Overview of the administrative framework with respect to disciplinary matters

Disclaimer: *The Compendium is issued for informative purposes only. It does not amend, replace or otherwise substitute the applicable legal framework, set out in the Charter, UN Staff Regulations and Rules and relevant administrative issuances, including those referred to below.*

A. Legislative framework governing the conduct of staff members

1. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

2. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values (see, in particular, staff regulation 1.2 and staff rule 1.2).

3. An overview of provisions relating to the status, rights and duties of staff members, and to disciplinary matters, can be found in the electronic version of the Human Resources Handbook (available at the Policy Portal) under the categories "Duties, obligations and privileges of staff" and "Disciplinary matters".

B. Misconduct

4. Staff regulation 10.1 (a) provides that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct".

5. In addition, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures.

6. Unsatisfactory conduct of sufficient gravity constitutes misconduct. The Secretary-General has discretion in making a finding of misconduct, based on the totality of the facts and relevant circumstances. For instance, unsatisfactory conduct that is addressed through performance management or other managerial action is generally not misconduct. However, cases of serious performance failings amounting to gross negligence and/or a pattern of managerial failures amounting to harassment or abuse of authority, could rise to misconduct.

7. The gravity of a staff member's unsatisfactory conduct not only determines whether the conduct amounts to misconduct, but influences the appropriate sanction, as discussed below in section D.

8. Examples of conduct for which disciplinary measures may be imposed are listed in section 3.5 of administrative instruction ST/AI/2017/1, which addresses unsatisfactory conduct, investigations and the disciplinary process. Reference may also be made to the Secretary-General's bulletin on addressing discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2019/8), the Secretary-General's bulletin on special measures for protection from sexual exploitation and abuse (ST/SGB/2003/13) and the Secretary-General's bulletin on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations (ST/SGB/2017/2/Rev.1).

C. Summary of the Disciplinary process

9. Under the provisions of administrative instruction ST/AI/2017/1, all reports of possible unsatisfactory conduct must be brought to the attention of the Office of Internal Oversight Services (OIOS). After receiving a report of possible unsatisfactory conduct, OIOS may decide either to consider the report or to refer it to a responsible official for assessment and possible investigation. OIOS must be apprised of decisions made by managers in relation to the reported unsatisfactory conduct.

10. ST/AI/2017/1 requires reports of unsatisfactory conduct to be acknowledged (sect. 4). The instruction also contains standards for the conduct of investigations (sect. 6), including procedures relating to staff members who are the subject of an investigation. For instance, such staff members must be informed in writing, prior to or at the start of an investigative interview, that they are the subject of an investigation and of the nature of the allegations made against them. In addition, such staff members may be accompanied by another staff member of their choice to act as an observer during the interview.

11. ST/AI/2017/1 also sets out the circumstances in which a staff member may be placed on administrative leave with or without pay in accordance with staff rule 10.4 (a). In this regard, a staff member may be placed on administrative leave at any time after an allegation of misconduct has been made, and the period of administrative leave may continue until the completion of the disciplinary process. Depending on the circumstances of a case, administrative leave may be with pay or without pay. As reflected in the instruction, staff rule 10.4 (c) provides that, for cases of sexual exploitation and sexual abuse, a staff member may be placed on administrative leave without pay when there are reasonable grounds to believe (probable cause) that the staff member engaged in the sexual exploitation or sexual abuse. The instruction specifies that, in cases where a staff member is placed on administrative leave without pay, the staff member will continue to maintain some entitlements and benefits.

12. Sections 7, 8 and 9 of ST/AI/2017/1 set out a step-by-step process of how matters are dealt with following the completion of an investigation. An overview of this process is provided below, and a visual representation of the process is provided as part of the Compendium under the “Visualization of the investigation and disciplinary process”.

13. The completion of an investigation report can lead to two outcomes: if the investigation does not produce sufficient evidence that unsatisfactory conduct has occurred, then the matter is closed, and the staff member concerned is informed accordingly. However, if the investigation produces evidence which indicates that the staff member concerned might have engaged in unsatisfactory conduct, which could constitute misconduct, the matter is referred to the Assistant Secretary-General for Human Resources (ASG/OHR) for further action. In the second case, the investigation report and all the supporting documentation collected during the investigation are provided to the ASG/OHR.

