

**THE HIGHLAND AND ISLANDS FIRE BOARD  
11 SEPTEMBER 2008  
DISCIPLINARY PROCEDURE**

Agenda Item	
Report No	

Summary

The attached Disciplinary Procedure is based upon ACAS guidelines and has been amended as a result of further consultation with the Fire Brigades Union.

The key amendment to this procedure is that dismissals for acts of gross misconduct will have the right of appeal to an appropriate sub-committee of the Fire Board. All other forms of dismissal will have a final right of appeal within the Service.

1. Background

On October 1<sup>st</sup> 2004, the Fire Service (Discipline) Regulations 1985 were abolished through statute. At that time, Fire Services were required to introduce disciplinary procedures based on Advisory, Conciliation and Arbitration Services (ACAS) best practice guidance, and to ensure that all staff received equality of treatment, it was further recommended that in introducing new disciplinary procedures, consideration should be given to including all employees within the same procedure.

The Board should also be aware that from October 1st 2004, the Employment Act 2002 (Dispute Resolution) Regulations 2004 (issued by the Department of Trade and Industry), requires all employers, regardless of the size of their workforce, to have ACAS compliant disciplinary procedures.

The provisions of this disciplinary procedure would apply to both uniformed and non-uniformed support personnel and meet all statutory obligations placed upon the Board.

2. Consultation

A disciplinary procedure and report was presented and discussed at the last Board meeting. At that time, given the request by the FBU to consider alternative practices, Members asked that additional information be sought, clarifying the processes adopted by other Services and Authorities.

The findings are that there are a variety of approaches including both the process advocated in the previously submitted report, and the approach proposed by the FBU.

Subsequently, the Service has entered into further consultation with the FBU have agreed the attached procedure which is based upon ACAS guidelines and is built upon the guidance contained within the Scheme of Conditions of Service, 6<sup>th</sup> Edition and reflects best practice.

The key amendment to this procedure is that dismissals for acts of gross misconduct will have the right of appeal to an appropriate sub-committee of the Fire Board. All other forms of dismissal will have a final right of appeal within the Service.

Recommendation

Members are asked to approve and adopt the amended Highlands & Islands Disciplinary Procedure as agreed by the representative bodies.

**CHIEF FIRE OFFICER  
25 AUGUST 2008**



# HIGHLANDS & ISLANDS FIRE & RESCUE SERVICE

## DISCIPLINARY PROCEDURE

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### 1. Scope

- 1.1 The Highland and Islands Fire & Rescue Service recognises that disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of employees. These disciplinary procedures have been designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance and will be made available to all employees. They will also be communicated to employees within the correspondence confirming their appointment and at induction.
- 1.2 Management will do all they can to ensure that every employee knows and understands the procedures, including those employees whose first language is not English or who have trouble reading.
- 1.3 These disciplinary procedures apply to all employees – both uniformed and support staff.
- 1.4 These disciplinary procedures are not exhaustive and will not cover every eventuality. They comply with the provisions of The Employment Act 2002 (Dispute Resolution) Regulations 2004 and with the relevant ACAS Code of Practice.
- 1.5 All managers, at every level who may be involved in disciplinary action, shall be trained and competent in the operation of these procedures. Responsibility for the appropriate level of disciplinary action must be in accordance with the relevant role map / job description, the role of the manager and the levels of delegated authority.

Advice on the operation of these procedures will be available from the HR Department.

- 1.6 The basis of this procedure is that the principle of natural justice both applies, and is clearly seen to apply, at every stage. The aim is to ensure that appropriate action can be taken without unnecessary delay, but in a framework which also ensures fairness for both employees and managers.
- 1.7 All problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. It is essential that all problems of this nature are fully discussed and support will be provided with the objective of encouraging and helping employees to improve.
- 1.8 On issues of conduct these procedures may be initiated at any stage

depending on the seriousness of the case.

- 1.9 On issues of incapacity at work brought on by misuse of alcohol or drugs, separate procedures should be considered as an alternative utilising relevant policy and via referral to Occupational Health or onward referral to a recognised counselling service.

## **2. Definition**

- 2.1 These disciplinary procedures are designed to cover behaviour which is contrary to that necessary for ensuring a safe and efficient workplace, and for maintaining good employment relations.
  
