

GUERNSEY STATUTORY INSTRUMENT 2006 No 31

GREFFE
ROYAL COURT
12 SEP 2006
GUERNSEY

THE PRISON ADMINISTRATION (Code of Discipline for Prison Officers)
ORDER, 2006

Made: 8th September 2006
Coming into force: 8th September 2006

THE HOME DEPARTMENT, in exercise of powers conferred upon it by Section 115 of The Prison Administration (Guernsey) Ordinance, 1998¹ ("the Ordinance"), and all other powers enabling it in that behalf, hereby makes the following order: -

1. The code of discipline set out in the Schedule is hereby prescribed for the purposes of section 115 of the Ordinance and shall apply from the date this Order comes into force.
2. For the avoidance of doubt, the code of discipline set out in the Schedule replaces any previous code of discipline for prison officers from the date this Order comes into force.
3. Section 19(2) of the Interpretation (Guernsey) Law, 1948² applies to a code of discipline replaced by this Order as it applies to a repealed enactment.
4. The Interpretation (Guernsey) Law, 1948 applies to the interpretation of this Order.
5. Any reference in this Order to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.
6. This Order may be cited as the Prison Administration (Code of Discipline for Prison Officers) Order, 2006, and shall come into force on the September 8th 2006.

Dated this 8th September 2006



Minister for the Home Department
for and on behalf of the Department

¹ Ordinance No. XXIII of 1998 as amended by Ordinance No. XXXII of 2002 and the Prison Administration (Guernsey) (Amendment) Ordinance, 2006.

² Ordres en Conseil Vol. XIII, p. 355.

Dated the 8th September 2006

SCHEDULE

Article 1

CODE OF DISCIPLINE FOR PRISON OFFICERS

[Insert text of Code of Discipline]

EXPLANATORY NOTE

(This note is not part of the Order but is intended to indicate its general purport.)

This Order prescribes the code of discipline in the Schedule as a code of discipline for prison officers pursuant to section 115 of the Prison Administration (Guernsey) Ordinance, 1998 and applies the Code from the date this Order comes into force.

PART 1

CONDUCT AND DISCIPLINE

SECTION 1: INTRODUCTION; PRINCIPLES

- 1.1 All members of the Prison Service are expected to observe certain standards of conduct. Indeed, a positive commitment on the part of members of the Prison Service to those standards of conduct and strict adherence to them are fundamental to the successful performance of the duties and responsibilities of the Service. Any failure to meet them undermines the work of the Service.
- 1.2 The commitment to upholding standards of conduct in the Prison Service must, therefore, be underpinned by disciplinary procedures which provide a fair and open method of dealing with alleged misconduct. This Operational Order sets out the standards of conduct expected of staff and goes on to detail the procedures for taking disciplinary action when conduct is alleged to fall below that standard. The primary objective is to ensure that standards are maintained and to encourage improvement in individual conduct and not primarily to impose penalties on the employee.
- 1.3 This document has been prepared in consultation with the relevant trade union. It is based on the following principles:
- *It is a fundamental principle of all disciplinary action - and the test of its fairness - that employers and managers must act in a way which an objective observer would consider reasonable - for example in relation to:*
 - *the grounds for believing that misconduct took place;*
 - *the sufficiency of the investigation into what happened;*
 - *the conduct of the disciplinary procedure;*
 - *the form of any penalty imposed, taking into account all the circumstances (including the nature of the working environment).*
 - *In the interests of justice and fairness, all matters relating to disciplinary action must be handled as speedily as possible.*
 - *The disciplinary rules and procedures are designed to be non-discriminatory and are to be applied irrespective of sex, marital status, racial group, sexual orientation, disability, religion, rank, seniority, age or any other bias.*
 - *All disciplinary matters must be treated in the strictest confidence.*
 - *A member of staff who is the subject of formal disciplinary proceedings must:*

Guernsey Prison

- *be told in writing of the allegation against them in advance of any disciplinary hearing;*
 - *be provided with copies of any written evidence (including witness statements) forming the basis of the allegations;*
 - *be given the opportunity to state their case and challenge any evidence before any decision is made.*
- *A member of staff under investigation for alleged misconduct or facing formal disciplinary proceedings has the right to be accompanied and assisted by a representative of a recognised trade union or by a work colleague.*
 - *In establishing whether a disciplinary offence has been committed the standard of proof to be applied is the balance of probabilities, i.e. that, on the basis of the evidence, it was more probable than not that an offence was committed. However the more serious the allegation the higher will be the required standard of proof, although it will not reach the criminal standard. But the over-riding test of fairness in employment law is that of reasonableness.*
 - *No member of staff will be dismissed for a first breach of discipline, except in the case of gross misconduct (see Paragraph 3.9 of the Operational Order).*
 - *Any member of staff who is the subject of disciplinary action has a right of appeal against the decision and the penalty.*
- 1.4 The operation of this Operational Order will be kept under review in consultation with trade unions.
- 1.5 All mandatory instructions are in italics. The word "prisoner" or "prisoners" in this Operational Order refers to all those held in custody by the Prison Service
- 1.6 The Service Conduct and Discipline Standard is based on this Operational Order and performance against it will be subject to regular review.

Guernsey Prison

SECTION 2: THE PROFESSIONAL STANDARDS STATEMENT**Purpose**

- 2.1 Prison Service staff are expected to meet high standards of professional and personal conduct in order to deliver the Prison Service Vision. All staff are personally responsible for their conduct. Misconduct will not be tolerated and failure to comply with these standards can lead to action which may result in dismissal from the Service.

This document therefore identifies and clarifies the key standards of professional and personal conduct expected of all staff.

It should be noted that this is not an exhaustive list. Any conduct that could undermine the work of the Service is not acceptable.

Prison Service Principles

- 2.2 The Prison Service Principles underpin the work of the Service and all staff are expected to act in accordance with them. *Staff must therefore:*
- *Deal fairly, openly and humanely with prisoners and all others who come into contact with them.*
 - *Encourage prisoners to address offending behaviour and respect others.*
 - *Value and support each other's contribution.*
 - *Promote equality of opportunity for all and combat discrimination wherever it occurs.*
 - *Work constructively with criminal justice agencies and other organisations.*
 - *Obtain best value from the resources available.*

Conduct Expected

The following sets out the professional and personal standards of conduct expected of all staff.

2.3 General

Staff must carry out their duties loyally, conscientiously, honestly and with integrity. They must take responsibility and be accountable for their actions.

Staff must be courteous, reasonable and fair in their dealings with all prisoners, colleagues and members of the public. They must treat people with decency and respect.

Guernsey Prison

All staff must comply with Service policies and procedures. Managers must ensure that standards of behaviour and conduct are maintained.

2.4 Discrimination, Harassment, Victimisation and Bullying

Behaviour of this kind is not acceptable and will not be tolerated. *Staff must not:*

- *Discriminate unlawfully against individuals or groups of individuals because of their sex, racial group, sexual orientation, disability, religion, age or any other irrelevant factor.*
- *Harass others through behaviour, language and other unnecessary and uninvited actions.*
- *Victimise or bully others through their actions and behaviour.*

2.5 Relationships with prisoners

Staff must exercise particular care to ensure that their dealings with prisoners, former prisoners and their friends and relations are not open to abuse, misrepresentation or exploitation on either side. Staff relationships with prisoners must be professional. In particular staff must not:

- *Provoke, use unnecessary or unlawful force or assault a prisoner.*
- *Use offensive language to a prisoner.*
- *Have any sexual involvement with a prisoner.*
- *Give prisoners or ex-prisoners personal or other information about staff, prisoners or their friends and relatives which is held in confidence.*
- *Have any contact in or outside work with prisoners or ex-prisoners that is not authorised.*
- *Accept any approaches by prisoners for unauthorised information or favours and must report any such incidents.*

2.6 Corruption

Corrupt behaviour is not acceptable. *Staff must not solicit or accept any advantage, reward or preferential treatment for themselves or others by abusing or misusing their power and authority.*

2.7 Conflicts of Interest

Staff must not have private interests that interfere or could interfere with the proper discharge of their duties. This includes financial and business interests but also any personal relationships which could compromise or be perceived to compromise them in the discharge of their duties. Staff must

Guernsey Prison

bring any potential conflicts of interests to the attention of a Senior Manager. The Head of Operations should maintain a register of conflicts of interest for their staff.

2.8 Criminal Activity

Staff must not be involved in any criminal activity. They must inform the Head of Operations/Duty Manager as soon as possible if they are charged or convicted (including a police caution) of any criminal offence.

2.9 Use of Information

Staff must protect any information which they have obtained through their work in the Service, for example procedures, security information and staff and prisoner details.

2.10 Personal Finances

Staff must conduct their financial affairs in a proper and responsible way. If difficulties occur they must inform their manager. "Citizens advice bureau" is available to staff for advice and support.

2.11 Conduct that affects the performance of duties

Staff must not take any action on or off duty that could affect, cast doubt on or conflict with the performance of their official duties. For example, outside activities or membership of organisations which promote racism.

2.12 Discredit on the Service

Staff must not bring discredit on the Prison Service through their conduct on or off duty.

2.13 Staff Responsibility

All staff are personally responsible for ensuring their conduct is in line with the above standards. If staff are in any doubt as to what is acceptable conduct they must seek advice from their line manager.

Staff must challenge and report any possible suspicion of misconduct to their line manager. If they are not able to do this they must report it to the Home Departments HR Unit.

2.14 Issues of Conscience

If staff feel that to act or abstain from acting in a particular way would raise for them a fundamental issue of conscience and the problem cannot be resolved by any other means, they may take up the matter with the Prison Governor. If the matter still cannot be resolved on a basis which the member of staff is able to accept, they must either carry out the instruction or resign.

Guernsey Prison

SECTION 3: BEHAVIOUR WHICH MAY ATTRACT DISCIPLINARY ACTION

3.1 The main areas of potential misconduct in the Prison Service are set out below. Any behaviour which is not specifically mentioned below but which is in clear breach of established standards of conduct expected of members of the Prison Service may also lead to disciplinary action. However not every action listed below will lead to disciplinary action if the action is of a relatively trivial nature or the matter is capable of resolution. *Managers must have regard to all the circumstances of the case in deciding whether formal disciplinary action is appropriate.*

3.2 Relations with others at the workplace

- fighting or assault on any other person;
- use of unnecessary force on a prisoner;
- deliberate provocation of a prisoner;
- offensive language or aggressive behaviour towards prisoners, colleagues or members of the public;
- racial or sexual harassment or discrimination towards prisoners, colleagues or members of the public, any racially motivated offence, or failure to deal appropriately with any racist, sexist or discriminatory behaviour.
- Membership of racist organisations and/or involvement in the activities of any such organisation.
- exploitation of working relationships or abuse of seniority over colleagues e.g. by borrowing, lending money or bullying.

