

**LEC SUPPORT SERVICES & TRAINING WING
BRITISH FORCES GERMANY**

LEC NOTICE No 41

DEPENDANT EMPLOYEE DISCIPLINARY AND APPEAL PROCEDURES

General

1. The disciplinary procedure is designed to help and encourage all Dependant (Dep) employees to achieve and maintain acceptable standards of conduct, attendance and job performance in the workplace. The procedure provides an instruction to deal with matters in a positive way ensuring that employees are treated in an effective consistent fair manner in accordance with the ACAS codes of practice.
2. The disciplinary procedure should be used primarily to help and encourage employees to improve rather than just a means of imposing punishment. It provides a method of dealing with any apparent shortcomings in conduct and can help an employee to become effective again.

Disciplinary Procedures

3. There are two disciplinary routes that can be pursued; either informal or formal and these are dependent on the circumstances involved and the level of any misconduct that has occurred. The disciplinary procedures and some examples of the types and levels of misconduct are shown in Annex A and B respectively. An overview of how to handle discipline can be seen at Annex C.

4. **Informal Discipline Procedure.** Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally and if actioned early, a discussion can often resolve most cases. The discussions should be completed in private and be a two-way discussion aimed at highlighting possible shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained. After listening to the employee, it may be evident that there isn't a problem and this should be made clear to the employee. If there is a need for improvement, then it is important that the employee understands what needs to be done, how and for what period, and/or when their conduct or performance will be reviewed. A capability programme should be formulated consisting of a list of achievable/measurable objectives against a set timeline and where necessary, a programme of specific in-house or external training to assist with the capability gaps. This will then stop any confusion or ambiguity from the outset. A copy of the capability programme should be given to the employee and one retained by the Line Manager for the reviews.

5. Care must be taken to ensure that any informal action does not become formal disciplinary action, as this may unintentionally deny the employee certain statutory rights, such as the right to be accompanied and not being informed in writing to attend a disciplinary meeting with sufficient information about the allegation. If during the informal discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned and advice sought from the OC LSU on the way forward. The employee should be informed if the matter will continue under the formal disciplinary procedure. Brief notes on any informal action should be kept for reference purposes.

6. **Formal Discipline Procedure.** The formal disciplinary procedure will be necessary when the misconduct is more serious or the informal procedure has not been successful. There are fundamental factors that need to be met when applying the formal disciplinary procedure and these are outlined below:

a. **Key Principles.** There are key principles that need to be met to ensure that the employee is treated fairly;

- (1) The employee should be informed in writing of the allegations that have been made against them, together with the supporting evidence in advance of a disciplinary meeting.
- (2) Provide for matters to be dealt with promptly without unreasonable delay.
- (3) Allow for information to be kept confidentially.
- (4) Inform the employee what disciplinary action might be taken.
- (5) Inform the employee what levels of management have the authority to take various forms of disciplinary action.
- (6) Give employees the opportunity to have their say before management reaches a decision.
- (7) Provide employees with the right to be accompanied.
- (8) Provide that no employee is dismissed for a first breach of discipline, except in the cases of gross misconduct.
- (9) Require management to fully investigate before any disciplinary action is taken.
- (10) Ensure that employees are given an explanation for any sanction and allow employees to appeal against a decision.
- (11) The employee will be heard in good faith and that there is no pre-judgement of the issue.
- (12) Where the facts are in dispute, no disciplinary penalty is imposed until the case has been carefully investigated, and there is a reasonably held belief that the employee committed the act in question.
- (13) No person should be discriminated against on the grounds of sex, age, sexual orientation, race, nationality, disability, religion or any other group where discrimination legislation is applicable.
- (14) Ensure consistency in approach.
- (15) Inform employees of the right of appeal against any formal decision made.

b. **Keeping Records.** Records for all disciplinary and appeal procedures are to be completed and retained in case the matter is taken to an Employment Tribunal. The records should consist of the following:

- (1) The complaint against the employee.
- (2) The employee's defence.

