



**Overview of Disciplinary processes to be used in the management of disciplinary cases arising from RHI Inquiry**

**February 2020**

## **Introduction**

The independent RHI Inquiry chaired by the Rt Hon Sir Patrick Coghlin was established on 24 January 2017.

The Inquiry Terms of Reference provide that:-

*'Examine the role of Ministers, Special Advisors, Civil Servants, and any others involved in the RHI scheme (including external consultants) and whether their actions and/or advice met appropriate professional standards, were ethical, within the law, and compliant with standards in public life including in particular the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisors, and conditions of employment'*

The Inquiry Report may reach conclusions, which may require action under the NICS Disciplinary Procedures

Due to the particular circumstances of the Inquiry, it has been agreed by a sub group of the NICS Board<sup>1</sup> members that the NICS disciplinary process is modified to seek to ensure the disciplinary processes are applied in a way that best upholds the following **five principles**:

- a. **Fairness:** impartial and just consideration and treatment without favouritism, discrimination or bias.
- b. **Timeliness:** to complete all considerations and the process in a timely way given the length of time these issues have been under consideration, without compromising the quality of the process.
- c. **Consistency:** to ensure a consistent approach (behaviour, considerations and treatment) to all parties.
- d. **Public confidence:** to ensure the public and NICS stakeholders have faith in the process to effectively deal with any disciplinary matters relating to NI civil servants as a result of the RHI Inquiry.
- e. **Internal confidence:** to ensure NI civil servants have faith in the process to effectively deal with disciplinary matters as a result of the RHI Inquiry.

In addition, on review of the main procedures within the current NICS disciplinary processes, it was concluded that some modifications were needed to the process for the handling of any potential discipline cases arising from the RHI Inquiry Report. These

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<sup>1</sup> NICS Board sub group, of individuals not conflicted with the Inquiry, agreed these arrangements in October 2019

modifications are in place to support the five principles and to manage any disciplinary cases in a timely and organised manner as soon as the RHI Inquiry Report is made available.

**Immediately prior to publication of the RHI Inquiry Report, the Department of Finance (DOF) will advise each of the affected individuals within the NICS of the arrangements for handling potential disciplinary matters.**

**The NICS will advise the public of the agreed disciplinary processes for any cases resulting from the findings of the report. During the disciplinary process, no further comment on individual cases will take place. At the end of the disciplinary process, NICS will report on the overall action taken. The NICS does not plan to disclose the names of individuals, however, in light of the particular nature of the Inquiry, it is acknowledged that the identity of e.g. high profile NI civil servants may become publicly known.**

**The NICS has engaged with trade unions on the modified matters which includes the establishment of two panels, and appeal arrangements for all individuals. All modifications are summarised in Annex A.**

### ***The Disciplinary Process***

In line with the five principles, NICS Board sub group members have agreed that two independent panels will be appointed. An **External Panel** comprising three members who are external to and independent of the NICS; have relevant knowledge and experience to allow them to fulfil their role; and who are independent of the RHI Inquiry. An **NICS Internal Panel** will comprise three NICS officers at Grade 2 who are independent of involvement with the RHI Inquiry. The **NICS Internal Panel** will consider and decide on discipline cases in those grades up to and including Grade 3 level thereby seeking to maintain consistency, continuity and due diligence in its decision-making role and complying with the five principles of the process.

The **Cabinet Secretary** will consider and decide on disciplinary cases arising for Grade 2 and above, taking account of the provisions for these grades within the NICS Disciplinary Procedures, HR Handbook, Section 6.03 Annex 4.

#### **Stage 1: The External Panel**

The External Panel will:-

- i) consider RHI Inquiry Report content;
- ii) identify those NI civil servants in relation to which any relevant facts have been identified by the Inquiry
- iii) determine whether or not there have been potential breaches of the Standards of Conduct (incorporating Annex 1 – Code of Ethics) Section 6.01 NICS HR Handbook and Discipline Policy Section 6.03 NICS HR Handbook and any other relevant policies;

- iv) define the formal disciplinary charges as quickly as possible from receipt of RHI Inquiry Report. This is an additional independent stage of the NICS disciplinary procedures that complements the scope and purpose of the Inquiry report; and
- v) submit a report to setting out their conclusions a) Cabinet Secretary in relation to individuals at G2 and above and b) the NICS Internal Panel for individuals up to and including G3.