3.3 Unprofessional conduct

- trafficking: i.e.
 - any unauthorised monetary or business transaction with, or acceptance of gifts or favours from, prisoners, ex-prisoners or friends or relatives of prisoners or ex-prisoners;
 - bringing into, or carrying out of, the prison, without proper authority, any items for or on behalf of a prisoner or ex-prisoner; or knowingly condoning such action;
- failure to obtain proper authority for actions or relationships in connection with prisoners or ex-prisoners or the friends or relatives of prisoners or ex-prisoners, which could otherwise be open to abuse, misinterpretation or exploitation on either side (Prison Rule 112).

3.4 Performance of duties

- action or negligence likely to endanger the security of the prison, including contributing to the escape of a prisoner;
- breaches of security;
- action or negligence in the course of duty which causes, or which could have caused, or contributes to loss, damage or injury to the Prison Service or individuals;
- failure to obey a lawful and reasonable order or written instruction;
- being unfit for duty through drink or drug abuse.
- unauthorised drinking of alcohol or taking prohibited drugs while at work or on duty. *“On duty”, in respect of drinking alcohol, does not normally include meal breaks, but staff must be fit for duty when reporting back after a meal break.*

3.5 Timekeeping and attendance

- repeated poor timekeeping;
- unauthorised absence or lateness;
- abuse of provisions relating to sick absence as set out in the Operational Order on sick absence/attendance.

3.6 Dishonesty and corruption

- dishonesty of any kind, such as false statement (for example in expenses or sick pay claims), alteration of records or misappropriation or misuse of official transport, funds or property;
- Corruption (i.e. abuse of official position for personal advantage or gain).

3.7 Confidentiality and engaging in political activities

- Unauthorised disclosure of official information held in confidence, whether to prisoners, the press or others.
- Breaches of staff rules in relation to political and outside activities.

3.8 Other misconduct, such as:

- conviction of any criminal offence (excluding fixed penalty offences) or receipt of a police caution for the offences listed in paragraph 3.9 below,

Guernsey Prison

and/or failure to report such a conviction or a caution. Refer to Annex A of this Operational Order for convictions for a criminal offence or receipt of a caution;

- bringing discredit on the Prison Service. That is any action on or off duty which is likely to create an adverse effect on public confidence in the Prison Service;
- attempting to enlist the assistance or support of outside individuals or organisations to secure advancement or improve one's personal position, (e.g. in relation to promotion, discipline).
- failure to report misconduct by other members of staff. (this should generally apply only to wilful concealment of acts of serious misconduct)

3.9 Gross Misconduct

"Gross misconduct" is defined as misconduct that is so serious as to make any further relationship and trust between the Prison Service and the member of staff concerned impossible and staff can therefore be dismissed for a first offence of gross misconduct. Serious cases of any of the types of misconduct listed above may amount to gross misconduct in this sense, e.g. reporting for duty seriously incapacitated by alcohol. *A test of reasonableness must be applied in deciding whether a case constitutes gross misconduct and each case must be treated on its merits.* Some examples of gross misconduct are:

- trafficking in money, prohibited drugs or alcohol;
- racial or sexual harassment or discrimination;
- membership of racist organisations;
- bullying;
- serious unprofessional conduct;
- assault;
- theft;
- fraud i.e. all intentional irregularities and illegal acts for private gain perpetrated by staff outside or inside the organisation;
- serious acts of negligence causing appreciable loss, injury or damage to Prison Service property;
- failure to obey a lawful and reasonable order or written instruction, leading directly to serious disorder or loss of control;
- conviction of a criminal offence - or receipt of a police caution for an offence - such as:

Guernsey Prison

- any racially motivated crime;
- any offence of violence;
- burglary, robbery or theft;
- trafficking;
- corruption;
- drugs related offences;
- any serious offence of criminal damage or arson;
- sexual offences;
- fraud.

Guernsey Prison

PART 2

SECTION 4: ALTERNATIVES TO FORMAL DISCIPLINARY ACTION

4.1 Not all instances of misconduct should lead automatically to formal disciplinary action; and in some instances disciplinary action may not be the best means of encouraging an improvement in the conduct of a member of staff.

Managers must:

- *handle minor incidents of misbehaviour informally wherever appropriate, reinforced as necessary by more formal guidance or advice, and, where applicable, action taken in accordance with procedures set out in the Operational Order on Sick Absence/Attendance;*
 - *take account of any evidence which may suggest that the member of staff concerned may have a problem (for example, domestic stress, debt, alcohol) which can be helped by referral to welfare agencies, or where failures of performance might be better handled under the procedures set out in the Operational Orders on Managing Sick Absence/Attendance as an alternative to disciplinary action.*
- 4.2 It should be remembered, however, that Performance Management procedures are primarily concerned with performance, not conduct. *Therefore adverse comments about aspects of conduct must only be included in the SPAD if there is an appropriate context and if the comment is relevant.*
- 4.3 The decision to take action other than disciplinary action can take place at any stage during the process including at the conclusion of the hearing where the person conducting the hearing may decide that although misconduct occurred the circumstances make it unsuitable to administer any formal disciplinary warning or penalty.
- 4.4 Managers are advised to record any advice, counselling or guidance given in these circumstances. *But advice, counselling or guidance, even if it contains a cautionary element, must not be confused with the procedure for giving warnings under the disciplinary procedures.*

Mandatory

- 4.5 *If a manager believes misconduct is sufficiently serious to merit a formal disciplinary warning it must be administered only after the normal disciplinary procedures, with all their safeguards, are followed.*
- 4.6 *In some circumstances there will be no alternative to disciplinary action; and the encouragement to deal informally with minor instances of misconduct must not inhibit the use of formal disciplinary action where repeated instances of minor misconduct indicate an underlying problem which is affecting the effectiveness of a member of staff in fulfilling his or her duties.*

Guernsey Prison

SECTION 5: INVESTIGATIONS**Purpose**

- 5.1 The purpose of the investigation is to establish what happened. It may arise out of a grievance from a member of staff. It may involve looking into one person's alleged failure to meet the standards of conduct expected of them. It may also involve looking into an incident, to identify individuals who may have failed to meet the necessary standards of conduct. If the member of staff has been convicted of a criminal offence it may not be necessary to undertake an investigation (See Summary Dismissal Procedure - Section No. 10 of this Operational Order.)

Mandatory In all other cases, there must be an investigation.

- 5.2 *Operational Order 85 - Investigations contains detailed guidance on the conduct of all types of investigations, and account must be taken of Operational Order 85 once an investigation has been commissioned. The guidance contained in this chapter relates specifically to disciplinary investigations.*

Mandatory

Timing

- 5.3 *Investigations which may lead to disciplinary action against a member of staff must take place as soon as possible after any misconduct is alleged or suspected.*

Investigating Officer

- 5.4 For straightforward cases where a member of staff is alleged to have breached the established standards of conduct, the investigation will normally be conducted by the line manager unless they are directly involved in the events leading to investigation.

Mandatory

Investigations involving doctors, nurses, chaplains and other professional and specialist staff.

- 5.5 *When the investigation involves the alleged misconduct of a professional member of staff, there must be appropriate input into the investigation from someone from the same professional group. This will help clarify whether the case should also be referred to the relevant professional body who may need to carry out its own investigation.*
- 5.6.1 *Where the misconduct appears to be more complex or involves several members of staff, the Governor, must commission the investigation and appoint members of staff to carry it out. Normally such investigations are conducted by a member of staff from the prison. Exceptionally someone*

Guernsey Prison

from another Prison Service or outside the Service may be authorised by the commissioning authority to conduct the investigation.

Mandatory

- 5.7 *Investigating officers must be of at least Principal Officer grade. The choice of investigating officer will depend on the nature of the investigation.*
- 5.8 The Head of Operations, will advise in cases involving protectively marked documentation.
- 5.9 It is good practice for a support officer to be appointed to act as a liaison point. His or her responsibilities will include:
- opening a file at the start of the investigation;
 - keeping the relevant papers filed;
 - arranging interviews;
 - ensuring timescales are met;
 - producing the required papers for the disciplinary hearing.

Police Investigations

- 5.10 Misconduct may give rise to criminal prosecution as well as disciplinary proceedings. If evidence of a possible criminal offence comes to light, or if an allegation of a criminal offence is made against a member of staff, it may be necessary to inform the police. However, subject to paragraphs 5.11 - 5.15 below, disciplinary action should generally be pursued even when criminal proceedings are possible or pending.
- 5.11 *The Governor must be consulted where practicable before the police are called in. Where this is not possible - for example, at weekends or in cases of great urgency - he must be informed as soon as possible.*

Mandatory

- 5.12 *In cases where the police are investigating alleged or suspected misconduct of a potentially criminal nature, care must always be taken to ensure that disciplinary proceedings do not prejudice the criminal proceedings.*
- 5.13 *The Governor must always be consulted in all relevant information, (and will normally seek legal advice as necessary. The investigating officer may also liaise with the police liaison officer.*
- 5.14 *Disciplinary action must be postponed in circumstances where:*

Guernsey Prison

- *an alleged or suspected criminal offence took place away from the workplace and the investigation initiated by the police;*
- *the investigating officer is unable to obtain evidence relating to any possible disciplinary charge pending the outcome of criminal investigations; or*
- *the principal evidence comes from a prisoner and the nature of any possible disciplinary charge is identical to the criminal charge.*

5.15 However, it will not normally be advisable to postpone disciplinary action in other circumstances.

Interviews

Mandatory

5.16 Any member of staff to be interviewed in connection with the investigation must be:

- *given advance warning of the interview;*
- *told before being questioned that the interview is part of such an investigation and the reasons for it;*
- *informed that any information which emerges from the investigation may be used in disciplinary proceedings (in accordance with the Data Protection Law). However in some circumstances it may be possible to use information not obtained under the Disciplinary process, for example statements submitted as part of standard reporting arrangements);*
- *reminded that they must not discuss their evidence with anyone;*
- *informed of their right to be accompanied by a trade union representative or work colleague while being interviewed, if they so wish;*
- *issued with Form DAPS F1 if a witness only (Annex B)*

5.17 Any member of staff alleged to have committed or suspected of having committed a disciplinary offence, and who is to be interviewed in connection with the investigation must also be:

- *informed that they are under investigation for alleged or suspected misconduct which may lead to disciplinary action and must be issued with form DAPS F2 (Annex B).*

5.18 A record of the interview must be taken and all involved provided with a copy and allowed to record any comments. Where possible, interviews should be tape recorded.

Guernsey Prison

Co-operation with Disciplinary Investigation

- 5.19 Staff are required to offer all reasonable co-operation to the investigation. Failure to offer reasonable co-operation to the investigation or to act in any way that undermines the investigation's process or procedures is a breach of conduct. However, if by co-operating staff might incriminate themselves, staff under investigation for alleged misconduct, have the right to be silent at a disciplinary investigation interview and cannot be forced to reply to questions. If staff refuse to co-operate, despite proper warnings being given, then reasonable inferences can still be drawn and disciplinary action must proceed on the basis of the available evidence.

