



# Disciplinary Policy and Procedure

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## Executive Summary

Hereford & Worcester Fire and Rescue Service (HWFRS) are committed to having a positive workplace culture that is fair and respectful, recognises the rights of individuals and where all members of staff are supported.

Our [People Strategy](#) is a statement of our intent to support and develop every member of our staff throughout their employment to deliver the Service's vision: [Saving More Lives](#).

Our values set out in the [Ethical Framework and Code of Conduct](#) guide all members of staff in carrying out their roles and responsibilities, as well as the NFCC Core Code of Ethics for Fire & Rescue Services. They help us to maintain high standards in acting fairly and ensuring dignity and respect in the workplace.

We want to help our workforce to become more resilient and diverse, develop their skills and maximise their wellbeing at work. We also recognise that the way we lead, manage and behave is fundamental to how people view us as an employer.

This Policy provides guidance to staff and managers to ensure acceptable standards of conduct are maintained. It sets out the action that will be taken when conduct falls below an acceptable level, with the aim of ensuring consistent and fair treatment for all employees.

This Policy has been written in line with the 'The ACAS Code of Practice' and aims to ensure a fair, consistent and timely means of managing and maintaining disciplinary standards.

### Alternative Formats

If you require this document in another format please contact the HR and Development Department.

### Service Values

This policy supports our commitment to the Service values.

## What we believe in

### Integrity

We will do the right thing and show fairness and consistency in our approach, taking responsibility for the decisions we make and the actions we take.

### Teamwork

By working collaboratively, we can exceed expectations and go beyond the achievements of individuals

### Honesty

We will be truthful in our actions and duties to build trust amongst our colleagues and within the communities we serve.

### Openness

We will act in a way that is transparent and open to review and will welcome new or innovative ways of thinking.

### Respect

We value the differences between individuals and create an inclusive environment which recognises everyone's experiences and opinions.



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# Disciplinary Policy and Procedure

## 1. Introduction

- 1.1 The Service seeks to maintain high standards in all its activities. The Disciplinary Policy and Procedure is designed to maintain standards and the efficient and effective operation of the Service, and to ensure that employees are treated fairly and consistently in disciplinary situations.
- 1.2 The Disciplinary Policy and Procedure is in every case (except dismissal) intended to support maintaining the required standard of behaviour outlined in the [Ethical Framework and Code of Conduct](#) by emphasising and encouraging improvements in employee conduct, standards of performance and safe practices.
- 1.3 The Service will adopt the principles of natural justice in which all employees have a right to fair treatment. As per the Employment Rights Act 1996, these principles include the duty to:
- give an employee a fair hearing;
  - ensure that the matter is decided by someone who is impartial and unbiased;
  - allow the employee to appeal against a decision.
- 1.4 **Scope of the Policy**  
The Disciplinary Policy and Procedure is applicable to all current employees. The procedure for Principal Officers / Statutory Officers is documented in Appendix A.
- 1.5 Details of where managers should raise issues for other members of staff is outlined in the table below:

Group	Procedure/Policy
Contractors	Any issues should be raised with the organisation they are engaged with
Agency Workers	Any issues should be raised with the employment agency
Volunteers	'Problem Solving' procedure, as per the <a href="#">Volunteering Policy</a>
Work Experience	Any issues should be raised with the school or college

### 1.6 Links to Other Policies

[Ethical Framework and Code of Conduct](#): sets out the standards of conduct and behaviour required of employees.

[Capability Procedure](#): to be followed when dealing with issues of poor performance resulting from a lack of skill or capability.

[Safeguarding Policy](#): should be referred to for ensuring appropriate safeguards are put in place to protect the public.

[Whistleblowing Policy](#): protects those who have voiced concerns regarding any aspect of the Service's work.

Anti-Fraud Bribery and Corruption Policy: sets out the legal obligations in relation to Anti-Fraud, Bribery and Corruption and actions to be taken if Fraud, Bribery or Corruption is suspected.