### Individuals

In line with the NICS Disciplinary policy, the General Principles set out in section 2 of the Policy will apply. All stages of the disciplinary process will be completed as quickly as possible. The Welfare Support Services and Inspire Workplace Services will be able to provide assistance where required

The individual circumstances and merits of each case will be thoroughly considered during proceedings. The NICS Internal Panel deciding on matters for NI civil servants up to and including Grade 3 will consist of the same members throughout the NICS disciplinary process.

The individual will:-

- i) be advised of any proceedings under the NICS disciplinary procedures;
- ii) be informed in writing of any formal disciplinary charges and the details of the supporting facts;
- iii) be given the opportunity to respond to those charges both in writing and in person at the disciplinary hearing;
- iv) have the right to be accompanied by a Trade Union representative or work colleague both at the disciplinary hearing and appeal hearing;
- v) be invited to submit within a written reply to charges if they so wish;
- vi) **NI civil servants Grade 2 and above** have their case referred by the External Panel to the Cabinet Secretary who will decide any disciplinary action. The Cabinet Secretary will inform individuals of the arrangements for and attendance at any disciplinary hearings required; and
- vii) have the opportunity to appeal<sup>2</sup> the disciplinary decision and in cases of dismissal further appeal to the NI Civil Service Appeal Board.

*The individual will be notified of the disciplinary procedures applying to them and will have access to NICS HR Employee Relations advisors should there be any questions around the process.*

### Stage 2: The NICS Internal Panel

The NICS Internal Panel will:-

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<sup>2</sup> Grade 2 and above will have the same right of appeal against a disciplinary decision as any other member of staff. Appeals in respect of cases involving Grade 2 and above will be heard by a suitable individual identified by the Cabinet Secretary.

- i) receive the report from the External Panel of the disciplinary charges defined in each case for those civil service grades up to and including Grade 3. The NICS Internal Panel will not consider any cases above Grade 3;
- ii) carry out the decision making role (Decision Officer) as set out in the NICS Disciplinary Policy;
- iii) write to the individuals at grade 3 advising them of the charges and the date for the Disciplinary Hearing, which should be 10 working days from date of letter;
- iv) hold Disciplinary Hearings to allow the individual opportunity to respond to the charges in person;
- v) recommend whether suspension is appropriate upon receipt of the conclusions of the External Panel; and
- vi) decide the disciplinary outcomes for the individual civil servants.

### ***Disciplinary Hearing by NICS Internal Panel***

A timetable of the **disciplinary hearings** will be provided by the NICS Internal Panel to the NICS Strategic HR Director. Those individuals who are the subject of disciplinary proceedings will have **10 working days** from notification of the formal charges by the NICS Internal Panel to prepare for their respective disciplinary hearing.

The individual may submit a written response to the formal charges within **10 working days** from the date of issue of the invite to hearing. This may also be used for their defence should they decide not to attend the disciplinary hearing. Any written responses received after this date will be considered at the discretion of the NICS Internal Panel.

At the Hearing the individual will have the right to be accompanied by either a Trade Union representative or a work colleague. Requests to be accompanied by other individuals may be considered in particular circumstances, for example under provisions relating to disability.

If an individual is unable to attend the hearing date, the NICS Internal Panel must review the reason for not attending and consider whether or not it is appropriate to reconvene to another hearing date. If it is agreed to reconvene the hearing date, it should be within **five working days** from the original date. Failure to attend a rearranged meeting without an acceptable reason will result in the case being decided on the basis of the evidence available to the NICS Internal Panel.

A summary note will be sent to the individual and their representative to allow for the individual to comment on factual accuracy within **five working days** from the date of the hearing. The individual will have a further **five working days** to advise of any factual amendments. If additional information is submitted, it will be considered at the discretion of the NICS Internal Panel when considering the case.

