

Misconduct Policy

Policy principles

All employees are responsible for ensuring their behaviour meets the standards expected of them. The Civil Service Code, Diplomatic Service Regulations (DSRs) and Home Service Regulations (HSRs) outline the key principles of behaviour expected from all employees.

Separate policies and procedures cover attendance, performance management and other capability issues.

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

Everyone involved in the Misconduct Procedure is expected to:

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

Scope of the policy

This policy and its related procedure apply to all FCO UK Based employees, including those on probation and fixed term appointments. Locally Employed staff are bound by local misconduct procedures which should follow those of UK staff as closely as possible, taking into account local law. Staff from other government departments are bound by their parent department's procedures.

Policy summary

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

Key areas covered by this policy include:

- initial assessment, including levels of seriousness of misconduct;
- informal and formal action;

investigations and meetings; and
decision-making (including penalties).

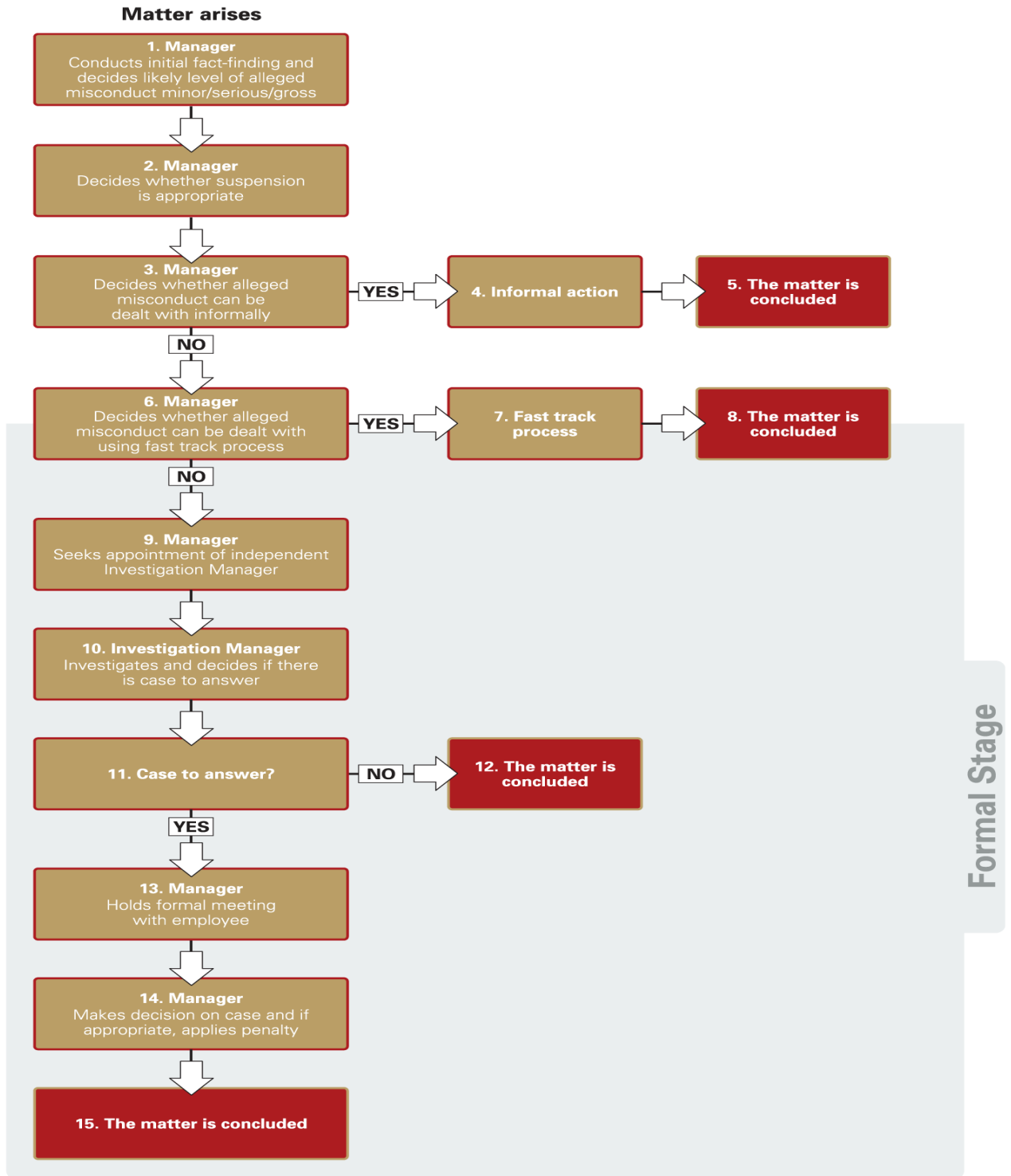
Misconduct Procedure

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Process overview

A text version of this flowchart is available on page 12



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

Introduction

This document sets out the procedure to use when it is suspected or alleged that any FCO UK Based employee has failed to meet acceptable standards of behaviour or conduct in any way. It should be read with the Misconduct policy.

This procedure must be followed to ensure the statutory code of practice laid down by the Advisory, Conciliation and Arbitration Service (ACAS) is adhered to.

The Misconduct Advice contains tips and templates for use throughout the procedure, including a Decision Manager's checklist. Additional support is also available through the 'Misconduct Advice for Employees' and the following 'How to' guides:

- Hold a formal misconduct meeting
- Investigate potential misconduct cases
- Assess the level of misconduct
- Decide an appropriate penalty.

Where expressly required, managers must consult the HR Management Advice Service (MAS) for advice at different stages of the process.

All actions in this procedure should normally be taken within the set times. However, it is recognised that this is not always possible due to the complexity of the case or circumstances such as working patterns, shift working, annual leave, public holidays and/or employee absence or disability, in which case all actions should be done as soon as reasonably possible. The reasons for any delay should be recorded and, agreed in advance with MAS.

If the employee has a disability and requires reasonable adjustments to enable them to attend meetings, or read correspondence, they should inform the manager accordingly. Managers will need to put these adjustments in place before taking action. Further advice where necessary, can be sought from the Disability Policy and Support Team.

A summary of the procedure is in the flowchart: *Procedure overview*.