14. Upon referral of a matter, the ASG/OHR needs to determine whether to close it, take administrative action, or initiate a disciplinary process. Reaching this determination entails a detailed review of the evidence collected during the investigation. Pursuant to section 8.1 of ST/AI/2017/1, when reviewing the evidence, the ASG/OHR is not constrained by the factual findings of the investigation. During the review, clarifications are sought from investigators regarding evidence or facts, where necessary. All reasonable lines of inquiries drawn from the record, including subject staff members’ statements, are considered before completing the review.

15. There are three potential outcomes from the ASG/OHR’s review of the referred matter:

- If the ASG/OHR determines that the evidence collected does not suffice to establish that unsatisfactory conduct has occurred, the matter is closed and the staff member concerned is informed accordingly;
- If the evidence collected suffices to establish that unsatisfactory conduct occurred, but the ASG/OHR determines that such conduct does not amount to misconduct, then the ASG/OHR

may decide to impose an administrative measure or take managerial action. Alternatively, the matter may be referred to the responsible official (i.e., the head of entity of the staff member concerned), who can take any managerial action deemed necessary. The staff member concerned is informed of the ASG/OHR's determination; or

- If the evidence collected suffices to establish that unsatisfactory conduct, which may amount to misconduct, occurred, then the ASG/OHR initiates a disciplinary process.

16. The initiation of a disciplinary process entails the issuance of a memorandum setting out formal allegations of misconduct against the staff member concerned ("Allegations Memorandum"). If no Allegations Memorandum is issued, then the disciplinary process has not commenced. The Allegations Memorandum, which is issued under the ASG/OHR's authority, contains a detailed presentation of relevant facts, with references to the evidence collected during the investigation. Towards the end of the Allegations Memorandum, the ASG/OHR sets out formal allegations of misconduct, i.e., specific charges against the staff member.

17. The Allegations Memorandum, together with the investigation report and its supporting documentation, are sent to the staff member concerned, who is then invited to provide any comments in response. A period of at least one month is provided to the staff member for the submission of comments. There is no constraint on the scope, extent, length and detail of the comments that the staff member may wish to submit. The staff member is also informed that the Office of Staff Legal Assistance (OSLA) may be able to provide legal assistance during the disciplinary process. Staff members may opt to avail themselves of the services of private legal counsel, at their own expense. In cases where the charges relate to financial or other damage to the Organization, the staff member is informed that financial recovery may also take place, if misconduct is established at the end of the disciplinary process and the conduct constituting misconduct is determined to be wilful, reckless or grossly negligent. If relevant, staff members are also reminded that, pursuant to ST/SGB/2017/2/Rev.1, witnesses who cooperated with the investigation may not be subject to retaliation. This means that the staff member may not take adverse actions against others.[2] Any retaliatory action, whether threatened or taken, against persons who have cooperated with a duly authorized investigation and/or have appeared as witnesses before the internal system of administration of justice constitutes misconduct in and of itself and may result in the imposition of separate/additional disciplinary measures.

18. While staff members are invited to provide a response to the formal allegations of misconduct, they are not obligated to do so. However, if no comments have been received by the deadline, the disciplinary process proceeds.

19. Upon receipt of the staff member's comments, the ASG/OHR will review the comments together with the evidence on the record. As in the review of referrals, all reasonable lines of questions raised from the comments are pursued before completing this review. This includes seeking clarifications from investigators. Any additional information obtained in this process may be relied upon by the ASG/OHR only after it is given to the staff member for further comments. Any further comments received are considered. There are three possible outcomes:

- The ASG/OHR may decide to take no further action and inform the responsible official and the staff member concerned accordingly;
- The ASG/OHR may conclude that the alleged facts do not amount to misconduct, but may warrant administrative or managerial action. In that case, the ASG/OHR will no longer pursue the matter as a disciplinary case but will decide to take administrative and/or managerial measures or refer the matter to the responsible official to consider taking administrative and/or managerial measures; or
- The ASG/OHR will recommend to the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") to take disciplinary action.

[2] If the Organization would have taken the action irrespective of the subject's involvement, then such action does not constitute retaliation. For instance, if the contract of a witness is not renewed because the funding for the witness's post has been discontinued, then the non-renewal of the contract does not constitute retaliation on the part of the subject of the investigation and/or the disciplinary process.