- (3) Findings made and actions taken.
- (4) Whether an appeal was lodged.
- (5) The outcome of the appeal.
- (6) Any grievances raised during the disciplinary procedure.
- (7) Subsequent developments.
- (8) Notes of all formal meetings:
 - (a) Time, date of the meeting.
 - (b) The names and roles of all personnel in attendance.
 - (c) Summary of what was discussed and the conclusions that was come to and or agreed.
- (9) All correspondence with the employee concerning the disciplinary procedure.

c. **Investigations.** Investigations can be carried out by either the LSU or at unit level, but it must be by somebody other than a person that may be involved in the allegation, conducting the disciplinary hearing or making the decision. Generally, it would be the unit, but consultation with the OC LSU should be sought prior to it occurring. The following are key action requirements when conducting investigations:

- (1) It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary meeting. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.
- (2) Any investigatory meeting (also known as fact finding meeting) should be conducted by a management representative and should be confined to establishing the facts of the case. It is important that disciplinary action is not considered at an investigatory meeting. If it is apparent that formal disciplinary action may be needed then this should be dealt with at a formal disciplinary meeting at which the employee will have the statutory right to be accompanied by either a work colleague or the Dependant Representative and prior written notice (See Para 6, d, (1)).
- (3) There may be instances where suspension with full pay may be necessary while investigations are carried out (only the OC LSU or Head of Agency can make this decision). For example where relationships have broken down, in gross misconduct, where there are risks to an employee's or the organisation's property or risks to another employee or vulnerable adult or child that the employee may have contact with during their normal course of work.
- (4) If the investigation reveals the possibility of criminal action before the employee is interviewed, then the RMPs should be involved and the investigation suspended to ensure that any subsequent RMP investigations are not compromised. The Head of Agency is to be advised immediately of the situation.

d. **Holding the Disciplinary Meeting.** The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. The following action and consideration should be made:

- (1) It is essential that the employee is informed in writing of the details of the time and venue of the disciplinary meeting.
- (2) The employee should be informed of the alleged misconduct and its possible consequences and provided with copies of written evidence such as witness statements to enable them to prepare for the disciplinary meeting.
- (3) The employee should be allowed enough time to prepare their case and be informed of their right to be accompanied at the meeting.
- (4) Factors to be considered and actions to take when holding a disciplinary meeting is at Annex D.

d. **Informing the Employee of the Disciplinary Decision.** The decision should always be provided in writing as soon as the decision has been made. However, where possible, the employee should be first informed at a meeting, but if waiting to hold a meeting would cause unnecessary delays then the notification in writing should not be delayed. The written notification should include the following:

- (1) The nature of the misconduct.
- (2) The decision of the disciplinary hearing.
- (3) Any period of time given for improvement and the improvement expected.
- (4) The disciplinary penalty and, where appropriate, how long it will last. If the outcome is dismissal, then the reasons for the dismissal.
- (5) The likely consequences of further misconduct.
- (6) The right to appeal against the decision and the timescale for lodging this and the procedure for doing so.

e. **Disciplinary Penalties.** The levels of disciplinary penalties are outlined below:

- (1) **First Written Warning.** When the misconduct is more serious, the employee may be given a first formal written warning by the Head of Agency which sets out the nature of the misconduct and the change in behaviour required. The warning should also inform the employee that a final written warning may be considered if there is further misconduct. A copy of the written warning is to be kept on the individual's personal file and a second copy given to the employee. The warning is to be disregarded for disciplinary purposes after 1 year subject to achievement and sustainment of satisfactory conduct and performance.
- (2) **Final Written Warning.** When the offence is serious, or is a repeat of a type of offence already subject to a first written warning, a final written warning may be given to the employee. The warning is to be issued by the Head of Agency. The document is to give details of the misconduct, the improvement required within an agreed timescale (which should not normally exceed 3 months). A copy of this warning is to be kept on the individual's personal file and a second copy given to the employee. The warning is to be disregarded for disciplinary purposes after 2 years - subject to achievement and sustainment of satisfactory conduct.
- (3) **Dismissal.** If there is still a failure to improve or in cases involving gross misconduct, then the employee may be dismissed. Dismissal decisions can only be taken by the Head of Agency. With the exception of gross misconduct the dismissal is to be with notice (as per the notice periods set out in SI BFG 6200). It may not be

