

# Code of Conduct

**This document outlines the Scottish Prison Service Policy in relation to Code of Conduct**

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**Unlocking Potential - Transforming Lives.**

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**Directorate Owners:**

Employee Absence Conduct & Health

**Policy Scope:**

All Scottish Prison Service Employees

**Links to Other Policies:**

**Annual Leave Policy**

**SPS Equality, Diversity and Human Rights Statement**

**Fraud Prevention Policy & Fraud Response Plan**

**GMA 10A-12 Information Security: Disposal of Documents and IT Equipment**

**Internet Acceptable Use Policy**

**Probationary Policy**

**Staff Attendance System (SAS) Code of Practice Revision 4**

**Social Media Guidance**

**SPS Suspension Guidance**

**The 7 Principles of Public Life**

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Head of Human Resources

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## 1.0 Introduction

SPS sets certain standards of conduct for its employees, which in some instances are significantly higher than those expected in other employment relationships. The standards that SPS employees are required to meet are detailed in various documents, staff notices and policies, which include, but are not limited to, the Professional Charter, Civil Service Code, 7 Principles of Public Life and Prison Rules as may be amended or replaced.

See **Guidance section 2.0: SPS Professional Charter and Policies**

Specialist employees employed within SPS who are members of professional bodies are additionally subject to the provisions contained within the Codes of Conduct of such professional bodies.

See **Guidance section 3.0: Professional Bodies**

## 2.0 Policy Statement

The SPS Code of Conduct (“the Code”) has been developed in consultation with the Trade Union Partners and complies with legislation and the ACAS Code of Practice on Disciplinary Procedures, which provides good practice guidance for dealing with discipline in the workplace. The purpose of the Code is to ensure that the highest standards of behaviour and conduct are met across the SPS at all times. It is, therefore, essential that any alleged issues of unacceptable behaviour and conduct are managed positively, proactively, transparently and objectively. They must be resolved swiftly, effectively and as early as possible.

## 3.0 Aims and Objectives

The primary purpose of the Code is to ensure that the high standards of conduct demanded of employees of the SPS are achieved and maintained.

The Code provides a framework within which the consistent application of procedures will provide for fair and equitable treatment for all and will ensure that the rights and responsibilities of both management and employees are protected.

The Code is intended for use when dealing with issues of conduct only. Separate policies and procedures are in place to deal with other issues that may arise, such as performance or attendance, and may operate simultaneously.

## 4.0 Scope

This Code applies to all employees of the SPS except probationers who are managed under the [Probationary Policy](#).

It shall have effect in relation to any conduct that amounts to misconduct/gross misconduct, or is suspected of amounting, or is alleged to amount, to misconduct/gross misconduct, where the conduct occurs, or is alleged to have occurred, on or after **23 February 2018**.

## 5.0 Roles and Responsibilities

### 5.1 Commissioning Manager

The Commissioning Manager is the manager who commissions a report into allegations of misconduct or gross misconduct. In the case of most gross misconduct investigations, the Commissioning Manager will also be the Adjudicating Manager. As such, in cases of alleged gross misconduct, the Commissioning Manager should be a Governor in Charge, Head of Branch/Directorate or equivalent, and will be at least one grade above the individual subject to the formal procedure. In cases of alleged misconduct, the Commissioning Manager must be at least a First Line Manager, and usually at least one grade above the grade of the employee(s) subject to the formal procedure. In general investigations, the Commissioning Manager should be a Governor in Charge, Head of Branch/Directorate, or equivalent, and will be at least one grade above the individual(s) subject to the formal procedure.

### 5.2 Investigating Manager

An Investigating Manager will be appointed by the Commissioning Manager to investigate allegations of misconduct or gross misconduct. They will conduct a comprehensive investigation process which provides the Commissioning / Adjudicating Manager with a well-constructed, fully researched, comprehensive analytical assessment of incidents and events that contains all relevant facts, evidence and information. With regards to formal allegations of misconduct, an Investigating Manager will usually be at least one grade senior to the individual being investigated. With regards to formal allegations of gross misconduct, the Investigating Manager will be a member of the Conduct Investigation Unit.

In some cases, it may be appropriate to appoint Investigating Managers from out with SPS. This will only be considered in exceptional cases, or when it is in the public interest to do so.

### 5.3 Adjudicating Manager

The Adjudicating Manager will chair the disciplinary hearing and decide on the outcome. They will be First Line Manager grade or above and will be at least one grade above the individual subject to the formal procedure. At disciplinary hearings relating to an allegation of gross misconduct, the appropriate Adjudicating Manager will be a Governor in Charge, Head of Branch/Directorate or equivalent and will be at least one grade above the individual subject to the formal procedure. The Adjudicating Manager, upon consideration of the investigation report, will decide whether or not to convene a disciplinary hearing. During the disciplinary hearing the Adjudicating Manager will consider the points made in mitigation and the information offered on behalf of the employee. The Adjudicating Manager will be entitled to:

- a) decide no warning is appropriate; or
- b) issue an appropriate level of warning; or
- c) dismiss, where appropriate.

### 5.4 HR Representative

The HR Representative accompanying the Adjudicating Manager at disciplinary hearings will be an HR Officer, HR Business Partner or equivalent. Their role at the disciplinary hearing is to ensure that an accurate record of the meeting is produced (see **Guidance section 13.0: Record of meetings/interviews**) and, if required, to advise on points of policy and/or process. The HR Representative should limit their advice to legal issues, the correct procedure, and the level of sanction to ensure consistency with previous decisions when assisting the Adjudicating Manager to arrive at their outcome decision.

### 5.5 Head of HR

The Head of Human Resources, or their nominee, will act as Chairperson of the Internal Dismissal Appeal Board (IDAB), which hears appeals against dismissal.

### 5.6 Witnesses

All SPS establishments and employees shall provide any assistance required to the Investigating Manager in the collection of information relating to any allegation(s). Witnesses who are employees of the SPS will be required to attend investigation meetings or disciplinary hearings if invited to do so. Any written witness statements that are to be relied upon must be signed and dated by the individuals submitting them.

