



Government of Samoa

**MANAGING BREACHES
OF THE
CODE OF CONDUCT
MANUAL**

Public Service Commission

January 2013



FOREWORD

In accordance with Sections 17, and 19 of the Public Service Act, all Chief Executive Officers and employees of the Samoa Public Service (SPS) are required to comply with and uphold the Public Service values and Code of Conduct. These provide the standard of behavior that is expected of CEOs and employees so as to ensure an ethical Public Service that is serving the Government of the Day and meeting the needs and expectations of the public. An employee or CEO who acts or behaves in a way that is contrary to the Code of Conduct will be seen to have committed a breach of the Code of Conduct.

This Manual is designed to assist Ministries in managing breaches of the Code of Conduct by Officers and Contract Employees in the SPS in accordance with the current legislative framework. In particular, it aims to provide Human Resource Coordinators (HRCs) with the information they require to assist with:

- ❑ Advice to their Chief Executive Officers (CEOs) generally on the policy and procedure for managing breaches of the Code of Conduct and the related responsibilities;
- ❑ Advice to the relevant Line Manager regarding their specific role in the procedure; and
- ❑ Advice to Officers and Contract Employees who have been alleged to have breached the Code of Conduct on their rights and responsibilities in the procedure.

Section 19 of the *Public Service Act 2004* outlines the Code of Conduct and *Part 9 of the Public Service Regulations 2008* provides an outline of the procedure for managing breaches of the Code of Conduct.

The principles underpinning the procedure for managing breaches of the Code of Conduct are;

- ❑ All Chief Executive Officers and all employees (contract, officers and temporary) of the SPS must comply with the SPS Code of Conduct and uphold the SPS Values;
- ❑ Taking action in cases of a suspected breach of the Code of Conduct is primarily aimed at protecting the integrity of the SPS and thereby maintaining public confidence in public administration; and
- ❑ The procedure for managing a breach of the Code of Conduct is designed to be fair and reasonable, striking a balance between the needs of officers, the needs of the Ministry and the public interest, while at the same time complying with relevant legal requirements.

The management of such cases will quite often prove to be difficult and stressful and should be handled with sensitivity and confidentiality.

Chairman
Public Service Commission



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GLOSSARY OF TERMS

Act	Public Service Act 2004
CEO	The Head of Department or a Ministry and includes the Head of a Constitutional Authority.
Charging Officer (CO)	An officer or a contract employee appointed as the CEO Delegate for the purposes of subsection 44(1) of the Act.
Charged Officer	An officer who has been served charges under the <i>Public Service Act 2004</i> .
Code of Conduct	The Code of Conduct set out in section 19 of the <i>Public Service Act 2004</i> .
Commission	The Public Service Commission
Contract Employee	An employee employed in a contract position under Section 30 or 31 of the PS Act 2004
Employee	Means a person employed in a Ministry but does not include a Chief Executive Officer.
Investigating Officer (IO)	An officer appointed under subsection 44(2) of the <i>Public Service Act 2004</i> to investigate charges.
Misconduct	An action which does not adhere to the code of conduct under Section 19 and the values under section 17 of the PS Act 2004 and other additional conduct under Section 31 of the PS Regulations 2008.
Officer	An employee who is not: (a) a contract employee; or (b) a temporary employee.
Regulations	The Public Service Regulations 2008 (includes all the Amendments)
Suspect Officer	An employee who is suspected or alleged to have breached the Code Of Conduct but has not been charged.
SPS	Samoa Public Service as constituted under Article 83 of the Constitution of Independent State of Samoa



PART 1: THE CODE OF CONDUCT AND HOW TO DETERMINE A BREACH HAS OCCURED

The Samoa Public Service Code of Conduct

The Code of Conduct (section 19 of the Act) sets out the standards of behavior required of every employee and every CEO in their capacity as a member of the SPS. It applies generally to conduct in the course of employment and outside the workplace except in relation to conflict of interest which is only in the course of employment. The obligations imposed are not mutually exclusive and an employee may breach more than one provision of the Code of Conduct at the same time.

The Code of Conduct consists of three (3) parts:

1. Twelve (12) specific subsections of the **Code**, (section 19);
2. **SPS Values**, incorporated into the Code by subsection 19(j) (section 17); and
3. **Additional Conduct Requirements**, incorporated into the Code by subsection 19(k), but set out in Part 7 **under Sections 31 – 40** of the Regulations.

The Code is described in detail below.

a. **Be honest and impartial**

This provision requires employees to be honest and truthful in their dealings with their fellow workers, members of the public, their CEO, their responsible Minister and the Government in general.

It also requires employees to act and provide advice without fear or favor of anyone and generally to make decisions on their merits alone. Employees should act apolitically and serve the Government with impartiality, regardless of which party is in power and which party they personally support.

Checklist for (a)

- ✓ Can the actions of the employee be deemed as dishonest?
- ✓ When the employee made the decision in question were they being impartial?

b. **Work carefully and diligently**

This provision requires employees to work with care in their duties, and is especially important where those duties concern issues of public safety or public money. Further, it requires that employees are productive during work hours and do not shirk from their duties, for example, by taking sick leave when they are not sick or being absent without authorization.

Checklist for (b)

- ✓ Was care taken by the employee when they executed their duties?
- ✓ Was there a danger to the public as a result of the actions of the employee?
- ✓ Has the employee misused public monies?
- ✓ Has the employee been absent from work too often and for no apparent reason?

c. **Treat everyone with respect and courtesy and without coercion or harassment**

This provision requires that employees behave professionally and show respect and courtesy to their fellow workers and to members of the general public. It also requires



that they do not harass or engage in intimidating or bullying behaviour towards their fellow workers or other members of the public. In this context, harassment can include, physical, emotional and sexual harassment.

Checklist for (c)

- ✓ Has the employee been seriously disrespectful?
- ✓ Has the employee been seriously discourteous?
- ✓ Has the employee harassed another person either physically, emotionally or sexually?
- ✓ Has the employee engaged in intimidating or bullying behaviour?

d. Comply with all laws that apply to them

This provision requires that employees abide by all the laws of Samoa that apply to them, e.g. the Crimes Ordinance 1961 or the Road Traffic Ordinance 1960. This is because a breach of a law by a member of the Public Service reflects badly on the Public Service as a whole. Therefore, an employee who breaks a law breaches this provision, even if the unlawful act is not related to their employment in the SPS.

Individual Ministries may also have additional governing legislation that employees within those Ministries must comply with.

Checklist for (d)

- ✓ Has the employee broken the law?

e. Comply with all lawful and reasonable directions given to them by persons who have authority to give those directions

This provision requires that all employees obey any lawful and reasonable directions given by authorized persons. These directions may be formal and in writing, or they may be informal and given orally. An example of a formal direction would be any Employment Instruction made by the Commission under the Act. An example of an informal direction would be a manager directing a employee via telephone to return to work when the employee has no reason to be absent.

In addition, individual Ministries may have developed internal policies that employees within those Ministries must comply with. For example if an employee does not comply with a Ministry's Internal Email Policy, disciplinary action could be taken against that employee.

Checklist for (e)

- ✓ Has the employee failed to follow an Employment Instruction issued by the Commission?
- ✓ Has the employee not followed a reasonable instruction given by their supervisor?
- ✓ Has the employee failed to follow an internal Ministry policy?

f. Disclose and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment

This provision requires that employees avoid situations in which their private interests, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his public duty. Where employees possess, directly or indirectly, an interest that conflicts or might reasonably be thought to conflict with their public duty, or could



improperly influence their conduct in the discharge of their responsibilities, they should disclose that interest to their supervisors. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the relevant employee should disclose this new information.

Checklist for (f)

- ✓ Does the employee have a financial or personal interest in a company which the Ministry deals with?
- ✓ Does the employee have a financial or personal interest in a company that may impact on their work in the Ministry?
- ✓ Would the actions of the employee be perceived as resulting from a conflict of interest by their colleagues?
- ✓ Did the employee make a personal profit from any Ministry property?
- ✓ Did the employee operate a private business using resources of the Ministry?
- ✓ Was the employee on a selection panel, where one of the persons interviewed was their spouse, relative or friend and did they influence the outcome in favour of that person?
- ✓ Did the employee make a decision that allowed themselves their, spouse or friend to obtain a benefit from the Ministry

g. Use government resources properly

This provision requires that employees use government resources at their disposal in a proper manner. Government resources are public property and should therefore be only used in connection with the provision of public services or for the public good. The use of government resources for personal gain or convenience would be a clear breach of this provision, as would the use of government resources in a wasteful manner. (eg. Using Government vehicles for personal use on weekends without permission)

Checklist for (g)

- ✓ Has the employee used Government resources inappropriately?
- ✓ Has the employee been wasteful in their usage of Government resources?

h. Use official information only for official purposes

This provision relates to the use by employees of information that they obtain or have knowledge of in the course of their employment. It requires that the employees only use such information for the purposes of their employment in the SPS, and not for personal gain or any other purposes. (eg leaking information to the media)

Checklist for (h)

- ✓ Has the employee used official information for their own personal gain?
- ✓ Has the employee disclosed official information that they should not have?

i. Act with integrity and not misuse their status or authority to seek or obtain a benefit for themselves or any other person or body

This provision requires employees to exercise their powers responsibly and with integrity. For example, if a senior manager delegates all their work to their employees whilst surfing the internet during working hours.

Checklist for (i)



- ✓ Has the employee failed to act with integrity in their dealings as an employee of the Ministry?
- ✓ Has the employee misused their positional power?
- ✓ Has the employee gained personal benefit from their actions?

j. Uphold the Values of the Public Service set out in Section 17 of this Act

This provision requires that employees act consistently with the Values of the Public Service set out in section 17 of the Act. These are as follows:

- ❖ *Honesty*: Acting honestly, being truthful and abiding by the laws of Samoa.
- ❖ *Impartiality*: Providing impartial advice, acting without fear or favour, and making decisions on their merits.
- ❖ *Service*: Serving the people well, through faithful service to the Government.
- ❖ *Respect*: Treating the people, the Government and colleagues with courtesy and respect.
- ❖ *Transparency*: Taking actions and making decisions in an open way.
- ❖ *Accountability*: Being able to explain the reasons for actions taken and taking responsibility for those actions.
- ❖ *Efficiency & Effectiveness*: Achieving good results for Samoa in an economical way.

Checklist for (j)

- ✓ Has the employee failed to uphold the values of the public service?

k. Comply with any other additional conduct requirements

This provision requires employees to follow any other additional conduct requirements set out in the Regulations. Currently, the additional conduct requirements are as follows:

Use of official information: Each employee must within 14 days of commencing employment, complete a statutory declaration of the effect that their attention has been drawn to the provisions of the Act and these Regulations relating to the use of official information and that they will uphold the requirements of those provisions.

Authorized communications –An employee must not communicate any matter of policy affecting a department to the news media or to the public unless they have been expressly authorized to do so by the Commission or their Head of Department.

Outside Work – An employee must not engage in any paid employment or occupation outside the Public Service unless they have the written permission of the Commission.

No payment beyond official salary and allowances – An employee must not accept any remuneration, beyond their salary and allowances, for performing any service in connection with the Public Service for the Government or for any other person

Use of drugs or alcohol – An employee must not use drugs or alcohol in a way that adversely affects the performance of their duties or the performance of the duties of other employees



Absence from duty - An employee must not be absent from their official duties during hours of duty unless they have obtained official leave or unless in the case of illness or emergency they have taken all reasonable steps to inform their supervisor of their absence as soon as possible.

Attendance -

- (1) Employees must attend work during the hours of attendance specified by the Commission.
- (2) Each employee must enter their time of arrival and time of departure each day in the attendance record kept by their department.
- (3) An employee who reports late for duty may be required by their supervisor to make up the time lost.
- (4) Except in the case of illness or emergency an employee must not leave work during their hours of duty without the permission of their supervisor.

Near relatives in same Ministry –

- (1) An employee who has a near relative working in the same ministry as the employee must immediately notify the Commission.
- (2) The Commission must consider whether it would be in the interests of the Public Service to take action in response to a notification under this regulation.
- (3) In this regulation, ‘near relative’ means a parent, child, brother, sister or spouse (including defacto spouse) whether by blood or marriage or adoption.
- (4) The Commission may in its absolute discretion, require an employee to transfer to another department where a near relative is working in the same department.

Acceptance of money or goods (Gifts) –An employee must not directly or indirectly ask for or accept money or goods or any other valuable from any person or entity concerned with any matter connected with the employee’s official duties.

