The employee or his/her representative shall be permitted to question the organisation's witness(es).
- d. The employee charged shall respond to the charges presenting any evidence including witness(es) for consideration.
- e. The employee charged may also be questioned by the Committee.
- f. Notes of the proceedings shall be duly recorded.

7.6 After the Enquiry

On conclusion of the Enquiry:



- 7.6.1 The Committee reviews the proceedings and decides on the response which may be any of the following:
- a. That the evidence is insufficient without calling on the employee to make a defence where the charges were reviewed based on the written reply.
 - b. That the evidence is sufficient, recommend that the charges be upheld and the relevant penalty (based on the Schedule of Disciplinary Breaches and Penalties) be imposed.
 - c. That the employee deserves an alternative penalty and recommends same.
- 7.6.2 The chairman provides a written report to HR advising whether or not the charge against the employee has been substantiated.
- 7.6.3 The report must be circulated to the employee along with the verbatim notes/recordings of the enquiry.
- 7.6.4 HR shall consider the findings and take action.
- 7.6.5 If the charge has not been established, the employee shall be advised in writing. However, some counsel should be given regarding involvement in the matter that brought the issue to the Committee.
- 7.6.6 If the charge has been established, the employee shall be advised in writing and shall also be informed of the penalty to be imposed and the right to appeal.

7.7 Failure to Attend Disciplinary Enquiry

- 7.7.1 If the employee's absence was due to circumstances beyond his/her control then consideration should be given to rescheduling the date of the disciplinary enquiry.
- 7.7.2 If an employee refuses to attend a disciplinary enquiry then he/she should be advised that a decision will be taken on the charge in his/her absence and without the benefit of his/her evidence or witness(es). Such an employee would not have right to an appeal based on any matter connected to or resulting from his/her absence.



Appeal

The opportunity to appeal against a disciplinary decision is essential to natural justice and should be dealt with promptly. Employees who have reason to believe that a disciplinary process was unfair or who are dissatisfied with the disciplinary penalty imposed may appeal the decision.

Employees should be aware of the arrangements for submitting an appeal, appeal hearings and their right to be accompanied to the hearing.

Each employee who has been subject to disciplinary action shall have the right of one (1) appeal within the organisation.

Employers should inform employees in writing of their right of appeal and any deadline for doing so when the disciplinary decision is communicated. The potential outcomes of the appeal process should be made clear, i.e. whether it will be a review of the original decision, or a complete re-hearing of the case.

On an appeal, unless there is a re-hearing of the case and new evidence presented substantiating the need for a harsher disciplinary action; the disciplinary penalty should not be increased.

8.1 Submitting an Appeal

- 8.1.1 On receipt of the written notification from the HR of the disciplinary penalty to be instituted, the employee has fourteen (14) working days within which to submit an appeal outlining the grounds for the appeal. Depending on the justification given, the HRD can use discretion in allowing appeals to be heard where the appeal is received after fourteen (14) working days but not exceeding twenty-eight (28) working days.
- 8.1.2 The appeal is to be reviewed by an officer at a more senior level than the person who took the original decision. If it is deemed necessary, the witness(es) and employee may be invited to an appeal hearing.
- 8.1.3 Where an appeal against a disciplinary penalty of suspension or higher has been submitted, the employee may be suspended from duty without pay pending the decision.
- 8.1.4 Disciplinary action taken as a result of procedures will remain in force pending the outcome of any appeal
- 8.1.5 If the appeal hearing finds in favour of the employee, he/she is to be reinstated without any loss of pay.



- 8.1.6 If the employee still disputes the appeal decision, he/she may initiate the grievance procedure as outlined in the Grievance Policy for the Public Sector.

8.2 Appeals from a Dismissed Employee

Appeals against dismissal for disciplinary reasons are to be referred to the Ministry with responsibility for the Public Service, copied to the organisation's Board and Parent Ministry. Pending the hearing of such an appeal, the dismissal decision shall stand.

8.3 USEFUL TIPS

Employers should:

- 8.3.1 Always give a right of appeal against any disciplinary action taken
- 8.3.2 Make sure the appeal is conducted by someone more senior and impartial
- 8.3.3 Offer the right to be accompanied at the appeal hearing
- 8.3.4 Explain the type of appeal process to be followed and potential outcomes
- 8.3.5 Give the employee an opportunity to comment on new evidence
- 8.3.6 Keep careful records of the appeal process.