appropriate to require individuals to work during their notice period, depending on the circumstances of the dismissal and where appropriate a payment in lieu may be made (advice on this is to be sought from LEC Sp Svcs).

f. **Suspension.** Employees may only be suspended on the authority of the Head of Agency. Suspension is not to be an automatic reaction to an incident and should only occur if it is considered necessary and then the period should be as brief as possible. It must be highlighted to the employee that the suspension is not a disciplinary action and is simply an action to allow time to establish the facts of the case. The suspension interview should be carried out by the Head of Agency together with the Line Manager with confirmation of the suspension in writing as soon as possible after the interview. Before the suspension interview employees are to be informed that they can be accompanied by either the Dependant Representative or a work colleague. If such individuals cannot be found within a reasonable time (under an hour) then the interview can take place provided that another impartial witness is present. Should the employee object to the person chosen then they are to give their reasons which are to be officially recorded.

Appeals

7. An employee who wishes to appeal against a disciplinary decision is to notify the appropriate Head of Agency in writing of his or her wish to appeal before the end of the 5 working days from the date of receipt by the employee of the written notice of a disciplinary penalty. On receipt of an appeal the individual is to be offered the opportunity to put the reasons for appeal either in writing or verbally to the Appeal Officer. The appeal can be against the decision or the level of penalty incurred and can include new information. If no new information is provided then the Appeal Officer can base his decision solely on whether the decision of the Head of Agency was within the range of reasonable decisions on the basis of the evidence available at the time. However, if there is any doubt about the investigative or disciplinary process then the Appeal Officer must rehear the case and decide for himself. A copy of a suspension letter is at Annex E.