## 5.7 Representatives

The role of the representative (trade union representative or workplace colleague) can be defined in two distinct ways:

1. **Accompanied** – where an employee subject to the formal procedure is required to be interviewed, they have the right to be accompanied by a trade union representative or workplace colleague of their choice. At this stage, the purpose of the accompanying person is to offer support to the employee being interviewed, not to answer questions on their behalf.
2. **Represented** – at the conclusion of any investigation carried out under formal procedures, where an employee is required to attend a disciplinary hearing as a result, they have the right to representation by a trade union representative or workplace colleague of their choice. At this stage, the representative can address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing.

The representative cannot:

- answer questions on the employee's behalf;
- address the disciplinary hearing if the employee does not want them to do so.

## 5.8 Employees

Employees, when interviewed at any stage of the formal process, must provide any relevant and material evidence of which they are aware, or of which they subsequently become aware.

## 5.9 Appeal Manager

Appeals against any warning for cases of misconduct are to the Appeal Manager, who will be an individual who is equivalent to a second line manager for appeals against verbal or written warnings, and the Governor in Charge, or Head of Branch/Directorate for appeals against final written warnings. For gross misconduct cases, where the Adjudicating Manager was the Governor in Charge, or Head of Branch/Directorate, and the sanction fell short of dismissal, the Director of Operations, or their nominee, will be the Appeal Manager.

## 5.10 Internal Dismissal Appeal Board (IDAB)

Appeals against dismissal are to the IDAB. The IDAB will consider the points of appeal and any further submissions made by the appellant, the detail of the



investigation and the disciplinary hearing. Based on consideration of this information the IDAB may decide whether they feel it appropriate to:

- confirm the dismissal decision; or
- overturn the dismissal decision; or
- substitute a lesser penalty (i.e. an appropriate level of warning).

## 5.11 Observers

As part of on-going training, Adjudicators, TU representatives and potential IDAB members will, on occasion, be allowed to observe disciplinary hearings and/or IDABs. The attendance of observers will be at the approval of the Adjudicating Manager of the disciplinary hearing/Chair of the IDAB and with the agreement of the employee. All observers will be required to adhere to the following:

- they must maintain confidentiality prior, during and after the hearing/appeal;
- they will not be permitted to take notes or ask any questions during the hearing/appeal;
- they will not take part in any decision making;
- if provided with papers, they must return these at the end of the hearing/appeal.

## 6.0 Principles

The Code is based on the principles, and meets the requirements of, natural justice.

The Code will be applied fairly and consistently to all employees of SPS. All employees will be treated in accordance with current HR policies and collective agreements.

In applying the Code, all concerned should be aware of an endeavour to fully reflect the stated standards and values of SPS, as reflected in the [Professional Charter](#). In particular, the behaviours of all persons involved in the process, in whatever capacity, should be based on treating others with dignity and respect. Advice and guidance on the application of the Code can be obtained from local HR teams.

The Code should be used as a positive means of ensuring adherence to consistent standards of conduct and **not** as a means of punishment.

Informal interviews will always precede the formal procedure in appropriate cases (see **Section 7**). As part of the informal stage, the option of mediation should be considered, where appropriate.

Conduct issues will be dealt with as promptly as possible, and within the timescales set down in the Code. In exceptional circumstances, where these timescales cannot be met, the employee will be informed in writing of the reasons for any extension.

The Code is based on the principle that authority to deal with conduct issues will be delegated to the appropriate level of management, which is set out at **Section 18**.

Investigating Managers appointed to establish the facts in a case shall have access to any person or document in connection with the investigation into the circumstances, complaint or allegation made.

The Code incorporates an appeals mechanism and employees will have the right to appeal against any level of disciplinary decision.

At all stages of the formal procedure, an employee who is subject to an investigation or disciplinary hearing will have the right to be accompanied by a trade union representative or workplace colleague of their choice. At any Internal Dismissal Appeal Board (IDAB) against a dismissal decision, this right is extended to include the right to legal representation at the employee's own cost (see **Section 20**).

See **Guidance sections 4.0: Witnesses** and **5.0: Accompanied and Represented**.

No disciplinary action will be taken against a trade union representative until discussions have taken place with a full time official of the appropriate trade union.

Employees will always be informed in writing of the nature of the complaint against them and given the opportunity to state their case before any decision is made.

No disciplinary action will be taken against an employee until the facts or available information in each case have been fully explored and established.

No employee will be dismissed for a first breach of discipline - except when an offence is found to be gross misconduct which may result in summary dismissal (i.e. dismissal without notice or payment in lieu of notice).

The formal procedures are set out in **Sections 9 to 17**. The stage at which action is initiated will depend on the seriousness of the alleged misconduct. However, in most circumstances, it will be appropriate for the stages to be followed on a sequential basis.

Suspension will be used only in exceptional circumstances. This means in circumstances where it is considered that the interests of the employee, or the organisation, would be best served by such suspension. The normal rules will apply to any sickness absence during the period of the suspension.

Any recommendation to suspend without pay will only be made in exceptional circumstances and will be submitted for decision to the Head of Human Resources (or their nominee). An opportunity will be given to the employee (or their representative) to make representations prior to any decision being taken.

The burden of proof in all disciplinary matters raised under the Code will be on the basis of the balance of probabilities (See **Section 27**).

Managers are required to demonstrate the reasonableness of their decision (see **Guidance section 9.0: What is Considered to be Reasonable?**).

Employees will be afforded access to and/or copies of all material that the Adjudicating Manager may rely upon during a disciplinary hearing.

## 7.0 Informal Stage

SPS aims to encourage and maintain appropriate standards of conduct and behaviour by its employees. Good management practice includes day-to-day communication with employees, during which conduct issues can be identified and discussed. Managers will be expected to raise, and deal with, minor issues by meeting informally, and/or by referring appropriate cases to mediation with the parties' agreement. Effective handling of minor conduct issues through this **informal** approach should, in the majority of cases, avoid the need to implement the formal procedure.