Social Media Policy: sets out the unacceptable use of social media when using both Service and personal accounts.

NFCC Core Code of Ethics for Fire & Rescue Services: a guide for all Fire & Rescue Service (FRS) employees in their day-to-day conduct, providing professional standards of practice and behaviour to carry out business honestly and with integrity and to underpin organisational culture.

## **2. Roles and Responsibilities**

### **All Members of Staff**

- 2.1 Staff should familiarise themselves with the expected levels of conduct (both inside and outside of the workplace) as outlined in the Ethical Framework and Code of Conduct and raise the issue with their manager if the standards are not clear.
- 2.2 Staff should agree and implement action to address any concerns or problems raised by managers.

### **Line Managers**

- 2.3 Managers should ensure that their staff know and understand the standard of conduct that is expected of them.
- 2.4 Managers should address any problems with staff at the earliest opportunity and keep accurate records of matters that are dealt with informally.

### **Commissioning Officer**

- 2.5 The Commissioning Officer will have oversight over a discipline case as it moves through the disciplinary process. They will ensure the process is fair, unbiased, that the correct procedure is followed and is conducted in a timely manner.

### **Investigating Officer**

- 2.6 The Investigating Officer is responsible for carrying out a fair investigation into the alleged Misconduct and to fully explore all lines of enquiry. They will produce an Investigation Report and present the management case at any subsequent hearings.
- 2.7 The Investigating Officer will have:
  - the necessary skills and experience in order to carry out an effective investigation
  - availability to complete the investigation in a timely manner
  - a role that is more senior than the employee being investigated

### **Service Liaison Officer**

- 2.8 The Service Liaison Officer will act as the point of contact for the employee during the formal stages of the disciplinary process. They are not involved in the investigation, or privy to any information regarding the investigation.
- 2.9 The employee can speak to the Service Liaison Officer about any personal concerns or issues they have. The Service Liaison Officer will regularly check-in with the employee and arrange further support where necessary e.g. counselling.

### **Hearing Officer**

- 2.10 The Hearing Officer will chair the Disciplinary Hearing. They will listen to both the management case and the employee's defence and decide whether on the balance of probabilities there is a case to answer to.
- 2.11 The Hearing Officer will consider all the evidence, taking into account mitigating factors and decide the appropriate outcome.
- 2.12 The Hearing Officer will have:
- the authority to issue the appropriate sanction
  - a role that is more senior than the employee
  - had no prior involvement in conducting the investigation (where reasonable)

### **Appeal Officer**

- 2.13 The Appeal Officer will chair the Disciplinary Appeal Hearing. They will consider the employee's appeal and determine the appropriate outcome.
- 2.14 The Appeal Officer will be a manager whose level is higher than the Hearing Officer who conducted the disciplinary hearing and awarded the disciplinary penalty.

### **HR and Development**

- 2.15 The HR and Development department will provide advice and guidance to managers and employees on the application of the Disciplinary Policy and Procedure.

### **Staff Welfare Support Team**

- 2.16 The Staff Welfare Support Team has a number of trained employees and volunteers who can provide support to employees. To access this service, please contact one of the [Welfare Co-ordinators on SharePoint](#).

## **3. General Principles**

- 3.1 The aim of this Disciplinary Policy and Procedure is to help and encourage employees to improve their conduct, rather than impose punishment (with the exception of dismissal which would not be an improvement tool).
- 3.2 This Policy complies with employment legislation and guidance within 'The ACAS Code of Practice'.

