

# Discipline policy



OFFICE OF RAIL REGULATION

## Policy

- It is a manager's responsibility to deal with any concerns about conduct or behaviour at an early stage, to avoid a situation escalating and the need for disciplinary action later.
- This discipline policy sets out what action will be taken if there are concerns about an employee's conduct or behaviour at work that cannot be addressed by good management practice or when an incident is serious enough to warrant immediate disciplinary action.
- The policy can be applied to any person who is currently employed by ORR, including people on fixed term employment contracts.
- There are many different reasons why formal disciplinary action may be appropriate and these are set out at **Annex A**.
  - The levels of disciplinary action that can be taken are set out in **Annex B**.
- It is important that managers seek the advice of their HR business partner before any formal disciplinary action is initiated to ensure that the policy is applied in a **fair** and **consistent** way across ORR
- If you are formally accused of misconduct (including gross misconduct), you may invite a staff representative, trade union representative or work colleague to any disciplinary meeting, at any stage, to support you if you wish.

## Procedure

### Management warnings

1. Managers are expected to try to resolve any minor concerns about conduct or behaviour before they escalate into a serious problem. When doing this, managers may seek advice from their manager, work colleagues or their HR business partner.
2. The manager should arrange a meeting with the employee and discuss with them the reasons why they are unhappy with their conduct or behaviour and what changes they would like to see. The manager will then help the employee improve to the required standard within a specified time – in some cases, a change in conduct or behaviour may be expected immediately.
3. It is important that any notes and correspondence about these discussions are kept securely and confidentially. If a management warning is given then it needs to be put in writing.
4. If the manager believes that any management warnings given previously have not

achieved a positive outcome, or if the alleged offence requires more serious action, then formal disciplinary action should be considered.

## Notifying a formal disciplinary matter

5. If standards of behaviour or conduct are not maintained, or if an incident is serious enough to warrant immediate use of the formal procedure, then the manager should talk immediately to their HR business partner. If it appears that formal disciplinary action is warranted, the manager should follow this discussion up in writing, setting out:

- (a) the background to the alleged misconduct;
- (b) the actions the manager has taken to resolve the matter (if any);
- (c) the conduct breaches that have occurred (from the lists at **Annex A**); and
- (d) the proposed level of disciplinary action (from the tables at **Annex B**).

6. If the HR business partner agrees that formal disciplinary action is warranted, they will:

- (a) acknowledge receipt of the disciplinary notification and let the manager know the next steps;
- (b) notify the relevant director if the case is alleged gross misconduct;
- (c) notify finance if the allegation is of fraud;
- (d) appoint an independent senior manager in the employee's directorate to consider the facts of the case and chair any subsequent disciplinary hearing ('the chair') – this will always be the Director if the employee is alleged to have committed gross misconduct;
- (e) appoint an independent investigator who will compile an investigation report into the alleged misconduct ('the investigator'). Depending on the nature of the offence and/or people involved, this might be a member of HR, a senior manager from another directorate, or an external person from another government department; and
- (f) write to the employee who has allegedly committed misconduct, informing them:
  - (i) of the alleged offence – this will be the manager's note of the offence;
  - (ii) what level of disciplinary action is proposed;
  - (iii) whether they are suspended (this will always be the case if the allegation is of gross misconduct);
  - (iv) who will consider the case and chair any subsequent hearing;
  - (v) who will conduct the investigation; and
  - (vi) that they can be accompanied by a staff representative, trade union representative or work colleague at any subsequent meeting that is called in relation to the disciplinary action.

7. The HR business partner will become responsible for managing the disciplinary case from start to end.

8. If the HR business partner believes that formal disciplinary action is not warranted then they will contact the manager to discuss next steps.

## Disciplinary investigations

9. The investigator will:

- (a) ask the employee who is alleged to have committed an offence to provide a written

statement setting out their version of events leading up to the disciplinary action, and providing any evidence to support their claims – they will have 5 working days to provide this statement and may wish to seek help in writing the statement from a work colleague or a trade union representative;

- (b) at the same time, ask anyone else who is involved in the disciplinary offence to provide a written statement, setting out their views on the matter and providing any evidence to support their response. Again, they will have 5 working days to provide this statement;
- (c) arrange to meet with the employee, the employee's manager and any other people who they believe can provide information that is essential to the case. A minimum of 48 hours notice will be given for these meetings;
- (d) seek further information and undertake any relevant analysis to investigate the facts of the case – this might include obtaining email correspondence, internet usage or other technological information;
- (e) seek medical information on the employee from occupational health, if this is relevant to the case; and
- (f) seek any additional clarifications on any matters raised in statements – this might be through correspondence, face-to-face meetings or by telephone.