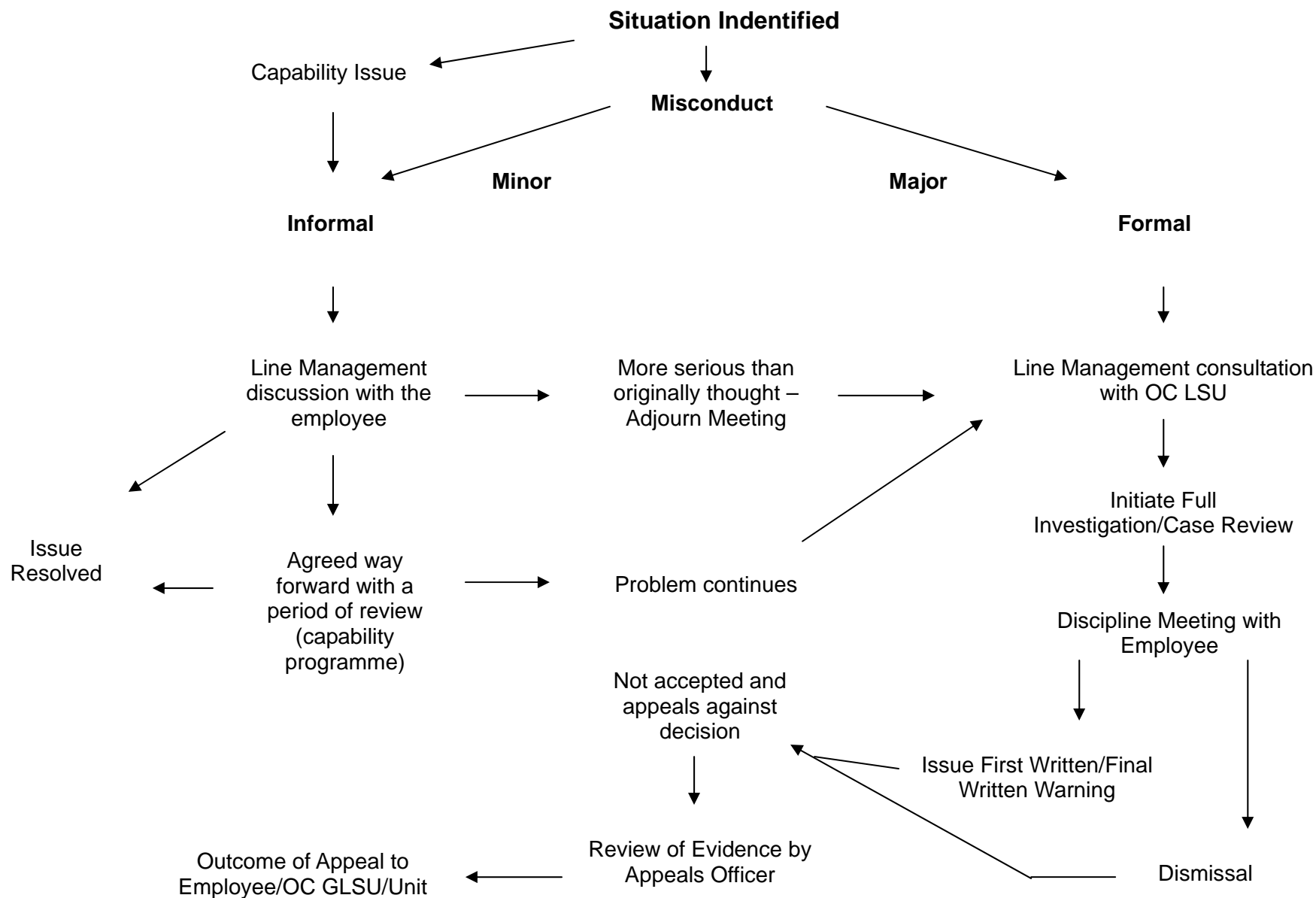
8. The Appeal Officer would ordinarily be the Gar Comdr/Dep Gar Comdr or their representative of no lower rank of Lt Col or equivalent.

Documentation Involved with the Disciplinary Process

9. The following example letters used during the disciplinary process are listed below;

- a. Notice of disciplinary meeting - Annex F.
- b. Notice of written warning or final written warning - Annex G.
- c. Notice of appeal meeting against warning - Annex H.
- d. Notice of the result of the appeal against a warning – Annex I.
- e. Letter to be sent to the employee to attend a disciplinary meeting where dismissal action is being considered - Annex J.
- f. Letter to be sent by the GLSU after a disciplinary meeting where consideration for dismissal action was being considered - Annex K.
- g. Notice of appeal meeting against dismissal action – Annex L.
- h. Notice of the result of appeal against written warning/dismissal – Annex M.

INFORMAL AND FORMAL DISCIPLINARY PROCEDURE



TYPES AND LEVELS OF MISCONDUCT

General

1. Conduct leading to disciplinary action may take any form, and managers will need to consider whether any particular misconduct warrants disciplinary action. The following guidance is designed to assist managers with this process, but it is not intended to be exhaustive, nor rigidly adhered to:

a. **Minor Offences:**

- (1) Isolated infringements of regulations without serious consequences.
- (2) Poor timekeeping (usually only after an informal warning).
- (3) Minor discourtesy (usually only after coaching or advice on unacceptable behaviour).
- (4) First occasions of minor verbal bullying or harassment where the perpetrator lacked intent or understanding e.g. poor attempts at humour.¹
- (5) Minor breaches of security (if not employed in a security related position).

b. **Major Offences:**

- (1) Refusal to comply with, or disregard of, reasonable instructions, especially if witnessed by other employees.
- (2) Work performance where the employee has made no effort to put training and coaching advice to good effect.
- (3) Breach of standing regulations, or any statutory obligations.
- (4) Harassment or verbal bullying.
- (5) Minor offences that are connected to a previous minor offence.

c. **Gross Misconduct:**

- (1) Theft, fraud, and deliberate falsification of records.
- (2) Physical violence.
- (3) Physical bullying, serious verbal bullying and harassment.
- (4) Deliberate damage to property.
- (5) Serious insubordination.
- (6) Unlawful discrimination or harassment.

