

**Staff information**

# Disciplinary policy and procedure

## **1. Introduction**

- 1.1 At the Information Commissioner's Office (ICO), we expect all employees to meet high standards of behaviour and conduct. It is important, therefore, that you understand your obligations and rights regarding this aspect of your employment.
- 1.2 This document sets out the general standards of conduct expected of all employees, identifies the circumstances in which disciplinary action may be taken, and explains the sanctions available to managers.
- 1.3 This procedure will apply where your conduct is considered to be unsatisfactory.
- 1.4 Breaches of discipline should be handled constructively and disciplinary decisions should be taken in a consistent, fair and reasonable manner. The aim should always be to encourage improvements in an employee's conduct and behaviour.
- 1.5 Issues relating to your job performance or sickness record would **not** be dealt with under the disciplinary policy. Normally, these issues would be dealt with under the ICO's 'Managing absence' or 'Managing poor performance' procedures.
- 1.6 This procedure applies to all ICO employees.

## **2 General standards of conduct**

- 2.1 It is important that you are clear about the standards of conduct we expect. The following paragraphs in this section outline some specific examples of the standards required.
- 2.2 As employees we are all representatives of the ICO and, as such, it is important to present all internal and external customers with a professional and caring image that is reinforced with courteous, responsive and friendly attitudes and behaviour.
- 2.3 You should attend work punctually and regularly, in line with operational requirements.
- 2.4 You should carry out reasonable requests / instructions from your supervisor or line manager promptly and efficiently, and to the required standard.
- 2.5 Annual / flexi leave must be approved in advance by the appropriate authority, usually your line manager.

- 2.6 As far as the notification of sickness absence is concerned, you must follow the procedures outlined in the 'Managing absence' policy. Breaches in sickness reporting may result in your payments being stopped and could lead to disciplinary action being taken against you.
- 2.7 You should notify your line manager of any emergency absence, for instance a domestic crisis at the earliest possible opportunity.
- 2.8 You must comply with all of the ICO's policies and procedures and adhere to professional body guidelines, as appropriate.
- You must observe Health and Safety policies and guidelines at all times.
  - You must comply with the ICO's 'Dignity at work' policy and treat your ICO colleagues, customers and visitors with dignity and respect.
  - You must treat all information responsibly and with discretion, in line with relevant ICO policies and legislation.
- 2.9 In your own interests, and in the interests of the ICO as a whole, you should bring serious breaches of ICO policies or procedures to the attention of management.

### **3 Unacceptable behaviour and conduct**

- 3.1 The ICO expects all employees to meet high standards of behaviour and conduct. The following list, although not exhaustive, gives examples of the types of misconduct or unacceptable behaviour which will be regarded as disciplinary offences.
- Repeated minor infringements, for example lateness.
  - Failure to follow ICO policies and procedures such as the 'Dignity at work' policy, the 'Personal use of Computers' policy or the 'Health and safety' policy.
  - Unjustified refusal of a lawful and reasonable instruction.
  - Malicious or vexatious allegations, dignity at work complaints or grievances.
  - Falsifying timesheets or taking sick leave when you are not ill.
  - Failing to maintain a duty of care, for example from lack of motivation or inattention.

- 3.2 Concerns about genuine sickness absence will be dealt with through the ICO's 'Managing absence' procedure.
- 3.3 Concerns about poor performance will be dealt with through the ICO's 'Managing poor performance' procedure.

#### **4 Human Resources**

- 4.1 The Human Resources (HR) Team is responsible for ensuring that managers are provided with appropriate advice, guidance and training on the use of this procedure, and for the overall monitoring of disciplinary matters across the ICO. An appropriate member of the HR Team will, therefore, be involved in all formal stages of the procedure.
- 4.2 The HR Team will ensure that the correct policy and procedure is being used by managers.
- 4.3 The HR Team is responsible for appointing a manager to investigate the alleged misconduct (the 'Investigating Manager'). Where appropriate, the Investigating Manager will be a manager who works in a different department to the employee concerned.
- 4.4 The HR Team is also responsible for ensuring that an appropriate manager is appointed to chair the disciplinary or appeal hearing.
- 4.5 To ensure that all managers and trade union (TU) representatives follow this procedure in an appropriate and agreed manner, the HR Team will organise regular joint training sessions on handling disciplinary matters.

#### **5 Right to be accompanied**

- 5.1 You have the right to be accompanied at any stage of the formal procedure by a TU representative or full-time official of a recognised trade union, or by an ICO colleague.
- 5.2 Under this procedure, you do not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative) apart from those people already referred to.

#### **6 Trade union representatives**

- 6.1 Disciplinary action against a TU representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal disciplinary standards apply to their conduct as ICO employees, the relevant full-time official must be notified of any action (including suspension) that the ICO proposes to take. In any event, disciplinary

action must not be taken against a TU representative until the relevant full-time official has had an opportunity to be present at any stage of the formal procedure.