10. If the employee refuses to participate in the investigation, they will be told that ORR has no other option than to proceed with the investigation and, if necessary, any disciplinary hearing without their statement.

11. Once all the information has been gathered the investigator will write an investigation report setting out their findings.

12. The preparation of the investigation report will normally take no longer than 15 working days from the date the investigation is launched, but may take longer in some cases (for example, if a lengthy investigation is necessary because the case is complex or key people involved in the case are absent from work). If the investigation is extended, everyone involved will be notified of the date by which it is expected to be completed, and will also be kept updated as the investigation progresses.

13. Once completed, the investigator will present their findings to the chair who will then decide, within 48 hours, whether or not there is a case to answer that is sufficient in seriousness to warrant a disciplinary hearing.

14. If there is no case to answer following the investigation then everyone involved will be told the reasons why the disciplinary action is to be halted and all papers will be held by HR (for information only) on an ORR discipline file (marked Protect) for 12 months, after which point it will be destroyed (the information will not be passed to potential / future employers).

## Suspension

15. It may be appropriate for the employee who is alleged to have committed an offence to be suspended on full pay whilst an investigation takes place if:

- (a) the allegation is of gross misconduct – this enables the employee to fully prepare their case;
- (b) not suspending the employee might potentially affect ORR's reputation; or
- (c) there is a risk that the employee will destroy or fabricate evidence if they remain at work.

16. The employee will be suspended until the conclusion of the investigation. If the investigation concludes that a hearing is necessary, they will remain on suspension until the hearing is held and the outcome known. Suspension does not imply that any decision has been taken about the outcome of the investigation or hearing, and should not be viewed as a disciplinary penalty.
17. Whilst on suspension the employee must not attend any of ORR's offices, or discuss the case with any ORR employee (apart from their companion), without the agreement of the HR business partner managing the case.
18. During the suspension, the employee must ensure they are always contactable during normal working hours, or they can discuss with their HR business partner why they might not be contactable at a particular time (for example, if they have a doctor's appointment during the working day). Any changes to contact details, including address, must be notified to their HR business partner immediately.

## Disciplinary hearings

19. The HR business partner will provisionally arrange a disciplinary hearing whilst the investigation is happening, ensuring that at least 5 working days' notice is given to all attendees.
20. The employee who is alleged to have committed the offence, and the relevant managers involved in the case, will be invited to the hearing to discuss the case.
21. The employee is able to bring a staff representative, trade union representative or work colleague to the hearing. If the chosen companion is unavailable to attend on the date or at the time originally set for the meeting then the hearing will be postponed to another date and time within 5 five working days of the original date proposed. If the companion is still not available within this time, another companion must be proposed or the employee must attend the hearing without one.
22. Everyone involved will be told in advance who will be attending the hearing. If the investigation report identified any relevant witnesses, they will be asked to be available during the hearing in case they are needed to provide their account of events to the chair.
23. A management case, including full written details of the alleged offence(s), the investigation report and any information/witness statements being relied upon, will be made available to the employee (and their companion) at least 2 working days in advance of the hearing. If the management case is to be sent electronically then the HR business partner managing the case will agree this with the employee to whom it is being sent beforehand. The management case will only be sent electronically to an ORR email address.
24. At a disciplinary hearing the chair will open the hearing by explaining the procedure to be followed. The management case will then be discussed and the employee will be able to present their case in response. The employee may wish to prepare this as a written statement to be read out at the hearing. The chair will seek clarifications if necessary and will have access to HR support throughout the process.
25. Once the chair is satisfied they have a clear understanding of the case they will explain the next steps and end the meeting. They will then decide on the appropriate action to take.
26. The employee will be told the outcome of the hearing within 48 hours of the end of the hearing, including any actions that will be taken, and they will be advised of their right of appeal. Within 5 working days of the hearing they will be sent the chair's decision in writing,

setting out fully the outcome of the hearing.

27. If there is no case to answer following the disciplinary hearing then everyone involved will be informed of the reasons why the disciplinary action will be halted and all papers will be held by HR (for information only) on an ORR discipline file for 12 months, after which point it will be destroyed (i.e. the information will not be passed to potential / future employers).

## **Appeal**

28. If disciplinary action has been taken, the employee should notify their HR business partner within 5 working days after receiving the written decision if they wish to appeal against the decision. They should then submit their full appeal within 10 working days after receiving the written decision.

29. The appeal should explain their reasons for appealing against the decision made – for example, a fair process was not followed, or key evidence was not taken into consideration, or they feel the outcome was unjust or disproportionate.

30. The HR business partner will appoint an appropriate senior manager to hear the appeal (this will not be the senior manager that considered the case previously). If the HR business partner considers it appropriate, a senior manager from another government department may be asked to hear the appeal.