Appendices

- 9.1 Code of Conduct from the Staff Orders for the Public Service
- 9.2 Schedule of Disciplinary Breaches and Penalties
- 9.3 Flow Chart for the Disciplinary Procedure
- 9.4 Allegation of Misconduct – Disciplinary Investigation
- 9.5 Allegation of Misconduct – Invitation to Disciplinary
- 9.6 Removal from Office Notification
- 9.7 Verbal Warning Notification
- 9.8 Written Warning Notification
- 9.9 Appeal Request Form



9.1 Code of Conduct from the Staff Orders for the Public Service, 2004

4. CODE OF CONDUCT

4.1 THE FRAMEWORK

- i) *The Public Service is governed by established Statutes, Regulations, Orders and Procedures. These are translated into a list of behaviour expectations deemed to be acceptable which may be considered as a Code of Conduct for all public officers, including those in managerial positions.*
- ii) *The expectations listed in these Orders apply generally to all members of the public service. In addition, based on the nature of the organization other operational and/or professional requirements might apply.*
- iii) *Taken together, the combined list of expectations establishes the framework for equity and fairness within the organization; outlines the rights, privileges and obligations of individuals; and becomes the standard or benchmark against which the conduct of both managers and employees will be assessed.*
- iv) *It is the responsibility of each Permanent Secretary/Head of Department to ensure that the complete set of behaviour expectations is formulated, communicated to everyone within the Ministry/ Department and posted at convenient locations as a constant reminder.*
- v) *Violation of any of the behaviour expectations could lead to disciplinary measures being taken.*

4.2 BEHAVIOUR EXPECTATIONS

4.2.1 Absence From Duty

- i) *Absence from duty due to illness or other emergencies must be communicated to the appropriate authority within the organization as soon as possible, but no later than the end of the first day of absence.*
- ii) *Absence from duty for other reasons should be pre-arranged and authorized by the appropriate authority within the Ministry or Department.*
- iii) *Permanent Secretaries are required to notify their respective Ministers and the designated Head of the Civil Service of any absence from duty.*

4.2.2 Dress Code

Officers should be appropriately dressed for work at all times, in a manner which demonstrates professionalism, decency and a respect for colleagues, clients and members of the general public. In certain circumstances, specific attire (e.g. uniform) may be required.



4.2.3 Standard of Behaviour

All officers are expected to demonstrate the highest level of professional conduct and personal integrity in the performance of their duties and in serving the public.

The following are some examples of behaviour which are unacceptable:-

- a) Excessive noise which disturbs others - colleagues, clients, or customers;*
- b) Illegal possession and/or use of firearm, weapons or explosives;*
- c) Fighting or other forms of physical disturbance;*
- d) Any act of sabotage;*
- e) Careless abuse or theft of government property;*
- f) Larceny or theft from others - colleagues, clients, customers;*
- g) Use of obscene or threatening language;*
- h) Insubordination (failure to obey a reasonable order from a supervisor).*

4.2.4 Service Standards

- i) Officers are expected to treat everyone, including other public officers, clients and members of the general public with courtesy, respect, fairness and objectivity;*
- ii) Officers should display a positive attitude and be pro-active in the exercise of their duties, seeking to understand and to satisfy the real needs of clients, volunteering information and services as appropriate;*
- iii) In the exercise of official duties, no officer shall confer any special benefit and/or give preferential treatment to anyone on the basis of any special relationship;*
- iv) Requests for services must be dealt with in a manner which is timely, accurate and complete;*
- v) The standards established in Citizens Charters must be adhered to.*

4.2.5 Display and Decorations

- i) Any item of display or decoration should be presented in a manner which is tidy and in good taste;*
- ii) Care must be exercised to avoid the display of items which may be offensive to good taste and public morals or which may reflect bias or discrimination on the grounds of race, religion or gender.*

4.2.6 Political Activity

- i) Officers are expressly forbidden to engage in any type of partisan political activity in any elections at any level;*
- ii) In the exercise of official duties, no service or benefit should be denied or provided to anyone on the basis of partisan political affiliation;*
- iii) In the exercise of official duties, officers may be required to provide factual information to explain or clarify government policy.*



4.2.7 Substance Abuse

- i) *The use of alcohol, intoxicants, or any illegal substance is prohibited at the work place;*
- ii) *Arriving at work under the influence of any of the substances noted above is also prohibited.*

4.2.8 Engagement in Private Work

Officers may engage in private work, only under specified conditions and with prior permission from the appropriate authority/Services Commissions, based upon an assessment of potential for conflict of interest.