- 2.2 The nature of the offence generally falls into one of two categories, unsatisfactory conduct or gross misconduct. The former covers cases involving minor misconduct or unsatisfactory performance/attendance which, if repeated, can subsequently lead to dismissal. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms.

2.2.1 Examples of unsatisfactory conduct might include, but are not limited to:

- bad behaviour, such as fighting or drunkenness;
- unsatisfactory work performance;
- harassment, victimisation or bullying;
- misuse of company facilities (for example e-mail and the internet);
- poor timekeeping;
- unauthorised absences;
- repeated or serious failure to follow instructions;
- negligence resulting in minor damage/loss;
- abuse of time recording systems;
- minor breach of health and safety rules;
- persistent short term intermittent sick absenteeism;
- breaches of Service policy, i.e. Equal Opportunities, Fairness at Work etc.

2.2.2 Examples of gross misconduct might include, but are not limited to:

- theft or fraud;
- physical assault 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 drugs causing loss, damage or injury through serious negligence;
- a serious breach of health and safety rules;
- a serious breach of confidence;
- false particulars given to secure employment (which could have influenced decision to appoint);
- bringing the Service into serious disrepute;
- serious act of insubordination;
- serious breaches of Service policy , i.e. Equal Opportunities, Fairness at Work etc.

The above lists are not exhaustive.

- 2.3 In cases involving alcohol or drugs misuse consideration should be given to the provision made in paragraph 1.9.
- 2.4 Where the conduct in question occurs outside of the working environment, disciplinary action will only be considered where it has a material bearing on an employees contract of employment, brings the reputation/image of the organisation into disrepute and fails to comply with the Code of Conduct.

### **3. Principles**

The procedures set out in this document reflect the under noted principles:

- 3.1 The guiding principle of the procedure is that, in every case except dismissal, the aim is to obtain improvement and remedy problems. Each case shall be treated on its merits in the light of the particular circumstances involved.
- 3.2 No disciplinary action will be taken until the matter has been fully investigated and any decision thereafter to impose disciplinary action will not be taken by the same person who conducted the investigation (Formal Stage 2 and above).
- 3.3 An employee placed on precautionary suspension will be entitled to full pay and maintenance of conditions.
- 3.4 Disciplinary action (i.e. issuing of a warning, action short of dismissal, dismissal etc) will not be taken against an employee until he/she has attended a properly convened hearing, with the opportunity to be accompanied by a trade union representative or fellow employee, and been given the opportunity to respond to the allegations. The employee should be advised, in writing, of the date and time of the hearing and reasonable time given (minimum 7 days first formal stage, 14 days for a second formal stage, and 21 days for gross misconduct, or where due to previous warnings the application of a disciplinary sanction would result in dismissal) to allow the employee to arrange to be represented, if they so wish. *It is the responsibility*

*of the employee to arrange such representation.* The right of representation is restricted to a trade union representative or fellow employee.

- 3.5 In addition, it is good practice for employees to be provided with the opportunity to be accompanied at the investigation stage although this should not frustrate the process.
- 3.6 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.
- 3.7 An employee or lay 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 fulfil that responsibility. This should cover the hearing and allow time for the representative 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.
- 3.8 The Service will make any reasonable adjustments for an employee's disability at a hearing, or for a representative's disability, for example providing for wheelchair access, minicom, etc.
- 3.9 Before the hearing takes place, the employee will tell the manager who they have chosen as a representative.
- 3.10 The representative should be allowed to address the hearing in order to:
  - put the employee's case;
  - sum up the employee's case, and
  - respond on the employee's behalf to any view expressed at the hearing.
- 3.11 The representative can also confer with the employee during the hearing and participate as fully as possible in the hearing, including asking witnesses questions. The representative will not be permitted 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. In exceptional circumstances and with the agreement of the chair, where an employee is inarticulate or clearly unable to answer due to stress, the companion can answer on their behalf.
- 3.12 Depending on the seriousness of the misconduct, disciplinary sanctions may be initiated at any stage and will not necessarily start at the level of first written warning. Apart from gross misconduct, no employee will be dismissed for a first breach of discipline.
- 3.13 Previously expired warnings will be removed from an employee's file and disregarded for disciplinary purposes.
- 3.14 An employee will be informed, in writing of details of the alleged offence(s), any disciplinary action taken, the reason for it, consequences of further misdemeanour and the procedure to be followed to submit an appeal within 7

working days of the hearing.

