# People & TalentProcedure

## Disciplinary Operational Staff

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### Introduction

Cumbria Fire and Rescue Service aims to deliver the best possible service to our communities and expects the highest levels of conduct and behaviour from our employees to achieve this.

This procedure and associated guidance specifically applies in cases of conduct. Capability and performance issues should be dealt with in accordance with the Grey Book Capability Procedure and attendance issues should be dealt with in accordance with the Grey Book Absence and Wellbeing Procedure.

This procedure is not intended to penalise employees but to enable them to improve their performance in order to meet the services’ objectives, to provide quality services and treat people with dignity and respect. The aim of this procedure is to ensure consistent and fair treatment for all employees.

It is important that managers seek advice and support from the HR team at the earliest opportunity when implementing any part of this procedure.

Scope

This policy applies to all operational employees of Cumbria Fire & Rescue Service.

For questions or assistance with this, employees are encouraged to contact the HR team on HR@cumbriafire.gov.uk.

Principles

This procedure is based on the following principles:

* Informal action will be considered, where appropriate, to resolve problems.
* No disciplinary action will be taken against an employee until an internal investigation has occurred.
* For formal action the employee will be advised of the nature of the allegation(s) against them and will be given the opportunity to state their case during the investigation process before any decision is made at a disciplinary hearing.
* Employees will be provided with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.
* At all formal stages of the procedure the employee will have the right to be accompanied by a trade union representative or work colleague. Employees may wish to arrange for accompaniment at informal meetings for support.
* No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice or payment in lieu of notice. All mitigating circumstances will be considered in each case.
* An employee will have the right to appeal against any formal disciplinary action.
* There are 3 Stages to the discipline procedure, dependent on the alleged seriousness of the misconduct, the procedure may be implemented at any of the stages.

The disciplinary procedure is designed to cover behaviour which is contrary to that necessary for ensuring a safe and efficient workplace, and for maintaining good employment relations. Such behaviour could include, but is not limited to:

* Poor or unprofessional behaviour leading to misconduct, such as, fighting or drunkenness.
* Misuse of company facilities (for example, e-mail and internet).
* Persistently unreasonable or uncooperative behaviour, and unsatisfactory work performance such as persistent poor timekeeping, repeated or serious failure to follow instructions.
* Harassment, victimisation or bullying.
* Unauthorised absences.

Where misconduct issues are arising due to personal circumstances, every effort should be made by the line manager to support the employee and resolve the issue informally using the relevant procedure (e.g. Disciplinary Procedure, Capability Procedure or the Absence and Wellbeing Procedure) where appropriate.

Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and thus potentially liable for summary dismissal. It is still important to establish the facts before taking any action.

Examples of gross misconduct might include:

* Theft or fraud.
* Physical violence or bullying.
* Deliberate and serious damage to property.
* Serious misuse of the Authority’s property or name.
* Deliberately accessing pornographic, offensive or obscene material.
* Unlawful discrimination or harassment.
* Bringing the Authority into serious disrepute.
* Serious incapacity at work brought on by misuse of alcohol or illegal drugs.
* Causing loss, damage or injury through serious deliberate or unreasonable negligence.
* A serious breach of health and safety rules.
* A serious breach of confidence.

## Procedure

### Informal stage

This is an informal discussion with the employee’s line manager. The separate formal stages of initiating action, investigation, hearing and decision are not relevant at this stage. The informal approach means that minor problems should be dealt with quickly and confidentially. The line manager will speak to the employee about their conduct and may put this in writing although it would not form part of an individual’s disciplinary record.

At the informal stage the manager should ensure that employees are clear of the expected outcomes and the process by which they will be achieved.

### First formal stage

An employee’s line manager, at Watch Manager level or above, may initiate the disciplinary process and investigate following discussions with the commissioning manager (this would normally be the Duty Area Manager). Where, following a disciplinary meeting, the employee is found guilty of misconduct; a possible outcome could be to give them a warning. An additional recommendation may be for the employee’s line manager to provide support and development through an action plan. Where the issue is one of unsatisfactory performance or unsatisfactory attendance, managers should refer to the Capability Procedure or Absence and Wellbeing procedure.

A warning must give details and an explanation of the decision. It should warn the employee that failure to improve or modify their behaviour may lead to further disciplinary action and advise them of their right of appeal. A first stage warning should be disregarded for disciplinary purposes after six months.

A formal written warning may only be given to an employee by a Station Manager or above.

### Second formal stage

Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is sufficiently serious, the sanction may be no greater than a final written warning. This sanction may only be issued after a further investigation and hearing. An additional recommendation may be for the employee’s line manager to provide support and development through an action plan. Where the issue is one of unsatisfactory performance or unsatisfactory attendance, managers should refer to the Capability Procedure or Absence and Wellbeing Procedure.

A final written warning must give details and an explanation of the decision. It should warn the employee that failure to improve or modify their behaviour may lead to dismissal or to some other sanction and advise them of their right of appeal. A final written warning should be disregarded for disciplinary purposes after eighteen months. Where a lesser sanction is issued, the same right of appeal applies.

A final written warning may only be given to an employee by a Group Manager (or equivalent) or above.

### Third formal stage

Where employees continually fail to improve, or where the offence is sufficiently serious, there should be an investigation and hearing. The sanctions available may include dismissal. Alternatively, the outcome may be a sanction less than dismissal (see guidance for details). An additional recommendation may be for the employee’s line manager to provide support and development through an action plan. Where the issue is one of unsatisfactory performance or unsatisfactory attendance, managers should refer to the Capability Procedure or Absence and Wellbeing procedure.