4.2.9 Conflict of Interest

- i) *A conflict of interest may be deemed to exist under any of the following circumstances:*
 - a) *Engagement in private activity similar to official functions;*
 - b) *Using information and/or any material gained from official position for private gain;*
 - c) *Exploiting the status and privilege of one's position for private gain;*
 - d) *Soliciting and/or accepting payment and/or any other consideration relating to the performance of or neglect of official duties;*
 - e) *Conducting private business during work hours and/or on government property;*
 - f) *Engaging in transactions with relatives or family members, or an organization in which relatives or family members have interest.*
 - g) *Ownership of investment or shares in any company or undertaking.*
 - h) *Acting as auditors or directors of companies or societies.*
- ii) *In order to address the potential for conflict of interest, officers should in all instances inform the appropriate authority of any such undertaking, seek clarification and get permission. Any such permission would be subject to periodic review.*

4.2.10 Engagement in Work for Statutory Bodies and Public Companies

- i) *Officers may engage in work for Statutory Bodies and Government-owned Companies only with the written permission of the appropriate authority;*
- ii) *The Ministry or Department shall seek to recover the reasonable costs associated with the task, including an honorarium which may be paid to the officer executing the task.*



4.2.11 Exercise of Managerial Authority

- i) Managers are expected to exercise their authority fairly, and even-handedly;*
- ii) The exercise of authority must be to achieve the goals of the organization (results, outputs, etc.) consistent with the committed resources;*
- iii) The exercise of authority should be consistent with sound human resource management practices;*
- iv) Managers who are found to be abusive or vindictive in the exercise of authority shall be subject to disciplinary measures;*

4.3 GIFTS AND EXCHANGES

- i) Officers, in their official capacity are forbidden to solicit or accept gifts or gratuities for the performance or neglect of official duties and responsibilities; Officers, may however accept small tokens of appreciation from customers or clients, subject to the Conflict of Interest provisions under Sections 4.2.9(i) (c) and (d) of these Orders. Officers are advised to act with prudence and if in doubt to seek the advice and approval of the appropriate authority.*
- ii) Where the refusal of such offers may offend international or cultural sensitivities, the matter should be reported immediately to the Permanent Secretary or Head of Department and the object transferred to the Crown;*

4.4 PUBLIC EMPLOYEES AND THE MEDIA

- i) Permanent Secretaries/Heads of Departments must ensure that mechanisms and procedures are in place to facilitate transparency and access to information consistent with government policy;*
- ii) Permanent Secretaries/Heads of Departments must appoint designated spokesperson(s) within the Ministry/Department to respond to public enquiries and requests for information;*
- iii) Any material, statement, documentation or other forms of communication for publication in any media must be approved by the Permanent Secretary/Head of Department or other authorized personnel;*
- iv) Where an officer is called upon to respond to the media or participate in interviews on public policy, care must be exercised to provide only factual information for explanation and clarification.*
- v) Subject to the provision of the Access to Information Act, employees must obtain written approval and clearance from the appropriate authority to make public or communicate with the media or to any private individual, organization or entity any documents, papers or information, not in the public domain which may come into the employee's possession in an official or*



unofficial capacity.

4.5 CONFIDENTIALITY

- i) *All employees shall adhere to the provisions of the relevant legislation pertaining to the utilization and dissemination of public information;*
- ii) *Employees who are required to produce into evidence, in any court of law, any official document of a confidential nature, shall inform the Minister, and Permanent Secretary/Head of Department of the nature of the document;*
- iii) *Other Ministries, Departments /Agencies that may be involved and/or affected shall be consulted;*
- iv) *The advice of the Attorney General should be obtained prior to any such disclosure.*

4.6 LEGAL ADVICE

4.6.1 The advice of the Attorney General shall be sought where:

- i) *in the execution of official duties and responsibilities, a public officer is in doubt of the legal implications of any matter; or*
- ii) *the interests of the Government may be compromised or jeopardized; or*
- iii) *there are indications that legal proceedings may need to be instituted against anyone; or*
- iv) *other legal services are not readily available to the Ministry or Department.*

4.6.2 Submissions to the Attorney General should include:

- i) *the points on which the advice is required;*
- ii) *the precise statements of the relevant facts;*
- iii) *the appropriate cross references to any attachments*