The outcome of the informal meeting should be clear to both parties. The specific area(s) of difficulty should be highlighted and agreement sought on what action, if any, is to be taken by either party. If agreement cannot be reached, the manager must ensure that the employee is clear about the standards expected and how they are to be achieved. **Both parties may wish to keep their own informal notes of the discussion and expected outcome, but no formal record of the interview will be retained on the employee's career file or the employee's electronic HR records, unless they become formal.**

See **Guidance section 6.0: Notes from informal meetings.**

If, during the course of the informal meeting, issues that are performance related are identified (e.g. training) then these should be dealt with through the appropriate procedure.

See **Guidance section 2.0: SPS Professional Charter and Policies.**

A clear distinction exists between the **informal** and the **formal** stages of the Code and management must ensure that this distinction is not blurred.

If it becomes clear to the manager during the course of the informal procedure that it is inappropriate to deal with matters at an informal level, the process should be terminated and the employee should be informed that matters will now be managed through the formal procedures set out in **Sections 9 to 17** of the Code. The decision as to whether the informal procedure has been effective will be at the sole discretion of the manager.

**A formal warning must never be the outcome of the informal interview.**

## 8.0 Types of Offences

It is in the best interests of SPS and its employees that acceptable standards of conduct at work are clearly understood. In order to indicate the general standards required of employees, the list below sets out some examples of unacceptable conduct which may lead to disciplinary action. **The list is not exhaustive nor is it in any order of perceived gravity of offence.**

Offences will never be **automatically** dealt with at any particular stage of the conduct procedures. The seriousness of the act of misconduct may depend also on the circumstances in which it occurs. Facts will be established in individual cases and action taken at the **appropriate** stage of the procedures including any mitigating issues or circumstances.

Some examples of unacceptable conduct, which could lead to disciplinary action under formal misconduct procedures, are:

- whether on or off duty, behaving in a manner which brings, or is likely to bring, SPS into disrepute;
- failure to obey a reasonable instruction;
- failure to report without delay:
  - bankruptcy;
  - insolvency;
  - inappropriate contact with ex-prisoners and/or their families;
  - being the subject of a police enquiry, being held in custody, arrest, Police/Procurator Fiscal fine/warning, criminal charge or criminal conviction (normally within 72 hours).
- failure to obtain prior approval / permission for a second job;
- unauthorised lateness;
- unauthorised absence;
- neglect of duty;
- breach or disregard of the rules and policies governing security standards;
- smoking in a designated 'No Smoking' area;
- breach or disregard of the rules and policies governing the integrity or security of the SPS, including its computerised equipment, data or software;
- breach or disregard of Health and Safety Rules and Regulations;
- breach or disregard of Equality Policies;
- any conduct matter that is referred to/from a professional body, and which is acted upon by that body;
- regular Earnings Arrestment Orders;
- unauthorised use or disclosure of confidential information, or failure to ensure that confidential information in the employee's possession is kept secure;
- inappropriate use of social media;

- damage to, or unauthorised use of, SPS property;
- breach of SPS Professional Charter (See **Guidance section 2.0: SPS Professional Charter and Policies**);
- breach of SPS's policies, procedures, staff notices or other workplace rules or procedures in force from time to time;
- breach of the Civil Service Management Code;
- breach of SPS's Prison Rules (currently the Prisons and Young Offenders institutions (Scotland) Rules 2011) in force from time to time;
- breach of the 7 Principles of Public Life.

## 9.0 Formal Procedure: Misconduct Investigations

If a conduct issue arises which cannot be dealt with informally under **Section 7**, and is not obviously gross misconduct under **Sections 12-17**, an Investigating Manager will be appointed to conduct a misconduct investigation to establish the relevant facts and circumstances. The employee will be informed in writing that such an investigation is to take place, using the [Notification of Investigation \(Misconduct\)](#). Any allegation will be clearly and unambiguously explained to the employee, and vague or generalised statements avoided. A reasonable time frame for completion of the misconduct investigation will be communicated to the employee at the outset.

See **Guidance section 9.0: What is considered to be Reasonable?**

The misconduct allegation is usually investigated at a local level by an Investigating Manager, prior to a decision being made by an Adjudicating Manager as to whether or not a disciplinary hearing is required, or whether the matter requires to be investigated as potential gross misconduct.

At the conclusion of the misconduct investigation, the Investigating Manager will provide a written report clearly stating whether or not, on the basis of the available evidence, there is a disciplinary case to answer.

See **Guidance section 16.0: Disciplinary Case to Answer**

If it emerges during the misconduct investigation that the matter being enquired into may be more serious than initially believed, the Investigating Manager should:

- complete the misconduct investigation; and
- refer the matter, with all relevant information and documentation, to the Adjudicating Manager.

The Adjudicating Manager, upon consideration of the misconduct investigation, will make a decision:

- whether or not to convene a disciplinary hearing; or

- to recommend to the Governor in Charge, Branch Head/Directorate or equivalent responsible to refer the matter, with all relevant information and documentation, to gross misconduct level.

Where the Adjudicating Manager decides not to convene a disciplinary hearing, the employee will be notified using the [Notification of Decision Not to Proceed to Disciplinary Hearing](#).

See **Guidance sections 10.0: Misconduct Investigations** and **11.0: Multiple Allegations/**

## 10.0 Formal Procedure: Disciplinary Hearing

The appropriate Adjudicating Manager will conduct disciplinary hearings concerning allegations or complaints relating to misconduct. The Adjudicating Manager should be accompanied at the disciplinary hearing by an HR Representative. The decision about whether to convene a disciplinary hearing should be made **within 5 working days** of the Adjudicating Manager receiving the investigation report, and the employee notified.

The employee will be notified of the disciplinary hearing using the [Notification of Disciplinary Hearing \(Misconduct\)](#), and informed that they are entitled to be represented by a trade union representative or by a workplace colleague of their choice.

The disciplinary hearing is the employee's opportunity to put forward their version of events and/or points of mitigation to the facts and information that have arisen from the misconduct investigation. The employee will be entitled to submit written documentation/evidence in addition to making oral representations.