Interviews

- 5.20 **Preparation:** *All the relevant material must be carefully considered, and a decision made on who, if anyone, will need to be interviewed and in what order.* In straightforward cases of clear misconduct (e.g. receipt of a minor conviction) it may not be necessary to hold any interviews. However, it is usually better to interview rather than leave a formal disciplinary hearing to elicit motives, mitigation etc. Careful thought should be given to further relevant documentation that may be available, and of any facts that will need to be confirmed in writing.
- 5.21 **Assistance:** In all but the most simple of investigations it is preferable to have more than one investigating officer. This will enable notes to be taken, specialist input to be provided or as a safeguard in cases with, for example, racial or sexual overtones. Consideration should be given to having an input from someone with relevant specific knowledge e.g. equal opportunities, finance, canteen or gate procedures.
- 5.22 **Interview:** *Enquiries which may result in disciplinary charges being laid must always be conducted with care, and in an objective and fair manner. It is important not to prejudge the issues, nor to try to scapegoat individuals or groups of staff, nor to create a culture in which apportioning blame is the only objective.* Interviews should focus on drawing out information about what was directly observed, heard or done by the person concerned and must try to distinguish hearsay and speculation from fact. *The approach must be formal and courteous and the individual must be encouraged to talk freely with a view to establishing what happened.*
- 5.23 *An investigation must not automatically be delayed because the member of staff facing the allegation is on sick leave. The approach set out in paragraphs 7.28 to 7.33 of this Operational Order should be followed.*

Mandatory

- 5.24 *Where an investigation may lead to disciplinary action any member of staff who is interviewed must be informed in advance of the interview, and given the appropriate warnings as to the purpose of the interview, and informed of their right to be accompanied as laid down in paragraph 5.23 of the Operational Order, and be given reasonable time to arrange this, if required.*

Guernsey Prison

Forms DAPS F1 and DAPS F2 must be used to administer the warnings and inform staff of their rights. If the correct warnings are not given before statements are taken, the statements can only be used in subsequent disciplinary hearings with the consent of the member of staff who gave the statement. In some circumstances however statements provided in line with other standard processes may be used.

- 5.25 Forms DAPS F1 and DAPS F2 are for use with members of staff employed by the Prison Service. They are not required for prisoners or staff not directly employed by the Prison Service. However a version of the DAPS F1 suitably amended may be used for these people to ensure they are clear of the purpose of the interview

Accompaniment by a trade union representative or work colleague:

- 5.26 The Employment Protection (Guernsey) Law, 1998 does not give workers a right to be accompanied by a trade union representative or work colleague, however where they make a reasonable request to be so accompanied during a disciplinary interview the code of practise issued under the law recommends the right to be accompanied.
- 5.27 There is no right to legal representation either during the course of a disciplinary investigation or at any subsequent disciplinary hearing.

Information made available at the interview

- 5.28 *The investigating officer must explain to the member of staff under investigation what the allegation is and give them the relevant information to be able to answer questions in relation to it*

Disciplinary investigations which start as other types of investigations

- 5.29 It is possible that, while carrying out another type of enquiry, evidence will come to light suggesting that there may have been misconduct by member(s) of staff. In such cases it will usually be advisable to check with the commissioning authority so that a decision can be made whether to convert the investigation into a disciplinary investigation by administering the relevant warnings, or whether to decide that it is more important to elicit the fullest possible information, and give guarantees that statements made will not be used in a disciplinary context without the consent of the member of staff who made them.

Record of Interview:

- 5.30 *A record of the interview (not necessarily verbatim) must be taken. A typed version of the note must be provided to everyone who attended the interview and any comments must be recorded. Tape recordings can also be used by agreement.*

Guernsey Prison

Other Methods of Investigation

5.31 In some cases, an investigation can be assisted by the use of such methods as private investigators, forensic experts (e.g. handwriting identification) and video and tape recordings. Before adopting such methods, investigating officers should normally consult the Prison Governor, who, if necessary, will obtain legal advice about proceeding in this way. When engaging outside experts the expectation is that they will be called as witnesses to any disciplinary hearing that may result.

Investigation Report

5.32 *All the documentation, including all interview notes with any disagreements recorded, must be compiled into a report. A recommendation on whether disciplinary action needs to be taken should be made and if others issues needing action have been identified then these should also be recorded in the report. If formal disciplinary action is taken the report including all supporting documentation must be given to the member of staff facing the allegation. In exceptional circumstances part of the report may be excluded for example for security reasons.*

5.33 A recommended report structure is below:

- Executive summary (for complex investigations)
- Terms of Reference and composition of team
- Investigation outline. Describe how the investigation was conducted/ methodology
- the incident: outline the incident or alleged misconduct, referring to the documentary evidence and interviews;
- findings and conclusions: list them in order of priority;
- recommendations: make a recommendation as to whether or not disciplinary action should be taken and any other action that may be necessary. Consider alternatives to disciplinary action as described in Section 4 of this Operational Order;
- Annexes: include all documentation read in connection with the investigation, typed copies of all interviews, a note of any comments and copies of all discipline forms DAPS F1 and DAPS F2 used.

NB: The assumption in any disciplinary hearing is that the member of staff being charged will be given full disclosure of all relevant documentation, including the investigation report. The person conducting the disciplinary hearing would need to provide justification for withholding any piece of evidence.

Guernsey Prison

- 5.34 The report should then be forwarded to the person who will take the decision on whether disciplinary action should be taken. This person would normally be the commissioning authority.
- 5.35 If formal disciplinary action is proposed, the report will invite the person reviewing the report to make a decision on whether or not disciplinary action should be taken. The investigating officer may therefore include in the report a proposal for what that disciplinary action might be. But it should be remembered that it is the responsibility of the person who receives the report to decide whether the investigation's conclusions merit disciplinary action and if so what form that should take.
- 5.36 A checklist for disciplinary investigation is below:
- carry out investigation as soon as possible;
 - commissioning authority appoints members of staff to carry out an investigation, and will supply terms of reference;
 - the commissioning authority informs the Investigations Co-ordinator (Admin Manager)
 - support officer should be identified and they should open an a file for the investigation;
 - Investigating officer considers all relevant information and decide who, if anyone, needs to be interviewed;
 - if criminal offence is suspected, liaise with the Police.
 - interviews:
 - give advance warning of the interview;
 - give appropriate warnings before the interview;
 - inform of right to be accompanied;
 - supply a copy of note of interview and record any comments.
 - collate all the information and conclusions into a report, making a recommendation whether action, which may include disciplinary action, needs to be taken.

For further guidance on investigations please refer to Operational Order 85 – Investigations.

Guernsey Prison

SECTION 6: SUSPENSION FROM DUTY

6.1 In some cases it will not be appropriate for a member of staff to remain at their place of work pending investigation of serious misconduct, including criminal misconduct, which could lead to dismissal. In such cases, the Governor or Assistant Governors, may suspend a member of staff from duty - normally on full basic pay - pending the outcome of an investigation, and any subsequent disciplinary, or court action.

Mandatory

6.2 *That discretion is, however, subject to the following qualifications:*

- *suspension is not, in itself, a disciplinary penalty; but it may be seen as such, and managers must be aware of this in deciding what course of action to take;*
- *Suspension without pay is appropriate where the member of staff is in prison custody, has been convicted of a criminal offence but not remanded into custody, or has admitted an offence under police caution;*
- *must be given on the formal notice of suspension form DAPS F3 (Annex B);*
- *the need for suspension must be reviewed at least every 4 weeks;*

6.3 A member of staff who has been suspended may appeal against their suspension to a manager who will normally be one grade senior to the person who took the original decision to suspend.

6.4 The general requirement to handle disciplinary matters speedily is particularly important where members of staff are suspended.

6.5 Only in exceptional circumstances should staff who have been placed on suspension in these circumstances be denied access to the prison for the purpose of discussions with a trade union representative or work colleague. *Where this is the case, alternative arrangements must be made to allow the member of staff and their trade union representative or work colleague to meet.*

Guernsey Prison

SECTION 7: ACTION AFTER INVESTIGATION AND BEFORE THE HEARING

7.1 *Once the investigation is completed the report must be passed to the person responsible for taking the decision on whether disciplinary action is to be taken. This will normally be the person who commissioned the investigation.*

Responsibility for disciplinary action

7.2 Subject to paragraph 7.3 below, responsibility for deciding to take formal disciplinary action and for conducting the disciplinary hearing rests;

- with The Prison Governor; or Assistant Governors

7.3 The person responsible for a decision to take disciplinary action or for conducting the associated hearing:

- *must not be the person who investigated the alleged or suspected misconduct;*
- *must not be a probable witness at the hearing;*

7.4 There may be other circumstances where it is not appropriate for a Governor to conduct a hearing, for example where they have had a direct involvement in a case or have a possible personal interest in the outcome. Where this is so, The Chief Officer of the Home Department should be asked to conduct the hearing. However, there is no requirement for the Chief Officer of the Home Department to approach the case 'de novo' (have no previous knowledge of the case).

Discipline of doctors, nurses, chaplains and other professional and specialist staff

7.5 In cases involving professional staff who are employed in the health care services (e.g. nurses) or chaplains, and who are answerable both to the operational management of their establishment and to their own professional managers, *The Governor must consult the professional specialist managers, both on the decision about whether to proceed with disciplinary or other action and on the conduct of the hearing.* In such circumstances the hearing may be conducted:

- by the Governor; or
- jointly by the Governor and a professional. It should be recognised that specialist input may also be required when dealing with officers whose specialisms is a factor in the disciplinary action.

Discipline of trade union representatives

7.6 Normal disciplinary procedures apply to staff who are trade union representatives. However, it is important to ensure that any disciplinary action taken against a union representative is not seen as an attack on the

Guernsey Prison

functions of the union. Trade union representatives may be represented by a senior trade union representative or full-time representative of their union.

Deciding how a case is to be treated

- 7.7 *The responsible manager must decide how the case will be treated and, if formal disciplinary action is justified, what possible penalties are indicated.*
- 7.8 It is not possible to decide what award should be indicated simply according to the nature of the alleged misconduct, since apparently minor misconduct can sometimes turn out to be more serious than its nature suggests. For example, lateness would normally be a minor offence. *If, however, a member of staff has failed to improve their behaviour in this respect and had been warned previously, then the next penalty they face could be dismissal. Many other types of misconduct could be either minor or serious, depending on the circumstances and the context. Managers must use their judgement based on evidence collected in the investigation and other relevant factors for example, the extent to which standards have been breached, similar cases, the member of staff's disciplinary and general record, position, length of service and any other particular circumstances of the case.*
- 7.9 *The statement of alleged misconduct (DAPS F4 - Annex B) must indicate what penalties are likely to be awarded if misconduct is proved. It is also important to have regard to the extreme and unnecessary stress which could be caused by listing one of the more serious awards unless there is good reason. Dismissal should not be included as a potential penalty on the basis that something hitherto unknown might be uncovered at a subsequent disciplinary hearing. (If that should happen, the person conducting the hearing has the option of stopping proceedings and having the matter re-investigated in the light of the further information. There could then be a further hearing.)*
- 7.10 Dismissal should not be indicated for a first breach of discipline except in the case of gross misconduct..