4.7 LEGAL PROCEEDINGS AGAINST PUBLIC OFFICERS

- i) *The Government, further to the advice of the Attorney General, shall defend public employees against whom proceedings are threatened or brought in respect of acts done or liabilities incurred in the exercise of their duties;*
- ii) *In instances where such proceedings are threatened or brought the facts shall be reported to the Attorney General. Subject to paragraph (v) below, the officer against whom the proceedings have been threatened or brought, shall incur no legal or other expenses. No other action shall be taken in connection with any proceedings until the advice of the Attorney General has been obtained;.*



- iii) *Where the Government defends proceedings against a public officer and the Attorney General decides to settle, the cost shall be indicated to the Financial Secretary and also the amount if any, which the Government shall contribute towards such a settlement;*
- iv) *Upon receipt of the decision, the Attorney General shall advise the public employee of the amount which he will be asked to contribute towards such settlement. His/her written agreement shall be obtained for the Attorney General to settle the proceedings.*
- v) *If the public employee does not agree to contribute the amount decided upon, the Government may refuse to continue to afford legal assistance to him/her.*

4.8 LEGAL PROCEEDINGS AGAINST THE GOVERNMENT CAUSED BY THE ACTIONS OF PUBLIC OFFICERS

Where as a result of the act of a Public Officer, legal proceedings are successfully brought against the Government or another public officer and the Government deems it desirable to settle such proceedings out of court, disciplinary action may be instituted against the employee. In such an instance, the public officer shall have the right to own counsel. The public officer may be required to bear some of the costs of a successful action against the Government or another public officer.

4.9 LEGAL PROCEEDINGS BY PUBLIC OFFICERS

Officers may not institute civil proceedings in any Court in connection with matters arising out of the performance/discharge of their public duties or against a Minister or any other public officer for anything done in the performance of his/her duties, without the permission of the appropriate Service Commissions.

4.10 GOVERNMENT COPYRIGHT POLICY

4.10.1 Ownership

- i) *The right of ownership is vested in the Government for any work, documents, reports, where:*
 - a) *the work is produced within the scope of employment, using facilities, personnel, resources of the government; or*
 - b) *the work results from a contractual arrangement between a Ministry, Department or Agency and a contractor, in which the ownership is not specified;*
- ii) *The right of ownership is vested in employees for any work created at their own initiative, outside the scope of employment not using facilities, personnel or other resources of the Government*



4.10.2 Use

Employees are required to take the following steps in the use of works of others in whom copyright is vested:

- a) *seek permission, where necessary;*
- b) *credit source with appropriate reference.*

4.10.3 Royalties

- i) *The use of works, which are subject to copyright, may require the payment of royalties to the author or to the authority in which the copyright is vested.*
- ii) *Where there is any doubt as to whether copyright exists in a work as to who is entitled to it, the advice of the Attorney General should be sought.*



9.2 Schedule of Disciplinary Breaches and Penalties

Key:

- | | |
|--------------------------------------|--------------------------|
| 1. VW - Verbal Warning | 4. S - Suspension |
| 2. WW - Written Warning | 5. D - Dismissal |
| 3. FW - Final Written Warning | |

OFFENCE		PENALTY FOR OFFENCE				
		1st	2nd	3rd	4th	5th
Minor Offences						
1.	Absence from duty during working hours without permission of the relevant senior officer for more than the approved time.	VW	WW	FW	S	D
2.	Absence from work for one (1) day without permission except in cases where by reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence.	VW	WW	FW	S	D
3.	Being late for work two (2) to four (4) times or up to four (4) hours per month without permission.	VW	WW	FW	S	D
4.	Refusing to sign the attendance register.	VW	WW	FW	S	D
5.	Loitering on the organisation's premises during working hours.	VW	WW	FW	S	D
6.	Sleeping on the job.	VW	WW	FW	S	D
Serious Offences						
7.	Absence from work for two (2) to three (3) days without permission except in cases where by reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence.	WW	FW	S	D	
8.	Failure or refusal to follow lawful work instructions.	WW	FW	S	D	
9.	Being late for work five (5) or more times or in excess of four (4) hours per month without permission.	WW	FW	S	D	
10.	Failure or refusal to adhere to the organisation's established policies and procedures	WW	FW	S	D	
11.	Failure to report damage to the organisation's property under your care.	WW	FW	S	D	