During the disciplinary hearing, the Adjudicating Manager will consider the information/evidence offered on behalf of the employee and any points made in mitigation. The Adjudicating Manager may ask questions of the employee to seek further information and clarification of any aspect of the information gathered during the misconduct investigation, or provided by the employee in their submissions.

The employee will be entitled to call witnesses in support of their case. The Adjudicating Manager can also call witnesses (see **Section 22**).

During the course of the hearing, either party can request a short recess at any time.

If new evidence or further material information emerges, an adjournment can be requested by either party or called at the discretion of the Adjudicating Manager to allow for consideration or further investigation. The duration of such an adjournment will be mutually agreed, but will not normally last longer than **5 working days** unless

any relevant witnesses are not available, in which case a longer period may be required. Following any adjournment, the disciplinary hearing will be reconvened.

An accurate record of the disciplinary hearing will normally be produced and provided to the employee **within 5 working days** of its conclusion.

See **Guidance section 13.0: Record of meetings/interviews**

Following the interview, an outcome decision will be issued in writing to the employee (and, at the employee's request, to their representative) as soon as practical, and normally **within 5 working days**. A detailed response will be provided with the decision which covers each of the points raised by the employee at the disciplinary hearing, including any mitigation, and consideration given to process, substantive issues, proportionality and consistency in how the case has been concluded.

The Adjudicating Manager will be entitled to:

- a) decide that no warning is appropriate; or
- b) issue an appropriate level of warning (see **Section 11**).

If a decision is taken to impose a warning, the employee will be informed in writing of their rights of appeal and representation at appeal.

## 11.0 Formal Procedure – Warning Levels

### 11.1 Stage 1: Verbal Warning

On the basis of the misconduct investigation, and after considering all available information, together with any evidence, explanations or mitigation offered, an Adjudicating Manager may:

- Decide that no warning is appropriate and complete the [Notification of Decision of No Disciplinary Case to Answer](#); or
- Issue a formal verbal warning on the [Record of Verbal Warning form/template](#).

If issued, the record of the verbal warning will be copied to the employee **within 5 working days** of the hearing. At this stage, the Adjudicating Manager should discuss with the employee any improvements required and identify the standards of conduct and behaviour expected of them, and the consequences should they fail to achieve a satisfactory improvement in their standard of conduct or behaviour.

This warning will remain live for **6 calendar months** from the date of issue, after which time it will be removed from the employee's career folder.

The employee will be informed in writing, through the issue of the warning letter of their right to appeal (see **Section 19**).



## 11.2 Stage 2: Written Warning

An employee will enter into the second stage of the Code if:

- a) there is a failure to achieve the standard of conduct detailed in the verbal warning whilst it remains live; or
- b) there is a further or new instance of misconduct whilst a verbal warning remains live; or
- c) the nature of a single instance of misconduct or unacceptable behaviour is considered to merit a written warning, whether or not a verbal warning was previously issued.

In all cases, a misconduct investigation is conducted by an Investigating Manager and passed to the Adjudicating Manager who will establish whether or not a disciplinary hearing is required.

The employee and, if they wish, a trade union representative or workplace colleague will attend a hearing with the Adjudicating Manager where they will be given an opportunity to explain their version of events and their actions. Notification of this hearing, along with all relevant documentation and papers, will normally be issued to the employee, on the [Notification of Disciplinary Hearing \(Misconduct\)](#), at least **5 working days** before the date of hearing.

After considering all the available information and evidence, and any explanations or mitigation, the Adjudicating Manager may:

- decide that no warning is appropriate and complete the [Notification of Decision of No Disciplinary Case to Answer](#); or
- issue a formal Written Warning on the [Record of Written Warning form/template](#).

If issued, the record of the written warning will be copied to the employee within **5 working days** of the hearing. At this stage, the Adjudicating Manager should discuss with the employee any improvements required and identify the standards of conduct and behaviour expected of them, and the consequences should they fail to achieve a satisfactory improvement in their standard of conduct or behaviour.

This warning will remain live for **9 calendar months** from the date of issue after which time it will be removed from the employee's career folder.

The employee will be informed in writing, through the issue of the warning letter, of their right of appeal (see **Section 19**).



### 11.3 Stage 3: Final Written Warning

An employee will enter into the third stage of the Code if:

- a) there is no satisfactory improvements in the standard of conduct whilst a written warning remains live; or
- b) there is a further, or new, instance of misconduct or unacceptable behaviour whilst a written warning remains live; or
- c) the nature of a single instance of misconduct or unacceptable behaviour is considered to merit a Final Written Warning – whether or not a verbal or written warning was previously issued.

In all cases, a misconduct investigation is conducted by an Investigating Manager and passed to the Adjudicating Manager who will establish whether or not a disciplinary hearing is required.

The employee and, if they wish, a trade union representative or workplace colleague will attend a hearing with the Adjudicating Manager and be given an opportunity to explain their version of events and their actions. Notification of this hearing, along with all-relevant documentation and papers will normally be issued to the employee, on the [Notification of Disciplinary Hearing \(Misconduct\)](#), at least **5 working days** before the date of hearing.

After considering all available information and evidence, and any explanations or mitigation the Adjudicating Manager may:

- decide that no warning is appropriate and complete the [Notification of Decision of No Disciplinary Case to Answer](#); or
- issue a Final Written Warning on the [Record of Final Written Warning form/template](#).

If issued, the record of the Final Written Warning will normally be copied to the employee **within 5 working days** of the hearing. At this stage, the Adjudicating Manager should discuss with the employee any improvements required and identify the standards of conduct and behaviour expected of them and the consequences should they fail to achieve a satisfactory improvement in their standard of conduct or behaviour.

This warning will remain live for **12 calendar months** from the date of issue after which time it will be removed from the employee's career folder.

The employee will be informed in writing, through the issue of the warning letter, of their right of appeal (see **Section 19**).

## 11.4 Stage 4: Dismissal

An employee will enter into the dismissal stage of the Code if:

- a) there is no sustained improvement in the standard of conduct whilst a Final Written Warning remains live; or
- b) there is any instance of misconduct or unacceptable behaviour whilst a Final Written Warning remains live.