Gross misconduct

- 7.11 Gross misconduct is defined as misconduct which is so serious as to make any further relationship and trust between the Prison Service and the member of staff concerned impossible. Serious cases of any misconduct may amount to gross misconduct, e.g. reporting for duty seriously incapacitated by alcohol. *A test of reasonableness must be applied in deciding whether a case constitutes gross misconduct. Some examples of gross misconduct are:*

- trafficking in money, prohibited drugs or alcohol;
- racial or sexual harassment or discrimination;
- membership of racist organisations;
- bullying;

Guernsey Prison

- serious unprofessional conduct;
- assault;
- theft;
- fraud i.e. all intentional irregularities and illegal acts for private gain perpetrated by staff outside or inside the organisation;
- serious acts of negligence causing appreciable loss, injury or damage to Prison Service property;
- failure to obey a lawful and reasonable order or written instruction, leading directly to serious disorder or loss of control;
- conviction of criminal offence - or receipt of a police caution for an offence - such as:
 - any racially motivated crime;
 - any offence of violence;
 - burglary, robbery or theft;
 - trafficking;
 - corruption;
 - drugs related offences;
 - any serious offence of criminal damage or arson;
 - sexual offences;
 - fraud.

Notification to the member of staff to be disciplined

7.12 *The decision to take formal disciplinary action must then be notified to the member of staff concerned, by giving them in person (or where, exceptionally, that is not possible, by sending them):*

- *a statement (DAPS F4 (Annex B)):*
 - *outlining the alleged misconduct;*
 - *indicating the range of possible penalties; and*
 - *inviting them to indicate whether they accept that the allegation is true or wish to contest it and to offer further comments.*

Guernsey Prison

- *reminding them of their right to be accompanied at the hearing by a trade union representative or work colleague.*
 - *indicating the witnesses that it is intended to call to attend the hearing*
- 7.13 *The statement of alleged misconduct must be signed by the responsible manager or another manager (not the investigating officer) who must hand it to the member of staff facing disciplinary action in person.*
- 7.14 The description of the alleged misconduct should be in straightforward everyday language, avoiding legalistic terminology.
- 7.15 *An extra copy of the statement must be provided for the member of staff to pass to their trade union representative or work colleague if they so wish;*
- 7.16 *Copies of all written evidence which may be used at the disciplinary hearing must be provided to the member of staff, subject to paragraph 7.17 below. In addition, the member of staff must also be provided with any other evidence obtained during a preliminary investigation which may be relevant to their case, and the names of any other individuals who may be asked to attend the hearing.*
- 7.17 *The person conducting the hearing must provide justification for withholding any piece of evidence. The general presumption must be that everything is disclosed, including a copy of the investigation report.*
- 7.18 If a member of the HR Department is to attend the hearing to advise on procedure then the person conducting the hearing should contact that Department at this stage and forward the papers to them.

Timetable

- 7.19 *Any decision to take formal disciplinary action must be communicated to a member of staff as soon as possible and in most cases before a period of two weeks has elapsed: either from the receipt of the investigation report by the person who commissioned the investigation (or by the nominated responsible manager) or following confirmation of the facts where no investigation has been undertaken, Exceptions to this timescale could include where the police are investigating or where a responsible manager is not available within the timescale.*
- 7.20 In cases where timescales are not met, it is ultimately for the appeal authorities to decide whether a delay was unacceptable, such as to render the disciplinary proceedings unfair.
- 7.21 A decision should be made earlier than the deadline if this is at all possible.
- 7.22 *The member of staff must reply to the statement of alleged misconduct within 2 weeks of its receipt indicating whether they accept the allegation of misconduct or wish to challenge it and to offer any further comments The member of staff must be given the opportunity to ask for witnesses to attend*

Guernsey Prison

the disciplinary hearing, and must indicate why their attendance is relevant. The DAPS F5 should be used for this purpose.

Where the penalties are warnings only

7.23 *The hearing must take place within two weeks of the expiry of the 2 weeks time limit given to the member of staff concerned to respond to the allegation of misconduct.*

Where other more serious penalties are indicated

7.24 *The hearing must be held within four weeks of the expiry of the 2 weeks time limit given to the member of staff concerned to respond to the allegation of misconduct*

The right to be accompanied at a disciplinary hearing

7.25 See paragraph 5.26

7.26 It may be difficult to find an early date for a disciplinary hearing which is convenient for all concerned. However, this should take priority over most other commitments and where necessary key people (e.g. the member of staff concerned, trade union representative, or work colleague, the investigating officer and important witnesses) may be asked to attend when off duty or even, for serious cases, when on leave.

Refusal to attend a disciplinary hearing

7.27 Members of staff who are unwilling, without good reason, to respond to a statement of alleged misconduct and/or to attend a disciplinary hearing may have their case decided in their absence.

Attendance at a hearing when on sick absence

7.28 The fact that a member of staff is on sick leave when facing a disciplinary hearing, or when called as a witness, should not automatically cause a delay in dealing with the matter. *Managers must consider the nature of the illness or injury, and decide whether it is reasonable to continue with the disciplinary hearing in the circumstances.*

7.29 In general, however, when a member of staff has a sick certificate which indicates they are unlikely to be able to attend a disciplinary hearing, the hearing should be postponed. The responsible manager should seek to establish whether the nature of the illness prevents the member of staff attending and for how long the illness is likely to last and may wish to seek the advice of The Medical Officer of Health. It may be that the processes in the Operational Order in sick absence/attendance need to be followed

7.30 If the medical advice is that the sick absence is likely to be longer than 6 weeks or that it is not possible to establish the likely length of the absence then the responsible manager may decide to proceed with the disciplinary hearing.

Guernsey Prison

- 7.31 *A date should be set and the member of staff must be advised that the hearing will go ahead on this date in their absence. They must be offered the following options:*
- *to attend a hearing in person even if not fit for full duty;*
 - *to submit a detailed written reply to the allegation or, if called as a witness, a written account of the relevant evidence; and/or*
 - *to brief a trade union representative or work colleague to attend the hearing as their representative and on their behalf.*
- 7.32 *The member of staff must reply within one week. The hearing can then go ahead on the date proposed by the responsible manager.*
- 7.33 It is the interests of both the individual and the Service that the disciplinary proceedings should be resolved as quickly as possible. The responsible manager will need to take account of all the circumstances of the case before deciding to proceed in this way.

Responsibility for arranging the hearing

- 7.34 It is the responsibility of the Administration Manager to arrange the date of any hearing.

Witnesses

- 7.35 Where possible, the person conducting the hearing and the member of staff will seek to reach agreement on which witnesses should be invited to attend. *In cases of doubt the person conducting the hearing must ensure that he or she clearly understands why the attendance of a named individual has been requested.*
- 7.36 If less essential and/or largely uncontroversial witnesses are unable to attend on a set day, written statements may be used, with agreement.
- 7.37 Reasonable expenses incurred by a witness in attending a disciplinary hearing may be reimbursed.
- 7.38 Those assisting a member of staff either as a trade union representative or work colleague at a hearing will be allowed reasonable facility time to prepare for the hearing and to treat attendance at the hearing itself as duty time.
- 7.39 The person conducting the hearing may refuse to call witnesses named by a member of staff, citing with an explanation in writing (DAPS F6 Annex B) one or more of the following grounds:
- irrelevance;
 - because it is clearly impracticable (for example, when the witness is a prisoner who has since been discharged and cannot be traced);

Guernsey Prison

- because the witness cannot be available within an acceptable timescale;
- because there is no dispute over facts; or
- because their presence would clearly not add to the information already available (e.g. from others attending).

Guernsey Prison

SECTION 8 THE HEARING

- 8.1 This Operational Order does not prescribe any particular procedure for conducting a formal disciplinary hearing but there are some important general requirements. These include:
- conducting the procedure in a way which an objective observer would consider reasonable;
 - handling matters with discretion and in confidence;
 - allowing the member of staff to state their case and challenge any evidence before a decision is made.
- 8.2 The disciplinary hearings should normally be conducted by the Prison Governor. However, when the Governor is on a period of protracted absence from the prison, or is otherwise prevented from taking the hearing, this responsibility may be devolved to an Assistant Governor.
- 8.3 The discipline of, nurses, chaplains and other professional and specialist staff can often raise difficult issues, because of the division of responsibility for such staff between the Governor and member of staff's professional management. *Governors must therefore consult the Home Departments HR Unit for general guidance in such cases, as well as consulting the professional specialist managers.* It should be recognised that specialist input may also be required when dealing with officers whose specialisms is a factor in the disciplinary action.
- 8.4 The decision on whether a professional manager should take part in a hearing involving a professional will depend on the nature of the alleged offence. *In all cases where the alleged misconduct appears to involve professional failings or inadequacy, a professional manager must be present and may conduct the hearing with the Governor.*
- 8.5 A HR representative attends hearings in the main to advise the person conducting the hearing on procedure and similar cases.
- 8.6 Procedural advice should normally be made available to both parties, but advice may be given to either party in confidence.
- 8.7 *All disciplinary hearings must be tape-recorded.*

Evidence to be taken into account

- 8.8 *A disciplinary hearing must not take account of any evidence which has not been made available to the member of staff concerned.*
- 8.9 The person conducting the hearing should ensure as far as possible the right of every member of staff or their trade union representative or work colleague to challenge fully the evidence presented and ask questions directly of

Guernsey Prison

witnesses. The person conducting the hearing has discretion to control the questioning in the following respects:

- there may be occasions when they may require that any questions be put through them rather than directly to a witness;
- they may exclude any questions which they see as unreasonable, irrelevant or intimidating.

8.10 Particular sensitivity may be required in the questioning of witnesses in cases involving alleged racial or sexual harassment, especially in cases including allegations made by prisoners.

