



Disciplinary Policy

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Policy Owners	As by title above
ER	Employee Relations Advisor
Trade Union	Trade Union Staff Side Chair and representatives
DATE/S OF PREVIOUS AGREED VERSIONS AND TITLES	
April 2004	Previous Policy listed as (1)
August 16, 2010	The 2010 policy replaced and updated policy (1) 2004 in terms of best practice and ease of use and understanding. For clarity and consistency, there is now a full suite of letter formats / management guidance.
May 4, 2011	Adjustment to reflect the removal of the Civil Service Appeals Board CSAB
May 21, 2012	Appendix 2 updated - Gross Misconduct paragraphs (j) and (o) to include Anti Bribery Provisions
September 6, 2013	Adjustment to add statement / section on the importance of confidential handling (see 4.5)

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1. Purpose

- 1.1 To provide a clear policy on the procedures to be used by the Library when handling disciplinary matters such as instances of misconduct, gross misconduct, negligent performance or wilful under-performance.
- 1.2 To be compliant with current legislation and ACAS codes of practice to ensure that the disciplinary procedures are effective, fair, transparent, easily understood and consistently applied.
- 1.3 To aid good management and ensure procedures are not viewed principally as a means of imposing sanctions.

2. Scope of this policy

2.1 This policy applies to all staff except in the following instances:

- (a) Termination during / at the end of a probationary period of service (including any extended probationary period of employment) (**See the Library's Probation Policy**).
- (b) Termination by mutual consent.
- (c) Termination for some other substantial reason. (**See Section 2.2**)

2.2 It should be noted that in some instances it may be more appropriate to apply an alternative policy. For instance where a member of staff's;

- (a) Work performance is unacceptable due to their lack of ability to do their job then the Capability Policy should be followed.
- (b) Level of attendance is unacceptable - the Managing Attendance Policy should be followed.
- (c) Performance and attendance issues related to disability are covered by the Capability and Managing Attendance policies and should also be considered in accordance with the Diversity and Equality Policy, DDA Guidelines and the Reasonable Adjustment Policy.

3. Policy statement

- 3.1 The Library believes that clear rules benefit both members of staff and the Library since they set standards and make it clear to all members of staff what is expected of them.
- 3.2 The Library has recognised standards of acceptable behaviour and expects members of staff to maintain these standards in the workplace. Where members of staff fail to achieve the required standards, disciplinary action may be taken where appropriate.
- 3.3 The maintenance of standards of conduct and performance is the responsibility of line managers at all levels. Failing to act appropriately with support, guidance, or informal warnings on conduct or performance issues, at an early stage, is not an

effective way to manage and is not the best way to help members of staff. If timely discussion does not occur, this may result in a more serious situation arising, leading to the need for formal disciplinary action later (see also under **Section 4** General Principles in relation to good management 4.2 to 4.8)

4. General principles

- 4.1** A disciplinary offence is a breach of the general principles of conduct or official instructions set out in the Staff Handbook and associated policies, Office Notices, local notices, or any other authoritative form, or misconduct of any kind which may have an adverse effect on the working of the Library. If there is conflict between local notices and the Staff Handbook the Staff Handbook is the authoritative document
- 4.2** Such offences lead to disciplinary action, whether or not there has been an offence in law and whether or not criminal proceedings are instituted (See **Section 15**). Examples of what constitutes misconduct and gross misconduct can be viewed in **Appendix 2**
- 4.3** The Library is aware that it is important to stress that consistency in application and outcome of this policy is important so the Library will consider misconduct, particularly misconduct which is not a criminal offence, in the context of the individual circumstances of the case, the individual's previous record and the effect on the Library and where applicable the effect on other Library employees. Warnings must not be automatic and should only be given after careful consideration of the circumstances.
- 4.4** The Library is also mindful of the need for ensuring consistency in approach, application and outcomes and so will ensure that adequate training is provided so that managers are able to operate this procedure and also apply this in accordance with the Library's **Equality and Diversity Policy**. Any shortcomings in management must be pointed out as and when they arise.
- 4.5** Any matters dealt with through the disciplinary procedure should, so far as is reasonably practicable, be kept confidential. If the line manager considers it necessary to explain the details of the disciplinary to others, this will usually be discussed with the member of staff before such action is taken. At any stage of the discipline procedure, staff or line managers may seek advice on this procedure from Human Resources and may request a confidential meeting with Human Resources to discuss the matter. Staff may also wish to contact their Trade Union representative.
- 4.6** All information will be treated as confidential and in accordance with the data protection legislation. It is important that line managers understand that guidance, support and advice is in most cases a more satisfactory method of resolving issues than formal disciplinary action. The aim is to be corrective and offer support to staff to overcome problems and help them to return to these standards.
- 4.7** Line managers are best placed to identify misconduct and should take early action to prevent serious problems arising, specifying what the acceptable standards are. As soon as a problem is identified the manager should discuss the situation with the individual informally and agree a plan of action between them. The manager should, make a note of the date the discussion was held and of any agreed actions
- 4.8** Managers should be careful about linking conduct, performance or attendance issues, as it is not always appropriate to do so. Advice should be obtained from

Human Resources.

- 4.9** Members of staff must know what is expected of them and it is important that along with help, advice, and guidance, that they have the opportunity and time to improve their conduct. However, in some cases e.g. where there is a finding of gross misconduct, or the misconduct is repeated, or is serious enough, it can warrant prompt use of the formal procedure. No members of staff will be dismissed for a first offence other than in cases which result in a finding of gross misconduct.
- 4.10** Normally the informal stages will involve a discussion between the member of staff and the line manager. In the formal stages each member of staff may seek assistance and support as necessary from a Trade Union representative, HR or a colleague at any stage of this procedure (see **Appendix 3** -The Role of the Companion). The Library will permit members of staff to take paid time off during working hours for the purpose of accompanying another staff member to a disciplinary or appeal hearing.
- 4.11** All members of staff have the right of appeal against formal disciplinary action.
- 4.12** Sometimes a grievance may be raised during a disciplinary investigation / hearing. Where this happens, the manager should refer to the manager's guidance in **Appendix 8** for detailed advice on what to do in these circumstances. Equally sometimes an allegation of harassment, bullying or discrimination may arise during a disciplinary investigation / hearing and both the Harassment, Bullying and Discrimination Policy and **Appendix 8** Management guidance of this policy will be able to guide and advice on how to handle this.

5. The Discipline Procedure

- 5.1** **Appendix 1** illustrates by flowchart the steps which a manager may take, depending upon the seriousness of the matter or concern under consideration and whether this leads to informal or formal handling.

Minor offences, such as minor incidents of misconduct are at first dealt with by giving oral and, if necessary, written warnings.

The Library is not obliged to invoke each step and a warning may be issued at any point on the steps. For instance in some circumstances where the matter is regarded as particularly serious (i.e. in the case of an allegation of gross misconduct.) a final warning may be issued first. For definitions of gross misconduct **see Appendix 2**. For serious offences where the outcome could be dismissal, advice must be sought from Human Resources.

6. Informal Oral Warning

- 6.1** After following the general principles of good management in **section 4** above, and if a desired improvement has not been reached or a minor offence has been committed an informal oral warning may be given
- 6.2** Managers should make it clear to their staff that they are being given an informal oral warning. The warning will ordinarily state that any further misconduct will render the member of staff liable to further disciplinary action. Also that there is no right of appeal

- 6.3** Managers should note that this warning is not part of the formal warning procedures. However, the manager should (a) give a note of the meeting to the individual confirming the key issues discussed and (b) keep a copy of their notes for not usually longer than 6 months as they will be relevant if formal disciplinary action is considered necessary at a later stage. A printed version of an electronic record will normally suffice. These notes must be kept securely and confidentially and are **not** sent to HR for their file.
- 6.4** If the informal action has not led to the necessary improvements, or if the issue requires more serious action, then the formal warning procedure in **section 10** should be invoked promptly.

7. The Investigation

- 7.1** Prior to a possible formal interview or hearing being held at any of the stages of the formal procedure it is essential that the / or a manager should find out promptly (before memories fade) all the relevant facts surrounding the circumstance, incident or allegation (see **Appendix 4** on Investigations)
- 7.2** A member of staff's line manager (unless he or she is directly involved in which case it will be *their* line manager) will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Library's policies or rules or may otherwise be a disciplinary matter. (For guidance for how to hold and investigation see **Appendix 4**)
- 7.3** The member of staff will be informed as soon as possible that an investigation is taking place and when it has been concluded.
- 7.4** Witnesses may need to attend investigatory meetings and contribute to the investigation process. Both the witnesses and the employee have a duty to attend and it is in the best interest of all staff to attend these meetings if required (**see Appendix 4**).
- 7.5** Depending on the circumstances of the case, the member of staff may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the member of staff will be informed at the outset that the interview is an investigatory interview. In exceptional circumstances The Library reserves the right to dispense with an investigatory interview with the member of staff accused of misconduct and to proceed directly to a formal disciplinary hearing in light of the evidence in the investigation.
- 7.6** In some instances suspension may need to be considered prior to or during the investigation see **Section 8** for further details.
- 7.7** The Member of staff and witnesses may choose to bring a companion to an investigation meeting. The companion may be a trade union representative or a colleague from the British Library. Care should be taken that the companion has no conflict of interest e.g. by, perhaps, being a companion for more than one party in the investigation, or if they will attend an investigative interview as part of the process (See **Appendix 3**).
- 7.8** At the end of the Investigation the Investigating Manager will write a Summary Report detailing the reasons for the investigation, what was found during the investigation and recommend the way forward.