Disciplinary Policy for Public Bodies

OFFENCE		PENALTY FOR OFFENCE				
		1st	2nd	3rd	4th	5th
	Sexual activity on the organisation's premises.	WW	FW	S	D	
12.	Disgraceful or {improper conduct} while acting in an official capacity whether on the physical compound or otherwise.	WW	FW	S	D	
13.	Soliciting or accepting a reward, gratuity or gift in connection with the discharge of duties. (See the Staff Orders for Public Service 4.2.9 and 4.3)	WW	FW	S	D	
14.	Withholding information which may be detrimental to the organisation's operations.	WW	FW	S	D	
15.	Use of the organisation's property for personal use without permission.	WW	FW	S	D	
16.	Failure to bring to the attention of the organisation any action by another employee which may jeopardise the safety of others or brings the organisation into disrepute.	WW	FW	S	D	
17.	Gambling on the organisation's premises or worksites.	WW	FW	S	D	
18.	Misuse of internet, email and other facilities.	WW	FW	S	D	
Very Serious Offences						
19.	Absence from work for more than four (4) days without permission except in cases where by reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence.	FW	S	D		
20.	Inefficient use of organisation's resources leading to waste and loss in production and/or damage to the organisation's property	S/D	S/D			
21.	Unauthorised removal of co-workers', organisation's or clients' property.	S/D	S			
22.	Fraud.	S/D	S/D			
23.	Physical violence or threat of assault or violence, e.g. fighting.	FW	S/D	D		
24.	Bullying or harassment of colleagues or clients, including sexual harassment.	FW				
25.	Sabotage or damage of the organisation's/co-worker's equipment or property.	S/D	S/D			
26.	Wilfully endangering the safety and welfare of others which could/does result in injury or worse.	S/D	S/D			

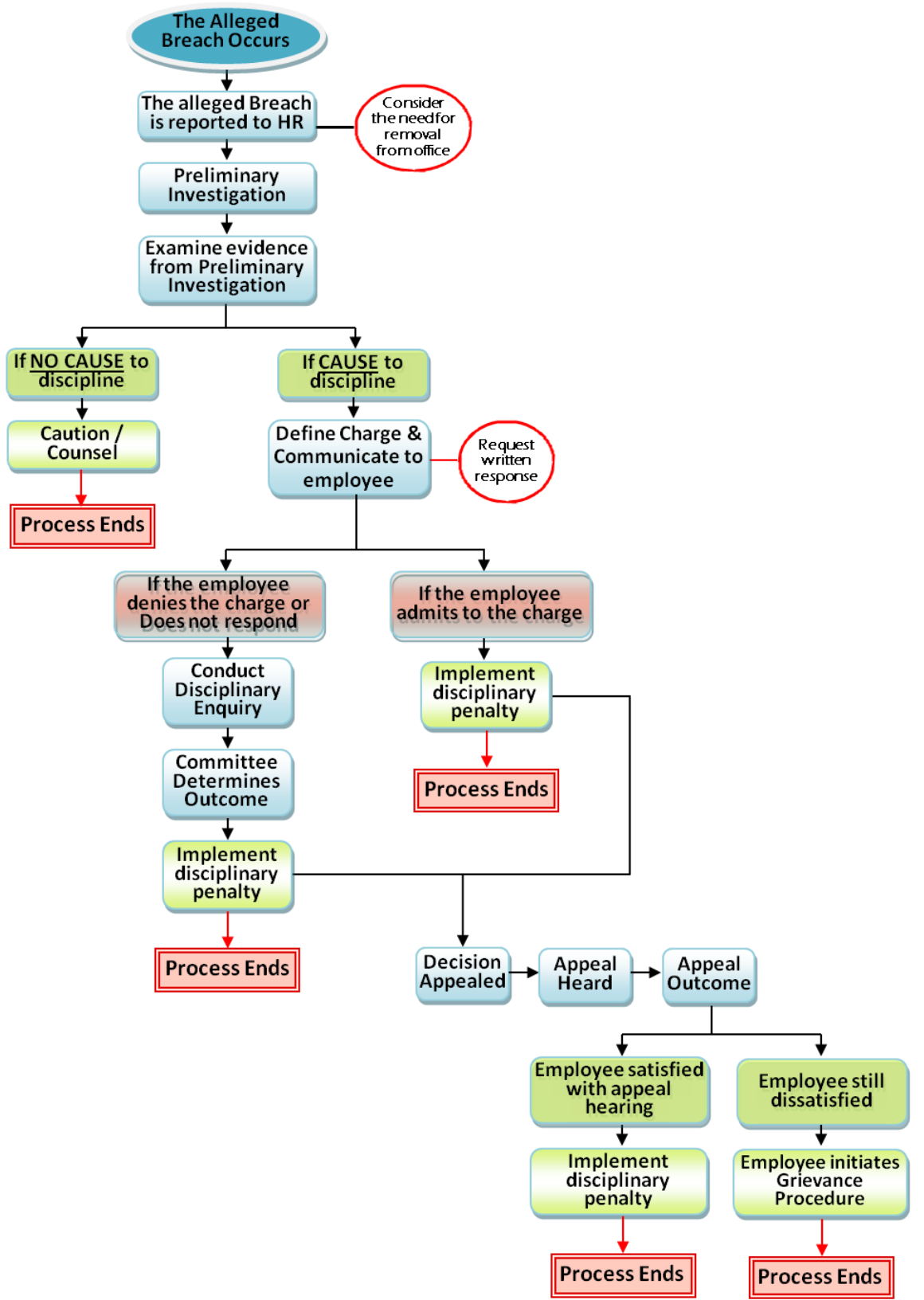
OFFENCE		PENALTY FOR OFFENCE				
		1st	2nd	3rd	4th	5th
27.	Conviction of a criminal offence <i>(See 3.7.5)</i>	FW	S	D		
28.	Producing false testimonials and qualifications to seek employment, appointment or promotion.	D				
29.	Use of obscene language to colleagues, managers/supervisors or clients.	FW	S	D		
30.	Committing any act which brings the organisation into disrepute.	FW	S	D		
31.	Divulging confidential or secret information to unauthorised persons.	FW	S/D	D		
32.	Attending work under the influence, using and/or distributing alcohol and/or illegal substances on the organisation's premises or worksites.	FW/S/D	S	D		
33.	Using your position in the organisation for personal gain and/or to obtain favours from clients	FW	S/D	D		