### ***Disciplinary Action***

The NICS Internal Panel is responsible for deciding whether or not misconduct has occurred in light of the evidence presented and determining any appropriate disciplinary

penalty for staff in grades up to and including Grade 3. ***In cases where gross misconduct has been established by the NICS Internal Panel it has the ability to decide on dismissal as an appropriate disciplinary penalty.***

The NICS Internal Panel will write to the individual advising of its decision, the Disciplinary Action and any penalty/penalties. The individual will be notified of their right to appeal the decision. Appeal to be lodged within **10 working days**.

### ***Appeal Hearings***

If an appeal is received to an NICS Internal Panel decision, it has been agreed that two officers at Grade 2, separate from the NICS Internal Panel and who are independent of the RHI Inquiry, will conduct the Appeal Hearing.<sup>3</sup>

A written summary of the hearing will be provided to the individual and their representative within **five working days**. The individual will have a further **five working days** to advise of any factual amendments. If additional information is submitted, it will be considered at the discretion of the Appeal Panel when considering the appeal. This appeal concludes the internal process.

### ***Indicative Timeline***

***An indicative timeline of the disciplinary process from the point of the publication of the RHI Inquiry Report to the Decision Outcome of the NICS Internal Panel is set out at Annex B.***

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<sup>3</sup> These appeal hearings will relate to NICS Internal Panel decisions only. It is expected that appeals to the Cabinet Secretary decisions will be arranged in line with Disciplinary Policy Annex 4 and will be heard by a suitably qualified person identified by the Cabinet Secretary

**Annex A: Explanation of modifications to NICS Disciplinary Procedures**

Action	Reason	Principles
Role of External panel	The nature of the RHI Inquiry report will require expertise in ascertaining the allegation of any misconduct in a timely and fair manner. The External Panel will identify those individual NI civil servants whose actions will be subject to the formal disciplinary procedures and define the potential disciplinary charges. The External Panel will also establish those individuals who will not be included in any disciplinary process. <i>The External Panel is in place to support the public interest in the outcomes of the Inquiry for NI civil servants. The RHI Inquiry Report will provide the established facts of the case.</i>	a, b, and d.
Grade 2 and above	Any disciplinary matters arising for NI Civil Servants in these grades will be referred to the Cabinet Secretary	a, b,c d and e
Role of NICS Internal Panel	The NICS Internal panel comprises three NICS Grade 2 civil servants who are not conflicted in relation to the RHI Inquiry to act as Decision Officers during the disciplinary process. The NICS Internal Panel seeks to provide consistency to the consideration of the formal charges in each case. <i>Discipline Policy provides that Panel convened for cases at Grade 2 level</i>	a,b,c,and e
Appeals process	Appeal hearings relating to decisions by the NICS Internal Panel will be conducted by two Appeal Officers who have been independent of involvement from the NICS Internal Panel.  It is expected that appeals to the Cabinet Secretary decisions will be arranged in line with Disciplinary Policy Annex 4 and will be heard by a suitably qualified person identified by the Cabinet Secretary	a, c and e
Date of hearings (Discipline and Appeal) for grades up to and including Grade 3	A defined 10 working days to allow individual appropriate time to prepare for meeting. <i>No specified timeframe within the policy</i>	a, b,c and e
Reconvened hearing dates for both Discipline and Appeal Meetings for grades up to and including Grade 3	If an acceptable reason is provided the reconvened hearing date should now be within 5 working days of the original date offered. <i>No specified timeframe within the policy</i>	b and c
Decision (Discipline and Appeal) Meetings for grades up to and including Grade 3	The decision outcome should be reached no later than 15 working days from hearing. <i>No timeframe provided in the policy</i>	a, b, c, d and e

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**Annex B – Indicative Timeframe for those cases referred to NICS Internal Panel**

<b>Working days</b>	<b>Stage within the Disciplinary Process</b>
1	RHI Report published
8	Formal charges determined by External Panel
9	Formal charges provided to NICS Internal Panel
15	Invite to Disciplinary Hearings by NICS Internal Panel
25-30	Disciplinary Hearings by NICS Internal Panel are held
45	Disciplinary Outcome by NICS Internal Panel completed

*If an appeal is received, it is anticipated it will take up to 25 working days to conclude the internal appeals process from receipt of Notice of Appeal.*





## **User Guide for the External Panel and NICS Internal Panel of NICS Disciplinary Procedures**

**February 2020**

Status: V1.1

Classification: OFFICIAL SENSITIVE

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## ***Introduction***

The RHI Inquiry report has outlined a number of potential areas of concerns that may necessitate NI civil servants to be considered under NICS disciplinary procedures. The policies considered throughout the disciplinary process are; 6.03 Discipline Policy and 6.01 Standards of Conduct incorporating the Code of Ethics. Other relevant policies may also be considered when determining allegations of misconduct.

