

6.03 Discipline

This policy is about the disciplinary rules and procedures in the NICS.

- There are various kinds of conduct or behaviour that could lead to disciplinary action - Section 2 General Principles
- There are a number of general principles that underlie the procedure - Section 2.3 Principles Underlying Disciplinary Procedures
- Minor disciplinary offences will be treated informally - Section 3 Minor Disciplinary Offences - Informal Action
- Serious disciplinary offences will be dealt with under the formal disciplinary process - Section 4 Serious Disciplinary Offences Resulting in Formal Disciplinary Action
- If you are found to have committed a serious disciplinary offence you may be subject to one of a number of penalties, including dismissal – Sections 4.3 and 5 Disciplinary Penalties and Summary Dismissal/Gross Misconduct
- There are a number of kinds of conduct or behaviour that could lead to dismissal for gross misconduct - Annex 1
- You have a right of appeal against any disciplinary action taken against you – Section 2.3.1 Principles Underlying Disciplinary Procedures
- If you are arrested, charged or convicted of a criminal offence you should inform your Departmental Personnel Officer as soon as possible - Section 6.2 Criminal Offences

The following terms within this policy are defined in the glossary:

Summary dismissal, gross misconduct,

You may also be interested in the following policies:

6.01 Standards of Conduct, 6.05 Equal Opportunities and Diversity (Dignity at work)
6.06 Inefficiency Sickness Absence, 6.07 Inefficiency Performance, 2.07 Civil Service Appeal Board

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6.03 DISCIPLINARY PROCEDURES

CONTENTS

1	Introduction	3
2	General Principles.....	3
2.1	General.....	3
2.2	Offences.....	3
2.3	Principles Underlying Disciplinary Procedures	5
3	Minor Disciplinary Offences - Informal Action.....	6
4	Serious Disciplinary Offences Resulting in Formal Disciplinary Action	7
4.1	Preliminary Steps (Enquiries).....	7
4.2	Formal Disciplinary Procedures	7
4.3	Disciplinary Penalties	8
5	Summary Dismissal/Gross Misconduct.....	9
6	Criminal Offences.....	9
7	Suspension from Duty	10
8	Accrual of Annual Leave.....	10
9	Recovery of Losses of Public Funds	11
10	Trade Union Representatives.....	11
11	Transfers	11
12	Records	12
	ANNEX 1	13
	Examples of Behaviour that Might Lead to Dismissal for Gross Misconduct are:.....	13
	ANNEX 2	14
	Recovery of Losses to Public Funds	14

6.03 DISCIPLINARY PROCEDURES

1 Introduction

This Section sets out the general principles and agreed procedures relating to disciplinary action against staff in the NICS. It is designed to help ensure that the accepted standards of conduct (see policy 6.01, Standards of Conduct) for Civil Servants are observed by providing a fair method of dealing with alleged offences. The procedures should not be viewed primarily as a means of imposing sanctions. They are also concerned with emphasising and encouraging improvements in individual conduct. A certain framework is set by employment protection law and practice, for example, it is recognised as important that employees should know what standards of conduct are expected of them; and it is required that employees should be given a written statement, or referred to a reasonably accessible document, specifying certain aspects of an employing organisation's disciplinary rules and procedures. The guidance in this Section is intended to satisfy these general principles.

2 General Principles

2.1 General

2.1.1 The Department of Finance and Personnel is available to provide advice and guidance on the application of these general procedures to particular cases. These procedures normally are drawn up after consultation with the Trade Union Sides of the Central Whitley Council and the Trade Unions representing industrial staff, which have the right to make representations on procedural matters and on general principles underlying disciplinary action. Disciplinary action against an individual is the responsibility of the employing Department. Disciplinary action against individuals on loan is the responsibility of the Department to whom the officer is on loan.