POINTS TO NOTE

- 9.2.1 It's not practicable to specify all offences.
- 9.2.2 The Agency reserves the right to treat any offence against the general rules and regulations on the merit of the case.
- 9.2.3 Where the Schedule requires adjustments in the attendant penalties to reflect the uniqueness of the organisation's operations, these are to be agreed on by management and employees and changes submitted for approval to the Ministry with responsibility for the Public Service.
- 9.2.4 Disciplinary action will be more severe if previous offences are recorded on the employees file. *(See 4.8)*
- 9.2.5 Counselling is not a penalty but depending on the breach may be recommended in conjunction with the penalty imposed.



9.3 Flow Chart for the Disciplinary Procedure



9.4 Allegation of Misconduct – Disciplinary Investigation

Private and Confidential

[Employee name]

[Address]

Dear [Name]

Re: Allegation of Misconduct – Disciplinary Investigation

I am writing to advise you that a formal investigation has been initiated into the following allegation(s): -

- *[Insert charges]**

The purpose of the investigation is to establish whether there is a disciplinary case to answer. [name], [job title] has been appointed to conduct the investigations and may invite you to investigation meeting should it be necessary.

Please note that on completion of the investigation, it could be deemed necessary to invite you to a disciplinary hearing, and were the issues proven, could, ultimately, result in some form of disciplinary action being taken against you according to the Schedule of Disciplinary Breaches and Penalty and the organisation's Policies.

It must be stressed that, at this stage, this action is as outlined in the disciplinary policy and is purely to gather evidence to conclude whether further action, if any, should be taken.

You should treat this matter as confidential limiting discussions to the fellow employee or trade union representative who you chose to accompany to the investigatory interview.

If you have any questions regarding the above please do not hesitate to contact [name]on [number].

Yours sincerely,

[Name Manager]

[Job Title]

Cc: HR, File



9.5 Allegation of Misconduct – Invitation to Disciplinary Enquiry

Private and Confidential

[Employee name]
[Address]

[Date]

Dear [Name]

Re: Invitation to a Disciplinary Enquiry

Following the (conclusion of the investigation into allegations made against you/your denial of the allegations presented in letter dated/your request for the disciplinary enquiry to be held..) and in accordance with Chapter 7 of the Disciplinary Policy for Public Bodies, I am writing to inform you that you are required to attend a disciplinary hearing on [date *should give 10 working days notice], at [time], in [location].

At this hearing, the following allegations of misconduct made against you will be considered.

- [Insert charges]* these should match those that the Investigating Officer recommended consideration of disciplinary action*.