8.11 *Where a member of staff is required to attend a disciplinary hearing and reasonably requests to be accompanied, the person conducting the hearing must allow the member of staff to be accompanied by a trade union representative or work colleague.*

Adjournments

8.12 The person conducting a hearing may adjourn the hearing to enable additional, relevant information to be collected, or for other necessary reasons. *If a serious procedural dispute arises during the hearing the person taking the hearing must consider carefully and decide whether or not to allow an adjournment to determine how the matter might be resolved. The adjournment should normally be for not more than 24 hours.*

8.13 *If further evidence or new witnesses are discovered during an adjournment, the member of staff should be presented with copies of the new evidence and the names of new witnesses before the hearing reconvenes. The member of staff may then request a further adjournment, for up to 14 days, to prepare a response. This must be granted.*

8.14 It may be that, during a hearing that appeared to be minor, substantial new evidence emerges of more serious misconduct by the member of staff concerned, which if proved could justify one of the more serious penalties than originally indicated. *The person conducting the hearing must adjourn to decide whether a new investigation and hearing is required.*

8.15 There may be cases which turn out to be less serious than originally envisaged. However, as the person conducting the hearing has the power to impose the full range of penalties (including minor ones), it will probably be simplest and most cost-effective for the case to be concluded at that time. *In these circumstances, the person conducting the hearing must indicate at the earliest opportunity that the higher penalties are now not under consideration.*

The outcome of the disciplinary hearing

8.16 *If the alleged misconduct is found not proven, the member of staff must be told accordingly.*

Guernsey Prison

8.17 *If the alleged misconduct is found proven, the person conducting the hearing must, before deciding what action to take in the light of the hearing, allow the member of staff to enter a plea of mitigation, allowing an adjournment if requested, and must also take into account:*

- *the employee's disciplinary record (but disregarding any spent penalties - see paragraphs 9.19 - 9.22), general record, position and length of service;*
- *any mitigating circumstances, e.g. personal, domestic or social;*
- *the nature and seriousness of the misconduct involved;*
- *any advice given by a professional or specialist manager if present.*

8.18 *After all relevant information has been heard, the person conducting the hearing must inform the member of staff orally of his or her conclusions and, where appropriate, of the form of any disciplinary action to be taken and the reasons for this. In conveying conclusions to the member of staff the person conducting the hearing must give the specific reasons which led to those conclusions. These must also be recorded in paragraph 1 of DAPS F9.*

8.19 *Where a hearing results in the misconduct being found proved a copy of the record of the hearing must be sent to the member of staff (DAPS F7). They must be given an opportunity to comment on the record and any comments must be kept with the record on the member of staff's file.*

8.20 The record of the hearing should be taken by a member of staff. There is no requirement for the record to be verbatim but it should be written up precisely, and agreed, at the earliest opportunity.

8.21 *A copy of the record of hearing must be given to the Administration Manager.*

Good Practice at a disciplinary hearing

8.22 The following outlines a 'good practice' hearing, enabling the hearing to be undertaken in a fair and logical manner:

- Say who is to record the evidence - not necessarily verbatim - and that the hearing will be taped.
- It may be helpful to ask the investigating officer to outline the investigation and its conclusions
- If appropriate, introduce the representative from the Home Departments HR Unit and ask him or her briefly to explain their role.
- Check if the member of staff has nominated a trade unions representative or work colleague to act on their behalf

Guernsey Prison

- Ask the trade union representative or work colleague to confirm if they are prepared to act
- Ask if the member of staff and /or their trade union representative or work colleague has had sufficient time to prepare for the hearing.
- Explain that if the member of staff or trade union representative or work colleague wishes to adjourn the proceedings at any time, they should so indicate. Similarly, if the person hearing the case feels it is necessary to adjourn, he or she will advise accordingly.
- Explain that either the member of staff or trade union representative or work colleague may speak. The member of staff may dispense with trade union representative or work colleague at any stage in which case they would be asked to withdraw.
- Check if any other procedural points arise.

8.23 Hearing starts

- State "Mr/Mrs/Miss/Ms **** we are here to investigate an allegation of misconduct against you" (read out allegation of misconduct on DAPS F4) "Do you understand the allegation?"
- State "Mr/Mrs/Miss/Ms **** please confirm that you have been served with (all documents listed on DAPS F4 and DAPS F5)"
- Ask "Do you accept the allegations, or do you wish to challenge them?" (Even if member of staff accepts the allegations are true, the person conducting the hearing should proceed to review the admission and evidence in order to satisfy himself or herself that it is reasonable to find the misconduct proved.)
- Explain how you intend to conduct the hearing, e.g. to allow questions of witnesses; to allow member of staff, trade union representative or work colleague to make statements; to request adjournments if needed etc.

8.24 The witnesses

- Summon each witness in turn, first those listed on DAPS F4 and then those listed on the DAPS F5.
- State to each witness: "You have been asked to attend this hearing under the Operational Order on Conduct and Discipline in the Prison Service. You should give your evidence clearly and precisely. When you have finished I or [accused member of staff] may wish to ask further questions. When you leave this hearing you must not discuss your evidence with anyone. Do you have any questions about the procedure?"
- Witness may be asked to read out statement, or questioning of witnesses may begin. . The person conducting the hearing begins questioning those

Guernsey Prison

witnesses listed on the DAPS F4; the member of staff or representative begins questioning of those witnesses listed on DAPS F5.

- At conclusion of a witness's evidence, check that the member of staff and representative have no further questions. Does the person conducting the hearing have any further questions?

8.25 Final representations, decision etc.

- Ask "Before I decide whether these allegations are proven or not, do you wish to make any final representations?"
- Allow the member of staff or trade union representative or work colleague to make final representations.
- Adjourn (if necessary) to consider decision.
- Reconvene, and announce decision. If proven, give a summary of why you found the allegation(s) proven.
- If proven, ask "Before I decide on a penalty, is there anything you wish to say in mitigation?"
- If requested to do so the representative from the Home Departments HR Unit may openly give factual information relating to cases of a similar nature.
- Adjourn (if necessary) and consider penalty(ies), referring to Section 9.
- Reconvene and announce penalty(ies) or informal guidance. Give advice about appeal procedure.
- Close the hearing.
- Arrange for DAPS F7, DAPS F9, DAPS F10 and DAPS F11 to be given to the member of staff.

Guernsey Prison

SECTION 9. PENALTIES

9.1 The disciplinary penalties available when misconduct is found proven are:

Oral Warning)	
Written Warning)	Formal Disciplinary
Final Written Warning)	Warnings
Financial Restitution		
Loss of increment/pay increase or part of an increment or pay increase		
Removal from field of promotion or the opportunity to move to a higher payband		
Regrading		
Downgrading/paybanding		
Dismissal		

Below is an explanation of these penalties and how they can be used.

9.2 **Formal disciplinary warnings**

Before a disciplinary warning is imposed, the member of staff must be told clearly:

- *the reasons for accepting or rejecting evidence;*
- *the period of time in which the warning will remain in force;*
- *the type of misconduct which must not be repeated;*
- *how their conduct will be monitored and that an interview will take place at the end of the review period.*

9.3 The warnings may occur in a sequence for a series of repeated, connected offences (e.g. continuous poor timekeeping) or, exceptionally, for a series of unconnected offences. In addition, any of the three kinds of warning may be given for isolated acts of misconduct, according to the circumstances and gravity of the case.

9.4 Where misconduct persists with no evidence of real improvement and the series of formal disciplinary warnings has been exhausted to the point where a final written warning has been issued, further repetition of the misconduct will normally lead to disciplinary proceedings resulting in dismissal.

9.5 *All formal disciplinary warnings must be recorded on the personal file of the member of staff concerned, and they must be so informed.* The warnings are subject to review at the end of the stated period by the person who made the award or another senior line manager. The object of the review is to ensure that the individual's conduct has improved to a satisfactory standard or that no repetition of the misconduct has occurred.

9.6 The review will take the form of a formal interview at the end of the review period, and it should be an occasion when the individual's conduct is subject

Guernsey Prison

to thorough review by both parties. The member of staff may be accompanied by a trade union representative or work colleague if they so wish. The outcome may be one of the following:

- conduct has been satisfactory over the period since the warning, then no further review is necessary;
- if there has not been sufficient improvement the review period must be extended for a period of no more than six months.

A record of the outcome must be given to the member of staff and kept on their personal file.

9.7 If further misconduct occurs during the review period, it is not necessary to await the end of that period before starting further disciplinary action.

9.8 The review periods are as follows:

- for oral warnings, up to six months from the date of the disciplinary decision;
- for written warnings, normally up to 12 months from the date of the disciplinary decision.

9.9 Formal disciplinary warnings are invariably more suitable than other penalties and should be the most common form of disciplinary action for all types of misconduct.

Financial Restitution

9.10 For damages to property or loss to public funds caused deliberately or by negligence a penalty of financial restitution can be given up to a limit of £600. This is used, normally in conjunction with another penalty, in cases where there is clearly identifiable and quantifiable loss to the Prison Service or another organisation or individual concerned. Examples are damage to property or the taking of unauthorised leave. *Written agreement must be obtained from the member of staff before the amount concerned is deducted from their pay.*

Loss of an increment/pay increase or part of an increment/pay increase

9.11 This should be very rarely used and is only suitable for cases where it is believed that a financial penalty is likely to have a suitable salutary effect on a member of staff's conduct. The loss of an increment/pay increase is the forfeiture of that pay increase. The member of staff will not receive the increase(s) specified during a period, not to exceed twelve months. At the end of the period specified they will then be eligible for any increases due in the future. But they will not receive any increases due during the period of forfeiture. The loss of an increase already earned should be used extremely rarely and usually where the only alternative is dismissal. Revalorisation pay increases should not be forfeited.

Guernsey Prison

Removal from the field of promotion/or the opportunity to move to a higher payband

- 9.12 This should normally be used in conjunction with another penalty, in cases where a member of staff who would otherwise be eligible for promotion or for applying for a post in a higher payband has behaved in a manner which suggests they would not at present be suitable. *The length of the ban must be specified and must not exceed three years.* The impact of this penalty includes substitution and temporary promotion.

Re-grading/paybanding

- 9.13 This penalty would normally be used for serious offences, as an alternative to dismissal, in circumstances where the nature of the misconduct has cast doubt on the member of staff's judgement and/or their fitness for the other or more senior grade.

- 9.14 This penalty can involve any of the following:

- Regrading to a lower grade
- Regrading to a lower payband

The responsible manager will wish to consider the impact of these options and whether they wish to remove an individual from carrying out responsibilities at a certain level and/or make this involve financial loss to the individual

Dismissal

- 9.15 This penalty should only be awarded in cases where either a continued pattern of misconduct or an individual act has meant dismissal is the only option.
- 9.16 There is no automatic right to a period of notice for dismissal on disciplinary grounds

Guernsey Prison

Effective date of penalties

9.17 All disciplinary penalties are effective from the date they are awarded by the person conducting the disciplinary hearing. In addition, in cases where dismissal has been awarded and an appeal has been lodged, the member of staff's pay will be stopped with effect from 6 weeks from the date of the original decision to dismiss. *However if the delay in hearing the appeal is attributable to the Prison Service then this period must be extended.*

Recording the penalty

9.18 *Details of any disciplinary penalty must be given in a note (DAPS F9, Annex B) to the member of staff, and a copy placed on their file. It must specify:*

- *the misconduct;*
- *the specific reasons that led to a conclusion of 'proven';*
- *the disciplinary penalty and where appropriate how long it will last;*
- *the reasons for the penalty;*
- *the length of any review period;*
- *the period after which any penalty will be disregarded;*
- *the likely consequences of further misconduct;*
- *the timescale for lodging an appeal and how it should be done.*

Periods after which penalties will be disregarded for further disciplinary purposes.