Employees must be told they have the right to appeal and details of the appeals process.

Any sanction up to dismissal may only be given to an employee by an Area Manager or above.

# People & TalentGuidance

## Disciplinary Operational Staff

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### Stages of Disciplinary Proceedings

The stages of the disciplinary process are as follows and detailed below.

### Informal stage

Issues involving minor misconduct are usually best dealt with informally by the line manager. A discussion is often all that is required. The informal approach means that minor problems can be dealt with quickly and confidentially.

At this informal stage, the manager should ensure that employees fully understand the situation and giving them a written note (e.g. letter or notes of the discussion and any actions), if necessary. This would not form any part of their disciplinary record, but it would be filed on their Personal Record File. The separate formal stages of initiating action, investigation, hearing and decision are not relevant at this stage. At the informal stage the manager should ensure that employees are clear of the expected outcomes and the process by which they will be achieved and may include a time limited development plan.

There will, however, be situations where issues are more serious or where an informal approach has been tried but is not working. At this point it may be appropriate to enter the formal stages of the process.

### First Formal Stage

This stage should be used in cases of conduct where the nature of the alleged issue may warrant a sanction no greater than a written warning. A written warning should be disregarded for disciplinary purposes after six months.

### Second Formal Stage

Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, the employee may be issued with a final written warning – but only after a further investigation and hearing. Alternatively, where the offence is sufficiently serious, action may be initiated at this stage. A final written warning should be disregarded for disciplinary purposes after eighteen months.

### Third Formal Stage

Where employees fail to improve, or where the offence is sufficiently serious, following an investigation and hearing, employees may be dismissed. This stage should be used in all cases where the employee is subject to a final written warning and/or where the alleged offence is sufficiently serious that it may warrant dismissal or an alternative sanction short of dismissal.

Further details on the investigation and hearing at these stages are detailed below.

## Wellbeing

Going through a disciplinary process can be very stressful; it is important that employers consider the wellbeing and mental health of their employees.

Looking out for the employee's wellbeing and offering support can help prevent:

* Absence.
* Mental health issues arising/getting worse.

In the first instance of the disciplinary procedure being initiated, the employee should be informed of which manager has been named to provide them with support (known as the Support Manager) throughout the process, usually their line manager, or an alternative equivalent where appropriate. This manager should maintain regular contact with the employee and may also assist them to identify a trade union representative and/or colleague who can also provide support. All individuals/managers involved in the process need to prioritise sticking to agreed timescales wherever possible to minimise the impact on employees.

The manager may also signpost the employee to the Employee Support Pages if required. This includes information and resources on the following:

* Health and Wellbeing Helpline
* Mental Health Support
* Self-referral for counselling (should employees not wish their manager to make the referral for them)
* Alcohol and substance misuse
* Bereavement support

As stated above, being part of a disciplinary process can be a very stressful situation. Employees who are exhibiting signs of stress or disclose their feelings/symptoms of stress to their manager, may benefit from the use of the organisation’s managing stress resources which can be found on the Health and Safety pages. This includes an individual stress risk assessment which can be completed by the employee with their line manager to try and identify what support could be provided to assist them. The Employee Support page also signposts to other organisations that can offer support in managing stress.

Line managers should also provide the employee with appropriate support when returning to the workplace if they have been absent at any time throughout the disciplinary process, including due to suspension or sickness absence. This can be a very difficult experience for individuals, and they may benefit from the support or resources listed above. Employees may also benefit from more regular contact with their manager to discuss how they are feeling and if they are finding any particular aspect of their return to work difficult.

Managers are encouraged to contact People Management or Occupational Health for further information or relevant support when required.

## Right to be accompanied/role of the companion

Employees have a statutory right to be accompanied by a fellow employee or trade union official of their choice at all formal stages of the procedure.

In addition, it is good practice for employees to be provided with the opportunity to be accompanied at the investigation stage (including the fact-finding/information gathering) for support, although this should not frustrate the process.

Fellow employees or trade union officials do not have to accept a request to accompany an employee, and they should not be pressurised to do so.

An employee or trade union official who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfill that responsibility. This should cover the hearing and allow time for whoever is accompanying the employee to familiarise themselves with the case and confer with the employee before and after the hearing. A request for reasonable paid time off by a trade union official to accompany an employee employed by another fire authority in the same region shall be given due consideration by the respective employers.

Employers should cater for an employee’s and/or companions’ reasonable specific requirements at a hearing, for example, providing for wheelchair access if necessary.

Before the hearing takes place, the employee will inform the hearing manager who they have chosen to accompany them at least 3 days prior to the hearing.

The companion should be allowed to address the hearing in order to:

* Put the employee’s case.
* Sum up the employee’s case.
* Respond on the employee’s behalf to any view expressed at the hearing.

The companion can also confer with the employee during the hearing and participate as fully as possible in the hearing, including asking witnesses questions. The companion has no right to answer questions on the employee’s behalf, or to address the hearing if the employee does not wish it, or to prevent the employer from explaining their case.

## Fact Finding/Information Gathering

In most cases any potential disciplinary issue should start with a fact finding/information gathering exercise. Managers are encouraged to seek people management advice prior to undertaking a fact-finding. The fact-finding/information gathering enquiries will be carried out by the manager of the employee unless there are reasons why an alternative manager should complete the process. A fact-finding/information gathering exercise is usually undertaken in the first instance to understand what has occurred and whether the commissioning of a formal investigation is required. This may include speaking to the employee. The employee concerned must be given details of the complaint or incident as far as it is known.