20. The allegations of misconduct are considered established if the following evidentiary standard is met:

- Clear and convincing evidence for imposing separation or dismissal of the subject staff member. This standard of proof is lower than the criminal standard of "beyond a reasonable doubt" and is interpreted as it being "highly probable" that the facts and circumstances underlying the misconduct exist or have occurred; or
- Preponderance of the evidence (more likely than not that the facts and circumstances underlying the misconduct exist or have occurred), for imposing any other disciplinary measure.

21. If a review of the entire record in a given case leads to a conclusion that the applicable evidentiary standard is met, the ASG/OHR recommends an appropriate course of action to the USG/DMSPC regarding the established facts. In the recommendation, the ASG/OHR presents the detailed analysis of the evidence juxtaposed with the staff member's comments. At the end of the analysis, the ASG/OHR explains how the alleged facts have been established to the requisite evidentiary standard and recommends the imposition of one or more appropriate disciplinary measures under Staff rule 10.2(a). Administrative and/or managerial measures may also be recommended.

22. Upon receipt of the ASG/OHR's recommendation, the USG/DMSPC decides:

- Whether the alleged facts have been established to the requisite standard of proof;
- Whether the alleged facts amount to misconduct or serious misconduct;
- To impose one or more the disciplinary measures provided for in Staff rule 10.2(a);
- Where relevant, to take administrative measures and/or managerial action; and
- Where relevant, to decide whether the established facts which amount to misconduct were wilful, reckless or grossly negligent, and to recover the financial loss to the Organization, in full or in part, from the staff member concerned.

23. The staff member concerned is informed of the decision of the USG/DMPSC in writing (the "Sanction Letter"). Guided by UNAT jurisprudence, the USG/DMSPC provides detailed information to the staff member concerned about all relevant considerations underpinning the decision to impose one or more disciplinary measures. The Sanction Letter explains how the alleged facts have been established, why they amount to misconduct or serious misconduct, how the due process rights of the staff member concerned have been upheld throughout the disciplinary process, and how the USG/DMSPC has determined which disciplinary measure(s) is appropriate to impose.

24. Sometimes, before deciding whether to initiate a disciplinary process, the ASG/OHR may request a staff member for comments with respect to a referred matter. Following a review of the staff member's comments (as described above), a decision can be made on whether to initiate a disciplinary process, or to close the matter with or without an administrative measure or managerial action. The administrative measures that can be taken include a written reprimand. Under Staff rule 10.2 (c), a staff member should be provided with the opportunity to comment on the relevant facts and circumstances prior to the issuance of a reprimand.

25. In accordance with Staff rule 10.3 (c), a staff member against whom a disciplinary and/or administrative measure has been imposed after a disciplinary process may submit an application to the United Nations Dispute Tribunal challenging the imposition of the measure in accordance with Chapter XI of the Staff Rules.

26. Judgments of the United Nations Dispute and Appeals Tribunals relating to disciplinary cases can be found on the website of the Administration of Justice at the UN (https://www.un.org/en/internaljustice/index.shtml).

27. The process from filing a formal report of potential misconduct, possible investigation through to disciplinary action can be relatively lengthy. The Annex to the Compendium contains a visualization of the entire process.

28. More information about the investigation and disciplinary process, and regarding ST/SGB/2019/8, is available at the United to Respect Toolkit through the HR Portal or on iSeek.

D. Disciplinary measures

29. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e., more than one measure may be imposed in each case):

(a) Written censure;
(b) Loss of one or more steps in grade;
(c) Deferment, for a specified period, of eligibility for salary increment;
(d) Suspension without pay for a specified period;
(e) Fine;
(f) Deferment, for a specified period, of eligibility for consideration for promotion;
(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;
(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;
(i) Dismissal.

30. In accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and gravity of the misconduct involved. Given the thoroughness of the review involved to assess the unique facts and features of each case, the specific sanction that applies to a specific type of misconduct cannot be determined in advance or applied across the board. The appropriate sanction should bear a rational connection to the facts and circumstances of the individual case.

31. Misconduct exhibiting a serious lapse of integrity, or otherwise breaking the trust necessary for continued employment, results in termination of employment. Mitigating and aggravating circumstances in these cases would only inform the choice of whether to dismiss or to separate from service and, if separation is chosen, whether or not to provide termination indemnity. In other cases, depending on mitigating and aggravating factors, the appropriate sanction varies within a range. Additional explanations on these considerations are presented visually.