An employee shall not directly or indirectly ask for but may accept customary gifts within the tradition of Faa-Samoa provided that the employee discloses such gifts in writing to the Commission and the Employee’s CEO.

Checklist for (k)

Has the employee failed to comply with any of the additional conduct requirements?

1. Uphold the good reputation of the Public Service

This provision requires employees to behave generally in a manner that is consistent with the good reputation of the Public Service. This requirement applies not only to employees’ conduct in the workplace, but also to employees’ conduct outside of the workplace.

Checklist for (l)



- ✓ Has the employee brought the reputation of the public service into disrepute?

How to Determine a Breach has occurred

In broad terms, an employee of the SPS whose conduct does not comply with an element of the Code of Conduct can be found to have breached the Code.

It is important however to note the following:

- Where a provision of the Code contains more than one element, it may not be necessary for the employee to have breached all the elements in order for a breach of the Code to be established;
- Conduct, which is apparently unrelated to the performance of duties, may be subject to the Code - as long as there is a real connection between the conduct and its effect on the workplace (as indicated in the section above);
- If an employee's unsatisfactory performance is due to factors within their control that can be linked to the Code of Conduct, it can be dealt with as a possible breach of the Code. The question of whether or not something is within a person's control must be determined according to the circumstances of each case, having regard to the particular employee's capacity and capability. For example, under section 19(e), an employee's persistent failure to comply with instructions could be because they are simply incapable of following the instructions due to insufficient skills, or because they decide not to follow them.

If they are incapable or unable to follow instructions it should be dealt with as an underperformance or unsatisfactory performance issue as per section 48 of the Act.

The need for Consistency

When undertaking the procedure of handling breaches of the Code of Conduct it is important for there to be a consistent approach taken by those involved in the procedure. For example if minor breaches have been tolerated in the past and suddenly there is an enforcement of the rules against one employee in particular it may be unfair.

When considering whether or not to take action under the Managing Breaches of the Code of Conduct it is important to consider the following factors:

- The **nature and seriousness of the misconduct** e.g. the type of conduct, the standard of care and skill required of the person, the actual and potential consequences of the person's conduct
- The relevance of the misconduct to the person's role and the reputation of the SPS e.g. whether a breach of trust is involved, how senior the person's position is;
- The circumstances of the misconduct or criminal offence e.g. degree of participation by the person, external pressures on the person

Mitigating factors, e.g. age, experience, cultural background, language difficulties (NB the presence of mitigating factors may be outweighed by the seriousness of the conduct concerned)



PART 2: PROCEDURE FOR MANAGING BREACHES OF THE CODE OF CONDUCT

This section sets out the procedure for responding to and managing an alleged breach of the Code of Conduct by either an Officer or Contract Employee of the SPS; and, if necessary, deciding on appropriate disciplinary action. Note that unless otherwise specified, the same procedure that applies to Officers also applies to Contract Employees, subject to the Commission performing the role of the relevant CEO and the term ‘Officer’ being replaced with ‘Contract Employee’.

The procedure ensures that Officers and Contract Employees are accorded procedural fairness and it is the responsibility of those involved to ensure that the procedure is managed and undertaken with integrity and honesty.

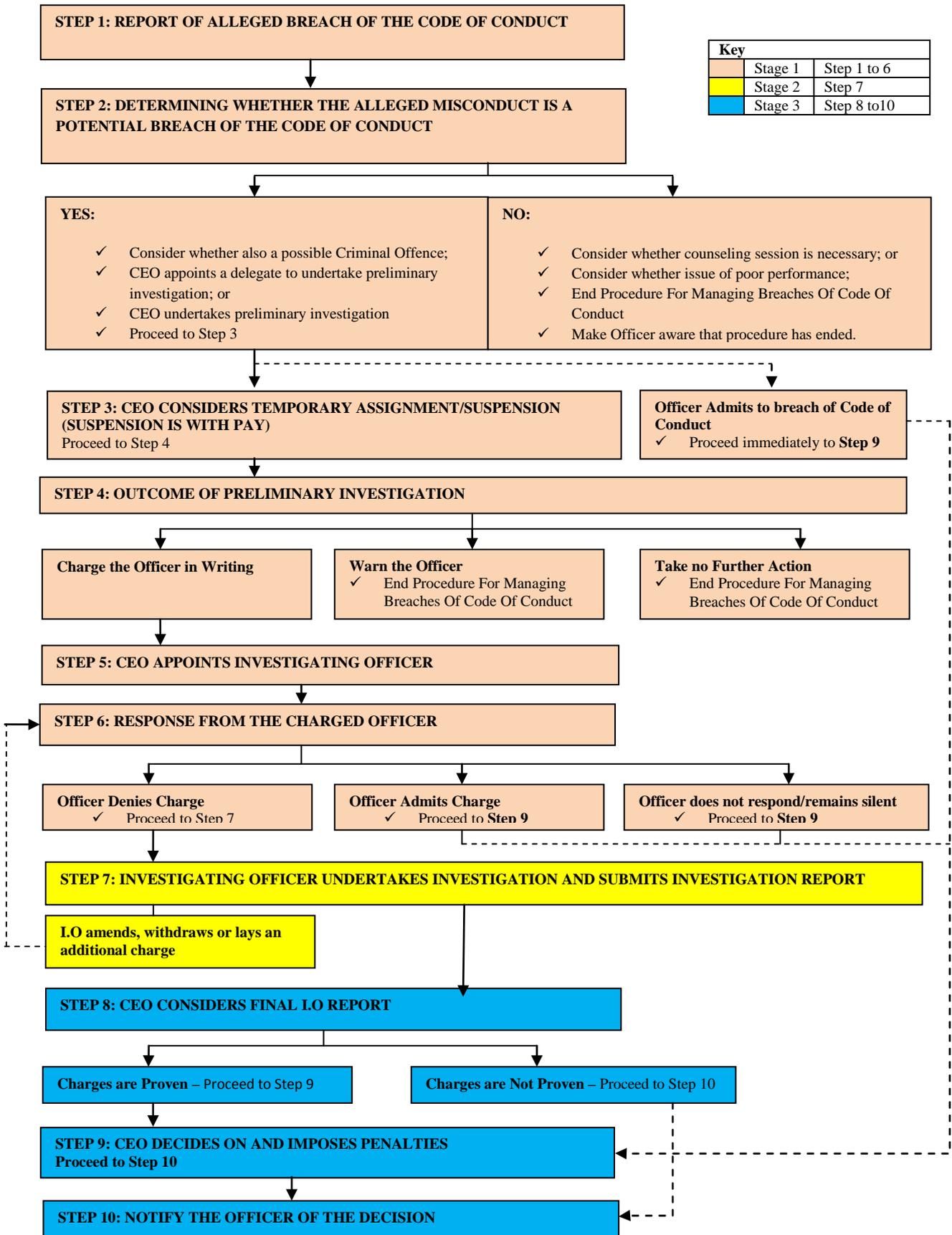
The procedure is set out in three stages:

1. Reporting and Considering Misconduct;
2. Commencing and undertaking an Investigation
3. Decision and Imposing Penalties

The flowchart in Figure 1 illustrates the procedure for managing breaches of the Code of Conduct.



Fig 1. Flow Chart: Procedure for Managing Breaches of the Code of Conduct





STAGE ONE: REPORTING AND CONSIDERING ALLEGED MISCONDUCT

Step 1: Report of alleged breach of the Code of Conduct

- ✓ The CEO receives a report or is made aware of alleged misconduct by an officer in his/her Ministry.
- ✓ The CEO reviews the alleged misconduct, with reference to
 - The Code of Conduct (Section 19 of the PS Act 2004);
 - Values of the Public Service (Section 17 of the Act);
 - Additional Conduct Requirements (Part 7 of the Regulations)
- ✓ The CEO may seek assistance from the suspected officer's Manager or the Ministry's HRC; and
- ✓ Note that where a CEO is made aware of or suspects a breach of the code of conduct by a Contract Employee in his/her Ministry, then that CEO must provide a report on the matter to the PSC. In relation to Contract Employees, the PSC takes on the role of the CEO from here on.
- ✓ **Proceed to Step 2.**

Step 2: Determining whether the alleged misconduct is a potential breach of the Code of Conduct?

- ✓ The CEO makes a determination (i.e. decides) as to whether or not the alleged misconduct is a potential breach of the Code of Conduct.
- ✓ To assist in making this determination the CEO should refer to PART 1 of this Manual, titled **The Code of Conduct and How to Determine a Breach of the Code of Conduct.**
- ✓ **If No:** - the CEO should:
 - Consider whether a counseling session is necessary; or
 - Consider whether the issue is one of poor performance and subsequently refer to section 48 of the Act "Dealing with Poor Work Performance" for further direction on action to be taken; and
 - Ensure that the officer is made aware that any further action to be taken is not part of the procedure for managing breaches of the Code of Conduct; and
 - **End the procedure for managing breaches of the Code of Conduct.**
- ✓ **If Yes:** - the CEO needs to:-
 - Consider whether or not the action of the officer could also be a **criminal offence** and if so, report it to the Police (please refer to 6.1 Criminal Proceedings and Fig 2). If the CEO requires assistance with this matter they should seek the advice of the Attorney General or Commission; and **either**
 - Undertake a preliminary investigation of the matter and then proceed to Step 3; **or**
 - Appoint a delegate, hereinafter referred to as the Charging Officer, to undertake a preliminary investigation and subsequently complete a Warrant of Appointment of Charging Officer in accordance with **Appendix A**; and
 - If a Charging Officer is appointed, provide a copy of the Warrant to the PSC; and then
 - **Proceed to Step 3;**



- ✓ Note however, that if at any time during this Step, that the CEO is of the opinion that the Officer has breached the Code of Conduct and the Officer admits (in written or verbal form) to that breach of the Code of Conduct then the CEO may, without any further investigation **proceed immediately to Step 9**, which is to impose on that Officer any of the penalties specified under section 45 of the PS Act 2004. If the Officer verbally admits to that breach of the Code of Conduct, then he/she will need to verify his/her admission by signing Appendix B. This is to be prepared and witnessed by the CEO, or delegate;
- ✓ In selecting and appointing the Charging Officer, the CEO **must** ensure the Charging Officer is:
 - An officer or contract employee of the Samoa Public Service (i.e. Not an officer on probation, a Term Employee or a Wage Worker);
 - From the same Ministry as the CEO and the officer who has allegedly breached the Code of Conduct; and
 - A person who is and is seen to be independent and impartial.

Please Note: - the final point is very important because if the Charging Officer is deemed not to be independent or impartial, it could be grounds for an appeal against **any** decision made throughout the whole procedure.

Step 3: CEO considers Suspension or Temporary Assignment of the Officer.

- ✓ The CEO:
 - Considers and decides whether or not to either suspend the Officer with pay, or temporarily assign the officer to other duties in the Ministry if:
 - A Charging Officer has been appointed; or
 - A Charge has been made against an Officer; and
 - The CEO has first given the officer an opportunity to be heard on the matter of suspension or temporary assignment
 - Determines the date of the suspension or temporary assignment to other duties.
 - Ensures that a **Notice of Suspension (Appendix C) or Notice of Temporary Assignment (Appendix D)** must be issued to the officer and is copied to the Commission. It should clearly state the:
 - Reasons for the temporary assignment or suspension;
 - Conditions of the temporary assignment or suspension; and
 - Any other relevant matters.
 - In undertaking this decision, needs to consider a number of questions in the Temporary Assignment/Suspension Checklist (Appendix E).
- ✓ The Officer:
 - Receives a Notice of Temporary Assignment or Notice of Suspension;
 - Must respond either in writing or in person within 7 days of receiving the Notice of Suspension/Temporary Assignment;
 - Must ensure that their response is received by the CEO.
- ✓ Where an Officer is not charged within 21 days of suspension, the CEO is required, under Section 47(3) to revoke the suspension using **Notice of Revocation of Suspension, (Appendix F)**.
- ✓ A copy of the Notice of Revocation of Suspension must be provided to the Commission.



- ✓ If the Officer is charged within 21 days, the suspension will remain in place pending the determination of the charge(s).

- ✓ **Proceed to Step 4**

Step 4: Undertaking and Outcome of Preliminary Investigation.