**Note: Single allegations or instances of misconduct or unacceptable behaviour considered serious enough to lead to dismissal should be actioned under the gross misconduct procedure.**

Following a misconduct investigation, the Investigating Manager will submit a report and all relevant documentation to the Adjudicating Manager who will establish if a disciplinary hearing is required.

Notification of this disciplinary hearing, along with all relevant documentation and papers, will normally be issued to the employee, on the [Notification of Disciplinary Hearing \(Misconduct\)](#), at least **5 working days** before the date of the disciplinary hearing.

At the disciplinary hearing, the employee will be interviewed by the Adjudicating Manager and given an opportunity to explain their version of events and their actions. After considering the detail of the allegation, all available information and evidence, and any explanations or mitigation the Adjudicating Manager may

- decide that no sanction is appropriate and complete the [Notification of Decision of No Disciplinary Case to Answer](#); or
- decide to dismiss the employee.

If the Adjudicating Manager dismisses the employee, a letter indicating this decision will normally be prepared and issued **within 5 working days** of the hearing and will state:

- a summing up of the conclusions reached at the disciplinary hearing;
- the reason for the dismissal;
- the right of appeal and the right to legal representation, at their own cost, at appeal, or to be represented by a trade union representative or workplace colleague.

Unless the employee has been suspended without pay, employees dismissed for **misconduct** will be entitled to the appropriate period of paid notice or pay in lieu of notice. In exceptional circumstances, where there is a delay in convening the IDAB due to availability of SPS Board members, employees dismissed for **misconduct** may have their paid period of notice extended to ensure that they remain in paid employment until the outcome of any appeal is known.

## 12.0 Gross Misconduct

### 12.1 General Advice

Gross misconduct is regarded by the SPS as any conduct, unacceptable behaviour, breach of the rules or fundamental breach of contract, which, if substantiated, is so serious it would be likely to result in summary dismissal. Summary dismissal means dismissal without paid notice or pay in lieu of notice.

In general, acts which constitute gross misconduct are for the SPS to decide. Acts of gross misconduct might include the following:

- serious breaches of the matters listed at **Section 8**;
- victimisation, harassment, discrimination or bullying of any person in connection with the employee's employment;
- knowingly becoming involved in criminal activity;
- being found guilty in a criminal court of a criminal offence;
- embezzlement, theft, fraud and falsification of records;  
(For further guidance on the actions to undertake in cases of suspected and actual fraud see **Guidance section 7.0: Fraud**);
- assault or any form of violent, threatening or abusive conduct or behaviour;
- trafficking (supplying, procuring or receiving any unauthorised item (e.g. food, money, illegal substances etc.);
- being under the influence of/or unauthorised consumption of alcohol and/or any substance which may adversely affect performance whilst at work;  
(Problems related to alcohol and/or substance misuse should be dealt with using the appropriate procedure. Disciplinary action may be suspended pending the outcome of any other action taken under those procedures.)
- possession, use, supply or attempted supply of illegal drugs, controlled substances or any substance which may adversely affect performance; where controlled substances are prescribed as a medical treatment, employees are required to inform a manager;
- removal of SPS property from SPS premises without prior formal written authority;
- the use of SPS property, resources or name with the intent to deceive;
- serious negligence;
- serious acts of insubordination;

- abuse of a position of trust, authority or professional relationships;  
(This includes, amongst others, any inappropriate relationship with a person in SPS custody and will include any form of abuse physical, mental or sexual.)

**This list is intended as a guide and is not exhaustive.**

See **Guidance section 2.0: SPS Professional Charter and Policies**

Subject to the guidance above, if an allegation arises which is considered by the Governor in Charge, or Head of Branch/Directorate to be an issue of gross misconduct, HR will inform the relevant team in central HR, who will discuss the rationale and confirm how to proceed.

See **Guidance section 14.0: Contacting Corporate Services: Human Resources**

If a conduct issue arises which may constitute gross misconduct (and thus cannot be dealt with informally or as misconduct), the relevant Commissioning/Adjudicating Manager will commission the Conduct Investigation Unit to carry out an investigation into the facts and circumstances. The employee will be informed in writing that such an investigation is to take place using [Notification of Investigation \(Gross Misconduct\)](#). Any allegation will be clearly and unambiguously explained to the employee, and vague or generalised statements avoided.

## 13.0 Suspension

Where the decision is taken to proceed with an investigation into an allegation of gross misconduct, the Commissioning/Adjudicating Manager will consider if suspension is merited. The employee will be notified in writing of the reason for suspension.

Suspension will be used only in exceptional circumstances. This means in circumstances where it is considered that the interests of the employee or the organisation would be best served by suspension. A period of suspension should not normally exceed 2 weeks **without review** and will usually be with pay. The normal rules in relation to sickness absence will apply during any period of suspension.

Any recommendation to suspend without pay will only be made in exceptional circumstances and will be submitted for a decision to the Head of Human Resources (or their nominee). An opportunity will be given to the employee (or their representative) to make representations prior to any such decision being taken.

The Commissioning/Adjudicating Manager will normally review the need for continued suspension at 2 weekly intervals thereafter. If the suspension is continued, the employee will be notified in writing of the reasons for this with an indicative timescale of when the investigation is expected to be concluded.

## 14.0 Gross Misconduct Investigations and Interviews

The Commissioning Manager will contact the Conduct Investigation Unit who will nominate an Investigating Manager to establish the facts and circumstances around any allegations and to provide a report detailing these. Clear and reasonable timescales will be provided for the completion of this report and the individual subject to investigation should be made aware of these.

The Investigating Manager will obtain and collate all relevant available information surrounding the allegation(s), whether from within SPS or from external sources. All SPS establishments and employees shall provide any assistance required to the Investigating Manager in collecting information relating to these allegation(s).

See **Guidance section 15.0: Interviewing Non-SPS Witnesses**

If the subject of the investigation is interviewed, they should be informed of the right to be accompanied by a trade union representative or workplace colleague of their choice.

During an investigation, only the subject of the investigation is entitled to accompaniment.