7.9 The Summary Report will be handed to the Reporting Manager and HR who will review the report, decide whether the recommendation is correct and then determine the next course of action. If the agreed recommendation was no case to answer the Investigating Manager will be required to write to the Member of Staff to confirm this and no record of the investigation will be put on the Member of Staff's file. If the agreed recommendation was that the Member of staff should be asked to attend a formal Disciplinary Hearing to respond to the issues identified, they will proceed to organizing the hearing to take place (See **Appendix 6** - Managers Guide to a Disciplinary Hearing)

8. Suspension

8.1 Suspension is a serious step and the decision should not be taken lightly. A manager who is contemplating the need for suspension should consult with Human Resources and/or a more senior manager before authorising suspension

8.2 Where it is believed that the matter to be investigated involves gross misconduct, or during the course of an investigation of a minor offence the investigator then forms the opinion that a serious breach of discipline standards has occurred, there may be a requirement that the member of staff be immediately suspended from work. For example there is a risk;

- To the staff member, other staff or the public
- To the collections or Library Property
- That evidence may be tampered with
- To health and safety e.g. drugs or alcohol use
- That the nature of the allegation makes it difficult for the staff member to continue working

8.3 A member of staff may be suspended on full pay and with ongoing contractual benefits while an investigation takes place to establish the facts and decide whether action is to be taken at any stage of the formal warnings procedure. Suspension should be for the shortest possible time.

8.4 Any decision to suspend will be confirmed in writing issued within 1 working day of the suspension unless it is intended that the suspension will be only 1 working day or less and will state that the nature of the suspension is precautionary, not disciplinary, pending the outcome of the investigation. The act of suspension does not prejudice the outcome of any possible hearing.

8.5 When a member of staff is suspended the Secretary of the appropriate Trade Union will be notified that a member of staff in a grade represented by the union has been suspended. This will be sent at the same time as the written confirmation of suspension.

9. The Disciplinary Hearing

9.1 If upon completion of an investigation and consideration of the investigations Summary Report there are reasonable grounds to believe that a member of staff has committed an act of misconduct; the member of staff will be invited to attend a disciplinary hearing. (For managers guidance on arranging and holding a hearing see **Appendix 6**).

9.2 The member of staff has a legal right to be represented at, or accompanied to a disciplinary hearing. The person chosen by the member of staff as their

representative or companion may be one of the following:

- a. a trade union representative (including a Head Office or National Trade Union Officer)
- b. a British Library colleague

For details on the role of a companion refer to **Appendix 3**

- 9.3** If there is a clear conflict of interest with the Trade Union representative or companion, management may suggest that an alternative be found. Human Resources may be consulted with regard to any queries or concerns over the appropriateness of a particular companion and will be the final arbiter in any disagreement.
- 9.4** In the event of a disciplinary hearing taking place the Library will ensure the member of staff:
- a. Has a minimum of 10 working days' advance notice of the hearing;
 - b. Is informed of the purpose of the hearing - that it will be held under the Library's Disciplinary Policy;
 - c. Is given written details of the nature of their alleged misconduct;
 - d. Is provided with all relevant information which should include relevant statements taken from any fellow members of staff or other persons that the Library intends to rely upon against the member of staff, not less than 5 working days in advance of the hearing. All relevant papers will be provided to the member of staff in order for them to pass to their representative or companion to assist the member of staff in their role at a hearing
 - e. Is notified of the right to be accompanied
 - f. Is given details of those who will be present so that they can comment on the composition of the panel.
- 9.5** Where the member of staff has a communication issue e.g. a disability or where a member of staff's first language is not English, the member of staff may arrange for an appropriate translator from outside the Library to attend, in addition to the companions listed. The Library will normally pay for this service.
- 9.6** If the member of staff or their representative is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day within 5 working days from the date of the original hearing. The Library will give written notice of the rearranged hearing.
- 9.7** If the member of staff or their representative is still unable to attend the rearranged hearing without good reason, it will take place in the member of staff's or representatives absence. If the member of staff is unable to attend the representative may attend in such circumstances and will be allowed the opportunity to present the member of staff's case. The member of staff will also be allowed to make written submissions in such a situation. [See **Appendix 6**]
- 9.8** A disciplinary hearing will normally be conducted by a panel which includes a line manager not previously involved with the case together with a member of the HR team .Any member of management responsible for the investigation of the disciplinary offence shall not be a member of the panel. This manager may present any supporting facts and material to the panel at the disciplinary hearing.
- 9.9** At the hearing, the member of staff will be given a full explanation of the case against him/her and informed of the content of any statements provided by

witnesses. The member of staff will also be entitled to state their case in response to the Library's case and put forward an explanation of their conduct and/or mitigating factors. (See **Appendix 6**)

9.10 Adjournments can occur, if appropriate, and these can be initiated by either party, in order to clarify points or confer.

9.11 Within 5 working days after the conclusion of the disciplinary proceedings, the chair of the panel will convey the decision to the member of staff and will also inform the member of staff what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The member of staff will be notified of their right of appeal under this policy.

10. Formal Disciplinary Action

10.1 Where, following a disciplinary hearing, the Library establishes that the member of staff has committed a disciplinary offence, formal disciplinary action may be taken as listed below in this section.

[Any warning will be recorded and stay on the member of staff's record for defined period of time after which time it should be removed at the Member of staff's request. (If any difficulties are experienced in securing removal the member of staff may seek assistance and support as necessary from a Trade Union representative, or HR advisor)

10.2 Formal Recorded Oral Warning

Where a further minor offence of misconduct has been committed, a formal oral warning may be given. The warning will ordinarily state that any further misconduct will render the member of staff liable to further, more severe disciplinary action. The member of staff should be informed in writing of the period that the warning will remain 'live', the ¹improvement required and the right of appeal. During this period, the Library may rely on such a warning in the event of further misconduct on the part of the member of staff. (See **Appendix 6**)

The warning should be recorded and stay on the member of staff's record for 12 months after this time it should be removed at the Member of staff's request.

10.3 Written Warnings

Where, under this policy and procedures, a more serious disciplinary offence or further minor offences have been found to have been committed by a member of staff who has a formal live oral warning, the member of staff will receive:

- **First Written Warning**

Such a warning will:

- (a) set out the nature of the offence committed
- (b) inform the member of staff that further misconduct is likely to result in further sanctions which could lead to their dismissal.

¹ Under conduct issues relevant to the Safeguarding Children and Younger Persons Policy – information or warnings may be held on file for longer than other matters of conduct due to the nature of the allegation or offence

The member of staff should be informed that they may appeal against the warning. The first written warning should stay on the member of staffs' personal file for 12 months, after which it should be removed at the member of staff's request.

- **Final Written Warning**

Where a member of staff commits further disciplinary offences after a first written warning has been issued and remains 'live', a final written warning may be given.

Where a serious disciplinary offence occurs it may be appropriate to issue a final written warning. This final written warning should stay on the member of staff's file for 18 months after which it should be removed at the member of staff's request.

Where a final written warning is given to a member of staff, the Library may also impose on the member of staff:

- in exceptional circumstances a transfer to another work area in the same directorate and/or another location within the Library, as considered reasonable by the Library;
- monetary repayment (in whole or in part) by way of restitution if the hearing considers this appropriate and reasonable in light of the concerns and issues under consideration and where the Library needs to be mindful of an obligation to pursue any identifiable loss to its fullest extent.

The sanctions described above, may for instance; be used in conjunction with other forms of disciplinary action or as an alternative to dismissal (in mitigating circumstances)

10.4 Dismissal

Dismissal should be deemed the last resort under this policy and thus it is only appropriate to use:

- where the act of misconduct is so serious as to warrant dismissal for the first complaint (gross misconduct) or alternatively;
- when measures and warnings have failed to improve conduct or performance and;
 - there has been a more serious incident of misconduct during the period for which a Formal Warning is applicable or;
 - there has been a recurrence of misconduct during the period for which the Final Written Warning is applicable

This level of action can only be dealt with by an SB4 or above. Please also note that;

- (a) Summary dismissal i.e. dismissal without notice or without payment in lieu of notice will be applied for acts found to be of gross misconduct after the usual process i.e. investigation and hearing. For other acts of misconduct dismissal will be with notice, although payment in lieu of notice may be applied (**See Appendix 2, 1.4**).
- (b) Where the member of staff has been found to have committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning, the member of staff may be dismissed after

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the usual process i.e. Investigation and hearing, with notice or with pay in lieu of notice depending on the seriousness of the case.

- (c) For a hearing to consider dismissal the Secretary of the appropriate Trade Union will be notified that a member of staff in a grade represented by the Union is subject to dismissal (discipline) proceedings. This will be done at the same time as the member of staff is notified of the hearing.

11. Appeal

11.1 A member of staff who is dissatisfied with the outcome at any formal stage of the process may appeal to a member of line management immediately senior (or other senior nominated manager) to the line manager who has taken the decision. This appeal must be received by the nominated manager within 10 working days of the warning or dismissal decision being communicated to the member of staff. (For management guidance on arranging and hearing an appeal see **Appendix 7**)

11.2 Any appeal must be put in writing, and the staff member must explain clearly and set out the grounds on which they intend to appeal. The basis of the appeal should normally relate to one of the following areas.

- facts of the case are incorrect, (e.g. A belief that the panel chair made a decision about a significant **fact**, which it wasn't reasonable for him/her to take e.g. where a manager unreasonably believes that a particular event must have taken place
- The **procedure** was not followed correctly - (the relevant procedure was not followed properly and this significantly affected the decision – a procedural flaw that would not have significantly affected the decision is not sufficient grounds for upholding an appeal)
- **Decision** - mitigation was not considered / disagreement on the severity or appropriateness of the penalty,
- The fact that **new evidence** has come to light since the disciplinary panel made their decision, which the member of staff could not have introduced at an earlier stage and which could have a significant effect on the decision taken.