This user guide provides guidance on disciplinary procedures that have been modified from the relevant policies and are in accordance with the following principles:

- a. **Fairness:** impartial and just consideration and treatment without favouritism, discrimination or bias.
- b. **Timeliness:** to complete all considerations and the process in a timely way given the length of time these issues have been under consideration, without compromising the quality of the process.
- c. **Consistency:** to ensure a consistent approach (behaviour, considerations and treatment) to all parties.
- d. **Public confidence:** to ensure the public and NICS stakeholders have faith in the process to effectively deal with any disciplinary matters relating to NI civil servants as a result of the RHI Inquiry.
- e. **Internal confidence:** to ensure NI civil servants have faith in the process to effectively deal with disciplinary matters as a result of the RHI Inquiry.

The disciplinary process will be conducted in three phases:

- A. An External Panel, independent of the RHI Inquiry and the NICS, will consider the Inquiry Report and identify those NI civil servants where there are relevant facts in relation to breaches of conduct and determine any formal disciplinary charges;
- B. Following receipt of advice from the External Panel, the NICS Internal Panel or the Cabinet Secretary will decide on any formal disciplinary action for individual NI civil servants.
- C. Appeal Hearings – the individuals involved have the right to appeal the disciplinary decisions by either NICS Internal Panel or the Cabinet Secretary. [DN: NICS Internal Panel or NICS Panel?]

## **A: User guide for External Panel**

### **Step 1 Consideration of the RHI Report content and identify allegations of breaches of conduct and/or discipline policy**

The External Panel will consider the RHI Inquiry Report to identify any individuals who have reached the threshold of breaching 6.01 Standards of Conduct focusing on Annex 1 Code of Ethics and 6.03 Discipline Policy as set out in the NICS HR Handbook.

The External Panel will consider all individuals at all grades in the NICS.

### **Step 2 Determine the formal charges**

Where allegations of misconduct have been identified a description of the individual's misconduct that demonstrates a breach of the 6.01 Standards of Conduct incorporating the Code of Ethics and relevant NICS policies will be established. The External Panel must be confident that this constitutes a potential breach of 6.01 Standards of Conduct and/or other relevant policies and is consistent with examples of categories of breaches within Annex 1 and 2 of 6.03 Discipline Policy. The External Panel should also advise whether or not the potential breach is an example of misconduct (Annex 1) or gross misconduct (Annex 2) of 6.03 Discipline policy.

NI civil servants who have been identified as having potentially undertaken an act/acts of misconduct and having breached relevant NICS policies, will have formal disciplinary charges against them determined by the External Panel.

On receipt of the RHI report, the External Panel will consider as quickly as possible any individuals for whom disciplinary procedures will be progressed; to specify the misconduct in accordance with the relevant policies in each of these cases; and to identify those individuals against whom no further action will be taken. The External Panel will submit a report to the NICS Internal Panel in respect of staff up to and including Grade 3. The External Panel will separately submit their conclusions to the Cabinet Secretary for those at Grade 2 and above. The processes for handling these cases are not provided for in this user guide.

This concludes the role of the External Panel. However the External Panel should be available to answer any questions from NICS Internal Panel and/or the Cabinet Secretary if required during the disciplinary process.<sup>1</sup>

## **B: User guide for NICS Internal Panel**

### ***Introduction***

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<sup>1</sup> Agreed at NICS Board sub group meeting November 2019

The Inquiry Report is the independent investigation to establish the facts of the actions of NI civil servants. Given the particular nature of the Judge-led Inquiry, the employing department does not plan any further investigatory work to be required. The External Panel's determination of individuals at grades up to and including Grade 3 who should be the subject of disciplinary processes and the charges against them will be passed to the NICS Internal Panel to take forward the disciplinary process in each case.