Where there is the potential for someone attending an interview to become the subject of an investigation, or where they have requested support at the meeting from a workplace colleague or trade union representative, this may be granted at the sole discretion of the Investigating Manager and on the understanding that neither the workplace colleague nor trade union representative may respond on the witness's behalf.

During the investigation, only an investigator appointed by SPS has the authority to conduct interviews.

Interviews should be recorded to assist in the accuracy and verification of statements. Evidence and information collected during interviews should include and reflect:

- a full understanding and explanation of what happened, when it occurred, who was involved, where and how the circumstances leading up to the allegation of gross misconduct transpired;
- original copies of any related and relevant documentation; and

- signed and dated interview transcripts taken from recorded interviews from all relevant persons involved including, if appropriate, the person subject to the investigation.

Upon completion of the investigation process, the Investigating Manager will submit a written report to the Commissioning Manager, detailing whether or not there is a disciplinary case to answer. The report will not make any recommendations on disciplinary outcomes.

See **Guidance section 16.0: Disciplinary Case To Answer**.

In exceptional circumstances where agreed investigation timescales cannot be met, the employee will be informed in writing of the reasons for any extension.

## 15.0 De-escalating the Procedure

If, following the investigation, it becomes clear to the Commissioning Manager that continuing with the gross misconduct procedure is inappropriate, the matter may be passed to the first or second line manager to be dealt with informally under **Section 7** or formally under **Section 9**. Alternatively, they may decide no further action is required and complete the [Notification of Decision of No Disciplinary Case to Answer](#).

## 16.0 Request for an Alternative Adjudicating Manager

If, exceptionally, the Adjudicating Manager or the employee feel there are serious and material reasons why that Adjudicating Manager cannot chair the disciplinary hearing, these must be stated in writing **3 working days** before the date of the disciplinary hearing to the Head of Human Resources or their nominee. A request that an alternative manager carry out the gross misconduct procedure must be submitted. If those reasons are accepted, an alternative manager will be appointed to take forward all aspects of the gross misconduct procedure.

## 17.0 Gross Misconduct: Disciplinary Hearing

The Adjudicating Manager will conduct disciplinary hearings regarding allegations of gross misconduct. The employee will be notified of the disciplinary hearing using the [Notification of Disciplinary Hearing \(Gross Misconduct\)](#), and of their right to representation by a trade union representative or by a workplace colleague.

The hearing is the employee's opportunity to put forward their version of events and any points of mitigation in relation to the information, facts and evidence collected during the investigation into the allegation(s) made. The employee will be entitled to provide written submissions in addition to making oral representations. During the disciplinary hearing, the Adjudicating Manager will consider the points made in mitigation and any information offered on behalf of the employee. The Adjudicating Manager may ask questions of the employee to seek further information and clarification, as required, on any aspect of the information gathered during investigation, or provided by the employee in oral or written submissions.

The employee will be entitled to call witnesses in support of their case, and will give a minimum of **3 working days'** notice to the Adjudicating Manager of the names of such witnesses before the disciplinary hearing. The names of witnesses may be given at shorter notice subject to the provisions in **Section 22**, and at the discretion of the person conducting the disciplinary hearing. This may delay proceedings while the availability of such witnesses is arranged. The Adjudicating Manager may also call witnesses (see **Section 22**).

Witnesses who are employees of the SPS will be required to attend. It will be the responsibility of the Adjudicating Manager to call the witnesses to the hearing. A request may be made by witnesses attending the disciplinary hearing to be supported by a workplace colleague or trade union representative; this may be granted on the understanding that neither the colleague nor trade union representative may respond on the witness's behalf. The decision to allow such a request rests with the Adjudicating Manager.

During the course of the disciplinary hearing, a short recess may be called at any time, by any party.

It is expected that an audio recording of the disciplinary hearing will be made and the recording retained for reference until the SPS internal appeal process is completed. An accurate written account of the hearing will normally be produced and copied to the employee **within 5 working days** of the conclusion of the hearing. The employee will be asked to sign off the written account of the meeting.

See **Guidance section 13.0: Record of Meetings/Interviews**.

The employee's submission will be retained along with all other relevant information and documentation.

Following final adjournment of the disciplinary hearing, a decision will be issued in writing to the employee (and, at the employee's request, to their representative) as soon as practical and normally **within 5 working days**. The decision must include the detailed rationale to support the outcome.

The Adjudicating Manager will be entitled to:

- a) decide that no warning is appropriate; or
- b) issue an appropriate level of warning; or

c) decide to dismiss the employee.

If a decision is taken to dismiss or to impose a warning, the employee will be informed in writing of their right of appeal and, in the case of dismissal, also of their right to legal representation at their own cost at an Internal Dismissal Appeal Board (IDAB). If dismissed, a letter of dismissal containing this information and the reason for dismissal will normally be issued **within 5 working days** of the interview (see **Section 19**).

In cases where an SPS employee has been summarily dismissed for an instance of gross misconduct, dismissal will be immediate without notice or pay in lieu of notice. Employment will not continue during any period for submitting an appeal or during any appeal process.

## 18.0 Management Levels Authorised to Issue Warnings

<i>Type of Warning</i>	<i>Level of Authority</i>
<b>Verbal</b> Warning	First Line Manager
<b>Written</b> Warning	First Line Manager
<b>Final Written</b> Warning	Second Line Manager
<b>Dismissal</b>	Governor in Charge / Head of Branch or Directorate (or equivalent)

### *Duration of Warnings*

<b>Verbal Warning</b>	Will remain in employee's career folder for <b>6 calendar months</b> .
<b>Written Warning</b>	Will remain in employee's career folder for <b>9 calendar months</b> .
<b>Final Written Warning</b>	Will remain in employee's career folder for <b>12 calendar months</b> .

## 19.0 Appeals

### 19.1 General Advice



Employees have the right of appeal against any disciplinary action. The appeal process is to allow consideration of the reasonableness of the original decision, it is not normally to re-hear the allegation or complaint. The employee will be advised in writing of the right of appeal and of the right to representation at the appeal either by a trade union representative, a fellow employee, or by a legal representative at the employee's own cost where the decision was dismissal. Employees will be advised about how and when to exercise this right of appeal when the disciplinary outcome is issued.