- ✓ The CEO or Charging Officer undertakes a preliminary investigation;
 - By assessing the evidence available and determining whether or not sufficient evidence exists to lay charges against the Officer; and
 - Ensuring that this task/part must be carried out as quickly and efficiently as is practicable to determine which action to take.
- ✓ Following completion of the preliminary investigation, the CEO or the Charging Officer can either:
 - a) ***Charge the Officer in writing.***
 - ❖ In Charging the Officer, the CEO or Charging Officer will need to:
 - Note that this is the option that should be chosen if, following the preliminary investigation, there is sufficient evidence to substantiate the charge(s) and the misconduct of the officer concerned warrants charge(s) being laid. This is an Option when there is evidence to support allegations that an alleged misconduct or breach of the code has occurred.
 - If the officer has committed an act which may potentially be a breach of multiple subsections of the Code of Conduct the CEO/delegate must select the most appropriate subsection to charge the officer under. One act is equivalent to one charge but an officer can receive multiple charges for the same act that occurred at a different time or on a different day.
 - The charge(s) need to be as detailed as possible given that they provide the sole terms of reference for the investigation. **If there are any gaps in the information contained in the charge(s) it could ultimately jeopardize the whole procedure.**
 - Prepare/Draft Formal Charges in writing. It is advised that draft charges are referred to the PSC or the Office of the AG for analyzing and advice before they are finalized and served on the Officer.
 - Serve written Charges on the Officer (now to be known as the Charged Officer) using the **Charge Sheet** Template (**Refer Appendix G**). Charges are to be clearly stated on the **Charge Sheet**;
 - Ensure that Charges (Charge Sheet) are accompanied by a **Notice Accompanying Charges** (**Refer Appendix H**) in writing which informs the Charged Officer of what is expected of him/her and his/her rights, in accordance with Section 46 of the Public Service Regulations 2008.
 - Ensure that the Charged Officer receives Charges in Writing and verifies receipt of Charges by signing **Proof of Charges Served**. (**Refer Appendix I**)
 - ❖ After an Officer has been charged, **proceed to Step 5.**

Or

b) Give the Officer a warning

- ❖ In giving the Officer a warning, the CEO or CEO's delegate will need to:
 - Note that this is the option that should be chosen if the alleged misconduct, even if true is not misconduct which is serious or grave enough to warrant charging the Officer.



- Prepare a **Notice of Written Warning** (Appendix J) and give this to the Officer
- Provide a copy of the Warning to the CEO and the PSC.
- ❖ After the Officer has been given a Warning, this **ends the procedure for managing breaches of the Code of Conduct.**

Or

c) **Take no further action.**

- ❖ In taking no further action, the CEO or CEO's delegate will need to;
 - Note that this is the option that should be chosen if there is insufficient evidence or they have determined that the allegations are unfounded.
 - Prepare a **Written Notice of No Further Action** (Appendix K), that advises the Officer that No further Action will be taken and give this to the Officer.
 - Provide a copy of the Notice to the CEO and the PSC;
- ❖ After the Officer has been given the Notice of No Further Action, this **ends the procedure for managing breaches of the Code of Conduct.**
- ✓ Where a Charging Officer is appointed, he/she should consult with and seek the views of the CEO before deciding whether or not to:
 - Charge the Officer in Writing; or
 - Give the Officer a Warning; or
 - Take no further action.

Step 5: CEO Appoints an Investigating Officer

- ✓ Where an Officer has been charged, the CEO needs to appoint an Investigating Officer (I.O) by preparing a **Warrant of Appointment of Investigating Officer** (Appendix L);
- ✓ The Original Warrant of Appointment is given to the I.O with copies provided to the:
 - ❖ Charged Officer; and
 - ❖ The PSC
- ✓ The role of the I.O is to carry out a complete investigation into the charges and make recommendations to the CEO;
- ✓ The I.O must:
 - ❖ Be an Officer or Contract Employee from a Ministry other than the Ministry in which the Charged Officer works;
 - ❖ Be a Certified Investigating Officer of the Samoa Public Service; and
 - ❖ Be a person who is and is seen to be independent and impartial.

*The final point is the very important because if the IO is deemed not to be independent or impartial, it could be grounds for an appeal against **any** decision made throughout the whole procedure.*
- ✓ The CEO should first obtain the agreement of the intended IO and the CEO of the I.O's Ministry. This is to ensure that the IO will have sufficient time to carry out the investigation and identify any conflict of interest issues that may exist to disqualify them from the IO role.
- ✓ **The I.O's Warrant of Appointment** should set out the following:
 - ❖ For the IO to investigate the charge(s);
 - ❖ Report to the appointing CEO including recommendations on whether charges are proven or not proven; and



- ❖ Submit the recommendations and relevant material to the CEO as soon as practicable.

More details on the **Role of the Investigating Officer** are set out in Part 4.

- ✓ A **letter (Appendix M)** should also be provided to the CEO of the IO’s Ministry, advising/confirming that the I.O has been appointed to undertake the investigation.

Step 6: Response from the Charged Officer:

- ✓ Upon receipt of Charges, the Charged Officer has **7 days** to respond to the charge(s).
- ✓ The Charged Officer may respond in the following ways:
 - ❖ **Admits** the charge(s) and makes a written submission to the relevant CEO on the issue of penalty; OR
 - ❖ **Denies** the charge(s) and makes a written submission to the relevant CEO by way of a response; OR
 - ❖ The Charged Officer **does not respond** within the required 7 days or chooses to exercise his/her right to **remain silent** and in this case is deemed to have admitted to the truth of the charge(s).
- ✓ If the Charged Officer either admits the charge(s) or is deemed to have admitted to the truth of the Charges by virtue of not responding within 7 days or choosing to remain silent then:
 - ❖ The CEO **revokes the Warrant of Appointment** of the I.O (**Appendix N**); and
 - ❖ The CEO **proceeds immediately to Step 9**, which is to impose penalties on the Charged Officer. The Charged Officer should be invited to make a submission to the CEO in relation to penalty before a decision on penalty to be imposed is made.
- ✓ If the Charged Officer denies the charge(s):
 - ❖ The CEO provides a copy of the Charged Officer’s response to the I.O; and
 - ❖ The I.O **proceeds immediately to the first step of Stage 2** (i.e. Step 7.)

Note: If the preliminary Investigation uncovers that there are other employees involved, even when the Charged Officer admits or is deemed to have admitted to the charges, the CEO can still instigate a new process for those employees that were implicated in the preliminary investigation.

Stage 1 Templates

Appendix A	Warrant of Appointment of Charging Officer
Appendix B	Proof of Officer’s confirmation of verbal admission to breach(es) of Code of Conduct
Appendix C	Notice of Suspension
Appendix D	Notice of Temporary Assignment
Appendix E	Suspension/Temporary Assignment Checklist
Appendix F	Notice of Revocation of Suspension/Temporary Assignment
Appendix G	Charge Sheet
Appendix H	Notice Accompanying Charges
Appendix I	Proof of Charges Served
Appendix J	Notice of Written Warning
Appendix K	Notice of No Further Action
Appendix L	Warrant of Appointment of Investigating Officer
Appendix M	Letter to CEO of the I.O’s Ministry
Appendix N	Notice of Revocation of I.O’s Appointment



STAGE TWO: COMMENCING AND UNDERTAKING AN INVESTIGATION

Step 7: Investigating Officer commences Investigation:

- ✓ Once the Warrant of Appointment has been issued the IO may begin their investigation. **However, it is recommended that they wait for the response from the Charged Officer that is due 7 days following the receipt of the charge(s). This is to avoid any unnecessary workload if the Charged Officer admits to the charges;**
- ✓ Where the Charged Officer denies the Charges, the IO **must** undertake a comprehensive investigation;
- ✓ During the course of his/her investigation, the (IO) may do any or all of the following:-
 - Amend a charge
 - Withdraw a charge
 - Lay an additional charge; and
- ✓ Where the IO Amends, Withdraws or lays an additional Charge, the I.O must, without delay, inform the Charged Officer of any amendment, withdrawal or additional charge. A copy should be submitted to the PSC for their advice.
- ✓ Where the I.O **amends, withdraw or lays an additional charge**– **repeat Steps 6** and proceed with Investigation.
- ✓ At the conclusion of the investigation the I.O must prepare a **written** preliminary report covering their findings and a summary of the evidence upon which the findings are based (**Appendix O**).
- ✓ Within 7 days of concluding the investigation; provide this preliminary report to the Charged Officer accompanied by a **Notice Accompanying Preliminary Report (Appendix P)**, which would inform the officer they have 14 days to respond in writing to the IO;
- ✓ Following the receipt of the Charged Officer’s response conduct any further investigations that may be required; and
- ✓ Prepare a Final Report with recommendations for the relevant CEO as to whether the charges are proven or not proven, having regard to any submissions made by the Charged Officer. **Final Report Template for IO (Appendix Q)**. Note that if no reply is received by the IO within the 14 days given to the Charged Officer to respond to the findings in the preliminary report, then the IO must still proceed to prepare his/her final report to the CEO.
- ✓ The IO must submit their final report with recommendations on whether charges are proven or not proven, and all supporting materials to the relevant CEO. This must be accompanied by a **Notice of Final Report on Breach of the Code of Conduct. (Appendix R)**
- ✓ A copy of the Final Report and materials must also be given to the Commission.

Stage 2 Templates

Appendix O	Report template for Investigating Officer to give Charged Officer
Appendix P	Notice Accompanying Preliminary Report
Appendix Q	Final Report Template for Investigating Officer
Appendix R	Notice of Final Report on Breach of the Code of Conduct



STAGE THREE: DECISION AND IMPOSING PENALTIES

Step 8: CEO considers the Final Report and makes a determination.

- ✓ The CEO receives the Final Report from the I.O and as soon as possible makes a determination as to the truth of the charges and whether they are proven or not proven;
- ✓ The CEO must if he or she is **satisfied** as to the truth of a charge made against the Officer, decide that the charge is **proven**;
- ✓ The CEO must, if he or she is **not satisfied** as to the truth of a charge made against the Officer, decide that the charge is **not proven**;
- ✓ In making this determination, the CEO must take into consideration the following:
 - All the findings and evidence submitted by the IO;
 - The recommendations made by the IO; and
 - Any submissions made by the Charged Officer.
- ✓ Where the CEO determines that the Charge(s) are **proven** on the weight of the evidence, he or she must invite the Officer to make a submission to him or her in relation to the penalty and: **proceed to Step 9**.
- ✓ Where the CEO determines that the Charge(s) are **not proven** on the weight of the evidence, he or she must:
 - Acquit the Officer;
 - Revoke any suspension or temporary transfer and reinstate the Officer to their original position; and
 - **Proceed to Step 10**

Step 9: Deciding on and Imposing Penalties.

- ✓ Where an Officer admits or is deemed to have admitted to the truth of a charge (s) and/or breach of the Code of Conduct **or** where the CEO is satisfied that a charge(s) is/are proven the CEO may decide to impose one or more of the following penalties under section 45 of the PS Act 2004:
 - a. Caution and reprimand the officer;
 - b. Order that a sum not exceeding \$1000 be deducted by way of penalty from the salary of the officer and paid to the Treasury fund;
 - c. Transfer the officer to other duties;
 - d. Reduce the classification and/or the grading of the officer;
 - e. Reduce the rate of salary of the officer (with or without a reduction in grading); or
 - f. Terminate the employment of the officer.
- ✓ Note that sections 45 (c), (d) and (e) will not normally apply to Contract Employees given the nature as well as terms and conditions of their employment.
- ✓ The CEO, in making a decision on any penalty/ties to be imposed must take into account the service record of the Charged Officer; and
- ✓ The CEO must first give the Officer an opportunity to make a submission (in oral or written form) to him/her in relation to penalty.
- ✓ **Proceed to Step 10**

Step 10: Informing the Officer of the Decision.

- ✓ Once the CEO has made their determination they must inform the Charged Officer in writing via a *Notice of Decision (Appendix S)* of:
 - The decision;



- The reasons for that decision;
 - The penalty imposed, if any;
 - The reasons for any penalty imposed;
 - The officer's right to an appeal to the Public Service Board of Appeal;
 - The availability of mediation with the Commission if the officer lodges an appeal;
and
 - Any other relevant matters.
- ✓ Note however, that Contract Employees do not have a right of appeal to the Public Service Board of Appeal. This should be reflected in the Notice of Decision issued to a Contract Employee
- ✓ A copy of the Notice of Decision should also be sent to the Commission.
- ✓ **Recovery of Loss:** If the officer is found to have breached the code of conduct and the Commission is satisfied that the breach had resulted in an assessable loss to the Government, the Commission may direct that any amount up to the full extent of the loss be recovered through deductions from the officer's salary or entitlements.
- ✓ **Implementation of Penalty:** Following the Officer being informed of the CEO's determination and decision with regard to the penalty via the **Notice of Decision** the penalty must be implemented.
- ✓ **This ends the procedure for Managing Breaches of the Code of Conduct.**

Stage 3 Templates

Appendix S	Notice of Decision
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Important Notes to Consider While Managing Breaches of the Code of Conduct



PART 3: ROLES, RESPONSIBILITIES & ACCOUNTABILITIES OF CEO, CHARGING OFFICER AND INVESTIGATING OFFICER

This section further clarifies the roles and responsibilities of the CEO, Charging Officer and Investigating Officer in the process for managing breaches of the Code of Conduct.