The NICS Internal Panel will decide on the disciplinary penalties, as appropriate, in each case at grades up to and including Grade 3 and in accordance with the disciplinary policy in the NICS HR Handbook.

If, as a result of examination, the External Panel concludes a named individual has not breached relevant policy/policies that individual will be notified of their removal from any further consideration under the disciplinary procedures. NICS HR Employee Relations will provide the draft letter to notify the individual that no further proceedings will take place on this matter.

### ***The disciplinary process***

#### **Step 1 Confirm the disciplinary charges**

The NICS Internal Panel will consider the alleged misconduct of and charges against each individual identified by the External Panel. The charges should be consistent with the examples of types of conduct indicated within Annex 1 or 2 of 6.03 Discipline Policy.

On receipt of the allegations of misconduct, the NICS Internal Panel will consider if suspension of an individual is recommended. Before the Panel makes its decision it should consider the relevant sections within 6.03 Discipline Policy and the five principles of the disciplinary process. The NICS Internal Panel will seek advice on handling of suspension from NICS HR Strategic Director.

The NICS Internal Panel will advise the individual of the formal disciplinary charges against him/her and decide what information will be provided in advance of the disciplinary hearing.

When proceeding to disciplinary charge, members of the NICS HR Employee Relations team will prepare draft letters for issue to the individuals to invite them to attend a disciplinary meeting.

A timetable for disciplinary hearings should be provided by the NICS Internal Panel to NICS Strategic HR Director.

The NICS Internal Panel will issue the charge letter within **seven calendar days** following notification from the External Panel of the individual and their alleged misconduct.

The **charge letter** will include the following:

- Details of charge(s) against the individual;

- Date, time and venue of the disciplinary meeting;
- The composition of the panel;
- Who will be attending the meeting;
- Their right to be accompanied by a Trade Union representative or work colleague of their choice;
- The requirement to notify NICS HR ER of their nominated companion before they attend the meeting;
- Details of how the individual can submit a written response to the charge(s) made against him/her and
- Alternative to non-attendance at the hearing.

**10 working days** from the date of charge letter should be allowed for each individual to prepare for the hearing. The location for the meeting must enable proceedings to be conducted in a confidential and private manner. A request to be accompanied by an individual other than a Trade Union representative, work colleague or adjustments for the hearing itself, may be considered in particular circumstances by the NICS Internal Panel, when deemed a reasonable adjustment under provisions relating to disability.

## **Step 2      Disciplinary meeting**

The individual will be given the opportunity to submit a written response to the charge(s) within **10 working days** from the date of the letter. Any written responses received after this date will be considered at the discretion of the NICS Internal Panel.

If an individual is unable to attend the hearing date, the NICS Internal Panel must review the reason for not attending and consider whether it is appropriate to reconvene to another hearing date. If it is agreed to reconvene the hearing date, it should be within **five working days** from the original date. Failure to attend a rearranged meeting without an acceptable reason will result in the case being decided on the basis of the evidence available to the NICS Internal Panel.

The purpose of this Disciplinary meeting will be to:

- Ensure that all aspects of the case are presented by the Panel at the meeting;  
and
- Provide the individual with the opportunity to respond to the evidence and present any mitigating factors or other relevant evidence they feel is appropriate to their case.

Notes will be taken during the hearing and a summary sent to the individual and their representative to comment on factual accuracy within **five working days** from the date of the hearing. The individual will have a further **five working days** to advise of any factual amendments. It is not however an opportunity to include additional information

and if additional information is submitted, it will be considered at the discretion of the NICS Internal Panel when considering the case.

There should be no recording devices present to record the disciplinary hearing unless the NICS Internal Panel considers it a reasonable adjustment under Disability Discrimination Act where no other suitable alternative adjustment can be accommodated.