- 3.15 An employee will have the right of appeal against any disciplinary action within 7 days from receipt of the written outcome. Appeals will not be heard by the manager who issued the disciplinary action. All appeals will normally end at Service level. An appeal against any disciplinary action taken by the Chief Fire Officer or in the case of dismissal for cases of gross misconduct, appeals will be to an appropriate Sub Committee of the Fire Board.
- 3.16 Following an appeal, should any disciplinary action be reconsidered and revised, the employee will be notified accordingly and records amended. Should any disciplinary action be reconsidered and withdrawn, the employee will be notified accordingly, and no further reference will be made to it.
- 3.17 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, if disciplinary action is considered, the case should be discussed, after obtaining the employee's agreement, with a full time official of the union concerned. In these circumstances, guidance must be sought from the HR Department.
- 3.18 If the full disciplinary procedure is not immediately available special arrangements might be required for handling disciplinary matters among employees in isolated locations, or others who may be difficult to reach. Nevertheless the appropriate procedures must be followed where it applies.
- 3.19 Time limits applicable to the different stages of the procedure are set out in the guidance below. These may be varied by mutual agreement.

## **4 Stages of Procedure**

### **4.1 Informal Stage**

- 4.1.1 This is an informal discussion with the line manager to ensure that minor problems are dealt with quickly and confidentially. Therefore the employee does not have the right to be accompanied at such meetings. The employee will be advised of the line manager's concern regarding minor misconduct, unsatisfactory performance or attendance. The line manager will produce a diary note of the action taken. An informal warning will not be placed in the employees personal record file and will not form part of the disciplinary record.
- 4.1.2 At this stage the manager should also ensure that employees are clear about the expected outcomes, the processes by which they will be achieved and that failure to improve could lead to disciplinary action being taken.

### **4.2 First Formal Stage (First Written Warning)**

- 4.2.1 This stage deals with cases of unsatisfactory conduct or performance.

- 4.2.2 Where the manager conducting the disciplinary hearing (Chairperson) is satisfied that the employee is guilty of the allegations he/she will so advise the employee and issue a first written warning.
- 4.2.3 The Chairperson will also advise the employee of the future standards expected by management and of the consequences of failing to achieve this or of further instances of unsatisfactory conduct. Where appropriate this decision shall include the points referred to in paragraph 5.1.
- 4.2.4 The Chairperson should also inform the employee that if there is no improvement, further stages, leading ultimately to dismissal may be invoked.
- 4.2.5 A note of the warning will be retained in the employee's personal record file but will be disregarded for disciplinary purposes after a period of 6 months satisfactory service.
- 4.2.6 Where the Investigating Manager is of the opinion that there is no case to answer the matter will be terminated and the employee so advised. All notes relating to the investigation will be removed from an employees file

### **4.3 Second Formal Stage (Final Written Warning)**

- 4.3.1 This stage deals with continued unsatisfactory performance or conduct, which has not been resolved following the application of stage one above or with matters of a more serious nature.
- 4.3.2 Consideration of any disciplinary action will be handled as in 4.2.2 to 4.2.6 above. Where disciplinary action is taken, the employee will be issued with a final written warning which will be disregarded for disciplinary purposes after 12 months satisfactory service.

### **4.4 Third Formal Stage (Termination of Employment)**

- 4.4.1 This stage deals with continued unsatisfactory performance or conduct or serious misconduct, which has not been resolved at stage two or matters of gross misconduct, which, could justify summary dismissal.
- 4.4.2 Wherever possible attendance and/or advice should be sought from the HR Department at all third stage hearings.
- 4.4.3 Where the Chairperson is satisfied that the employee is guilty of the allegations he/she will so advise the employee and terminate the employee's employment with HIFRS.
- 4.4.4 Where dismissal is because of gross misconduct the employment is terminated immediately and arrangements made to return Service property, clear lockers, desks or personal effects etc.