A. CHIEF EXECUTIVE OFFICER

As Head of the Ministry, the CEO is ultimately responsible for the management of all employees employed in his or her Ministry. This responsibility includes promoting adherence to the Code of Conduct within his or her Ministry and managing the breaches of the Code of Conduct that may occur. The CEO has important roles to play throughout the managing breaches of the Code of Conduct procedure which are discussed as follows:

1. Preliminary considerations - Bias or conflict of interest

Before the relevant CEO carries out any of the functions in relation to the disciplinary procedure, the relevant CEO must first consider whether they have a personal interest in the matter that conflicts or may reasonably be seen to conflict with those functions. If such an interest exists, the relevant CEO should immediately declare the interest to the Commission and stop participating in the procedure. Following consultation with the Commission, the relevant CEO should then either request that the Commission take over the functions, or delegate the functions to one of the Assistant CEOs who has no such personal interest.

2. Starting the Disciplinary Procedure and Undertaking a Preliminary Investigation

When allegations of a breach of the Code of Conduct are first brought to the attention of the CEO, the CEO must make a preliminary determination on whether the allegations warrant commencing the formal disciplinary procedure. There are two questions relevant to making this determination:

Question 1 - Does the relevant CEO believe that the officer **may** have breached the Code of Conduct?

There are two sub-issues that need to be considered here:

- *Is there a possibility that the alleged misconduct breaches the requirements of the Code of Conduct?*

First, the relevant CEO must consider the nature of the alleged misconduct and whether the alleged misconduct **may** breach at least one of the conduct requirements of the Code of Conduct. The Code of Conduct does not cover all forms of 'misconduct' in the workplace. Further, many requirements of the Code of Conduct do not apply to an officer's behaviour outside of his or her employment in the SPS. Where the alleged misconduct is totally unrelated to the employee's employment in the SPS or is not clearly covered by one of the provisions of the Code of Conduct, it may be that behavior or action in question is not a breach of the Code of Conduct.



Nonetheless, the relevant CEO does not have to be satisfied that the alleged misconduct breaches one of the conduct requirements, only that the alleged misconduct may do so.

- *Is there a possibility that the allegations of misconduct are true?*

Second, the CEO must consider the factual evidence underlying the allegations and whether there is sufficient evidence to justify a belief that the allegations against the employee **may** be true. As above, the relevant CEO does not have to believe that the allegations are true, only that the allegations may be true. There does not need to be highly compelling evidence for the CEO to have such a belief though there must at least be some corroborating evidence in relation to the allegations.

Question 2 - If so, is it appropriate in the circumstances for the CEO to either undertake a preliminary investigation or to appoint a Charging Officer to undertake the preliminary investigation into the matter?

This is where the CEO considers whether the conduct is serious or persistent enough that it should be dealt with under the formal disciplinary procedure.

To assist in this task, please refer to Part 4 - Important Legal Principles relevant to Managing Breaches of the Code of Conduct.

If the answer to both questions is in the positive, then the relevant CEO should start the disciplinary procedure by undertaking a preliminary investigation or by appointing a delegate to be a Charging Officer to undertake a preliminary investigation and either: -

- a. Charge the Officer in writing
- b. Give the Officer a warning
- c. Take no further action

3. Referring potential criminal offences to the Police.

Where an employee's actual or alleged actions are a potential offence under the Crimes Ordinance 1961, the CEO also has a responsibility to refer the matter to the Ministry of Police whilst proceeding with the procedure for managing breaches of the Code of Conduct a appropriate.

4. Appoint Charging Officer (CEO Delegate).

If the CEO decides that he/she will not personally undertake the preliminary investigation then the CEO has responsibility for appointing a delegate, referred to as Charging Officer to undertake this responsibility.

The delegate must be an Officer or Contract Employee employed in the same Ministry as the CEO and suspect officer.

In appointing the Charging Officer, the relevant CEO should take all reasonable steps to ensure that the Charging Officer is not biased or seen to be biased against the Suspect Officer. It is



recommended that, before appointing a Charging Officer, the relevant CEO should at least obtain confirmation from that officer that he/she has no personal interest in the matter.

5. Determining whether to suspend the Officer or temporarily assign them to other duties

In accordance with Section 47 of the Act, the CEO also has responsibility for determining whether or not to suspend the Officer who is suspected of breaching the Code of Conduct or temporarily assigning them to other duties. This can be done once the CEO has appointed a Charging Officer or if charges have already been laid against an Officer. Where an Officer is suspended, then that suspension shall remain in place pending determination of the charge(s).

However, the CEO shall revoke any suspension where charges have not been laid within 21 days of the imposition of suspension, OR where a decision is made by the CEO/Charging Officer not to lay charges.

Reasons for suspension or assignment to other duties?

The effect of a suspension or a temporary assignment to other duties is to remove the Officer from his or her current position while the charge(s) are being determined. The relevant CEO must be satisfied that, having regard to the relevant circumstances surrounding the charge(s) against the Officer, it is necessary to remove that officer from their position while the charge(s) is being determined. In this respect, a decision on whether to suspend or temporarily assign an Officer to other duties would usually be made for one or more of the following reasons:

- ***To limit the risk of interference with or prejudice to the investigation of the Charged Officer***

Where the charge(s) against the Officer is closely related to his work duties, there may be a risk that the Officer could interfere with or prejudice the investigation of the charge(s) if they remain in their current position while the charge(s) are being determined.

For example, the Officer may potentially intimidate or otherwise influence work colleagues who may be potential informants or the Officer may potentially use his position to tamper with physical and documentary evidence relevant to the charge(s). The risk of interference with the investigation of the charge(s) is higher where the Officer occupies a supervisory position or is in a position of trust and responsibility.

Having regard to the nature of the charge(s) and the position of the Officer, the relevant CEO may determine to remove the Officer from his or her current position in order to limit the risk of interference with the investigation of the charge(s).

- ***To protect the interests of the public***

Having regard to the nature of the charge(s) against the Officer, it may be in the public interest that that officer be removed from his or her current workplace. For example, it may be in the public interest for the relevant CEO to suspend or assign to other duties an officer charged with the improper use of highly sensitive government information. The potentially severe consequences of such a breach may mean that the relevant CEO



cannot afford to take the risk that the charge(s) is true and that the employee would continue his or her breach. Accordingly, the relevant CEO is obliged to remove the Officer from his or her position by suspending that officer/ or transferring them to other duties, pending the determination of the charge(s).

- ***To protect the interests of the Ministry employing the Charged Officer***

Similarly, if the nature of the misconduct or charge(s) means that the Officer is unable to perform his or her work duties effectively, it may be in the interests of the relevant Ministry for the relevant CEO to suspend the officer or assign them to other duties.

For example, an officer responsible for awarding tenders is charged with using their position to award tenders to family members. It is likely that if that officer continues working in their position, it would create a perception that the tender procedure is not fair and impartial and render the tender process unworkable. In this instance, the relevant CEO would be justified in suspending or transferring that officer to protect the efficiency of the tender process for the Ministry.

- ***To protect the interests of the Public Service in general***

Under the Code of Conduct, the relevant CEO is bound to uphold the good reputation of the Public Service. It is possible that the nature of the allegations against the Officer is so serious that it would adversely affect the good reputation of the Public Service merely to have that officer continue working in their position. In such cases, the relevant CEO may be justified in suspending that officer to protect the good reputation of the Public Service.

- ***To protect the interests of the Officer or their fellow employees***

In some instances, it may be necessary to remove the Officer from their position in order to protect that officer or their fellow employees. For example, if the Officer is charged with the physical harassment of a fellow employee, then it may be in the interests of both that officer and his alleged victim that that officer be suspended or assigned to other duties.

The reasons given above are not exhaustive and the relevant CEO may exercise the discretion to suspend or assign to other duties for other reasons connected to the charge(s) against the Officer. However, it is important here to stress that the decision to suspend or assign to other duties a Officer should not be made on the basis that the charge(s) is true. Rather, the relevant CEO must consider the **risk** that the charge(s) is true, and whether the relevant CEO should assume that risk in light of the various interests affected by the charge(s).

Generally, suspension should only be considered if a temporary assignment to other duties is not possible (e.g. due to the lack of other possible duties, or in the case of Contract Employees) or inappropriate in the circumstances (e.g. if the allegations against the suspect employee are very serious).

Employee's right to be heard



Before the relevant CEO formally suspends or temporarily assigns an Officer to other duties under section 47 of the Act, the relevant CEO must give the officer the opportunity to be heard on the matter. The relevant CEO may hear the officer orally or may receive written submissions from the officer on the matter.

The relevant CEO must take into account any submissions by the Officer before exercising his discretion to suspend or temporarily assign that Officer to other duties.

6. Appointment of Investigating Officer.

If the Charging Officer decides to charge the officer with a breach of the Code of Conduct, the relevant CEO must, as soon as practicable, appoint an officer or contract employee from another Ministry as an Investigating Officer to carry out a complete investigation into the charge(s) and make recommendations to the CEO.

Pursuant to paragraph 44(3) of the Act and regulation (51) of the Regulations, the relevant CEO shall ensure that the person appointed as Investigating Officer is a person that the Commission has certified as being qualified to carry out this role and shall take all reasonable steps to ensure that the Investigating Officer is, and appears to be, unbiased in the matter. This means that the relevant CEO must take reasonable steps to ensure that the Investigating Officer is free from any circumstance that may give rise to actual or apparent bias in his investigation of the charge(s) against the Charged Officer.

In practice, the relevant CEO should, before formally appointing the I.O, obtain a declaration/confirmation from the him/her to confirm his/her availability to carry out the task and to confirm the absence of any potential or actual conflict of interest in the matter.

In addition, if the relevant CEO becomes otherwise aware that the appointee or the intended appointee (I.O) may have a conflict of interest, the relevant CEO should conduct further inquiries to ascertain the fact, and it may be necessary to seek further advice and assistance from the Commission at this point. If a conflict of interest is found to exist, the CEO should appoint another Investigating Officer.

Finally, if the relevant CEO receives any submission from an Officer in relation to a charge(s), the relevant CEO must give a copy of that submission to the relevant Investigating Officer as soon as practicable.

7. Determining whether charge(s) against the Charged Officer is true

Where the officer is charged and denies the charge(s), the Investigating Officer is responsible for undertaking a complete investigation into the matter and submit a report to the CEO which shall include recommendations as to whether the charges are proven or not proven.

The CEO, upon receipt of the I.O's report, must then decide whether he or she is satisfied as to the truth of the charge(s) against the employee.

In determining whether the charge(s) are proven or not proven, the relevant CEO must consider the available material relating to the charge(s) provided by the I.O, the recommendations made by the I.O in relation to the truth of the charge(s), and any submissions on the charge(s) made by the Charged Officer. The relevant CEO may not usually consider any other material.



The function of investigating the charge(s) lies with the Investigating Officer and not the relevant CEO. If, after receiving the investigating officer's recommendations and before making the decision, the relevant CEO is made aware of other relevant material that the Investigating Officer did not consider, the relevant CEO should refer that material immediately to the Investigating Officer for further investigation. After the further investigation, the investigating officer should then reconsider the recommendations to the relevant CEO and revise the recommendations if appropriate to do so.

The relevant CEO must then decide, having regard to the necessary matters, whether the charge(s) against the Charged Officer is true **on the balance of probabilities**. This means the relevant CEO must decide whether it is more probable than not that the charge(s) against the employee is true given the weight of the evidence.

The severity of the charge(s) influences the degree of probability required to satisfy the relevant CEO that the charge(s) is true. The greater the seriousness of the charge(s) and the consequences for the employee if the charge(s) were true, the more compelling the evidence must be before the CEO can be satisfied that the charge(s) is true.