### **Step 3 Disciplinary decision**

The NICS Internal Panel will review all information, including the summary note of the hearing, and conclude, on a balance of probabilities, whether or not the individual committed a breach of 6.01 Standards of Conduct and 6.03 Discipline Policy. If the NICS Internal Panel concludes a breach has been committed it will also determine the appropriate disciplinary penalty, taking into account any current penalties from previous disciplinary proceedings. A Written Warning or Final Written Warning should issue. Additional disciplinary penalties can include but not limited to:

- Ban on promotion;
- Downgrading;
- Transfer to other duties;
- Fine;
- Cessation of official facilities e.g. internet access or flexi; and
- Suspension from duty

In cases where the NICS Internal Panel has concluded the misconduct is so serious in nature to constitute gross misconduct the panel can consider dismissal [DN: suggested alternative to amendment]

### **Step 4 Disciplinary Outcome**

Individuals should be informed of the outcome of their discipline case within **15 working days** from the date of their hearing. This outcome letter will also advise individuals of their right of appeal.

## ***Appeal of NICS Internal Panel Decisions***

### **Step 1 Receive written notice of appeal**

An individual wishing to appeal the disciplinary action taken by the NICS Internal Panel, must submit the grounds on which they wish to appeal within **10 working days** from the date of the outcome letter. If the appeal is submitted after this date, it will be considered at the discretion of the appointed Appeal Panel.

The appeal will be heard by two NICS officers at Grade 2 level not associated with the NICS Internal Panel process.

The individual will receive an **invite to attend appeal meeting** that includes:

- Date, time and venue of appeal meeting;
- The composition of the Appeal Panel;
- Who will attend the appeal meeting;
- Their right to be accompanied by a Trade Union representative or work colleague of their choice;
- Request to notify NICS HR ER of their nominated companion before they attend the meeting; and
- If applicable, reason for accepting the late appeal.

The Appeal Panel should be available to hold appeal hearings within **10 working days** from receipt of appeal. A request to be accompanied by an individual other than a Trade Union representative or work colleague or adjustments for the hearing itself, may be considered in particular circumstances by the Appeal Panel, when deemed a reasonable adjustment under provisions relating to disability.

### **Step 2 Appeal meeting**

The purpose of the meeting will be for the individual appealing the disciplinary action to state the grounds of their appeal against the disciplinary decision. The Appeal Panel will then consider all relevant factors including a review of the procedure followed and the fairness of the original decision. Based on this information the Appeal Panel will decide whether or not the disciplinary decision taken was appropriate.

Notes will be taken during the hearing and a written summary provided to the individual and their representative to comment on factual accuracy within **five working days**. The individual will have **five working days** to advise of any factual amendments. It is not, however, an opportunity to include additional information and should additional information be submitted, it will be considered at the discretion of the Appeal Panel when considering the appeal.

### **Step 3 Appeal Outcome**

An individual should be informed of the outcome of their appeal within **15 working days** from the appeal hearing.

The outcome of the Appeal will be one of the following:

- a) The disciplinary action is upheld
- b) The disciplinary action is overturned
- c) The disciplinary action is amended