No person involved in the original disciplinary decision should participate in the appeal hearing. Where possible, appeals should be heard by someone at least one level higher than the person making the decision being appealed.

At each stage of the appeal, the employee has the right to make oral representations in addition to written submissions.

The employee's intention to appeal should be lodged in writing with the appropriate person **within 5 working days** of receiving the written rationale supporting the disciplinary decision. The grounds of any appeal should be lodged, in writing, with the appropriate person **within 10 working days** of receipt of the disciplinary decision.

## 19.2 Appeals against Verbal and Written Warnings

Appeals against verbal and written warnings are to be heard by an individual who is at a level equivalent to a Second Line Manager (an appropriate individual to be identified by the employee's HR Business Partner). The appeal will be considered and a written decision (including full substantiated reasons for the decision reached based on each point of appeal) given to the employee **within 5 working days** of the close of the appeal proceedings.

The appointed appeal manager shall be entitled to:

- a) confirm the level of warning;
- b) overturn the level of warning decision; or
- c) substitute a lesser penalty (i.e. an appropriate level of warning).

The decision of the appointed appeal manager is final.

## 19.3 Appeals against Final Written Warnings

Appeals against Final Written Warnings are to the Appeal Manager (Governor in Charge, Head of Branch or Directorate). The appeal will be considered, and a written decision (including full substantiated reasons for the decision reached based on each point of appeal) given to the employee **within 5 working days** of the close of the appeal proceedings.

The Appeal Manager shall be entitled to:

- a) confirm the level of warning;
- b) overturn the level of warning decision; or
- c) substitute a lesser penalty (i.e. an appropriate level of warning).

The decision of the Appeal Manager is final.

## 19.4 Appeals against Dismissal

Appeals against **dismissal** are to the Internal Dismissal Appeal Board (IDAB), which is composed of the Head of Human Resources (or their nominee) who will act as Chairperson, together with two senior managers drawn from out with the direct line management chain of the appellant. Where it is appropriate and practical, at least one of the senior managers will be familiar with the subject area relevant to the appellant's duties.

The appellant (or their representative) will have the right to challenge the suitability of the IDAB membership chosen to perform this role. Grounds for challenge should be in writing and should be submitted to the Head of Human Resources no later than **2 working days** after being notified officially of the membership of the Board.

The appeal will be considered and a written decision (including full substantiated reasons for the decision reached based on each point of appeal) will be given as soon as practical, and normally **within 5 working days** of the close of the appeal proceedings. The IDAB shall be entitled to:

- a) confirm the dismissal decision;
- b) overturn the dismissal decision; or
- c) substitute a lesser penalty (i.e. an appropriate level of warning).

In the case of b) and c), the IDAB may also make a recommendation that the transfer of the employee may be appropriate (consideration would have to be given to individual terms and conditions of employment).

In the case of b) and c), the employee will be reinstated from the date of dismissal.

If, following consideration, the dismissal decision is upheld, the Head of Human Resources or their nominee will issue a full response to the points of appeal made.

## 20.0 Legal Representation

Employees will have the right to legal representation (at their own expense) at any appeal hearing against a dismissal decision. Such right will be confirmed in writing when the dismissal decision is given.

## 21.0 General Investigations

Where an incident or event occurs potentially involving multiple employees, multiple acts of misconduct or gross misconduct, or procedural or systemic failures, the Commissioning Manager may commission a general investigation which may not necessarily focus on named individuals.

In such instances, a general letter or circular may be issued to all employees potentially involved in the investigation process and it will not be necessary to issue individual notification documents.

At the conclusion of the general investigation, the Investigating Manager will provide a written report clearly stating whether or not, on the basis of the available evidence, there is a disciplinary case to answer in relation to misconduct or gross misconduct for any employees involved.

The Commissioning Manager, upon consideration of the General Investigation Report, will make a decision as to whether or not to convene any disciplinary hearing(s), whether they consider the matter to constitute misconduct or gross misconduct, and proceed accordingly.

Where the decision is to proceed with a disciplinary hearing, notification of this hearing, along with all relevant documentation and papers will normally be issued to the employee, using [Notification of Disciplinary Hearing \(Misconduct\)](#) or [Notification of Disciplinary Hearing \(Gross Misconduct\)](#), at least **5 working days** before the date of the hearing.

See **Guidance sections 11.0: Multiple Allegations** and **5.0: Accompanied and Represented**.

## 22.0 Witnesses at Disciplinary Hearings

If an employee is required to attend a disciplinary hearing, they are entitled to request witnesses to be called. All such requests should be notified to the Adjudicating Manager conducting the disciplinary hearing at least **3 working days** before the hearing. The names of witnesses may be given at shorter notice at the discretion of the person conducting the disciplinary hearing and subject to the provisions below. This may delay proceedings while the availability of witnesses is arranged. Witnesses who are employees of the SPS will be required to attend.

The Adjudicating Manager will give careful consideration to what can be presented as a factual written statement from witnesses (i.e. are not already part of the Misconduct/Gross Misconduct Investigation evidence) and what is required to be

presented personally, allowing questioning. Prior to the disciplinary hearing, the employee may seek and subsequently present relevant voluntarily written testimony or statements on their own behalf. Subject to the above, no reasonable request for the attendance of a witness should be refused. Any written witness statements that are to be relied upon must be signed and dated by the individuals submitting them.

The Adjudicating Manager will be entitled to call witnesses. These will be notified to the employee at least **3 working days** prior to the disciplinary hearing.

There is no entitlement for witnesses to request accompaniment to a disciplinary hearing.

See **Guidance sections 4.0: Witnesses** and **5.0: Accompanied and Represented**.

Once agreed, it will be the responsibility of the Adjudicating Manager to notify witnesses of the date and time of the interview.