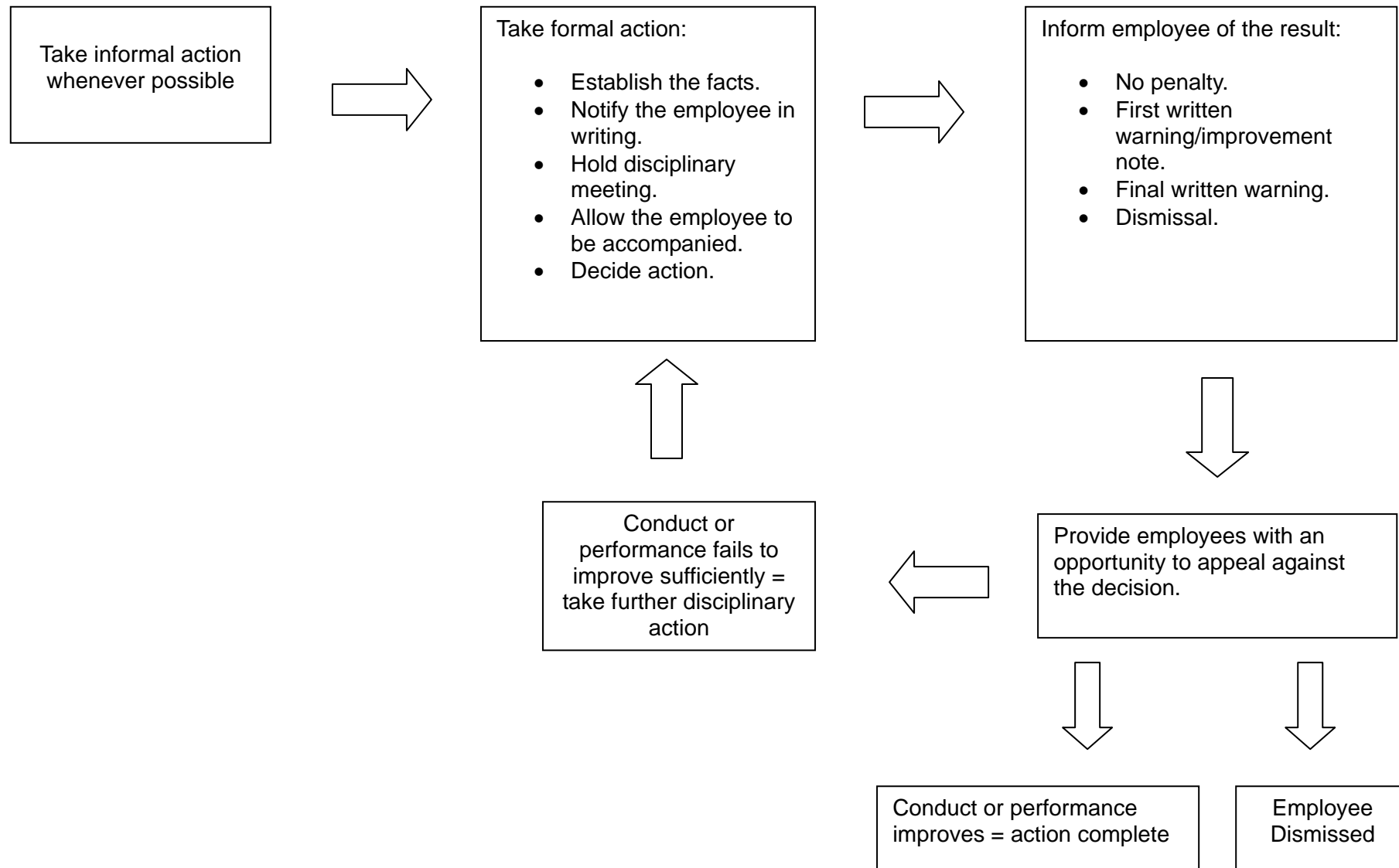
¹ It is not impossible to deal immediately with an observed or reported case of harassment or bullying. However, the views of the complainant are very important. Therefore, before dealing with such an issue the complainant should be referred to the JSP 763, the MOD Harassment Complaints Procedure and Administrative Instruction No 42. After reading it the complainant may choose to pursue the complaint in a different way.