31. The senior manager will consider the reasons presented for challenging the decision. They may also wish to seek additional clarification from anyone else who had previously been involved in the case, including the original decision maker. They may wish to hold an appeals meeting to discuss their initial views before making a final decision.

32. Within 10 working days of receiving the appeal, the senior manager hearing the appeal will provide notification of their final decision in writing.

33. In cases of appeal against immediate dismissal without notice, the employee will not be permitted to resume working whilst a decision on the appeal is being made  
- the dismissal date will remain as determined at the disciplinary hearing. However, in the event that the decision to dismiss is overturned at the appeal stage, reinstatement with continuous service will apply.

## **Notice and compensation**

34. Someone who is dismissed will be given their normal right to notice relating to their length of service. Compensation in lieu of notice will be decided on the individual merits of each case. ORR reserves the right to require staff to stay away from the office during their notice period (this is known as gardening leave).

35. Dismissal for gross misconduct will always be summary i.e. there will be no notice period.

## **Possible criminal offences**

36. If someone is the victim of a criminal offence whilst at work (for example, they are assaulted by another employee at work or their personal belongings are stolen at work) then they have the right to contact the police, but should also inform the head of HR that this is what they intend to do as this may impact on any subsequent disciplinary action taken against an ORR employee as a result.

37. There is a distinction between major disciplinary offences that may be dealt with by ORR and those that may be criminal – if a case has been reported to the police as a criminal offence then ORR will apply this discipline policy if the alleged offender is an ORR employee,

but will ensure that any internal investigation and subsequent action does not prejudice the outcome of any criminal proceedings.

38. You are required to inform human resources if you are arrested or convicted of a criminal offence. Failure to do so will result in disciplinary action.

## Records

39. Meeting notes, correspondence, reports and records made during the discipline process will be kept confidential between the parties involved at all times and retained in accordance with the Data Protection Act 1998. All material will be protectively marked Protect – staff.

40. The employee who is subject to disciplinary action will receive:

- (a) the investigation report;
- (b) any statements made in relation to the alleged misconduct;
- (c) the management case;
- (d) the meeting notes made at any disciplinary hearing; and
- (e) any decision letters that set out the outcomes of any stage.

41. We will not withhold any supplementary information if it is material to the case and refers to the employee requesting it.

42. If someone is found to have committed misconduct then the letter setting out the disciplinary hearing outcome will be retained on their personal file for the duration of the written warning. This can be anything between one month and two years depending on the severity of the case.

43. Information about a 'live' disciplinary warning will be released to potential new employers, but will not be released if the warning has expired.

44. When the formal disciplinary action is concluded, all papers relating to the grievance will be kept in a confidential ORR discipline file, and will not be stored in personal files. The confidential ORR discipline file will be kept for 6 years after the end of the person's contract of employment with ORR.

45. In order to comply with our duty of disclosure as a prosecuting authority, details of disciplinary matters may be shared with a limited number of ORR employees and disclosed to the defence during the course of a criminal prosecution. Any such sharing of information and disclosure would take place in accordance with the procedure detailed in Railway Guidance Document (RGD) 2007-10.



## **Annex A: Examples of disciplinary offences**

### **Misconduct (serious offences)**

This list gives examples of activities that may result in disciplinary action being taken against you. This list is not exhaustive.

- Security breaches
- Refusal to obey a legitimate instruction
- Refusal to answer a question during the course of a properly constituted investigation.
- Absence without permission, or persistent absence
- Unauthorised disclosure of official information
- Breaches of staff rules or the staff handbook
- Neglect of official business/neglect of duty
- Persistently poor timekeeping, including misuse of flexible working hours
- Continued poor work performance, or a persistent failure to keep up-to-date with technical developments
- False statements, and vexatious or malicious complaints
- Bringing or being likely to bring discredit on ORR and/or the civil service (not deemed serious enough for gross misconduct)
- Misuse of official property, such as official stationery or equipment
- Insubordination (not deemed serious enough for gross misconduct)
- Conviction on criminal charges
- Acceptance of benefits or favours that may be considered as bribes
- Betting and gambling during working hours, or on official premises (lottery and other charity syndicates are allowed)
- Unprofessional conduct, or behaviour that is not in the spirit of ORR's values
- Culpable loss or damage
- Breaching ORR's electronic mail and internet policies
- Harassment or bullying (not deemed serious enough for gross misconduct)
- Breaches of our equality and diversity policies (not deemed serious enough for gross misconduct)
- Not disclosing being the subject of criminal investigation

## Gross misconduct (most serious offences)

This list gives examples of activities that will result in disciplinary action being taken against you, and may result in your dismissal from ORR. This list is not exhaustive.