## **7 Criminal offences**

- 7.1 Certain criminal offences may affect your suitability to continue to perform your role at the ICO or damage the ICO's reputation. Therefore, if you are charged with a relevant, recordable criminal offence (including receiving a summons), you must inform your line manager as soon as possible. We will not treat notification about criminal proceedings, or a conviction (including bind-overs and cautions), as an automatic reason for dismissal, or for any other form of disciplinary action being taken. We will decide what action to take, if any, after the incident has been thoroughly investigated and facts of the case established. The main consideration should be whether the charge / conviction is one that makes you unsuitable for your job or affects the ICO's reputation.

## **8 Informal approach (outside the formal procedure)**

- 8.1 All managers and supervisors have a duty to ensure that they and all the employees they are responsible for are aware of, and comply with, the ICO's policies and procedures. Managers and supervisors are also responsible for making sure that employees know when they are not achieving or maintaining the expected standards of behaviour.
- 8.2 Whenever possible, we will adopt an informal approach to help, guide or advise employees in improving their conduct. We will only consider dealing with minor disciplinary breaches through the formal stages of the procedure if the employee's misconduct continues.
- 8.3 The purpose of any informal meeting between you and your line manager is to identify and examine any areas of concern, to ensure that you understand any future expectations of your conduct and, where appropriate, to develop an action plan leading to improvements in your performance.
- 8.4 Your line manager will keep a note of the meeting (such as a diary note) and any follow-up correspondence. Details of the meeting should not be kept on your personnel file. Where appropriate, you will receive written confirmation of the issues discussed at the meeting and any agreed action points.

## **9 Formal stages of the disciplinary procedure**

### **9.1 Investigation process**

- 9.1.1 The manager leading the investigation will be referred to as the Investigating Manager for the purposes of this procedure. Wherever possible, investigations should be carried out by managers who have completed an investigations training course.
- 9.1.2 A record should be kept of either the date a complaint or allegation about you is received, or the date when a complaint or allegation is identified as a potential breach of conduct.
- 9.1.3 You can ask for a different Investigating Manager but you must provide reasons for doing so. Your request will be considered by an appropriate HR representative and you will be informed of the decision.
- 9.1.4 Wherever possible, investigations into the allegations should be completed within 20 working days, unless otherwise agreed. This will include the fact-finding interview held between you and the Investigating Manager.
- 9.1.5 It is the Investigating Manager's responsibility to investigate and gather all relevant information and take all reasonable steps to assess the validity and accuracy of the complaint or allegation that has been made against you. At the investigation stage, you or your TU representative can ask the Investigating Manager to interview relevant witnesses.
- 9.1.6 You will normally be invited to attend a fact-finding interview in order to clarify the circumstances and facts relating to the complaint or allegation made against you. You will receive a letter at least five days before the meeting, if possible, giving details of the nature of the allegation against you and your right to be accompanied at the interview.
- 9.1.7 The Investigating Manager should collect statements from any witnesses and any other relevant documentary information as soon as possible, although potential witnesses should be given adequate notice to produce their statements as they may want to get support or guidance from their TU representative.
- 9.1.8 If we have reasonable grounds to suspect that your potential misconduct involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible, if appropriate.
- 9.1.9 If allegations against you are anonymous, the action we take will depend on the nature and content of the allegations. Before we can take formal action, we will need independent corroboration from a known and reliable source.

- 9.1.10 If the Investigating Manager decides that there is no case for you to answer, he or she will inform you in writing and may also provide feedback and make some recommendations, which will be passed on to you and your line manager.
- 9.1.11 Following investigation, the Investigating Manager may decide that a formal disciplinary hearing is not necessary but will issue you with a formal verbal warning (see section 12.3).

## **10 Suspension**

- 10.1 Suspension is a 'neutral' act in that it does not presume guilt or innocence. The decision to suspend an employee from duty should not be taken lightly or without careful consideration of all the circumstances and the nature of the complaint or allegation made against them.
- 10.2 If you are suspended, you will receive your normal pay in line with your planned working arrangement.
- 10.3 The following list is not exhaustive but provides an indication of the types of situation when suspension may be appropriate.
- Where gross misconduct is suspected or alleged.
  - Where it would not be possible to carry out a thorough or impartial investigation with the employee still at work.
  - Where there is a concern that further instances of misconduct may occur.
- 10.4 Whenever possible, an ET member or manager nominated by the ET member will hold a meeting with you and your TU representative or work colleague to advise you of our decision to suspend you from duty. If you are not available and you cannot be contacted by all reasonable enquiries, we will inform you in writing not to attend work and to contact a named manager. An employee can be suspended in the absence of a TU representative or work colleague.
- 10.5 If the line manager, HR representative or the Investigating Manager considers that it would be appropriate to suspend you, he or she must do the following.
- Get authority from Human Resources and a member of the Executive Team to suspend you.
  - In the absence of appropriate authorisation to suspend, if your line manager considers you to be unfit to carry out your duties, they can

send you home until an appropriate person is available to provide the relevant authorisation.