11.3 The appeal will be heard by an appropriate senior manager who has not been involved in the initial proceedings. The appeal will not hear all the evidence again as the appeal is not intended to repeat the detailed examination of the original hearing. The appeal can review but cannot increase a disciplinary penalty.

11.4 The Library should contact the member of staff with appeal arrangements as soon as possible, and inform them of their statutory right to be accompanied at the appeal meeting.

11.5 The Member of staff and witnesses may choose to bring a companion to an investigation meeting. The companion may be a trade union representative or a colleague from the British Library. (See **Appendix 3**).

11.6 In the event that the senior manager upholds the member of staff's appeal, the senior manager will allow the appeal and remove all records of the disciplinary

sanction from the member of staff's record. In the event that the senior manager does not accept the representations made by or on behalf of the member of staff, the senior manager will uphold the disciplinary sanction.

- 11.7** Appeal hearings will normally take place within 14 working days of receipt of the member of staff's written notice of appeal.
- 11.8** Upon completion of the appeal, the senior manager conducting the hearing will convey their decision to the member of staff. The Library's decision at the appeal is final. The decision will be confirmed in writing within one week.

12. Statutory Right of Appeal Against Unfair Dismissal

- 12.1** British Library staff may also have a statutory right under the provisions of the Employment Rights Act 1996 to appeal against unfair dismissal to an employment tribunal.

13. Keeping records

- 13.1** It is important, and in the interests of both employers and members of staff, to keep written records during the disciplinary process. Records of informal stages will be kept by the line manager and records of the formal stages will be kept by HR (See **Appendix 6**)

- 13.2** Records should include:

- the complaint against the member of staff including a statement of investigation (including appendices, witness statements etc.);
- the member of staff's defence;
- findings made and actions taken;
- the reason for actions taken;
- whether an appeal was lodged;
- the outcome of the appeal;
- any grievances raised during the disciplinary procedure; and
- subsequent developments.

- 13.3** Records should be treated as confidential and be kept no longer than necessary in accordance with the Data Protection Act 1998. This Act gives individuals the right to request and have access to certain personal data.

- 13.4** Copies of meeting records, which the member of staff undergoing the disciplinary process has attended, should be given to the member of staff including copies of any formal minutes that may have been taken. In exceptional circumstances (for example to protect a witness) the employer might withhold some information such as witness statements. Witnesses will be informed that information they provide may be released to the member of staff and their express approval does not need to be given about this e.g. in some cases of Whistleblowing. Witnesses will receive a copy of their statements, but not of the proceedings (See **Appendix 6**)

14. The application of the discipline policy to trade union representatives

- 14.1** If a member of staff who is an accredited representative of a trade union recognised by the Library for collective bargaining purposes is suspected of having

committed a disciplinary offence, the Library will take no action under this policy (with the exception of suspending the member of staff in a case of suspected gross misconduct) until the Library has had a chance to inform the relevant full-time officer of that trade union.

15. In the event of Potential Criminal Offences

15.1 Where preliminary enquiries disclose grounds for suspicion that a criminal offence in the Library may have been committed, an investigation will be initiated by a senior manager. The investigations of the police may conflict with any stage of the procedure, and the Library may seek advice and will normally follow police advice. Anyone who is the subject of such an investigation will be informed that they have the right to be assisted by a Trade Union representative or a colleague and they may wish to seek legal advice, unless the police advise the Library not to inform the member of staff that an investigation is under way.

15.2 Should it emerge that a member of staff has committed a criminal offence outside their normal working hours and this is likely to bring the reputation of the Library into disrepute or impact upon the work place, the Library will consider whether disciplinary action is appropriate and whether an instance of gross misconduct has occurred. An investigation will be carried out and a hearing may be convened to consider their continued suitability for employment by the Library. The member of staff's previous work record and length of service will be taken into account.

16. Conflict of Interest

16.1 A conflict of interest can occur when those involved in a disciplinary situation or the process have a close personal relationship where this relationship could potentially have, or be deemed to have, a bearing on the fair application, procedure or outcome of the process.

If there are issues or concerns around close personal relationships and potential conflict of interest e.g. with regard to their conduct, the disciplinary action, or any witnesses or representatives then refer to **Appendix 3** Role of the Companion and **Appendix 5** Composition of Panel Members, for advice and guidance.

17. Issues around Professional Expectations and Compliance

17.1 Formal disciplinary actions may have implications on an employee's continued level of professional status. This can occur if the employees conduct has breached or failed to comply with the expectations or requirements laid out as terms for meeting a regulatory standard / classification or for being registered with a professional organisation. If a statutory body is involved, dependant on the scope, serious conduct issues may need to be reported.

17.2 If the member of staff loses their professional status as a result of disciplinary action (e.g. loss of registration with external regulators), and this is a stated requirement for the post they hold, there will be a need to assess the impact on the individuals capacity to do their job.

17.3 In all these instances the manager must take specific advice from HR.

18. Diversity and Equal Opportunities monitoring

18.1 Human Resources will compile the personal details such as the race, gender, age

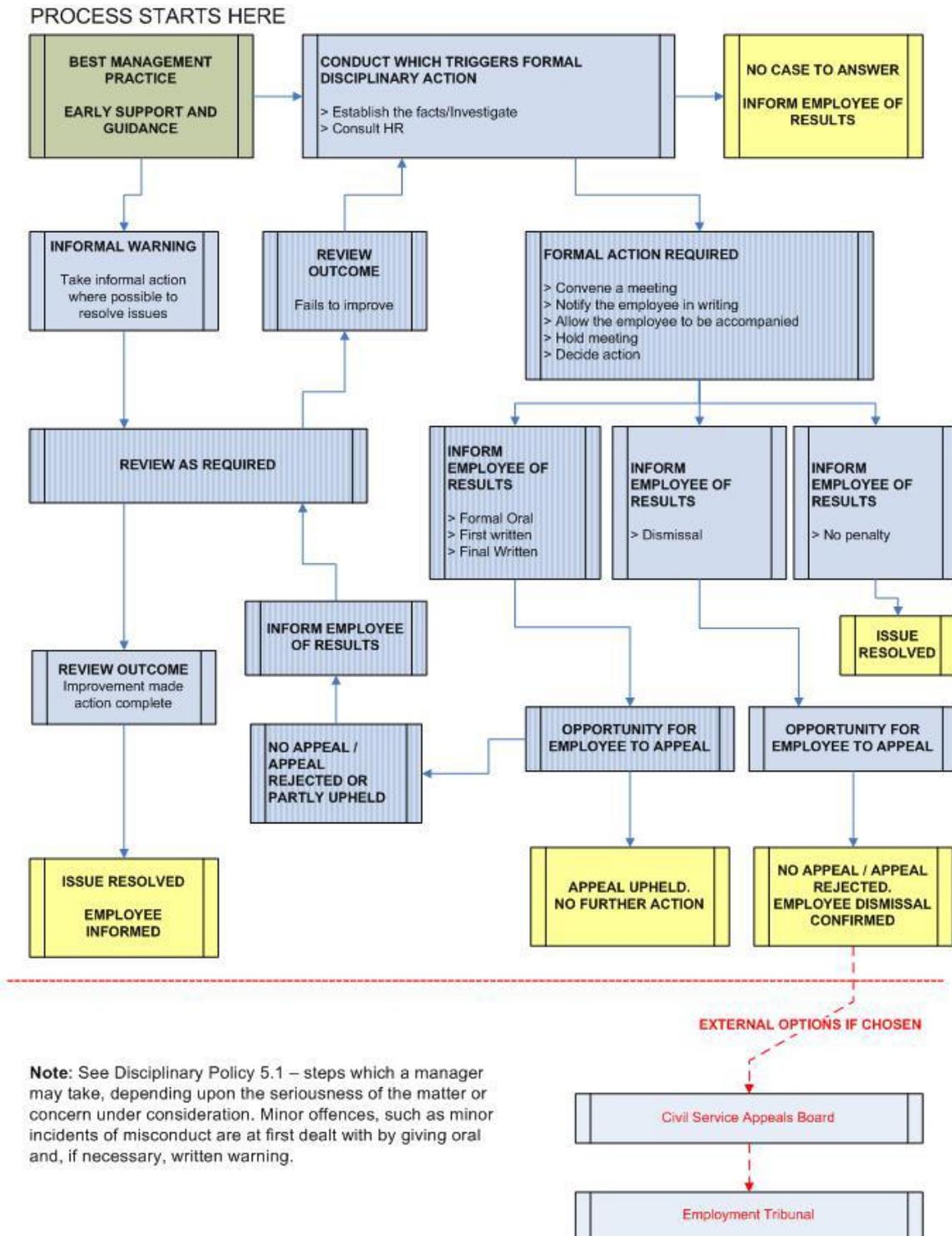
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and disabled status of all members of staff receiving a formal warning, other penalties, or who are dismissed by the Library. This information will be kept confidentially by Human Resources and will be used for no other purpose than to enable the Library to fulfil its obligations for monitoring and ensuring Equal Opportunities. (see [Equality & Diversity Policy](#))