8. Determining the penalty to be imposed on the employee

The CEO has responsibility for deciding on a penalty to be imposed on an Officer where:

- The Officer has admitted to a breach of the Code of Conduct and/or to the truth of the charges laid against him/her; OR
- The Officer has denied the charges, but the relevant CEO is satisfied as to the truth of the charge(s), after having considered the report submitted by the I.O, any relevant material as well as any submission made by the Officer in relation to the Charges.

Under section 45 of the Act, the relevant CEO may impose one or more of the following penalties:

- Caution and reprimand the Officer
- Order that a sum not exceeding \$1000 be deducted by way of penalty from the salary of the Officer and paid into the Treasury Fund
- Transfer the Officer to other duties
- Reduce the classification and/or the grading of the Officer
- Reduce the rate of salary of the Officer (with or without reduction in grading)
- Terminate the employment of the Officer

Before imposing the penalty or penalties, the relevant CEO must take into account the Officer's service record and submissions in relation to the penalty. Importantly, the relevant CEO does not have an unconfined discretion to impose whatever penalty they choose. The penalty must be reasonable in the circumstances and cannot be disproportionate to the breach in question.

(Please refer to Part 4– Important Legal Principles relevant to Managing Breaches of the Code of Conduct)

9. Approving Special Leave with Pay for Charging Officers and Investigating Officers.



Chief Executive Officers may upon application from employees in their Ministries who are appointed as Charging Officers or Investigating Officers approve a maximum of 10 days Special Leave With Pay (SLWP) to allow them to carry out their respective roles in the investigation process.

The purpose of this SLWP is to allow the Charging and/or Investigating Officer time away from their normal duties to fully focus on carrying out their respective roles as Charging Officer/Investigating Officer with a view to ensuring that the investigation process can be completed as soon as possible.

The number of days granted as SLWP will be determined by the CEO (for Officers appointed to these roles) or the Commission (for Contract Employees appointed to these roles) depending on the scope and nature of the investigation, but must not exceed the maximum of 10 days.

SLWP may be granted in consecutive working days or otherwise.

B. CHARGING OFFICER

The Charging Officer is the CEO's delegate, appointed by the relevant CEO under section 44(1) of the Act to undertake a preliminary investigation into an alleged breach of the Code of Conduct and do one of the following:

- A. Charge the Officer in writing ; OR
- B. Give the Officer a Warning ; OR
- C. Take no further action.

1. Preliminary considerations - bias and conflict of interest

The Charging Officer must be from the same Ministry as the Charged Officer. Where an officer or contract employee is requested by the relevant CEO to be appointed as the Charging Officer, they must first ensure that they do not have a personal interest in the matter that conflicts with the functions of being the Charging Officer, or could be reasonably be seen to do so. If such an interest exists, they should notify the CEO as soon as practicable of the conflict in interest.

2. Preliminary Investigation of the Matter

The Charging Officer is required to 'undertake a preliminary investigation' before taking one of the three (3) options stated above. The Charging Officer should consider the matter on the basis of the material in relation to the case available at the time. The Charging Officer is not required to carry out a thorough investigation of the charge(s), as that is the role of the Investigating Officer later on in the procedure.

In determining the appropriate action to take after considering the available material, several factors must be taken into account:

- Whether the alleged misconduct breaches the requirements of the Code of Conduct

First, the Charging Officer must consider the nature of the alleged misconduct and whether the alleged misconduct breaches at least one of the conduct requirements of the



Code of Conduct. Many requirements of the Code of Conduct do not apply to an employee's behaviour outside of his or her employment in the SPS. Where the alleged misconduct is totally unrelated to the employee's employment in the SPS or is not clearly covered by one of the provisions of the Code of Conduct, it may be that the behavior or action in question is not a breach of the Code of Conduct.

The Charging Officer must be satisfied that the alleged misconduct breaches one of the conduct requirements and must be able to identify the pertinent requirement before the Charging Officer can charge(s) the officer under suspicion.

- The weight of the evidence indicating that the allegations of misconduct are true

Second, the Charging Officer must consider the available evidence relevant to the allegations. The greater the weight of the evidence supporting the truth of the allegations, the more the Charging Officer should consider charging the suspect officer. Generally, unless there is very little evidence to support the allegations or if the weight of the evidence against the truth of the allegations is overwhelming, the Charging Officer should consider charging the suspect officer so that the allegations can be fully investigated.

- The nature of the allegations of misconduct

Third, the Charging Officer should consider the seriousness and the frequency of the misconduct alleged. If the misconduct alleged is serious (e.g. sexual assault of a student by a teacher) or persistent (e.g. regular theft of small sums of public money), the Charging Officer should consider charging the suspect. Conversely, if the misconduct alleged is minor and not likely to occur again, the Charging Officer may consider giving the suspect officer a warning instead of charging them.

3. Charge, Warn or Take No Further Action.

After considering these factors, the Charging Officer must determine which of the three (3) Options to take. The Charging Officer should consult with and obtain the views of his/her CEO before deciding which of the three options to take.

1. Charge the Officer

If the Charging Officer is satisfied that the alleged misconduct, if true, is a breach of the Code of Conduct and that the weight of evidence and or seriousness of the misconduct warrant further investigation of the allegations, the Charging Officer should proceed to charge(s) the officer in writing.

Drafting charge(s)

Ministries should submit draft charges to the Commission for consideration before being served to the Charged Officer. This is to make sure that charges are within the appropriate guidelines and legislations and to avoid dismissal by the Appeal Board due to lack of proof and inappropriate charges.



The charge(s) against the officer should be drafted carefully as the charge(s) are the basis for the rest of the disciplinary procedure and for any subsequent action taken by the Investigating Officer and the relevant CEO. The other main purpose of the charge(s) is to properly inform the Officer of the case against them, so that they are able to make full and proper submissions on the charge(s). It is recommended that the Charging Officer seek guidance on the preparation of charge(s) from either the Office of the Attorney General, an in-house solicitor of the Ministry, or the Commission if at all unsure of how to draft the charge(s).

It is required that as *a minimum*, the charge(s) must set out the following;

- (a) The *Officer's name*;
- (b) The *Officer's Ministry*;
- (c) The *specific element of the Code of Conduct* that is *alleged to have been breached*; and
- (d) The *date, times and places of the alleged breach* of the Code of Conduct, if available.

In addition, a copy of all available documentary evidence in relation to the charge(s) should be provided to the Charged Officer.

In drafting charge(s), the Charging Officer should note the following matters:

- Each charge(s) should only relate to a single incident of an alleged breach of the Code of Conduct. Therefore, if an officer is alleged to have improperly used the Ministry's resources on several occasions, there should be a charge(s) for each occasion.
- There should only be one charge(s) for each incident of an alleged breach of the Code of Conduct. Therefore, if a single incident (e.g. using his position to obtain money for his benefit from members of the public) could constitute a breach of several requirements of the Code of Conduct, the Charging Officer needs to pick the most appropriate requirement in the circumstances and charge(s) the suspect officer with a breach of that requirement.
- If uncertain, seek ADVICE from the Office of the Attorney General or the Commission.

Laying Charge(s)

After drafting the charge(s), the Charging Officer shall serve these charge(s) on the Charged Officer together with a *Notice Accompanying Charges*. There should also be clear evidence of the charge(s) being received by the Officer (*Proof of Charges Served*).

The Notice essentially requires the Charged Officer to do the following;

- Respond to the charge(s) within 7 days of receipt of charge(s) and notice, and:



1. Admit the charge(s) and make a written submission to the relevant CEO on the issue of penalty; OR
2. Deny the charge(s) and make a written submission to the relevant CEO by way of response; OR
3. Deny the charge(s) and say nothing further.

2. *Warn the Employee*

If after considering the matter, the Charging Officer determines that alleged misconduct, even if true, is not misconduct which is serious or grave enough to warrant charging the officer, the Charging Officer may warn the officer instead of charging the officer.

The Warning should be in writing and issued by the Charging Officer to the officer, with a copy to the relevant CEO and the Commission for information.

When the warning is given, this will end the procedure. However, the relevant CEO or manager as a management decision may determine that an alternative Performance Management Strategy is required for the officer concerned; for example, a capability building exercise or counseling etc.

3. *Take no further action against the employee*

If after considering the matter, the Charging Officer is not satisfied that the alleged misconduct, if true, is a breach of the Code of Conduct, the Charging Officer should take no further action against the Officer. Further, if the evidence strongly suggests that the allegations are unfounded and/or there is little or no evidence to warrant charging or warning the officer, the Charging Officer should take no further action against the officer.

In that event, the Charging Officer should make a written record of his determination and provide it to the Officer, with a copy to the relevant CEO and the Commission for information

C. INVESTIGATING OFFICER (IO)

When an officer is charged with a breach of the Code of Conduct, an Investigating Officer is appointed by the CEO under section 44(2) of the Act to investigate the charge(s) and to make recommendations to the relevant CEO. The IO is an officer or a contract employee from a Ministry other than the Ministry in which the Charged Officer works

1. Preliminary considerations - bias and conflict of interest

Where an officer or contract employee is requested by the relevant CEO to be appointed as the IO, they must first ensure that they do not have a personal interest in the matter that conflicts with the functions of the IO, or could reasonably be seen to do so. If such an interest exists, they should notify the relevant CEO as soon as practicable of the conflict of interest. The relevant CEO will then appoint another IO if this is appropriate in the circumstances.



2. **The role of the IO in the procedure is determined by the Charged Officer's initial response to the charge(s).**

a. **Charged Officer admits or is deemed to have admitted to the charge(s)**

If the Officer against whom charges have been laid, admits to the charges before the IO carries out his/her investigation then the appointment of the I.O is revoked by the CEO and the matter is referred back to the CEO for appropriate action. The I.O has no further role or responsibility in the matter.

b. **Charged Officer denies the charge(s)**

Where the Charged Officer denies a charge(s), the IO has the following responsibilities.

i. **Carry out a complete investigation into the charges.**

In undertaking this role, the IO must investigate the truth of the charge(s) against the Charged Officer, and not merely gather evidence supporting the truth of the charge(s). This means that the IO must seek and obtain all evidence that is relevant to the charge(s), whether or not it proves or disproves the truth of the charge(s). For example, where the Officer has made submissions in denying the charge(s), the IO should investigate any relevant matter brought up in those submissions after receiving them from the relevant CEO.

ii. **Give the employee written details of any findings and a summary of the evidence upon which those findings are based within seven (7) days of concluding the investigation and opportunity to respond;**

The IO concludes the investigation after gathering all the evidence relevant to the charge(s). Following this, the IO must quickly consider the evidence obtained and make findings with respect to the truth of the charge(s). The IO should make the findings upon **the balance of probabilities**, having regard to the totality of the evidence before him or her. The IO must then prepare a report setting out the findings and a summary of the evidence on which the findings are based, and provide the report to the Charged Officer within seven (7) days of concluding the investigation.

The IO must attach a written notice together with the report advising that the Officer must, within fourteen (14) days of receipt of the report, provide the IO with a written submission in relation to the findings, summary of evidence and his/her innocence or otherwise.

iii. **Submit a Final Investigation Report and Make recommendations to the relevant CEO**

When the time for the Charged Officer to make further submissions is past, the IO must then consider any submissions provided by the Officer in relation to the preliminary report, and make any adjustments to the findings if appropriate. The IO may find it necessary to investigate further any relevant matter brought up in the Officer's submissions. When the IO is satisfied all matters have been fully investigated, the IO should then prepare the final report which shall include recommendations to the relevant



CEO as to whether the charges are proven or not proven, based on the findings and the Charged Officer's submissions.

The Final Report, inclusive of recommendations and all relevant materials, shall be submitted to the CEO as soon as practicable.



PART 4: IMPORTANT LEGAL PRINCIPLES RELEVANT TO MANAGING BREACHES OF THE CODE OF CONDUCT

1. Procedural Fairness

Any administrative decision that may adversely affect an individual's rights or interests must comply with the two fundamental principles (rules) of procedural fairness:

- (1) A person directly affected by an impending decision must be afforded a fair hearing and be given the right to be heard prior to that decision being made; and
- (2) The decision maker needs to act without bias in exercising his/her responsibilities.

A constitutional right

The Constitution supports the principles of procedural fairness. Article 9(1) of the Constitution states that when a person has been charged with any offence a fair and public hearing by an independent and impartial tribunal should take place. It can be argued that if a charge(s) of a breach of the Code of Conduct is laid against an officer under the *Public Service Act 2004* it may be considered an offence and thus the officer is to be afforded their constitutional right as per Article 9(1).