10.5.1 If you are suspended, you will also be told:

- why you are being suspended from duty, and that this will be confirmed in writing;
- that your suspension from duty is a neutral act and not a form of disciplinary action;
- to contact your TU representative (if you have one) or a work colleague, if you have not already done so;
- to remain contactable and available during core hours so that you can attend meetings as required;
- to inform us of any change in your contact details immediately while you are suspended;
- under no circumstances to approach, or try to influence, anyone associated with the complaint / allegation against you about the complaint / allegation, or enter any of our office premises without authorisation from the Investigating Manager. Failure to comply may result in further disciplinary action being taken against you;
- that your suspension will be reviewed every 15 working days by the Investigating Manager, in consultation with the appropriate HR representative, and confirmed in writing; and
- to return any ICO property or equipment to the Investigating Manager (laptop, ID badge, etc).

10.5.2 If, at any stage in the procedure, it appears that there is a significant medical factor involved, you can be referred to our Occupational Health Service provider.

10.5.3 Your suspension will end in one of the following circumstances:

- the Investigating Manager decides that there is no case for you to answer and that you do not need to attend a disciplinary hearing;
- if the investigation can continue without you needing to be suspended;
- if the investigation has been concluded and the allegations against you are less serious than originally thought; or



- if the disciplinary procedure has been completed.

## **11 Arranging disciplinary hearings**

11.1 To ensure that meetings do not have to be delayed or postponed at the last minute, the Investigating Manager should agree a mutually convenient time and date for the hearing with you and your TU representative or work colleague.

### **11.2 Preparing for the disciplinary hearing**

11.2.1 If the Investigating Manager has decided that there is a case for you to answer, you will be asked to attend a disciplinary hearing.

11.2.2 We will write to you with the details of the complaint or allegation against you, enclosing copies of all statements (subject to the protection of the welfare of other employees) and/or written material gathered during the investigation, at least five days before the date set for the disciplinary hearing (unless otherwise agreed). The letter should also include the name of the manager or ET member who will be hearing your case, and details of any witnesses who will be present to give evidence at the hearing. The letter should remind you that you have the right to be accompanied at the hearing by a TU representative or work colleague and that, after due consideration of all the facts and circumstances, you may face disciplinary action.

11.2.3 If any witnesses are members of the public, they will be asked to provide a signed written statement authorised by the Investigating Manager, but they will not need to attend the disciplinary hearing.

11.2.4 You should also provide the Investigating Manager with copies of any statements and/or written material that you intend to refer to, at least three days before the hearing, along with details of any witnesses who will be present to give evidence.

11.2.5 If you or we do not disclose written material beforehand in line with the above guidelines, this information may be inadmissible at the disciplinary hearing. The Chair will decide whether to admit this information following discussion with the individuals present and having assessed the reasons for the late disclosure, including the possible significance of the information.

11.2.6 All employees are contractually obliged to make themselves available to attend investigatory interviews and disciplinary hearings when required to do so by management, whether they are at work or not (for instance, absent from work due to sickness or suspension).

- 11.2.7 If you cannot attend an investigatory interview or disciplinary hearing, you must inform the Investigating Manager immediately.
- 11.2.8 If you cannot attend due to medical reasons, the Investigating Manager may refer you to your GP or the ICO's Occupational Health Service provider to assess your ability to attend. You will be expected to provide a letter from your GP giving reasons for your absence from work and how long your attendance will be affected. If the reports from your GP and Occupational Health are conflicting, we will use the results of the Occupational Health report to decide on the appropriate course of action.
- 11.2.9 If you take sickness absence following an allegation of misconduct against you, you will be referred by the Investigating Manager to the Occupational Health Service as soon as possible. Your sickness absence will be dealt with in line with the ICO's managing absence procedure.
- 11.2.10 If you do not attend an appointment with the Occupational Health Service, and you do not have a satisfactory reason for missing the appointment, your occupational sick pay may be withheld until the situation is resolved. Your appointment will be re-arranged, but if you still do not attend and do not have a satisfactory reason for not doing so, the Investigating Manager will be entitled to proceed with the formal disciplinary process and take this behaviour into account since it is a breach of your contract of employment.
- 11.2.11 If the Occupational Health doctor judges that you are fit to attend an investigatory interview or disciplinary hearing, another date will be arranged. If you submit further medical evidence, either before or at the interview or hearing, the Investigating Manager or Chair of the hearing will refer the matter back to the Occupational Health doctor before deciding whether or not to proceed with a re-arranged hearing. Undue delay may result in reference to the managing absence procedure.
- 11.2.12 If the ICO's Occupational Health doctor judges that your attendance at an interview or hearing would be harmful to your health, the hearing will be postponed. If, after two postponements, you are still unfit to attend, the disciplinary procedure will be considered exhausted and a final hearing will be held.
- 11.2.13 If you do not attend the re-arranged hearing, you can:
- have your representative attend on your behalf; and/or
  - submit a written statement.

11.2.14 If you fail to take advantage of any of the opportunities available, the disciplinary hearing can still go ahead in your absence. The outcome of the hearing may be a decision to impose a disciplinary sanction, which in cases of gross misconduct could include summary dismissal.