19. Policy Responsibility

- 19.1** All members of staff referred to within the scope of this Policy are required to adhere to the policy in both letter and principle.
- 19.2** All line managers are responsible for ensuring that this Policy is applied within their own area. Any queries on the application or interpretation of this policy must be discussed with Human Resources prior to any action being taken.
- 19.3** Human Resources are responsible for ensuring the maintenance, regular review and updating of this Policy. Proposed changes to the policy will follow the process as described in [section A: Introduction: paragraph 1.1 of this Staff Handbook](#)

Appendix 1 – Disciplinary Flowchart



Disciplinary Policy - Appendix 2

1. Misconduct

- 1.1 Misconduct is behaviour that an employer deems inappropriate for an employee. It usually relates to an employee's conduct during working hours. There are varying degrees of misconduct, ranging from minor misconduct to serious (gross) misconduct.
- 1.2 Matters that the Library views as amounting to disciplinary offences include but are not limited to:
- persistent bad timekeeping;
 - unauthorised absence;
 - wilful damage to Library property;
 - failure to observe Library policies;
 - abusive behaviour;
 - unreasonable refusal to follow an instruction issued by a manager or supervisor;

2 Gross misconduct

- 2.1 Gross misconduct refers to any misconduct that is of such a serious and fundamental nature that it undermines the trust and confidence in the contractual relationship between the Library and a member of staff and breaches this contractual relationship. Matters that the Library views as amounting to gross misconduct include (but are not limited to):
- a) Discrimination against a fellow worker, reader or visitor to the Library on the grounds of age, sex, sexual orientation, race, disability or religion or belief.
 - b) Harassment, bullying or victimisation of a fellow worker
 - c) Stealing, theft or fraud or other offences of dishonesty in relation to the Library, employees or members of the public;
 - d) falsification, or attempts to falsify records, allowances, reports, accounts, expense claims or self-certification forms whether or not for personal gain;
 - e) violent or intimidating conduct (whether verbal or physical) or acting in an offensive manner to any member of the Library's employees or other person or persons including a visitor or reader
 - f) deliberate or negligent divulging of privileged, sensitive or confidential information contrary to the Library's Conduct at Work Policy (except in accordance with the Library's Public Interest Disclosure "Whistle Blowing Policy").
 - g) serious acts of insubordination which may include refusing to comply with a reasonable management instruction.
 - h) deliberate or serious negligence which results in a risk of or actual loss, damage or injury to the Library's employees, property or the public;
 - i) Serious incapacity whilst on duty brought on by alcohol or illegal drugs (see separate Substance Abuse Policy)
 - j) Bribery or corruption in terms of offering, giving, requesting, agreeing to receive or accepting an inducement e.g. gifts, loans, fees, favours, payments, rewards, benefits in kind or other privileges (see Section M Conduct at Work Policy and the Library's Anti –Bribery Policy.)
 - k) unauthorised acceptance of gifts, payment or reward related to official Library business [See Conduct at work policy]

- l) serious and deliberate damage to or misappropriation of the Library's property
- m) smoking anywhere in a Library Vehicle or in a British Library building
- n) unauthorised removal of collection items;
- o) serious breach of the Library's policies procedures or rules, including, but not restricted to, Health and Safety, information security, electronic communications and Equality and Diversity Policy, Anti Bribery Policy etc;
- p) falsification of a qualification that is a stated requirement of the employee's employment;
- q) sexual misconduct at work;
- r) physical assault on employees or the public;
- s) the viewing or downloading of pornography
- t) possession, handling or supply of illegal drugs on the Library's premises; See Substance Abuse Policy
- u) committing a criminal offence that is relevant to the employee's employment (See Disciplinary Policy section 15)**
- v) conduct that brings the Library's name into disrepute

2.2 If in the event of a formal disciplinary hearing an employee is found to have committed an act of gross misconduct, the Library will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

Appendix 3 – Role of the Companion

NB: This does not apply to Trade Union Representatives

1 The role of the companion

This document offers advice if you have been asked to act as a companion at a formal hearing. It sets out what you may and may not do and what your overall role is. If you have any more questions please contact Human Resources.

2 What is the role of companion?

Your main role is to support your colleague whom you are accompanying at the hearing. You may not normally answer questions put directly to your colleague. You may request an adjournment for a reasonable period to confer with your colleague. You may also ask to address the hearing if you so wish. You should think of yourself as being there as a 'friend' and witness to support your colleague.

3 Do I have to have legal knowledge and expertise?

No. You do not have to know the law but you should be familiar with the facts of the particular case. You should get together with your colleague before the hearing to discuss the issues being considered at the hearing so that you are fully informed. If you want any additional information before the hearing please contact Human Resources.

4 Will I get paid while I am being a companion?

Yes. Companions can attend the relevant hearing without loss of pay. You will also be given the time not only to attend the hearing, but also reasonable time to familiarise yourself with the case and to confer with your colleague before, during and after the hearing. If you choose to accept the request to act as a companion you are entitled to ask for a reasonable amount of paid time off in order to complete these duties. Please refer to Human Resources if you have any queries.

5 Do I have a duty to accept a request to act as a companion?

No. There is no compulsion on an individual to accept the role of companion. However, it is an important and helpful role and if you do choose to carry out the role then you will not be in any way disadvantaged by the Library. However you are not obliged to agree to accompany a colleague at one of these hearings. No pressure should be placed on you to attend and you do not have to give a reason for your decision.

6 What should I do if there is a potential conflict of interest?

There can be a conflict of interest in the proposed companion attending or supporting the individual. Employees cannot be a companion to the individual if they;

- are involved in the case e.g. a witness or as a companion to an individual witness (See **7.7 Disciplinary Policy**)
- have a close personal relationship with the individual (e.g. is a relative or partner) where the process may be compromised or affect the trust and confidence of colleagues. (Examples include conflict of loyalties or a perception or accusation of unfairness, un-professionalism, or bias). Hence, failure to disclose a close personal relationship could leave an employee open to allegations of misconduct should subsequent issues arise.

Companions and /or individuals are advised to err on the side of caution and notify HR of a close personal relationship so that HR can decide whether any safeguards need to be taken to remove or minimize the risks of a potential conflict of interest.

Appendix 4 – Managers' Guide to Conducting a Disciplinary Investigation

1 The Investigation and Investigating Manager

- 1.1 Before any disciplinary hearing can take place an investigation must be conducted in order to establish the facts or circumstances, so that a decision can be made about whether there needs to be a Disciplinary Hearing. This includes for instance, collating relevant facts, any issues relating to the alleged misconduct and any documented records of informal action taken.
- 1.2 An Investigating Manager needs to be appointed to arrange an investigation as appropriate to the matter. The Investigating Manager may be the member of staff's line manager or a different manager as appropriate. Advice must be sought from HR on the appropriateness e.g. if there is a likely conflict of interest such as the line manager being personally involved in the issues giving rise to the investigation or being a potential witness. HR may suggest an alternative.
- 1.3 A designated manager also needs to be appointed to handle the case with HR, review the investigation report and determine the action to be taken.
- 1.4 The investigation will not be conducted alone and the process will be supported by a member of HR. It should be noted too that in instances other than formal oral warnings the Investigating Manager will not be able to go on to chair or be a panel member on a Disciplinary Hearing if one is called.
- 1.5 The member of staff who has allegations against them may be invited to attend an investigatory interview, in which case they will be informed at the outset that this is an investigatory interview. (see [letter format no 1](#) for details and for issue to the employee)
- 1.6 If it at any stage it becomes evident the member of staff may have committed gross misconduct and that the investigation may be compromised by the member of staff remaining at work during the course of the investigation then suspension should be considered. This decision is not to be taken lightly (see **section 8** of the Disciplinary Policy) and HR must be consulted.
- 1.7 Whether the member of staff remains at work or is suspended, the member of staff under investigation may subsequently be required to attend various interviews as part of the investigation if this progresses. Such investigations will be carried out with due regard to the Member of staff's rights and confidentiality.
- 1.8 In complex cases involving allegations which could have legal implications (e.g. theft or fraud or harassment), the Investigating Manager must consult with HR over the management of the investigation. The timescale of the investigation may be affected by the activities of other bodies such as the Police. Decisions on accessing the work place must also be considered to ensure Human Rights are not breached.

2 Collation of Facts and Witness Statements

- 2.1 As part of the collation of facts the Investigating Manager may then need to interview any witnesses and take statements from them. It should be noted that the witnesses are not there to make a decision; they are there to enable the

Investigating Manager to decide whether to recommend taking into account all the facts gathered, if there needs to be a Disciplinary Hearing or not.

- 2.2 At the meeting the Investigating Manager will be accompanied by a HR representative. The witnesses may choose to be accompanied by a colleague or by a trade union representative. For the purpose of ensuring an accurate record of the meeting, there may be a note taker in attendance and an option for the meeting to be audio recorded for the purpose of creating the meeting notes only. (see [Letter format no 2](#) for details and issue to the witness)
- 2.3 The witnesses will be informed at the outset that this is an investigatory interview and of the expectations around, and importance of, confidentiality. The truth must be told at all times or disciplinary action may be taken against the witness.
- 2.4 Witnesses should give their account of the events telling the Investigating Manager exactly what they saw or heard. They should give an honest and impartial description of the events including dates and the time of day. They should not state that something is fact when it is opinion and should avoid phrases such as “David had obviously been offensive to Jane”, when it is better to state “In my opinion Jane was very upset. Jane had told me David had been offensive to her” or if you actually saw the incident write “I saw David being offensive to Jane, she was very upset”.
- 2.5 The Investigating Manager may ask the witnesses to prepare a statement. There may also be a note taker present who may record any witness recollections and then transcribe them. This should state the Witness’s name and job title. The witness may later be questioned on these statements so the statement or any contemporaneous notes should also be signed and dated by the witness and a copy given to them.
- 2.6 If the matters do proceed to a hearing the witness statement will form part of the case pack that will be given to the chair of the Disciplinary panel and the witness may be called to give their account of the events and may be asked to read the statement or notes at any subsequent hearing, (and potentially at an Employment Tribunal). The witness must consider that they are there to assist the chair and not to take sides. They may be called by the Library or the Member of Staff but they must still be considered impartial.