32. In determining the appropriate measure, each case is decided on its own merits, including aggravating and mitigating circumstances. Examples of possible aggravating circumstances are: (a) the previous disciplinary record of the staff member, (b) the intent to derive personal benefit, (c) the presence of a conflict of interest, (d) the seniority of a staff member, (e) acts were in contravention of staff member's duties, and (e) substantial harm resulting from the misconduct. Examples of possible mitigating circumstances are: (a) early and voluntary disclosure of actions constituting possible misconduct, (b) lack of seniority and (c) sincere remorse. Depending on the facts of each case, long service may be taken into account as either a mitigating or an aggravating factor. However, the gravity of the misconduct often outweighs any mitigating factors. The lack of a disciplinary record is not considered a mitigating circumstance/factor because staff members are expected to act, at all times and throughout their service, with the highest standard of efficiency, competence and integrity.

33. The United Nations Appeals Tribunal ("UNAT") in *Kennedy, 2021-UNAT-1184,* listed factors it considered relevant in assessing the gravity of the conduct and the proportionality of disciplinary measures. These included: (a) the extent of culpability, i.e., was the action accidental, careless, reckless or deliberate; (b) whether the staff member acted alone or with others; (c) whether the action was organized or the result of a rash action or lapse of judgement; (d) whether the misconduct was minor or technical or substantive or severe; (e) whether a single or multiple acts were involved; and (f) the extent of harm or damage to the Organization, colleagues and/or the public. As guided by the judgment in *Kennedy,* the Organization's proportionality assessment is explained in Sanction

Letters to assist the staff member's understanding and facilitate possible judicial review by the United Nations Dispute Tribunal ("UNDT").

34. Certain cases are pursued after a staff member separates from service because it is in the interest of the Organization to do so. Such post-separation cases may involve circumstances where the disciplinary process is in progress at the time of the staff member's separation, or the conduct at issue concerns serious misconduct or may end in financial recovery. In such cases, the former staff member is invited to participate in a disciplinary process and is provided with an outcome of the process, including the sanction that would have been imposed had the staff member continued in service. However, due to the staff member's prior separation, this sanction does not actually take effect. For example, if a former staff member is informed that the sanction that would have been imposed is that of separation with compensation in lieu of notice, the former staff member cannot be separated anew and no compensation in lieu of notice is actually paid.

35. When a staff member is dismissed from service due to sexual exploitation and abuse, the Organization may transfer the repatriation grant that the staff member would have been entitled to otherwise, to the Trust Fund in Support of Victims of Sexual Exploitation and Abuse. This measure also applies in post-separation cases, provided that during the pendency of the disciplinary process, the Organization has withheld the staff member's separation entitlements.

E. Other measures

36. **Administrative measures:** Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands are administrative measures that are important for upholding standards of proper conduct and promoting accountability. Written reprimands are placed on the staff member's official status file. Warnings or letters of caution are managerial measures directed at fostering awareness of the proper standards of conduct. Unlike written reprimands, they are not placed on the staff member's official status file. In addition, where conduct that may amount to misconduct has an impact on performance, the issue may be addressed in the context of performance management. This may include training, counselling, the non-renewal of a contract or the termination of an appointment. Administrative instruction ST/AI/2017/1 contains specific provisions on administrative measures and managerial actions that could be taken in response to unsatisfactory conduct by a staff member.

37. **Financial recovery:** Staff rule 10.1(b) provides that, where conduct is determined by the Secretary-General to constitute misconduct and the Organization has suffered a financial loss as a result of the staff member's actions, which are also determined to be wilful, reckless or grossly negligent, such staff member may be required to reimburse the Organization for such loss in whole or in part. Sections 9.5 and 9.6 of ST/AI/2017/1 also contain specific provisions on the recovery of financial loss to the Organization pursuant to staff rule 10.1 (b) in cases where the loss results from actions or omissions that are wilful, reckless or grossly negligent.