9.19 All disciplinary penalties will be disregarded for future disciplinary purposes after three years, save in the circumstances set out in paragraphs 9.20 to 9.22 below.

9.20 *Removal from the field of promotion will be effective only for the time specified in the original disciplinary decision or as amended as a result of any appeal, and in any case must not exceed three years.*

9.21 Where managers have evidence to suggest a pattern of behaviour in a member of staff, whereby conduct is satisfactory during a warning review period but lapses shortly thereafter, they have discretion to fix a review period of up to five years, with arrangements for periodic appraisal within that time.

9.22 There may exceptionally be circumstances where misconduct has been so serious - verging on gross - that it cannot realistically be disregarded for future disciplinary purposes for a long time to come. *In such circumstances it must be made very clear to the individual when the final written warning or*

Guernsey Prison

other penalty is given that it can only be removed after five years. It must also be made clear that any recurrence of misconduct within the "live" period of the penalty will probably lead to dismissal.

Timetable

9.23 Unless there are acceptable reasons for delay:

- *for cases where the potential penalties are warnings only:- the decision must be given within 48 hours of the conclusion of the hearing.*
- *for cases involving more serious penalties:- the decision must be given within two weeks of the conclusion of the hearing.*

Guernsey Prison

SECTION 10: SUMMARY DISMISSAL**Procedure for summary dismissal of members of staff who receive serious criminal convictions****Mandatory**

- 10.1 *The Prison Governor will inform the Minister for Home Department before invoking this procedure.*
- 10.2 Summary dismissal may be used for a member of staff who has received a criminal conviction.
- 10.3 *Under this procedure the member of staff must be informed by the Prison Governor of:*
 - *the intention to dismiss them without a formal disciplinary hearing; and*
 - *their right to appeal under the procedures described in Section 11 below.*
- 10.4 Staff sent to prison on conviction will invariably be dismissed.
- 10.5 A former member of staff who has been dismissed on conviction of a criminal offence and who subsequently has the conviction overturned on appeal, may apply to the Prison Governor for re-employment (up to and including reinstatement) within the Prison Service.
- 10.6 An example of a summary dismissal letter is given in DAPS F15 (Annex B to this Operational Order).

Guernsey Prison

SECTION 11 APPEALS

11.1 There is a right of appeal against all formal disciplinary decisions.

When an appeal is made, one or more of the following grounds must be specified:

- *unduly severe penalty;*
- *evidence not previously taken into account which could affect the original decision;*
- *that the disciplinary proceedings were unfair and breached the rules of natural justice;*
- *that the original finding was perverse;*
- *the original finding was against the weight of the evidence.*

11.2 Appeals will be conducted by the Home Department. Appeals must not be conducted by anyone who has been involved in:

- *the decision to charge*
- *the decision to find the allegation proven*
- *the decision on the level of award*

11.3 Appeals may take the form of written representations or, at the request of the member of staff concerned, a personal interview at which they may be assisted by a trade union representative or work colleague.

11.4 *The body considering an appeal must take the following factors into account:*

- *whether the disciplinary procedures were correctly followed and, if not, whether the appellant was materially disadvantaged;*
- *whether the appellant was given a sufficient opportunity to present their case;*
- *whether the disciplinary finding was consistent with the written and oral evidence;*
- *whether any arguments in mitigation were given due weight;*
- *whether the penalty was reasonable, given the seriousness of the misconduct;*
- *the appellant's disciplinary record, general record, position and length of service;*

Guernsey Prison

- *any other factors which the appellant may produce as evidence of an unfair finding or penalty.*
- 11.5 *If, as a result of evidence produced during an appeal hearing, it is necessary for the body conducting the appeal hearing to seek further evidence before coming to a conclusion the appellant must be able to see and comment on any such additional evidence obtained in this way.*
- 11.6 The body conducting the appeal may:
- approve the penalty;
 - reduce it;
 - find that the allegation of misconduct was not satisfactorily substantiated; or
 - order a re-hearing of the case by an alternative responsible manager.
- 11.7 *The outcome of the appeal must be notified in writing (on form DAPS F12, Annex B to this Operational Order) and include a note of the appeal hearing.*
- 11.8 Timetable:**
- Unless there are acceptable reasons for delay:
- *a member of staff must notify the appropriate appeal authority of their wish to make an appeal within **one week** of being informed of the disciplinary decision;*
 - *they must then either submit their case in writing and/or request an interview, within a further **two weeks**;*
 - *if an interview is requested, it should be held within **three weeks** of receipt of the appeal by the appeal authority;*
 - *where additional evidence is obtained following the appeal hearing, the appellant must be advised of that further evidence and given the opportunity to comment. Any such comment must be submitted within one week of its receipt by the appellant.*
- 11.9 The following suggested procedure may be helpful to the person hearing the appeal:
- introduce those present, their roles and explain the procedure you will follow;
 - explain the grounds of appeal you can consider and the possible outcomes of the appeal;

Guernsey Prison

- explain that you have read any written representations and ask if the member of staff or their companion wish to say anything to clarify or add to the written representations;
- ask any questions that you feel would help you understand or clarify the grounds of appeal;
- you may find it helpful to summarise your understanding of the appeal and the key issues you are being asked to consider;
- give the member of staff or their companion one final opportunity to summarise their position;
- explain that you will now consider all the points that have been raised and that you may seek further clarification if necessary before reaching your decision;
- after the appeal hearing consider all the points raised and seek further clarification if necessary;
- if you are minded to change the original decision you should consult with the manager who took the original decision before you decide;
- write to the member of staff notifying them of your decision using the format contained in the DAPS F12.

Right of external appeals against dismissal

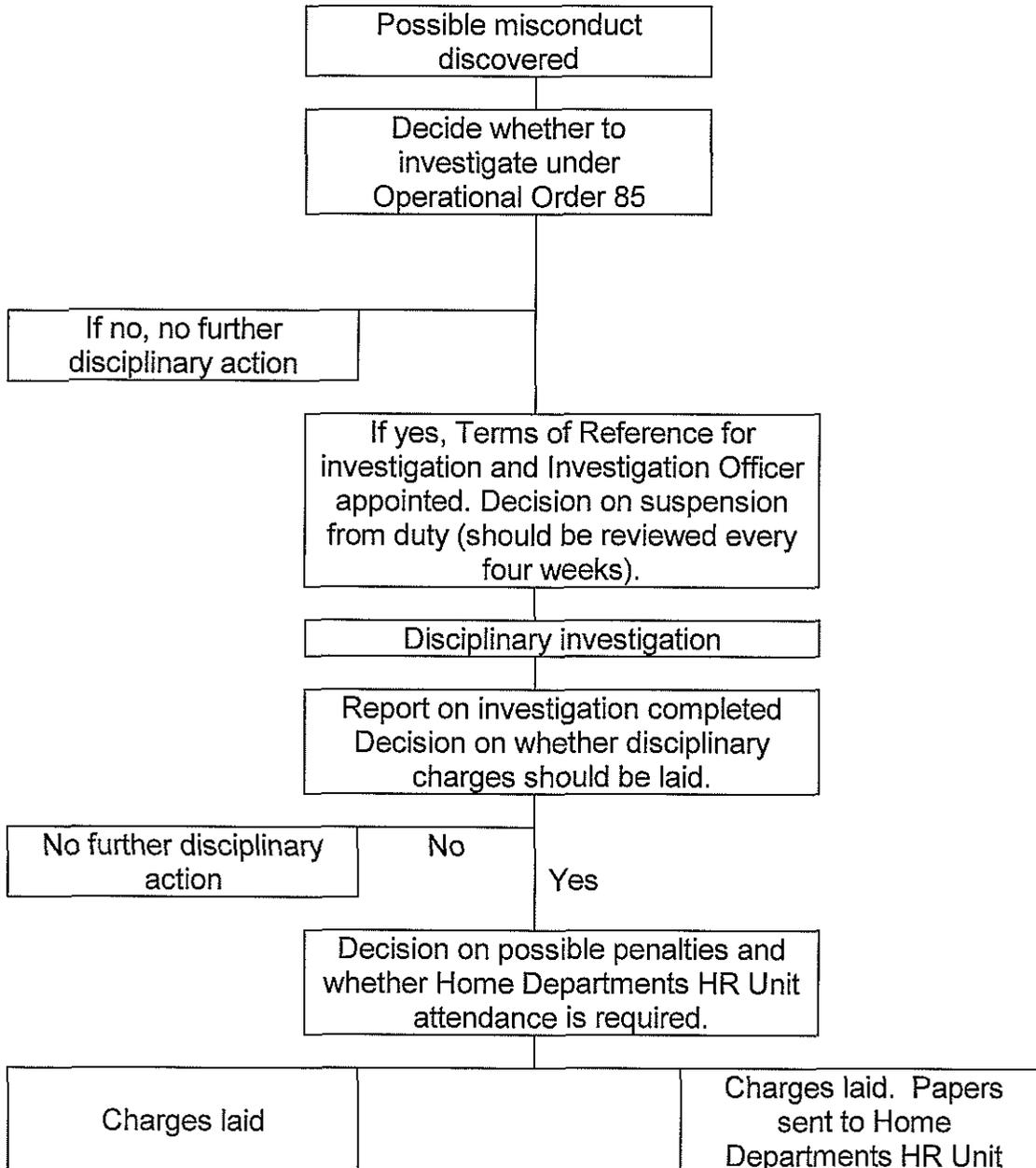
- 11.10 Subject to a 'qualifying period of employment', any employee who has been dismissed may exercise their statutory right to make a complaint of unfair dismissal under the Employment Protection (Guernsey) Law, 1998. (Advice on unfair dismissal is available from the Commerce and Employment Department)
- 11.11 If the member of staff makes an application to an Employment Tribunal the person responsible for the decision to dismiss would be expected to instruct the Law Officers to represent the Prison Service.

Guernsey Prison

PART 3

SECTION 12 FLOW CHART SHOWING THE POSSIBLE STAGES IN THE DISCIPLINARY PROCESS

Stages leading up to a hearing



Guernsey Prison

SECTION 13. TIMETABLE FOR DISCIPLINARY ACTION**Principle**

13.1 It is in the interests of both justice and fairness that all matters relating to disciplinary action are handled as speedily as possible.