3 Conducting an Investigation Meeting

- 3.1 The Member of staff and any potential witnesses will be informed of the investigation dates by letter or email (see [letter formats no 1 and 2](#)). Both the witnesses and the Member of staff have a duty to attend. **See 7.4 Disciplinary Policy**
- 3.2 There is not a legal right to be accompanied at an investigatory meeting but the Library recognises the benefits on an employee being accompanied and so the Member of staff and witnesses may choose to bring a companion to an investigation meeting if they wish. The companion may be a trade union representative or an appropriate colleague from the British Library. Care should be taken that the companion has no conflict of interest e.g. being a companion for more than one party in the investigation (**see Appendix 3 Role of the Companion**).
- 3.3 Being accompanied is different from being represented. The work colleague will not be allowed to speak on the Member of staff’s behalf but may ask for

clarification on the questions asked. The Trade union representative can speak on the member of staff's behalf.

- 3.4** If the Member of Staff and / or the individual accompanying them cannot attend on the stipulated date then the Member of Staff may request that it is changed. Managers should do their best to accommodate the request, and should, within reason try to rearrange the investigation meetings to allow a companion to attend. However, it is in the interests of all parties that issues are addressed as soon as possible and therefore there should not be an excessive delay when re arranging.

4 After the Investigation Meeting/s

- 4.1** At the end of the Investigation the Investigating Manager will write an Investigatory Report. It will detail the reasons for the investigation, the details of what was found during the investigation and will recommend the way forward which may be a recommendation that;

- there is no case to answer or that;
- the Member of Staff should be asked to attend a formal Disciplinary Hearing to respond to the issues identified

- 4.2** The Investigatory Report will be handed to the designated Manager (who will be handling the case supported by HR) and HR who will review the report, decide whether the recommendation is correct and then determine the next course of action. For instance if the recommendation was agreed as;

- **no case to answer**; the Investigating Manager will be required to write to the Member of Staff to confirm this. No record of the investigation will be put on the Member of Staff's file.
- **case to answer**; the Member of Staff should be asked to attend a formal Disciplinary Hearing to respond to the issues identified, then they organise the hearing to take place (see **Appendix 6** Managers Guide to a Disciplinary Hearing)

Appendix 5 – Composition of Panel Members for Hearings New

	Panel Participants	Please note these key points;
Formal Oral	<ul style="list-style-type: none"> • Chair – Line Manager / Manager of equivalent grade to the line manager • Accompanied by an appropriate HR representative or another appropriate manager 	<p>The Panel will vary according to the grade of the employee undergoing the disciplinary process. E.g. the chair will be a more senior manager than this employee.</p> <p>It should be noted that in instances other than formal oral warnings the investigatory manager will not be able to go on to chair or be part of a disciplinary panel.</p>
First written	<ul style="list-style-type: none"> • Chair – Line manager / Manager of equivalent grade to the line manager • Accompanied by an appropriate HR representative or another appropriate manager 	<p>There also needs to be consideration of conflict of interest with regard to panel members similar to the consideration given to companions (see appendix 2 section 6) e.g.; so that where the process may be compromised or conducted inappropriately e.g.</p>
Final Written	<ul style="list-style-type: none"> • Chair – next senior manager above the employees immediate manager, (unless employee reports directly to a director, where it will be the director) • Accompanied by the line manager and an appropriate HR representative 	<ul style="list-style-type: none"> • there is a close personal relationship between a proposed panel member and the employee undergoing the process or another panel member.
Dismissal	<ul style="list-style-type: none"> • Chair – at least an SB4 level manager (unless the employee reports directly to a director, where it will be the director) • Accompanied by another independent line manager of appropriate seniority and an appropriate independent HR representative 	<ul style="list-style-type: none"> • the line manager is already involved in the process (e.g. has conducted the investigation or is implicated e.g. is a witness) <p>a different panel member must be sourced</p> <p>In some instances the meeting will need to be chaired by an appropriate manager who is independent (e.g. from a different department) and who will not have been previously involved directly or indirectly in the case e.g. at the point of appeal or after a line manager has conducted an investigation.</p>
Appeals against formal warnings	<ul style="list-style-type: none"> • Chaired by an appropriate independent senior manager, who will not have been previously involved directly or indirectly with the case. • Accompanied by an appropriate independent HR representative not involved in the process so far 	<p>In some instances it may benefit the case, if the appropriate manager was someone who is familiar with work of the department.</p>
Appeals against dismissal	<ul style="list-style-type: none"> • Chaired by at least a Director who is not in the line management chain • Accompanied by an appropriate independent HR representative not involved in the process so far 	<p>The panel should be discussed with HR and advice sought.</p>

Appendix 6 – Managers' Guide to a Disciplinary Hearing

1. The Disciplinary Hearing

- 1.1** Once the Designated Manager (the manager nominated to handle the case supported by HR), and HR have reviewed the Summary Report of the investigations (see appendix 4 - Investigations) and have agreed that the Member of Staff should be asked to attend a formal Disciplinary Hearing and to respond to the issues identified, they will then organise the hearing to take place.
- 1.2** The disciplinary hearing will be held by a chair and panel of appropriate grade and position including HR representation (For details of the composition of the panel see appendix 5). Depending on the findings of the investigation and the seriousness of the case, the line manager may be able to hold the Disciplinary Hearing. However, if the line manager conducted the investigation s/he will not be able to chair or be a member of the panel of the Disciplinary Hearing.
- 1.3** The Chair of a disciplinary hearing (supported by the panel) should ensure the fair conduct of the hearing. The Chair should also make sure that the rules of natural justice are followed, these being that the member of staff should know the nature of the charge and be given the opportunity to state his or her case, and that the Disciplinary Panel should be unbiased and act in good faith.
- 1.4** Managers must note that staff subject to such proceedings or present as witnesses must be treated with courtesy, care and respect at all times since they may find (a) proceedings are stressful or difficult for them; (b) information discussed during the hearing touches on personal and sensitive matters for them. All information must be treated as confidential. The proceedings must be conducted in an impartial way in order to examine the evidence. If there is a failure to conduct a fair hearing this could for instance, lead to the member of staff raising a grievance, or making a successful appeal against the decision. Additionally the Library's Equality & Diversity Policy must also be adhered to in spirit and in letter.
- 1.5** There is also an overriding obligation on the Library to act reasonably in carrying out a dismissal. The Chair should thus ensure that the Library's disciplinary procedure is followed and that there is overall fairness of process. Without this the employee could make a claim at employment tribunal for unfair dismissal which may be supported, (provided that the Member of staff meets the necessary conditions for bringing a claim).
- 1.6** There will usually be a note taker at the meeting to support the accurate recording of the details of the meeting as notes for all parties. If the case is complicated there may be the option to have the hearing audio recorded (with the member of staff's permission) to aid the note taker.
- 1.7** All members of staff are entitled in law to be accompanied, if they wish, at any formal disciplinary hearing by either a British Library colleague or a trade union official.

2 Convening a Disciplinary Hearing

- 2.1** The designated manager and HR must ensure that the notification of the requirement to attend a hearing is confirmed in writing to the member of staff. The hearing time should be arranged between HR and the parties involved (e.g. member of staff / panel members).
- 2.2** The written notice of the hearing will be provided within 10 working days in advance of any hearing (taking account of the member of staff's working hours and the complexity of the issues and sufficient time to review any reports and statements) and will include;

A: A letter inviting the employee to attend the disciplinary (letter pro forma no 4A or 4B dependent on how serious the allegations are) which holds;

- details of the time, date and venue
- details of the alleged misconduct in brief
- That the hearing will be held in accordance with the Library's Disciplinary Policy
- Who the panel will consist of and of anyone else present (e.g. who will present the management case) with an opportunity for the employee to raise any concerns about any of the panel members attending
- That the employee is entitled if they wish to bring a Trade union representative or a companion / work colleague to the hearing and to notify who this will be.
- Notification that it is the employees responsibility to organise their representative and supply them with any relevant documentation
- That the member of staff may provide evidence in advance and call witnesses, and that if they do so statements should be provided by them 5 days before the hearing along with details of who the witnesses will be and confirmation of their attendance at the hearing
- Advice that to ensure there are accurate records of the hearing a note taker may attend and the meeting may be audio recorded to support the creation of meeting notes which they must advise if they have any issues with.
- Clear indication of the possible outcomes of the alleged misconduct

B: Along with supporting documents

- A copy of the Library's Disciplinary Policy
- Case pack as outlined in 2.3 Below

- 2.3** HR will prepare a Case Pack for the Disciplinary Hearing which will contain;

- The Investigation Report (a description of the alleged offences, the witnesses spoken to (if applicable) and the conclusions of the Investigating Manager) including the recommendation for a disciplinary hearing based on there being enough evidence to suggest misconduct having been committed.
- The signed witness statements. (Note, where evidence has been obtained from third parties in the form of written statements, either the statements themselves or a summary of their content will be given to the member of staff). The Library reserves the right however, to conceal the identity of the parties who provided this evidence if it thinks it is necessary or appropriate to

do so e.g. in some cases of whistleblowing. (However this confidentiality maybe waived if the case goes to Tribunal).