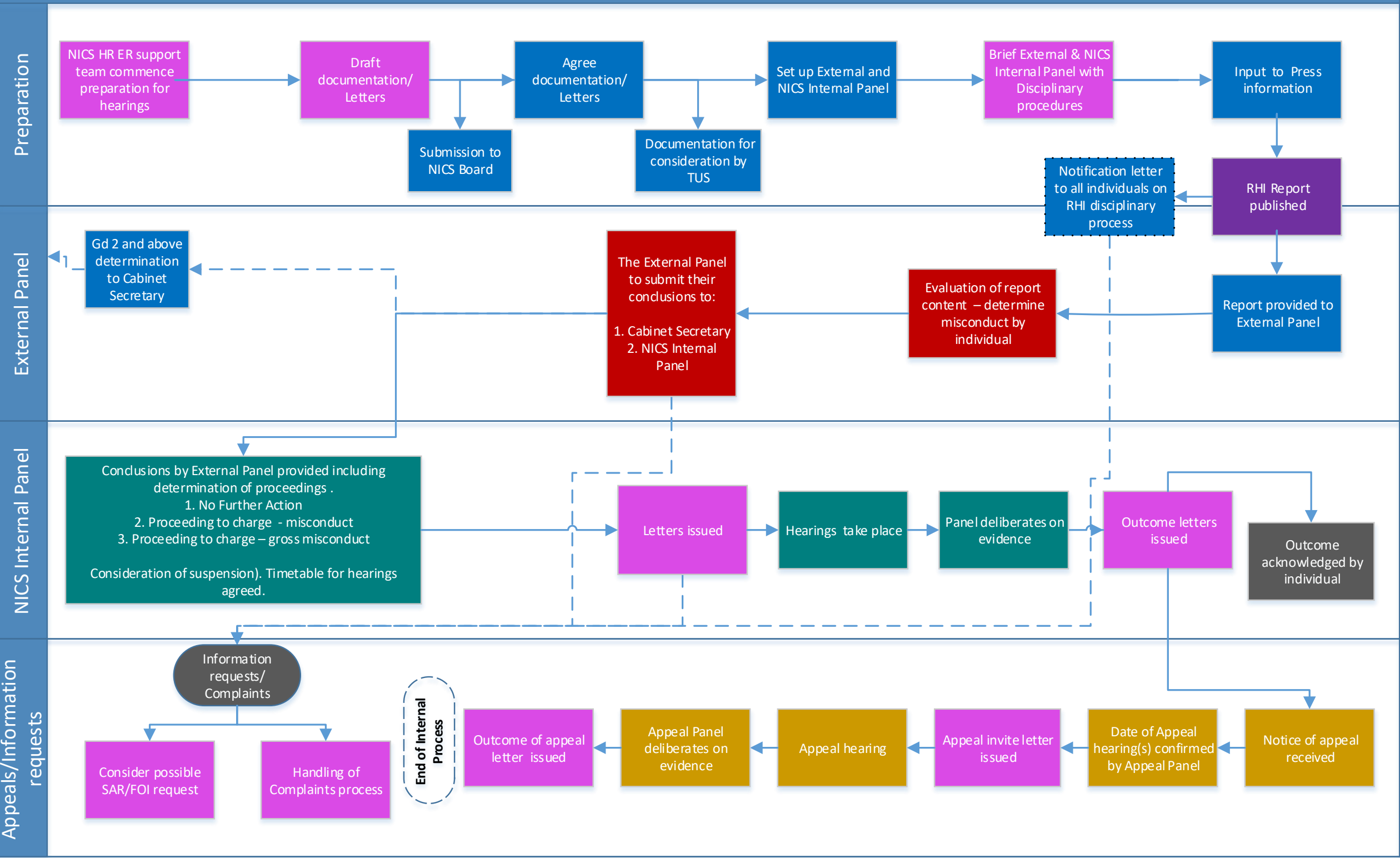
The Appeal Panel cannot impose a more severe disciplinary penalty than that determined by the NICS Internal Panel.



This concludes the internal appeal process except in cases of dismissal, where dismissed individuals have the right to appeal to the NICS Appeal Board within three months of their dismissal.



# Disciplinary process to manage decisions from RHI Inquiry



**KEY**

- Employee Relations
- DOF Senior Management
- Report
- External Panel
- Internal Panel
- Individual
- Appeal Panel

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**STAGE 1 – DECISION OF EXTERNAL PANEL**

**REPORT APPENDIX**

**NICS Disciplinary Decision form for recording action in respect of Disciplinary casework**

<b>Employee name</b>	
<b>Payroll number</b>	

<b>A: Decision:</b>	
<b>No Further Action</b> <input type="checkbox"/>	<b>please go to Section D</b>
<b>Proceed to charge</b> <input type="checkbox"/>	
<b>Extract of Report to be included:</b>	



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**B: Charge:**

**Misconduct (Annex 1 of 6.03 Discipline Policy):**

**Or**

**Gross Misconduct (Annex 2 of 6.03 Discipline Policy):**

**C: Charges:**

**1:**

**2:**

**3:**

**D: No Further Action reason:**



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**E: Rules of Conduct that have been breached:**

**6.01 Standards of Conduct**

**Code of Ethics**

**6.03 Discipline Policy**

**Annex 1 of Discipline Policy**

**Annex 2 of Discipline Policy**

**Other relevant policy**

**List of conduct (by letter):**

**List of conduct (by number):**

**Description:**

**F: External Panel Decision complete:**

**Name:**

**Date:**

**Name:**

**Date:**

**Name:**

**Date:**