Obligation under the Act

The principles of procedural fairness are also reflected in subsection 44(5) of the Act, under which the procedure for investigating and determining a charge(s) must provide that:

- (a) The Charged Officer is to be informed of the case against them;
- (b) The Charged Officer has a right to be heard on the question of their guilt or innocence and on the question of any penalty to be imposed on them; and
- (c) The person who investigates the charge(s) and the person who decides on the guilt or innocence of the Charged Officer and decides on any penalty to be imposed on the officer must not be biased in the matter.

Procedural Fairness and Managing Breaches of the Code of Conduct

I. THE HEARING RULE

- Officers who are charged with a breach of the Code of Conduct must be provided with:
 - All relevant information including the allegations so they are able to respond fully to the charge(s). This is facilitated by the Charging Officer ensuring that when the written charge(s) are prepared they include:
 - The Charged Officer's Name;
 - The Charged Officer's Ministry;
 - The actual part of the Code of the Conduct that is alleged to have been breached; and
 - The specific date, time, place and actual details of the alleged breach of the Code of Conduct to the extent they are known.



- The opportunity to admit, deny or otherwise respond to the charge(s) laid against them within seven (7) days of receiving the notice.
 - A copy of the completed Investigating Officer's report including written details of the findings within seven (7) days of the conclusion of the investigation.
 - The opportunity to provide a written response to the Investigating Officer's findings.
 - Adequate opportunity to be heard in relation to the truth of the charge(s) against them and any penalty that may be imposed in relation to the charge(s)
 - An opportunity to be heard prior to the CEO taking action to either suspend the officer or temporarily assign the officer to other duties.
- A Charged Officer's submissions on the charge(s) laid against them must be considered by:
- The Investigating Officer when making a recommendation on the charge(s) to the relevant CEO; and
 - The relevant CEO in determining the truth of the charge(s) and the penalty, if any are to be imposed.

II. THE BIAS RULE

For the management of breaches of the Code of Conduct there must not be any actual or apparent bias by those who have decision making roles namely the CEO, Charging Officer and Investigating Officer.

Actual bias can be described as when the decision maker unfairly accepts or rejects one side of the issue under consideration.

Apparent bias can be described as when considering the circumstances surrounding the making of the decision there is a real possibility that the decision maker might unfairly accept or reject one side of the issue under consideration. For example, this may be present where the decision maker has:

- a strong relationship (positive or negative) with the Charged Officer such as being a near relative;
- financial interests that will be directly affected by the outcome of the procedure;
- been previously concerned with the matter in some other capacity e.g. the investigating officer is the officer who brought the issue to the attention of the relevant CEO.

The integrity of the process is the responsibility of the relevant CEO so they must ensure:

- they refrain from participating in determining the truth of the charge(s) if they have any actual or apparent bias; and
- the Charging Officer and Investigating Officer has no actual or apparent bias by making the necessary enquiries.



2. General principles relating to the proper exercise of statutory powers and functions

Under common law there are three principles aimed at ensuring the proper exercise of statutory power. If they are not adhered to the decision made may be found to be unlawful and revoked by the Court. It is therefore important that all those involved in managing breaches of the Code of Conduct are familiar with these principles which are not mutually exclusive and overlap with the principles of procedural fairness.

I. REASONABLENESS

The principle of reasonableness requires statutory powers not to be exercised unreasonably. The Court will only find that an exercise of power is ‘unreasonable’ if it is ‘so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question’ could have exercised the power in that manner.

This principle can be illustrated via other related concepts as follows:

- Uncertainty - It would be considered unreasonable to impose a legal requirement that is so uncertain that no one actually knows whether or not they are affected by it or not.
- Proportionality – It would be considered unreasonable to impose a penalty for a breach of the Code of Conduct that was disproportionate to the breach. Such as terminating the employment of an officer who had been discourteous to a member of the public.
- No Evidence – It would be considered unreasonable for the Investigating Officer to make findings and recommendations and for the relevant CEO to determine the truth of the charge(s) if there was no evidence available to justify their determinations.

II. RELEVANCE

Under this principle statutory powers can only be exercised on the basis of matters and information which is relevant and on an independent basis and not under the command or direction of another person.

This principle is particularly important for the:

- CEO – when considering the truth of the charge(s) and whether or not to penalize the Charged Officer only the Investigating Officer’s final report and submissions by the Officer should be considered.
- Investigating Officer – when conducting their investigation, the investigation must be done independently and address all relevant issues.
- ACEO – when the CEO delegates their power to say an ACEO as a result of a conflict of interest the ACEO must act independently of the CEO.
- Charging Officer – when undertaking a preliminary investigation and determining whether or not to charge(s) the officer they must only consider relevant information and make the determination independently.



III. IMPROPER PURPOSE

Statutory power should only be exercised for the purpose(s) of the provision conferring the power. The Act enables the Commission and CEOs to institute action against an officer who has allegedly breached the Code for the purpose of upholding the Code of Conduct and maintaining the integrity of the Public Service. Instituting an action against an officer for the purpose of preventing the officer from being promoted would be an improper purpose.

3. Standard of proof required

The civil standard of proof applies to the determination of whether a charge(s) of a breach of the Code of Conduct is true. The decision-maker must make this determination **on the balance of probabilities**. This means that the decision-maker must be satisfied that it is more probable than not that the charge(s) is true, after weighing up the competing evidence available. The standard of proof required is affected by the seriousness of the charge(s) in question and as such the standard of proof is not absolute.

For example the standard of proof for an officer who has allegedly defrauded the Government of large sums of money would require more convincing evidence than for an officer who has allegedly been discourteous to a member of the public.

4. Presumption of Innocence

A Charged Officer is presumed to be innocent of the charge(s) brought against him, until those charge(s) have been determined to be true following the disciplinary procedure. This presumption means that any action the CEO may take in respect of the Charged Officer pending the determination of the charge(s) cannot be based on the prejudged guilt of the Charged Officer.

For example, the CEO cannot suspend the Charged Officer or temporarily assign them to other duties under the Act on the basis that the officer is probably guilty of the charge(s).

5. Conflict of interest

In the context of employment in the SPS, a conflict of interest exists where an officer's private interests, both financial and personal, conflicts with their official duties such that an independent observer might reasonably question whether the professional actions or decisions of that person are influenced by their own interests. As with the bias principle discussed above it may be real or apparent.

The Code of Conduct requires all officers to declare and avoid all conflicts of interest, whether real or apparent, in the course of their employment. This requirement to disclose and avoid conflicts of interest is part of the duty of the SPS as a whole to be impartial and to be seen as impartial.

For the procedure of managing breaches of the Code of Conduct those that are involved in the procedure must declare and avoid any conflicts of interest in relation to their appointment namely the Charging Officer, Investigating Officer and CEO (final decision maker). If a conflict exists the officers concerned should declare it and request to be excused from carrying out their designated role.

For example, if the Investigating Officer is a near relative of the Charged Officer they would have a personal conflict of interest and as such should not carry out the investigation.



PART 5: RELATED INFORMATION

5.1. Criminal Proceedings:

As stated in previous sections, where the CEO is made aware of an action of, or an incident involving an employee which may constitute a breach of the Code of Conduct and is deciding whether to take formal disciplinary action, he/she must also consider whether the same action or incident could constitute criminal behavior, and if so, should immediately refer the matter to the Ministry of Police.

While the two processes can be pursued at the same time, care must be taken not to risk jeopardizing the prosecution of the criminal charge(s). It is recommended that the CEO, in this situation, liaise closely with the Office of the Attorney General and/or the Ministry of Police.

In addition, pursuant to paragraphs 43(1)(a) and 43(1)(b) of the Act where an employee is **charged** with a criminal offence (other than an offence under the Road Traffic Ordinance 1960 which is not punishable by imprisonment), the CEO may suspend the Officer or assign him/her to other duties. Suspension in this instance is **without pay**, unless otherwise stated.

Pursuant to subsection 43(3) of the Act where an employee is **convicted** of the offence, the CEO may after giving the employee an opportunity to be heard on the matter, impose on the employee any of the penalties set out in section 45 of the Act.

Pursuant to subsection 43(4) of the Act if the employee is **acquitted** of the charge(s), he/she is entitled to be reinstated without loss of any benefit or status and to be paid the salary he or she lost as a result of suspension from duty.

Criminal Proceedings Templates:

Appendix T	Notice of Temporary Assignment when charged with Criminal Offence
Appendix U	Notice of Suspension when charged with Criminal Offence
Appendix V	Notice of Hearing once Convicted by the Police
Appendix W	Notice of Penalty once Convicted by the Police
Appendix X	Notice of Reinstatement once Acquitted by the Police

5.2. Resignation during Misconduct Investigations

Where the suspect officer resigns during the course of the procedure for investigating and determining breaches of the Code of Conduct, the officer’s resignation must be accepted and the procedure discontinued.

The Code of Conduct and the disciplinary procedure applies only to current employees of the SPS. Disciplinary action cannot be taken against former employees under the *Public Service Act 2004*. However, all documentation and records that have been obtained or created during the course of the investigation up to the date of the resignation should be retained by the Ministry and the Commission. If the person later seeks re-employment in the Public Service, these records can be utilized in the relevant Recruitment and Selection procedure. However, those utilizing the records for the Recruitment and Selection procedure should ensure that the principles of procedural fairness are complied with. This requires the decision makers in the Recruitment and Selection procedure to advise the former officer that the decision maker was taking such records into account and giving him or her, the opportunity to respond. If the officer is reemployed the incomplete Managing Breaches of the Code of Conduct procedure will be resumed.



5.3. Legal Representation

While normally, an officer will seek legal representation at the Appeal stage, it may be possible that they seek and retain the services of legal counsel earlier.

In practice, this requires that where an officer has retained the services of a solicitor or legal counsel, all communications with the suspect officer in relation to the alleged misconduct needs to be through their legal counsel.

5.4. Documentation:

All documents and records relating to the procedure for managing breaches of the Code of Conduct by an Officer/Contract Employee of the Samoa Public Service should not be placed on the personnel file of the Officer or Contract Employee concerned but rather on a separate file which is labelled accordingly. The file should be classified as **CONFIDENTIAL**, held in secure storage and accessed on a need-to-know basis only. A file note should be placed on the Officer/Contract Employee's personnel file indicating the existence of the separate file. If at any stage there is a discontinuation of the procedure the file must still be kept with all records up to that point.

5.5. Further Information:

Please contact your Ministries Human Resource Co-ordinator in the first instance followed by Office of the Public Service Commission on phone: 22123 or fax: 24215 or email: psc@psc.gov.ws



REFERENCES:

1. Government of Samoa, Office of the Legislative Assembly ;
 - Public Service Act 2004
 - Public Service Regulations 2008
2. Australian Public Service Commission, *Managing Breaches of the APS Code of Conduct*, 2002
3. Northern Territory Government, Officer of the Commissioner for Public Employment, *Investigation Officers Handbook*, 1998
4. King, Karen & Denise Wilcox, *Employee-Proposed Discipline : How Well is it Working*, , Public Personnel Management Volume 23, No.2 Summer 2003
5. Matautia Peni, Preparatory Notes for Discipline Manual, 2002
6. McIvor, George., *Notes from Training for Investigating Officers*, PSC-ISP, 2003
7. Posthuma, Richard., *Procedural Due Process and Procedural Justice in the Workplace : A Comparison and Analysis*, Public Personnel Management Volume 23, No.2 Summer 2003
8. Ropeti Puni, Preparatory Notes & Editorial Comments by Richard Harding (PSCISP Legal Adviser) titled Disciplinary Process and Manual for Managers circa 2002.



PART 6: APPENDICES

APPENDIX A: Warrant of Appointment of Charging Officer/ CEO/Delegate

LETTERHEAD of MINISTRY

[Insert Date]

**WARRANT OF APPOINTMENT OF CHARGING OFFICER
UNDER SUBSECTION 44(1) PUBLIC SERVICE ACT 2004**

Pursuant to subsection 44(1) of the *Public Service Act 2004*, I hereby appoint

[Insert Name of Charging Officer appointed]

[Insert Designation]

[Insert Name of Ministry]

to carry out a preliminary investigation against **[Insert Name of Officer]** and to do one of the following:

1. Charge the officer, OR
2. Warn the officer, OR
3. Take no further action.

[Insert Name of CEO]

Chief Executive Officer

Ministry of _____ [Insert]

cc: **[Insert Name of Officer]**
CEO, Public Service Commission



APPENDIX B: Verification of Verbal Admittance to a breach/breaches of the Code of Conduct.