If the enquiry is completed by the employee’s line manager, they may decide to deal with the issue informally. If the manager is of the view that formal action may be required, they should refer the issue to the commissioning manager by providing the information collated.

In exceptional circumstances it may be that fact finding/information gathering cannot be completed because of circumstances outside the control of the Service. Advice should be taken from People Management before a decision is taken on whether to proceed in the absence of a fact finding/information gathering meeting.

## The Role of the Commissioning Manager

It is important that the discipline procedure is applied consistently and fairly. To aid this, a service Commissioning Manager is available to provide advice and guidance when the issue is believed to be of a level that warrants the implementation of a formal stage of the procedure. The Commissioning Manager will normally be an Area Manager or above, depending upon the position of the employee concerned and the requirement for impartiality in the case.

The Commissioning Manager will be supported by a People Management representative who will provide advice on the disciplinary procedure and process, as well as any other relevant employment matters related to the case. The Commissioning Manager should seek advice from People Management before making a decision on whether to initiate the formal disciplinary procedure.

The relevant manager who has conducted a fact finding/information gathering exercise will present the information to the Commissioning Manager for consideration.

If the issue involved an Area Manager or above, a Principal Officer would commission an independent investigation.

The service reserves the right to change the Commissioning Manager as circumstances dictate. This will be influenced by impartiality, fairness and perceived involvement and training. The service will maintain a disciplinary Commissioning Manager’s register to record decisions taken and rationale.

Where it has been identified that there has been a potential breach of discipline on the basis of the evidence immediately available and it is believed that the issue should enter the formal process, contact should be made with the relevant Area Manager (normally the duty Area Manager), who will seek advice and determine the way forward.

Following presentation of the information related to the incident to the Commissioning Manager they will:

* determine whether a formal investigation or further fact finding should be completed.
* advise the line manager to proceed with the investigation (at first formal stage only) or they will appoint an Investigation Officer (IO) and contact the newly appointed IO to inform them and provide indicative timescales for completion of the investigation which will vary depending on the scope of the investigation.
* draw up and agree the allegation(s) to be included in the notification of disciplinary investigation letter that will be written by the IO.
* Provide advice in relation to possible suspension from duty and complete a suspension risk assessment and regular suspension reviews in consultation with the manager.

Where appropriate, reference should be made to the relevant service policy, Code of Conduct, Code of Ethics, or procedure that the misconduct has breached.

Additionally, the Commissioning Manager will provide direction on any appeal that is submitted.

## Allegations

Allegations must be clear and specific and should, throughout the disciplinary process, be consistent about the nature of the misconduct which is being investigated. Allegations should not be duplicated. Where known, allegations should include details of the alleged event/s including, locations and dates. Allegations must be sufficiently detailed to allow the employee to provide a thorough response during the fact finding and investigation**.** Allegations must be notified to the employee in writing at the earliest stage possible. Any new allegations that come to light during the investigatory stage can be added to the process and brought to the employee’s attention in writing. All new allegations must be put to the employee even if they have already been interviewed.

Any disciplinary sanction must only be imposed in respect of allegations that were sufficiently investigated and brought to the employee’s attention in writing as part of the proceedings.

Any complaint or incident involving financial irregularity must be immediately notified to the Executive Director, Corporate, Customer and Community Services, before proceeding with any disciplinary procedure or action. Serious cases may also need to be reported to the Police who might then conduct a criminal investigation.

Any complaint involving suspected sexual, physical or emotional abuse against children and/or vulnerable adults must also be investigated using Safeguarding Procedures; this may involve a joint approach with the Police. A formal investigation may still be commissioned during the course of criminal proceedings, further guidance on this is detailed below.

The line manager must inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours, or the Position of Trust Lead of any complaints involving adults at risk.

The Commissioning Manager will support the line manager or Investigation Officer on forming the allegations based on the fact finding/information gathering. The IO will write to the employee to advise them that an investigation is to be carried out and inform them of the allegations.

## Gross Misconduct

If a Commissioning Manager considers the alleged incident may be considered gross misconduct, and thus potentially liable for summary dismissal, it is still important to establish the facts before taking any action. Gross misconduct examples were listed earlier and generally are those resulting in a serious breach of contractual terms. A short period of suspension with full pay may be helpful or necessary. It is a core principle of reasonable behavior that employers should give employees the opportunity of putting their case at a disciplinary hearing before deciding whether to take action. This principle applies as much to cases of gross misconduct as it does to ordinary cases of misconduct.

## Suspension

It is impossible to predict the full range of circumstances which will arise in disciplinary cases. Emphasis will always be on a fair resolution within an appropriate timescale. In some cases, it may be appropriate to suspend an employee from the workplace while an investigation or preparation for a disciplinary hearing takes place, this is usually after a fact finding/information gathering exercise has taken place.

Suspension should not be an automatic response to any allegation of misconduct however serious, andmust only be undertaken as a last resort, where other reasonable alternatives have been ruled out. An employee should only be suspended if the employer has reasonable and proper cause to do so. Circumstances which may lead to restriction of duties or suspension include, but are not limited to:

* Cases where allegations, if proven, may be regarded as gross misconduct.
* Where there has been a significant breakdown of the employment relationship
* Where there are risks to property or other parties
* Where there is reasonable concern that evidence may be tampered with, or witnesses may be intimidated
* There is a risk of significant harm to children or vulnerable adults.