- Acts of dishonesty, where the conduct affects your ability or suitability for continued employment: for example, theft, fraud, deliberate falsification of records (including falsification of flexitime sheets) or falsification of expenses
- Physical violence or unacceptably aggressive behaviour
- Unacceptable sexual behaviour at work
- Deliberate damage to official property
- Serious incapability whilst on duty brought on by alcohol or illegal drugs
- Serious negligence which causes unacceptable loss, damage or injury
- Serious acts of insubordination or rudeness
- Serious breaches of confidence (subject to the public interest (disclosure) act 1998)
- Unauthorised access to computer records
- Being in possession of firearms or any offensive weapon whilst at work
- A serious breach of health and safety rules or policies
- Serious bullying or harassment
- Serious breaches of ORR's equality and diversity policy
- Bringing ORR and/or the civil service into disrepute
- Conviction on serious criminal charges



## Annex B : Disciplinary actions

Type of action	Management warning
When is this appropriate?	When conduct or behaviour is unacceptable but does not warrant formal disciplinary action
What are the possible outcomes?	<p>The decision maker may decide to give an informal warning – this should:</p> <ul style="list-style-type: none"> <li>involve a discussion with the individual;</li> <li>be followed up in writing (an email will suffice);</li> <li>set out the conduct/behaviours that are unacceptable; and</li> <li>confirm the date by when the manager expects to see improvements (this might be immediately)</li> </ul> <p>Or, after hearing the views of the employee, the decision maker may decide there is no need for formal management action.</p>
Who will determine the outcome?	The manager
Should the employee be suspended?	No

Type of action	First formal warning
When is this appropriate?	<p>Where a management warning has not resulted in the required change, or where the offence warrants moving directly to the formal procedure.</p> <p>There will be an investigation and a hearing.</p>
What are the possible outcomes?	<p>The decision maker can impose any of the following outcomes:</p> <ul style="list-style-type: none"> <li>Issue of a first formal warning, which can be 'live' for no longer than 12 months</li> <li>Remedial actions to correct the situation</li> </ul> <p>Or, after the disciplinary hearing, the decision maker may decide there is no case to answer</p>
Who will determine the outcome?	A senior manager (grade C or above) in the employee's management chain
Should the employee be suspended?	No

Type of action	Final formal warning
<b>When is this appropriate?</b>	<p>This is appropriate in cases where:</p> <ul style="list-style-type: none"> <li>• a very serious offence or offences have allegedly been committed, but not those which are considered gross misconduct; or</li> <li>• if the required improvements have not been made following the issue of a first formal warning; or</li> <li>• if the required improvements to attendance have not been made following the issue of a warning under the managing sickness absence policy.</li> </ul> <p>There will be an investigation and a hearing.</p>
<b>What are the possible outcomes?</b>	<p>The decision maker can impose any of the following outcomes:</p> <ul style="list-style-type: none"> <li>• Issue of a final formal warning, which can be live for up to 12 months</li> <li>• Removal of benefits, including flexitime</li> <li>• Restrictions on employment or additional management checks</li> <li>• Other remedial actions to correct the situation</li> </ul> <p>Or, after the disciplinary hearing, the decision maker may decide there is no case to answer</p>
<b>Who will determine the outcome?</b>	A senior manager (grade A or above) in the employee's management chain
<b>Should the employee be suspended?</b>	Possibly, depending on the nature of the offence

Type of action	Dismissal
<b>When is this appropriate?</b>	<p>This is justified in cases of:</p> <ul style="list-style-type: none"> <li>• alleged gross misconduct; or</li> <li>• if the required improvements have not been made following an employee receiving a final formal warning.</li> </ul> <p>There will be an investigation and a hearing.</p> <p>The employee must be informed that their future employment is at risk and they may be dismissed as a result of the hearing.</p>
<b>What are the possible</b>	The decision maker can impose any of the following

<b>outcomes?</b>	<p>outcomes:</p> <ul style="list-style-type: none"> <li>• Dismissal, with or without notice</li> <li>• Issue of a final formal warning, which can be 'live' for up to 24 months</li> <li>• Reduction in pay</li> <li>• Removal of benefits, including flexitime</li> <li>• Restrictions on employment or additional management checks</li> <li>• Downgrading</li> <li>• Other remedial actions to correct the situation</li> </ul> <p>Or, after the disciplinary hearing, the decision maker may decide there is no case to answer</p>
<b>Who will determine the outcome?</b>	The employee's Director, or another Director appointed by the head of HR if the employee's Director is involved in the case
<b>Should the employee be suspended?</b>	Yes