38. In paragraph 23 of its resolution 68/252, the General Assembly requested the Secretary- General to take appropriate measures to mitigate and recoup any losses arising from misconduct by staff members and to report thereon. When the loss arising from the misconduct is quantifiable, one or more of the following actions may be taken to mitigate or recoup the loss: (i) the Organization seeks to recover the relevant property and/or funds; (ii) the staff member concerned voluntarily returns the materials lost or repays the funds at issue; and/or (iii) the USG/DMSPC decides to recover an amount equal to the financial loss from the staff member's emoluments, including any final entitlements.

39. The recovery is sometimes limited by insufficient final entitlements. In order to provide for as great a recovery as possible, in appropriate cases, pension clearance documentation may be withheld to ensure as much financial recovery as possible. The United Nations Joint Staff Pension Fund will, at its discretion and with the agreement of former staff members, split payments to allow for financial recovery.

40. **Referral for accountability:** Under article 10.8 of the statute of the United Nations Dispute

Tribunal and article 9.5 of the statute of the United Nations Appeals Tribunal, each of the Tribunals may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability. Such action may include the initiation of an investigation and a disciplinary process.

41. If it is determined, during the investigation, that a report of possible misconduct has been made maliciously, i.e., with knowledge that the report is false, the staff member who made the malicious report may be referred for accountability. A factual determination that the staff member had *knowingly* made a false report is required for the report to be considered malicious. The requirement is not met if the circumstances indicates that a report has been made in good faith, but an investigation could not substantiate the reported possible unsatisfactory conduct due to reasons that are not in the control of the staff member who made the report. This is consistent with Staff rule 1.2 (c), pursuant to which staff members have the duty to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action.

42. **ClearCheck:** ClearCheck is a highly secure online platform of a centralized database. It is used to share information amongst the Organization and other UN system entities to prevent the re-employment of individuals with a record of serious misconduct that warranted, and, when applicable, would or could have warranted, the end of the working relationship with a UN system organization. It includes the names of staff members:

(a) against whom allegations of sexual harassment or sexual exploitation and abuse were substantiated following an investigation and/or disciplinary process and who were separated (or informed they would have been separated had they remained in service),

(b) who resigned or separated while they were the subject of a pending investigation and/or disciplinary process concerning sexual harassment or sexual exploitation and abuse.

(c) who have a final determination that they engaged in serious misconduct (other than sexual harassment and sexual exploitation and/or sexual abuse), including racism/racial discrimination, and that they were or would have been separated from service for such misconduct.

F. Performance management, performance evaluation, and the disciplinary process

43. Staff members' performance is managed continuously and evaluated by designated supervisors for a designated reporting period based on the process set out under ST/AI/2021/4. The process of performance management and evaluation is handled in each entity, and is separate from the disciplinary process, which is handled centrally at UN Headquarters. More often than not, the two processes do not coincide and/or the manager(s) responsible for managing and evaluating a staff member's performance may be unaware of the staff member's possible misconduct. In such case, performance evaluation does not always reflect a staff member's involvement in conduct issues. Nevertheless, managers are encouraged to reflect, in the staff member's performance evaluation documents, any possible unsatisfactory conduct they become aware of during the performance evaluation period. This could include, for example, reflecting behaviour witnessed by a supervisor during a performance period, such as shouting during team meetings, in the supervisor's evaluation of how the staff member performed as a team member and/or leader.

44. If not rebutted by a staff member, the evaluation of the staff member's performance becomes final at the end of the performance evaluation period. The final determination that a staff member engaged in misconduct takes time and is rarely available for the managers to reflect in the performance evaluation for the period in which the misconduct occurred. Mentioning a pending investigation or disciplinary process about conduct that occurred in the past in the staff member's current performance evaluation would be prejudicial to the staff member. Further, under the current framework, performance evaluation reports, once they become final, cannot be amended

retroactively, after the conclusion of a disciplinary process. Similarly, a negative performance evaluation may not be provided for facts or circumstances occurring outside the performance evaluation period, i.e., a reporting officer may not assign a negative rating or comments for the current performance evaluation period because the USG/DMSPC concluded that the staff member engaged in misconduct in the past.[3]

45. Recently, the UNAT has referred to the Secretary-General the cases of managers who, while aware of possible unsatisfactory conduct that could constitute misconduct, failed to take appropriate action, including by reflecting the possible unsatisfactory conduct in the performance evaluation of the staff member concerned.

[3] It is noted that reporting officers may not necessarily be informed of the imposition of any disciplinary measures on a staff member.