LETTERHEAD of MINISTRY

VERIFICATION OF VERBAL ADMITTANCE TO BREACH OF THE CODE OF CONDUCT

[Insert Date]

I _____ **[Insert Name of Officer admitting to Breach]** hereby confirm that on _____ **[Insert Date of Verbal Admittance]**, I verbally admitted to my CEO to a breach of the Code of Conduct in that: on _____ **[Insert Date]**, I: breached sub-section **[Insert Relevant Sub-Section/s of Code of Conduct]** by **[Provide Details of actions that constitute the Breach, including place of breach]**.

Signed by _____ **[Insert Name of Officer admitting to Breach]**
Ministry of _____ **[Insert Name of Ministry]**

This statement is signed in the presence of _____ **[Insert Name of Chief Executive Officer, Chief Executive Officer for the Ministry of]** _____ **[Insert Name of Ministry]** on this day _____ **[Insert Date]**.



APPENDIX C: Notice of Suspension

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF SUSPENSION

[Insert Name of Officer]

[Insert Address of Officer]

Dear _____ [Insert Name of Officer]

[DELETE ONE OF THE VERSIONS BELOW AS REQUIRED]

{Version 1 After Charging Officer appointed:

I am writing to inform you that having considered your response in relation to the matter of being suspended, I am of the of the opinion that it is not in the best interests of **[DELETE AS REQUIRED the Ministry, the public, your co-workers, and/or yourself]** for you to remain at work in the Ministry.

I have therefore decided to exercise my power under paragraph 47(1)(a) of the *Public Service Act 2004* and suspend you from duty. The suspension takes effect from **[Insert Date and Time]**.

Pursuant to section 47(3) of the *Public Service Act 2004* if you are not charged within 21 days of the imposition of your suspension the suspension will be revoked. Otherwise it will remain in place pending the determination of the charge(s).

In making this decision to suspend you from duty, I am not anticipating the truth or otherwise of the allegations against you.

Your suspension is with pay as per section 47(2) of the *Public Service Act 2004*.)

{Version 2 After Officer charged:

I am writing to inform you that having considered your response in relation to the matter of being suspended, I am of the of the opinion that it is not in the best interests of **[DELETE AS REQUIRED the Ministry, the public, your co-workers, and/or yourself]** for you to remain at work in the Ministry pending the outcome of the investigation into the charges laid against you.

I have therefore decided to exercise my power under paragraph 47(1)(b) of the *Public Service Act 2004* and suspend you from duty. The suspension takes effect from **[Insert Date and Time]**

The suspension will remain in place pending the determination of the charge(s).

In making this decision to suspend you from duty, I am not anticipating the truth or otherwise of the charge(s) against you.

Your suspension is with pay as per section 47(2) of the *Public Service Act 2004*.)

Fa'afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX D: Notice of Temporary Assignment

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF TEMPORARY ASSIGNMENT

[Insert Name of Officer]

[Insert Address of Officer]

Dear [Insert Name of Officer]

I am writing to inform you that having considered your response in relation to the matter of being temporarily assigned to other duties, I am of the opinion that it is not in the best interests of **[Delete As Required]** the Ministry, the public, your co-workers, or yourself] for you to remain performing your current duties.

I have therefore decided to exercise my power under paragraph 47(1)(a) of the *Public Service Act 2004* to temporarily assign you to other duties in the Ministry. I direct you to report for duty to **[Insert Name of Supervisor]** at **[Insert Location]** on **[Insert Time and Date]**. **[Insert Name of Supervisor]** will inform you of the duties that you will be required to perform.

This temporary assignment to other duties will remain in place pending:

[INSERT ONLY ONE OF THE VERSIONS BELOW AS APPROPRIATE]

- Insert this statement after a Charging Officer has been appointed but charges have not been laid: “a decision on whether or not you are to be charged with a breach of the Code of Conduct and the determination of the charge(s)”; **or**
- Insert this statement if charges have been laid: “the determination of the charge(s) laid against you”.

In making this decision to temporarily assign you to other duties, I am not anticipating the truth or otherwise of the allegations against you.

You will continue to be paid at your current salary level.

Fa’afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX E: Temporary Assignment / Suspension Checklist

TEMPORARY ASSIGNMENT or SUSPENSION CHECKLIST

Has the Officer been given the opportunity to be heard on the issue?

Before making the decision on whether or not to suspend the officer or temporarily assign the officer to other duties, the CEO must inform the officer that they have an opportunity to be heard on the issue. The Officer's submission can either be in writing or in person.

It must be made clear to the Officer that their response is to be on the issue of suspension or temporary transfer to other duties NOT on their guilt or innocence re: the charge(s).

Is the continued presence of the Officer at the workplace likely to interfere with or otherwise prejudice the investigation?

Examples of 'likely interference' relevant here include the possibility of;

- the Suspect Officer intimidating or threatening potential witnesses,
- potential witnesses being reluctant to provide evidence due to presence of Suspect Officer;
- Is there potential evidence in the workplace, which the Suspect Officer could tamper with through continued presence in the workplace?

Is it in the public interest or Ministry's interest or even the Suspect Officer's interest to remove him/her from the workplace?

Example:

- Is it likely that the Suspect Officer would continue the alleged breach if present in the workplace;
- Is the safety of the Suspect Officer an issue?

Has temporary assignment to other duties been considered as an option?

It is advisable that the decision-maker (CEO) considers firstly whether the concerns (if any) raised under the previous questions cannot be adequately addressed by transferring the officer temporarily to other duties. If this is not the case then the officer may need to be suspended. If the officer is assigned to other duties, they are entitled to their usual salary and entitlements.

The CEO should ensure that proper arrangements are made to affect this so that the assignment to other duties does not unduly affect the Ministry's work or other employees.

Is it clear that the decision-maker is not prejudging and is seen as not prejudging the guilt or innocence of the Officer?

The CEO when deciding on whether or not to suspend should not consider or impose suspension as a defacto penalty. Therefore, care should be taken to ensure that the imposition of a suspension is imposed for the appropriate reasons and cannot be seen as a pre-determination of guilt of the suspect officer.

If the answers to the above questions are mainly in the positive, then suspension may be justified.

However, as stated earlier, ultimately it will be a decision for the CEO to decide as deemed appropriate.



APPENDIX F: Notice of Revocation of Suspension

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF REVOCATION OF SUSPENSION

[Insert Name of Officer]

[Insert Address of Officer]

Dear **[Insert Name of Officer]**

I am writing to inform you that as **[Delete as Required]** no charge(s) are to be laid against you OR you were not charged within 21 days of your suspension OR I have made my decision in relation the charges(s) I am revoking, with effect from the date of this notice, your suspension from work.

You are required to resume your normal duties as the **[Insert Name Of Position]** by reporting to **[Insert Supervisor]** at **[Insert Time]** on **[Insert Date]**.

Fa'afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX G: Charge Sheet

LETTERHEAD of MINISTRY

[Insert Date]

CHARGE SHEET

Pursuant to paragraph 44(1)(a) of the *Public Service Act 2004*, I hereby charge:

[Insert name of Officer]

[Insert Designation]

[Insert Name of Ministry]

with a breach of subsection 19[Insert Subsection(s)] of the *Public Service Act 2004* in that, [On or Between] the [Insert Time And Date(s)] you failed to:[Use one or more of the following statements (Sub-Sections of the Public Service Code of Conduct) as appropriate and delete the rest]

- a. act in an [honest and / or impartial] way; OR
- b. work [carefully and/or diligently]; OR
- c. treat [INSERT NAME OF PERSON(S)] with respect and courtesy and without coercion or harassment; OR
- d. comply with [INSERT RELEVANT LAW] that applies to you;
- e. comply with a lawful and reasonable direction given to you by [INSERT NAME] who has authority to give you directions.
- f. disclose and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to your employment; OR
- g. use Government resources properly; OR
- h. use official information only for official purposes; OR
- i. act with integrity and misused your [status or authority] to [seek or obtain] a benefit for [yourself or insert name of person or insert name of body]; OR
- j. uphold the values of the Public Service namely subsection 17 [INSERT SUBSECTION] of the *Public Service Act 2004*; OR
- k. Comply with [INSERT RELEVANT ADDITIONAL CONDUCT REQUIREMENTS] set out in the Regulations; OR
- l. uphold the good reputation of the Public Service.

Particulars of the charge are that you [Outline the actual details of the act or action which constitutes the breach of the relevant Sub-Section of the Code of Conduct].

PLEASE READ THE ACCOMPANYING NOTICE (Regulation 46 Notice) CAREFULLY AND FOLLOW THE INSTRUCTIONS THEREIN.

[Insert name of CEO or Charging Officer/CEO Delegate]

[Insert Name of Ministry]

cc: CEO, [Insert Name of Ministry] (If charges issued by Charging Officer)
CEO, Public Service Commission



APPENDIX H: Notice Accompanying Charge(s) (Regulation 46 Notice)

REGULATION NOTICE

NOTICE ACCOMPANYING CHARGE/S

(This notice is to accompany charge(s) served upon an officer under the *Public Service Act 2004*)

You have been charged with a breach of the Code of Conduct

This notice tells you what steps you may take under the *Public Service Act 2004* if you are charged with a breach of the Code of Conduct.

- **The most important thing** to be aware of is that you have **7 days** from the receipt of this notice to admit or deny the charge(s).
- **If you admit the charge(s)**, you may make a written submission to the Chief Executive Officer on the circumstances surrounding the breach of the Code of Conduct that might be relevant to any penalty the CEO might impose on you. The Chief Executive Officer should receive this written submission within 7 days from your receipt of the notice of charge(s).
- **If you deny the charge(s)**, you may make a written submission to the CEO seeking to establish your innocence. The CEO should receive this written submission within 7 days from your receipt of the notice of charge(s).
- **If you do not respond to the charge(s)** within 7 days, you will be deemed to have admitted to the charge(s).
- **If the charge(s) is found to be true** - if you are found to have breached the Code of Conduct - one or more of the following penalties may be imposed on you;
 - Caution and reprimand
 - Deduction from salary not exceeding SAT\$1000
 - Transfer to other duties
 - Reduction in classification and / or grading
 - Salary reduction (with or without reduction in grading)
 - Termination

IF FURTHER INFORMATION IS REQUIRED PLEASE CONTACT THE CHARGING OFFICER OR
THE COMMISSION



APPENDIX I: Proof of Charges Served

LETTERHEAD of MINISTRY

PUBLIC SERVICE ACT 2004

PROOF OF CHARGE(S) SERVED

I, **[Insert Name of Officer]** acknowledge being personally served with charge(s) under the *Public Service Act 2004*.

Dated atthis..... day of **[INSERT YEAR]**.

.....

Name and Signature of

[Insert Name of Officer]

.....

Signature of Witness

Person who served the Charge(s)



APPENDIX J: Notice of Warning from the Charging Officer

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF WARNING

[Insert Name of Officer]

[Insert Address of Officer]

Dear **[Insert Name of Officer]**

In accordance with Section 44(1) of the PS Act 2004 I have undertaken a preliminary investigation into allegations that you committed a breach of the Code of Conduct. I have determined that whilst the evidence suggests that [INSERT A DESCRIPTION OF INCIDENT] took place on [INSERT DATE], the actual conduct does not warrant a charge(s) being laid against you. Nonetheless, the alleged conduct was unbecoming of a member of the Samoa Public Service. Accordingly, under paragraph 44(1)(b) of the Public Service Act 2004, I am issuing you with a warning for the act(s) done.

In line with this warning the [INSERT NAME OF CEO] and / or [INSERT NAME OF MANAGER] may opt to provide you with a formal counseling session with direct reference to your current behaviour.

The issuing of this notice ends the procedure for Managing Breaches of the Code of Conduct

Fa'afetai

[Insert Name of Charging Officer]

[Insert Name of Ministry]

cc. **[Insert Name of CEO], [Insert Name of Ministry]**
CEO, Public Service Commission



APPENDIX K: Notice of No Further Action from the Charging Officer

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF NO FURTHER ACTION

[Insert Name of Officer]

[Insert Address of Officer]

Dear **[Insert Name of Officer]**

I have undertake a preliminary investigation into the allegations that you committed a breach of the Code of Conduct and I am advising that, under paragraph 44(1)(c) of the Public Service Act 2004, I will be taking no further action against you.