Mandatory**Investigations**

13.2 *Investigations must be time bounded and reports dated to show when they were completed and when they were received by the responsible manager*

Decision to take formal disciplinary action

13.3 *This must be communicated to the member of staff (DAPS F4) **within two weeks** of the receipt of the investigation by the commissioning officer or the nominated responsible manager, or following confirmation of the facts where no investigation has been undertaken, unless special circumstances intervene, for example a police investigation is also being conducted (see para 5.10)*

Response from member of staff

13.4 *The member of staff must indicate **within two weeks** of receipt of the statement (DAPS F4) of alleged misconduct whether they accept the allegation or wish to challenge it and offer further comments (DAPS F5). If the member of staff does not respond within two weeks disciplinary proceedings may still take place.*

Date of hearing where the penalties are warnings

13.5 *The hearing must take place **within four weeks** of the issue of the DAPS F4.*

Date of hearing where other more serious penalties are indicated

13.6 *The hearing must take place within four weeks of the expiry of the 2 weeks time limit given to the member of staff concerned to respond to the allegation of misconduct.*

Papers to the HR Department

13.7 *The necessary papers must be sent to the Home Departments HR Unit **within three weeks** of the issue of the DAPS F4 where their attendance has been requested.*

13.8 *The hearing must take place **within three weeks** of the receipt of the papers by the Home Departments HR Unit.*

Guernsey Prison

Postponement for member of staff on sick absence

13.9 *If a member of staff has a sick certificate indicating they are unlikely to be able to attend the hearing **within six weeks**, they must be offered the option of attending the hearing, submitting a written response or briefing a trade union representative or colleague to attend on their behalf.*

Postponement for attendance of trade union representative or work colleague

13.10 Such postponement can be for no longer than 5 days from the original date.

Response from member of staff on sick absence

13.11 *The member of staff must reply to the options above **within one week**.*

Hearing adjournments

13.12 13.12 Adjournments should not normally be for longer than **24 hours**.

13.13 If further evidence or witnesses are discovered the member of staff may request a further adjournment for up to **fourteen days** to prepare a response. This should be granted save in exceptional circumstances.

Where warnings only are possible outcome

13.14 *The decision must be given **within 48 hours** of the conclusion of the hearing unless there are acceptable reasons for delay.*

Where more serious penalties are possible outcome

13.15 *The decision must be given **within two weeks** of the conclusion of the hearing unless there are acceptable reasons for delay.*

Record of hearing

13.16 *Where a case is proven, the record of the hearing (DAPS F7) and the confirmation of result of disciplinary hearing (DAPS F9) must be provided as soon as possible to the member of staff, and in time for them to submit their case in writing if they are appealing.*

Notification of appeal

13.17 *The member of staff must notify the appeal authority of their wish to make an appeal (DAPS F10) **within one week** of being informed of the disciplinary decision unless there are acceptable reasons for delay.*

Submitting the case for appeal

13.18 *The member of staff must then submit their case in writing and/or request an interview (DAPS F11) **within two weeks** of submitting the DAPS F10.*

Guernsey Prison

Appeal date

13.19 *The appeal must be considered **within three weeks** of receipt of DAPS F11 by the Appeal Authority unless there are acceptable reasons for delay.*

Further evidence

13.20 *If further evidence is obtained after the appeal and submitted to the appellant they must provide any comments on this to the Appeal Authority **within one week** of receiving it.*

Acceptable delay

13.21 There will be cases where there are acceptable reasons why the timescales described above cannot be met. In such cases, it will ultimately be for the appeal authorities (internal and external) to decide whether a delay was unacceptable, such as to render disciplinary proceedings unfair.

Guernsey Prison

SECTION 14 RECORDS OF DISCIPLINARY ACTION

- 14.1 In all cases where formal disciplinary proceedings have been taken and have resulted in a formal disciplinary penalty, the records will be kept on the member of staff's personal file for a minimum of 10 years in accordance with Operational Order 85; however, records of spent penalties will be disregarded where any future disciplinary action is under consideration (see paragraphs 9.19 - 9.22).
- 14.2 Records of disciplinary proceedings in which the alleged misconduct was unproven should also be kept in accordance with Operational Order 85. Access to the records will be controlled by the Administration Manager on the authority of the commissioning authority.
- 14.3 *The forms in Annex B of this Operational Order must always be used as part of the disciplinary procedures. If these forms are not used, the person taking the hearing must decide whether the relevant information has been conveyed satisfactorily to the member of staff.*

Guernsey Prison

ANNEXES**ANNEX A****STAFF CONVICTED OF CRIMINAL OFFENCES**

1. The purpose of this notice is to explain and bring to attention the policy adopted toward staff who are convicted of criminal offences, and the effect this may have on their continued employment in the Prison Service.
2. It should be noted that the general policy outlined in this notice applies to all staff working in the Prison Service, the great majority of whom have direct contact with prisoners, although each case will be judged on its merits.

General policy on criminal convictions

3. Staff should be aware that if they are convicted of criminal offences they run the risk of dismissal or other disciplinary action. This applies to offences committed off duty as well as those committed at work. Because prison staff are charged with the care and custody of those who have been convicted by the courts, staff who themselves receive criminal convictions place in doubt their continued suitability for the task. This is because their credibility with prisoners, who are under their control and subject to their discipline, and with the public, is weakened and they become vulnerable to pressure, blackmail or allegations by prisoners. This is true not only of prison officers, but of all those who have direct contact with prisoners whether they are governors, administrative staff, or others.
4. Although there are clear cut cases where individuals, by their actions, clearly disqualify themselves from continued employment in the Prison Service, there are others where the issues are less clear-cut and a fine judgement has to be made. In the past, the Prison Service had adopted a case by case approach in such circumstances, and will continue to do so. The key question is the effect which the conviction will have on the individual's employability. If the Prison Service feels that criminal conviction will make it impossible for the individual concerned to perform their job effectively, then dismissal will result. Staff may find it helpful to know what questions will be looked at when dismissal is being considered, these are:
 - the practical implication for the member of staff in their job;
 - the effect of the criminal conviction on their relationship with prisoners;
 - the effect on their relationship with colleagues;
 - whether the conviction makes them liable to pressure or blackmail;
 - whether the conviction raises a fundamental doubt as to the member of staff's honest or reliability under pressure;

Guernsey Prison

- whether similar or related offences have been committed in the past.

Account will also be taken where relevant of the member of staff's service record, mental or physical state of health and their domestic circumstances.

5. It should be noted that the standards applied to probationers, who have no record within the Service against which to be judged, will be particularly rigorous.

Police cautions

6. Disciplinary action may also be considered where a caution has been issued to a member of staff by the police for an offence regarded as particularly serious by the Prison Service, for example possession of prohibited drugs.

Requirement to notify management when charged with a criminal offence or cautioned by the police

7. Staff are required to notify the management if they are charged with a criminal offence including road traffic and drink-driving offences, or if they receive a caution from the police.

Suspension

8. As indicated in the Operational Order on Conduct and Discipline management has power to suspend staff who are having criminal proceedings brought or made against them.

Convictions resulting in a prison sentence

9. Staff sent to prison on conviction for any criminal offence will normally have their services terminated.

Convictions on other serious matters not resulting in imprisonment

10. Some offences are regarded as particularly serious in disciplinary terms and will invariably result in dismissal. These are:
 - any racially aggravated crime;
 - any offences of violence;
 - burglary, robbery and theft;
 - fraud
 - trafficking
 - corruption
 - drugs-related offences

Guernsey Prison

- any serious offence of criminal damage or arson;
 - sexual offences
11. Where a member of the Prison Service has been convicted of any such offence, but not imprisoned, dismissal will normally follow unless Prison Service management can be convinced that the individual's ability to continue to work effectively and honestly has not been damaged beyond repair. The standards applied to judge the member of staff's continued employability will be those set out in paragraph 4. As in the past, members will be able to put their case of dismissal by way of personal hearing or by making written representations.
 12. Where a court has considered an offence sufficiently serious to justify a suspended sentence or making a probation order, Prison Service management will need weighty evidence to convince it that dismissal is not an appropriate outcome.
 13. A police caution in respect of one of the serious offences listed in paragraph 10 may lead to disciplinary action which could result in dismissal or another disciplinary penalty.

Offences of violence

14. Offences of violence, even if committed off duty, and including domestic violence, gravely prejudice the continued employability of staff who have direct contacts with inmates. This is because the Service cannot afford to take the risk of employing anyone who shows signs of having a violent disposition. Moreover staff with such convictions are vulnerable to allegations of assault from prisoners.

Drugs-related offences

15. Any person known to be a user or to have any involvement in drugs is highly vulnerable to pressure and manipulation from prisoners. For this reason, any member of staff convicted of a drugs-related offence, on or off duty, however minor in criminal terms, will be dismissed.

Drink-driving and other serious driving convictions

16. Driving while under the influence of alcohol is regarded with increasing severity by society in general. Staff convicted of a drink driving offence may be subject to disciplinary action including a disciplinary warning. A second such conviction within three years will automatically result in disciplinary action which could lead to dismissal. Additionally, a serious first offence - for example dangerous driving under the influence of alcohol which causes death or injury - may result in dismissal. Other serious driving offences are

Guernsey Prison

also likely to lead to disciplinary action. Staff are reminded that they should seek help from their manager if they feel they have an alcohol problem.

Appeals

17. Under the terms of the Operational Order on Conduct and Discipline, staff may appeal against a decision to dismiss through a personal hearing. An appeal is also possible to an Employment Tribunal.

Right to trade union support

- 18 Any member of staff facing disciplinary proceedings is entitled to be accompanied at any formal interview or hearing by a Trade Union representative or work colleague.
19. This notice has been produced after consultation with the relevant Trade Unions.

ANNEX B**DISCIPLINARY FORMS**

This Annex comprises all the forms that should be used. If these forms are not used, the person responsible for the disciplinary process will need to decide whether the relevant information has been provided satisfactorily. This is particularly important in relation to members of staff who are interviewed as part of an investigation or may be the subject of the disciplinary action.

There are sixteen forms attached and they are:-

- DAPS F1 Notice of disciplinary investigation - for members of staff who may be witnesses
- DAPS F2 Notice of disciplinary investigation - for members of staff under suspicion
- DAPS F3 Notification of suspension
- DAPS F4 Statement of alleged misconduct
- DAPS F5 Information for disciplinary hearing
- DAPS F6 Notice of disciplinary hearing
- DAPS F7 Record of disciplinary hearing
- DAPS F8 Acknowledgement of receipt of record
- DAPS F9 Notification of result of disciplinary hearing
- DAPS F10 Appeal - Notification by member of staff
- DAPS F11 Appeal - Grounds
- DAPS F12 Notification of appeal result
- DAPS F13 Review of disciplinary warning
- DAPS F15 Example of summary dismissal letter

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Notice of disciplinary investigation
(for use with possible witnesses)

To:

1. In accordance with the procedure set out in the Operational Order on Conduct and Discipline this note informs you that on behalf of the Governor, I am enquiring into:

.....
.....

..... (details)

in order to find out what happened and to consider whether formal disciplinary proceedings should be initiated.

2. Any information which emerges from an investigation may be used in disciplinary proceedings. Staff are required to offer co-operation in their own interest and in that of the Prison Service.

3. You have the right to be accompanied by a trade union representative or work colleague when being interviewed.

Signed:

Date:

Received:

Signed:

Date:

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Notice of Disciplinary Investigation
(for use with member of staff under investigation)

To:

1. In accordance with the procedure set out in the Operational Order on Conduct and Discipline this note informs you that on behalf of the Governor I am enquiring into:

.....
..... (details)

in order to find out what happened and to consider whether formal disciplinary proceedings should be initiated against you.