- Any supporting written evidence.
- Any relevant Library policies, particularly those policies which may have been breached by the member of staff.
- NB: To ensure the Member of Staff's confidentiality any current live warnings and any relevant Occupational Health reports deemed relevant to the alleged action will only be given to the panel.

HR will then review the Case Pack before distributing to all relevant parties as appropriate which includes members of the panel of the Disciplinary Hearing and the member of staff.

- 2.4** The Member of Staff is responsible for passing this documentation on to any representative involved 5 days in advance of the hearing to allow them to familiarise themselves with the facts of the case.
- 2.5** If a Member of Staff has chosen to be accompanied or represented, it is the member of staff's responsibility to arrange this including asking the companion / representative in advance if they can attend the hearing, confirming that the chosen date is suitable and then providing relevant details of the companion to the manager convening the hearing at least 5 days in advance of the hearing.
- 2.6** If the Member of Staff chooses not to be represented or have a companion HR will make a note of this and inform the panel.
- 2.7** If a Member of staff's chosen companion is not available at the time the hearing is proposed, the member of staff may request a reasonable alternative time for the hearing within five working days.

3. Conducting the Hearing

- 3.1** At the start of the Hearing, the Chair of the Panel will:
- introduce the parties attending especially any parties not known to each other.
 - check that all parties have all relevant papers.
 - outline the purpose of the hearing (which is to establish the facts and determine, on conclusion of the hearing, whether the Library has grounds to take disciplinary action against the member of staff and, if so, the level of such disciplinary action)
 - Advise the member of staff of their rights under the disciplinary procedure and how the hearing will be conducted.
 - Inform the companion / work colleague they have specific responsibilities – see Appendix 3 of Disciplinary Policy.
 - Tell the member of staff of the extent of the complaints against them.
- 3.2** The investigating manager will then explain fully the Library's case, i.e. the member of staff's alleged or suspected misconduct or other circumstance leading to the possibility of disciplinary action being taken against him/her. All the relevant facts will be put to the member of staff, with specific examples of relevant incidents being given.
- 3.3** Any witnesses whom the Library has decided to call will be called into the hearing and asked to state their evidence in front of the parties. They may be questioned on this evidence by any member of the panel and the member of staff or their representative.

- 3.4** The member of staff will then state their case and respond to the allegations or concerns raised by the management and to draw attention to any circumstances relevant to their situation, before any decision is taken. This can include reference to written reports and statements supplied and/or witnesses attending to give evidence.
- 3.5** The member of staff or their representative will be allowed a full opportunity to ask questions of the manager presenting the Library's case, to ask questions of any witnesses and to challenge the content of any witness statements in any appropriate manner.
- 3.6** At any point during the hearing, the Chair may adjourn the proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). Likewise, the member of staff may confer with their representative or colleague or seek a short adjournment where appropriate.
- 3.7** The Panel Members or the Investigating Manager may ask questions of the member of staff on his/her evidence. Although the member of staff may confer with his/her representative at any time during the hearing on request, the Chair has the right to ask the member of staff personally to answer any questions put to him/her.
- 3.8** The Panel should invite the member of staff or his/her representative to put forward any mitigating circumstances or factors which should be considered. The Panel must take into account any mitigating factors put forward by the member of staff when subsequently making a decision about whether or not to impose a disciplinary penalty, and the level of any such penalty.
- 3.9** The Chair will ask each party to summarise the key points to their case prior to the panel making a decision.

4. The Decision

4.1 In terms of the decision the Chair will;

- Either adjourn the meeting to make the decision on the same date as the meeting and inform the member of staff on the day
- Or will inform the member of staff on when a decision will be made on whether to impose a disciplinary penalty on the member of staff or not and then close or adjourn the meeting.

In both instances the Chair will inform the member of staff that he/she will receive the decision in writing and have the right to appeal against any disciplinary penalty imposed on him/her (depending on the outcome) before the meeting ends.

4.2 The Chair will close the meeting

4.3 The Chair will provide the decision in writing within 5 working days (see letter format no 5, 6 or 7 according to the seriousness of the decision). In the letter the member of staff will be advised of:

- Any warning or disciplinary action being taken
- Details of the complaint
- The improvement required; and
- The timescales

- That further action will be considered if there is no satisfactory improvement or any recurrence, or any further act of misconduct,
- Advise of the right of appeal.

4.4 The Chair of the hearing will also put together a Case Summary of the hearing which:

- should give a brief summary of the case, listing all allegations separately and whether or not each of them has been upheld.
- outline the decision made and give justification for coming to the final decision.

The length and level of detail depends on the nature and seriousness of the case (e.g. a summary of a hearing resulting in a warning will likely be shorter than a complex hearing resulting in dismissal). The summary will be used for future reference if there is an appeal hearing. It will also be relevant in evaluating consistency of decision making across the Library

4.5 A copy of the case summary should normally be provided to the member of staff within 5 working days of the hearing. It can be sent at the same time as the decision letter.

4.6 Additionally, the written record of the hearing will be provided by the note taker, who will write down all the salient points and comments, and made. The note taker will then transcribe the notes. HR will provide 2 copies each to the Panel and the member of staff. The Member of Staff should then check the notes and sign both copies to say that they agree accuracy so that a final agreed copy can be produced. One copy should be kept for accuracy and the other sent back to HR.

4.7 Records of the hearing, outcome and final decision should be kept on the member of staffs' personal file. These records will be subject to normal data protection rules and also to the provisions made in the policy at sections 10.1, 10.2, 11.6 and 13.

Appendix 7 - Managers' Guide to hearing an Appeal against a Disciplinary Decision

1. Introduction

- 1.1** Following a disciplinary hearing, employees have the right to appeal for the reasons as laid out under Section 11 of the policy document should they wish to and if it is appropriate.
- 1.2** An appeal is not intended to repeat the detailed examination of the hearing. Other than in exceptional circumstances, any appeal hearing will not hear all the evidence again.
- 1.3** The appeal hearing will be held by a chair / panel of appropriate grade and position including HR representation (For details on the chair and panel see appendix 5)
- 1.4** General rules of fairness and natural justice should be applied. For instance, it is important for managers to ensure consistency of treatment in offering, hearing and deciding the outcome of an appeal so that the process is fair and non discriminatory. The hearing should be fairly conducted including giving the employee the opportunity to state their case, and the panel being unbiased and acting in good faith.
- 1.5** If a manager fails to give a Member of Staff the right of appeal or there is a failure to conduct a fair hearing, the Member of Staff may decide to take this further. For instance if the member of staff is dismissed in these circumstances this will render the dismissal unfair and, at Tribunal, can result in substantial compensation payable and other costs to the organisation. Equally, if an employee goes straight to Tribunal without exercising their right of appeal, a tribunal can reduce compensation to the employee if found unfair. Thus it is important for both parties to follow the Library process.
- 1.6** There will usually be a note taker at the meeting to support the accurate recording of the details of the meeting as notes for all parties. If the case is complicated there may be the option to have the hearing audio recorded (with the member of staff's permission) to aid the note taker only, after which the recording is destroyed.
- 1.7** All members of staff are entitled in law to be accompanied, if they wish, at any formal appeal hearing by either a British Library colleague (see appendix 3) or a trade union official.

2. Convening a Meeting

- 2.1** Once a formal notification of an appeal has been received, the designated manager (the manager nominated to handle the case with HR), and HR will ensure that the employee promptly receives a letter of acknowledgement.
- 2.2** The Designated Manager and HR will then proceed to make the basic arrangements for the hearing to take place including date, venue, and panel members. This includes contacting the employee and other parties involved where necessary and appropriate to check availability and other details.

- 2.3** The Designated Manager and HR will also ensure a letter of notification of the hearing is sent to the employee in 10 working days in advance of any hearing (taking account of the availability of those involved, the issues and the need for sufficient time to review any reports and statements). The letter will be sent with supporting documentation (see below).

A - The letter content (see [letter format 9](#)) will include for instance:

- details of the time, date and venue
- details of the in brief
- That the hearing will be held in accordance with the Library's Disciplinary Policy
- Who the panel will consist of with an opportunity for the employee to raise any concerns in advance about any of the panel members attending
- That the employee is entitled if they wish to bring a trade union representative or a companion / work colleague to the hearing and their need to notify who this will be.
- Notification that it is the employees responsibility to organise their representative and supply them with any relevant documentation
- That the member of staff may provide evidence in advance and if they do wish to bring evidence this must be provided by them 5 days in advance – Equally if they want to call witnesses, statements should be provided by them 5 days before the hearing along with details of who the witnesses will be and confirmation of their attendance at the hearing
- Advice that to ensure there are accurate records of the hearing a note taker may attend and the meeting may be audio recorded to support the creation of meeting notes which they must advise if they have any issues with.
- Clear indication of the possible outcomes of the hearing

B - The supporting documentation sent with the letter will include

- A copy of the Library's Disciplinary Policy
- Case pack as outlined in 2.4 below

- 2.4** HR will prepare a Case Pack for the Appeal Hearing which should be made available to the member of staff, and to the manager and the HR representative hearing the appeal.

This will contain supporting written evidence and appropriate and relevant records or notes of the disciplinary hearing such as;

- The original disciplinary report
- Notes of the original hearing
- Copies of the panel's decision and case summary
- The witness statements.
- Any relevant Library policies, particularly those policies which may have been breached by the member of staff.
- NB: To ensure the Member of Staff's confidentiality any current live warnings and any relevant Occupational Health reports deemed relevant to the alleged action will only be given to the panel.

HR will then review the Case Pack before distributing to all relevant parties as appropriate which includes members of the panel of the Disciplinary Hearing and the member of staff.