- (7) Conviction of criminal offences which either could prevent continued employment for some reason (e.g. imprisonment) or which would cast doubt on the trust necessary to continue the employment relationship.
- (8) Attempting to work whilst incapacitated due to the effect of intoxicating liquor or drugs (medical opinion may be sought in such cases).
- (9) Serious breach of health and safety rules.
- (10) Causing loss, damage or injury through serious negligence.
- (11) Falsification of attendance records and time recording.
- (12) Deliberate accessing internet sites containing pornographic, offensive or obscene material.
- (13) Serious breach of confidence.

2. Sanctions can only be issued by the Head of Agency/OC LSU and are applicable to the following categories of offence:

- a. **Minor Offences.** Dependent upon the seriousness of the situation, a minor offence will result in a Formal Verbal Warning or a written warning. Advice should be sought from the LSU and where possible before giving the warning.
- b. **Major Offences.** Major Offences will result in either the issue of a First or Final Written Warning of which can only be issued by the HoA. Dismissal with notice is possible if an offence is repeated after the issue of a Final Written Warning.
- c. **Gross Misconduct.** Gross misconduct will normally result in dismissal without a notice period. Dismissal can only be implemented by the HoA.

OVERVIEW ON HOW TO HANDLE DISCIPLINE



FACTORS TO BE CONSIDERED AND ACTIONS TO TAKE WHEN HOLDING A DISCIPLINARY MEETING

Factors to be Considered

1. Ensure that all the relevant facts are available, such as disciplinary records, absence and sickness records, written statements, etc.
2. Arrange for someone appropriate who is not involved in the case to take a note of the meeting and to act as a witness to what was said.
3. Check if there are any special circumstances to be taken into account. For example, are there any personal or other outside issues affecting performance or conduct?
4. Be careful when dealing with evidence from a person who wishes to remain anonymous. Take written statements, seek corroborative evidence and check that the person's motives are genuine.
5. Arrange a time for the meeting that can be held as privately as possible, in a suitable room and where there will be no interruptions. The employee may offer a reasonable alternative time within 5 days of the original date if their chosen companion cannot attend. You may also arrange another meeting if an employee fails to attend through circumstances outside their control, such as illness.
6. Allow the employee to call witnesses or to submit witness statements. If a witness is to be called, then advance notice must be given.
7. Consider what explanations may be offered by the employee, and if possible check them out beforehand.
8. Keep the approach formal and polite and encourage the employee to speak freely with the view to establishing the facts.
9. Use questions to clarify the issues and to check that what has been said is understood. Generally use open-ended questions and only yes/no questions when specifically required.
10. Do not get involved in arguments and do not make personal or humiliating remarks. Avoid contact, gestures or body language that could be misinterpreted or misconstrued as judgemental.
11. If it becomes clear during the meeting that the employee has provided an adequate explanation or there is no real evidence to support the allegation, bring the proceedings to a close.
12. If new facts emerge, it may be necessary to adjourn the meeting to investigate them and reconvene the meeting.
13. If it is not practical for witnesses to attend, consider proceeding if it is clear that their verbal evidence will not affect the substance of the complaint. Alternatively, consider an adjournment to allow questions to be put to a witness who cannot attend in person but who has submitted a witness statement.
14. It may be necessary to adjourn the meeting if the employee becomes angry, upset or distressed so that they are able to regain their composure before continuing.
15. Make provisions for any reasonable adjustments to accommodate the needs of a person with disabilities.