4.4.5 The Chairperson has the discretion to issue a lesser penalty in proportion to the offence committed and in place of dismissal. These lesser penalties include:-

- a warning;
- demotion (in the case of a uniformed employee this will be either within one 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 (in the case of uniformed employees this should include no loss of remuneration and unless the employee agrees otherwise it should be within the same duty system);
- loss of pay (up to a maximum of 13 days in respect of uniformed staff, or the denial of pay increments for 12 months for support staff).

4.5.6 Notes of sanctions issued at stage three in place of dismissal will remain on file but be disregarded for disciplinary purposes after a period of 18 months satisfactory service.

4.5.7 Appeals against dismissal or sanctions including demotion or loss of pay are to the Chief Fire Officer. Appeals against a warning or disciplinary transfer will be made to an appropriate manager, as defined in paragraph 4.8.5.

#### **4.6 Sequence of Warnings**

4.6.1 In cases of unsatisfactory conduct (including performance and attendance) it is usual for the disciplinary stages to occur sequentially (i.e. first, second and third stage). However, where an employees record improves following disciplinary action, only for it to deteriorate once again, the manager is entitled to consider the individuals previous disciplinary record when determining their outcome..

#### **4.7 Factors to Consider**

4.7.1 When reaching a decision the Chairperson will take the following factors into consideration:-

- nature of the offence/misconduct;
- employee's current disciplinary record;
- employee's experience;
- previous decisions taken for similar offences
- length of service;
- position within HIFRS;
- any mitigating circumstances (external/personal circumstances);
- employee's general record.

#### **4.8 Levels of management responsible for discipline procedures**

4.8.1 It is important that managers understand, and adhere to, their levels of responsibility within these procedures.

4.8.2 As a general rule, the following principles will apply:-

- First Stage** Disciplinary hearing to be chaired by the line manager (or equivalent managerial level) of the employee subject to disciplinary action.
- Second Stage** Where the procedure has reached the second formal stage the hearing should normally be conducted by a manager who is not the individuals line manager but is at the same or higher level, subject to consideration of the organisational structure and line management responsibility.
- Third Stage** Disciplinary hearing to be chaired by a Head of Department Area Manager/ Assistant Chief Fire Officer or, where appropriate Chief Fire Officer. This will include allegations of gross misconduct.
- Gross Misconduct** Where an employee is dismissed on the grounds of gross misconduct, they will have the right of appeal to the appropriate sub committee of the Fire Board.

4.8.3 The lowest levels of line management who can take action within the procedure is in accordance with the role maps or job descriptions. The lowest level at the informal stage would be the Crew Manager, or first level Supervisory Manager.

4.8.4 Where the manager who would normally deal with the issue cannot be available, or, there may be a conflict of interest, another manager at the same or higher level, should be appointed to deal with the case. Where the procedure has reached the second formal stage or higher, the hearing should be conducted by a manager who is not the investigating manager but is at the same or higher level. The investigating manager would normally present the management case at the second and third formal stages.

4.8.5 Subject to training, competence and levels of delegated authority the following table considers the disciplinary process as it may apply to a Firefighter:-

<b>Level of Action</b>	<b>Investigation</b>	<b>Chair Hearing</b>	<b>Appeal To</b>
Formal Stage 1	Watch Manager	Station Manager	Group Manager
Formal Stage 2	Station Manager	Group Manager	Area Manger
Formal Stage 3	Group Manager	Area Manager	Principal Officer
*Gross Misconduct	Group Manager	Area Manager	Fire Board

4.8.6 For support staff with a flatter organisational structure, the investigation will always be conducted by someone more senior than the person facing investigation, with a Head of Department chairing the hearing, but these staff may be from any department within the organisation.

4.8.7 Allocation of investigation responsibilities will be determined by the Head of Department with due regard to the nature of the allegation.

## **5. Unsatisfactory Work Performance**

5.1 Where there are issues of performance, account should be taken of the review of the employee's PDR, which is designed to offer support and assistance whenever possible. The disciplinary process should only be used where actions to remedy unsatisfactory performance, based on the developmental PDR, are not proving effective. An employee who is found to be performing unsatisfactorily should be given a written note detailing the following:-

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement;
- a review date, and
- support the employer will provide to assist the employee.

5.2 In cases of unsatisfactory work performance (and absence) it is appropriate for a line manager to inform the employee that a failure to improve could lead to disciplinary action. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period e.g. six months.