- 3.3 At every stage in the process the employee will be advised on the nature of the alleged Misconduct and have the opportunity to state their case before any decision is made.
- 3.4 No disciplinary action will be taken against an employee until all available facts and supporting information have been considered.
- 3.5 This Policy will apply to all activities carried out in the course of an employee's employment with the Service and where an employee's conduct outside the workplace has or may have an impact on the organisation either directly or indirectly. This includes work related or work connected social events and training courses held outside normal working hours and/or away from Service premises. This may also include social media and/or group messaging apps (such as WhatsApp). Comments made in a work group could well meet the test of being made "in the course of employment", even if they are made outside of working hours or using personal mobile devices. Employees should not have an expectation of privacy where work related matters are being discussed on these platforms.
- 3.6 Manager's should avoid any negative pre-judgements about conduct issues which might be linked to a protected characteristic. Discriminatory attitudes, bullying, harassment or the failure to create an inclusive working environment where all employees are enabled to perform effectively, regardless of their protected characteristics will not be tolerated.
- 3.7 Manager's will be provided with training which will be dependent on the role and level of authority e.g. training on carrying out an investigation and/or holding a hearing.

### **Misconduct**

- 3.8 Conduct is the manner in which an individual behaves. All employees should adhere to the standards of behaviour outlined in the [Ethical Framework and Code of Conduct](#).
- 3.9 Misconduct is a breach of the expected standards of behaviour both inside and outside of the working environment (where the actions have the potential to bring the name of the Service into disrepute) and will be dealt with under the Disciplinary Procedure.
- 3.10 Gross Misconduct is a breach of the expected standards of behaviour which is so serious that it damages the relationship between the Service and the employee and dismissal would be considered.
- 3.11 Accumulated repeated Misconduct of a lesser nature may also be dealt with as Gross Misconduct.
- 3.12 Examples of Misconduct and Gross Misconduct can be found in Appendix B but are not definitive.

- 3.13 **Capability Issues**

Capability is the ability to perform the duties of a role to the required satisfactory standard. The Service has a separate process for dealing with issues of poor performance resulting from a lack of skill or capability. In these instances please refer to the [Capability Procedure](#). Where the cause of poor performance in any area cannot clearly be attributed to either conduct or capability, the Service will determine the most reasonable and likely policy to pursue in order to address the issues or concerns.

### **Right to be Accompanied**

- 3.14 An employee has a right to be accompanied at all meetings within the formal stages of this procedure, including investigatory meetings and appeal hearing.
- 3.15 The companion may be:
- an official employed by a trade union
  - a trade union representative as long as they have been certified by their union as being competent to accompany an employee
  - a current work colleague
- 3.16 Where the chosen companion is unavailable on the day scheduled for the meeting or appeal, the meeting may be rescheduled, provided that an alternative time is proposed within five calendar days of the scheduled date.
- 3.17 Before any meeting takes place, the employee will advise the manager concerned of the name and details of their companion.
- 3.18 The Service reserves the right to refuse to accept a companion whose presence would undermine the discipline process e.g. where a companion is a potential witness.

For more information on time off for Trade Union duties please refer to the Joint Protocol for Industrial Relations.

### **Role of the companion**

- 3.19 The companion will be allowed to address the meeting, respond on behalf of the employee to any views expressed at the meeting, or confer with the employee during the meeting. The companion does not, however, have the right to answer on behalf of the employee.

### **Witnesses**

- 3.20 The Investigating Officer will identify any relevant witnesses and may interview them or request a witness statement as part of the investigation. Witnesses may be employees or any other persons not employed by the Service that is willing to cooperate with the investigation. The employee under investigation may also suggest the names of additional witnesses.
- 3.21 Any witnesses called on behalf of the Service (who are deemed employees, or similar) will be invited to attend meetings wherever reasonably practicable. If the witness is not an employee, they will be asked to assist where possible, for example by providing a written statement.
- 3.22 Either side may request to call upon witnesses to be questioned at a hearing. However the Hearing Officer will decide whether the witness is relevant and if it is appropriate to invite them to attend. An explanation will be provided if the witness is deemed not to be relevant.
- 3.23 Any witnesses called by the employee are attending at the request of that employee, such witnesses do not have to accept a request to act as a witness and should not be pressurised to do so.
- 3.24 Any witness that attends a hearing can be questioned by all parties. Witnesses must answer questions for themselves; it is not appropriate or permitted for anyone to speak on their behalf.