Conducting the Meeting

16. Introduce those present to the employee and explain why they are there.
17. Introduce and explain the role of the accompanying person if present.
18. Explain that the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the organisation's disciplinary procedures.
19. Explain how the meeting will be conducted.
20. The complaint against the employee should be explained and the evidence gathered should be gone through.
21. Ask the employee if they have any explanation for the alleged misconduct or unsatisfactory performance, or if there are any special circumstances to be taken into account.
22. The employee should be allowed to set out their case and answer any allegations that have been made. The accompanying person may also ask questions, put to and or sum up the employee's case and should be able to confer privately with the employee during the hearing. The employee should be allowed to call relevant witnesses.
23. They should also be given an opportunity to raise points about any information provided by witnesses.
24. Summarise the main points of the discussion after questioning is completed. This allows all parties to be reminded of the nature of the offence, the arguments and evidence put forward and to ensure that nothing is missed. Ask the employee if they have anything else further to say as this will help demonstrate to the employee that they have been treated reasonably.
25. Adjourn the meeting before making a decision about whether a disciplinary sanction is appropriate. This allows time for reflection, proper consideration and any checking on matters raised that may be necessary.
26. When deciding whether a disciplinary penalty is appropriate, the following should be considered;
 - a. Does the organisation's rules indicate what the likely penalty will be as a result of the particular misconduct?
 - b. The penalty imposed in similar cases in the past.
 - c. That the employee is not being unfairly singled out.
 - f. Employee's disciplinary record (including current warnings), general work record, work experience, position and length of service.
 - g. Any special circumstances which might make it appropriate to adjust the severity of the penalty.
 - h. Whether the proposed penalty is reasonable in view of all the circumstances.
 - i. Whether training, additional support or adjustments to the work are necessary.

Reference

Date

LETTER OF CONFIRMATION OF SUSPENSION FROM WORK

Dear

You attended a meeting on where you were suspended from work. The suspension is not a disciplinary sanction and is only for a period of time to allow management sufficient time to gather information/to carryout an investigation* into the (allegations/reason)

During the suspension you will continue receive full pay as if you were in normal work and should be prepared to return to work when notified. Should you wish to take leave during this period, you are to contact the LSU for prior authorisation.

Should you have any further queries on this matter, you should contact

Yours sincerely,

Signed by Head of Agency

**Delete as applicable.*

Reference

Date

NOTICE OF DISCIPLINARY MEETING

Dear

I am writing to inform you that you are required to attend a disciplinary meeting on
atam/pm which is to be held in

At this meeting the question of disciplinary action against you, in accordance with the Dependant
Employee Disciplinary and Appeal Procedure, will be considered with regard to:

I enclose the following documents* (witness statements, etc.):

The possible consequences arising from this meeting might be (written warning):

You are entitled if you wish, to be accompanied by another work colleague or the Dependant
Representative (contact Tel: xxxx).

Yours sincerely,

Signature of OC/CPO/ACPO

**Delete if not applicable.*

Reference:

Date:

NOTICE OF WRITTEN WARNING OR FINAL WRITTEN WARNING

Dear

You attended a disciplinary hearing on I am writing to inform you of your written warning/final written warning*.

This warning will be placed in your personal file but will be disregarded for disciplinary purposes after a period of 12 months, provided your conduct improves/performance* reaches a satisfactory level.

Either**:

- a. The nature of the unsatisfactory conduct or performance was:
- b. The conduct or performance improvement expected is:
- c. The timescale within which the improvement is required is:
- d. The likely consequence of further misconduct or insufficient improvement is a Final written warning/dismissal.

You have the right to appeal against this decision in writing to the OC LSU within 5 working days from the receipt of this disciplinary decision.