A decision to suspend an employee will usually be undertaken by the Commissioning Manager and advice must be sought from People Management. A suspension risk assessment must be completed prior to a decision being taken to suspend, to demonstrate that due consideration has been given to the suspension and that any alternatives to suspension have been fully considered. The completed suspension risk assessment should be added to the disciplinary commissioning managers register and include review periods – a form available for use is shown at Appendix 1. The service will endeavour that all periods of suspension are kept to a minimum and will be reviewed as necessary.

Suspension is usually undertaken at a meeting by the line manager or relevant on duty Area Manager and is followed up with a letter, which is given to the employee by hand or posted to their home address afterwards. When suspending an employee, they should be given the opportunity to be accompanied by a trade union representative or work colleague at all meetings. However, the non-availability of such a person should not unreasonably delay the process. The employee should be told that a serious issue has been reported that could potentially lead to an allegation of gross misconduct. An outline of the complaint or incident should be given to the employee to allow them the opportunity to respond. Once the employee has given a response, the meeting may be adjourned for the response to be considered and for advice to be taken, if necessary. If a satisfactory explanation is not given at the meeting the employee should be suspended, pending a full investigation into the allegation(s). A separate investigatory interview will need to take place at a later date but as soon as possible following the suspension.

It is also appropriate at this stage to highlight any conditions which will apply during the period of suspension, for example, communications channels, availability to attend meetings, facilities to meet with their companion, etc. In all cases of suspension, all property, keys, fobs, mobiles, access to ICT equipment should be returned and ICT accounts suspended. If required, supervised access to the workplace can be arranged via the person’s line manager e.g. to collect personal belongings.

It should be made clear to the employee that where the decision to suspend is taken as a precautionary measure under the Disciplinary Procedure, it is not a presumption of guilt and is not a form of disciplinary action. However, any breaching of the conditions of the suspension as outlined in the suspension letter will be dealt with immediately and as a serious matter.

Employees who are suspended should be offered appropriate support and contact should be maintained with them through the person outlined in the suspension letter. This may be their line manager or some other neutral party. Sources of support can be found in the Wellbeing section above.

Suspensions must be recorded on iTrent by the employee’s line manager or Commissioning Manager where appropriate and should be kept under regular review, a minimum of once per month is recommended. The Commissioning Manager is responsible for ensuring that suspension is reviewed by seeking information from the IO. At each review the continuing need to suspend should be considered and recorded.

Where an employee is suspended, they will receive full pay unless they commence sickness absence, in which case their pay will be in accordance with sickness entitlements and absence management procedure. If the employee is absent from work due to sickness it may be appropriate in certain circumstances to delay the suspension until the employee is fit enough to return to work i.e. the employee is absent from work due to sickness as an alternative to suspension. Any employee who is signed off as sick during a period of suspension may have their suspension rescinded temporarily until such time as they become fit for work. Every case will be assessed on an individual basis and advice should always be sought from People Management

Full pay for those employees on the On-call duty system will be calculated on the basis of their daily rate in accordance with the relevant Collective Agreement or policy.

Consideration should be given to any information provided to colleagues to explain the absence of the individual. It is important that a need-to-know approach is adopted in order to maintain confidentiality. A suggested approach to this would be to bring the team together and simply inform them that the employee is absent from work at present and the arrangements that may be put in place to cover their work. They should also be informed that when asked about the employees’ absence to relay the same information.

During the investigation the investigating officer and/or the employee may suggest that the matter is deal with under the Agreed Outcomes policy; in which case, the investigating officer should refer back to the commissioning manager for a decision. The Agreed Outcomes policy provides further information on this process.

## Carrying out an investigation

The manager/IO must give their enquiries the highest priority and carry them out without undue delay whilst ensuring that the allegations are investigated thoroughly. The IO will be an appropriate manager up to and including Area Manager and will be assigned based on the nature of the allegations. A People Management Advisor can provide advice to the manager/IO during an investigation. IO’s may want to complete an investigation plan.

The investigation should include:

* Holding a preliminary interview with the employee concerned at the earliest possible opportunity.
* Interviewing all witnesses
* Obtaining relevant documentary/electronic evidence. Care should be taken to follow GDPR and other related legislation. Advice should be sought from People Management if necessary.
* Writing a report summarising the evidence and stating whether or not there is reason to believe that the evidence substantiates the allegation/s. N.B. the investigation/IO will not decide on whether the issue is proven or decide on any disciplinary sanction. The decision on whether the matter progresses to a hearing will be made by the Commissioning Manager.

### Conducting the investigation interviews

The employee/witnesses are required to co-operate with the investigation and to attend any subsequent meetings. They have a responsibility to:

* Meet with the investigator.
* Put forward their own account and explanation of the event/s being investigated.
* Answer the investigators questions truthfully.

Investigating Officers should:

* Ensure that the employee/witness has been given reasonable written notice of the meeting and that they are aware of the reason for the meeting.
* Make the employee aware of support available to them.
* If it becomes apparent during the course of investigation that a person is at risk e.g. victimisation or intimidation, inform the appropriate manager immediately.
* Ensure the meeting place is appropriate – comfortable, private, free from interruptions. It may be useful for the interview to take place at a “neutral” location.
* Consider making any reasonable adjustments as necessary.
* Consider arranging for someone to note take for them.
* Explain the purpose of the interview.
* Ensure the employee has had the opportunity to be accompanied and make arrangements for this. When making these arrangements this should not frustrate the investigation.
* Ensure the employee/witness understands the purpose of the interview.
* Given the opportunity for the employee to describe their version of events.
* Ask the employee if they can identify any witnesses or documentary evidence.
* Ask open ended, non-leading questions.