## **6. Absence from Work**

6.1 When dealing with absence from work, it is important to determine the reasons why the employee has not been at work. Reference should be made to the managing absence policy. If there is no underlying capability issue, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.

6.2 Where the matter is being treated as a conduct issue the employee should be informed that failure to improve could lead to disciplinary action being taken. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period e.g. six months.

If the absence is due to (including medically certified) illness, the issue becomes one of capability, and the employer should take a sympathetic and considerate approach. When thinking about how to handle these cases, it is helpful to consider:-

- how soon the employee's health and attendance will improve;
- whether alternative work is available;
- the effect of the absence on the organisation;

- how similar situations have been handled in the past;  
and
- whether the illness is a result of disability in which case the provisions of the Disability Discrimination Act 1995 will apply.

6.3 Where it is established that a major factor relating to an employees conduct is an addiction problem (alcohol, drugs misuse, gambling etc) consideration will be given to a disciplinary referral to an appropriate agency rather than taking disciplinary action.

## 7. **Capability**

7.1 Under the Employment Relations Act 1996 (ERA), a lack of capability is potentially a fair reason to dismiss.

7.2 Capability in relation to an employee means his/her capability assessed by reference to his/her skill, attitude, health or any other physical or mental quality. For the purposes of this policy the focus is on employees who are not capable of meeting the service standards of performance.

7.3 Performance must relate to the position that the employee has attained and the work he/she is employed to do. Issues of capability relating to performance may include a general failure to reach the services standards, inability to manage employees, lack of qualification<sup>1</sup> or a general incompetence or inefficiency.

## 8. **Criminal Offences**

8.1 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.

## 9 **Precautionary Suspension**

9.1 Where the allegation involves gross misconduct or where remaining on duty may adversely affect an investigation or harm the interests of the employee or other parties, the employee may be placed on precautionary suspension. This will subsequently be confirmed in writing, explaining the reasons for the suspension and that it in no way prejudices an allegation. Suspensions will be reviewed every 21 days to ensure ongoing requirement.

9.2 At the meeting held to confirm the precautionary suspension the employee will be advised of any conditions which will apply including communication channels, accompanied visits to any Service premises in order to attend meetings etc.

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<sup>1</sup> ERA 1996 s.98 (3)

- 9.3 Precautionary suspension will be on full pay and conditions.
- 9.4 Where an employee placed on precautionary suspension consequently reports sick, payment will be in accordance with HIFRS's Sick Pay Scheme.
- 9.5 It is important that employees are not placed on precautionary suspension for longer than necessary, as this is neither reasonable nor helpful to the parties involved. The objective is to resolve any disciplinary complaints as close as possible to the point of origin with due recognition of the need to thoroughly investigate the matter.
- 9.6 Where the circumstances surrounding the case are such that the employee remains on precautionary suspension for over four weeks he/she will be issued with a further letter confirming extension of the arrangements. This letter will be issued at four weekly intervals thereafter.
- 9.7 Full pay for employees precautionary suspended from the retained duty system will be calculated on the basis of their retained payments averaged over the previous 12-week period.

## **10. The Investigatory Stage**

- 10.1 When a potential disciplinary matter arises, an investigation should be carried out to establish the facts promptly before memories of events fade. It is important to keep a written record for later reference. Having established the facts, the manager will decide whether to drop the matter or deal with it in accordance with these procedures, which may include reference back to the informal stage. Where necessary technical expertise relevant to the case should also be made available.
- 10.2 Any investigation will commence as soon as possible. Its duration will depend on the complexity of the investigation and the number of witnesses.
- 10.3 Where the employee is to be interviewed as part of an investigation they should be advised of the purpose of the meeting in advance and that they may be accompanied (see paragraph 3.5). Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary meeting.
- 10.4. Where the decision is to take no further action in terms of the disciplinary procedures the employee will be so advised and, all references to the investigation will be removed from the employee's personal file.

## **11. The Disciplinary Hearing**

- 11.1 All hearings and decisions will observe the principles of natural justice i.e.
- a) The right of the employee to know the allegation against him/her;
  - b) The right of the employee to prepare and personally submit a

response to the allegations made;

- c) The right of the employee to be treated fairly and in good faith, and
- d) The right of the employee to have a full and fair hearing.