Yours sincerely,

Signed by Head of Agency

**Delete as applicable.*

Reference:

Date:

NOTICE OF APPEAL MEETING AGAINST A WARNING

Dear

You have appealed against the written warning/final written warning* confirmed to you in writing on

Your appeal will be heard by in..... on..... at

You are entitled to be accompanied by a work colleague or the Dependant Representative (contact details).

The decision of the appeal hearing is final and there is no further right of review.

Yours sincerely,

Signed OC/CPO/ACPO

**Delete as applicable.*

Reference:

Date:

NOTICE OF THE RESULT OF THE APPEAL AGAINST A WARNING

Dear

You appealed against the decision of the disciplinary hearing that you be given a written/final written warning* in accordance with the Dependant Employee Disciplinary Procedure. The appeal hearing was held on

I am now writing to inform you of the decision taken by who conducted the appeal hearing, namely that the decision to stands*/the decision to be revoked* (specify if no disciplinary action is being taken or what the new disciplinary action is).

You have now exercised your right of appeal under the Dependant Employee Disciplinary Procedure and the decision is final.

Yours sincerely,

Signed by the OC LSU/Head of Agency

** Delete as applicable.*

Reference:

Date:

**LETTER TO BE SENT TO THE EMPLOYEE TO ATTEND A DISCIPLINARY MEETING WHERE
DISMISSAL ACTION IS BEING CONSIDERED**

Dear

I am writing to tell you that the British Forces Germany/GLSU is considering dismissing you.

The action is being considered with regard to the following circumstances:

You are invited to attend a disciplinary meeting on atam/pm which
is to be held in where this will be discussed.

You are entitled, if you wish, to be accompanied by another work colleague or the Dependant
Representative (contact details).

Yours sincerely,

Signed OC/CPO/ACPO

Reference:

Date:

**LETTER TO BE SENT TO THE EMPLOYEE AFTER A DISCIPLINARY MEETING WHERE
CONSIDERATION FOR DISMISSAL ACTION WAS BEING CONSIDERED**

Dear

On you were informed that British Forces Germany/GLSU was considering dismissing you.

This was discussed in a meeting on..... At this meeting, it was decided that: (either*)

- a. Your conduct/performance/etc. was still unsatisfactory and that you are to be dismissed.
- b. Your conduct/performance/etc. was still unsatisfactory and that you are to be given a written warning/final written warning against you.
- c. No further action would be taken against you.

I am therefore writing to you to confirm that decision that you be dismissed and that your last day of service will be

The reasons for your dismissal are:

Or*

I am therefore writing to you to confirm that the decision that disciplinary action will be taken against you. The action will be that you will be given a written warning/final written warning. The reasons for the warning are:

You have the right of appeal against this decision. Please write to the OC LSU within 5 working days from the receipt of this disciplinary decision.

Yours sincerely,

Signed OC LSU/Head of Agency

Reference:

Date:

NOTICE OF APPEAL MEETING AGAINST DISMISSAL ACTION

Dear

You have appealed against your dismissal on confirmed to you in writing on
.....

Your appeal will be heard by in..... on..... at

You are entitled to be accompanied by a work colleague or the Dependant Representative (contact details).

The decision of the appeal hearing is final and there is no further right of review.

Yours sincerely,

Signed OC/CPO/ACPO

**Delete as applicable.*

Reference:

Date:

NOTICE OF THE RESULT OF THE APPEAL AGAINST DISMISSAL ACTION

Dear

You appealed against the decision of the disciplinary hearing that you be dismissed in accordance with the Dependant Employee Disciplinary Procedure. The appeal hearing was held on

I am now writing to inform you of the decision taken by who conducted the appeal hearing, namely that the decision to dismiss you stands*/the decision to dismiss you be revoked*.

You have now exercised your right of appeal under the Dependant Employee Disciplinary Procedure and the decision is final.

Yours sincerely,

Signed by the OC LSU/Head of Agency

** Delete as applicable.*