The issuing of this notice ends the procedure for Managing Breaches of the Code of Conduct

Fa'afetai

[Insert Name of Charging Officer]

[Insert Name of Ministry]

cc. **[Insert Name of CEO], [Insert Name of Ministry]**

CEO, Public Service Commission



APPENDIX L: Warrant of Appointment of Investigating Officer
LETTERHEAD of MINISTRY

[Insert Date]

WARRANT OF APPOINTMENT OF INVESTIGATING OFFICER

UNDER SUBSECTION 44(2) PUBLIC SERVICE ACT 2004

Pursuant to subsection 44(2) of the *Public Service Act 2004*, I hereby appoint,

[Insert Name of Investigating Officer Appointed]

[Insert Designation]

[Insert Name of Ministry]

to investigate the charge(s) against:

[Insert Name of Charged Officer] ('charged officer') of
The Ministry of [Insert Name of Ministry]

AND provide a final report to the CEO including detailed findings and recommendations as to whether the charges are proven or not proven.

AND submit the recommendations and relevant material to myself as soon as practicable.

Pursuant to subsection 44(4) you may also do any or all of the following:

- Amend the charge(s)
- Withdraw a charge
- Lay an additional charge

but you must inform (**Insert name of charged officer**) immediately by notice in writing and allow him/her the opportunity to respond within 7 days of receiving the notice.

Please note that in undertaking your investigation, you are required to comply with all legislative requirements in the PS Act 2004 and the PS Regulation 2008, including Regulation 48 and Regulation 51.

Faafetai

[Insert Name of CEO]
CEO

cc: [Insert Name of Charged Officer], [Insert Name of Ministry]



APPENDIX M: Letter for CEO of Investigating Officer's Ministry

LETTERHEAD of MINISTRY

[Insert Date]

[Insert Name of CEO of Ministry Where Investigating Officer Works]

[Chief Executive Officer]

[Insert Name of Ministry]

Dear **[Insert Name of CEO]**

Following our discussion and your agreement I am writing to inform you that I have appointed **[Name of Investigating Officer]** to undertake an investigation in my Ministry.

[Insert Name of Investigating Officer] should begin the investigation as soon as possible and submit the recommendations and relevant material to myself as soon as practicable.

Thank you for allowing **[Name of Investigating Officer]** to carry out this work for our Ministry.

Fa'afetai

[Insert Name of CEO]

Chief Executive Officer

Ministry of [Insert Ministry Name]



APPENDIX N: Revocation of Appointment of Investigating Officer

LETTERHEAD of MINISTRY

[Insert Date]

[Insert Name of CEO of Ministry Where Investigating Officer Works]

[Chief Executive Officer]

[Insert Name of Ministry]

REVOCATION OF APPOINTMENT OF INVESTIGATING OFFICER

Dear [Insert Name of CEO]

This letter serves to inform you that the appointment of [Name of Investigating Officer] as an Investigating Office is hereby revoked as there is no longer a need for an investigation to proceed. I wish to thank you for agreeing to allow [Name of Investigating Officer] to undertake this role and also to thank [Name of Investigating Officer] for agreeing to the same.

Fa'afetai

[Insert Name of CEO]

Chief Executive Officer

Ministry of [Insert Ministry Name]



APPENDIX O: Preliminary Report Template for Investigating Officer to give Charged Officer

PRELIMINARY INVESTIGATION REPORT

Into a Breach of the Code of Conduct by [INSERT CHARGED OFFICERS NAME]

Prepared by: **[Insert Name of Investigating Officer]**

[Insert Date]

I have undertaken a full and thorough investigation into the charge(s) against **[Insert Name of Charged Officer]**. The charge(s) are outlined as, **[Insert Charge(s) Details]**.

SUMMARY OF EVIDENCE

During the course of my investigation, I obtained the following evidence in relation to the charge(s):

[Insert Details of Evidence]

FINDINGS

Having considered the above evidence, I make the following findings in respect of the charge(s):

[Insert Details of Findings]

[Name of Investigating Officer]

[Name of Ministry of Investigating Officer]



APPENDIX P: Notice Accompanying Preliminary Report (Regulation 48 (1)(b) Notice)

REGULATION 48(1)(b) NOTICE

NOTICE ACCOMPANYING PRELIMINARY REPORT

(This Notice is to accompany the Preliminary Report submitted to the Charged Officer)

You have been charged with a breach of the Code of the Conduct and the Investigating Officer has completed the investigation.

Please find submitted herewith the;

1. Preliminary Findings of the investigation of the charge(s) against you for breach of the Code of Conduct ; and
2. Summary of Evidence upon which the preliminary findings are based.

READ these carefully, and in response you may make a written submission to the Investigating Officer concerning;

1. Your innocence, and
2. Any penalty to be imposed in the event that you are found guilty of the charge(s) against you.

IMPORTANT: The written submission must be received by the Investigating Officer **within 14 days** of your receipt of this Notice and the Preliminary Report.

**FOR FURTHER INFORMATION PLEASE CONTACT
THE INVESTIGATING OFFICER**

[Name of Investigating Officer]

[Name of Ministry of Investigating Officer]

CC. CEO, Public Service Commission

Enc. Final Report



APPENDIX Q: Cover letter for Final Investigation Report Template for Investigating Officer

LETTERHEAD of MINISTRY

[Insert Date]

[Insert Name of CEO]

[Insert Name of Ministry]

Dear **[Insert Name of CEO]**

I am writing to inform you that I have completed my role as Investigating Officer.

Please find enclosed is my final report with recommendations as to whether the charges laid against **[Insert Name of Officer]** are proven or not proven.

Fa'afetai

[Name of Investigating Officer]

[Name of Ministry of Investigating Officer]

Enc. Final Report

CC. CEO, Public Service Commission



APPENDIX R: Final Report Template for Investigating Officer

FINAL INVESTIGATION REPORT

Into a Breach of the Code of Conduct by [INSERT CHARGED OFFICERS NAME]

Prepared by: **[Insert Name of Investigating Officer]**

[Insert Date]

I have undertaken a full and through investigation into the charge(s) against **[Insert Name of Charged Officer]**. The charge(s) are outlined as, **[Insert Charge(s) Details]**.

SUMMARY OF EVIDENCE

During the course of my investigation, I obtained the following evidence in relation to the charge(s):

[Insert Details of Evidence]

FINDINGS

Having considered the above evidence, I make the following findings in respect of the charge(s):

[Insert Details of Findings in relation to charge or in relation to each charge, if more than one charge]

RECOMMENDATIONS

On the basis of my findings above and having regard to the submission made by **[Insert Name of Charged Officer]** in relation to the evidence and findings in my preliminary report, I recommend that the charge/s laid against **[Name of Charged Officer]** are **[proven or not proven]** on the weight of the evidence.

[Name of Investigating Officer]

[Name of Ministry of Investigating Officer]



APPENDIX S: Notice of Decision

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF DECISION

[Insert Name of Officer]

[Insert Name of Ministry]

Dear [Insert Name of Officer]

I am writing to inform you that in relation to the charge(s) of a breach of the Code of Conduct laid against you on [Insert Date] I have now considered the report provided by [Insert Name of Investigating Officer] appointed by me to investigate the charge(s).

Having considered the [DELETE WHICHEVER IS NOT APPLICABLE findings, evidence and the recommendations by the Investigating Officer] and your submissions in relation to the charge(s), I am satisfied that [DELETE WHICHEVER IS NOT APPLICABLE you are guilty or you are innocent] in relation to the charge(s) laid against you.

IF INNOCENT INCLUDE THE FOLLOWING

You are therefore acquitted in relation to the charge(s).

IF GUILTY INCLUDE THE FOLLOWING

The reasons for your guilt are [Insert Reasons].

Pursuant to Section 45 of the *Public Service Act 2004* I am imposing the following penalty(ies):

- Caution and reprimand
- Deduction from salary of up to SAT\$1000
- Transfer to other duties
- Reduction in classification and / or grading
- Salary reduction (with or without reduction in grading)
- Termination.

[Delete As Required]

The reasons for this penalty(ies) are [Insert Reasons].

You have the right of appeal to the Public Service Board of Appeal on the issue of your guilt, the penalty(ies) imposed and [DELETE AS REQUIRED the order for recovery of loss]. The Notice of Appeal and Grounds of Appeal must be received by the Commission within **14 days** of receipt of this notice. There will be the opportunity for mediation with the Commission if you lodge an appeal

Fa'afetai

[Name of CEO]

[Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX T: Notice of Temporary Assignment when charged with Criminal Offence

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF TEMPORARY ASSIGNMENT

[Insert Name of Officer]

[Insert Address of Officer]

Dear [Insert Name of Officer]

As a result of you being charged by the Police I am writing to inform you that I am exercising my power under paragraph 43(1)(a) of the *Public Service Act 2004* to temporarily assign you to other duties in the Ministry. I direct you to report for duty to [Insert Name of Supervisor] at [Insert Location] on [Insert Time And Date]. [Insert Name of Supervisor] will inform you of the duties that you will be required to perform.

This temporary assignment to other duties will remain in place pending the outcome of the criminal proceedings against you.

In making this decision to temporarily assign you to other duties, I am not anticipating the truth or otherwise of the allegations against you.

You will continue to be paid at your current salary level.

Fa'afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX U: Notice of Suspension when charged with Criminal Offence

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF SUSPENSION

[Insert Name of Officer]

[Insert Address of Officer]

Dear [Insert Name of Officer]

As a result of you being charged by the Police I am writing to inform that I am exercising my power under paragraph 43(1)(b) of the *Public Service Act 2004* and suspend you from duty. The suspension takes effect from **[Insert Date and Time]**.

This suspension will remain in place pending the outcome of the criminal proceedings against you.

In making this decision to suspend you from duty, I am not anticipating the truth or otherwise of the allegations against you.

This suspension will be without pay.

Fa'afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX V: Notice of Hearing once convicted by Police

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF HEARING FOLLOWING CONVICTION

[Insert Name of Officer]

[Insert Address of Officer]

Dear [Insert Name of Officer]

I am writing to inform you that pursuant to subsection 43(3) of the *Public Service Act 2004* I am considering whether or not to impose a penalty following your conviction by the Police.

You have the right to be heard on this matter so I invite you to attend a formal interview with myself on [Insert Date] at [Insert Time and Place] for you to respond to this issue. If you would prefer to respond in writing please submit your response to me by [Insert Date-Allow 7 Days].

Following this interview I will make a determination and notify you accordingly.

In considering whether or not I should penalise you and to what extent I will have regard to:

- The nature and seriousness of the offence;
- The circumstances in which it was committed;
- Any statement(s) that you may make;
- Any other relevant matters.

Fa'afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX W: Notice of Penalty once Convicted by Police

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF PENALTY FOLLOWING CONVICTION

[Insert Name of Officer]

[Insert Address of Officer]

Dear [Insert Name of Officer]

I am writing to inform you that in relation to your conviction I have considered what you have said in relation to this issue. I have also considered the nature and seriousness of the offence and the circumstances in which it was committed.

Pursuant to Section 45 of the *Public Service Act 2004* I am imposing the following penalty on you:

- Caution and reprimand
- Deduction from salary of up to SAT\$1000
- Transfer to other duties
- Reduction in classification and / or grading
- Salary reduction (with or without reduction in grading)
- Termination.

[DELETE AS REQUIRED]

The reasons for this penalty(ies) are [Insert Reasons].

You have the right of appeal to the Public Service Board of Appeal. The Notice of Appeal and Grounds of Appeal must be received by the Commission within **14 days** of receipt of this notice. There will be the opportunity for mediation with the Commission if you lodge an appeal.

Fa'afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



APPENDIX X: Notice of Reinstatement once Acquitted by Police

LETTERHEAD of MINISTRY

[Insert Date]

NOTICE OF REINSTATEMENT

[Insert Name of Officer]

[Insert Address of Officer]

Dear [Insert Name of Officer]

I am writing to inform you that as you have been acquitted by the police you are being reinstated to your original position.

DELETE WHICH EVER VERSION IS NOT REQUIRED

{**Version 1:** This means that your temporary assignment to other duties will cease on [Insert Date] please report to your regular supervisor}.

{**Version 2:** This means that your suspension is revoked and you may return to regular duties [Insert Date]. Please report to your regular supervisor. As per subsection 43(4) of the *Public Service Act 2004* the exact amount of salary lost as a result of the suspension will be paid to you in due course.}

I would like to take this opportunity to say that you are reinstated without loss of benefit or status and look forward to your continuing contribution to the Ministry.

Fa'afetai

[Insert Name of CEO]

[Insert Name of Ministry]

cc. CEO, Public Service Commission



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