Following the procedure

In simple terms, alleged or suspected misconduct involves line managers (in consultation with MAS) making a series of decisions according to the individual circumstances of the case. The line manager must:

Decide the level of seriousness of misconduct
Decide whether temporary removal from the workplace/suspension is

appropriate
Decide whether matters can be dealt with informally or whether formal action should proceed (including fast track for Level 1 minor misconduct cases)
Have the matter investigated or gather facts
Inform the employee of the decision in writing and meet with them to discuss the allegations ensuring: <ul style="list-style-type: none"> • the right to be accompanied is offered • the opportunity to put forward mitigation
Decide whether the case is proven or not
Decide the appropriate penalty

The Decision Manager must always be at least one grade higher than the employee concerned, except for specialist/financial investigations. In most cases (i.e. Levels 1 (minor) or 2 (more serious or repeated misconduct) the employee’s line manager will take on the role of Decision Manager. Level 3/gross misconduct cases where dismissal is possible will be chaired as follows:

- SMS employees – by HR Director
- Band C & D employees – by a HRD Head of Department
- Band A & B employees – by Head of Employment Relations Team

The HR Director has discretion to delegate the role of chairing a Level 3/gross misconduct hearing to another SMS officer who has not previously been involved in the case.

Initial assessment

There are two key initial decisions for the line manager to make (in consultation with MAS) when misconduct is alleged or suspected:

- the likely level of seriousness
- whether the action warrants temporary removal or suspension from the workplace.

Deciding the level of seriousness of misconduct

The line manager, in consultation with MAS, should decide what the seriousness of the alleged misconduct is likely to be:

- minor misconduct (Level 1)
- serious misconduct (Level 2)
- gross misconduct (Level 3)

Further guidance on deciding the level of alleged misconduct and examples of each level can be found in the '*How to: Assess the level of misconduct*' guide.

As soon as the line manager is clear about the likely level of the alleged misconduct, having consulted MAS, they should advise the employee of:

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

Deciding whether to suspend/temporarily remove an employee from the workplace

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

As suspension is a serious decision, MAS must be consulted before any suspension action is taken. Circumstances in which suspension may be appropriate could include but are not limited to where:

- there has been a serious breakdown in the relationship between the employee and the department; or
- the nature of the allegation is such that it would make it difficult for the employee to continue working; or
- there is a risk to other employees, property or customers; or
- there is a risk that the employee may tamper with evidence required for the investigation and/or influence witnesses

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

Suspension will normally be with full pay.

