



“An Excellent Authority”

Service Instruction

Conduct (Discipline)

Document Control

Description and Purpose

To advise Managers of the process and procedures relating to conduct issues

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|-------------|-------------------------------------|------------------------|---|------------|
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| New | | Converted onto SI format | |

Equalities Impact Assessment

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Related Documents

| Doc. Type | Ref. No. | Title |
|-----------|----------|-------------------------------|
| Policy | | Conduct and Capability Policy |
| SI | | Capability |

Contact

| Department | Email | Telephone ext. |
|------------|-------|----------------|
| POD | | |

Target audience

| | | | | |
|--------------------|-------------------------------------|-----------------|---------------|--------------|
| All MFS | <input checked="" type="checkbox"/> | Ops Crews | Fire safety | Community FS |
| Principal officers | | Senior officers | Non uniformed | |

Introduction

The aim of this Service Instruction is to ensure consistent, fair and treatment for all employees through the application of a consistent procedure for the management of Conduct (discipline) in the workplace.

Procedures that can be demonstrated to be fair, transparent and consistently applied promote good staff and employment relations which improves performance and contribute to the Mission of creating and maintaining Safer Stronger Communities and Safe Effective Firefighters.

This procedure has been prepared to reflect and improve on the statutory provisions and ACAS Code of Practice and National and Local Government Conditions of Service. It has the status of a collective agreement with the representative bodies and as such is deemed contractual.

Clear rules and procedures set standards of conduct at work and help to ensure that those standards are understood and adhered to whilst providing a transparent method of dealing with any alleged failure to observe them. These are represented by the ground rules, employees' code of conduct and through the personal values adopted by the Authority that under pin all we do.

Purpose of Procedure

This procedure applies in cases of conduct. The basis of this procedure is that the principle of natural justice applies, at every stage, in a framework which also ensures fairness for both employees and managers. A guiding principle of the procedure is to obtain improvement and remedy problems.

Scope of the Procedure

The procedure, which reflects and improves on the statutory provisions and the ACAS Code on Disciplinary and Grievance Procedures, is designed to help and encourage all * employees to achieve and maintain the standards of conduct expected by the Service. The aim is to ensure consistent and fair treatment for all employees in the organisation.

* The Monitoring Officer will be dealt with under the Local Authority Standing Orders Regulations (2001)

Principles

All disciplinary procedures are designed to be corrective, not punitive and to indicate to employee's what is required to meet the standards expected by the Authority.

- The procedure is designed to establish the facts without undue delay and to deal consistently with conduct issues. Where external information is required, for example from the police or courts, these agencies will be advised of the necessity to provide

information in a timely manner. No disciplinary action will be taken until the matter has been investigated.

- The employee will be advised of the nature of the complaint, and following the principle of natural justice, be given the opportunity to state their case.
- The employee can be represented or accompanied by a Trade Union representative or by a fellow employee/ friend of their choice.
- An employee will not be dismissed for a first breach of discipline, except in the case of **Gross Misconduct**, when after investigation, the penalty will normally be dismissal without notice and without pay in lieu of notice.

When deciding whether a disciplinary penalty is appropriate and what form it should take, the Authority will bear in mind the need to act reasonably in all the circumstances.

Factors which might be relevant include,

- the extent to which standards have been breached,
- precedents,
- the individual's general record, position and length of service
- Whether any special circumstances might make it appropriate to adjust the severity of the penalty.

The individual has a right to appeal against any disciplinary action taken against them subject to compliance with specific timescales.

Level of Management Matrix

In most cases investigation is undertaken by the employee's line manager. However, there may be circumstances where this is not appropriate e.g., where the line manager may be involved in the alleged misconduct, or has commitments or absences, which may unreasonably delay the investigation.

Therefore, the Service has the right to appoint a different person other than the line manager to undertake the investigation as the "Investigating Manager".

| | Investigation | Meeting/Action | Maximum Sanction | Appeal |
|-----------------|---|--|--|-------------------------------|
| Informal | Line Manager or above | N/A | None - Note for Case recorded | N/A |
| Stage 1 | Line Manager Watch Manager /Station Manager (or equivalent) or above | Station Manager (or equivalent) or above | 6 Months First Written warning | Group Manager (or equivalent) |
| Stage 2 | Station Manager (or equivalent) or above | Group Manager (or equivalent or above) | 18 Months Final Written Warning | Area Manager/ Director |
| Stage 3 | Group Manager (or equivalent) or above | Area Manager/ Director or above | Dismissal Or 18 Months Final Written Warning 13 days Stoppage of Pay Demotion Disciplinary Transfer | Principal Officers |

The Procedure

Informal Stage

Managers have a right to manage and to hold informal management meetings with employees. A management meeting does not require Trade Union representation and tends to be a one to one informal discussion with the line manager.