2.2 Offences

2.2.1 The following is an indication of the kinds of conduct that may lead to disciplinary penalties, regardless of whether there has been an offence in law and whether or not civil or criminal legal proceedings are being instituted. The list is not comprehensive and does not preclude the possibility of additional charges being brought (see also policy 6.01, Standards of Conduct, Annex 9 Internet and email Usage)

- a. a breach of official instructions;
- b. misconduct of any kind which may have an adverse effect on the working of Departments, or subject Departments to unfavourable criticism;
- c. betting and gaming on official premises;

- d. intoxication and drugs - if you are found under the influence of alcohol or drugs on official premises, or bringing drugs (other than those required for medicinal purposes) on to official premises, you may be liable to disciplinary action. The NICS policy on problem drinking is set out in policy 7.05, Alcohol, Drugs and Substance Abuse;
- e. poor time-keeping - if you have persistent poor time-keeping you may be subject to disciplinary action;
- f. bankruptcy and insolvency - if you become bankrupt (or give notice that you intend to take advantage of the Bankruptcy Acts) you must report the fact to your Fgr ctvo gpvcnJ T."y j q"y knitgs vktg"c"eqo r rvg'ucvgo gpv'qh'j g case as soon as possible. You may be transferred or suspended from duty if your employing Department considers such a course advisable, or if there is reason to believe that public funds have been, or are likely to be, at risk. If you have been dishonest or have acted discredibly, you may be subject to disciplinary action (including dismissal) and, if there is evidence of misappropriation of public money, may be subject to prosecution. If you are bankrupt or insolvent you may be removed from duties where the handling of public funds is involved;
- g. lending and borrowing money - you must not conduct or represent a money-lending business on official premises. You must not lend money to another member of staff at interest. Borrowing money between Civil Servants (and particularly from more junior staff) should be discouraged. It is also a very serious offence for you to borrow money from people with whom you have come into contact through your official duties;
- h. unauthorised private trading on official premises is not allowed in any form;
- i. loss or misuse of Government property - you must take care of official stores and property. You are personally responsible for items that are on personal charge. Special care must be taken by you if your duties require you to travel and carry Government property with you. In particular, such items should not be left insecure in motor vehicles or hotel rooms. Any failure to take all reasonable care may lead to disciplinary action. All losses of official equipment must be reported as soon as they are discovered. All Government property must be surrendered as soon as it is no longer needed for official duties;
- j. misuse of official stationery, equipment and materials - the use of official stationery, equipment and materials for private purposes is forbidden. If you are found in unauthorised possession of Government property or have put Government property to unauthorised use, or have been party to such an offence, you may be dismissed and may also be prosecuted. [Official stores should not be loaned to you for purely private use.];

- k. theft and fraud - if there is reason to believe that there has been a case of theft, fraud or suspected fraud of public funds involving you or another member of staff, the matter should be reported at once to the responsible line manager;
- l. negligence - resulting in the loss of public funds or loss of, or damage to, official property;
- m. absence without authority;
- n. harassment, discrimination or victimisation of any description. For further information see policy 6.06, Equal Opportunities.

2.3 Principles Underlying Disciplinary Procedures

2.3.1 The general principles underlying the disciplinary procedures are:

- a. at all stages disciplinary proceedings will be completed as quickly as possible, consistent with the thorough investigation of the circumstances of each case and with the need for justice to be done and to be seen to be done; disciplinary cases should always be considered against as full an understanding as possible of any relevant personal, domestic or social circumstances and the assistance which the Staff Welfare Service may be able to give in this respect;
- b. you will be informed in writing of any formal disciplinary charges against you that are being considered and will be given an opportunity to answer those charges;
- c. you have the right to the assistance of a Trade Union representative or work colleague of your choice during all stages of the disciplinary procedure (or as specified in paragraph 4.2.1). You must not be accompanied by a person acting in a legal capacity;
- d. there is no rigid code which automatically assigns specific penalties to particular offences. Any mitigating circumstances and your previous record of service should be taken into account when considering what penalty should be imposed for a disciplinary offence. Disciplinary proceedings should not be viewed primarily as a means of imposing sanctions. They should also be concerned with emphasising and encouraging improvements in individual conduct;
- e. except for serious disciplinary offences amounting to gross misconduct, you will not be dismissed for a first offence or dismissed without notice; but see paragraph 4.3 (There is no specific definition for gross misconduct, but examples of behaviour that might lead to dismissal are shown at Annex 1.);
- f. any formal disciplinary penalty imposed and the reasons for it will be confirmed in writing;

- g. you have a right of appeal against any formal disciplinary penalty imposed (see paragraph 4.2.4).