- 3.25 If witnesses are unable to attend a meeting they must notify the relevant person at the earliest opportunity. The witness may submit a written statement, if they are willing to provide one.
- 3.26 If it is not practical for witnesses to attend, it will be for the Hearing Officer to consider whether or not to proceed in their absence or consider a written statement instead.
- 3.27 Although witnesses do not have a legal right to be accompanied at any meetings, they may request to be accompanied and acceptance will be given on a case by case basis. In these instances, the role of the companion or trade union representative would be to support the witness (without obstructing the process).

### **Record Keeping**

- 3.28 Written records should be kept at all stages of the procedure, and should include:

<b>Discipline Process</b>	<b>Appeal Process</b>	<b>Other Information</b>
<ul style="list-style-type: none"> <li>• details of the Misconduct</li> <li>• the employee's defence</li> <li>• findings made</li> <li>• actions taken and reasons for them</li> </ul>	<ul style="list-style-type: none"> <li>• whether there was an appeal</li> <li>• the outcome of the appeal</li> </ul>	<ul style="list-style-type: none"> <li>• any grievances raised during the disciplinary procedure</li> <li>• any subsequent developments</li> <li>• notes of any formal meetings</li> </ul>

### **Covert Audio Recordings**

- 3.29 The recording without express knowledge or consent, of any meeting held as part of the discipline process, is expressly forbidden and regarded as a fundamental breach of trust and confidence that may lead to further disciplinary action being taken.
- 3.30 An employee has no legal right to make a recording of a meeting held as part of a discipline process. Requests to record any such meeting must be submitted in writing in advance, stating the reason for the request. Requests will be considered on a case by case basis. However, they may take their own written notes during the meeting.

### **Confidentiality**

- 3.31 The Service will ensure that all disciplinary matters are treated confidentially and that the circumstances of disciplinary cases are discussed with relevant parties only, HR personnel and advisory services where necessary.
- 3.32 The employee, and any other witnesses interviewed as part of investigations have a duty of confidentiality. Any breach of confidence will have consequences and may be treated as a disciplinary case of Misconduct.

### **Reasonable Adjustments**

- 3.33 In applying this procedure, managers have a legal responsibility under the Equality Act 2010 to consider any reasonable adjustments that may be needed for an employee with a disability (and for their companion if they are disabled).

### **Where a Grievance is raised during a Disciplinary Procedure**

- 3.34 Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. However the grievance process should not normally delay or interfere with the discipline process nor should it be used to unreasonably delay or interfere with any scheduled proceedings.
- 3.35 Where the grievance and disciplinary cases are related, it may be deemed appropriate to deal with both issues concurrently. Depending on the nature of the grievance, the Service may consider bringing in another manager to deal with the disciplinary process.

### **Disciplinary Action against Trade Union Representatives**

- 3.36 Where disciplinary action is being considered against a Trade Union representative the normal disciplinary procedure should be followed. However, it is advisable to discuss the case with a senior Trade Union representative or permanent Union Official during the early stages of the process but only after obtaining the employee's agreement to do so.

### **Criminal Investigations**

- 3.37 If an employee is questioned in relation to, arrested for, charged with and/or convicted of a criminal offence and/or receives a police caution, the employee is required to inform their manager at the earliest instance. During out of hours, the employee should contact the Duty Area Commander. Failure to do so is likely to be regarded as a serious breach of trust and confidence, and may result in formal disciplinary action, including dismissal.
- 3.38 If the offence is not related to work, this is not in itself an automatic reason for disciplinary action, although the employee must still make full disclosure of the same. The Commissioning Officer should establish the facts of the case and consider whether the matter is serious enough to cause damage to the reputation of the Service, or relevant to the employee's role to warrant starting an investigation.
- 3.39 The main consideration should be to what effect the charge or conviction has on the employee's suitability and ability to do the job and their relationship with their employer, work colleagues and service users. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody. Consideration will need to be given to the above factors, as well as the length of time in custody and the potential impact on the reputation of the Service.
- 3.40 Each case will be considered on its own merits by managers in conjunction with advice from the HR and Development Department. The Service reserves the right to take disciplinary action, when awaiting the outcome of any criminal legal proceedings would cause undue delay, cost or the risk of potential harm to others or the reputation of the Service.