11.2.15 If you resign or have your contract of employment terminated on the grounds of capability due to sickness absence, then, in cases involving potential gross misconduct, a hearing in line with this procedure may go ahead in any case. The outcome of the hearing will be recorded on your personnel file and it could be that, had you not already resigned, you would have been dismissed.

11.2.16 If, during the course of the formal disciplinary process, you raise a grievance or dignity at work complaint, we **may** appoint an Investigating Manager to look into the matter. It **may** also be appropriate to appoint a different manager to continue with the disciplinary investigation. In the interests of justice, neither process should be unduly delayed. HR will decide whether it is appropriate to continue with either procedure.

11.2.17 If the complaint is found to be malicious or vexatious, you could face further disciplinary action.

### 11.3 **Conduct of disciplinary hearings**

11.3.1 The manager (or managers) hearing the presentations at the disciplinary hearing must not have had any previous involvement in the investigation.

11.3.2 The hearing should be conducted in line with the following procedure.

#### **Introductions**

The manager hearing the case (the Chair) should introduce everyone present, explain the purpose of the meeting (which is to consider whether disciplinary action is necessary) and how the hearing will be conducted, and explain that either party can ask for an adjournment at any point in the proceedings. The chair should also check that the employee received the documentation in advance of the hearing.

#### **Statement of complaint / allegation**

The Chair should establish precisely what complaint / allegation had been made against you, and invite the Investigating Manager to present their findings. This will include all previously circulated statements and/or written material gathered during the investigation, and any appropriate witnesses.

## **Employee's right to reply**

You should be given the opportunity to state your case and present evidence, including all previously circulated statements and/or written material, and call any witnesses.

## **Civility**

The hearing should be conducted courteously and fairly, with the emphasis being on establishing the facts. To this end, all parties should be free to ask questions politely and comment appropriately.

## **Summing up**

After general questioning and discussion, both parties should be given the opportunity to summarise the main points of their case. You will have the right to go last. At the end of the summaries, the Chair should ask the employee if they are satisfied that they have had a fair hearing and if there is anything else that they wish to add.

## **Adjournment**

The Chair should consider his or her decision in private. If it is necessary to recall one or other of the parties to clear any points of uncertainty on evidence already given, then both parties should be invited to return. In addition, if further investigation is necessary, the Chair can decide to adjourn the hearing.

## **The decision**

Everyone will be recalled and the Chair will inform them of his or her decision.

Minutes of the meeting will be taken by either a member of the HR team or an appropriate administrator.

## **12 Disciplinary action**

### **12.1 General considerations**

12.2 Decisions relating to the level of disciplinary action to be taken, if any, will be a matter of judgment for the Chair of the disciplinary

hearing. The Burchell Principles (see appendix 3) will be applied and line managers will need to consider:

- the seriousness of the disciplinary breach in question;
- the relevance and context of facts / information presented;
- your previous employment record;
- any mitigating circumstances you put forward;
- issues relating to fairness, consistency and the substantial merits of the information presented; and
- whether you currently have any relevant disciplinary warnings against you.

**Note:** Any warnings issued under the ICO's 'Managing absence procedures' are not relevant to this disciplinary procedure.

### 12.3 **Verbal warning**

12.3.1 If, following the informal process, your conduct does not improve or, in the case of minor infringements if your conduct does not meet acceptable standards, you will be given a verbal warning. You will be told why you have been given the warning and that it is the first stage of the disciplinary procedure. You also need to be aware of what the consequences will be if your conduct does not improve.

12.3.2 This verbal warning will be followed up in writing and recorded on your personnel file for 12 months. You will have the right to be accompanied at this meeting by a TU representative or work colleague. Your line manager can issue you with a verbal warning and there is no need for a formal hearing.

### 12.4 **First written warning**

12.4.1 If you have received a verbal warning but your conduct has not improved, or if the infringement is of a more serious nature, you may be given a first written warning. A first written warning can only be issued by an appropriate manager and a formal disciplinary hearing must be convened. You should be informed, in writing, why you have been issued with warning, the improvement or change in your behaviour that is required, the consequences of any repetition in your behaviour or your failure to improve, and your right of appeal. A copy of the written warning will be kept on your file but should be disregarded for disciplinary purposes after two years from its issue date.

### 12.5 **Final written warning**

12.5.1 If you have received a first written warning but your conduct has not improved, or if the infringement is considered by your line manager

to be sufficiently serious, you may be given a final written warning. You should be informed, in writing, why you have been given the final written warning, the improvement or change in your behaviour that is required, the fact that any repetition or failure to improve or modify your behaviour may lead to dismissal, and your right of appeal. A copy of the final written warning will be kept on your file but should be disregarded for disciplinary purposes after two years from its issue date.

## 12.6 **Dismissal**

12.6.1 If you have received a final written warning but your conduct has not improved, you may be dismissed with appropriate notice and told whether or not you need to work your notice.

## 12.7 **Summary dismissal**

12.7.1 If you have been accused of an act of gross misconduct, you may be suspended while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, we are satisfied that you have committed an act of gross misconduct, the result will normally be summary dismissal without notice or payment in lieu of notice.