Ask clarification questions and summarise events.

* If any losses involving cash, property, store or other financial or potentially fraudulent matters are suspected or alleged during the course of the investigation, inform the manager and internal audit immediately.

Following the investigation interviews a statement should be prepared for the employee/witness to agree. The statement is not intended to be a verbatim record. Amendments can be made to the statement by mutual agreement, and it may be possible for reasonable additions to be added in after the investigatory interview, where they serve the purpose of clarifying events. A copy of the interview minutes should be provided to the interviewee for their records.

Once agreed, the statement shall then be included in the investigation report. Employees/witnesses will be required to sign copies of their statements. Email confirmations for accuracy will suffice. If there is a need to go back to the employee to clarify events or ask further questions after the interview has ended, this can be done via phone, video call or email, if appropriate, as long as a written summary is agreed and included with the investigation report.

Should an agreement not be made on the content of the record then both versions of the record should be submitted as evidence in the report.

Recording equipment is not permitted for use in investigation interviews.

### Investigation Report

An investigation report should be prepared for the Commissioning Manager who initiated the investigation. The report should summarise the findings of the investigation in order for a decision to be made on the appropriate next stages of the process.

The investigating officer should, in respect of each allegation, group the evidence into the following groups:

* **Being unfounded** – to reflect cases where there is no evidence or proper basis to support the allegation.
* **Unsubstantiated** – there is insufficient evidence to either prove or disprove the allegation.
* **Substantiated** – there is sufficient evidence to prove the allegation.
* **False** – there is sufficient evidence to disprove the allegation.
* **Malicious** – there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive.

**The investigating officer must keep the employee informed of the progress on the case. If the investigation is likely to be delayed the IO must make the employee aware as soon as possible.**

### Following Completion of the Investigation

Upon completion of the investigation the Investigating Officer will be required to present the report back to the Commissioning Manager. The Commissioning Manager will then seek advice from People Management before deciding from the following what action to take:

* Request that further investigation is carried out for clarity.
* Not proceed with the matter
* Deal with the matter on an informal basis.
* Refer the matter to a stage 1 hearing.
* Refer the matter to a stage 2 hearing.
* Refer the matter to a stage 3 hearing.

The Investigating Officer does not form any part of the decision-making process. f

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## Disciplinary Hearings

### Arranging a Hearing and Notifying the Employee

If following an investigation, the issue is referred to a hearing the following minimum notice periods apply (although this can be shorter or longer if all parties are in agreement):

* Stage 1 – 7 days
* Stage 2 – 10 days
* Stage 3 – 21 days

If it is decided that there is a case to answer, the Commissioning Manager will be responsible for the appointment of an impartial hearing manager. The hearing manager will notify the employee, in writing, giving the appropriate days’ notice of the disciplinary hearing date and who will be in attendance. The notification letter should contain the disciplinary report and appendices, agenda and disciplinary procedure. The notification should also give the date and time of the hearing and advise the employee of their right to be accompanied. It is the IO’s responsibility to arrange the hearing and to organise a note taker (if required) and People Management advisor to attend the meeting.

The notification should contain enough information for the employee to fully understand the case against them and the reasons why this is not acceptable. If the employee has difficulty reading, or if English is not their first language, the manager should explain the content of the letter to them orally. The employee will be given copies of all documents that will be produced at the hearing.

### Employee Response

The employee must confirm their attendance to the Investigating Officer and also notify them if they plan on submitting any documentation to support their case and the name of the person who will be accompanying them at least 3 calendar days prior to the hearing. Failure to adhere to the above may result in this evidence not being considered.

Although employees should make every effort to attend disciplinary hearings. In exceptional circumstances, the employee may request an alternative date within 7 days of the original. The employee should contact the IO in those circumstances.

It is the responsibility of the employee to advise the service, prior to any hearing, if they have a medical issue that could have a bearing on the case or, they have a protected characteristics under the Equality Act 2010 which is likely to impact on their case or if adjustments are required. The service may request a referral to Occupational Health for advice before proceeding with the disciplinary process.

### Witnesses

The employee and employer may call witnesses or submit witness statements. Notification of witnesses and witness statements should be provided by the employee at least 3 calendar days prior to the hearing.

Where an employee would like to call any witnesses to support their case, they should provide the names of those who will be attending. It is the responsibility of the employee to make arrangements for the attendance of any witnesses.

Where there is a witness from outside of the service who is not prepared to attend the hearing, a signed statement may be submitted.

### Non-Attendance at Hearings

An employee who cannot attend a hearing should inform the manager/IO in advance, as soon as possible. If the employee fails to attend through circumstances outside their control, and unforeseeable at the time the hearing was arranged (e.g., illness), the IO should arrange another hearing. A decision may be taken at a hearing in the employee’s absence if they fail to attend the rearranged hearing without good reason. An employee’s companion may attend on their behalf, if the employee is unable to attend. If an employee’s companion cannot attend on a proposed date, the employee has a statutory right to suggest another date so long as it is reasonable and is not more than 7 days after the date originally proposed by the employer. This 7-day time limit may be extended by mutual agreement.