- 11.2 A case does not have to be proven beyond all reasonable doubt as with civil courts but rather the Chairperson must make a reasoned decision based on the balance of probability and the evidence available at the time of the hearing. The following guidelines will help managers to determine if a dismissal is fair in the circumstances:-
- the employer must have established a genuine belief that the employee has committed the act of misconduct;
  - the belief must be based upon reasonable grounds;
  - the employer must have carried out as much investigation as was reasonable into all the circumstances of the case.
- 11.3 Once a decision has been taken by the investigating manager to proceed with a disciplinary hearing, the employee should be advised in writing of the arrangements and grounds for the hearing, including the right of representation. It is the responsibility of the employee to ensure representation and that his/her representative is present at any stage of the procedure. Before the hearing takes place, the employee will advise management of the name of the representative.
- 11.4 The timing and location of the hearing should, where possible, be agreed with the employee and/or their representative. The length of time between the written notification and the hearing should be long enough to allow the employee and/or their representative to prepare but not so long that memories fade (please see guidance in 3.4). This period for preparation may be extended by mutual agreement.
- 11.5 The manager should hold the hearing in a private location and ensure that there will be no interruptions, wherever possible and that the employee feels the issue is being treated confidentially.
- 11.6 The employee will be provided with a copy of any written evidence that will be used at the hearing including any investigatory report, witness statements and details of any witnesses who will be called. The employee will also provide HIFRS with any written evidence together with the names of any witnesses who will be led in his/her defence in reasonable time before the hearing.
- 11.7 The employee will be given the opportunity at the hearing to present his/her case, call witnesses and be given an opportunity to raise points about any information provided by witnesses. The hearing will be conducted in line with the procedures to be followed at a disciplinary hearing as set out in Appendix 'A'.
- 11.8 If new evidence comes to light during the hearing, it is the responsibility of the Chairperson to suspend or adjourn the hearing to enable the points raised to be investigated. On completion of any further investigation, the hearing will be reconvened and all parties advised of the findings.

In the event of an employee or his/her representative refraining from offering an explanation or contesting any allegation, the Chairperson will require to draw his/her own conclusions from the information available and reach a decision on the appropriate action to be taken.

- 11.9 On conclusion of the hearing, the Chairperson will call a recess and consider all of the evidence as well as the employee's disciplinary and general record, length of service, actions taken in any previous similar cases, the explanation given by the employee and – most important of all – whether the intended disciplinary action is reasonable under the circumstances. Where practicable, the Chairperson should reconvene the hearing and advise the employee and his /her representative of the decision reached. However, where this is not practicable given the volume of evidence submitted, the Chairperson's decision will be communicated in writing at the earliest opportunity after due consideration has been given.
- 11.10 In any event written confirmation of disciplinary action being taken will be issued within seven days of the conclusion of the hearing and will contain advice as to the employee's right of appeal, to whom any appeal should be submitted and the designated time limit. It will also include details of the reason for the action, any required remedial action, the timescale for improvement and any support, which will be provided by the service. All relevant paperwork will be filed in the employee's personal record file.
- 11.11 An employee and/or their representative who cannot attend a hearing should inform the manager 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 manager should arrange another hearing. In confirming the date for the re-arranged hearing, the manager will also advise the employee that a decision may be taken in their absence if they fail to attend the re-arranged hearing. An employee's representative may attend on their behalf, if the employee is unable to attend.
- 11.12 If an employee's representative 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 seven days after the date originally proposed by the manager. This seven-day time limit may be extended by mutual agreement.

### **11.13 Where a grievance is raised during a disciplinary procedure**

In the course of a disciplinary process, an employee might raise a grievance that is related to the case. If this happens, the manager should consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Depending on the nature of the grievance, the manager may need to consider bringing in another manager to deal with the disciplinary process (see ACAS Code Paragraph 34).

Further guidance is available from the HR Department regarding this matter, if required.

## **12. Appeals**

All decisions made at stages 1, 2 and 3 of the procedure carry a right of appeal.