Suspension should not be confused with management action to temporarily remove the employee from their current place of work; this removal may be required immediately following an incident in order to diffuse a conflict situation. An example of this type of management action might be instructing people to work in a separate area of the office or sending the employee(s) home for the rest of the

day/shift to allow for a cooling-off period. The line manager must be very clear with the employee that they are not being suspended and will be expected to return to work as normal the next working day/shift.

Informal action

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

However, if action is not taken, line managers must advise employees that any further alleged misconduct may lead to formal action being taken in future. A note of all line management action should be kept securely either electronically or in hard copy and a copy given to the employee. As this is informal action, the note should not be placed on the employee's INDIV file at this time.

Formal action

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

At this stage, the line manager should, in consultation with MAS, decide whether using the fast track process (see below) is appropriate.

When the formal process has started, the Decision Manager should inform MAS that the process is underway. If the misconduct case is then not resolved after 40 working days it should be reviewed by MAS. The purpose of the review is to ensure that everything is being done to progress the case, that the correct process is being followed and that there are no unnecessary delays.

Fast track process

A fast track process may be appropriate in straightforward Level 1 cases where the evidence is readily available and the facts of the case are not likely to be in dispute.

The fast track process should only be used for minor misconduct (Level 1) cases. It should not normally be used for serious misconduct cases, unless expressly agreed by MAS, and is never used for gross (Level 3) misconduct cases which could result in dismissal. Dismissal is only possible where there is alleged Level 3/gross misconduct.

In fast track cases, a simple fact-gathering exercise should take place with only the following Misconduct Procedure steps required:

- the allegations being put to the employee in writing, together with a brief description of the evidence;
- a meeting with the line manager who will take the role of Decision Manager, where evidence will be presented and the employee will have an opportunity to present their case together with any mitigation; at this meeting the employee has the right to be accompanied by a trade union representative or work colleague; and
- the line manager advising the employee of the decision and following this up in writing within five working days, this will include an opportunity to appeal.

The fast track process should be stopped by the line manager, in consultation with MAS at any time if it is evident that the scope of the misconduct is broader and more complex than initially thought, or if the line manager themselves may have been implicated in the alleged misconduct. In such cases, the line manager should seek advice from MAS to consider if the appointment of an independent Investigation Manager is required.

Further guidance on when it is appropriate for line managers to use the fast track process can be found in the '*Misconduct Advice*'.

Investigations

Misconduct cases that are not straightforward will need a formal investigation rather than just the simple fact-gathering that is suitable for the fast track process. The aim of the investigation is to collect and record the facts necessary to decide whether there is a case to answer or not. Line managers should ensure that prior to investigating they have read the '*How to: Investigate misconduct cases*' guide.

Different people should carry out the investigation and act as Decision Manager. In such cases, the line manager should seek appointment of an independent Investigation Manager, while they would keep the role of Decision Manager themselves unless the behaviour may be considered Level 3/gross misconduct (see below for Level 3 process in more detail). If unsure whether to seek appointment of an independent Investigation Manager or of their own role, line managers may seek further advice from MAS.

An Investigation Manager will:

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

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

Informing and meeting with the employee

If there is **no case to answer**, the Decision Manager must write to the employee to confirm the decision and say that no meeting is necessary. A copy of the report and witness statements should be enclosed.

If there is **a case to answer (for minor or serious misconduct cases only – see below for steps to follow for Level 3/gross misconduct cases)**, the Decision Manager will need to take further formal action and should write to the employee who has been investigated within five working days of receiving the report inviting them to a formal meeting to discuss the findings of the investigation. The report and witness statements should be enclosed.

The Decision Manager should:

- give the employee at least five working days' notice of the meeting
- tell the employee they have the right to be accompanied by a trade union representative or work colleague. If the employee or their companion cannot reasonably attend the meeting, the employee should propose several new dates to the manager to allow the meeting to take place within five working days of the original meeting date.
- if the employee fails to engage or cooperate with meeting arrangements and/or fails to attend the scheduled or re-scheduled meeting, consideration of the discipline case may still go ahead in their absence based on the available information with agreement of MAS
- ask the employee if any specific arrangements or reasonable adjustments need to be made to enable them to attend the meeting
- enclose the investigation report plus any supporting documentation.