Each side should also let the other know if it intends to rely on any extra documents and provide copies at least 5 days before the hearing.

- 2.5 The member of staff is responsible for passing this documentation on to any representative involved 5 days in advance of the hearing to allow them to familiarise themselves with the facts of the case.
- 2.6 If a member of staff has chosen to be accompanied or represented, it is the member of staff's responsibility to arrange this including asking the companion / representative in advance if they can attend the hearing, confirming that the chosen date is suitable and then providing relevant details of the companion to the manager convening the hearing at least 5 days in advance of the hearing.
- 2.7 If the member of staff chooses not to be represented or have a companion HR will make a note of this and inform the panel.
- 2.8 If a Member of staff's chosen companion is not available at the time the hearing is proposed, the member of staff may request a reasonable alternative time for the hearing within five working days.
- 2.9 In consideration of attendance, both parties must be reasonable in their approach.

A member of staff must take all reasonable steps to attend an appeal hearing. If the employee has not taken all reasonable steps to attend, then the employer is not obliged to go ahead with the meeting.

If the reason for non-attendance could not have been foreseen at the time that the hearing was arranged, the manager must rearrange the hearing for a new date. The duty to rearrange the hearing usually applies only once. However, managers must be reasonable with regards to rescheduling a hearing. Extenuating circumstances could involve rearranging more than once, taking into account the reasons for the non-attendance, for instance where the delay or non attendance may be due to health, disability or childcare issues.

3. Conducting the appeal hearing

- 3.1 The Panel needs to be familiar with the fact that the Library will only consider an appeal on the basis of the grounds laid out under section 11.2 of the main policy – any representations made outside of this area or introduced into the hearing (rather than provided in advance of the hearing as required) will not be considered
- 3.2 At the start of the Hearing, the Chair of the Panel will:
 - introduce the parties attending especially any parties not known to each other.
 - check that all parties have all relevant papers.
 - outline the purpose of the hearing (which is to establish the facts and determine, on conclusion of the hearing, whether the Library has applied the disciplinary policy correctly in the areas which have been appealed against, e.g. by process the action taken, the level of sanction etc
 - Advise the member of staff of their rights under the disciplinary procedure and how the hearing will be conducted.

- Inform the companion / work colleague they have specific responsibilities (see Appendix 3 of Disciplinary Policy.)
 - Outline the basis of the employees appeal
- 3.3** General rules of fairness and natural justice (see section 1.3) should be carefully applied to the appeal hearing. The senior manager or panel hearing the appeal must make the decision on the basis of both sets of representations.
- 3.4** The member of staff should have:
- an opportunity to explain and state their case as to why they think that the original decision / application of the process was wrong.
 - the chance to put any new supplied evidence to the manager and draw attention to any relevant circumstances in relation to the grounds of their appeal or (e.g. via documents within the case pack or witnesses attending).
- 3.5** The manager should give the member of staff time to explain themselves; the manager should not interrupt the member of staff unnecessarily nor make assumptions about what the member of staff is going to say. It is essential that the manager hearing the appeal has an open mind.
- 3.6** If the member of staff has chosen to be represented, the companion should be allowed to put their case, sum up the case and respond to any view expressed at the hearing. The companion should not, however, answer questions on the member of staff's behalf. If witnesses are being called to the appeal hearing, the companion should be allowed to ask questions of the witnesses.
- 3.7** The manager conducting the appeal should also hear representations from the manager who conducted the investigation and from the manager who conducted the disciplinary hearing and imposed the sanctions.
- 3.8** Any witnesses whom the panel has decided to call will be called into the hearing and asked to state their evidence in front of the parties. They may be questioned on this evidence by any member of the panel and the member of staff or their representative.
- 3.9** The member of staff or their representative will be allowed a full opportunity to question the presenting manager on the Library's case, to question any witnesses and to challenge the content of any witness statements in any appropriate manner.
- 3.10** The Chair or panel members may question the member of staff on his/her evidence. Although the member of staff may confer with his/her representative at any time during the hearing on request, the Chair has the right to ask the member of staff personally to answer any questions put to him/her.
- 3.11** At any point during the hearing, the Chair may adjourn the proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). Likewise, the member of staff may confer with their representative or colleague or seek a short adjournment where appropriate.
- 3.12** At the end of the hearing the Chair conducting the appeal should reflect back to the member of staff what they believe to be the member of staff's grounds for appeal to be to ensure that there is no misunderstanding. The Chair will ask each party to summarise the key points to their case prior to the panel making a decision.

4. The Decision

4.1 The decision should not be rushed. It is recommended that the appeal hearing is adjourned to ensure full consideration of the issues by the panel. At the end of the hearing the Chair will;

- Either adjourn the meeting to make the decision on the same date as the meeting and inform the member of staff on the day
- Or inform the member of staff when a decision will be made on whether the appeal will be upheld or not then close or adjourn the meeting.

4.2 At the end of the hearing the Chair of the appeal may take up to 5 days to consider the facts of the appeal. All details must be taken into account before making a decision about whether or not to uphold, part up hold or not uphold the appeal. The decision can either be;

- **A** - in support of the employees appeal with the grounds for the successful appeal (which means that all records of the disciplinary hearing and warning will be removed from the employee's record).
- **B** - part supports both parties over different aspects of the appeal where it has been decided to allow part of the appeal (grounds stated) and part that has been rejected (grounds stated). Records relating to the areas in which the appeal has been successful will be removed from the employee's record, those related to areas on which the appeal has not been allowed, will be retained on the employees record.
- **C** - in support of employer's decision (grounds stated) and the records and warning retained on the employees record.

4.3 When the decision has been made, it must be conveyed to the member of staff in writing within 5 working days (see letter 10). In the letter the member of staff will be advised of any warning or disciplinary action being taken

- Details of the appeal
- The outcome - outline the decision made and give justification for coming to the final decision.
- What happens next (if upheld, not upheld / part upheld the concluding actions) give a brief summary of the case - listing all areas for appeal separately and whether or not each of them has been upheld.
- That the Library's decision is final and that there is no further internal appeal under the disciplinary process.
- That in dismissal cases the employee has the right to appeal to the Civil Service Appeal Board the details of which are contained in the Staff Handbook, section B part IV paragraphs 1-3 (copy attached).

4.4 The Chair of the hearing will also put together a Case Summary of the hearing which should summarise the detail. The length and level of detail depends on the nature and seriousness of the case (e.g. a summary of an appeal hearing regarding a disciplinary warning will likely be shorter than a complex hearing regarding dismissal). The summary will be used for future reference if there is a Civil Service Appeal Board to Employment Tribunal Hearing. It will also be relevant in evaluating consistency of decision making across the Library.

A copy of the case summary should normally be provided to the member of staff within 5 working days of the hearing. It can be sent at the same time as the decision letter.

- 4.5** Additionally, the written record of the hearing will be provided by the note taker, who will write down all the salient points and comments, and made. The note taker will then transcribe the notes. HR will provide 2 copies each to the Panel and the member of staff. The member of staff should then check the notes and sign both copies to say that they agree accuracy so that a final agreed copy can be produced. One copy should be kept for accuracy and the other sent back to HR.

5 Record keeping

- 5.1** If the appeal fails then it is essential that a manager keeps records of the appeal being lodged, the documents and the outcome. The notes of the appeal hearing and the final decision should be kept on the member of staffs' personal file. These records will be subject to normal data protection rules
- 5.2** If the appeal is upheld then all references to, and any records of, any of the disciplinary action should be removed from the member of staffs file.

Appendix 8 – Managers' Guide - Handling Grievances Raised During Disciplinary Procedures

1. Introduction

- 1.1** Sometimes a grievance may be raised during a disciplinary investigation / hearing. This appendix aims to give practical advice on managing situations that involve both disciplinary and grievance procedures.
- 1.2** If a grievance does occur, the manager should refer to the guidance in this appendix for detailed advice on what to do in these circumstances and refer to the Grievance Policy. Equally sometimes an allegation of harassment, bullying or discrimination may arise during a disciplinary investigation / hearing and both the [Dignity and Respect at Work Policy](#) and the guidance in this appendix will be able to guide and advice on how to handle this. In both instances the manager should also consult HR.
- 1.3** There are several scenarios where an employee undergoing the Library's disciplinary procedure could raise a grievance. This may for instance be in relation to;
- how the disciplinary process is being conducted, (e.g. breach of confidentiality)
 - the conduct of people involved in the situation or process, (e.g. manager or colleagues not behaving appropriately) or
 - in relation to matters that led up to the disciplinary process being invoked (e.g. the employee may allege that in the run-up to the disciplinary action they were bullied by the manager who initiated the process.

It could also be unrelated to the disciplinary process, but is raised while the disciplinary process is ongoing.

2. Handling Grievances Related to the Disciplinary Process

- 2.1** When a manager is faced with a grievance from an employee under going a disciplinary process they must act promptly to consider the nature and import of the grievance, how it needs to be responded to and how to avoid issues and delays to the disciplinary process.
- 2.2** The manager needs to make a judgment about the seriousness of what is being alleged. If the employee simply makes a vague complaint about the way the matter has been handled, the manager is entitled to ask for clarification and any decisions or a grievance hearing need not take place until the employee has informed the manager what the basis for the grievance is.
- 2.3** Having clarified the precise basis for the grievance and the nature of the allegations being made, the manager must make a judgment. The manager needs to make a reasoned and informed decision, supported by HR, about how the various issues surrounding the case can be dealt with most effectively, for instance;

- Is the Grievance procedure applicable or can this be handled within the disciplinary process?
- If the grievance procedure does apply, how and when will the hearing and resolving of a grievance take place / the disciplinary proceedings continue.