- 12.1 The right of appeal at stages 1 and 2 is to a manager at a higher level than the person who issued the disciplinary action.
- 12.2 The right of appeal at stage 3 is to the Chief Fire Officer or designated Principal Officer, unless the disciplinary action was issued by the Chief Fire Officer, or if the dismissal was on the grounds of Gross Misconduct. In these circumstances, the appeal would be referred to an appropriate Sub Committee of the Fire Board.
- 12.3 Employees are required to submit an appeal, in writing, no later than seven days after they have been informed of the decision. The letter of appeal will specify one or more of the grounds set out in paragraph 12.5 and provide full details of the specific reasons for submitting the appeal.
- 12.4 The letter of appeal must give full details of the grounds for appeal and why the employee considers the Chairperson's decision to be unfair in the circumstances.
  - 12.4.1 The grounds of appeal will normally be one or more of the following:
    - There was a serious defect in the procedure;
    - The issue is not proven on the balance of probability;
    - The disciplinary sanction was too severe in the circumstances, and/or
    - New evidence has come to light since the hearing, which will have an impact on the decision.
- 12.5 The Appeal Chairperson will conduct the appeal as a re-hearing or a review depending on the reason for the appeal.
  - 12.5.1 Examples of circumstances where a re-hearing would be required include:
    - There was a serious 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, and /or
    - There is a dispute about evidence given by one or more witnesses at the original hearing. In such cases it may be necessary to re-hear the witness evidence at the appeal.
- 12.6 In cases where the above criteria do not apply, the appeal would be held as a review with the Chairperson considering the record of the disciplinary hearing, the employee's reasons for appeal and any other relevant documents and the verbal submissions from management to the appellant (including trade union representative).
- 12.7 As with the original hearing the appeal hearing will observe the spirit of natural justice described in paragraph 11.1 above.
- 12.8 The decision of the Chairperson will be either:

1. The case against the employee is upheld (in whole or part), the sanction will then be confirmed or a lesser penalty substituted, or
  2. The case against the employee is not upheld.
- 12.9 Where the Chairperson is of the opinion that a dismissal or any other sanction involving a financial loss is unfair in the circumstances the employee will be reinstated and all monies lost repaid.
- 12.10 The sanctions applied at stages 1, 2 and 3, apart from dismissal, will not be implemented until 7 days after the employee has been advised of the decision. Where an appeal is received within this period, implementation will be left in abeyance until the appeals procedure has been exhausted. Where no appeal is received within the 7 days the sanction will be implemented.
- 12.11 The procedure to be followed in considering an appeal against disciplinary action is shown at Appendix 'B'.
- 12.12 At the final appeal against dismissal, if the Service's representative is legally qualified, the employee's representative may, if the employee wishes, also be a legal representative.
- 12.13 Appeals will be dealt with as soon as possible and normally within 28 days of receipt of the application. Notification will be given in writing at least 10 days in advance, unless otherwise mutually agreed, of the date, time and location for the appeal hearing.
- 12.14 Should the applicant fail to appear on the set date the Chairperson will dismiss the appeal unless, prior to the date of the hearing, the appellant has requested a further date for the appeal to be held, or has nominated a representative to make a case on their behalf.

## **13. Notice**

### **13.1 Dismissal without notice**

When an employee is summarily dismissed without notice on the grounds of gross misconduct, no payment will be made in lieu of notice. Gross misconduct is generally seen as misconduct serious enough to invalidate the employment contract between the employer and the employee and make any further working relationship and trust impossible. It is normally restricted to very serious offences as defined in paragraph 2.2.2 e.g. physical violence, theft or fraud.

### **13.3 Dismissal with notice**

An employee dismissed for repeated or continued misconduct, as opposed to summary dismissal on the grounds of gross misconduct, will be entitled to notice. Before deciding to make a payment in lieu of notice, consideration should be given to the circumstances since it may be appropriate for the employee to work the period of notice. Minimum periods of notice are laid down by law, however if the contractual period is greater, then this will apply.

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.

## **14. Legal Issues**

- 14.1 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.
- 14.2 Managers and employees will normally be expected to go through the dismissal and disciplinary procedures 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 behaviour, 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 exception 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.
- 14.3 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 time period. This will sometime be the case where there is long-term illness or a long period of absence abroad but in the case of managers, wherever possible consideration should be given to appointing another manager to deal with the procedure.