## 12.8 **Financial loss to the ICO, staff or customers**

12.8.1 If you are found to have stolen or caused fraudulent loss to the ICO, this will be discussed with you by the Investigating Manager and recorded in writing by the Chair of the disciplinary hearing. You will be asked to make recompense to the ICO, either in whole or in part. If you do not do so, we may take you to the County Court. You may agree to the amount you owe being deducted from any payment owing to you on termination.

## 12.9 **Alternatives to dismissal**

12.9.1 In exceptional circumstances and as an alternative to dismissal under this procedure, managers may (depending on the offence) consider the following options:

- transferring you to another available post within the ICO; or
- demoting you to another available post within the ICO.

Consideration must be given to fairness and consistency.

12.9.2 These alternatives would not involve any form of pay protection and both measures would be accompanied with a final written warning.

12.9.3 The final written warning should tell you why you have been given the warning, the expected improvement or change in your behaviour, the fact that any repetition or failure to improve or modify your behaviour may lead to your dismissal, and your right of appeal against the written warning. A copy of the final written warning will be kept on your personnel file but should be disregarded for disciplinary purposes two years from the date of issue.

12.9.4 You would need to agree to the proposal to transfer you to another available post within the ICO when demotion or downgrading is involved. The Chair cannot insist on it. If you do not want to consider demotion or downgrading as an alternative to dismissal, the Chair should confirm the decision to dismiss you.

## 12.10 **Additional disciplinary action**

12.10.1 Along with the disciplinary actions detailed above, the Chair may decide that, if relevant to the allegations, additional disciplinary action is also required:

Some examples include:

- withdrawing your flexi-time facilities (for example, if you have abused your flexi-time privileges);
- withdrawing your paid leave for attendance at college / professional qualification courses (for example, if you have falsely claimed attendance on a course); and
- withdrawing your access to the internet during work hours.

## 13 **Right of appeal**

### 13.1 **Written warnings**

13.1.1 You may appeal, in writing, against a written warning to the next higher level of line management not previously involved in your case. You should make your appeal within 10 days of receiving the letter confirming your written warning. As far as possible, we will hear your appeal within two months of receiving it.

13.1.2 Your written notice of appeal must specify the basis upon which you are making the appeal and, to save time, you should provide details of your and your representative's availability to attend the appeal over the next two months. For example, you may be appealing against:

- the finding that you were guilty of committing the alleged act (or acts) of misconduct;

- the severity of the disciplinary action imposed; and / or
- the fact that you don't feel the correct disciplinary procedure was followed.

13.1.3 Appeals against first or final written warnings should be dealt with by a manager at the next level to the manager who chaired the original disciplinary hearing.

## 13.2 **Dismissal**

13.2.1 You have the right to appeal internally against any formal disciplinary action taken against you.

13.2.2 You must submit your written notification of appeal to the Director of Human Resources within 10 working days of receiving the letter confirming the outcome of your disciplinary hearing.

14 If you are appealing against dismissal, on receiving your appeal the Director of Human Resources will set up a panel including a member of the Executive Team.

## 14.1 **Appeals procedure**

14.1.1 In normal circumstances your appeal should be heard as soon as possible but certainly within two calendar months of your written notification of appeal being received by the manager or HR.

14.1.2 All appeals will be dealt with within the ICO. You will have no further right of internal appeal although you can apply to an employment tribunal if you are unhappy with the outcome.

14.1.3 You can be accompanied at the appeal hearing by your TU representative or a work colleague.

14.1.4 You will receive at least five working days' notice in writing of the date, time and place of the appeal hearing, and any other arrangements.

14.1.5 The decision of the appeal hearing will be confirmed in writing to you within three working days of the decision.

14.1.6 The appeal decision may confirm, overturn or reduce the decision to impose on you one of the disciplinary actions set out above.

## 15 **Date of operation**



15.1 This procedure has been agreed with TU representatives and adopted by the ICO Executive Team with effect from 1 November 2006.

## **Gross misconduct**

The list below gives examples of the types of some of the types of offences that we might regard as gross misconduct at the ICO.

**1            Assault, abuse or physical harm**

Physical, verbal, sexual abuse or harm towards any person during the course of your employment with the ICO.

**2            Theft / fraud / deliberate falsification of company documents**

Theft, unauthorised removal with intent to steal, dishonest handling, dishonest appropriation or obtaining by deception money or property belonging to the ICO or involving money or property belonging to other employees, customers or visitors on ICO premises.

**3            Substance abuse**

Being under the influence of alcohol, drugs or other similar substances (not medically prescribed), which may give someone reasonable grounds to suspect that your ability to undertake duties professionally has been impaired.

**4            Disclosure of information**

Inappropriate disclosure of information relating to employees, customers, or other ICO information.

**5            Health and safety at work**

Disregarding safety rules, regulations and/or procedures, or serious negligence that endangers yourself or other people in the course of your employment.

**6            Abusive or violent behaviour**

Using abusive or violent behaviour, including threatening / abusive language, to other employees, visitors or customers.