### **Stages of the Disciplinary Procedure**

- 3.41 The Disciplinary Procedure contains the following stages:

Informal Stage

Formal Stages: 1, 2 & 3

Appeal Stage

- 3.42 The informal and formal stages may be followed sequentially however; dependent on the severity of the alleged Misconduct, cases may be accelerated to a higher stage without each stage being followed.
- 3.43 Managers should seek advice from HR before commencing any formal stage of the Disciplinary Procedure.

### **Appeal Stage**

- 3.44 At all formal stages of this policy the employee has the right to appeal. Any appeal will be heard in an appeal hearing by a manager that, where possible, has previously had no direct involvement with the case. The manager will be at Group Commander Level (or Support Staff equivalent) or above.

## **4. Disciplinary Procedure – Informal Stage**

- 4.1 Cases involving low level matters are usually best dealt with informally by the line manager and by taking this approach minor problems can be dealt with quickly and confidentially.
- 4.2 The line manager (or manager dealing with the issue) should ensure that the employee understands the reasons for their concerns, the expected standards and outcomes required (in line with the [Ethical Framework and Code of Conduct](#)) and timescales for improvement.
- 4.3 The line manager should confirm in writing with the employee, a record of what was discussed and if applicable, any improvements required. The line manager may choose to do this on a 'Record of Discussion' form (see Discipline Toolkit for template) or by sending an email to the employee. The line manager should forward a copy of the written record to [HRSupport@hwfire.org.uk](mailto:HRSupport@hwfire.org.uk), to be recorded on the employee's Personal Record File (PRF).
- 4.4 The 'Record of Discussion' is not a formal or informal warning and will not form any part of the employee's disciplinary record. However, it may be referred to in the event of repeated or similar behaviour in the future, as evidence of the Service's stated expectations.
- 4.5 There will, however, be situations where matters are more serious or where an informal approach has been tried but isn't working or where there are repeated low level issues of misconduct even if they are not necessarily related but show a pattern of unacceptable behaviour. At this point it may be appropriate to enter the formal stages of the procedure and investigate the alleged Misconduct.

## 5. Disciplinary Procedure – Formal Stages

5.1 Formal disciplinary matters will be addressed by the appropriate level of management in relation to the level of seriousness of the matter and will be used where the informal stage has been exhausted or is not deemed adequate. In all cases, the managers involved must be senior to the employee:

Formal Stage	When to use	Commissioning Officer	Investigating Officer	Hearing Officer	Possible Outcome
Formal Stage 1	Misconduct (see Appendix B for examples)	Station Commander/Support Staff Equivalent/or above	Watch Commander/Li ne Manager/or above	Station Commander/Support Staff Equivalent/or above	No further action Informal (Record of Discussion) Written Warning (valid up to 6 months)
Formal Stage 2	Misconduct which is sufficiently serious (e.g. where the employee's actions have, or are liable to have, a serious or harmful impact on the Service)  Failure to improve conduct or change behaviour within agreed timescales at Stage 1	Group Commander/Head of Department/or above	Station Commander/Support Staff Equivalent/or above	Group Commander/Head of Department/or above	No further action Informal (Record of Discussion) Written Warning (valid up to 6 months) Final Written Warning (valid up to 18 months)
Formal Stage 3	Serious offence amounting to Gross Misconduct (see Appendix B for examples)  Failure to improve conduct of change behaviour within agreed timescales at Stage 1 and/or 2  Commits further acts of Misconduct	Area Commander/Support Staff Equivalent/or above	Group Commander/Head of Department/or above	Area Commander/Support Staff Equivalent/or above  Senior member of HR may also be present	No further action Informal (Record of Discussion) Written Warning (valid up to 6 months) Final Written Warning (valid up to 18 months) Dismissal with notice Summary dismissal (i.e. no notice) Other appropriate action (as below)