### At the Hearing

Disciplinary hearings should be held in a confidential manner and will be conducted in accordance with the agenda at Appendix 2. To summarise, the process will be explained to the employee. The case against the employee will be stated including the evidence. The employee and/or their companion will be given every opportunity to set out their case and answer any allegations that have been made. The employee will also be allowed to ask questions, present evidence and/or information, call witnesses, question witnesses and character witnesses where appropriate and be given an opportunity to raise points about any information provided by witnesses.

The hearing manager should ensure that there is a record made of the hearing. Audio/video recordings of hearings are not permitted. The covert recording of any meetings or conversations is forbidden and if undertaken will be considered as an act of gross misconduct. The allocated People Management Advisor will attend the hearing and if necessary, a note taker. Employees will be given a copy of the meeting notes following the hearing.

If new information has come to light during the hearing, then this should be given to the employee in writing, with sufficient time to consider it before giving the employee the opportunity to respond at a reconvened hearing.

### Making a Decision

Before coming to a decision, the hearing manager should consider:

* Has there been as much investigation into all aspects of the matter as is reasonable in the circumstances? If the answer is "no" or if new information has come to light during the hearing that requires investigation, the case should be adjourned, and the investigating officer should be asked to carry out additional investigations and for a further report.
* Whether they reasonably believed that the employee did, or failed to do, what has been alleged and are there reasonable grounds on which to sustain that belief based on the balance of probabilities i.e. more probable than not (if the answer to either part is "no" then no formal action should be taken - although some management action might be required such as the creation of an action plan using the relevant procedure).
* Whether the allegation(s) are sufficiently serious to justify a sanction? (This should involve consideration of the actual or potential effects upon the community, fellow employees, the public and the reputation of the service).
* Whether the decision is within the band of reasonable responses of a reasonable employer in the circumstances
* Whether there are any mitigating circumstances put forward during the hearing which would affect the decision and/or any recommendations that are given as an outcome of the matter.

After consideration of the above, the hearing manager may decide that there is insufficient evidence to award a disciplinary sanction and therefore decide not to pursue the matter. Under these circumstances the employee will be advised at the end of the hearing and the decision will be confirmed in writing within 7 calendar days.

### Sanctions

Where it is necessary to award a disciplinary sanction the hearing manager should take into consideration the following:

* The nature of the offence.
* The nature of the employee’s work.
* The employee’s length of service and level of responsibility and seniority.
* Any current warning on the employee’s record. Expired warnings should be disregarded unless there are exceptional circumstances, an example of this may be a repeated pattern of similar misconduct issues alongside lapsed warnings.
* What previous precedents have been set for a similar disciplinary offence/s.
* Any relevant information submitted by the employee and/or their companion during the disciplinary process.
* Any health or training issues.
* Any mitigating factors or circumstances which may affect the initial decision on appropriate sanction.

It will be the hearing manager’s responsibility to make a decision to award the following sanctions/recommendations:

* Deal with the matter on an informal basis.
* Issue a written warning, which will remain live on the employee’s record for a period of 6 months.
* Where the offence is sufficiently serious or the employee has a live written warning on their PRF - issue a final written warning, which will remain live on the employee’s record for a period of 18 months (at stage 2 and 3 hearings).
* Dismiss the employee with or without notice (at stage 3 hearings only). Dismissal without notice is for cases of gross misconduct only.

Alternatively, depending upon the circumstances of the case, the hearing manager may award one of the following sanctions as an alternative to dismissal (at stage 3 meetings only). These sanctions may be any combination of the following:

* Formal warning up to a final.
* Demotion either within role or no more than one role (a demotion of more than one role can only be done with the agreement of the employee).
* Disciplinary transfer (which should involve no loss of remuneration unless the employee agrees otherwise should be within the same duty system).
* Loss of pay up to a maximum of thirteen days.

It must be remembered that in most cases, unless the nature of the offence warrants dismissal, the hearing manager will take the appropriate steps to bring about an improvement in the employee’s conduct rather than purely punishment. Sanctions will normally commence at first written warning in most cases, except where the offence warrants a more severe sanction. It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee’s misconduct– or its continuance – is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, general public or colleagues, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss even though the employee has not previously received a warning for misconduct.

### Notifying the Employee

The employee should be advised of the outcome by reconvening the hearing. Written confirmation will be communicated to the employee no later than 7 calendar days following the hearing. The decision shall include a description of the nature of the issue, any required remedial action and the timescale for improvement. Where appropriate, and not in cases of dismissal, the decision shall include the following:

* The improvement that is required.
* The timescale for achieving this improvement.
* A review date.
* All support the employer will provide to assist the employee.

Employees should also be informed that if there is no improvement, further stages, leading ultimately to dismissal, may be invoked.

A record of the warning should be kept, but it should be disregarded for disciplinary purposes after the allocated time period, i.e. six or eighteen months. A warning must give details and an explanation of the decision. Additionally, employees should be informed of the right of appeal.

On completion of any disciplinary hearing, the hearing manager should ensure that a copy of the outcome letter and all paperwork is forwarded to the Service Centre for filing on the employee’s record.

**Appeals**

### Making an appeal

Employees who have had disciplinary sanction awarded will be given the opportunity to appeal. Employees will be allowed to appeal no later than seven days after they have been informed of the decision.

Where an employee appeals against disciplinary action taken against them, they must put their grounds of appeal in writing to the original hearing manager. The grounds of appeal will normally be one or more of the following:

* There was a defect in the procedure.
* The issue is not proven on the balance of probabilities.
* The disciplinary sanction was too severe.
* New evidence has come to light since the hearing which will have an impact on the decision.