2.4 Disciplinary powers are, in practice, exercised by the Permanent Heads of Departments/Agency Chief Executives or, in the case of Permanent Secretaries and Heads of Departments, by the Head of the Northern Ireland Civil Service.

2.5 A decision to dismiss will normally be taken by either the Director of Personnel or the Establishment/Personnel Officer. Such disciplinary powers should not be further delegated below Grade 7 or equivalent level without the express authority of the Head of the Department and should normally be subject to consultation with Trade Union Side. Delegation of disciplinary powers is without prejudice to the Head of the Department's powers to deal personally with any particular case, or to confirm or vary decisions made by officers to whom disciplinary powers have been delegated when considering appeals personally or reports made by the Civil Service Appeal Board (see paragraph 4.2.4 below).

2.6 If you are at Grade 3, the Head of the employing Department will decide whether disciplinary proceedings are to be instituted and, if so, of what kind. You have a right of appeal to the Head of the Northern Ireland Civil Service. Heads of Departments normally delegate decisions if you are below Grade 3 level in order that they may be able themselves to deal with appeals. The level to which decisions are delegated is decided by the Head of the Department in the light of the nature and size of the Department and of any other relevant considerations (see paragraph 2.5 above).

2.7 The Head of the Northern Ireland Civil Service will deal with any cases if you are a Permanent Secretary or equivalent or a Head of Department/Agency Chief Executive. In such cases, the normal practice, after consultation with the Minister of the Department concerned and with the Secretary of State for Northern Ireland, will be to set up a board of inquiry that will report to the Head of the Northern Ireland Civil Service.

3 Minor Disciplinary Offences - Informal Action

3.1 Minor disciplinary offences may be best dealt with informally as they arise by line management through an oral warning. A written record of the issue of any such warning should be held by management and copied to you. This may be sufficient and avoid the need for formal procedures. If conduct does not improve a written informal warning may be given by line management stating the conduct complained of and, if appropriate, the standard of conduct expected and what specific improvement is required. A written informal warning will state that any further misconduct may be considered under formal disciplinary procedures and may lead to a penalty within the terms of paragraph 4.3 below.

3.2 Establishment/Personnel Branches should be sent a copy of any written warning issued by line management.

3.3 If satisfactory improvement does not occur as a result of the informal actions then the matter will be reported to the appropriate person exercising formal disciplinary powers for consideration of action, where appropriate, under the formal procedures.

4 Serious Disciplinary Offences Resulting in Formal Disciplinary Action

4.1 Preliminary Steps (Enquiries)

4.1.1 Departments must carry out preliminary enquiries in cases where the facts are not clear before considering any formal charges. Both for reasons of good investigation technique and the need to be fair to employees, desks, lockers, cupboards, tool boxes and the like should normally be searched only in the presence of the individual concerned. Where, for any reason this is not practicable, the searcher will be accompanied by a witness, preferably a line manager of the individual. However, it should be borne in mind that management has no authority to search your personal belongings without your consent except where there is a contractual right.

4.1.2 Where these preliminary enquiries disclose grounds for suspicion that a criminal offence may have been committed and the case is reported to the police, a search may be carried out by the police under a search warrant or under various statutory powers of search.

4.1.3 Where possible, departments should tell you orally if you are under investigation, and in writing of the right to be assisted by a Trade Union representative or colleague of your choice and of the right to remain silent. It should be explained to you that this representative cannot be someone who may be approached and interviewed as part of the investigative procedures. These rights apply whether or not the matter under investigation could lead to criminal proceedings. Departments should confirm in writing that these rights have been drawn to your attention. Departments should also consider whether to suspend those involved while enquiries take place (see paragraph 7.1).