The Decision Manager should then meet with the employee to hear the case, arranging for a note-taker to be present at the meeting.

If an investigation shows clearly that the Decision Manager is implicated in the original allegation of misconduct, the case must be referred to the next senior manager in the Decision Manager's line management chain, or to a suitable alternative manager at the same grade, consulting MAS as necessary.

Deciding the outcome

The Decision Manager must decide whether the alleged misconduct is, in their genuine belief, on the balance of probabilities:

- proven, or
- not proven.

The Decision Manager must notify Personnel Security Team (PST-ESD) and/Internal Audit for any proven cases involving breaches of security, fraud or criminal matters. Where it is suspected that a criminal offence has been committed, the advice of PST should be sought in relation to notifying the police.

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

Mitigation

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

If the case is proven, penalties should be decided after the employee has been given the opportunity to put forward any mitigating circumstances and after providing evidence of mitigation where available.

Deciding an appropriate penalty

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

Instances of minor misconduct do not necessarily merit a penalty.

Informal action is not a disciplinary penalty.

Penalties could be the following:

- First written warning. Appropriate in some instances of minor misconduct, or when informal action has not stopped further instances of similar minor misconduct. Valid for a minimum of 12 months from notification which could be extended exceptionally with the agreement of MAS.
- Final written warning. Usually appropriate when another incident of minor misconduct occurs during the live period of a first written warning or when the misconduct is serious. Normally valid for a minimum of 12 months from notification, which could be extended exceptionally with the agreement of MAS
- Further guidance on deciding the appropriate penalty can be found in the '*How to: Decide a misconduct penalty*' guide.

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

All penalties attract a right of appeal.

Informing the employee of the decision

The Decision Manager should normally make a decision within five working days of the meeting and immediately communicate this in writing to the employee.

Appeals

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

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

Appeals on disciplinary matters should be heard, where this is possible, by someone senior to the person who made the decision being appealed. If this is not possible due to operational circumstances, or for some other reason, the appeal for warnings, but not dismissals, may be heard by a manager at the same level as the Decision Manager in consultation with MAS. The Appeal Manager should be impartial and independent of the original case wherever possible.

Employee's actions

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

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

Appeal Manager's actions

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

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

At the meeting, the Appeal Manager should examine the decision-making process and the penalty given and decide whether these were reasonable. They should not reconsider the case in detail.

If new evidence is made available the Appeal Manager should consider any impact this may have on the final decision. Normally within five working days of the appeal meeting, the Appeal Manager should decide and inform the employee whether their appeal has been upheld or rejected.

The Appeal Manager's decision is final.

Record keeping

It is important that a written record is kept at all stages of the Misconduct Procedure. Following conclusion of the formal process the Decision Manager should send copies of the documents to MAS who will retain them and ensure the warning letter is placed on the employee's INDIV file and removed at the appropriate time.

Records must be protectively marked, kept securely and handled in line with departmental records management policy.

At all stages, documentation should be managed in compliance with the requirements of the Data Protection Act 1998. Further advice on the Data Protection Act aspects if required, can be sought from IMD.

Process overview – text version

Matter arises

Step 1. Line Manager (in consultation with MAS) conducts initial fact-finding and decides likely level of misconduct [minor/serious/gross]

Step 2. Line Manager (in consultation with MAS) decides whether suspension is appropriate

Step 3. Line Manager (in consultation with MAS) decides whether alleged misconduct can be dealt with informally

Yes: go to step 4

No: go to step 6

Step 4. Informal action

Step 5. The matter is concluded

Step 6. Line Manager (in consultation with MAS) decides whether alleged misconduct can be dealt with using fast track process (for Level 1 cases only)

Yes: go to step 7

No: go to step 9

Step 7. Fast track process

Step 8. The matter is concluded

Step 9. Line Manager seeks appointment of independent Investigation Manager

Step 10. Investigation Manager investigates and decides if there is a case to answer

Step 11. Case to answer?

Yes: go to step 13

No: go to step 12

Step 12. The matter is concluded

Step 13. Line Manager holds formal meeting with employee. Or for Level 3/gross misconduct cases refers matter to MAS

Step 14. Line Manager (in consultation with MAS) makes decision on case and if appropriate, applies penalty

Step 15. The matter is concluded

UNCLASSIFIED

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

UNCLASSIFIED