## **15. Further Advice**

- 15.1 Further advice and guidance is available from the HR Department and employees' trade union representatives.

Nothing in this disciplinary procedure impinges on an employee's right to appeal to an employment tribunal in appropriate circumstances.

## **16. Review**

- 16.1 ***Rules and procedures should be reviewed periodically in the light of any developments in employment legislation or industrial relations practice and, if necessary, revised in order to ensure their continuing relevance and effectiveness. Any amendments and additional rules imposing new obligations should be introduced only after reasonable notice has been given to all employees and, where appropriate, their representatives have been informed.***

**PROCEDURE TO BE FOLLOWED AT DISCIPLINARY HEARINGS**

There may be present at all times, the employee, his/her representative and the management representative, who will usually be the investigating manager.

The Chairperson will explain the process to those present.

The Management Representative will put forward management's case in the presence of the employee and his/her representative and call such witness(es) as may be required.

The employee's representative or the employee (if not represented) will have the opportunity to ask questions of the management representative and management witnesses.

The Chairperson, and where in attendance the Advisor, will have the opportunity to ask questions of any witnesses and of the management representative.

The employee or his / her representative will put his / her case in the presence of the Management Representative and may call any witnesses required.

The Management Representative will have the opportunity to ask questions of any witnesses called by the employee or his / her representative and of the employee. The representative 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 employee from explaining the case.

The Chairperson and Advisor will then have the opportunity to ask questions of the employee representative, the employee or any witnesses called.

The Management Representative followed by the employee or his / her representative will have the opportunity, if they wish, to sum up their case introducing no new material.

The Management Representative, the employee and his/her representative will then withdraw.

The Chairperson in the presence of any Advisor will then deliberate in private, only recalling if necessary the Management Representative, the employee and his / her

representative to clarify points of uncertainty on evidence already given. If recall is necessary, **both** parties have to return even if only one of the parties is required to clarify any point.

Where practicable the Chairperson will recall both sides and announce the decision on the unless further time is required to make a decision in which case all parties will be so advised in writing within seven days. In any event the final decision will be confirmed in writing.

## PROCEDURE TO BE FOLLOWED AT APPEAL HEARINGS

There may be present at all times, the employee, his/her representative and the management representative.

The Chairperson will explain the process to those present.

The Management Representative will put forward management's case in the presence of the employee and his / her representative and call such witness(es) as may be required.

The employee's representative or the employee (if not represented) will have the opportunity to ask questions of the management representative and management witnesses.

The Chairperson, and where in attendance the Advisor will have the opportunity to ask questions of any witnesses and of the management representative.

The employee or his / her representative will put his / her case in the presence of the Management Representative and may call any witnesses required.

The Management Representative will have the opportunity to ask questions of any witnesses called by the employee or his / her representative and of the employee.

The Chairperson and Advisor will then have the opportunity to ask questions of the employee representative, the employee or any witnesses called.

The Management Representative followed by the employee or his / her representative will have the opportunity, if they wish, to sum up their case introducing no new material.

The Management Representative, the employee and his / her representative will then withdraw.

The Chairperson in the presence of any Advisor, will then deliberate in private, only recalling if necessary the Management Representative, the employee and his / her representative to clarify points of uncertainty on evidence already given. If recall is necessary, **both** parties have to return even if only one of the parties is required to clarify any point.

The Chairperson will recall both sides and announce the decision on the appeal unless further time is required to make a decision in which case all parties will be so advised in writing within seven days. In any event the final decision will be confirmed in writing.

The Chairperson is authorised to uphold or reject appeals against disciplinary action or to order the varying of the disciplinary action taken. The form of the decision to be announced by the Chairperson will be one of the following as appropriate:-

- (1) That the grounds of the appeal have been substantiated in part and the appeal be upheld.
- (2) That the grounds of the appeal have been substantiated in part and the appeal is upheld to the extent that .....
- (3) That the grounds of the appeal have not been substantiated and the appeal is not upheld.

**NOTE:-**

*Where the grounds of an appeal against dismissal have been substantiated in part and the Chairperson varies the disciplinary action previously taken to action other than dismissal, the appellant shall be deemed to have been reinstated to the employ of the Service with effect from the date of the dismissal.*