I have enclosed a copy of all relevant evidence from the investigation that will be raised at the hearing. We will consider these documents, together with any evidence and submissions from you, during the hearing. If you would like to submit any documentation for consideration at the hearing please let me have copies, along with the names of any witnesses you wish to bring forward, no later than 12 noon on [Date * 5 working days prior to the hearing].

If you have any questions regarding any of the statements or other evidence, please direct them to [name of HR representative].

The enquiry will be chaired by (Name of Chairman) and [name of HR representative] will be present as the HR representative to advise on any HR procedure.

You have the right, if you wish, to be accompanied at the meeting by a work colleague or trade union representative not acting in a legal capacity. I would be grateful if you could confirm your attendance at this meeting and let me know whom, if anyone, you will be bringing as your representative, and if you need any special requirements for the day, by [date].



Depending on the facts established at the hearing, the outcome could be any of the following:

- *no formal action being taken*
- *disciplinary action being taken against you [including a written warning or a final written warning]*
- *[your dismissal]* only if appropriate*
- *some other action*

Please note a decision on this will not be made until you have had a full opportunity to put forward your version of events and the enquiry has been concluded.

I would like to remind you that this matter is strictly confidential and should not be discussed with colleagues other than your representative.

I understand this can be an unsettling time and therefore if you wish clarification on any of the details in this letter or anything else around this subject, please do not hesitate to contact [insert name and contact details of your HR representative]. I would also like to remind you of the Employee Assistance Programme accessible through the Ministry of Finance and the Public Service

Yours sincerely,

***[Name Disciplinary Manager* HoD for potential dismissals]
[Job Title]***

Cc: HR; File

Enclosures: Copies of documents & statements



9.6 Removal from Office Notification

Private and Confidential

Name (Employee being warned)

Address

Dear (employee),

Consequent upon (your alleged violation of the code of conduct/you being arrested and charged on xxxxx for a criminal offence, which is currently before the court) and in accordance with the Disciplinary Policy for Public Bodies, Section 5, please be advised that you are interdicted/Suspended from duties with (xxxx) pay with effect from (xxxxx), pending the outcome of the case/investigation and disciplinary enquiry.

*In accordance with **Section 5.3** of the above-mentioned policy, please note the following:*

- a) You are required to provide an address at which you can be located*
- b) You shall not leave the island without the prior permission of the (CEO/DG/etc)*
- c) You shall make yourself available at the time communicated for you to return to work.*

This office will communicate with you regarding the status of the investigation and your required input.

Yours truly,

XXXXXXXXXXXXXXXXXXXXX

Director, HR

*Copy: (Employee's supervisor)
(Employee's Union representative)*



9.7 Verbal Warning Notification

Private and Confidential

This is to confirm that you, **(Employee's Name)** have been verbally warned in respect of **(violation of the Disciplinary Policy or Organisation's Code)** or **(violation not specified)** on the **(Date)** .

Please be reminded that a repeat of this action within the next six (6) months will result in further disciplinary action against you.

(Signature of Supervisor)

Name and Job Title of Supervisor

I hereby acknowledge that I have been verbally warned in respect of the above.

Employee's Signature

Date

NOTE

- Where the employee refuses to sign, supervisors should make a note on the form and file accordingly.
- The employee's signature is not a prerequisite for the validity of the warning.

Verbal warnings are only sent to HR where further action needs to be taken for the specific offence!



9.8 Written Warning Notification

Private and Confidential

Name (Employee being warned)

Address

Dear (Employee),

We refer to disciplinary hearing held (date) and attended by you, concerning your (misconduct).

On previous occasions detailed reviews of expectations regarding your (performance and/or behaviour) have been undertaken to ensure that you understand the requirements of your position. They have been discussed with you orally (list dates) and in writing (list dates). However, you have failed to meet these requirements.

This is to confirm the decision conveyed to you orally that you be given a (written warning/final written warning/suspension of (# days) beginning on (date)).

Your failure to adhere to these requirements on an ongoing basis has seriously impacted the operations of the Department/unit and our ability to meet established goals. It is expected that as of (date) there will be improvement in your conduct over the next (# of working days/months).

In the event that there is further misconduct or a failure to improve within the time frame specified above, you may be subject to other disciplinary measures pursuant to the Organisation's Code of Conduct and Disciplinary policy.

Should you have any questions about this warning/reprimand or wish to communicate further with a view to improve your conduct/performance, your request will be facilitated.

You have the right to appeal this decision within (#) of days.