4.2 Formal Disciplinary Procedures

4.2.1 As a first step in the formal disciplinary procedure, you will be given a written statement defining the charge(s) and setting out the details of the supporting facts. At the same time, if you are subject to a charge you will be advised that, if you so wish, you may be assisted throughout by a Trade Union representative or a work colleague of your choice and that the Department will, with your agreement, send a copy of the written statement to that person. You will be invited to submit, within a reasonable period of time (normally 10 working days, but a shorter or longer period if agreed in the circumstances of a particular case), a written reply to the charge. You will be invited to attend a meeting by the person exercising disciplinary powers before any action is taken. You must take all reasonable steps to attend the meeting. You may, if you wish, be accompanied by a Trade Union representative or work colleague at the meeting, in accordance with the Employment Relations (NI) Order 1999.

4.2.2 The aim of the meeting is to resolve any doubts about the facts and to ensure that a clear picture is presented of your defence, without undue formality. Unless those exercising disciplinary powers intend to conduct the meeting personally they will appoint the person or persons who are to be present on their behalf. You may be accompanied by a Trade Union representative, or colleague. There can be no standard practice, but the normal intention is that the person or persons conducting the interview will submit a report

to the person exercising disciplinary powers which should give their opinion as to whether you committed the offence (giving reasons for such opinion). The report will be accompanied by a note of the interview on which you will have been given the chance to record your comments. The fact that there has been a meeting does not affect your right to appeal afterwards.

4.2.3 The person exercising disciplinary powers is responsible for deciding whether you committed the offence in the light of the facts presented and, if so, what disciplinary penalty is appropriate. If it is decided that you did commit the offence a formal written warning may be issued. Where a formal warning already exists a final formal warning may be issued. You must be informed of the decision made at this point and the decision can take effect.

4.2.4 Departments must make clear to you your rights of appeal against disciplinary decisions and the procedures to be followed, including time limits. In addition to any statutory rights, in the majority of cases of dismissal, you also have the right of appeal to the Civil Service Appeal Board (see the Leaving the Service section of the Handbook) within three months of your dismissal. Those who are ineligible to appeal to the Civil Service Appeal Board have the right of appeal against dismissal to the Permanent Head of the Department. In the case of all other disciplinary penalties, you have the right of appeal to the Permanent Head of the Department/Agency Chief Executive following the exhaustion of the disciplinary procedures. You must inform the Department of your wish to appeal.

4.2.5 Where you have reasonable grounds for believing a disciplinary procedure is still ongoing at the end of three months, the normal time limit for presenting to an Employment Tribunal will be extended to six months.

4.3 Disciplinary Penalties

4.3.1 The main disciplinary penalties available to persons exercising formal disciplinary powers are:

- a. written reprimand;
- b. forfeiture of one (or part) or more awards under the terms of the relevant performance pay scheme for that year;
- c. monetary payments by way of a fine; or by way of restitution (in whole or in part) either for culpable loss or damage caused by you or for unauthorised absence from duty. Such payments may be recovered by deduction from pay with your prior knowledge;
- d. restriction in carrying out certain duties or transfer to other duties;
- e. suspension from duty for a specific period with loss of pay;
- f. downgrading/demotion, which may be for a specific period, after which you will be eligible for consideration for promotion. Downgrading/demotion

also includes removal from a post attracting additional pay or allowances; and reclassification from non-industrial to industrial where you are on probation as a non-industrial on transfer from industrial status;

- g. a ban for a specific period on promotion or consideration for promotion including temporary promotion or eligibility for substitution; and
- h. dismissal.

4.3.2 Normally no account will be taken of an earlier offence in subsequent disciplinary actions after a period of three years' satisfactory service. (See paragraph 12.1.)

5 Summary Dismissal/Gross Misconduct

5.1 In cases of a very serious nature, Departments have the right of summary dismissal without notice or warning. If you are summarily dismissed you may appeal against your dismissal in the normal way, but dismissal will not be set aside pending the outcome of any appeal. Examples of gross misconduct are shown at Annex 1.