**7            Discrimination**

Actions or language of an unlawful discriminatory nature that are in breach of the ICO's 'Dignity at work' policy.

**8 Harassment / bullying**

Actions or behaviour carried out against other employees, customers, visitors or members of the public that are in breach of the ICO 'Dignity at work' policy.

**9 Criminal convictions outside work**

Convictions relating to activities outside work but which have a significant and direct bearing on your employment and duties with the ICO and its reputation.

**10 Destruction of ICO property**

Deliberate and inappropriate destruction of, or damage to, the ICO's property / equipment.

**11 Reasonable instructions**

Unjustified refusal of a lawful and reasonable instruction which is within your capabilities, and which could result in immediate and serious consequences.

**12 Computers and other electronic equipment**

Inappropriate access, interference with and/or use of a computer, or any other similar electronic equipment, which is in breach of ICO policy.

**13 Pornographic, indecent, racist or offensive material**

Accessing, copying or distributing, by paper or electronic means, pornographic, indecent, racist or offensive material.

**14            Unauthorised use of ICO property/equipment**

Unauthorised use of ICO property, equipment or resources, including unauthorised use of a company vehicle or mobile phone.

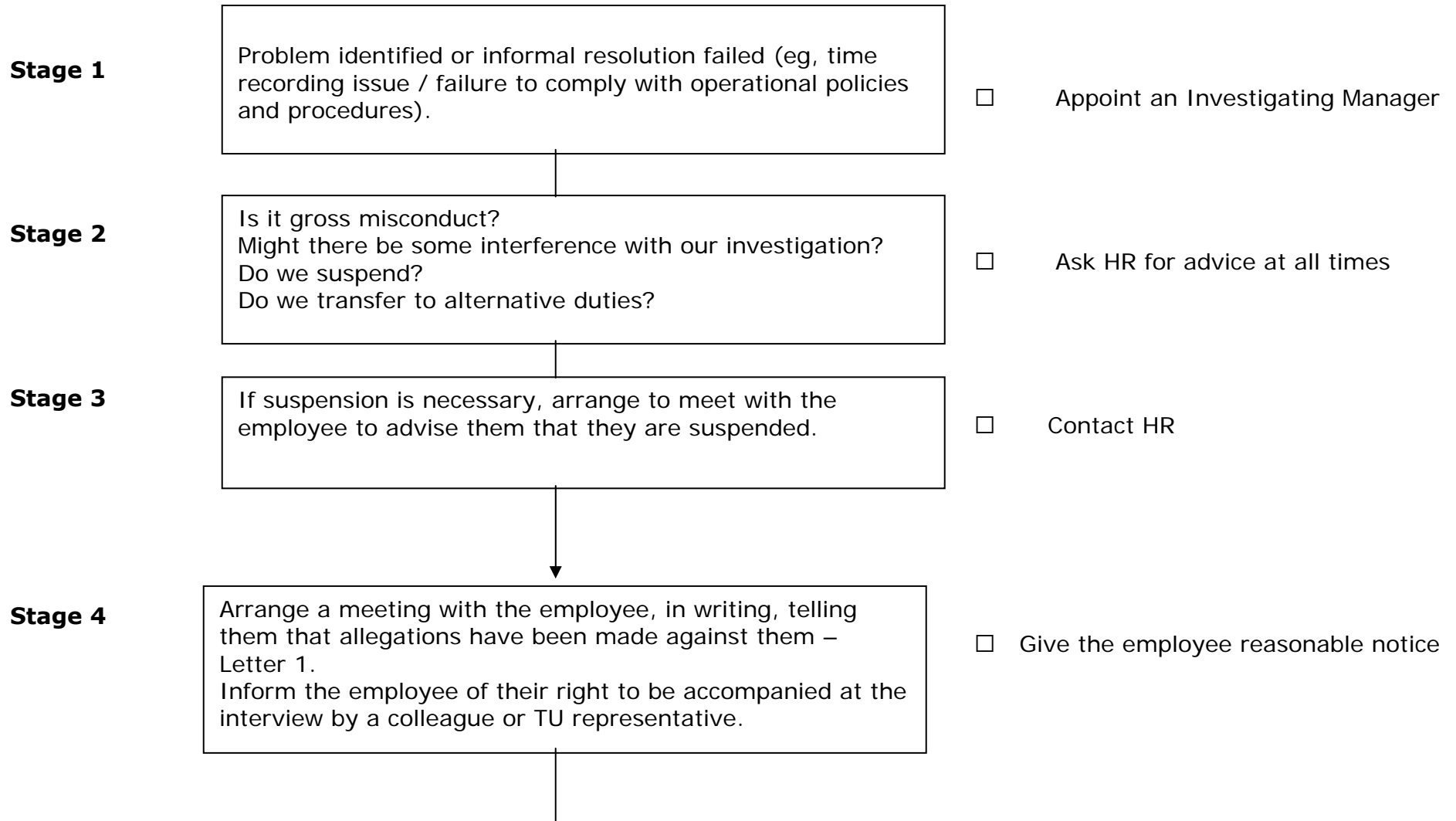
**15            Deception**

Misrepresenting at any time, including at your appointment with the ICO, any previous positions you have held, your qualifications, date of birth, declaration of health, or a failure to disclose a criminal offence or pending criminal action subject to the provisions of the Rehabilitation of Offenders Act 1974.