Yours faithfully,

(Signature of Supervisor)

Name and Job Title of Supervisor

I hereby acknowledge receipt of this letter.

Employee's Signature

Date

NOTE

The employee's signature is not a prerequisite for the validity of the warning.



9.9 Appeal Request Form

Name of Employee:			
Division:		Unit:	
Date of Disciplinary Hearing:			
Date of HR Advisory:			
Grounds for Appeal (Tick that which applies):			
<input type="checkbox"/> Procedural Error			
<input type="checkbox"/> New Evidence which was not available for original Enquiry			
<input type="checkbox"/> Unfair or Perverse Recommendation			
Proposed Resolution:			
Employee's Signature:			Date:
For use by the Human Resource Department			
Received by:	Name:		
	Signature:		
Date Received:			
Date sent to Appeal Panel / Board:			

This form should be completed in full when an employee wishes to appeal a disciplinary penalty imposed subsequent to the conduct of the disciplinary process. The completed form should be submitted to the Senior Director of the Human Resource Management Department or the designated Officer with responsibility for HR.



Glossary

<i>Authorised Officer</i>	The Head of Department or a public officer to whom the functions of the Governor General have been delegated pursuant to Section 125 of the Constitution.
<i>Breach of Discipline:</i>	Any action by the employee that violates the code of conduct established by the organisation. This may involve behavioural or performance issues.
<i>Central Government</i>	The administrative arm of Government which embodies Ministries and Departments.
<i>Code of Conduct</i>	Set of rules outlining the responsibilities of, or proper practices for, an individual or organization; related concepts include ethical, honour and moral codes that must be maintained in the workplace.
<i>Designated Officer with Responsibility for HR</i>	In organisations where the structure does not have a named position for the Human Resource function, the designated officer is the person with responsibility for carrying out the required HR functions such as leave administration.
<i>Due Process</i>	A course of formal proceedings carried out in accordance with established rules and principles ensuring the fair treatment of all employees.
<i>Employee</i>	An individual who has entered into or works or normally works (or where the employment has ceased, worked) under a contract, however described, in circumstances where that individual works under the direction, supervision and control of the employer regarding hours of work, nature of work and management of discipline.
<i>Employer</i>	A person for whom one or more workers work or have worked or normally work or seek to work.
<i>Executive Agency</i>	An agency that forms a part of a Parent Ministry that is treated as managerially and budgetary separate in order to carry out some part of the executive functions of that Ministry.
<i>Exhibitionism</i>	Exposure of the genitals, breasts or buttocks.
<i>Fraud</i>	Wrongful or criminal deception intended to result in financial

or personal gain, including falsification of records.

Groping

Feel or fondle someone for sexual pleasure, especially against their will.

Infraction:

This is a violation of the code of conduct and is used interchangeably with the term breach.

Loitering

Stand or moving around with no apparent purpose. Spending extended time in another employee's workspace involved in activities not related to the organisation's work.

Interdiction

An order prohibiting an employee from reporting for duty.

Misconduct

Any improper behaviour which may or may not be stated in the organisation's code of conduct.

Parastatal Organisation

Organizations owned or controlled wholly or partly by the Government that are established to operate in commercial affairs. However, it is separate from the Central Government though its activities serve the state directly.

Parent Ministry

The Ministry which has general oversight for the Public Body.

Public Body

A statutory body or authority or any government company.

Right of Appeal

An employee's right to contest a decision that is made towards a higher power or authority than the power making the challenged determination.

Sexual Activity

Refers to activities associated with sexual intercourse including but not limited to kissing, fondling and oral sex.

Sexual Harassment

This refers to any unwelcomed sexual advances or request for sexual favours or other verbal or physical contact of a sexual nature, directed to a male or female, while on the job. Unwelcomed sexual advances or behaviour include but are not limited to:

- a) Voyeurism – the derivation of sexual gratification from the secret observation of nudity or sexual acts by others, more so from a secret vantage point
- b) Petting
- c) Kissing
- d) Groping
- e) Exhibitionism
- f) Extensive bodily contact
- g) Displaying, exhibiting or distributing



pornographic material or information.

- h) Soliciting or offering sexual favours.
- i) Sexually explicit statements.

Suspension:

1. This is part of the disciplinary process where an employee is removed from office, with pay or part thereof, to facilitate investigation into an allegation.
2. A disciplinary penalty that is where an employee is removed from duty without pay for a period not exceeding three months.



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