5.2 These formal procedures comply with the statutory requirements for dispute resolution as set down in the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004. However, there are limited circumstances, as set down in the Regulations, in which disciplinary action may be taken without going through the formal disciplinary procedure.

6 Criminal Offences

6.1 If it appears that a criminal offence may have been committed and the matter is put into the hands of the police, in accordance with the employing Department's normal procedure, the person exercising formal disciplinary powers may, if the circumstances warrant it, pursue formal disciplinary action without waiting on the outcome of any police investigation and disposal of any resulting criminal proceedings.

6.2 You must report to your employing Department as soon as possible if you have been arrested, charged or convicted by a court of any criminal offence (except a traffic offence with a private vehicle for which a penalty has not included imprisonment or disqualification from driving). Failure to do so may be considered to be a disciplinary matter.

6.3 A criminal conviction, whether related to work or otherwise, may lead to disciplinary action. Although not all stages of the formal disciplinary procedure may be appropriate, such as when the facts are not in dispute, you will be given the opportunity to make representations before a decision is reached and may be assisted in this by a Trade Union representative or colleague. The main considerations which the person exercising disciplinary powers will take into account in deciding what action is appropriate are whether the offence impairs the business of the Department/Agency or of the Civil Service or makes you unsuitable for your type of work.

6.4 Minor criminal offences, such as breach of the peace, will normally result in a disciplinary warning from Establishment/Personnel Division and a minute outlining the standard of behaviour expected of a Civil Servant. Recurring patterns of improper behaviour will be dealt with as a serious matter and disciplinary penalties determined accordingly.

6.5 Where you are convicted of an offence and receive a custodial sentence, consideration will be given to the termination of your employment.

7 Suspension from Duty

7.1 You may at any time be suspended from duty if, in the opinion of the person exercising disciplinary powers, that course is a necessary precaution in the public interest pending the outcome of criminal or disciplinary investigations or proceedings and no alternative course, such as transfer to other duties, is appropriate. Suspension in these circumstances, as distinct from suspension as a disciplinary penalty (see paragraph 4.3.1 e), does not imply any decisions about the case and this important distinction should be kept in mind whenever any record or report of the period of absence is necessary.

7.2 Pay in respect of any period of suspension may be withheld wholly or in part so long as such suspension continues, if the person exercising disciplinary powers so decides. In such circumstances, you will be told that you may be eligible to claim for Social Security benefits.

7.3 Where it is decided that pay, in whole or in part, should continue, for the purposes of calculating the amount to be paid, you should be treated in the same way as staff are treated during the first six months of sickness absence. This would entail, among other things, paying shift disturbance allowance (SDA) for the first 30 days, but not paying notional overtime.

7.4 Any decision to withhold pay will be subject to early and regular review; among the factors taken into account will be the circumstances of the alleged offence and your dependants. If disciplinary proceedings result in a penalty, any withheld pay in respect of the suspension will be forfeited wholly or in part if the person exercising disciplinary powers so determines after consideration of all the circumstances of the case. Any withheld pay, which it is decided will not be forfeited, will be paid. If you are cleared of all charges you will receive a net sum making up any shortfall in net pay that would have been received during the period of suspension.

8 Accrual of Annual Leave

8.1 Annual leave will/will not accrue in the following circumstances:

- a. in all cases of unpaid suspension, you should be advised at the time of suspension that annual leave will not accrue, but that this will be reviewed at the end of the period of suspension. In cases where you are suspended with pay, annual leave will accrue;

- b. irrespective of whether suspension has been paid or unpaid, annual leave will be deemed not to have accrued if dismissal ensues;
- c. if you are found 'not guilty' and have either been on paid suspension or subsequently paid for the period of suspension, then annual leave will be deemed to have accrued (in other words the normal carry-over rules will apply); and
- d. reduction in leave entitlement should only be made in respect of complete periods of 30 days or more. The amount to be deducted in respect of each 30-day period should be $\frac{1}{12}$ of the annual allowance rounded down to the nearest half-day.