## 23.0 Timescales

Every effort should be made to deal with conduct issues as promptly as possible and certainly within the timescales set down in this Code, which are:

- Misconduct Investigations – as advised;
- Gross misconduct investigations – as advised;
- At least **5 working days'** notice will normally be given of a disciplinary hearing;
- At least **3 working days'** notice will normally be given of witnesses to be called to a disciplinary hearing;
- Outcomes will normally be issued within **5 working days** of the disciplinary hearing;
- Suspension will not normally exceed **2 weeks without review**;
- Adjournments will not normally exceed **5 working days**;
- Notification of intention to appeal must be lodged, in writing, within **5 working days** of receipt of the disciplinary decision;
- Grounds of appeal must be lodged, in writing, within **10 working days** of receipt of the disciplinary decision;
- Appeal decisions will normally be issued with **5 working days** of the close of appeal proceedings.

In exceptional circumstances, where these timescales cannot be met, the employee will be informed in writing of the reasons for any extension.

For the avoidance of doubt, a working day is Monday to Friday, excluding Scottish public and bank holidays.

## 24.0 Allegations of Criminal Offences

**The SPS Code of Conduct procedures may run in tandem with any criminal proceedings.** Where a decision is taken to do so, the Head of Human Resources (or nominee) will take account of any representations from the employee (or their representative) and will give a written response explaining the reasons for proceeding.

If a decision is made to proceed in cases where the alleged criminal conduct takes place in connection with an employee's duties/responsibilities, the employee may request from the Head of Human Resources (or nominee), legal representation (at their own cost) at whatever stage the procedure is entered into. If this request is refused, a full written explanation for the refusal must be provided to the employee concerned.

Where appropriate, the Adjudicating Manager may await the outcome of any criminal proceedings before making a decision.

## 25.0 Recovery of Losses to Public Funds

If an employee is dismissed for an offence involving loss to public funds, any sums due to the individual by the SPS in respect of salary 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 may be made if someone who would have been dismissed for an offence resigns before the dismissal can be put into effect.

In all cases of financial irregularity, whether fraudulent or not, and whether or not disciplinary penalty is imposed, the individual will be required to repay the sum in question.

See **Guidance section 7.0: Fraud.**

## 26.0 Restitution for Culpable Loss, Damage or Unauthorised Absence

Where an employee has, or is, judged to have been responsible for culpable loss or damage, or has been absent from duty without authorisation, a monetary payment by way of restitution may be imposed by the Adjudicating Manager. Such payments may be recovered by deduction from pay with the individual's prior knowledge and will not exceed the value of the loss or damage.

Employees have the right to appeal against such decisions to the Head of Human Resources or their nominee. Appeals against restitution must be lodged with the Head of Human Resources, or their nominee, **within 5 working days** of the decision to seek restitution.

The appeal will be considered and a written decision given to the employee **within 5 working days** of the close of the appeal proceedings. The decision of the Head of Human Resources or their nominee is final.

## 27.0 Standards of Proof

Employment law requires the burden of proof in disciplinary matters to be demonstrated up to the standard of the “balance of probability” (similar to civil law). Adjudicating Managers are required to consider, on the basis of the information and facts available, whether or not it is more probable than not that the alleged misconduct or gross misconduct occurred. Adjudicating Managers are required to show that when coming to a decision they can demonstrate reasonableness in their conclusions.

## 28.0 Information Collected During an Investigation

During misconduct or gross misconduct investigations, a significant amount of notes, documents, information and evidence may be accumulated. Throughout the course of the proceedings, the employee, Commissioning Manager, Adjudicating Manager and Investigating Manager will ensure these materials are kept securely and confidentially.

Once the Investigation is complete, all materials gathered in the course of the investigation shall be passed to the Commissioning Manager who will ensure that these are stored appropriately until the conclusion of the formal process, at which point they shall be destroyed in accordance with SPS policies on disposal of personal data.

With regards to gross misconduct investigations, the Conduct Investigation Unit (CIU) may securely retain electronic copies of reports for training, learning and development purposes within the CIU and these will be anonymised.

At the conclusion of the disciplinary hearing, all relevant materials (including recordings and evidence offered during the hearing) will be retained by the HR Representative until the conclusion of the formal process, at which point they shall be destroyed in accordance with SPS policies on disposal of personal data.

All materials received, obtained or generated during investigations should be treated as confidential and handled according to the SPS [Information Security Policy](#). All materials created in the course of the investigation should be protectively marked in accordance with current guidelines.

If a decision is made to dismiss the employee and an appeal against dismissal is lodged with an Internal Dismissal Appeal Board (IDAB) all originals and copies of relevant papers will be passed to the IDAB Chairperson, who will ensure these materials are kept securely and confidentially.

Once any warning issued has expired, the Human Resources Business Partner will prepare, retain and copy to the employee a summary record of the case. This record will be stored in a confidential and secure manner and will not be associated with the employee's career folder.

Materials associated with cases will be dis-applied once this summary has been completed.

See **Guidance section 19.0: Summary Record of Case.**

## Further Information:

The SPS recognises that from time to time employees may have questions or concerns relating to the Code of Conduct. In certain situations employees' rights and obligations regarding the Code of Conduct and to the Code of Conduct may change. In these circumstances the SPS will abide by any statutory obligations.

The SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with an appropriate manager in the first instance.

## Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with the SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

## Equality Statement

The SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity and human rights and to ensuring our culture, working environment, policies, processes and practices are free from bias. This policy applies to all employees regardless of protected characteristics, and, subject to any eligibility criteria, length of service, grade, working pattern or operational status.



## Inclusive Communications

It is our ambition to ensure that SPS documents are readable, accessible and engaging for staff.

In formatting this document, good practice principles around engagement and inclusive communications have been adhered to.

If you require this document in an alternative format please contact Human Resources.

## Review and Monitoring

This policy will be reviewed every three years or sooner where applicable to reflect changing business and legislative requirements.

## Human Resources Policy and Guidance in SPS

SPS policies take into account current legislation, rules, regulations and best practice guidance from a range of professional and public bodies, including the following:



UK Civil  
Service  
Management  
Code



UK Legislation



EU  
Legislation



ACAS



CIPD Best  
Practice