The separate formal stages of initiating action, investigation, hearing, and decisions 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 the formal disciplinary record. This Note For Case should be shared with the employee and kept by the manager in a secure location in case it is required at a later stage by Professional Standards.

At the informal stage, the manager will ensure that employees are clear on the expected outcomes and the process by which they will be achieved. If the employee's conduct fails to improve or is not maintained, or if during the course of the informal action, it becomes apparent that the issue warrants a formal approach, the formal conduct procedure may be initiated.

Formal Process

First formal stage.

An employee's line manager, for example the Watch Manager (or equivalent) or above, may initiate the conduct process and investigate. Following a disciplinary hearing, if the employee is found on the balance of probability to have committed an act of misconduct; the usual first step would be to give them a warning.

A warning must give details and an explanation of the decision. It should make it clear to the employee that failure to improve or modify behaviour may lead to further disciplinary action, and advise them of their right of appeal. A warning will be disregarded for disciplinary purposes after six months, subject to satisfactory conduct and will be expunged.

Second Formal Stage

Where there is a failure to improve or the improvement is not sustained 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 following an investigation and disciplinary hearing.

A final written warning must give details and an explanation of the decision. It should make it clear to the employee that failure to improve or modify 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 their Group Manager (or equivalent) or above.

Third Formal Stage

Where an employee fails to improve or where the offence is sufficiently serious, there should be an investigation and formal hearing. The sanctions available may include dismissal. As an alternative to dismissal the outcome may be-

- A warning
- Demotion – either within grade/ role or no more than one grade/ role. A demotion of more than one grade/ role can only be done with the agreement of the employee.
- Disciplinary transfer.
- Loss of pay up to a maximum of thirteen days pay.

Employees will be informed of their right to appeal and details of the appeals process.

Only Area Manager, Director or above have delegated powers to dismiss employees.

Advising the employee

Employees will be invited to all formal meetings in writing to advise them of the allegation and their right to representation.

They will be advised of the time, date and location of hearings and any special reporting instructions, especially where this is not the employee's normal location.

Where one of the potential outcomes is dismissal for Gross Misconduct or the employee is on a final written warning, the employee will be advised of this fact.

The employee will be furnished in advance with any documentation pertaining to that hearing.

Timescales

The timing and location of the hearing should (wherever practicable) 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 and shall in any event be not less than:

- Ten working days for First Formal Stage
- Ten working days for Second Stage
- Twenty One working days for the Third Stage.

These periods are changeable by mutual consent.

Gross Misconduct

If after investigation, it is deemed that an employee has potentially committed an offence which constitutes Gross Misconduct, the normal consequence will be dismissal. Acts which constitute Gross Misconduct are those resulting in a serious breach of contractual terms and thus potentially liable for summary dismissal.

Examples (but not an exhaustive list) of Gross Misconduct are:-

- Serious bullying or harassment based on the protected characteristics detailed in the Equality Act 2010;
- Major infringement of the Authority's Code of Conduct;
- Theft, fraud, bribery;
- Action endangering life and limb;
- Assault or physical violence;
- Deliberate damage to Authority property;
- Serious unauthorised disclosure of information or breach of confidentiality;
- Deliberate falsification of records;
- Serious incapability for work through alcohol or illegal drugs;
- Offences of a sexual nature or sexual/race discrimination within the workplace;
- Serious negligence which causes or might cause unacceptable loss or injury;

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- Failure to comply with a significant or reasonable order, instruction or contractual requirement;
- Unauthorised absence from work;
- Serious insubordination;
- Commission of criminal offences outside work, which have a substantial impact upon the employee's ability to perform their duties or are relevant to the employees employment;
- Serious infringement of health and safety rules.

Suspension

This is a neutral act. In situations where the allegations are such that it would be inappropriate for the employee to remain at the workplace, the Professional Standards Manager may consider it appropriate to suspend the employee to facilitate a speedy and unhindered investigation and/or to alleviate any potential intimidation of staff. Such suspension is not to be regarded as a form of disciplinary action and will be for as short a period as possible. Employees will receive their full contractual pay for the duration of the suspension.

Grievances

In the course of the conduct process an employee may raise a grievance that is related to the case. If this happens, Professional Standards may consider suspending the disciplinary proceedings for a short period while the grievance is dealt with. Depending on the nature of the grievance, Professional Standards may need to consider bringing in another Manager to deal with the conduct issue.

Appeals

An employee has a right of appeal against any formal disciplinary action taken against them, within 14 days of the decision as to such action being communicated to them, and to be represented at an appeal hearing by a Trade Union representative or work colleague.

The appeal must include the specific grounds of appeal. These will normally be one of the following:

- There was a procedural defect,
- 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.

Dealing with Special Situations

Trade Union Officials

Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union's functions. Although the normal disciplinary process should apply, if

disciplinary action is contemplated then the case should additionally be discussed with a senior Trade Union representative or full-time official.

Criminal Charges or Convictions outside Employment

All involvement with the Police should be reported immediately to Professional Standards. See Service Instruction 0771 “Notification to the Service by an Individual Subject to Police Involvement or Criminal Investigation”

Failure to notify Professional Standards may result in disciplinary action being taken.

These should not be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that makes workers unsuitable for their type of work. In all cases, the Authority, having considered the facts, will need to consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.

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Conduct (Disciplinary) Guidance

The Guidance

This does not form part of the conduct procedure, and should not be regarded as such. Discipline is the responsibility of line managers; this guide has been designed to offer practical advice to all employees to understand the handling of conduct issues at work.

Further advice and guidance is available from the HR Department, either by email to Professional Standards or by calling 0151 920 4320.

Confidentiality

All discipline records and notes should be kept confidential and in accordance with the Data Protection Act 1998.

Equal Opportunities

It is essential that conduct proceedings are applied in a non-discriminatory way. Equality considerations will be made, as appropriate, throughout the application of the procedure (e.g. taking into account an employee's disability when arranging facilities for discussions, interviews, hearings, or awareness of potential language difficulties where an employee's first language is not English). This aspect of the procedures is carefully monitored.

Human Rights

The provisions of the Human Rights Act 1998 should be considered when applying the conduct procedures. For example, particular care needs to be taken to meet an employee's "right to respect for private and family life", when carrying out disciplinary investigations and gathering of evidence in relation to an employee's conduct. As a general principle, consent is required before surveillance or monitoring of communications is undertaken, however express consent is not always required. Any investigation should be compatible with the Service Instruction 0810.

Advice should be sought before embarking on investigations involving surveillance, direct monitoring of telephone calls or e-mails.

Communicating the required standards

If the standards are to be fully effective, they need to be clearly communicated to all employees, understood by them, and accepted as reasonable. This can be done in a number of ways.

During recruitment

It is important to make prospective employees aware of the standards expected within their

new employment.

During induction and the probationary period

This stage sets standards immediately so the new employee is fully acquainted with the terms and conditions of their employment, codes of conduct, details of their duties and responsibilities and expected standards.

Job Descriptions/ role map

It is important that employees have access of their job/role description and understand what is expected of them in work.

Appraisals

It is important for both employee and line manager to meet to review, monitor and positively reinforce standards of conduct.

Checking the facts on employee conduct

Managers need to refer to various documents, records, and files, as relevant (e.g. working time records, service instructions, work files, absence records, correspondence, existing personnel records, and files for any relevant information and background, financial records etc.)

Informal Action

Minor breaches of conduct, unless persistent, are usually best dealt with via an informal discussion between the immediate line manager and the employee. Such discussions are effective in achieving necessary improvements and are an important management practice.

The informal discussion is essentially a two-way problem-solving exercise, where emphasis is placed on finding ways in which the employee can remedy any shortcomings.

There is no need for trade union representation at this stage, because such meetings are an **integral part of the line manager/employee relationship**.

How to conduct an informal discussion

If a timely and quiet word has not resolved the issue a Manager may wish to hold a more structured informal meeting and the following should be undertaken.

Managers should organise a mutually convenient time with their employee advising that they want to discuss an issue in private.

- Managers should collate relevant information pertinent to the issue with specific examples where appropriate

- They should explain their reasons for calling the meeting.
- Managers should use an open questioning technique to encourage discussion
- Managers should establish why there have been any shortcomings by exploration of the facts.
- Managers should listen to employee explanations.

Only where the problem is identified to be more serious misconduct should the issue continue to be dealt with as a formal conduct matter.

Agree an Improvement Plan

If the employee's conduct has fallen below acceptable standards, managers should consider agreeing an improvement plan with the employee where a structured approach is required. It should include :

- The improvement which is required and by when
- Any actions agreed which will facilitate the necessary improvement
- Clear information as to who will do what and when.
- When the issue will be reviewed, in accordance with the plan.

One copy of this should be given to the employee and the original securely retained by the Manager as it may be referred to at any subsequent disciplinary hearing if the misconduct persists. ([Appendix 1](#))

Monitor progress and review

The plan must be monitored and reviewed to check that the necessary improvement has been achieved. The outcomes of the review may be one of the following;

- If the improvements have been achieved, these must be recognised and the employee informed that their efforts have been successful, and the improvements must be maintained.
- If the improvements have not been achieved, depending on the circumstances, further discussion, or formal disciplinary action may be needed.

If the misconduct is considered more serious, or where the employee has already had an informal discussion and failed to achieve the required level of improvement, the formal stages of the conduct procedure should be invoked.

It would not be appropriate to either commence or continue with an informal approach if there is already sufficient reason to consider that there has been a breach of the Service's rules or other act of more serious misconduct. In such circumstances, a formal investigation should be conducted in accordance with the conduct procedure.

Formal Process

The need for investigation

A fair handling of disciplinary matters requires a thorough and prompt fact finding and information gathering exercise through :

- Enquiring into the circumstances surrounding the alleged misconduct.
- Giving the employee a chance to offer an explanation.
- Taking a balanced view of the information that emerges.
- Ensuring that all relevant or potential witnesses are interviewed.
- Accurate recording of all relevant information arising from the investigation.
- Reaching a decision as to whether or not there are sufficient grounds for an allegation of misconduct.

Conducting an investigation

In most cases, this is undertaken by the employee's line manager. However, there may be circumstances where this is not appropriate e.g., where the line manager may be involved in the alleged misconduct, or has commitments or absences, which may unreasonably delay the investigation.

Therefore, the Service has the right to appoint a different person other than the line manager to undertake the investigation as the "Investigating Manager".

The role of the Investigating Manager

The Investigating Manager's task is to :-

- Establish relevant facts
- Assemble evidence, which may or may not support the allegation.
- Decide whether the matter should go to a formal disciplinary meeting and notifying the Director of People and Organisational Development of this need.
- Prepare a detailed report of the allegations and collate supporting documents, ensuring these are submitted to Professional Standards who will share this with the employee and Disciplinary Manager.
- Present the case together with appropriate evidence at the disciplinary hearing.

Fact finding

It is vital that the Investigating Manager undertakes a thorough investigation into the facts by asking open questions to elicit information, for example:

What?

- What actually happened, in as much detail as possible or, perhaps
- What should have happened?

- What were the required standards?

Who?

- Who else is involved? Is there more than one person?
- Are there any witnesses?
- Who else may know something or have a relevant opinion?

When?

- When did the potential misconduct happen?
- Was it on more than one occasion?

Where?

- Was it at their place of work?
- Where were they, where should they have been?

Why?

- Why did the employee behave in that way?
- Are there any mitigating circumstances?

How?

- How did the employee act?

Each case must be investigated and assessed on the individual circumstances, and may require the collection of evidence from a range of sources. Investigations should include :-

- An examination of evidence which may either corroborate or refute the employee's response during investigation.
- An examination of any other relevant evidence, which may be identified from other sources of enquiry, for example, signed witness statements.
- A review of the employee's record e.g. any previous disciplinary action (providing time limits have not expired), notes of informal discussions, improvement plans etc.
- The employee's statements

Holding an investigatory interview

The Investigating Manager will convene an investigatory interview with the employee, in order to put questions to them and provide an opportunity for the employee to answer and explain their actions.

Natural justice requires that an employee should have sufficient details of the nature of the alleged misconduct to enable them to prepare, and employees have the right to be

accompanied if they so wish.

If an employee's trade union representative/work colleague is not available on the date given, an alternative date should be sought within a reasonable timescale.

At the interview

The Investigating Manager will,

- Introduce everyone in the room (where necessary) explaining their role, explain that the interview is investigative and is not a formal disciplinary hearing, and at the end of the interview, no immediate disciplinary action will be taken. However, the information provided by the employee may influence whether to proceed to a formal disciplinary hearing or not.
- Confirm that an unaccompanied employee does not want to have representation. If they do want a representative, ascertain why that person is not at the meeting. If a reasonable explanation is provided, it may be necessary to permit one adjournment, to allow a representative to attend.
- Explain the nature of the potential misconduct in detail, for example, dates, location, number of occasions etc.
- Ask any relevant questions relating to the potential misconduct, giving the employee every opportunity to respond, at the end of each question.

Note: The employee does not have a right of silence, which was provided in the previous Discipline Regulations, and is expected to co-operate with the investigation.

Investigatory Managers should:

- Keep an open mind.
- Remain calm throughout.
- Listen carefully to what the employee says.
- Ask searching questions as detailed above
- Avoid accusatory statements and questions.
- Allow the employee to talk without interruption
- Avoid being critical or judgmental during the interview.
- Conclude the interview when satisfied that all the pertinent information has been gathered.

When concluding the interview :-

- The Manager should ascertain whether there is anything else the employee or representative would like to say, which is pertinent to the investigation.
- Advise the employee that their representations will be considered and any further/ necessary enquiries will be undertaken.
- Advise the employee what will happen next.

After the interview the Investigating Manager should,

- Ensure that the interview notes are written up to form a statement.
- Investigate fresh issues which have been raised or evidence which needs to be examined,
- Decide on the balance of probabilities whether or not the employee has committed the misconduct and what should happen next. This will depend on the evidence and the options will fall into one of three categories.
 1. A conclusion that there is no formal case to answer

The employee has not committed misconduct, or there is a lack of evidence to justify such a conclusion. The employee should be informed as soon as possible that the matter will not be progressed and the relevant information sent to HR for reference purposes.

2. Alternatively where there are minor breaches of conduct not requiring formal action, an informal discussion should be initiated,
3. A firm conclusion that there is a formal disciplinary case to answer

The Formal Disciplinary Hearing

Purpose

The purposes of a formal disciplinary hearing is to :-

- Hear the allegations of misconduct and evidence relating to it.
- Give the employee a fair opportunity to answer the allegations.
- Decide whether misconduct has been committed by the employee.
- Consider the action to be taken.
- Inform the employee of that decision, and if appropriate their right of appeal

Moving to the hearing stage

Once the Investigating Manager has completed their investigations, and following consultations with an HR Adviser concluded that the matter should be dealt with formally; an appropriate Disciplinary Manager will be appointed by Professional Standards to chair the meeting

Normally the Manager who has investigated the case will present management's case in the disciplinary hearing. However, in exceptional circumstances this might not be appropriate and advice should be sought from the HR Department. The Disciplinary Manager should be an equivalent rank or role as that of the Investigation Manager

Making arrangements for the hearing

The Investigating Manager:

- Will forward to the employee and Disciplinary Manager via Professional Standards, all the

relevant information.

- Will ensure that their witnesses are appropriately informed of the hearing details, providing them with a copy of their statement and documents which may be referred to at the hearing.
- Prepare their own statement for the hearing to present to the Disciplinary Manager.
- Place documents in chronological order with each page of the bundle numbered consequentially for ease of reference.

Conducting an effective disciplinary hearing

The Disciplinary Manager

- Introduces those present
- Checks the employee has received correct notification of the hearing,
- Ascertains whether the employee is represented, and if not accompanied is aware of their right to representation
- Explains the purpose of the hearing is to consider fully the allegations and to decide whether disciplinary action is appropriate.
- Explains the issue has not been prejudged; the aim is to explore the facts.
- Explain how the hearing will be conducted.
- Ask if there are any questions about the procedure.

Presentation of the facts by the Investigating Manager

The Investigating Manager's opening statement specifies details of the alleged misconduct contained in the written notice and which Service rule or standard has potentially been breached. The facts of the case should be presented clearly and concisely in chronological order.

The Investigating Manager will call required witnesses and ask relevant questions. However, where a written statement from the witness has been included in the written notification this may be referenced.

Witnesses should not attend the whole hearing but will give their factual evidence, and following questioning by all parties leave the hearing.

At the end of the witness' evidence, if anything has arisen which is important and requires further questioning, the Disciplinary Manager may be asked for permission to question the witness again on a matter which has arisen out of the other party's questioning, or ask questions themselves.

Adjournments

Adjournments may be sought at any time during the hearing where appropriate. The decision to adjourn rests with the Disciplinary Manager, who may decide that it would be appropriate in circumstances such as :-

- To give a cooling off period to all parties.

- It is a convenient time for a break.
- In exceptional circumstances, when it is necessary for relevant evidence which is not currently available to be brought to the meeting e.g. a document or a witness.

Other parties may ask for an adjournment where there is a good reason e.g. one of the witnesses has not arrived. (In such a case, it may be appropriate to proceed with the hearing to deal with all matters except the absent witness' evidence, and then reconvene to a reasonable date to deal with that information).

Summing Up

The Investigating Manager and the employee and/or their representative (in that order) will be given the opportunity to summarise :

The Investigation Manager should;

- Be brief
- Review the key points of the presentation
- Review the key points in the employee's response, highlighting any inconsistencies and vagueness.
- Prevent the introduction any **new** evidence at this stage.

Making an effective decision

Following the summaries, the Disciplinary Manager will ask all parties, with the exception of the HR Adviser to withdraw whilst he/she comes to a decision. Consideration will be given to:

- Whether all the stages of the disciplinary process have been complied with
- Whether all relevant facts been established
- Whether on the balance of probabilities the employee committed misconduct
- Any mitigating circumstances
- The employee's previous record of conduct and length of service
- What action is appropriate and proportionate in the circumstances

It is the Disciplinary Manager's responsibility to satisfy him/herself that the relevant facts have been sufficiently established, before a decision is made. If there are still unanswered questions, which are relevant or require further clarification/investigation these must be followed through.

For example, it might be appropriate to recall both parties to clarify an issue or direct the Investigating Manager to gather a specific piece of evidence. At this stage it is appropriate to adjourn the hearing, pending these investigations and re-convene later.

The Disciplinary Manager must examine evidence given by all parties in a dispassionate manner deciding which account they place greater weight on. Where a conflict of evidence exists, it is not sufficient to conclude that a decision cannot be made. The Disciplinary Manager must decide which evidence they prefer.

It is not a requirement to find “beyond reasonable doubt” (i.e. the burden of proof in criminal proceedings) but one based on the balance of probabilities.

Mitigating circumstances

Such circumstances might be :-

- The employee's inexperience.
- Provocation, sexist/racial abuse, bullying or inappropriate behaviour by colleagues or a line manager.
- Inadequate explanation of the rules or procedures by the line manager.
- Inconsistent enforcement of regulations and standards.
- Misunderstanding of instructions caused by language difficulties.
- The employee's previous record of conduct

In taking account the employee's past history with the Service, it is useful to check the :-

- employee's length of service/ tenure in the role
- general standard of conduct of the employee
- any current disciplinary warnings which need to be taken account of

Taking Action

The Disciplinary Manager has a number of possible courses of action available :-

- To take no action, for example the evidence indicated that there were misunderstandings or the allegation did not occur. In such cases, it is appropriate to close the matter, if the Disciplinary Manager clearly explains how he/she has come to this conclusion.
- To take informal action (see section above)
- To take formal action. This should always be accompanied by an explanation of the desired improvement, together with details of any targets, time limits and reviews.

Giving the decision

The primary purpose of a warning is to be corrective and to prevent later and more serious action having to be taken.

The disciplinary hearing is not complete until the decision is communicated. It is vitally important to :

- Tell the employee what the decision is and why
- Explain the employee's appeal rights, if appropriate.
- Explain the objectives for the future and, if appropriate, agree targets and supportive action.
- Confirm the whole position in writing, within 7 days.

Appeals

An employee's right of appeal only applies where formal disciplinary action has been taken. The function of the Appeal is to :-

- Review the case (or in certain circumstances to rehear the case) dependent upon the grounds of appeal from when the initial decision was taken.
- Consider any other relevant matters which the parties want to raise.

The employee should advise in writing:

- The disciplinary action being appealed against, e.g. final written warning.
- The reason/grounds for the appeal e.g. new evidence.
- The name of the employee's representative.

Appeals may be raised on the following grounds :

- A failure to follow the procedure had a material effect on the decision.
- The conclusion of the Disciplinary Manager was not supported by the evidence presented.
- The action taken was too severe given the circumstances of the case.
- New evidence relevant to the case has genuinely come to light since the disciplinary hearing.

The level of authority at which appeals are heard is set out in the appropriate Grey, Green, and Red books and subject to local conditions of service.

The Appeal

The person to whom the appeal was directed will write to the employee, acknowledging receipt of the appeal letter and requesting the following information from the employee :

- A statement on the grounds on which he/she is appealing.
- Any documents which are to be presented at the meeting in support of the appeal.
- If they wish to be represented at the meeting, the name and contact point of their representative.
- Any dates when they, or their representative, are not available

The Disciplinary Manager will also be informed that an appeal has been received. They will be requested to provide in a timely manner,

- A statement summarising their reasons for taking disciplinary action.
- A copy of all documents and statements which were presented at the initial hearing.
- A copy record of evidence given at the initial hearing.
-
- The statements/reports from the original disciplinary hearing

Procedure at the Appeal meeting

It is a requirement prior to the meeting to determine whether the appeal is to be conducted as a review or a rehearing. Normally, the appeal is conducted as a “review”.

The parties present at the meeting and their role should be clarified.

If the employee has not attended, the reasons should be sought. If their absence is due to ill health, it should be ascertained whether they are fit to attend a re-arranged meeting, even though unfit to perform their full duties within a reasonable timescale. Where this is not possible, holding the appeal in the absence of the employee should be considered.

In a review, the employee appeals against the disciplinary sanction. The Appeal Manager examines the evidence and submissions that were presented at the original hearing, and thus the decisions made at that hearing to see whether the decision was reasonable.

If the Appeal Manager considers that the decision was within the band of reasonable responses, the Appeal Manager is entitled to reject the appeal.

A “rehearing” may be appropriate if the employee was absent at the original hearing or where the disciplinary process was not followed.

Conduct of a review

In a review, the Appeal Manager should ensure they have :-

- All documents presented to the initial hearing;
- A copy of the record of the hearing;
- Letter confirming the outcome of the disciplinary hearing;
- The letter of appeal and grounds of appeal;
- Any other relevant information.

The employee (or representative) presents their case referring to documents as appropriate.

The Disciplinary Manager explains the reason for the warning, and responds to the submissions of the employee (or representative)

The Appeals Manager will consider their decision and to promptly notifies employee (and representative) or decision in writing.

Conduct of a “Rehearing” or partial “Rehearing”

This is to address any perceived procedural defects.

The employee (or representative) presents case in support of their grounds of appeal (Relating to documents as appropriate) and introduces their witness for questioning.

This process is repeated for the Disciplinary Manager.

The employee (or representative) sums up their case followed by the Manager who sums up the explanation for the decision and their response to the grounds of appeal.

Decision Making

The Appeal Manager will ask the parties with the exception of the HR Adviser to leave the room while they consider their decision.

They may recall the parties to seek clarification. In such a case, both parties should be present, even if clarification is only required from one side.

The decisions available to the Appeal Manager are :-

- To confirm the disciplinary action already taken.
- To substitute the disciplinary action for some lesser disciplinary action.
- To dismiss the original decision without taking any disciplinary action at all.

The Appeal Manager will recall the parties to the meeting to give their decision verbally, with brief reasons. This will be confirmed in writing to the employee within 7 days. No further right of appeal exists. However, the procedure does not limit an employee's right under employment legislation to pursue the matter further.

Precautionary suspension

Suspension is a neutral act and is not a disciplinary penalty. It is undertaken to enable a full investigation of the circumstances, where it is not practicable or desirable for the employee to remain in the workplace whilst the investigation proceeds. During the period of suspension, the employee will receive full pay.

When to suspend :

- In circumstances where the case has been identified as one of potential gross misconduct.
- Where it is necessary to safeguard the personal welfare of employees, or members of the public.
- Where it is reasonably considered that the employee may interfere with witnesses or documents should they remain at work.
- To allow an investigation to take place which could not be undertaken if the employee remained in the workplace.
- Where the allegations are of a serious nature and the employee's response has not been sufficient.

Who can suspend

Suspension can only be carried out by the Director of People and Organisational

Development or appropriate Area Manager, Director or above.

Where it is necessary to make a decision about suspension quickly, Managers have the right to proceed with the suspension without employee representation, or notice.

How to carry out the suspension

If the employee is in work when the misconduct allegations arise, they should be taken to a private area away from their normal workplace and told of the nature of the allegations.

The manager undertaking the suspension may be accompanied by another management representative, who will act as a witness.

The employee may have a trade union representative or work colleague with them whilst being suspended, if one is available. However, it is not considered appropriate to delay a suspension if a representative is not available.

The employee should not be requested to comment on the allegations, and should be told that a detailed investigation will follow during which they will have full opportunity to comment on the misconduct allegations.

The employee should also be told that they should not make contact with colleagues during the course of the suspension or return to their place of employment unless authorised to do so by an appropriate senior manager from their department.

Sensitivity should be exercised by Managers in assisting the employee to leave the premises discreetly. If the employee needs to collect any personal items from work they should be accompanied by a senior manager.

All precautionary suspensions must be subsequently confirmed in writing.

Questioning Skills

An important part of the fact finding and disciplinary process is the use of skilled questioning. Employees may be reluctant to talk about some aspects of the matter in hand or may have difficulty expressing their views or concerns. Four main types of questions are involved.

The Open Ended Question

This is particularly useful in the early stages, when asking the employee or a witness to give their account of events. It gives no clue to the type of answer expected but simply asks them to tell their story. For example:

'What happened in the incident involving a member of the public last Friday?'

The Probing or Clarifying Question

The answers to the initial open-ended questions may be inadequate or very general and may

need probing. An example of a short sequence of questions illustrates this:

Open-ended question:

'What happened in the incident with the member of public?'

Answer: *'I had a bit of an argument about our requirement to undertake a routine inspection of the premises.'*

First probing question: *'How did the argument start?'*

Answer: *'I told her that we needed to update our record on the premises and she told me that she hadn't been notified about the visit'.*

Second probing question: *'What did you then say to her?'*

Asking employees and witnesses to repeat what was actually said during a discussion or confrontation, rather than accepting a less specific account, often throws valuable new light on the situation.

The Closed Question

Closed questions can be only answered with a simple yes or no.

They should be avoided when opening up the interview, but can be useful to confirm single facts. For example, in the case above concerning the store employee the employee says, *'I thought she was trying to be obstructive and told her so'*. Prompting the closed question, *'did you actually use the word obstructive?'*

The Playback Question

This is a variation on the closed question, because it may be answered satisfactorily with a simple 'yes'. It is used to play back to the employee your understanding of what they have said to check that this is correct. Some examples:

'Are you saying that you have never been told about the Service's time recording procedure?'

'Am I right in assuming that the important point in your mind was?'

The time for most question of this kind is towards the end of the interview, when clarifying employee's statements and views before considering what action to take.

There are three types of questions to be avoided:

The multiple question

Impatience may lead to questions being asked that cover several different topics. For

example: *'Tell me why you failed to report the problem to your supervisor and whether you said anything about it to any of your colleagues – or was it that you could not find anyone to talk to because of the lunch break?'* . The probability is that the employee will respond to only the last part of this multiple question, leaving the rest unanswered.

The leading question

This invites the employee to agree with a possible explanation, instead of probing for the employee's explanation. *'You do agree, don't you, that it would have been better to have been more polite to the member of public?'*

The discriminatory question

Questions regarding any of the protected characteristics in the Equality Act that may be perceived as discriminating against the employee or any other group must be avoided. For example, questions/statements that make assumptions should not be used e.g. *"Did you struggle to read the Services' time recording policy because of your disability?"*

Checklist for questioning witnesses

In order to maximise the effectiveness of questioning:

- Prepare points which must be taken up. Have a clear indication of the employee's case and have some idea which questions will have to be asked to achieve the desired outcome.
- Is the question necessary? If the witness has already given the required answer, or one which could be interpreted to give the meaning desired, do not pursue the issue.
- Evidence in dispute is not the only area which should be subject to questioning. Areas of omission or gaps in the evidence may be raised provided they are relevant; for example, where one party fails to refer to a written statement of terms and conditions or the lack of such a statement.
- Never ask a question to which you do not know the answer or have a shrewd idea of the answer.
- Keep questions short and sharp so the witness understands the question.
- Once you ask the question, you must let the witness have a fair chance to answer and only ask one question at a time.
- Do not try to discredit a witness because of minor contradictions and discrepancies.

Please refer to :

SI 0771 Notification to Service by an Individual Subject to Police Involvement or Criminal Investigation

Appendix 1

| IMPROVEMENT PLAN | | | | |
|---|--------------------------|---------------------------------------|-----------------------------------|---------------------------------------|
|  Merseyside FIRE & RESCUE SERVICE <i>"An Excellent Authority"</i> | | REVIEWER: <input type="text"/> | DATE: <input type="text"/> | REVIEWER: <input type="text"/> |
| ACTIVITY | EXPECTED STANDARD | TIMESCALE | ADDITIONAL SUPPORT | ACHIEVEMENT ATTAINED |
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