8.2 Where it is concluded that you should be paid during a period of suspension, including retrospective payment, the period should reckon under the Principal Civil Service Pension Scheme in the normal way.

8.3 The procedures set out in these paragraphs do not affect the practice whereby a line manager may send you home if the circumstances appear to require such action, for example, if you have become inebriated over the lunch break. Unless your sending home is for a very brief period, however, consideration should be given by the person exercising disciplinary powers to the need for formal suspension.

9 Recovery of Losses of Public Funds

9.1 Departments must apply, where appropriate, the rules that apply to the recovery of losses to public funds on dismissal. These rules are set out in Annex 2.

10 Trade Union Representatives

10.1 Although normal disciplinary standards apply to Civil Servants who are Trade Union representatives, normally no disciplinary penalty should be imposed on you if you are a Trade Union representative until the circumstances of the case have been discussed with a senior Trade Union representative or full-time official. (Consultation is not necessary over an oral reprimand or written warning, as provided for minor disciplinary offences, see paragraph 3.2.) Care should be taken that a disciplinary penalty is not seen as an attack on the union's functions.

11 Transfers

11.1 Where the nature of the disciplinary offence makes it inappropriate for a Department to continue to employ a member of staff at the same location, you may be required to move to another location as an alternative to dismissal. Reimbursement of expenses will be at the discretion of Departments.

12 Records

12.1 Departments should record on your file, or the appropriate record, the full circumstances of any disciplinary offence, the action taken, whether an appeal was lodged, its outcome and any subsequent developments. Such records will be carefully safeguarded and kept confidential. Except for very serious offences where specific warning will be given, no account will be taken of earlier offences in subsequent disciplinary actions after a lapse of three years.

12.2 No record of any anonymous and unsubstantiated allegations will be kept on your personal file, although Departments may keep a separate general record of such allegations in order to assist in tracing the originators.

DISCIPLINARY PROCEDURES

ANNEX 1

Examples of Behaviour that Might Lead to Dismissal for Gross Misconduct are:

- 1. Assault/threatening behaviour** - use or threat of physical violence. Discrimination including harassment or victimisation against colleagues or members of the public on grounds of religious belief, political opinion, gender, race or disability.
- 2. Unauthorised/improper receipt of money** - receipt of money, goods or pecuniary advantages in respect of any services rendered.
- 3. Theft and Fraud** - any deliberate attempt to defraud Departments, colleagues or members of the public, such as travel and other expenses irregularities, misappropriation of funds, deliberate falsification of time records, and the like.
- 4. Misuse of computer systems** - any wrongful or unauthorised access to IT systems or other breach of IT security.
- 5. Incapacity through alcohol or drugs** - incapacity to perform normal duties owing to the consumption of alcohol or the misuse of drugs.
- 6. Negligent behaviour** - any action or failure to act which seriously threatens the health or safety of colleagues or members of the public.
- 7. Malicious damage** - the intentional causing of damage to the property of Departments, colleagues or members of the public.
- 8. Unauthorised use of equipment or misappropriation of property** - including property of Departments, colleagues or members of the public.
- 9. Criminal convictions** - a conviction by a court for any criminal offence.
- 10. Breach of procedures** - actions likely or intended to corrupt or seriously affect the integrity of departmental systems, policies or information and destroying the trust between management and staff.

The above list is not exhaustive and Departments reserve the right to dismiss you for gross misconduct, where the gravity and severity of the offence is such, that continuing your employment is not considered reasonable or appropriate.

DISCIPLINARY PROCEDURES

ANNEX 2 Paragraph 9.1

Recovery of Losses to Public Funds

On dismissal for an offence involving loss to public funds, any sums unpaid, for example, in respect of salary or wages up to the last day of duty, or of income tax overpaid on salary, may be withheld as a set-off against the loss. Similar set-offs should be made if you would have been dismissed for an offence but resign before the dismissal can be put into effect. The Inland Revenue should be notified of any sums so withheld in respect of income tax refund and, at the same time, be requested to initiate proceedings for the withholding of refunds of overpayment of tax.