It will not be sufficient for the employee to cite one or more of the generic reasons quoted above as grounds for their appeal. They should provide sufficient details/evidence to enable the appeal manager/appeal panel, where applicable, to make a decision as to whether or not a review or rehearing is required.

### Following receipt of an appeal

The original hearing manager should contact the Commissioning Manager who will identify a higher-level manager to either conduct a review or arrange an appeal hearing. This manager should have had no prior involvement in the original decision/investigation process. Normally the appeal manager will conduct the appeal hearing as a rehearing (in full or part), where this is required. A rehearing would normally be required in the following instances (this is not necessarily an exhaustive list):

* There was a procedural defect at the original hearing such that the hearing was unfair.
* New evidence has come to light which needs to be heard in full.
* There is a dispute about evidence given by one or more witnesses at the original hearing. In these cases it may be necessary to rehear the witness evidence at the appeal.

Otherwise the appeal hearing will be conducted as a review.

Where the appeal hearing is conducted as a review, the appeal manager will have available all the documents presented to the original hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original disciplinary hearing, the letter of appeal and all other relevant information. The appeal manager will reach findings based on the documentation and the submissions at the appeal hearing from the parties.

Arrangements in respect of the appeal will be the responsibility of the original hearing manager. They will be responsible for arranging the date/time/location for the appeal and collating and sending out all relevant documentation with support from People Management. When the arrangements have been completed, the original hearing manager will write to the employee informing them of the details.

Following the invite the original hearing manager (in liaison with People Management) and the appellant must each submit the following documents to the appeals manager at least five calendar days prior to the hearing:

* A full written statement of the case including the grounds upon which the appeal is presented (or resisted, as appropriate).
* Copies of any documents the party concerned intends to use in evidence and.
* The identities of any witnesses the party concerned intends to call.

The original hearing manager will be responsible for ensuring that the panel, the original hearing manager and the appellant have copies of all documentation/names of witnesses to be used at the hearing.

### Appeal Hearing

At the appeal hearing the employee and/or their companion will first put their case by explaining the grounds of appeal and presenting any relevant evidence. The management case will then be put forward, in response to the grounds of appeal, normally by the manager who conducted the original hearing. Relevant witnesses may be brought by either side and be questioned by all parties. The appeal hearing agenda is available at Appendix 3.

### Appeal Outcome

The outcome of the appeal will be either:

* The case against the employee is upheld (in whole or part); the sanction will then be the same or a lesser penalty.
* The case against the employee is not upheld.

The outcome of the appeal should be confirmed by the appeal manager on the day, or it will be communicated to the employee by no later than seven calendar days of the date of the appeal hearing or review. This decision will be final.

In cases of gross misconduct, dismissal will be summary following the hearing. If the employee is reinstated on appeal, pay will be reinstated and backdated.

In other cases of dismissal, employees shall be given contractual notice of dismissal following the hearing. Every effort will be made to conclude any appeal process within the notice period. Where it has not been possible to conclude the appeal process within the notice period, notice may be extended for a reasonable period with a view to concluding the appeal process within the notice period. If the dismissal is not upheld on appeal, the employee will be reinstated.

In cases of sanctions other than dismissal, the sanctions should not be implemented until any appeal process has been concluded.

On completion of any appeal, the appeal manager should ensure that a copy of the outcome letter and all paperwork is forwarded to the Service Centre for filing on the employee’s record.

## Additional Information

### Where a Grievance is Raised During the Disciplinary Process

In the course of a disciplinary process, an employee might raise a grievance that is related to the case. If this happens, the manager may consider suspending the disciplinary procedure for a short period while the grievance is dealt with. When appropriate, and depending on the nature of the grievance, the hearing manager of the grievance may need to consider recommending that another manager deals with the disciplinary process (see ACAS Code).

###

### Disciplinary Action Against Trade Union Representatives

Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on the union’s functions. Normal standards apply however, if disciplinary action is considered, the case should be discussed, after obtaining the employee’s agreement, with a senior trade union representative or permanent union official.

### Criminal offences

If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. The manager should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody.

The fire and rescue service is a public serving organisation and expects the highest possible standards of its employees and as such would consider very seriously the implications of such conduct on their role and on the reputation of the service.

Any employee of the service arrested in connection with or charged or cautioned with a criminal offence whilst on or off duty, must ensure that his or her line manager is informed at the first opportunity, stating the reason for the arrest and/or the nature of the charge. Failure to do so may result in disciplinary action.

Where it is thought that the conduct warrants disciplinary action the commissioning manager will determine whether suspension and the appointment of an appropriate manager would be necessary to conduct a disciplinary investigation to determine the facts. The commissioning manager will then consider whether the conduct is sufficiently serious to warrant convening a disciplinary hearing.

Where following the above, the conduct requires prompt attention; the service need not await the outcome of the prosecution before taking fair and reasonable action. This action should arise from a properly conducted investigation and disciplinary hearing.

Where the police are involved, they will not be asked to carry out any investigation on behalf of the service and they will not be present at any meeting or disciplinary hearing.

Where the employee is charged with, or convicted of, a criminal offence and refuses or is unable to cooperate with the Service disciplinary procedure, this will not deter the service from taking action. The employee should be given every opportunity to put forward their case and attend the disciplinary hearings. Ultimately the employee will be advised that a decision will be taken on the basis of information available and could result in dismissal.

In some cases the nature of the alleged offence may not justify disciplinary action. If the employee is in custody or on remand, the service will make a decision whether, in light of the needs of the service, the employee’s job can be held open.

Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the service will consider whether alternative work is appropriate and available.

Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the disciplinary procedure, this will not deter it from taking action. The employee may choose not to respond to any further questions in such cases the employee will be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available and could result in dismissal. People Management advice should always be sought in these cases.

### Promotion

Employees who have live disciplinary sanctions are not eligible to apply for promotion (including acting up and temporary promotions).

### Other Legal Issues

It should be noted that the appeal stage against dismissal or other serious sanction short of dismissal is part of the statutory procedure and if the employee pursues an employment tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal.

Managers and employees will normally be expected to go through the dismissal and disciplinary procedure unless they have reasonable grounds to believe that by doing so, they might be exposed to a significant threat, such as violent, abusive or intimidating behavior, or they will be harassed. There will always be a certain amount of stress and anxiety for both parties when dealing with any disciplinary case, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.

Equally, the procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad but in the case of manager absence, wherever possible they should consider appointing another manager to deal with the procedure.

# Appendix 1 – Suspension Risk Assessment

|  |
| --- |
| **DETAIL OF CASE UNDER CONSIDERATION:**  |
| **Date:** |  |  | **Nature of allegation against employee assessed for suspension:** |
| **Commissioning Manager:** |  |  |  |

|  |
| --- |
| **ASSESSMENT:** |
| **Hazard****(Hazards will carry individual weighting)** | **Detail** | **Likelihood** |
| **Highly****Unlikely (1)** | **Unlikely (2)** | **Likely (3)** | **Highly****Likely (4)** |
| **Is there a risk to individual (i.e. physical or emotional well-being)?** |  |  |  |  |  |
| **Is there a risk to other employees (i.e. physical, emotional, trust)?** |  |  |  |  |  |
| **Is there a risk to others (i.e. community members)?** |  |  |  |  |  |
| **If not suspended would this pose a political risk?** |  |  |  |  |  |
| **If not suspended would this pose a risk to Fire and Rescue Service reputation?** |  |  |  |  |  |
| **Would suspension be in the public interest?** |  |  |  |  |  |
| **Is the allegation one that may lead to or involve significant legal action i.e. fine, imprisonment, ASBO, etc. (not minor traffic offences)?** |  |  |  |  |  |
| **Other risks (specify). Disruption /Interference with investigation through discussion and influence with colleagues**  | . |  |  |  |  |
|  |  |  |
| **CONTROL MEASURES:****Would the implementation of control measures lessen the risk?** | **Yes** | **No** |
|  |  |

|  |  |  |
| --- | --- | --- |
| **Control Measure 1** |  | **Responsible Manager** |
| **Control Measure 2** |  | **Responsible Manager** |
| **Control Measure 3** |  | **Responsible Manager** |

**OVERALL ASSESSMENT:**

***This is a value judgement based upon the evidence presented and the professional judgement of People Management.***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ü****Overall Risk Assessment** | **Very Low (8-12)** | **Low (13- 16)** | **High (17 - 25)** | **Very High (26 - 32)** |
| **Suspension not required** |  |  |

**OUTCOME:**

|  |  |  |
| --- | --- | --- |
|  | **Do Not Suspend**   |  **Suspend**  |
| **Summary of Reasons:** |  |

# Appendix 2 – Disciplinary Agenda

The procedure to be adopted at disciplinary hearings is as follows:

1. The person who has conducted the disciplinary investigation (Investigating Officer) will make submissions and may call witnesses.
2. Questions on the management case and witnesses may be asked by
3. the Employee’s representative
4. the Employee
5. the Presiding Manager
6. the Advisor
7. The employee or their representative will reply, put their case, and may call witnesses.
8. Questions may be asked by the Investigating Officer, Presiding Manager of the employee and/or their representative and witnesses and the Advisor may seek clarification on matters raised.
9. The person who conducted the disciplinary investigation (Investigating Officer) shall have a right of reply and may sum up their case but may not introduce any new matter.
10. The Employee or their representative may make a closing submission. No new evidence must be introduced at this stage.
11. The parties will withdraw, and the Presiding Manager will reach a decision with advice from the Advisor. In considering the decision, the Presiding Manager may recall the parties for more information, provided that both parties including any witnesses where appropriate, are recalled together. The decision must be communicated at the earliest opportunity. The decision will also be confirmed in writing. Any decision to lift a suspension will be effective immediately.
12. Advise of right of appeal (disciplinary hearing only)

# Appendix 3 – Disciplinary Appeal Agenda

1. Introductions. Appeal Manager outlines the process for the hearing.
2. The Appellant or their representative will state their grounds for appeal and put their case.
3. Questions may be asked of the Appellant and/or their representative by: -
4. the Management representative
5. Appeal Manager

NB The Advisor may seek clarification on matters raised.

4. The Management representative will reply and then state their case

5. Questions on the case may be asked by

1. The Appellants representative
2. The Appellant
3. Appeal Manager

NB The Advisor (may seek clarification on matters raised)

6 The Appellant or their representative have the opportunity to sum up their case. No new evidence must be introduced at this stage.

7 The Management representative has the opportunity to sum up their case. No new evidence must be introduced at this stage.

8 The parties will withdraw, and the Appeal Manager will reach a decision. In considering the decision, the Appeal Manager may recall the parties for more information provided that both parties including any witnesses where appropriate, are recalled together.

9 The decision must be communicated at the earliest opportunity. The decision will also be confirmed in writing.

# Appendix 4 – Disciplinary Process Map