**16            Any other act of gross negligence**

Failing to exercise a duty of care which adversely affects the safety or well-being of ICO customers, staff or visitors; or performing a hoax or practical joke, or any other negligent act resulting in serious disruption of the ICO's service or any action or inaction that may bring the ICO into disrepute.

**Formal disciplinary action (HR flowchart)**



**Stage 5**

Preparation – take time to prepare questions that are relevant to the complaint / allegation made against the employee.

**Stage 6**

Conduct the interview, making sure that it is private and that there will be no interruptions.  
Allow appropriate breaks.  
Identify and agree any witnesses to be interviewed.

**Stage 7**

Type up notes within five working days of the interview. Send to the employee for agreement and signature as a true record, enclosing a prepaid envelope for the employee to return.

**Stage 8**

Arrange to interview witnesses within seven working days.

**Stage 9**

Type up interview notes as soon as possible.  
Send to witnesses for agreement and signature, enclosing a prepaid envelope for them to return.

Repeat stages 6 to 8 if necessary

**Stage 10**

Gather additional evidence: eg,  
- phone bills  
- time sheets  
- policies  
- copy of the employee's training record.

**Stage 11**  
**If action is needed, go to stage 12**

Prepare report.  
Consult HR in next stage

If no action, write to employee to advise them of the outcome.

**Stage 12**

Organise disciplinary hearing with HR.

**Stage 13**

Prepare management case with appendices.  
Send copies to employee and their representative at least five days before the disciplinary hearing date.

**Stage 14**

Hold disciplinary hearing and confirm the outcome in writing.

**Stage 15**

Hold an appeal hearing if needed.



## **The Burchell Principles**

**The Burchell Principles are used by employment tribunals to test the reasonableness of an employer's decisions in disciplinary matters. These principles are used at the formal stages to help ensure that decisions are made fairly and consistently.**

1. Has there been as much investigation as is reasonable in the circumstances?
2. Where there is an established disciplinary procedure, have the requirements of that procedure been properly complied with up to this point, including giving the employee advance notice of any matters to be considered at this hearing?
3. Have I given enough consideration to any explanation put forward by or on behalf of the employee?
4. Do I genuinely believe that the employee has committed the misconduct as alleged?
5. Have I reasonable grounds on which to base that belief on the balance of probabilities (in other words, is it more likely than less likely that the employee did what is alleged)?

If you have answered 'Yes' to each of the questions 1 to 5 above, this will result in a finding that the employee has committed the alleged act of misconduct. What to do about it will then become your next consideration. Your answers to the following three questions will help with this.

6. Is the misconduct serious enough to justify the disciplinary decision I am contemplating?
7. Have I considered any mitigating circumstances put forward by or on behalf of the employee (and any response to these by management's representative)?
8. Does my decision fall within the band of reasonable responses of a reasonable employer in the circumstances?

If, after careful consideration of the above questions, you decide that dismissal is the appropriate action to take in the circumstances, the employee's prospects of being successful at a tribunal will be significantly decreased if the manager, when giving evidence to the tribunal about the reason for dismissal and how the decision was arrived at, confirms that the eight Burchell Principles were all answered with a firm 'Yes'.

A similar approach using the same principles can be used by those hearing appeals under domestic disciplinary procedure.

**Appeals procedure**

1. The employee lodges their appeal with the HR Director within 10 working days of receiving the letter confirming the decision of the disciplinary hearing.
2. The HR Director will acknowledge the employee's request to appeal against the hearing's decision, in writing, within five working days of receipt.
3. The HR secretary organises dates for appeal.

Contact:     Employee (making the appeal)  
                  Trade union representative  
                  ET member  
                  HR Director  
                  HR advisor  
                  Chair of the disciplinary hearing  
                  Investigating Manager  
                  Witnesses

Book room and refreshments, and notify everyone involved of date in writing. Arrange for someone to attend and take notes (secretariat).

4. The HR Team and the secretariat will prepare a bundle (the relevant statements, etc) to be presented to the Appeal Panel.

Copies to:   Employee (making the appeal)  
                  Trade union representative  
                  Appeal Panel  
                  Chair of the disciplinary hearing  
                  HR advisor

These copies are to be sent five clear working days before the hearing.

5. The appeal hearing must be held within two months of receiving the original appeal letter, unless mutually agreed otherwise.

**Procedure at the appeal hearing**

1. The Chair of the original disciplinary hearing presents their executive summary and the reasons for their decision.
2. The employee or their TU representative will have the opportunity to ask questions.
3. Members of the Appeal Panel have the opportunity to ask questions.
4. The employee presents their response to the Chair's disciplinary sanction.
5. The Chair and the Appeal Panel have the chance to ask questions.
6. The Chair sums up ICO management's case.
7. The employee sums up their case.
8. Everyone will withdraw to allow the Appeal Panel to reach their decision in private (the person taking notes will remain).  
  