2. Any information which emerges from an investigation may be used in disciplinary proceedings. Staff are required to offer co-operation in their own interests and that of the Prison Service.

3. If a decision is made to initiate formal disciplinary proceedings against you, you will receive a statement of alleged misconduct on form DAPS F4 within two weeks of the completion of these enquiries. You will then have two weeks to respond, and a hearing will normally follow within a month after that.

4. You have the right to be accompanied by a trade union representative or a work colleague whilst being interviewed.

Signed:

Date:

Received:

Signed:

Date:

Guernsey Prison
RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Notification of Suspension

To:

1. In accordance with the procedure set out in the Operational Order on Conduct and Discipline, this note informs you that you are suspended from duty with effect from (date). The suspension is *with/without pay.

2. The reason why I have concluded that you should be suspended is:
.....
.....
.....
.....

3. Until further notice, you should report to:
..... (name of line manager) each
.....(days of the week) at
.....(time).

You must notify them of any intended overnight absence from your usual address. You may apply to them to be allowed to take annual leave and must notify them if you would be unfit to attend work due to sickness. Any failure to comply with these conditions may result in your pay being stopped.

4. Whilst you are under suspension, you are liable to be recalled for duty at any time.

5. I will review your suspension every four weeks.

6. You may make representations against this decision to
.....

Signed:(Governor/Asst Governor)
Date:

cc: HR Home Department
Received:
Signed:.....
Date:.....

(* Delete as appropriate)

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Statement of Alleged Misconduct

To:

1. It is alleged that you have behaved in a manner which is in breach of the standards of conduct set out in the Operational Order on Conduct and Discipline. Details of the allegation(s) are as follows:

.....
.....
.....
.....
.....
.....

2. If misconduct is proved, you are likely to be subject to any of the penalties which are ticked below:

- Oral Warning
- Written Warning
- Final Written Warning
- Financial Restitution
- Loss of increment/pay increase or part of increment/pay increase
- Removal from eligibility for promotion for a specified period
- Re-grading to(grade/payband)
- Dismissal

For use if dismissal box is ticked:

3. You will note that I have ticked the dismissal box. This is because,
- although you have no previous misconduct against you, the misconduct, if proved, amounts to gross misconduct - that is, it makes any further relationship and trust between the Prison Service and you impossible; or
 - the misconduct, if proved, is a serious example of repeated misconduct.

Guernsey Prison

(● delete as appropriate)

4. You will shortly be invited to attend a disciplinary hearing. The hearing will be conducted by who will assess your conduct and come to a decision. You are entitled to be assisted at the hearing by a trade union representative or work colleague.

5. The following documents which are relevant to the allegation(s) and may be used at the hearing are attached:

6. The following individuals will also be asked to attend the hearing for the reasons given below:

Name	Reason
.....
.....

7. You may if you wish choose not to attend the hearing, in which case the matter will be decided on the basis of the evidence available.

8. You must return the attached form DAPS F5 (Information for Disciplinary Hearing) together with any enclosures you may wish to include, to(name) by two weeks from the date you receive this form. If the DAPS F5 is not returned within that period, disciplinary proceedings may take place on the basis of the evidence available.

9. Further information about the disciplinary procedure is contained in the Operational Order on Conduct and Discipline.

10. An additional copy of this document is enclosed, which you may wish to pass to a trade union representative or a work colleague.

Signed:
Date:

cc: Line Manager

Received:
Signed
Date:

RESTRICTED - STAFF

Conduct and Discipline

Guernsey prison

Information for disciplinary hearing

To:

1. You informed me on Form DAPS F4 that allegations of misconduct had been made against me and that formal disciplinary proceedings would be taken against me.

2. I *do/do not wish to attend a disciplinary hearing at which the allegations will be considered.

3. My response to the allegations is as follows (delete any that do not apply):

a] I accept that the allegations are true.

b] I contest the allegations.

c] I would like the officer conducting the hearing to take account of:

i] the attached statements listed below:

ii] contributions from the following individuals who I wish to attend for the reasons given below:

Name	Reasons
------	---------

4. I wish/do not wish (delete as appropriate) to be accompanied at a hearing by a trade union representative/work colleague:..... (name)

Signed:

Date:

Received:

Signed:

Date:

Guernsey Prison

DAPS F6

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Notice of Disciplinary Hearing

To:

1. In accordance with the procedure set out in the Operational Order on Conduct and Discipline, on(date) you are expected to attend a hearing to be conducted by(name), about.....(details).

2. The person conducting the hearing will take account of the written evidence copies of which were attached to form DAPS F4 of(date) and your response on Form DAPS F5 of(date).

3. In addition, the following individuals name on form DAPS F4 or DAPS F5 are expected to attend to make contributions as required.

Name	Why attending.
------	----------------

4. The following individual(s) named on your DAPS F5 will not be invited/are unable to attend (delete as appropriate)

Name	Why not attending
------	-------------------

Signed:
Date:

cc: Line Manager

Received:
Signed:
Date:

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Record of Disciplinary Hearing

Date of hearing:

Person conducting hearing: (name)

Member of staff charged: (name)

Home Departments HR Unit.....(name) (if present)

Trade Union Representative/Work Colleague (delete as appropriate):

.....(name)

Record taker:

Others Attending:

.....
.....
.....
.....

Record of Hearing:

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Acknowledgement of Receipt of Record of Hearing. Please return by.....

To:

1. I acknowledge receipt of the record of the disciplinary hearing held on
.....

2. *I agree that the record is an accurate account of the proceedings/I regard the record as inaccurate and wish the following comments to be taken into account (delete as appropriate). (It should be noted that, if agreed, the record should be amended.)

Comments:

(Continue on a separate sheet if necessary)

Signed:

Date:

RESTRICTED - STAFF

Conduct and Discipline

Notification of the result of the disciplinary hearing

To:

1. Following the disciplinary hearing held on, I reached the following decision:

(Indicate: Whether misconduct was proved or not proved;
if proven, nature of any warning/penalty and reasons for it;
length of any review period;
the period after which the penalty will be disregarded;
likely consequence of further misconduct.)

2. If you wish to appeal you must notify me to that effect using form DAPS F10 (Appeal - Notification) by(date), being one week from your receipt of this note. I will then notify the appropriate appeal authority. You must then submit your case to me using form DAPS F11 (Appeal - Grounds) within two weeks, and I shall forward it to the appropriate appeal authority who will be(name or position). You may ask for your appeal to be heard in person.

3. Please note that on form DAPS F11 you must specify one or more of the following grounds for your appeal:

- Unduly severe penalty;
- New evidence which could affect the original decision;
- That the disciplinary proceedings were unfair and breached the rules of natural justice;
- That the original finding was perverse;
- That the original finding was against the weight of the evidence.

4. If you fail without good reason to lodge your appeal within the time limits specified, your appeal may be disallowed.

5. Copies of forms DAPS F10 & DAPS F11 are attached.

Signed: (the person who conducts the hearing)

Date:

Received:

Signed:

Date:.....

cc Appeal Authority, Line Manager

Guernsey Prison

DAPS F10

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Appeal - Notification

To:..... (person who conducted hearing)

1. I give notice that I intend to appeal against the decision taken at the disciplinary hearing held on that I would be subject to the following penalty:

.....
.....

2. I will submit a completed form DAPS F11 by (date no longer than two weeks from submission of this form.)

Signed:

Date:

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Appeal - Grounds

To: (*person hearing appeal*)

1. As a result of the disciplinary hearing held on(*date*), it was decided that I would be subject to:

(insert details of penalty)

2. I wish to appeal against that decision on the following grounds:

- unduly severe penalty;
 - evidence not previously taken into account which could affect the original decision;
 - that the disciplinary proceedings were unfair and breached the rules of natural justice.
 - that the original finding was perverse;
- the original finding was against the weight of the evidence

(Tick one or more which may apply.)

3. These grounds are supported by the attached statement and documents listed below. [*delete if no documents are attached*]

4. I do/do not wish (delete as appropriate) to attend an appeal hearing

5. I will/will not (delete as appropriate) be accompanied by a trade union representative or work colleague.

Signed:

Date:

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

To: (*appellant*)

1. You appealed against the decision made by (*person who conducted hearing*) on (*date of hearing*) that the allegation was found proved and you should be subject to (*details of penalty*).

2. I have considered the grounds of appeal made by you on your form DAPS F11 dated..... I have also considered (include as appropriate):

- the statements and documents you submitted;
- the points you made at the appeal hearing;
- the points made on your behalf by your trade union representative/work colleague at the appeal hearing.

3. My decision is:
.....

4. I attach a record of the appeal hearing.

Signed:

Date:

cc: Line Manager/Person who conducted the hearing
Personal File.

Further Appeal

Subject to a 'qualifying period of employment', any employee who has been dismissed may exercise their statutory right to make a complaint of unfair dismissal under the Employment Protection (Guernsey) Law, 1998. (Advice on unfair dismissal is available from the Commerce and Employment Department).

If you have been dismissed under the summary dismissal procedure, you may following a successful appeal against a criminal conviction be considered, for re-employment.

RESTRICTED - STAFF

Conduct and Discipline

Guernsey Prison

Review of Discipline Warning

To:

1. It was decided at the disciplinary/appeal (delete as appropriate) held by (name) on(date) that you should be subject to an *oral/written/final warning to be reviewed after months.

2. The review interview was held on (date). The outcome was as follows: (tick as appropriate)

Your conduct has been satisfactory and no further review is therefore necessary.

As your conduct has not improved sufficiently to be regarded as satisfactory, a further review will be held after a further months. The areas of your conduct which continue to be unsatisfactory are detailed on the attached sheet.

Your conduct has continued to be unacceptable and further formal disciplinary pro-ceding are being taken.

Signed:

Date:

cc: Line Manager
Personal File

Received:

Signed:

Date:

RESTRICTED - STAFF

EXAMPLE OF SUMMARY DISMISSAL LETTER

Guernsey Prison

Dear

I am writing to inform you that, following your conviction atCourt, for (*enter offence*) on (*date*), it is intended to dismiss you from the Prison Service without a formal disciplinary hearing under the provisions of Section 10 of the Operational Order on Conduct and Discipline.

Under the provisions of Section 11 of this Operational Order you have the right to make an appeal in mitigation against this decision. You can make representations orally, or in writing. If you wish to appeal, you should notify me of your intention to appeal, using the attached form DAPS F10. You should let me have that form within one week from the date of this letter. You must then submit the detailed grounds of your appeal using Form DAPS F11 enclosed. You must do this within two weeks of the date of this letter.

Any appeal that you might lodge will be heard by a senior manager and you may be accompanied at the hearing by a trade union representative or a work colleague, if you so wish.

Yours sincerely

Prison Governor

Received:

Signed:

Date: