

Office of the Services Commissions

User Manual for the Administration of Discipline in Executive Agencies, Jamaica



DISCLAIMER

This **User Manual** is intended to be used as a practical and helpful guide **only** and is **not to be used as legal authority for any purpose**. Precise legal authority comes wholly from statute and case law and **the Office of the Services Commissions reserves the right to revise, modify or alter the contents of this manual at any time.**

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Acronyms

PSC	Public Service Commission
OSC	Office of the Services Commissions
HREC	Human Resource Executive Committee
CEO	Chief Executive Officer
G-G	Governor-General
EAs	Executive Agencies
CPO	Chief Personnel Officer
PSR	Public Service Regulations
REG	Regulations
HREC	Human Resource Executive Committee

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INTRODUCTION

This document outlines a rationale for the development and dissemination of this Manual; identifies the target users; and defines key concepts relevant to the understanding and application of the elements; procedures and laws governing discipline in Executive Agencies in Jamaica. Additionally, it outlines the regulatory framework governing discipline in Executive Agencies and background information on the introduction of Executive Agencies in Jamaica. The remaining sections will instruct you on the three (3) stages of the disciplinary processes and emphasis is placed on getting the procedures right in keeping with the Public Service Regulations and in particular the following relevant sections: 42; 43; 39; 37; 35; 34; and 26. The Schedules and Appendices Section toward the end of this manual present a fulsome step by step guide to the critical procedures integral to the effective, lawful and ethical administration of Discipline in Executive Agencies. A cluster of Frequently Asked Questions and Answers has also been included with the hope that you will derive from that section answers to some of the questions you might have concerning the Administration of Discipline in Executive Agencies.

WHY USE THIS MANUAL?

The effective use and application of the instructions and principles outlined in this manual assures for:

- Mitigating the transaction costs associated with the relevant parties appealing at the local level (PSC and Local Privy Council) and at the National Level (via the courts) resulting in an injunction being issued by the court. Essentially, it is hoped that the application of the instructions in this manual would minimize the costs emanating from appeals of disciplinary outcomes being quashed by the courts (locally and the United Kingdom);
- Inspiring the application of sound and ethical employment relations practices undergirded by the **FRAME IT** principles of **F**airness, **R**espect, **A**ccountability, **M**erit, **E**quity, **I**ntegrity and **T**ransparency;

- Upholding the rule of law and principles of natural justice and in particular due process and constitutional rights of the relevant parties;
- Encouraging and maintaining a disciplined, motivated, managed, productive better performing workforce;
- Making applicable information readily available to target users

ACKNOWLEDGEMENTS

The Chief Personnel Officer, Mrs. Jacqueline Hinkson, JP, Office of the Services Commissions (OSC), Jamaica expressed a desire for the development of a User Manual for the Administration of Discipline in Executive Agencies in Jamaica as a guide to Chief Executive Officers (CEOs) attached to Executive Agencies in exercising their authority and control over officers attached to their agencies. This initiative was driven largely by the decision of the local Privy Council which upheld appeals brought by officers and the need for the administration of discipline to be consistent with the rule of law, existing policies and practices and guided by the principles of natural justice and in particular due process across all Executive Agencies.

The Office also organized and delivered two workshops and participants included CEOs, Legal Officers and HR Officers attached to Executive Agencies. The workshop had the following aims:

1. Reinforcement of the importance to adhere to the rule of law (namely the Public Service Regulations and the Constitution), the principles of natural justice and in particular due process in the disciplining of officers attached to executive agencies,
2. Facilitation of **deep, active and experiential learning** through the **use of role playing** and a **problem based learning instrument** centred on:
 - a. Preliminary investigations
 - b. Interdiction;
 - c. Disciplinary Action consequent on criminal proceedings against an officer;
 - d. Disciplinary action with a view to dismissal, and
 - e. Appeal
3. Facilitation of an exchange **of ideas and concerns from participants** and dissemination of expert guidance and feedback from the Legal Officer attached to this Office.

In that connection, the Chief Personnel Officer & Staff and the Public Service Commission (PSC) wish to thank and acknowledge the following officers attached to the Office of the Services Commissions as indicated below for their contribution towards the development of this User Manual and the Delivery of two (2) workshops:

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BACKGROUND AND RATIONALE

R v Sussex Justices, Ex parte McCarthy (1924) is a famous English case which highlights the importance of the impartiality/lack of prejudice and recusal of judges in advancing justice. One of the common expressions of this case which is instructive for the successful administration of discipline is:

“NOT ONLY MUST JUSTICE BE DONE BUT SHOULD MANIFESTLY AND UNDOUBTEDLY BE SEEN TO BE DONE”

In this connection, while the administration of discipline is governed by documented rules (namely the Public Service Regulations, 1961), parties involved must ensure that this is done fairly and the principles of natural justice are upheld. Failure to adhere to the principles of natural justice and in the event that there is a judicial review of the matter, the courts can quash the ruling resulting in embarrassment and even costs associated with the pursuance of legal action by the aggrieved parties.

The Government of Jamaica is the single largest employer in Jamaica. The composition of the workforce is diverse both in terms of the complexity of the functions performed and the varied social backgrounds of the officers. To effectively manage this pool of employees, rules of engagement and expected behavior standards have been established. These rules and behaviour standards are rooted in Acts of Parliament, subsidiary legislation (Delegation Orders, Public Service Regulations. When an officer breaches these rules disciplinary measures are undertaken.

Discipline in a broad context deals with setting standards and reinforcing them. Discipline is an important tool in maintaining productivity in organizations. The effective administration of discipline in the public service is essential for stability in the work place, equitable and consistent treatment of issues and by extension, improved service delivery to the public and economic growth.

This Manual serves as an instructional and information tool to users attached to Executive Agencies across Jamaica to advance the effective and lawful administration of discipline in those entities. This Manual addresses the administration of discipline in Executive Agencies.

Target Users

It is intended for this Manual to be used by a target audience attached to Executive Agencies namely the Chief Executive Officers; Legal Officers; Human Resource Staff and Members of the Disciplinary and Human Resource Executive Committees.

EXECUTIVE AGENCIES AND DELEGATION IN JAMAICA

The Cabinet in June 1998 approved the principles which governed the drafting of legislation to create Executive Agencies in Jamaica. Additionally, Cabinet also “approved using administrative procedures within the context of the Constitution on specific laws to create the agencies” (<http://www.jis.gov.jm/Departments&Agencies/index.asp>, Jamaica Information Service, 2010). Executive Agencies were introduced in Jamaica in 1999 as a new organizational form within the Jamaican Public Sector landscape to operate as semi-autonomous government agencies as part of the Public Sector Modernization Programme initiatives which were underpinned by New Public Management reform paradigm of **Decentralisation** and in particular the Delegation Model. Notwithstanding and while remaining a part of government, unlike central government ministries and departments, they have more responsibility for their own management and performance are governed by civil service rules and conditions of service.

Executive Agencies according to the Jamaica Information Service “are one way in which the government has been able to improve accountability for performance and service delivery”. Essentially, the “primary aim is to reduce central control and delegate authority to the **Chief Executive Officers** in the various government institutions. Another aim is to substantially improve the quality and quantity of services provided by government agencies”. In that connection, Executive Agencies have **enhanced delegated authority over the management of their resources**. An Executive Agency, while still fully owned by government, is given greater autonomy in making financial and **human resource**

management decisions. The Chief Executive Officer is required to sign a performance agreement, holding him or her accountable for achieving key performance indicators which are based on the quality and cost effectiveness of the services provided to customers. The Chief Executive Officer, once given this level of autonomy is expected to use the available resources in the best ways possible to maintain high satisfaction levels among customers. (<http://www.jis.gov.jm/Departments&Agencies/index.asp>, Jamaica Information Service, 2010).

What is Delegation?

Delegation within the context of Central Government Human Resource Management Functions (previously undertaken by the Public Service Commission), is the granting of authority to Permanent Secretaries/Heads of Department/Chief Executive Officers to carry out certain personnel transactions as provided under Section 127 of the Constitution and effected by a Delegation of Functions (Public Service) Order (please see Appendix 4: Sample of Delegation of Functions (Public Service), Order) signed by the Governor-General (G-G) on the advice of the Public Service Commission. Delegation is not a new phenomenon as certain functions had previously been delegated. For example in 1963 Heads of Departments were given authority to pursue disciplinary action that would not result in dismissal. Since April of 1999, the Governor-General acting on the advice of the Public Service Commission took the decision to delegate certain Human Resource functions (namely; Appointments inclusive of Training and Development, Discipline and Separation of Public Officers attached to Executive Agencies) of the Public Service Commission to Chief Executive Officers, in Jamaica Permanent Secretaries and Heads of Department on a phased basis.

Why Delegation?

Factors such as the increasing size and complexity of the Civil Service and the tasks being performed, the turbulent economic environment, globalisation, rapid technological advances, and increased public demand are impacting on the machinery of government

forcing it to become more efficient and effective in the delivery of its services. In order to combat these problems within the Civil Service, the Government of Jamaica, has embarked on a Public Sector Modernisation Programme, which is geared towards improving accountability in service delivery in the Public Service.

As a result of the delegation of functions, the Public Service Commission has recognised that it is imperative that it assume a more strategic role in ensuring that public servants are hired and promoted on the basis of merit, i.e. the person who is judged to be the best candidate in a competitive process. The Commission now has to ensure that the functions delegated are managed in keeping with the prescribed values and behaviour expectations.

To this end it will now be responsible for the following duties with respect to the delegated functions:

- ✓ Human Resource Management Auditing and Monitoring
- ✓ Recourse and Redress
- ✓ Research
- ✓ Information, Standards and Education
- ✓ Training of designated agency personnel in the management of these functions
- ✓ Provision of advice/consultancy

The Office of the Services Commission's audit teams are mandated to monitor and audit the administration of discipline in Executive Agencies and submit a report to the Public Service Commission and the relevant Chief Executive Officer (CEO).

SCOPE AND LIMITS IN EXERCISING CONTROL OVER DISCIPLINE

While it is the prerogative of the Chief Executive Officer to exercise control and authority over the discipline of public officers appointed in his/her agency, there is a limit to which he or she can act. Disciplinary actions against public officers not appointed to the Agency but seconded to the agency must be directed to the Office of the Services Commissions for necessary action. The Human Resource Executive Committee (HREC) cannot act on disciplinary appeals. These must be forwarded to the OSC for the necessary action in preparation for submission to the local Privy Council. The local Privy Council is the appellate body to the Public Service Commission. Section 39 of the Public Service Regulations provides for disciplinary appeals to be referenced/submitted to the local Privy Council.

CAN CEOs DISCIPLINE AND SEPARATE OFFICERS ATTACHED TO THEIR AGENCIES?

The Accountability Agreement (please see Appendix 5: Sample of an Accountability Agreement for Executive Agencies between the Public Service Commission and the Chief Executive Officer) is pursuant to the Delegation of Functions (Public Service) Order [\[Appendix 4: Sample of Delegation of Functions \(Public Service\), Order\]](#). Under this Agreement and on the conditions set out, the Chief Executive Officer has delegated powers to appoint, separate and discipline officers appointed in their Agencies under the Public Service Regulations, 1961. Notwithstanding, procedures relating to removal and/or discipline must follow due process; and the provisions of Section 127(4) of the Constitution of Jamaica continue to apply.

ACCOUNTABILITY

The Chief Executive Officer, in exercising control over public officers appointed in his/her Agency, is accountable to the Governor-General through the Public Service Commission, and should ensure that in removing from office or exercising disciplinary measures over any person the provisions of Section 127(4) of the Constitution of Jamaica are respected.

It should be noted that the authority to discipline and separate officers assigned/seconded to Executive Agencies (EA), [that is, they are public officers who hold substantive posts perhaps on the old structure prior to agencification and not appointed in the EA but who remain on the old structure and seconded to the Executive Agencies] does not rest with the CEO and these matters should be referred to the Office of the Services Commissions for action. The relevant documents should also be forwarded to this Office. Please note that Chief Executive Officers have the power to retire an officer in the public interest.

FRAMEWORK OF VALUES STEERING THE ADMINISTRATION OF DISCIPLINE

Some of the guiding principles that steer the processes for the Administration of Discipline will be managed within a framework of values as set out below:

- **Fairness**
 - Make decisions and take actions that are, and are seen to be fair and equitable, with due regard to the impact of such decisions/actions on current situations and their potential impact of future processes.
- **Respect**
 - Maintain balance between achieving the goals and outputs of the Agency and due consideration for the well-being of employees. Involve employees in decision-making processes, including matters of relevance to their welfare.
- **Accountability**
 - Be prepared to accept responsibility for decisions and actions and to be held accountable.
- **Merit**

Ensure that disciplinary processes and mechanism encourage the retention of disciplined and suitable employees.
- **Equity**
 - Ensure that all persons are treated equitably, consistent with prevailing human rights and gender considerations when undertaking discipline in the organization.
- **Integrity**
 - Chief Executive Officers and HR Staff behave in a manner such that decisions and actions can withstand the highest level of scrutiny especially from the local Privy Council and the Supreme Court, Court of Appeal and the UK Privy Council.

- **Transparency**
 - Ensure that there is adequate access to relevant information especially charges and evidence to the defendant and his legal and union representative.

RIGHTS, ROLES AND RESPONSIBILITIES

The Employee, Chief Executive Officer, Public Service Commission, Privy Council and the Office of the Services Commissions have critical roles and functions in the administration of discipline and appeals in Executive Agencies.

The Chief Executive Officer is responsible for:

- ✓ Establishing appropriate accountability mechanisms for the proper management of the delegated functions including a Human Resource Executive Committee and a Management Employee Consultative Committee.
- ✓ Exercising the delegated functions in accordance with the guidelines established by the Public Service Commission at the times specified.
- ✓ Reporting on his/her performance in relation to the delegation, to the Public Service Commission at the times specified.
- ✓ Ensuring that all employees are aware of and have access to appropriate recourse and redress mechanisms.

While delegation allows for autonomy, awesome responsibilities and authority, employees do have rights. Chief Executive Officers are accountable in this regard and must ensure that employees' rights are not infringed upon. In this connection, the Chief Executive Officer is responsible for disciplinary decisions made by him/her and in the event that there is an appeal and or challenge/judicial review via the local Privy Council and or the Courts the CEO becomes a plaintiff in that matter and has to give account and justification for his/her action. Should there be a judicial review of the decision taken by him/her, the CEO will be represented by the Solicitor General. With regards to legal costs the government will cover that cost in the event that the court quashes the decision

taken by the CEO and the government is required to compensate employee seeking redress through the court.

Employees have the right to appeal

The employee is responsible for:

- ✓ Being aware of what the delegated functions are and how they are to be managed
- ✓ Understanding the disciplinary policy and procedures of the Agency
- ✓ Being aware of and obtaining access to appropriate policy and procedures of the agency
- ✓ Reporting acts of misconduct to the CEO
- ✓ Making himself/herself available as a witness at disciplinary hearings
- ✓ Adhering to the Code of Conduct

The Office of the Services Commissions is responsible for:

- ✓ General oversight and monitoring of the performance of the Public Service in respect of the delegated functions.
- ✓ The conduct of periodic audits, monitoring visits and surveys to assess the management of the delegated functions.
- ✓ The provision of recourse and redress mechanisms for employees.
- ✓ Ensuring that adequate training is provided to designated ministry personnel.
- ✓ Being a source of consultation and advice.

The Public Service Commission (PSC) and Local Privy Council

These bodies are to receive and deliberate on appeals taking into consideration the rule of law and the principles of natural justice in arriving at a decision. The PSC reviews the appeals and its advice is then forwarded to the Local Privy Council for a final decision.

KEY CONCEPTS IN THE MANAGEMENT OF DISCIPLINE

This section will define some of the key concepts relevant to deepening the users' understanding of the key principles critical to the lawful and effective administration of Discipline in Executive Agencies in Jamaica.

Justice

Konow (2003) defines the term justice as moral rightness based on the fundamental principles of ethics, rationality, law, natural law, religion, fairness, or equity, along with the punishment of the violation of the said fundamental principles outlined. Disciplinary actions should be guided by justice principles of fairness and the rule of law.

Discipline

The term discipline for the purposes of this User Manual refers to efforts taken by employers against employees in order to gain control, enforce obedience and as a final stage of justice when the worker has been found to breach established rules. Usually when an employee violates rules, the code of conduct or fails to adhere to behaviour expectations, he or she once found guilty is disciplined.

Quash

The legal term quash refers to the court's suppressing/rejecting a ruling as invalid, voiding a ruling or annulling a ruling.

Injunction

This term is a legal one which refers to a judicial remedy issued by the court in order to prohibit a party from doing or continuing to do a certain activity. For example, the courts served an injunction for the PSC to halt proceedings geared towards retiring an officer in the public interest.

Interdiction

Interdiction is an administrative procedure and refers to the removal of an officer from performing his official duties and the withholding of a specified portion of his salary. Interdiction is usually utilized if it is considered in the public interest that the officer should cease to perform his duties pending the outcome of a disciplinary or criminal case.

Infraction and Misconduct

An infraction or act of misconduct is a breach of discipline and may be deemed to have occurred if an employee violates any of the behaviour expectations established (and these can be explicit and or implied). Some of these may be found in the Agency's Code of Conduct, Employee Handbook and the various legislation, code and professional standards that govern a particular occupational group. Essentially, an infraction or misconduct is an act by an employee that is contrary to implied and explicit behaviour expectations and occupational standards thereby, warranting the execution of disciplinary proceedings with or without a view to dismissal. Notwithstanding the explicit behaviour expectations, there are some implicit behaviour expectations though not listed but if breached would bring the organization into disrepute. The officer could also be responsible indirectly or vicariously for damaging the government's property. For example, an employee allowing his/her child into the office and this child damages the government's property. These actions would warrant disciplinary action with or without a view to dismissal.

Due Process

The term due process is one of the dimensions/characteristics of natural justice, which is a critical feature of legal proceedings. It is fundamental that all legal and disciplinary proceedings be fair and that the authority to administer discipline does not act in ways that are unreasonable, arbitrary or capricious in exercising his or her authority in taking disciplinary actions against an employee. Some manifestations/features of due process that the authority charged with carrying out discipline should ensure are that:

- The defendant and parties involved are given timely notice/communication of infraction and decision to take disciplinary action.
- Notice of trials is duly communicated and at a time and place that is mutually convenient for parties.
- The defendant is allowed time to prepare and make his/her own defence.
- Hearings/trials are swift and at a mutually convenient time.
- The defendant is allowed to make representation on his/her behalf and have witnesses on his/her behalf.
- There is evidence to support the accusations.
- The defendant is informed of his right to a hearing.
The defendant is informed of his right to an appeal.
- Disciplinary proceedings are swift and do not cause undue hardship to the defendant.
- The defendant is allowed to know and confront his accusers, and cross-examine if necessary.
- Documentation of infractions, warning, minutes of meeting should be prepared and made available to the defendant.
- Punishment must fit breach (verbal/written warning, reprimand, suspension, withholding of increment, termination).
- The guilty party should not be punished twice for the same offence.
- The defendant has a right to know charges prior to the trial.
- The defendant is given notice of disciplinary proceedings.

One good example of arbitrariness, unreasonableness and capriciousness by an authority in exercising his/her right to discipline and control staff is captured in the vignette¹ below:

Price Meat is a legal officer attached to a multinational communications and marketing company in Downside District, in the country of Far-Away-Land. He was recently invited to a meeting by his head of unit. At the meeting he was informed that he disrespected his supervisor. He was then issued a letter of reprimand and warned never to 'disrespect' his supervisor again. He left

¹ **Disclaimer:** This is not a true story. The scenario represented in the vignette is for **instructional use only** and any resemblance to a true case is by coincidence.

the meeting a bit perturbed and outraged at what transpired. Price Meat knows his rights were infringed on. He also felt the relationship between his unit head and supervisor prejudiced the process and that the approach and process used by his unit head to discipline him had been compromised, was procedurally flawed and arbitrary. Additionally, he felt that there was apparent bias emanating from a conflict of interest as the Unit Head was related to his supervisor's husband, making them sisters-in-law. Based on his legal knowledge and experience, he is of the opinion that he has been wrongfully defendant, was never notified of the charges and reason for the meeting; tried and convicted in his absence, not given an opportunity to defend himself or have a representative of his present, and the meeting was to only inform him of the accusation, verdict, sentence and then to reprimand him.

Kindly look at the definitions for due process, recusal, conflict of interest and the principles of natural justice; look also at the procedures outlined in Public Service Regulation 42 and ask yourself the following questions:

1. *How was the process flawed?*
2. *How could the Unit Head better handle this matter so that discipline and justice are administered fairly?;*
3. *What are Mr. Meat's rights?*
4. *What could be the most appropriate recourse in this case?*

Principles of Natural Justice

For the purposes of this manual, the principles of natural justice refer to guidelines that inspire and encourage procedural fairness at a hearing or trial. According to Binmore (2005) some of the principles of natural justice are manifestly present when there are no doubts and we are sure that:

- "There is a Right to Advanced Warning. Contractual obligations depriving individuals of their Rights cannot be imposed retrospectively.
- A person defendant of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges).
- A person making a decision should declare any personal interest they may have in the proceedings.
- A person who makes a decision should be unbiased and act in good faith. He or she therefore cannot be one of the parties in the case, or have an interest in the outcome. In this regard "no man is permitted to be judge in his own cause".
- Proceedings should be conducted so they are fair to all the parties - expressed in the Latin maxim audi alteram partem: "let the other side be heard".
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party.

- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations.
- Justice should be seen to be done. If the community is satisfied that justice has been done, they will continue to place their faith in the courts” (Binmore, 2005:).

Recusal

For the purposes of this Manual, the term recusal is defined as the act to disqualify or seek to disqualify from participation in a decision on the grounds such as a conflict of interest, prejudice or personal involvement. For example, the recusal of the CEO from presiding over the hearing is expected as it is known that he and the Manager, Corporate Services against whom disciplinary proceedings have been evoked are blood relatives, in fact they are siblings. Another example, requiring recusal would be a case where a member of the disciplinary committee is a main witness of the defendant.

Conflict of Interest

The term conflict of interest as it relates to the administration of discipline refers to a manifestation (whether apparent or real) of personal and professional interests and the conflicts that arise. Conflicts of interest occur when an individual or organization is involved in multiple interests, one of which could possibly corrupt the motivation for an act in the other. For example, a conflict of interest exists when the Director of HRM who is marshalling evidence is also related to the defendant by blood, or the main accuser is also the a member of the HREC and Disciplinary Committee.

Ultra vires

The term ultra vires is a popular Latin term meaning without authority. Here a decision taken by an individual, group or organization which is beyond the powers or authority of the person or organization taking and making the action? For example, the Supreme Court would have acted ultra vires if they ordered the reinstatement of a public officer who was summarily dismissed on account of breach of the principles of natural justice. The court can however, quash the decision to dismiss the officer and ask the Chief Executive Officer to start the proceedings anew. The public service commission would have acted ultra vires if it retired in the public interest an officer when there was no

recommendation by his head of department to retire him in the public interest. Authority to take actions against another must be informed by the rule of law and the principles of natural justice.

Certiorari

When a decision is thought to be *ultra vires* the usual remedy is to get a higher level judicial body, such as a Court, to assess and rule on it. In the event that the decision has already been made, then the remedy is *certiorari*. Essentially, the an order of certiorari is a formal request to a court challenging a legal decision of an administrative tribunal, judicial office or organization (for example the Public Service Commission or the Chief Executive Officer) alleging that the decision has been irregular or incomplete or if there has been an error of law.

Privy Council

For the purposes of this manual the Privy Council refers to the local appellate body to the Public Service Commission. Section 39 of the Public Service Commission provides for disciplinary appeals to be referenced/submitted to the Privy Council.

No Order

A no order is where the police has failed to complete investigation after the case has been given several mention dates to facilitate completion of investigation, or complainant not located to attend court and give evidence. **A “No Order” does not mean an acquittal, as the prosecution can revive the case at a later date.**

Convicted

This is means the individual was found guilty of a criminal offence in a court of law.

Charged

A formal accusation of a crime/misconduct in law.

REGULATORY FRAMEWORK

The regulatory framework (Public Service Regulations & Delegation Order) is what informs the legal procedures to handle discipline in Executive Agencies and identifies the key organizations; key stakeholders and participants involved in the disciplinary processes and outcomes. The regulatory framework that governs, informs, executes and participates in the Administration of Discipline in Executive Agencies in Jamaica includes the following organizations; legislation and codes; and individuals (stakeholders and participants):

1. Organizations

- a. Executive Agencies
- b. Office of the Services Commissions
- c. Governor-General's Office
- d. Public Service Commission
- e. Local Privy Council

2. Legislation, Codes, Departmental codes of conduct

- a. Jamaica (Constitution)(1962)
- b. The Public Service Regulations (1961)
- c. Executive Agencies Act (2002)
- d. Executive Agencies Regulations (2010)
- e. Corruption Prevention Act
- f. Financial Administration and Audit Act
- g. Financial and Administration and Audit Instruction
- h. Financial Regulations
- i. Code of Conduct Manual
- j. Delegation Order
- k. Delegation of Functions Accountability Agreement
- l. Public Service Enquiries (Attendance of Witnesses) Act (1964)

3. Individuals:

a. Key Stakeholders

1. The Governor-General
2. Chairman and Members of the Public Service Commissions
3. The Chief Executive Officer
4. The Chief Personnel Officer

b. Participants

i. On the side of the defendant

1. The Defendant Employee
2. Witnesses
3. Union Representatives
4. Legal Representatives

ii. Internal

1. Chairperson and Members of the Committee of Enquiry
2. Chairperson and Members of the Disciplinary Committee
3. HR Auditors, Office of the Services Commissions
4. Chairman and Members, Human Resource Executive Committee
5. Senior Director, Human Resource Management

..

HOW DISCIPLINE WORKS IN EXECUTIVE AGENCIES

WHAT IS A BREACH OF DISCIPLINE?

A breach of discipline or an infraction may be deemed to have occurred if an employee violates any of the behavioural expectations established by the Code of Conduct/departmental-occupational group regulations (for example the Corrections Act (1987), Poor Relief Act (1886)), The Child Care and Protection Act (2004). Please note that Acts establishing an Executive Agency and its accompanying Regulations, organisational/occupational codes and laws also outline a schedule of behaviour expectations of officers and if breached would be grounds for disciplinary proceedings against the officer without or without a view for dismissal.

WHO CAN TAKE DISCIPLINARY ACTION?

In the central government service, **the Governor-General (G-G) has the authority to take disciplinary action on the recommendation of the Public Service Commission** (Section 125 (1) Constitution of Jamaica). Under Section 127 of the Constitution of Jamaica, the **Governor-General has the power to delegate his authority**. In keeping with this provision and the provisions of the Executive Agencies Act, the Chief Executive Officer (CEO) has the authority to discipline staff based on an instrument of delegation under Section 127 of the Constitution. The Governor-General issues this instrument on the advice of the Public Service Commission. All the instruments of delegation that have been issued by the Governor-General cover **the entire disciplinary function**.

The CEOs' authority to discipline employees in Executive Agencies is therefore derived from the Governor-General's powers under the Constitution to discipline public officers. This is the same provision by which Permanent Secretaries and Heads of Departments receive delegated authority. What this means is that employees in EAs are public officers within the same meaning outlined under the Constitution and therefore the exercise of disciplinary authority in EAs is governed by the same provisions applicable in Central Government.

The power of the Governor-General on advice of the Public Service Commission under Section 135 of the Constitution is to regulate the procedure for discipline. Public Service Regulations is made under this provision.

The Executive Agencies Act (2002) stipulates for the Chief Executive Officer to act in accordance with the Executive Agencies Regulations (2010). The Executive Agencies Regulations (2010) specifies that “provisions of the Public Service Regulations [are] to be included with necessary modifications in Codes of Conduct and Human Resource Manuals of Executive Agencies. The Regulations to be included are:

- Regulation 11 – Failure to comply with request of Commission
- Regulation 13 – Penalty for giving false information
- Regulation 15 – Supervision of training
- Regulation 16 – Advertisement of vacancies
- Regulation 17 – Principles of selection for promotion
- Regulation 18 – Principles of selection for acting appointments
- Regulation 19 – Procedure for appointments
- Regulation 20 – Selection Boards
- Regulation 28 – Functions respecting discipline
- Regulation 32 – Interdiction
- Regulation 35 – Officer convicted of a criminal charge
- Regulation 36 – Non-payment of emoluments on conviction of a criminal charge
- Regulation 38 – Suspension, deferral and withholding of increments
- Regulation 43 – Proceedings for dismissal.

WHEN SHOULD DISCIPLINARY PROCEEDINGS BE CONDUCTED?

Disciplinary proceedings should be conducted when there is an allegation of misconduct. Misconduct is a breach of the Code of Conduct for the Public Service as outlined in the, Executive Agency’s Manual, and any act which in the opinion of the appropriate authorized officer amounts to misbehavior, disciplinary proceedings can be conducted without a view for dismissal (PSR, Reg. 42) or with a view for dismissal (PSR, Reg. 43). Section 1 of this Manual outlines what actions are to be taken if there is an allegation of misconduct. Schedule A: Step by Step Guide to Disciplinary Action provides detail and Schedule B: Discipline – Actions to be taken, presents useful guides for how to proceed with disciplinary action against an employee. A sample of the layout of charges brought against an officer is also displayed at Box 1: Sample of Disciplinary Charges.

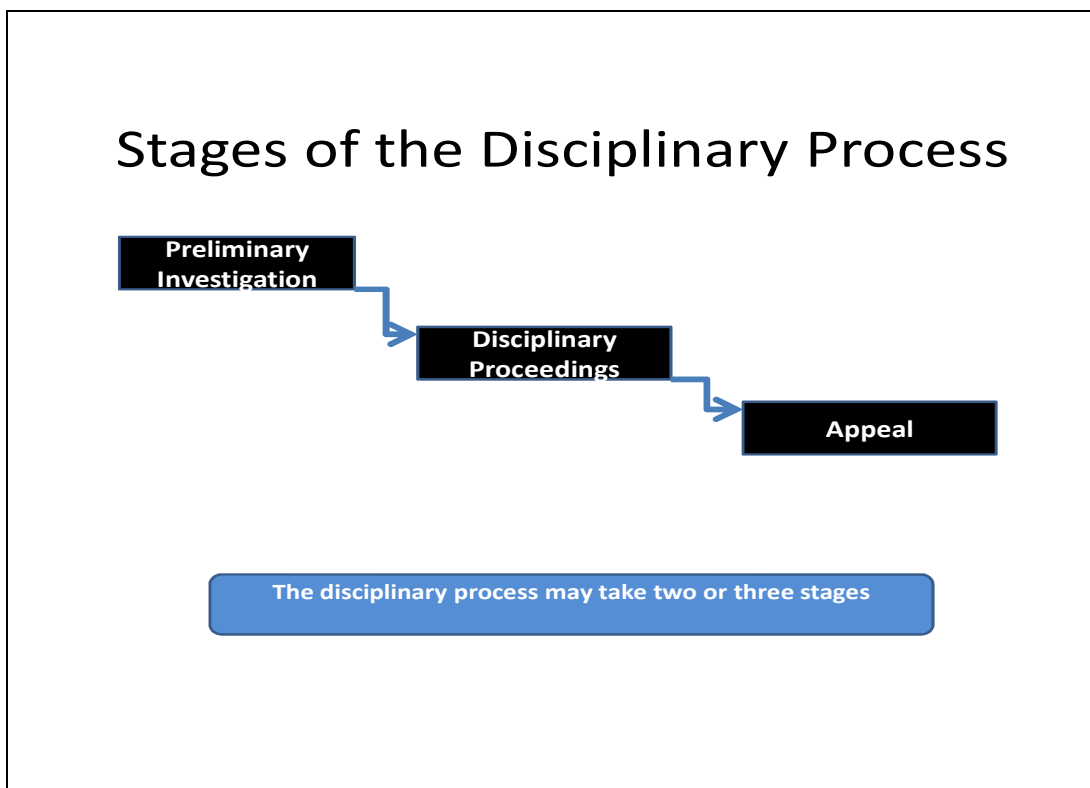
What are the stages of the disciplinary process?

The disciplinary process may take two or three stages: (i) preliminary investigations; (ii) disciplinary proceedings with/without a view to dismissal; and (iii) Appeal.

1. **Preliminary investigation** (please go to Preliminary Investigation and Schedule A: Step by Step Guide to Disciplinary Action for more fulsome details of this stage of the disciplinary process).

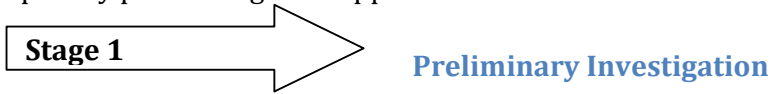
FIGURE 1 – DISCIPLINARY PROCEEDINGS

The diagram below displays three stages of the disciplinary process:



2. **Disciplinary Proceedings - WITHOUT A VIEW FOR DISMISSAL** (PSR, REG 42)
Disciplinary Proceedings - **WITH A VIEW FOR DISMISSAL** (REG. 43) Disciplinary Action on Determination of Criminal Proceedings and
3. **Appeal** (please go to , Appeal to the Local Privy Council, What happens if there is No Appeal for fulsome details on the appeal of the disciplinary process).

The preceding section will briefly outline the three (3) stages: preliminary investigation; disciplinary proceedings and appeal.



Once there is an allegation of misconduct, certain procedures must be adhered to so as to determine what happened and the party/parties involved. Please see Schedule A: Step by Step Guide to Disciplinary Action and SECTION 5: How to arrange and conduct the investigation? of this manual, for detailed guide on the procedures to be adhered to when undertaking this first stage of the disciplinary process.

At this stage, complaints are to be investigated through the identification of witness(es) and the collection of statements. **It is recommended that a competent officer from the HR department or a Legal Officer conducts the investigations. Efforts should be made that the investigator is not otherwise linked to the case in question.**

FIGURE 2 – PRELIMINARY INVESTIGATIONS

The diagram below displays the stages of the Preliminary Investigations

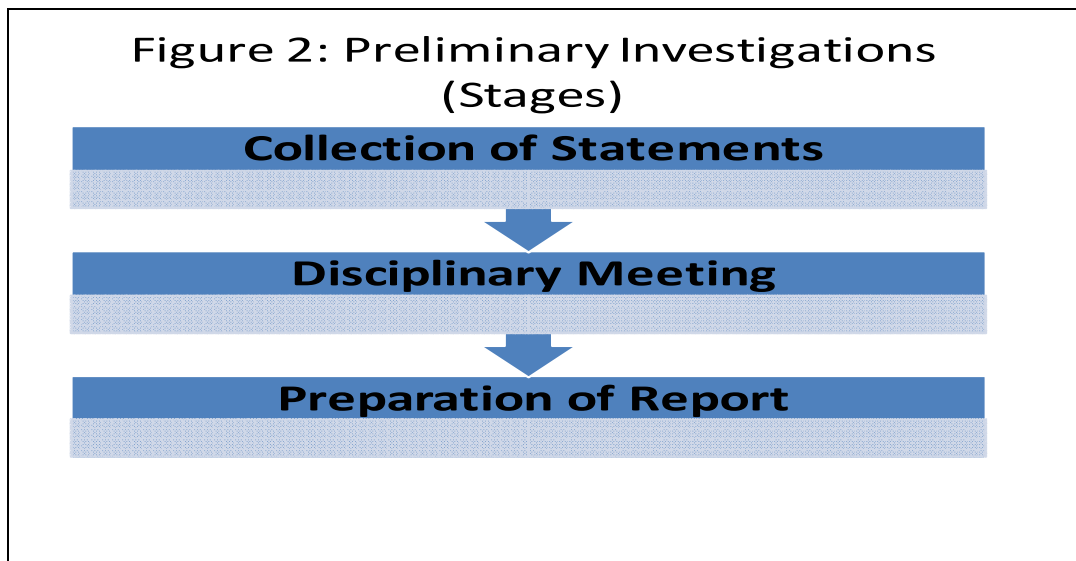
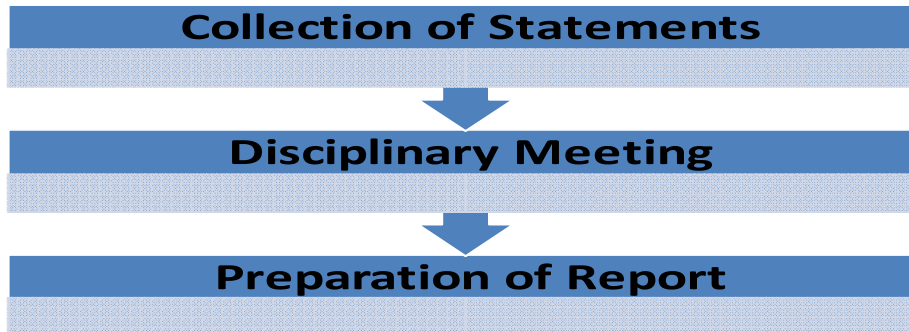


Figure 2: Preliminary Investigations
(Stages)



Collection of Statements

- Witnesses should begin their statements by stating their name, occupation, employer, length of employment and job functions. The investigator should interview the witness(es) by allowing the witness(es) to speak freely. For example, the investigator can ask witness(es) to “**tell me everything you saw when you opened the vault at 1:00 pm on July 18,**” The investigator should **NOT** suggest to witness(es) what may have happened in a given circumstance. The investigator should record the statements in the language used by the witness(es). If the statement is recorded in writing, errors/mistakes must be crossed out and initialled. Each page of the witness’ statement must be sequentially numbered, signed and dated.

Disciplinary Meeting

- As part of the preliminary investigation, it may be useful to meet with the officer against whom the allegation(s) have been made to ascertain the basis for the allegation. The officer would have to agree to this meeting and should be given the opportunity to have a representative. This meeting is **NOT** a hearing and so allegation(s) are not to be explored extensively as would be done at a formal hearing. The officer

Preparation of Report

- The information obtained from the investigation and disciplinary meeting is to be used to prepare a comprehensive report for submission to the Head of the entity. The report must be supported by statements, a copy of the rules/procedures allegedly breached and other evidential material.
- The report must also include recommendations as to whether to discontinue the matter in the event that a case was not made: arrange for corrective intervention

such as counselling; institute disciplinary proceedings and in the given circumstance whether the officer should be sent on ***interdiction***.



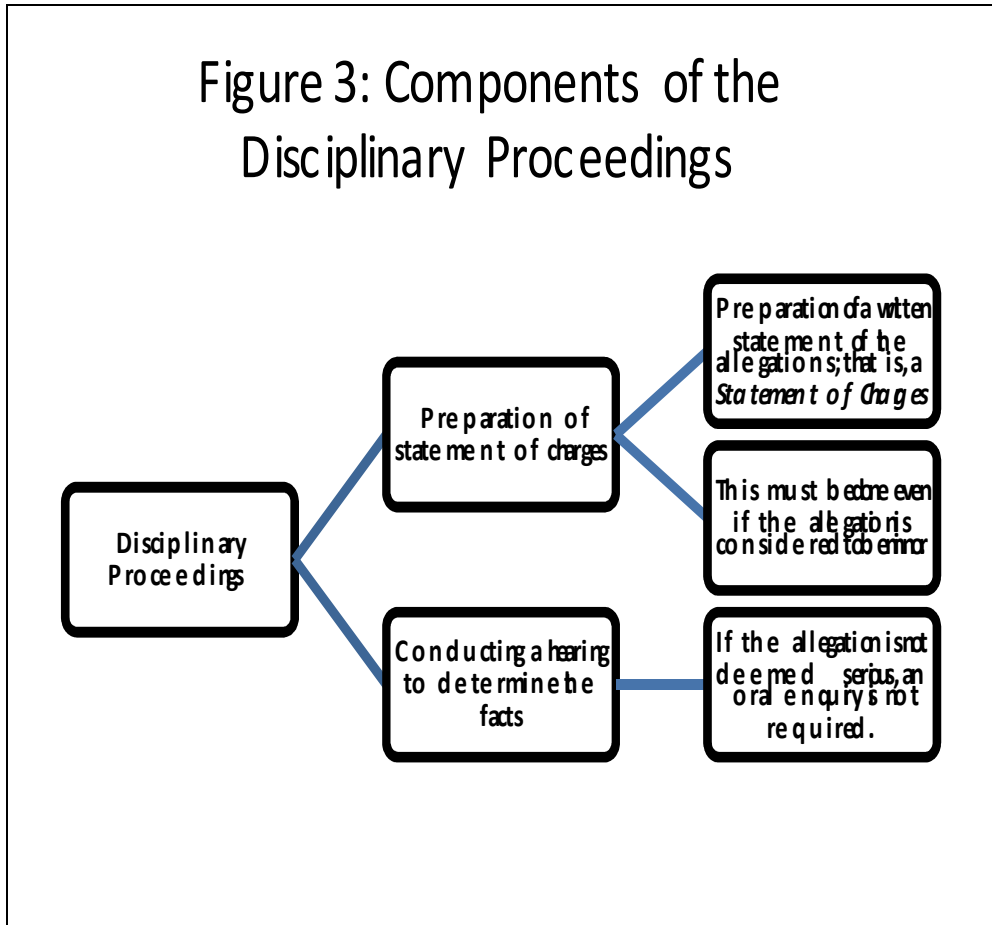
All disciplinary proceedings have two (2) basic components (as displayed in figure 2 below):

1. Preparation of a written statement of the allegations; that is, a *Statement of Charges*. Please see Box 1: Sample of Disciplinary Charges against an officer.
This must be done even if the allegation is considered to be minor.
2. Conducting of the Hearing to determine the facts. If the allegation is not deemed serious, an oral enquiry is not required.

FIGURE 3 – COMPONENTS OF THE DISCIPLINARY PROCEEDINGS

The diagram below captures and presents the components of the disciplinary proceedings.

Figure 3: Components of the Disciplinary Proceedings



Communication and Due Process

When an infraction occurs and disciplinary measures are deemed necessary, a procedure must be established and duly communicated to all relevant parties. The procedure must ensure that the rights of all parties are protected without prejudging the outcome. No arbitrary judgment is to be made about the likely outcome of any proceedings.

Any disciplinary procedure should adhere to the following:

- Be consistent with the conditions of employment;
- Begin with a thorough investigation;
- Follow due process; **DOCUMENTATION, FILING AND RETRIEVAL OF RELEVANT DOCUMENTS/REPORTS/RECORDS/LETTERS ARE IMPORTANT;**

- Guarantee all parties the right to be heard and the right to representation;
- Guarantee the right to appeal;
- Be conducted as quickly as possible.

Disciplinary Proceedings - WITHOUT A VIEW FOR DISMISSAL (PSR, REG 42)

Unless in a given circumstance the CEO is of the opinion that the following offences are of a serious nature, the offences are to be treated as not serious enough to warrant dismissal:

- Absence from duty during working hours without permission from the relevant senior officer
- Absence from duty without permission
- Signing the attendance register for or on behalf of another officer
- Being idle, disorderly, undisciplined or behaving in an improper manner while on duty
- Careless handling of any article or equipment being the property of the EA
- Inefficient performance of duties
- Committing any act prejudicial to good order and discipline

If **the allegation is proved**, one of the sanctions outlined under Regulation 37 of the Public Service Regulations is to be applied **except** for dismissal or reduction in rank.

The officer could therefore be suspended without pay for a period not exceeding three (3) months, be fined, have his/her increment deferred or withheld, or be reprimanded. Please see SECTION 2: Penalties for what penalties should be imposed on the officer when disciplinary charge has been established.

Disciplinary Proceedings - WITH A VIEW FOR DISMISSAL (REG. 43)

Where the matter warrants dismissal, a report with the allegation(s) and supporting statements/ documentary evidence must be submitted to the officer so designated by the CEO of the Agency, normally the Human Resource Manager. On the instruction of the Chief Executive Officer, the designated officer will:

1. Issue the Charges: The charges are to be submitted to the officer in writing with instructions for a response within a given time (14 days) and for him to outline the grounds on which he/she is relying to absolve himself.

2. Examine Officer's reply: After the expiration of the given time, the matter is resubmitted to the Head of the Disciplinary Committee. If the officer's reply absolves him/her of the charges, the matter is dismissed.
3. Appoint Committee of Enquiry: If the officer failed to respond within the given time or if the response does not absolve him/her, a Committee of not less than three (3) persons, **chaired by a person with legal qualification**, must be convened.
4. Schedule the Enquiry: Please see SECTION 7 – The Enquiry: set up, activities and outcomes which outlines how the Enquiry is to be set up and details the activities and outcomes of such an Enquiry. The Enquiry should be held at a time convenient for members of the Enquiry, the officer's representative and witnesses. In preparing for the Enquiry, copies of relevant statements and supporting documents must be submitted to the committee members and the officer. The officer is to be advised that he/she may be represented at the hearing and that he/she can invite witnesses of his own.
5. Conduct the Enquiry: At the Enquiry, the Agency is to call the witnesses in support of the charges. The Officer is to be allowed to cross examine the witnesses. At the end of the evidence in support of the charges, the officer is allowed to give evidence in his/her defence and call witnesses. After the Hearing, the Committee prepares a report indicating its findings.

If no case was established, the Officer should be **notified in writing accordingly**. **If the Officer was on interdiction, he/she must be advised to report for duty immediately and be paid the portion of the salary withheld and the normal pay restored.**

If the case is proven, the CEO **determines a penalty taking into account the recommendation of the Committee of Enquiry, advise the officer of the penalty and of his/her right to appeal.**

Disciplinary Action on Determination of Criminal Proceedings

There should be a preliminary investigation to determine inter alia, (among other things), the nature of the infraction and the proceedings warranted. **If the infraction is deemed as being a criminal offence, the matter should be reported to the police**

and/or the DPP for a ruling. Where the officer is charged, disciplinary proceedings cannot be instituted against him until the proceedings have been determined.

Regulations Nos. 34 and 35 of the Public Service Regulations, 1961, apply when there is Disciplinary Action on Determination of Criminal Proceeding. These are reproduced in boxes A and B.

BOX A: REGULATION 34: DISCIPLINARY ACTION AFTER ACQUITTAL OF A CRIMINAL CHARGE

34. *An* officer acquitted in any court of a criminal charge shall not be dismissed or otherwise punished **in** respect of any charge of which he **has** been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any other charge arising out of **his** conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.

BOX B: REGULATION 35: OFFICER CONVICTED OF A CRIMINAL CHARGE

35. If an officer is convicted in any court of a criminal charge, the Commission may consider the relevant proceedings of that court, and if the Commission is of the opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon recommend the dismissal or other punishment of the officer without the institution of any disciplinary proceedings under these Regulations.

If the infraction does not amount to a criminal offence, the CEO needs to determine if disciplinary proceedings whether with a view or without a view for dismissal should be instituted.

NOTE: All these steps/procedures apply mainly to permanent employees.

The provisions are also applicable to persons on fixed term contract during the contractual term. That is, during the term of the contract such officers can only be dismissed on the ground of misconduct based on the above procedures. Once the contract comes to an end, however, the officer's employment automatically terminates.

Temporary Officers/persons on probation will be dealt with in accordance with Regulation 23 of the Public Service Regulations. Additionally, the Second Schedule of the Public Service Regulations outlines the disciplinary procedure applicable to officers holding non-pensionable posts and of weekly paid and daily paid and casual employees. Regulations 45, 46, 23, 31, 33, 34, 35, 38 and 40.

REGULATION 23 - PROBATIONARY SERVICE AND TERMINATION OF APPOINTMENTS

23.-(1) *On* first appointment to the public service or on promotion in the service from a non-pensionable to a pensionable post or from any post listed in the First Schedule to the Provident Fund Act to a pensionable post, an officer will be required to serve a probationary period of one year unless a shorter term is specified in **his** letter of appointment.

(2) At intervals of **six** months and nine months during the probationary period Permanent Secretaries and Heads of Departments shall submit to the Chief Personnel Officer a report **on** every officer **so** promoted or appointed **on** probation in their Ministries or Departments. One month before the end of the probationary period Permanent Secretaries and Heads of Departments shall submit a further report and a recommendation-

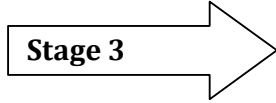
(a) that the officer be confirmed in the appointment; or

(b) that the probationary period be extended; or

(c) **that the officer's services be terminated; or**

(d) **that the officer revert to his former post.**

(3) Subject to the provisions of these Regulations, the appointment **on** probation of an officer may, at any time during the period of probation and without any reason being given, be terminated by the Governor-General acting **on** the recommendation of the Commission upon one **month's notice** in writing or payment of one month's salary in lieu thereof.



Appeal

An officer against whom a penalty has been recommended has the right of appeal. If the officer exercises this right, the penalty is deferred pending the outcome of the appeal.

Officers in Executive Agencies may appeal to the local Privy Council through the Office of the Services Commissions. The officers must apply within fourteen (14) days from the receipt of the letter notifying of the decision.

The preceding sections of this manual dealt with the 3 stages of the disciplinary process namely: preliminary investigation; proceedings when there is an allegation of criminal offence; disciplinary action with and without a view to dismissal and Appeal. It is at this critical juncture that we will turn our focus on some other critical areas to assist with your understanding as well as instructions for the appropriate administration of discipline in your Agency. The proceeding section will have the following subheadings and address these issues: **what happens when discipline is flawed; what happens when workers challenge disciplinary actions in the courts; summaries and commentaries on three (3) well known challenges to decisions** taken by the Public Service Commission and one Chief Executive Officer to separate public officers. These items are for illustrative purposes only and were drawn from electronic and print media sources. Additionally, the **scope and limits of exercising control over discipline; and a conclusion** followed by the **relevant Sections; Extracts from the Public Service Regulations; Schedules and Appendices** will be presented.

WHAT HAPPENS WHEN DISCIPLINE IS FLAWED?

This section will provide details of flawed disciplinary outcomes relevant to the Public Service and highlight the imperfections as identified by the courts. For the purposes of this Manual the summaries of the relevant judgments as represented in the media will be displayed and used only for instructional purposes and not to cause embarrassment to the parties involved. In these cases you will note that emphasis has been placed on principles of natural justice, due process and documentation. These items will be addressed at a later stage of this Manual.

Essentially, when a decision is thrown out by the Supreme Court and the Court of Appeal, or an appeal is upheld by them, the Local Privy Council or even the Privy Council in the UK, this can cause not only embarrassment but may also result in pecuniary damage emanating from legal costs associated with the legal challenge.

The Courts (namely the Supreme Court and the Court of Appeal) or Local Privy Council having found a breach of the principles of natural justice or that the outcome and processes were unlawful may quash the decision and or ask the Chief Executive Officer to start anew. Oftentimes the quashing of the ruling, and where a breach of natural justice has resulted in procedural flaws, the officer though guilty can be reinstated. Every effort must be taken to ensure that steps to terminate officers and discipline without a view to dismissal adhere to the principles of natural justice and the rule of law so that the outcomes that are warranted and dispensed can stand up to the highest level of scrutiny.

WHAT HAPPENS WHEN DISCIPLINARY OUTCOMES ARE CHALLENGED BY WORKERS?

This section will describe and outline the chain of actions when disciplinary outcomes are challenged by workers; that is, when they appeal the matter outside of the legal recourse² framework beyond the Public Service Commission and the Local Privy Council. It will speak to appeals made to the Supreme Court, Court of Appeal, and Privy Council, U.K. When disciplinary outcomes are challenged by workers there are high transactions costs and disclosure of information which may bring the Chief Executive Officer and the Executive Agency in general is brought into disrepute. Listed below are the stages for challenging a decision:

1. The Claimant files motion in the Supreme Court to review a disciplinary outcome
2. The Defendant (CEO) is notified by the Court and he or she is represented by the Solicitor General and may be required to file an affidavit
3. Court hears the matter
4. Court rules on the matter (quashes or uphold decision/ ask the CEO to start the disciplinary proceedings anew)
5. If the court agrees with the ruling of the CEO – the worker may file an appeal in the Court of Appeal
6. Court of Appeal – reviews the matter – if the decision is upheld then the individual may appeal to the U.K. Privy Council. However, matters of a disciplinary nature do not go to the UK Privy Council as of right. In such cases the Claimant would have to get leave (permission) from the Court of Appeal before it can be heard in the UK Privy Council. See Section 110 of the Constitution.

² A **legal recourse** is an action that can be taken by an individual in an attempt to remedy a legal difficulty.

TEST CASES (JUDICIAL REVIEWS AND OUTCOMES) AND EXAMPLES

This section summarizes key judicial reviews of decisions taken by the Public Service Commission that have been challenged in the courts and have either been quashed by the courts citing breaches of the principles of natural justice and unlawful actions by the appropriate authority to separate public officers. These cases highlight good examples of breaches of the principles of natural justice and procedural gaps in exercising disciplinary control rendering the outcomes null and void or unlawful.

ERLIN HALL, DEPARTMENT OF CORRECTIONAL SERVICES, "SUMMARY DISMISSAL"

WORKER TO BE GIVEN HEARING BEFORE DISMISSAL

by BARBARA GAYLE

Though the Public Service Regulations state that an employee who is absent from work five days or more without permission is liable to summary dismissal, the employer must be given an opportunity to be heard before he can be dismissed, the Full Court has ruled.

The Full Court comprising of Justice Langbein, Mr. Justice Lurie and Mr. Justice Karl Har- lson (acting) made the ruling when it quashed an order of the Public Service Commission which had dismissed a senior prison warden without giving him a hearing. The court held that the Commission could state the reasons for its decision.

Erlo Hall, a senior prison warden had applied to the Full Court for an order of certiorari (quash) a decision by the Public Service Commission whereby a letter dated September 17, 1980, he was dismissed from his job with effect from September 9, 1980 under Regulation 37 (a) of the Public Service Regulations 1961 because he was absent from work without permission for more than five days.

Hall sought to have the order for his dismissal quashed on the ground that it was unlawful, unfair and in breach of the Public Service Regulations 1961. The purported dismissal, he said, was in fact null and contrary to law and in breach of natural justice. He also contended that the Public Service Commission and/or the Commissioner of Corrections acted without or in excess of jurisdiction and in breach of Public Service Regulations and the principles of natural justice in that he was dismissed summarily and arbitrarily without being

accorded a fair trial or any trial at all, was in breach of the procedure provided as provided by Regulation 45 of the said Regulations in that regard.

The Full Court said the sole issue raised in the application before it was whether the rules of natural justice had been observed.

Hall had joined the Service on April 14, 1969 and was assigned to the General Penitentiary. While on duty in September, 1969, he was injured by a bullet fired from a rifle in his possession. As a result of the injury he lost the second toe on his right foot. He continued working until June 1987 when the residual effects of the injury developed to an extent that he could no longer stand for long periods, suffered back pains and had difficulty in walking properly.

In April 1984 he sought medical treatment for the complaint and was advised by Dr. Fraser to seek medical treatment in the USA. During 1988 he travelled to the USA on two separate occasions and got medical treatment.

Summoned

In January 1980, Hall was summoned to attend a meeting at the offices of the Chief Personnel Officer who advised him that he may be placed before a Medical Board to ascertain if he should be discharged from the service on medical grounds and/or in the public interest.

Hall continued to have his medical certificate endorsed by Dr. Gray, the Correctional Services Department doctor until August 1989 when upon examination, Dr. Gray recommended that Hall was fit to resume du-

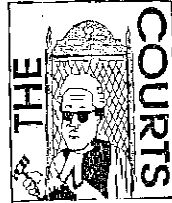
ties. From September 16, 1989 to November 1990 Hall, was medically unfit to resume duties and submitted medical certificates to cover that period.

The Full Court said that there was a conflict in the evidence as to whether certificates were submitted to cover that period. Mr. George Martin, Chief Personnel Officer asserted in an affidavit that Hall was requested to provide a report from his doctor in February, 1989 but no report was received. Dr. Anania Samuels, Chief Medical Officer on June 4, 1990 recommended that Hall should return to work in the absence of a medical report.

A comprehensive medical report prepared by Dr. G. A. Fraser and dated August 29, 1990 stated that Hall was medically unfit and suggested that arrangements be made so that he may curtail his professional responsibilities on medical grounds. The report was forwarded to the relevant authorities.

In July 1990, Hall received a letter dated June 18, 1990 from the Correctional Services Department, requesting that he report to the office at 34 Duke Street, Kingston on June 19, 1990. But when he attended in July 1990, he spoke with one Mr. Roberts who informed him that his matter had been sent to the Services Commission for a ruling.

The court said that Mr. Kob-



ers said in his affidavit that Hall did not arrive until July 1990 but was silent as to what he was alleged to have told Hall. According to Mr. Roberts, several notices were sent to Mr. Hall requesting him to report at his office.

Letter

On November 20, 1990 Hall received a letter dated September 28, 1990 purporting to dismiss him from the office.

"There are two important matters revealed in the affidavit. First, there was contradicted evidence that notices were delivered to the applicant to report for duty. Second, there was a significant absence of evidence that the applicant was told what was alleged against him and being his defence or explanation," the Full Court held.

In referring to the statutory provision, the court said "Regulation 37(4) of the Public Service Regulations 1961 as amended by the Public Service (Amendment)

Regulation 1988 reads as follows:—

"The absence of an officer from duty for a period of five days or more without permission renders him liable to summary dismissal with effect from the first day of such absence."

The court said "It is plain from the wording of the regulation that the power to dispense with the services of an officer is to be exercised only after consideration and determination of—

(a) That the officer was absent from duty for a period of at least five days and

(b) that he was absent without permission for that period."

"It is not a power which must be exercised arbitrarily."

"We wish to emphasize that the only matter which we are deciding is that the process by which the Public Service Commission reached its decision in this case was unfair in this respect, that the applicant was never told the reasons why his dismissal was considered and that he was given no opportunity of making an explanation about the matters of complaint against him. We are far from saying that if the procedure had been fair, the respondent Commission would not have been entitled to reach the decision that it did. Whether the decision itself was fair and reasonable is not a matter that can be raised in the present proceedings."

The court said there must

have been a particular date on which the Commission formed and arrived at its decision, yet there was no evidence before the court that date was notified to the applicant. Indeed, there is no evidence that any attempt was made by the respondent to invite the applicant to attend an informal hearing of the charge which had such disastrous results," the court said.

Remedy

On the question of remedy, the court said since it was concerned not with the decision but the decision-making process, the court was content with quashing the decision thereby enabling the Commission to have the wrong put right.

The court said that the order that it would require the Commission to deal with the matter de novo (anew). The court said the order did not mean that the court had to ignore the applicant in his former position as a senior warden.

Costs were awarded to the applicant to be agreed or taxed.

Attorney-at-law Arthur Knich represented Hall.

Lennox Campbell Senior Assistant Attorney General, instructed by the Director of State Proceedings, appeared for the Commission.

Sunday Express 16th January, 1994

LACKSTON ROBINSON, ATTORNEY GENERAL'S DEPARTMENT, "RETIREMENT IN THE PUBLIC INTEREST"

C. DAMAGES

[126] In general it can be said that there is no right to damages as a result of public law breaches. However, Rule 56.10 of the CPR 2002 provides that a claim for damages or restitution can be made where it "arises out of or is related to or connected to the subject matter of the application". The Applicant must include the claim for damages either in the claim form, the statement of case or his affidavit to justify granting the relief.

[127] In this case, the Applicant has claimed loss of salary, allowances and benefits from the date of his retirement. He has also claimed payment for leave entitlement, damages, interest and cost. Counsel for the Respondents rightly submits that the Applicant's grounds do not reveal a separate cause of action against the Public Service Commission and, therefore, general damages and interest should not be awarded. He cites the case of **Commissioner of Police for NSW v Jarratt**⁵³ where Mason P said that:

"Unless statute creates its own cause of action sounding in damages, conduct that is invalid for administrative law reasons (including denial of procedural fairness) but is not tortious or breach of contract does not usually sound in damages.⁵⁴"

[128] It is unchallenged, and the court accepts that the Applicant is without a doubt entitled to an amount equivalent to the diminution in his salary and allowances from the date of the date of his retirement to the date of this judgment.

D. CONCLUSION

[129] In my judgment, the case for the Applicant that the Public Service Commission is in breach of Section 24 (1) and (2) of the Public Service Regulations and of natural justice in

⁵³ [2003] NSWCA 326 [Delivered November 11, 2003]

⁵⁴ At paragraph 120

Lackston Robinson, Attorney General's Department
"Retirement in the Public Interest" (cont'd)

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recommending to the Governor General that he should be prematurely retired from the Public Service is unanswerable. Accordingly, the Applicant is entitled to the following relief:

- i) A declaration that the consideration of the Solicitor General's report by the Public Service Commission and the subsequent advice tendered by the Public Service Commission to the Governor General are ultra vires, null and void.
- ii) An order of certiorari to bring the decision of the Public Service Commission to advise the Governor General that steps should be taken to retire the Applicant in accordance with the provisions of Regulation 24 (1) and (2) of the Public Service Regulations, 1961 into court and quash it.
- iii) A declaration that the decision taken by the Governor General to retire the Applicant from the Public Service in accordance with the provisions of Regulation 24 (1) and (2) of the Public Service Regulations, 1961 is ultra vires, null and void.
- iv) An order that damages for loss of salary and allowances be assessed on a date to be fixed by the Registrar of the Supreme Court.
- v) No order as to cost.

Stay for 30 days



Discarded registrar wins appeal

Published: Tuesday | December 22, 2009

Barbara Gayle, Staff Reporter

Former Registrar of Titles, Alfred McPherson, who was fired by the Government in January 2006, has won his appeal against his dismissal.

The Court of Appeal sent the case back to the [Supreme Court](#) for constitutional damages to be assessed in McPherson's favour on Friday.

"I am very pleased with the judgement," McPherson said yesterday.

The judges found that there was a clear breach of the Constitution of Jamaica when the then minister of land and environment recommended to the governor general in January 2006 that McPherson's appointment be revoked.

Provision made

The judges said that at all material times, McPherson, in his capacity as registrar of titles, was the holder of a public office and fell within the purview of Section 125 (1) of the Constitution. The judges said the section made provision for the Public Service Commission to recommend dismissal if there was reasonable cause.

McPherson, an attorney-at-law, was appointed registrar of titles at the National Land Agency in July 2003.

His dismissal stemmed from disagreements with the then chief executive officer of the National Land Agency, Elizabeth Stair.

McPherson said in court documents that the disagreements emanated largely from Stair's attempts to control his statutory authority as registrar of titles.

Stair, in dismissing him, wrote to him in January 2006 describing his conduct as becoming increasingly uncooperative and having a negative impact on their working relationship.

Shortly after receiving the dismissal letter, the governor general revoked McPherson's appointment on the advice of the minister.

<http://jamaica-gleaner.com/gleaner/20091222/lead/lead6.html>

GO-JAMAICA

NewsFormer Registrar of Titles wins appeal against his dismissal

2009-12-22 09:02:11 | (8 Comments)

The former Registrar of Titles who was fired by the government in January 2006 has won his appeal against his dismissal.

The Court of Appeal ruled in favour of Alfred McPherson on Friday and sent the case back to the Supreme Court for constitutional damages to be assessed in his favour.

The judges found that there was a clear breach of the constitution when the then Minister of Land and Environment recommended to the Governor General in January 2006 that McPherson be dismissed.

The judges said it was the Public Services Commission which had the authority to recommend the dismissal if there was reasonable cause to do so.

McPherson was appointed Registrar of Titles at the National Land Agency in July 2003.

His dismissal had stemmed from disagreements with the then Chief Executive Officer of the National Land Agency, Elizabeth Stair.

McPherson said in court documents that the agreements emanated largely from Stair's attempts to control his statutory authority as Registrar of Titles.

Stair wrote to him in January 2006 describing his conduct as becoming increasingly uncooperative and having a negative impact on their working relationship.

Shortly after receiving the letter, the Governor General revoked McPherson's appointment.

He then took the issue to the Supreme Court seeking to have the decision to revoke his appointment set aside, but was unsuccessful.

McPherson subsequently appealed the Supreme Court's ruling and won.

http://go-jamaica.com/news/read_article.php?id=15422



Jamaica Gleaner
Established 1834

Dismissal of Registrar of Titles irks lawyers

published: Saturday | January 28, 2006

THE DECISION by the Land and Environment Ministry to dismiss Alfred McPherson from his post as Registrar of Titles has angered some members of the legal fraternity.

The Jamaican Bar Association has taken issue with the manner in which Mr. McPherson was relieved of his duties.

On Wednesday Mr. McPherson was handed a letter of dismissal from the Land and Environment Ministry, however he refused to honour the contents until Thursday when he received a letter from the Office of the Governor-General.

According to Land and Environment Minister, Dean Peart the decision was made to relieve Mr. McPherson of his post as he had not fully met the requirements for the job.

But Past President of the Bar Association, Hilary Phillips claims that while there have been discussions regarding amendments to the functions of the Office of the Registrar of Titles, Mr. McPherson was not informed of the plans for his dismissal. "There has been no meeting telling him he's been charged with inefficiency, there's been no meeting of the Services Commission, there's been a revocation by the Governor-General without him being told why," she charged.

Miss Phillips believes Mr. McPherson's dismissal is the result of a misunderstanding and misinterpretation of the role of the Office of the Registrar of Titles. "He understood his obligations one way and the Chief Executive Officer understood it another way" she said.

LOBBY FOR INDEPENDENCE

The Bar Association has been seeking to have the Office of the Registrar of Titles made an independent body instead of being part of the National Land Agency.

Miss Phillips said the association sought the opinion of the Solicitor General who indicated that the Registrar of Titles should be guided by the provisions of the Registration of Titles Act.

However, Permanent Secretary in the Land and Environment Ministry, Donovan Stanbury is maintaining that the proper procedures were followed in dismissing Mr. McPherson. According to him "due process was followed and he was properly terminated based on the terms of his contract, and the proper consultations took place."

The Bar Association has sought the intervention of the Prime Minister on the issue.

<http://jamaica-gleaner.com/gleaner/20060128/lead/lead5.html>

CONCLUSION AND SUMMARY

Discipline can be an arduous task requiring sound understanding of the principles, procedures and laws that govern discipline as well as the requisite skills to evoke disciplinary proceedings against an employee in Executive Agencies. While knowledge and skills are two important elements in administering discipline the right attitude must prevail. In that regard, discipline, as a final stage of justice must be undergirded by the principles of natural justice and in this regard Lord Chief Justice Hewart's posture that **"not only must justice be done it must also be seen to be done"** is instructive. For detailed guidance on the administration of the disciplinary process in the Public Service, please contact the Disciplinary Unit or the Legal Officer at:

**Office of the Services Commissions
30 National Heroes Circle
Ministry of Finance and the Public Service Building
Kingston 4
Phone (876)876-922-8600
Fax: 876-924-09764**

SECTION 1: (A) WHAT ACTION SHOULD BE TAKEN IF THERE IS AN ALLEGATION OF MISCONDUCT?

Chief Executive Officers should be mindful that SENDING AN OFFICER ON VACATION LEAVE IS NOT A PART OF THE DISCIPLINARY FUNCTION. The Chief Executive Officer has the authority to send officers on leave. In the past where there was a contemplation of disciplinary action this approach was commonly used by Ministries, Departments and Agencies before an interdiction. Notwithstanding, Chief Executive Officers should be mindful that while they have the authority to send officers on leave, they cannot use that power outside of the purpose for which it was given. Leave is a benefit to workers and as such the power to administer leave was given to Chief Executive Officers for them to ensure that employees received their entitlements and that at any given time the office is appropriately staffed

Chief Executive Officers can only grant vacation leave, if the officer applies for it. Notwithstanding, Chief Executive Officers may direct the officer to apply for leave, and this can **only** be done in circumstances where the officer has accumulated the maximum allowed based on the leave rate that is applicable to the officer. In other words, this can only be done in situations in which the directive to apply for leave is in the officer's interest in order to ensure that he/she does not lose his entitlements and not in situations where the officer is alleged to have committed an act of misconduct or criminal offence.

Accordingly, sending an officer on leave **cannot** be the preferred approach where an allegation of misconduct has been made against an officer. If it is alleged that an officer has committed misconduct and public interest requires him to cease to perform duties, the officer is to be interdicted forthwith as outlined in Regulation 32 of the Public Service Regulations, 1961.

If, however, the officer chooses to apply for vacation leave before being interdicted, the officer may be permitted to proceed on such leave.

SECTION 1: (B) INTERDICTION

Interdiction is the removal of an officer from performing his official duties and the withholding of a specified portion of his salary. Interdiction is usually utilized if it is considered in the public's interest that the officer should cease to perform his duties pending the outcome of a disciplinary or criminal case.

SECTION 1: (C) MINOR OFFENCES

Normally if the act of misconduct is not considered serious then disciplinary action should be taken under Regulation 42 and the officer not interdicted. The regulation sets out a list of offences (please see Regulation 42:4(a-j) below) and which states that:- Unless the appropriate authorized officer [and for the purposes of this Manual], the Chief Executive Officer is of the opinion that there are circumstances which render the following offences more serious, these offences shall be regarded as not so serious as to warrant proceedings with a view to dismissal Disciplinary Proceedings - WITHOUT A VIEW FOR DISMISSAL (PSR, REG 42).

REGULATION 42:4 (A-J) – LIST OF OFFENCES NOT WARRANTING DISMISSAL

4) Unless the appropriate authorized officer is of the opinion that there are circumstances which render the following offences more serious, these offences shall be regarded as not so serious as to warrant proceedings with a view to dismissal-

(a) absence from duty during working hours without permission of the relevant senior officer;

(b) absence from duty without permission except in cases whereby reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence;

(c) habitual or frequent unpunctuality;

(6) failure to sign the attendance register;

(e) being a party to the signing of the register by another person on his behalf;

(f) signing the attendance register for or on behalf of another officer;

(g) being idle, disorderly, indisciplined or behaving in an improper manner while on duty;

(h) careless handling of any article or equipment the property of a Ministry or Department;

(i) inefficient performance of duties;

j) committing any act prejudicial to good order and discipline.

These acts of misconduct (as listed at Regulation 42:4(a-j)) may be serious if frequently repeated and in those instances it might be considered necessary to proceed to a higher level of discipline under regulation 43 and consideration given to interdicting the officer at this stage.

A temporary employee is not to be interdicted. The Public Service Regulations (Second Schedule Reg.19) state that an authorized officer may dismiss a temporary employee forthwith if he is satisfied that the employee has been guilty of any misconduct. Therefore where a temporary employee is alleged to have committed an infraction the employer may have an informal hearing into the alleged misconduct after which the employee's services may be terminated. The employer may also dismiss without an enquiry by giving two weeks' notice or two weeks' salary in lieu of notice.

SECTION 2: PENALTIES

Section 1 outlined the actions to be taken when there is an allegation of misconduct and in particular focused on disciplinary proceedings with a view to dismissal, disciplinary proceedings without a view to dismissal and a list of the offences that do not warrant dismissal. This section will outline the penalties to be applied once the officer has been found guilty of an offence. Notwithstanding, discipline should be fair and as such the penalty must suit the offence and the guilty party should not be subjected to no more than one penalty for each offence. What penalty should then be imposed on the officer when disciplinary charge has been established?

PENALTIES

Regulation 37 (1) of the Public Service Regulations sets out the disciplinary penalties that may be imposed as follows:-

- dismissal
- reduction in rank
- suspension from duty without pay for a period not exceeding 3 months
- deferment or withholding of increment
- a fine
- reprimand

One should bear in mind that dismissal and/or reduction in rank cannot be imposed if action is taken under Regulation 42 which deals with disciplinary proceedings not with a view to dismissal.

A fine can be a deterrent but it should not be onerous. There must be stipulation by the Chief Executive Officer as to how the fine is to be withdrawn from the employee's salary. Care should be taken in making this decision/recommendation. **Normally the fine should not exceed half of the month's salary.**

A reprimand is more serious than a warning. A written warning is not one of the penalties and may be issued without having a disciplinary enquiry. However a reprimand must not be imposed before going through the disciplinary process. A reprimand must be in writing to the officer and a copy should be placed on his/her personal file.

Consideration should therefore be given to the intended impact by the imposition of the selected penalty.

Only one penalty should be imposed at any one time.

SUSPENSION

Suspension from duty without pay for a period not exceeding three (3) months is one of the disciplinary penalties that may be imposed on an officer.

IMPORTANT

OFFICERS CAN BE SUSPENDED FROM DUTIES WITHOUT SALARY PENDING APPEAL

If the *penalty of dismissal* is imposed on an officer and he/she makes an application for his case to be referred to the Privy Council he/she may be suspended from duty without salary pending the determination. This action of suspension therefore is not to be confused with the *penalty of suspension*.

SECTION 3: REINSTATEMENT AND REFUND

Having interdicted an officer and taken steps to discipline not with a view to dismissal there will be one of the following outcomes:

- ✓ Guilt/charge has not been established or
- ✓ Guilt/charge is established

Below are the next steps.

CHARGE AGAINST OFFICER HAS NOT BEEN ESTABLISHED

Where disciplinary proceedings have taken place and the charge against the officer has not been established the officer should be reinstated in the job. In this instance if he had been on interdiction then he would be entitled to be refunded all the salary that had been withheld -Regulation 32(4).

There is to be no sign or evidence of victimization.

WHEN THE CHARGE IS ESTABLISHED WHAT SHOULD BE DONE?

If the charge against the officer is established and a penalty other than dismissal is imposed, the officer may be refunded a portion of the salary withheld. However, this is left to the discretion of the authorized officer. The length of period that the officer was off on interdiction and the penalty that was imposed may impact on the decision as to whether there should be a refund.

SECTION 4: FORMS OF INVOLUNTARY SEPARATION IN THE PUBLIC SERVICE

Retirement and summary dismissal are two means of separating an officer prematurely from office. Retirement in the public interest and premature retirement while not disciplinary actions/outcomes are means of separating officers prematurely when there is no evidence of misconduct but it is felt that the officer should be retired from the Service. In keeping with the Accountability Agreement, the CEO has the authority to retire appointed officers in the public interest. Additionally, the CEO can however, terminate the secondment of an officer who has been seconded to their Agency for a breach.

RETIREMENT

There are two (2) ways that an officer may be retired without resorting to disciplinary proceedings: - (i) Retirement in the Public Interest; and (ii) Premature Retirement.

REGULATION 24 (1) & (2) - PREMATURE RETIREMENT

24.-(1) Where it appears to a Permanent Secretary or Head of Department that pursuant to paragraph (2) of section 8 of the Pensions Act an officer in his **Ministry** or Department who has attained the age of fifty years ought to be **called** upon to retire from the public service, the Permanent Secretary or Head of Department shall advise the officer accordingly and report the matter together with **his** reasons therefore for consideration by the Commission, and the Commission shall recommend to the Governor-General whether or not that officer ought to be called upon to retire.

(2) Any such officer shall be afforded an opportunity of submitting to the Commission any representations he may wish to make regarding **his** proposed retirement.

REGULATION 26 – RETIREMENT IN THE PUBLIC INTEREST

26.1) Notwithstanding the provisions of regulations 42 and 43, where it is represented to the Commission or the Commission considers it desirable in the public interest that an officer ought to be required to retire from the public service on grounds which cannot suitably be dealt with under any of these Regulations it shall call for a full report from the Head of every Ministry or Department in which the officer has served during the last preceding ten years. **(2)** If, after considering such reports and giving the officer **an** opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the public service, the usefulness of the officer thereto, and **all** the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the officer be required to retire.

In each instance, the officer is afforded an opportunity of submitting to the Commission any representation he may wish to make regarding his proposed retirement. The steps for retirement:

1. The officer should be served with the Notice of the grounds on which retirement in the public interest is being contemplated.
2. The grounds should be itemized
3. At the end of the document it must be stated that the CEO has lost confidence in the employee's ability to discharge his/her functions and that retirement in the public interest is being contemplated.
4. The employee must be invited to respond to the grounds within a certain period (usually 14 days).

SUMMARY DISMISSAL

Summary Dismissal can be executed in keeping with Public Service Regulations 37 (3) and (4) as outlined below:

REGULATION 37 (3)

An officer who is absent from the Island without permission renders himself liable to summary dismissal.

REGULATION 37 (4)

An officer who is absent from duty without permission for five or more consecutive days renders himself liable for summary dismissal. Notwithstanding, due process must be executed in contemplation of summarily dismissing an officer.

REGULATION 37:3 & 4

(3) The absence of an officer from the Island without permission renders him liable to summary dismissal **with** effect from the date **of his** departure.

(4) The absence of an officer from duty for a period of five days or more without permission renders him liable to summary dismissal with effect from the first day of such absence.

In light of a ruling of the Supreme Court, before steps are taken to dismiss an officer who has contravened this Regulation, a telegram or registered letter should be sent to their addresses:

- a. bringing to their attention the provisions of Regulation 37 (4) and advising of the intention to take steps to dismiss them for breach of the Regulation; and
- b. requiring an explanation to be given within five (5) days as to why they were absent without permission and otherwise to show cause why they should not be dismissed for breach of Regulation 37 (4).

HR Officers should therefore ensure that an appropriate register showing the addresses of all officers in their Agencies is kept, so that they may be contacted if required.

SECTION 5: HOW TO ARRANGE AND CONDUCT THE INVESTIGATION?

INVESTIGATION

The highest level of integrity must be utilized when conducting an investigation into an incident. All the relevant parties must be identified and their statements taken. The statements must be examined and where clarification is needed this should be immediately obtained from the individual who made the statement. Where necessary, the appropriate description must be included in the statement. Use of indecent language must be clearly stated word for word as can be recalled. Dates, times and locations are of great significance and care must be taken to ensure their accuracy.

Promptness in the collection of the statements and the securing of the evidence will lead to more credibility in the process.

SECURING OF EVIDENCE

There are various forms of evidence for example: statements, registers, books, tapes, receipts, letters, files, clothing and certificates.

It is important that the evidence is made secure as the charges might be thrown out in the absence thereof. Many of the persons charged do engage the services of lawyers and therefore the non existence or absence of essential information can be very critical or detrimental to the case.

Original documents are of vital importance as copies are usually not accepted. In most instances the keeper of the records must be present to bring the documents on the record. In other cases the evidence can be secured by the persons in the office who are responsible for preparing the case. These records should however be kept secured that is, under lock and key. At the appropriate time in the enquiry the office staff may be called upon to produce the documents.

Regulation 33 provides that the defence is entitled to get copies of the evidence free of charge or allowed to access any documentary evidence relied on for the Enquiry before

the date of the enquiry to prepare the case. Regulation 33 which is reproduced below states that:

PUBLIC SERVICE REGULATION NO. 33 – ENTITLEMENT OF OFFICER TO RECEIVE COPIES AND ACCESS TO DOCUMENTARY EVIDENCE

33. An officer in respect of whom a disciplinary enquiry is to be held shall be entitled without charge to him to receive copies of or to be allowed access to any documentary evidence relied on for the purpose of the enquiry. He shall also be given upon request a copy of the evidence (including copies of documents tendered in evidence) after the enquiry is closed.

IDENTIFYING WITNESSES

Immediate action must be taken to identify witnesses. Any party to the incident and the main offender(s) should be called upon to inform who were the persons present during the incident. Where there is difficulty in obtaining this information any tapes from surveillance cameras may be used to identify the persons present during the incident under investigation. Keepers of records are also important witnesses and the appropriate one must be identified relevant to the case.

Witnesses and keepers of the records should be alerted that they might be required and that they should make themselves available at the appropriate time. If any witness is to proceed on leave, care must be taken that he is aware of the date and time of the enquiry (if arranged) or he/she should indicate where he can be located in the event that the enquiry is to begin before the completion of the leave.

Witnesses are to be informed in writing of the place and time of the enquiry and they should acknowledge receipt of the letter informing them. A copy of this letter should be kept on file for the records in the event that that person fails to appear on the date of the enquiry.

Where the witness is not a part of the service then a summons should be prepared signed by a Resident Magistrate and forwarded to the police to be served on the person. Care should be taken that the address of the witness on the summons is accurate.

The witness should be, where necessary, instructed in the summons to bring any documents he may think is relevant to the case. In addition the location and time of the enquiry and the person charged should be clearly indicated in the summons.

A summons must be served three (3) days before the date of the enquiry therefore adequate time must be given for its serving by the police. A copy of the served or unserved summons with the notation by the police must be kept on file for possible presentation to the panel on the day of the enquiry.

SECTION 7 – THE ENQUIRY: SET UP, ACTIVITIES AND OUTCOMES

ENQUIRY

The enquiry is most important to the officer charged. His/her future lies in the evidence which is presented. It is important that the officer is assured that an opportunity will be given to him/her to cross-examine the witnesses and also to present his/her side.

The enquiry is very important to the Executive Agency from which the allegations originated. It is here that the allegations will have to be proven and therefore it is imperative that the statements and other evidence are made available and the witnesses are present on the day of the enquiry.

The enquiry is mainly a private affair and only the following persons should be present in the room during the enquiry:

- the officer(s) charged,
- the individual who is giving evidence,
- representatives of the officer(s) (e.g. lawyers, representative from trade union or staff association),
- the relevant investigating body,
- the main Executive Agency personnel involved in the disciplinary process,
- the stenographer or substitute, and
- keeper of the records.

The witnesses should be placed to sit outside of the room until called to give evidence in the enquiry.

The time period for the enquiry can be a flexible one however there can be predetermined time period set for all enquiries in any one day for example; 10 a.m. – 1 p.m. (3 hrs). If it is seen where the enquiry cannot be finished within the time and an extension past the pre-arranged hour will not lead to its completion, the Chairman can adjourn the meeting and a convenient date set with the representatives for its

continuation. Any remaining witnesses should be informed that their presence will be required on the date and time agreed on.

FINDINGS

The Panel at the end of the investigations makes a written report on its findings indicating whether the disciplinary charge has or has not been established. A submission is made by the Executive Agency's HR staff to the Human Resource Executive Committee (HREC) outlining the findings and attaching a copy of the Panel's report. The Chief Executive Officer acting on the recommendation of HREC gives his/her decision and this is eventually communicated to the officer concerned and his/her representative.

Where the disciplinary action was taken by the Chief Executive Officer or other authorized officer then a determination is made there and the relevant parties informed by the HR section of the decision of the Chief Executive Officer.

SECTION 8: APPEALS AND THE LOCAL PRIVY COUNCIL

Under the Constitution, the officer has the opportunity to appeal to the Local Privy Council against any disciplinary penalty. The Public Service Regulation 39 indicates that the application must be in writing and must be within two weeks of the receipt of notification of the disciplinary penalty to be imposed.

In making an appeal to the Local Privy Council the grounds should be stated. This appeal can be done by the offender himself or if he wishes to retain the services of a lawyer or his trade union representative to do so. This should be sent to the Office of the Services Commissions (OSC) where a submission will be prepared and forwarded to the Local Privy Council along with all the relevant documents in the case.

In the circumstances where the case was dealt by the Chief Executive Officer then a request will be made by the OSC for the relevant documents which would include statement(s) from the witness(es), reports, copies of any documentary evidence, verbatim notes and any other relevant information.

The decision of the Governor- General acting on the advice of the Local Privy Council will be communicated to the relevant persons.

There is no government cost imposed on the officer if he/she appeals to the Local Privy Council.

IMPORTANT

DID YOU KNOW THAT AN OFFICER CAN BE SUSPENDED FROM DUTIES WITHOUT SALARY PENDING APPEAL?

If the *penalty of dismissal* is imposed on an officer and he/she makes an application for his case to be referred to the Local Privy Council he/she may be suspended from duty without salary pending the determination. This action of suspension therefore is not to be confused with the *penalty of suspension*.

SCHEDULE A: STEP BY STEP GUIDE TO DISCIPLINARY ACTION

INCIDENT

Incident occurred whether misconduct or otherwise. The next steps are:

- Reporting of the incident to Human Resource Department (HRD).
- Identifying witness(es) and the collection of statements by HRD or investigator (person designated to conduct investigation).

EXAMINATION OF REPORT

Examination of the reports/statements by HRD/investigator. This is to be followed by the following actions:

- A determination of the most appropriate action by HRD.
- The preparation of the submission for the Committee/Commission.

DETERMINATION OF DISCIPLINARY PROCEEDINGS WITH OR NOT WITH A VIEW TO DISMISSAL

Upon approval by the authorized officer of action to be taken, the HR Department writes letter to the officer instituting Disciplinary Proceedings. If there is to be no action, this is to be stated. **If it is with a view to dismissal then indicate whether officer should be interdicted and on what portion of salary as determined by the authorized officer.**

INTERDICTION

Where the disciplinary proceedings with a view to dismissal have been instituted the officer is to be interdicted from duty on $\frac{1}{2}$, $\frac{1}{4}$ or no salary, if agreed.

DRAFTING OF DISCIPLINARY CHARGES

Box 1: Sample of Disciplinary Charges displays the format and wording of charges against an officer. Kindly ensure that the following steps are taken:

- a. HRD sends file to the Attorney General for the drafting of the charges if this cannot be adequately addressed internally.
- b. On receipt of charges the HRD prepares them for delivery to the officer with a letter addressed to him/her. The officer is given a maximum of 14 days from the receipt of the charges to respond.
- c. The Agency should determine who will marshal the evidence on its behalf. It can be a representative from the Attorney General's Department or internal lawyer who is not involved in the investigation.

Box 1: SAMPLE OF DISCIPLINARY CHARGES

PROCEEDINGS WITH A VIEW TO DISMISSAL
PURSUANT TO REGULATION 43 OF
THE PUBLIC SERVICE REGULATIONS, 1961

TO: (NAME OF DEFENDANT)
(POST)
(DEPARTMENT)

CHARGE 1

Misconduct contrary to Rule 101 (2) of the Correctional Institution (Adult Correctional Centre) Rules

Particulars of Misconduct

That on at the you corresponded with the of
....., an Inmate without the express authorization of the Superintendent.

CHARGE 2

Misconduct contrary to Rule 129 of the Correctional Institution (Adult Correctional Centre) Rules

Particulars of Misconduct

That onat the you allowed, an Inmate to have in ...
possession prohibited articles without the authorization of the Commissioner.

PLEA OF OFFICER/APPOINTMENT OF A COMMITTEE OF ENQUIRY

If the officer pleads not guilty, a Committee of Enquiry must be appointed by authorized body to investigate the matter (If the Charge is with a view to dismissal).

A minimum of three (3) persons are to be appointed. The Chairman must have legal qualification.

If officer pleads not guilty, HRD sends the file to the Chairman of the Committee for the naming of the witness(es) to attend at the enquiry.

If the officer pleads guilty then an enquiry may not be necessary.
See Public Service Regulation 44 (4) which is reproduced below:

REGULATION 44.-4 - OFFICER PLEADS GUILTY (A COMMISSION OF ENQUIRY IS NOT REQUIRED)

(4) Where **an** officer charged under this regulation admits in writing the facts giving rise to the charges, it shall not be necessary to hold **an** enquiry or investigation under this regulation unless in the opinion of **the** Commission such enquiry or investigation is likely to find such circumstances as may modify the view taken of and the punishment to be imposed for the offence.

ARRANGING OF DISCIPLINARY ENQUIRY

Upon the naming of the witness(es), then arrangement is made with the committee members, the legal representative/ union (if the officer is to be represented) as well as the lawyer representing the office, for a convenient date for the commencement of the enquiry.

ARRANGING FOR THE TAKING OF VERBATIM NOTES

Immediately thereafter contact should be made with the Chief Stenotype Writer at the Office of the Services Commissions requesting a steno writer for the date of the enquiry.

PREPARATION AND DISPATCHING OF BRIEF

Write committee members and officer/representative and marshalling lawyer mentioned above at item 14 confirming the date and also send a brief to them. The brief contains the relevant statements, charges and reports in relation to the case.

If the officer is unrepresented, send the brief to him/her.

CONTACTING WITNESSES

The designated Human Resource (HR) officer must write letter(s) to the witnesses to be called informing them of the date time and location of the enquiry for the person who is charged.

The officer charged should be informed in writing of the details pertaining to the commencement of the enquiry.

Where the witnesses are not part of the Government Service then prepare a summons addressed to each individual. This is to be signed by a Resident Magistrate or Judge. Send three (3) copies to the police for the serving on the individual.

See the Section 3 (1) of the Public Service Enquiries (Attendance of Witnesses) Act. Three (3) copies must be returned noting that the witness was served with the summons.

EXTRACT: PUBLIC SERVICE ENQUIRIES (ATTENDANCE OF WITNESSES) ACT

Section 3(1) - Power to summon Witnesses

3 (1) A tribunal shall have power to summon any person to attend the enquiry and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

LOCATION OF THE ENQUIRY

- The designated HR officer for this matter is responsible to identify the most suitable location for the holding of the Enquiry.
- Arrange for the serving of refreshments.
- Arrange for parking for the Committee members.
- Prior to the day notify the receptionist of the persons who will be attending the enquiry for them to be properly seated.
- The enquiry is to be held in private.

SEATING OF THE WITNESSES

Arrange the seating in the room in which the enquiry will be held.

INSIDE THE ENQUIRY ROOM

Please ensure that the following adhered to:

- The designated HR officer responsible for the enquiry sits away from the main table and monitors the proceedings and calls in the officer and his representative to be seated, once the committee members are prepared to start.
- All the relevant documents e.g. registers, log books, recording books and original statements and other evidence should be brought to the room by the HR personnel along with appropriate rules e.g. , Public Service Regulations and other relevant rules/regulations to that case.
- The steno writer is seated in a comfortable chair usually without arms at a point in the room which allows for easy note taking.
- There may be the need for an extension cord to assist the steno writer.
- During the enquiry the Chairman will guide the proceedings and with the notification by the lawyer/union involved, the witnesses will be called to testify as identified.

DURATION OF THE ENQUIRY

The enquiry may be scheduled for three (3) hours, e.g. 10 am - 1pm.

Kindly note that the committee members are paid an hourly rate, as indicated by the Ministry of Finance and the Public Service. This information is communicated to the Accounts Department after the completion of the enquiry.

END OF THE PROCEEDINGS

- At the end of the proceedings the Chairman will thank everyone for coming and inform that the findings of the committee will be communicated to the relevant authority.
- At the end of the enquiry the committee members will be left alone to deliberate on the matter.

FINDINGS OF THE COMMITTEE

- The committee will prepare its report in draft or otherwise.
- The designated HR officer may be required to have the report typed for the Chairman and returned to all the members of the committee (the Chairman first) for signing. The report is to be kept confidential by the HR Department at all times.
- Two (2) signed original copies should be made. One to be placed on the file and the other to be stored confidentially with other reports.

DECISION OF THE RELEVANT AUTHORITY

The relevant personnel in the Executive Agency will prepare a submission for the authorized officer/committee and attach the following:-

- i. The charge(s)
- ii. The verbatim notes
- iii. The report of the committee (photocopies for each member of the committee and one to be enclosed on the officer's personal file)

A decision is taken by the relevant authority i.e. CEO.

The decision is communicated to the officer by that HR Department as to whether:-

- iv. The Charge was established and the penalty to be imposed, or
- v. The Charge was not established and he/she should be reinstated, if interdicted.

If the officer is found not guilty (charge not established) then he/she should be refunded the full salary withheld during his/her interdiction.

The officer should also be informed in that same letter of his/her right to appeal the penalty to the Local Privy Council.

APPEAL TO THE LOCAL PRIVY COUNCIL

Here are the stages:

- This appeal (reference) is to the Local Privy Council. He/She has 14 days to submit in writing to the Governor-General his/her grounds for the appeal.
- The officer him/herself may appeal or he/she may use his/her representative to prepare the appeal for the Privy Council. He/She has a right to obtain the verbatim notes for the preparation of his/her appeal.
- The HR Department on receipt of the appeal should send it along with all the documents relating to the case and the verbatim notes to the Chief Personnel Officer at the Office of the Services Commissions.
- The Office of the Services Commissions will prepare a Local Privy Council Submission and attach all the pertinent documents, the report on findings of the committee, the verbatim notes, the charges and the officer's appeal. These will then be submitted to the Local Privy Council through the Office of the Governor-General and Staff.

PRIVY COUNCIL DECISION

The decision of the Local Privy Council will be communicated to the Chief Executive Officer.

A letter will be addressed for delivery to the officer from the OSC informing whether his appeal was:-

- vi. Dismissed and the penalty to be imposed
- vii. Upheld

The HR is responsible to ensure that the officer acknowledges receipt of the letter and this is placed on the file.

If there is difficulty locating the officer, the letter should be sent by registered mail to his/her last known address. The registration slip should be kept on file.

If the officer is represented, then that individual should be informed of the outcome of the appeal but not before the Agency is informed.

WHAT HAPPENS IF THERE IS NO APPEAL?

If there was no appeal, then the penalty is imposed by the Agency once the fourteen (14) days allowed for the appeal have expired.

SCHEDULE B: DISCIPLINE – ACTIONS TO BE TAKEN

This section will outline in greater details all the necessary steps that are to be taken when instituting disciplinary proceedings against an officer with/without a view to dismissal as under Regulations No. 42 and 43.

Disciplinary Proceedings

Under Regulation 42 the authorized officer and in this context, the Chief Executive Officer can institute disciplinary proceedings **not** with a view to dismissal against ALL officers in the Agency.

Under Regulation 43 the procedure for disciplinary proceedings with a view to dismissal are clearly set out.

Steps to be taken:

1. After the initial investigation and report to the CEO, the officer is given the charge (s) and given a specified time within which to respond (normally 14 days from the receipt of the charge).
2. The matter is then investigated by a committee of enquiry which comprises of three (3) persons. The Chairman must be either a Judge, Resident Magistrate, a legal officer or someone possessing legal qualifications. The members are selected with due regard to the standing of the officer.
3. The officer charged can be represented by a public officer, an attorney -at -law or an accredited member of the trade union or staff association to which he belongs.

All statements are to be made available to the defendant officer (if unrepresented) or to his representative.

What happens after those steps?

1. *A convenient date is arranged between all parties for the enquiry.*
2. *What protocols should follow at the enquiry?*
 - a. At the enquiry, which is held in private, the defendant officer is allowed to call witness(es) after the committee has taken its evidence.
 - b. The committee then furnishes a report to the commission or the Chief Executive Officer.
 - c. At the meeting, if the Commission or the Authorized officer (Chief Executive Officer) is of the opinion that the officer should be dismissed, it shall so recommend to the Governor-General (in the case of the Commission). It may also recommend a lesser penalty if in its opinion the officer does not deserve to be dismissed.
 - d. If the Commission/Chief Executive Officer is of the opinion that the officer does not deserve to be dismissed but should be removed from the Public Service it may recommend to the Governor General that the officer be retired in the public interest without recourse to **Regulation 26**.

It is crucial that the following is observed to ensure that there are no doubts about bias or collusion which can impact the outcomes:

1. The witness in the matter should remain outside of the room until he/she is needed to give evidence.
2. A supervisor / manager should ensure that whilst the witnesses are waiting to give evidence to the Committee, they must not be seen together and speaking with each other.
3. Where a witness has given evidence before the Committee, a supervisor / manager should ensure that, that witness does not speak with the other witnesses who have not testified before the Committee.

Some important points to Note

1. **No need for an enquiry if officers admits in writing to the charges**
 - a. **Regulation 43 (4)** indicates that if an officer *“admits in writing the facts giving rise to the charges, it would not be necessary to hold an enquiry or investigation... unless in the opinion of the Commission, such enquiry or*

investigation is likely to find such circumstances as may modify the view of and the punishment to be imposed for the offence”.

2. **Under Regulation 32** where disciplinary proceedings or criminal proceedings are about to be instituted or have been instituted, the Chief Executive Officer/Commission can recommend the interdiction from duty on half ($\frac{1}{2}$), quarter ($\frac{1}{4}$) or no salary.
3. It should be noted that where charges involve allegation of defalcation, fraud or misappropriation of public funds or public property, the officer may be interdicted on $\frac{1}{4}$ salary. Under special circumstances, the Chief Executive Officer/Commission may recommend that he be paid less than a quarter or it may be entirely withheld.

SCHEDULE C: FREQUENTLY ASKED QUESTIONS AND ANSWERS

Here is a cluster of Frequently Asked Questions and Answers (FAQA). You can always use the Find tool to search for a key term.

Interdiction	
Questions	Answers
What is Interdiction?	This is the removal of an officer from performing official duties.
Who can interdict an officer?	In the central government service, the Governor General has the authority to interdict officers on the recommendation of the Public Service Commission. The Governor General has the power to delegate this authority (<i>section 127 of the Constitution of Jamaica</i>). Permanent Secretaries, Heads of Departments and Chief Executive Officers of Executive Agencies to whom the authority to exercise full disciplinary control has been delegated can interdict officers in their respective entities in accordance with the Public Service Regulations, 1961.
When can an officer be interdicted?	An officer can be interdicted if: <ul style="list-style-type: none"> <input type="checkbox"/> Criminal charges have been or are to be made against him and it is in the public interest for him to be removed from duties. <input type="checkbox"/> Disciplinary proceedings have been or are to be instituted against him and it is in the public interest for him to be removed from duties. An officer can also be sent on interdiction pending the outcome of a disciplinary process.
What is the process of effecting an interdiction?	Once it is decided to send an officer on interdiction, he should be notified in writing. The notice takes immediate effect. If the officer is on vacation leave, he is not to report for duty at the expiration of the leave, unless he/she has been instructed to do so.
Is an officer paid his salary while on interdiction?	An officer in the central government may receive a portion of his salary while on interdiction. The amount paid is determined by the circumstances of the allegation/charge against the officer; i.e. the more serious the allegation/charge, the less is paid. The general principle is that an officer should not be paid less than 1/2 salary. However, if the charge involves an allegation of fraud or misappropriation of public funds or property the proportion may be as low as 1/4. In special circumstances, the proportion may be less than 1/4. For officers in entities which have been granted delegation of functions, the responsible officer is to administer the payment of salary as stated above.
Should an officer be paid allowances while on interdiction?	Allowances should still be paid in full provided that the officer qualifies for them in accordance with the requirements outlined in the Staff Orders or otherwise set out by the Ministry with responsibility for the public service. The allowances that can be paid are those <u>not</u> linked to actual performance of duty. For example, motor vehicle upkeep should be paid but no claim for actual mileage can be made.
Can an officer be sent on vacation leave pending the decision to send him on interdiction?	No. An officer should not be sent on vacation pending a decision of interdiction. Vacation leave is not to be used for this purpose! Vacation leave is already earned. If it is necessary to remove an officer from a sensitive area while a matter is being investigated and before there is sufficient evidence to determine what action to be taken, the officer may be reassigned/deployed.
Does an officer earn vacation leave while on interdiction?	No. An officer does not earn vacation leave while on interdiction. There is no provision for an officer to be paid salary in lieu of vacation leave for the period during which he was on interdiction. (See Staff Order 2004, Order 7.3 (iii))

Interdiction	
Questions	Answers
What happens if an officer is convicted of an offence?	An officer who has been convicted of an offence may be dismissed from the Public Service, or some other disciplinary penalty be imposed. If the officer appeals the criminal conviction, no action can be taken until the appeal has been heard by the Court .
What happens if a charge is made out against an officer?	The officer has the right to appeal the decision. If the officer exercises this right, the penalty is deferred pending the outcome of the appeal. Officers in Executive Agencies may appeal to the local Privy Council through the Office of the Services Commissions. Application must be made within fourteen (14) days from the receipt of the letter notifying of the decision.
What happens if no criminal case is made against the officer?	Usually, the officer is reinstated. However, depending on the circumstance, the relevant authority may then institute disciplinary proceedings. The disciplinary charge must not amount to an offense which is substantially the same as the criminal offence from which the officer was acquitted.
What happens if no disciplinary charge is made out against the officer?	If no disciplinary charge is made out against the officer, he/she is reinstated with immediate effect.
Can an officer take up employment while on interdiction?	No. An officer should not take up employment while on interdiction.
Can an officer travel overseas while on interdiction?	Yes. However the officer must receive permission to do so from the relevant authority/CEO.
What happens to the salaries withheld from the officer while he/she was on interdiction?	If the officer is acquitted of the charges all salaries withheld while the officer was on interdiction must be repaid on reinstatement. If the officer is found guilty of the charges but was not dismissed, he/she is not entitled to salaries withheld. However at the discretion of the relevant authority/CEO he/she may receive any or all of the salaries withheld.
How is an officer reinstated?	An officer is reinstated by simply advising him to report for duty. This must be confirmed in writing.
Discipline	
Questions	Answers
When should disciplinary proceedings be conducted?	Disciplinary proceedings should be conducted when there is an allegation of misconduct. Misconduct is a breach of the Code of Conduct for the public service as outlined in the PSR/Staff Orders/EA Regulations, or any act which in the opinion of the appropriate authorized officer amounts to a misconduct.
What are the stages of the disciplinary process?	The disciplinary process may take two or three stages: I. Preliminary Investigation II. Disciplinary Proceedings III. Appeal
Who has the authority to initiate disciplinary action?	The Governor General Permanent Secretaries Heads of Departments Chief Personnel Officer Chief Executive Officers in Executive Agencies
What are some of the documents which authorise disciplinary action?	Constitution of Jamaica Public Service Regulations EA Regulations

Discipline (Cont'd)	
Questions	Answers
What do the Constitution and the Governor- General have to do with discipline?	<p>The Constitution of Jamaica Order 125 clearly states that the authority for disciplinary action is vested in the Governor General. The Governor-General however acts on the recommendation of the Public Service Commission:-</p> <p><i>Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission.</i></p> <p>The Public Service Regulations, 1961 shows the various areas which the Public Service Commission advises the Governor General. The Constitution however allows for the delegation of functions in accordance with Order 127.</p> <p>The Delegation of Functions Order, 1963 shows the specific authorities with delegated functions and the specified areas for which they have the authority.</p>
Can an officer be suspended from duties without salary pending appeal?	<p>If the <i>penalty of dismissal</i> is imposed on an officer and he/she makes an application for his/her case to be referred to the Privy Council he/she may be <u>suspended</u> from duty <u>without</u> salary pending the determination. This action of suspension therefore is not to be confused with the <i>penalty of suspension</i>.</p>
What happens if there is no appeal?	<p>If there was no appeal, then the penalty is imposed by the Agency once the fourteen (14) days allowed for the appeal have expired.</p>

APPENDICES

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APPENDIX 1: STEP BY STEP GUIDE FOR DISCIPLINARY ACTION

This section provides a detailed schedule of the steps to be taken to guide the disciplinary action. Here is the chain of actions that should flow:

1. Examination of Reports
2. Determination of the most appropriate action
3. Preparation of the submission
4. Upon approval by the Chief Executive Officer of action to be taken
 - Write Human Resource Department - Instituting disciplinary proceedings and giving approval for interdiction of the officer
 - Send file to the Attorney General for drafting of charges. Attorney General sends back the charges
5. Send Charges to the Department for delivery to Officer with a letter addressed to him/her

IF OFFICER PLEADS GUILTY

Enquiry not necessary

IF OFFICER PLEADS NOT GUILTY

6. After Officer replies (**if pleads not guilty**) send file to Chairman of the Committee of Enquiry.
7. Chairman names persons to be called as witness(es)
8. Arrange with Committee members and legal representative/union (if officer is to be represented) for a date
9. Write individuals confirming date and send brief to them:
 - If officer is not represented, send brief for delivery to him/ her

- Write Chief Stenotype Writer requesting a writer for the date of the enquiry.
- Write indicating who are the witness(es) to be called. The officer charged is to be contacted by the Human Resource Department.

10. Arrange room for enquiry and refreshment if necessary

Notify receptionist of persons who will be attending the enquiry for them to be properly seated.

Arrange parking if necessary

11. At the completion of the enquiry and after receiving the drafted report from the committee:

- vet and prepare typed copies (original plus two copies)
- send report for signing by members of the committee

12. Do submission for the Human Resource Executive Committee (HREC) and ensure that the following documents are submitted:

- a) Charge(s) (see the sample of a charge)
- b) Verbatim notes
- c) Report of the Committee

SAMPLE OF A CHARGE

PROCEEDINGS WITH A VIEW TO DISMISSAL

PURSUANT TO REGULATION 43 OF

THE PUBLIC SERVICE REGULATIONS, 1961

TO: (NAME OF DEFENDANT)

(POST)

(DEPARTMENT)

CHARGE 1

Misconduct contrary to Rule 101 (2) of the Correctional Institution (Adult Correctional Centre) Rules

Particulars of Misconduct

That on at the you corresponded with the of, an Inmate without the express authorization of the Superintendent.

CHARGE 2

Misconduct contrary to Rule 129 of the Correctional Institution (Adult Correctional Centre) Rules

Particulars of Misconduct

That onat the you allowed, an Inmate to have in ... possession prohibited articles without the authorization of the Commissioner.

13. HR should indicate in writing to the CEO the HREC's recommendation, for example:

- Reinstatement **or**
- Penalty to be imposed

IF THE OFFICER IS FOUND NOT GUILTY

- **The officer is reinstated and repaid the salary withheld during interdiction**

IF THE OFFICER IS FOUND GUILTY

- Send letter from the Chief Executive Officer

IF A REFERENCE IS SUBMITTED BY THE OFFICER

14. If a reference is submitted by the officer then the following applies:

- Send to OSC who will do Privy Council Submission

15. If there is no reference to the Privy Council, then the following actions should be taken:

- Prepare minute for the Chief Executive Officer (to be signed by the Human Resource Director)
- Send File to Chief Executive Officer
- The Office of the Services Commissions (OSC) will submit minute and file to the Governor General
- Governor General Office submits to the Privy Council
- Ruling of the Privy Council sent to OSC
- OSC will write the Executive Agency and officer concerned upon receipt of ruling of the Privy Council
- Upon receipt of final approval from the Chief Executive Officer
- Prepare and send letters to the officer concerned

IF THERE IS REFERENCE TO THE PRIVY COUNCIL

16. If there is reference to the Privy Council then the following applies

Reports can be varied and therefore require action for:-

- retirement in the public interest
- premature retirement
- summary dismissal
- retirement on the ground of reorganization
- retirement on the ground of abolition of post
- retirement on medical grounds
- interdiction pending outcome of criminal case

APPENDIX 2: GUIDE TO ENQUIRIES

Firstly, the person charged should be brought into the room, asked to sit down and the charges read out to him/her. He/she should be asked whether he/she fully understands the charge and if he/she replies **yes** then he/she should be asked whether he/she pleads guilty or not guilty. If the person replies **no**, then the charges are to be sufficiently explained to him.

Next the witness(es) should be called to give evidence in support of the charge(s) should be called, one at a time, in logical sequence, as far as possible and be examined by the investigator in the presence and hearing of the person charged with a view to bringing out the facts needed to establish the charge(s).

Where from the nature of the charge it is necessary to tender documents or objects in evidence (e.g. vouchers, salary sheets etc.), this should be done and the documents numbered and initialled by the Investigator.

When the investigator has completed his/her examination of each witness, the person charged should be allowed to cross-examine the witness (namely putting questions as may tend to weaken or destroy the evidence in support of the charge or which tends to establish the defence). If the person charged does not wish to cross-examine the witness the Investigator should write **not cross-examined** on the line immediately below the last line of the evidence-in-chief (evidence that is established and documented prior to enquiry) or simply **No Xxn**, meaning (no cross examination).

After the cross examination is finished the investigator should re-examine the witness with a view to clearing up any inconsistencies between the evidence-in-chief or the evidence in cross-examination. If there is no need for re-examination the Investigator may write **no re-examination** or simply **No ReXn**.

The notes of evidence should show clearly where examination in chief, cross-examination and re-examination began.

It is also part of the investigator's duty to assist the defence in bringing out any point in favour of the person charged which from his/her knowledge of the written statements or otherwise he/she knows of and which the person charged may have failed to bring out in cross-examination. It may be found convenient to do so in re-examination; but this may be done at any stage of the witness evidence.

If a new matter is gone into re-examination, the person charged should be allowed to cross-examine on the new matter.

If during the course of the enquiry some important evidence has been omitted, the investigator may recall the witness(es) and put the necessary questions to them. He/she should then allow the person charged to cross-examine the witness(es) on such.

When the witness(es) in support of the charge(s) have completed their evidence the person charged should be informed that the witnesses' statement is the evidence in support of the charge(s) against him/her. It is usual to write just below the last line of the evidence of the last witness across the middle of the page the word **ACASE**.

At this stage the person charged may submit to the investigator that **no case** has been made out against him/her for him/her to answer. He/She should be given an opportunity to elaborate on this submission and a précis is taken down in the notes.

It may be that the investigator agrees with the submission but as the ultimate findings of guilty or not guilty of the charge(s) rests with the Governor-General or the Chief Executive Officer. The Investigator should enquire from the person charged whether he/she wishes to rest his case on the submission of no case to answer alone or whether he/she wishes to give evidence himself/herself and to call witness(es).

The person charged may elect to rest his/her case on the submission of **no case to answer**; in which event a note should be made at the end of the précis of his/her submissions to the effect:-

*Mr. X states that he rests his defence on these submissions
and does not wish to give any evidence himself or to call any
witnesses*

If the person charged makes no claim that there is **no case to answer** he/she should be asked by the Investigator as follows:

*Mr. X do you wish to give evidence on your own behalf and to call any
witnesses? You are not obliged to do so but if you wish you may give evidence
on your own behalf and call such witnesses as are relevant and necessary.*

If the person charged elects not to give evidence or call witnesses simply put note as follows:-

Mr. X elects not to give any evidence or to call any witnesses.

If he/she elects to give evidence and/or to call witnesses it is usual that the person charged should give the evidence first. He/she should be allowed to do so in narrative form, as far as possible, and confining himself/herself to relevant matters. When he/she has completed his/her evidence the investigator may cross-examine him/her.

If the person charged calls witnesses, he/she should be allowed to examine [them] in chief³ - the Investigator may cross-examine them and the person charged re-examine them. If necessary, the person charged may be allowed to recall witnesses in the same circumstances as previously mentioned.

When the defence is closed, whether on a submission of no case to answer or the person charged elects to give no evidence, or after evidence given, the person charged should be asked whether he/she wishes to say anything further as to the charge(s) generally or in mitigation of punishment in the event of his/her being found guilty of the charge(s). A précis of what he/she says should be noted.

The person charged should be told by the investigator that the evidence will be considered by him/her and a report made for final decision on which he/she will be notified in due course.

The enquiry is then adjourned; after which the investigator will consider the evidence and make his/her report to the Governor-General or the Chief Executive Officer who will consider the whole evidence and decide whether or not to confirm the investigator's findings.

³ The legal term to examine in chief means to examine (one's own witness) in attempting to adduce a case.

APPENDIX 3: REGULATIONS 42 AND 43 - DISCIPLINARY PROCEEDINGS WITH/WITHOUT A VIEW TO DISMISSAL

Regulations 42 and 43 which outline the procedures for disciplinary proceedings with/without a view to Dismissal are reproduced below. The word "Commission" (referring to the Public Service Commission) where it appears in Regulations 42 and 43 should be replaced with the word Chief Executive Officer (who has been delegated authority to exercise control and authority over the discipline of public officers appointed in Executive Agencies).

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days of the date on which he is informed of the Governor-General's decision to dismiss him or to impose some other disciplinary penalty, and the case shall be referred accordingly.

40. Where an officer has been suspended from duty and a reference of his case to the Privy Council results in his exculpation he shall be entitled to receive the full amount of any salary which he would have received but for his suspension; but if the reference results in any punishment other than dismissal the officer shall be allowed such salary as the Commission or the appropriate authorized officer may, in the circumstances, recommend.

Payment of salary to suspended officer.

B—PROCEEDINGS

41. [Deleted by L.N. 133B/1995.]

42.—(1) Where—

(a) it is represented that an officer has been guilty of misconduct; and

(b) the appropriate authorized officer is of the opinion that the misconduct alleged is not so serious as to warrant proceedings under regulation 43 with a view to dismissal,

Proceedings for misconduct not warranting dismissal.

the appropriate authorized officer (or the Commission at the request of the Governor-General) may cause an investigation to be made into the matter in such manner as he may think proper; and the officer shall be entitled to know the whole case made against him, and shall be given an adequate opportunity of making his defence.

(2) If the appropriate authorized officer is of opinion that the allegation is proved, he may inflict such punishment upon the officer other than dismissal or reduction in rank as may seem just.

(3) If the Commission is of opinion that the allegation is proved, it may recommend such punishment other than dismissal as may seem just.

(4) Unless the appropriate authorized officer is of the opinion that there are circumstances which render the following offences more serious, these offences shall be regarded as not so serious as to warrant proceedings with a view to dismissal—

(a) absence from duty during working hours without permission of the relevant senior officer;

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- (b) absence from duty without permission except in cases where by reason of illness or other unavoidable circumstance permission cannot be obtained prior to such absence;
- (c) habitual or frequent unpunctuality;
- (d) failure to sign the attendance register;
- (e) being a party to the signing of the register by another person on his behalf;
- (f) signing the attendance register for or on behalf of another officer;
- (g) being idle, disorderly, indisciplined or behaving in an improper manner while on duty;
- (h) careless handling of any article or equipment the property of a Ministry or Department;
- (i) inefficient performance of duties;
- (j) committing any act prejudicial to good order and discipline.

Provided
that for
dismissal.

43.—(1) Subject to the provisions of these Regulations an officer may be dismissed only in accordance with the procedure prescribed by this regulation

(2) The following procedure shall apply to an investigation with a view to the dismissal of an officer whose basic annual salary (whether fixed or on a scale) exceeds the prescribed salary rate—

- (a) the Commission (after consultation with the Attorney-General if necessary) shall cause the officer to be notified in writing of the charge and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself;
- (b) if the officer does not furnish such a statement within the time so specified or if he fails to exculpate himself the Governor-General shall on the recommendation of the Commission appoint to enquire into the matter a Committee consisting of not less than three persons of whom the chairman shall be a Judge, Resident Magistrate, or legal officer, or some other person possessing legal qualification; the members of the Committee shall be selected with due regard to the standing of the officer concerned, and to the nature of the charges made against him;

[The inclusion of this page is authorized by L.N. 33/1998]

- (c) the Committee shall inform the officer charged that on a day specified the Committee will enquire into the charges and that he will be permitted to appear before the Committee and defend himself;
- (d) if witnesses are examined by the Committee the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto;
- (e) an officer against whom charges are preferred shall be entitled to be represented before the Committee by—
 - (i) a public officer;
 - (ii) an attorney-at-law;
 - (iii) an accredited representative of a trade union or staff association recognized as representing the category of staff of which the officer is one,and the person or authority preferring the charges shall be entitled to be represented by a public officer or an attorney-at-law;
- (f) if during the course of the enquiry further grounds of dismissal are disclosed, and the Commission thinks fit to proceed against the officer upon such grounds, the Commission shall cause the officer to be furnished with the written charge and the same steps shall be taken as those prescribed by this regulation in respect of the original charge;
- (g) if having heard the evidence in support of the charges the Committee is of the opinion that that evidence is insufficient it may report accordingly to the Commission without calling upon the officer for his defence;
- (h) the Committee shall furnish to the Commission a report of its findings together with a copy of the evidence and all material documents relating to the case; if the Commission is of opinion that the report should be amplified in any respect or that further enquiry is desirable, it may refer any matter back to the Committee for further enquiry or report accordingly;
- (i) if the Commission is of opinion that the officer should be dismissed the Commission shall recommend to the Governor-General that an order be made accordingly;

(The inclusion of this page is authorized by U.N. 33/1998)

- (j) if the Commission is of opinion that the officer deserves some punishment other than dismissal, it shall recommend to the Governor-General what other penalty should be imposed;
- (k) if the Commission is of opinion that the officer does not deserve to be dismissed by reason of the charges alleged, but that the proceedings disclose other grounds for removing him from the service in the public interest it may recommend to the Governor-General that an order be made accordingly, without recourse to the procedure prescribed by regulation 26.

(3) The procedure prescribed by paragraph (2) shall apply to an investigation with a view to dismissal of an officer whose basic annual salary (whether fixed or on a scale) does not exceed the prescribed salary rate except that the charges may if the Commission so recommends be investigated by the Permanent Secretary, Head of Department or such other officer or officers as may be appointed by the Governor-General.

(4) Where an officer charged under this regulation admits in writing the facts giving rise to the charges, it shall not be necessary to hold an enquiry or investigation under this regulation unless in the opinion of the Commission such enquiry or investigation is likely to find such circumstances as may modify the view taken of and the punishment to be imposed for the offence.

APPENDIX 4: SAMPLE OF DELEGATION OF FUNCTIONS (PUBLIC SERVICE), ORDER

This is done under broad seal, signed by the Governor-General and issued to the CEO

THE CONSTITUTION OF JAMAICA

The Delegation of Functions (Public Service) Order, (year)

By His Excellency The Most Honourable
PROFESSOR KENNETH OCTAVIUS HALL,
Member of the Order of the Nation, Member
Of the Order of Jamaica, Governor-General of Jamaica.

GOVERNOR GENERAL

In exercise of the power conferred on the Governor General by Section 127 (1) of the Constitution of Jamaica, and of every other power hereunto enabling, the following Order is hereby made on the advice of the Public Service Commission:-

1. This Order may be cited as the Delegation of Functions (Public Service) Order, 2007.
2. In this Order “officer” has the same meaning as in the Public Service Regulations 1961.
3. Subject to the provisions of Section 127 (4) of the Constitution of Jamaica, and of the Public Service Regulations, 1961, the powers of the Governor-General specified in the Schedule to this Order shall be exercisable by the appropriate authority specified in that Schedule in relation to the respective offices and officers specified in that Schedule.

SCHEDULE

(Paragraph 3)

Offices and Officers	Powers	Appropriate	Authority
All offices in the (Name of Agency), Agency except the office of Chief Executive Officer, and all officers except the Chief Executive Officer	1. Appointment 2. Removal 3. Disciplinary Control 4. Training	The Chief Executive Officer	

Given under my hand and the Broad Seal of Jamaica at King’s House this day of August, in the Year of Our Lord, Two Thousand and Seven and the fifty-sixth Year of the reign of Her Majesty Queen Elizabeth II.

APPENDIX 5: SAMPLE OF AN ACCOUNTABILITY AGREEMENT FOR EXECUTIVE AGENCIES

ACCOUNTABILITY AGREEMENT

AGREEMENT made this 24th day of June, 2004 between the PUBLIC SERVICE COMMISSION and the CHIEF EXECUTIVE OFFICER,Agency (An Executive Agency) in relation to the Delegation of Functions (Public Service) Order, 2004, for the Agency effective the 1st June, 2004:

MANDATE

This Accountability Agreement is pursuant to the Delegation of Functions (Public Service) Order, 2004.

POWERS

Under this Agreement and on the conditions set out below, the Chief Executive Officer is delegated the following powers under the Public Service Regulations, 1961:

2.1 Appointments

All appointments activities, including:

- recruitment
- first appointment
- promotion
- acting appointment
- transfer

2.2 Separation

Removal of persons from office, including:

- for cause (misconduct, criminal offence, etc.)
- in the public interest
- discontinuation of function

(lack of work, reorganization, elimination of position, etc.)

incapacity

(inability to perform for medical, physical and/or psychological reasons)

- voluntary departure (resignations)
- retirement (mandatory and/or elected)
- other

2.3 Discipline

The exercise of disciplinary measures for any and all infractions, including those which could lead to removal from public office.

2.4 Training

The selection of persons for training, including the grant of study leave.

3. ACCOUNTABILITY

The Chief Executive Officer is accountable to the Governor-General through the Public Service Commission, based on the following:

3.1 Key Values

The Human Resource Policies and Procedures of the Agency shall, as a minimum, reflect the key values of:

- Integrity
- Merit
- Fairness
- Transparency
- Equity
- Respect
- Accountability

3.2 Expectations

The Chief Executive Officer shall, with respect to:

3.2.1 Appointments

- Ensure that appointment decisions flow from sound human resource strategy, including comprehensive succession planning;
- Make appointment decisions based on merit, through processes that are fair, equitable and transparent;
- Ensure that the widest possible access and opportunity are provided in selection processes, including, but not limited to advertising;

Appointments cont'd

- Avoid giving unfair advantage to any potential candidate;
- Ensure that selection criteria fairly reflect the duties to be performed and the needs of the Agency;
- Use a mix of selection tools to enhance the balance and fairness of selection processes;
- Provide information and opportunity for feedback to explain appointment processes and decisions;
- Provide mechanisms for fair and impartial recourse and redress.

3.2.2 Discipline

Ensure that in removing from office or exercising disciplinary measures over any person the provisions of Section 127(4) of the Constitution of Jamaica are respected.

3.2.3 Training

Ensure that the principles of transparency, equity and fairness govern the selection of persons for training and that training is in keeping with the Training and Development Plan of the Agency.

4. PERFORMANCE INDICATORS

The exercise of the delegated powers shall be assessed by the Public Service Commission against the following performance indicators:

- Number of appeals filed and upheld as a percentage of total number of appointments made;
- Number of persons in acting assignments, subsequently confirmed as permanent appointees, as a percentage of all permanent appointments made;
- Number of appeals against disciplinary decisions upheld, as a percentage of all disciplinary decisions made;
- Collective grievances settled and speed at which they are settled without time loss and loss of goodwill;
- Employee feed-back about the exercise of the delegated authorities;
- Others, as may be agreed by the Agency and the Public Service Commission from time to time.

5. REPORTING REQUIREMENT

The Chief Executive Officer undertakes to submit to the Public Service Commission, an Annual Report for each fiscal year, based upon the agreed performance indicators, by no later than the end of the first quarter of the succeeding fiscal year.

6. RECOURSE AND REDRESS

6.1 Appointment

- Any unsuccessful candidate in a selection process who has reason to believe he/she was assessed unfairly may appeal to the Public Service Commission within five (5) working days of being informed of the results;
- Appeals made to the Public Service Commission will be heard within twenty (20) working days of filing;
- An appellant has the right of representation by person/persons of his/her choice;

- The appeal process will reassess only matters in respect of the appellant in the selection process;
- If there is an appeal, no appointment will be made until the appeal has been heard and a decision rendered;
- An upheld appeal does not result in the automatic appointment of the appellant;
- If an appeal is upheld, a completely new selection process may be necessary.

6.2 Removal/Discipline

- Procedures relating to removal and/or discipline must follow due process;
- The provisions of Section 127(4) of the Constitution of Jamaica continue to apply.

7. MONITORING

The Public Service Commission has the responsibility for monitoring the performance of the Chief Executive Officer in respect of these delegated powers, including the conduct of periodic audits and/or opinion surveys among employees, as may be warranted.

8. PERFORMANCE ASSESSMENT

Failure to comply with the provisions of this Accountability Agreement may result in appropriate sanctions by the Public Service Commission up to and including revocation of the delegated powers either from a manager to whom the power is sub-delegated or, ultimately from the Chief Executive Officer. The Assessment of the Commission will form part of the overall Accountability of the Chief Executive Officer.

.....
Name of Chairman

Chairman

Public Service Commission

.....
Name of CEO

Chief Executive Officer

..... **Agency**

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