If one or other party needs to be recalled for any reason, everyone involved will be invited to return.
9. The Appeal Panel will invite everyone back to announce their decision or confirm that the decision will be given in writing.
10. The Chair of the Appeal Panel will draft a letter confirming their decision.
11. This letter to be sent within five working days of the decision being made.

**Sample suspension letter**

Dear

**Suspension on full pay**

At your meeting with..... on ..... you were informed that serious allegations of gross misconduct have been made against you.

I am now confirming that, pending further investigation into these allegations, you are suspended from work on full pay.

The suspension is a neutral act without prejudice, which means that it does not presume either guilt or innocence on your part.

..... has been appointed as Investigating Manager in this matter and will contact you shortly to arrange an investigatory interview.

Please do not contact any of your colleagues at the ICO about this matter. If you have any questions, contact the Investigating Manager or the Human Resources Department.

If the Investigating Manager has decided that it is necessary to hold a hearing under the ICO's disciplinary procedure, you will receive full written details of the allegations made against you. If these allegations prove to be unfounded, you will be contacted and asked to return to work.

Yours sincerely

## **Sample investigatory interview letter**

Dear

### **Investigatory interview conducted under the ICO's formal disciplinary procedure**

As the next step of this disciplinary procedure, you will need to attend an investigatory interview on..... at..... I will be conducting the interview, and .....will also attend.

I have arranged this investigatory interview to discuss the allegations of .....that have been made against you.

You have the right to be accompanied at the interview by a trade union representative or one of your work colleagues.

Yours sincerely

**Appendix 7**

## Sample disciplinary hearing letter (gross misconduct)

Dear

### Hearing conducted under the formal disciplinary procedure

Under the ICO's formal disciplinary procedure, you will need to attend a disciplinary hearing on..... in the meeting room at ..... On the panel hearing the evidence will be .....(Chair) and .....(HR).

This disciplinary hearing has been called to hear the following allegations that have been made against you:

- 
- 

The Investigating Manager, ....., has investigated these allegations and will present the management case, supported by....., Human Resources advisor. As part of the management case, .....will be called as [a witness / witnesses]. If you want to call any other witnesses not mentioned here, please let me know by ..... so that I can make the necessary arrangements.

The supporting documentation for the management case is attached to this letter. If there is any other documentation that you want to submit as part of your case, please mark it for my attention or for the attention of Human Resources and submit it at least three working days before the hearing.

You have the right to be accompanied at this hearing by either a work colleague or by your TU representative. If the allegations against you are proven, this may constitute gross misconduct and you could face disciplinary action up to and including dismissal. You are therefore strongly advised to seek representation.

Please confirm your availability to attend this hearing by calling .....

Yours sincerely

**Example management case**

**Strictly confidential**

**Hearing convened under the ICO's formal  
disciplinary procedure**

**Joe Bloggs**

**1 April 2004**

**Prepared by: John Smith – Investigating Officer**

**1. Background to investigation**

- Why the investigation was instigated.
- The sequence of events leading up to the investigation.
- Whether the employee was suspended.
- When and how the employee was made aware of the allegations made against them.

**2. Allegations**

Following an investigation and interviews with staff members, the following allegations were raised:

1. Downloading inappropriate material from the internet in core time.

**3. Summary of investigation process**

- List of who was interviewed, why and when.
- Refer to relevant appendices.

**4. Findings**

If the employee faces more than one allegation, list the findings for each allegation separately.

- Summary of how this allegation came to light.
- What evidence there is to support the allegation.
  - Witness statements
  - Training records
  - Medical assessment
  - Copy of logs / records
  - Written documents
  - Notes of meetings



- Memos / letters
- The employee's response to this allegation during your investigatory meetings.
- Whether the employee admits or denies the allegation.
- Whether the employee has been offered any support; for example, if the allegation is alcohol-related, what support has the ICO provided in relation to this problem?
- Confirm whether, on the balance of probability:
  - there is a case to answer;
  - there is no case to answer; or
  - you cannot make a decision as to whether the allegation is proven (in other words, it's one person's word against another).

## **5. Conclusions**

List the conclusions of the investigation.

## **6. Summary**

### **Consider the following questions.**

- Are there any key issues that relate directly to the ICO (for example, a risk to customers and staff, or loss of money through negligence or deliberate acts).
- Are there any other warnings outstanding against this employee (verbal or written)?
- Has the employee been offered the opportunity to improve their performance through informal support, training and so on? What were the outcomes?
- Are there any medical issues involved? What support have we offered them? What action has been taken, and what was the outcome?
- Have we explored any other options, such as re-deployment?
- Are there any key issues that have come out of the investigation?

### **Example appendices**

Appendix 1	Job description
Appendix 2	Letter of suspension
Appendix 3	Investigatory interview letter
Appendix 4	Witness statement – Anne Brooks
Appendix 5	Notes of meeting with Joe Bloggs