The basis for any decision should be clear and communicated to the member of staff. (For details around management decisions see the rest of this section)

- 2.4** There are instances where grievance procedures do not apply such as where the grievance is that the manager is taking action under the disciplinary policy that may lead to a disciplinary sanction or dismissal. A response indicating that the disciplinary procedure is the appropriate forum to discuss those issues will be sufficient, and no action under the grievance procedure need be taken.
- 2.5** Normally, the employee's complaint is best dealt with in the course of the disciplinary process itself, possibly as a basis for appeal. This would especially be the case where an employee has a grievance but does not want to take this up formally through the grievance procedure.
- 2.6** Managers should also be mindful of the purpose of the right of appeal (see section 11- Disciplinary Policy). Depending on the position that the process is at, and the nature of the grievance, the appeal may be considered a more appropriate avenue, for instance if the employee
- raises a grievance about the way in which the process has been conducted at the same time as the disciplinary sanction has been delivered then it may fall under the criteria for raising an appeal under the disciplinary process.
 - alleges that the initial disciplinary hearing, or a preliminary investigatory meeting, was improperly handled e.g. in that it amounted to bullying or harassment, this is likely a matter for the Grievance procedure.
- 2.7** If it is determined that the best way of dealing with the issue is to allow the disciplinary process to take its course, the employee must be informed of this decision and also that they are free to raise their allegations when stating their side of the case during the disciplinary hearing and appeal. Such matters must be investigated where they appear to relate or be relevant to the disciplinary matter under consideration. Any remaining grievances can then be dealt with once the disciplinary process has been completed.
- 2.8** If there is a need to initiate the grievance process, the only requirement regarding timing of progressing matters when managing situations that involve both disciplinary and grievance procedures is that 'each step and action under the procedure must be taken without *unreasonable* delay'. For instance an employee who raises a grievance during disciplinary proceedings is not entitled to have this heard before the disciplinary process can continue so if there is a reasonable decision to delay hearing a grievance it will be deemed acceptable to allow the disciplinary process to run its course first.
- 2.9** In practice it will be unusual if the allegation was sufficiently serious to warrant calling a halt to the disciplinary procedure in order to launch an immediate

investigation into the employee's allegations. Even though this can occur such a step would rarely be found to be appropriate, as the conclusion of the grievance process could prejudice the process and outcome of the disciplinary procedure.

3. Handling Grievances unrelated to the disciplinary process

3.1 In many cases an employee's response to being taken through a disciplinary hearing is to raise a grievance, or a number of grievances, that are unrelated to the disciplinary process. Where this is the case, there is no need for the disciplinary process to be put on hold. On the other hand, there will generally be nothing to be gained from deferring the grievance until after the disciplinary process has been completed. Grievance and disciplinary issues can simply be dealt with in parallel.

4 Running a grievance hearing after the disciplinary process

4.1 If the result of the disciplinary process is dismissal, the manager is not obliged to continue to employ the employee while addressing a grievance. It is important to remember that, even if the result of the disciplinary process is that the employee is summarily dismissed, the standard grievance procedure will continue to apply, even though the employee is no longer employed. This means that the manager must invite the former employee to a grievance meeting and give a formal right of appeal.

4.2 Where the employee remains in employment following the disciplinary process, the standard grievance procedure applies. In many cases the grievance will simply take its course. However, the employee may seek to use the grievance to challenge whatever decision was taken at the disciplinary hearing. They are entitled to do this, but the manager will not be required to re-open matters that have already been thoroughly dealt with via a hearing and appeal. There should be no need to conduct a fresh investigation.

4.3 The Library's grievance procedure is there to ensure that meetings are held where both sides are able to explain their case and that, where appropriate, an appeal hearing is held. The manager must therefore listen carefully to what the employee has to say. It may be that this leads the manager to think that something has gone wrong with the process and reconsider the action that has been taken. However, it may also be considered an appropriate response for the manager to say that these matters were thoroughly dealt with during the disciplinary and appeal process and that further action may not be necessary.

Appendix 9 - Explanation and Guide on Covert Monitoring

The use of covert monitoring is rare, takes place for restricted periods, and its use is carefully controlled and requires formal authorisation. This appendix aims to explain what it is, and the circumstances in which its use and application can be lawful, justified and appropriate.

1 Definition and purpose

1.1 Covert monitoring describes when an individual or employee is observed without their explicit awareness and agreement. This is so that the observer's presence does not affect the behaviour of those being observed.

1.2 To observe someone covertly is an invasion of privacy, thus:

- It is rarely used and it should not normally be considered unless there are justified or exceptional circumstances.
- There is strong legislation around its application and use e.g. an employee's rights to privacy are firmly recognised and protected by legislation such as the Human Rights Act.

1.3 Covert monitoring may in exceptional circumstances be undertaken by the Library with restricted use (see 2.2 to 2.4 below) and only if authorised by the Director of HR (or when absent their appropriate nominated deputy). Except in very rare and serious cases of Whistleblowing where the decision may be taken by a board member or instances where there is police involvement (see Whistleblowing Policy).

2 General Principles and Application

2.1 If a manager has grounds to suspect criminal activity or a serious breach of Library policies they should contact HR for advice. If a need to monitor is justified and the circumstances are deemed to be serious enough covert monitoring may be requested.

2.2 In such instances, the Library will comply with the legal provisions laid out for covert monitoring such as the Data Protection Act and the Human Rights Act 1998 ('the HRA'), which provides that: 'Everyone has the right to respect for his private and family life, his home and his correspondence.' (Article 8(1)).

(It is important to note that the covert watching of an individual by another is not in itself caught by the Data Protection Act 2000 (DPA), but once it results in a record being kept about the person, the Act will apply).

2.3 Privacy rights have some exceptions which allow restricted use of covert monitoring in exceptional circumstances such as potential breach of law, public safety or health and safety, or for the protection of the rights and freedoms of others. (Article 8(2)).

2.4 Thus there may be exceptional circumstances where such monitoring in the workplace will be justifiable and can be lawfully undertaken by the Library, limited solely to incidents where there are reasonable grounds to suspect criminal activity

or equivalent malpractice², or if the Library believes that it is being considerably harmed by an employee breaching any of its Policies.

- 2.5** Due to the fact that covert monitoring is rare and restricted any such monitoring of a Library Employee will always be authorised beforehand by the Director of HR (or when absent their nominated deputy) except in exceptional circumstances with regard to whistleblowing (see 1.3) or police involvement. It is only justified when there are grounds for suspecting criminal activity or equivalent malpractice, and also as part of a specific investigation where notifying individuals about it would prejudice prevention or detection, or the apprehension or prosecution of offenders.
- 2.6** A privacy impact assessment should always be completed to consider whether the activity being monitored is of sufficient seriousness as defined in 2.2 above that it will cause considerable harm to the Library or would be reasonable to involve the police. Note that this does not mean the police actually have to be involved. An impact assessment should be put in writing and discussed with the director **before** authorisation of covert monitoring.
- 2.7** The privacy impact assessment must be carried out by the manager requesting the monitoring. This is then submitted to the Director of HR (or their nominated deputy) for review. The impact assessment will assess:
- Extent and method of monitoring
 - Purpose of the monitoring and benefits to be delivered
 - Management and security of information collected, and who will have access to the results of monitoring
 - Consideration of alternative less intrusive means of achieving the same objective
 - Advantages balanced with adverse impact
 - Balance of privacy rights against public interest
 - Balance of interception activities in proportion to risk of no action
- 2.8** Monitoring will only be authorised, and the Library will only move directly to actual monitoring in circumstances where it believes there are reasonable grounds for doing so. If authorisation is granted by the Director of HR (or when absent the nominated deputy) for monitoring to take place, then they will ensure that this is carried out in accordance with legislation.
- 2.9** When authorisation is granted the monitoring activities will then be carried out for the specific purpose and for the defined period. If evidence of apparent misuse is established this may be dealt with in accordance with the Disciplinary Policy.
- 2.10** The information collected through covert monitoring will be used according to the legal provisions and best practice laid out for covert monitoring which clearly define the limits on disclosure and access to information, and limit usage only to the prevention or detection of criminal activity or equivalent malpractice. All other information will be disregarded and deleted during or at completion of the monitoring / investigation as appropriate unless they reveal something of such seriousness that the Library could not reasonably be expected to ignore, such as criminal activity, gross misconduct or health and safety breaches.
- 2.11** Any covert monitoring will aim to obtain evidence within a set time frame, namely, the completion of the investigation, after which it will be discontinued. The number of people involved will be restricted as much as possible, and places where staff would reasonably expect to have privacy - toilets, private offices - will be avoided.

² Such as wilful damage to the collections / legal deposit

Exceptions would be for instance where serious crime is suspected of being committed, and where the police may be involved.

2.12 TUS will be informed on an annual basis of instances of monitoring and/or analysis undertaken under the scope of this policy.

3. Additional areas to be considered.

3.1 Covert monitoring may be performed through video or audio monitoring, as well as any monitoring of other electronic communications.

3.2 Where a private investigator is used for covert monitoring, they will usually be engaged through the Director of HR and Integrated Risk Management unless in a case of whistle blowing where this may not be appropriate. This arrangement will be regulated by a contract that restricts the investigator to collecting information only in a way that satisfies the Library's obligations under the DPA, so that information can be collected, used and secured according to the Library's instructions. By such an arrangement, the private investigator will be a data processor and the Library will retain responsibility for data protection compliance unless the contract between them places data protection obligations on the investigator.