5.2 Other alternative outcomes to dismissal that may be appropriate for consideration and could include any of the following non-exhaustive items:

- withdrawal from any 'Flexitime' hours arrangements
- demotion or change in role with the appropriate reduction in pay and terms and conditions of employment (either within 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 (which should involve no loss of remuneration and unless the employee agrees otherwise and should be within the same duty system)
- loss of pay up to a maximum of thirteen days

**Consideration of Suspension**

5.3 In some cases, the Service may take the decision to suspend the employee from the workplace while an investigation or preparation for a disciplinary hearing takes place. This may include where:

- working relationships have broken down
- the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation
- there is a risk to an employee's health or safety, property and/or customers / the public
- the employee is the subject of criminal proceedings which may affect whether they can do their job or where the matter is of a serious nature which may affect whether they can do their job or whereby remaining in the workplace threatens the integrity and/or image of the Service

5.4 The Service accepts that it has a duty to act reasonably, fairly and consistently in suspending an employee and the decision to suspend an employee will not be taken lightly.

5.5 The decision to suspend an employee will be made by a Principal Officer, who has the authority to suspend, as per the below table:

Level	Authority to Suspend	If Authoriser is Absent
Up to and including Group Commander/Support Staff equivalent	Assistant Chief Fire Officer or Deputy Chief Fire Officer	Duty Principal Officer, in conjunction with Head of HR & Development
Assistant Director	Chief Fire Officer	Deputy Chief Fire Officer
Assistant Chief Fire Officer/ Deputy Chief Fire Officer/Director of Finance	Chief Fire Officer	Fire and Rescue Authority
Chief Fire Officer	Fire and Rescue Authority	N/A

5.6 Before suspending, consideration must be given to temporary alternatives. Only if all other options are not practical, may suspension become necessary. Examples of other arrangements are:

- being moved to a different area of the workplace
- working from home
- changing working hours
- being placed on restricted duties
- working under supervision
- transferring to a different role within the organisation (the role should be of a similar status to the employee's normal role, but the same terms and conditions of employment).

- 5.7 A suspension pro-forma will be completed by the Commissioning Officer, in order for the Principal Officer to carefully consider whether suspension is necessary.
- 5.8 The employee will be informed of the reasons for the suspension and it should be made clear to the employee that suspension is not an assumption of guilt and is not considered a disciplinary sanction.
- 5.9 Where an employee is suspended from duty they will receive full pay unless they commence sick leave in which case their pay will be in accordance with the rules of the sick pay scheme. Full pay for those employees on the Retained Duty System will be calculated on the basis of their payments averaged in the previous 52 weeks, or if less, the number of complete weeks during which the employee has been employed excluding any week in which they have been on sick leave or received no pay. (Please refer to CIRCULAR NJC/2/20 for further details).
- 5.10 If an employee becomes unfit for duty during the period of suspension, normal rules of the occupational sick pay scheme apply.
- 5.11 Any period of suspension will be kept as brief as possible and will be kept under regular review throughout the disciplinary process.
- 5.12 A suspended employee will be expected to be contactable during normal working hours and available to attend any meetings and/or interviews that are necessary concerning the investigation.
- 5.13 If the employee wants to go on holiday during their suspension, they must follow the Service's Annual Leave procedure and make a request to take annual leave. Where the suspended employee has pre-booked a period of annual leave, they are entitled to take this. However, if the Service chooses to cancel this leave it should give adequate notice in accordance with reg.15 of the Working Time Regulations 1998 (SI 1998/1833) (i.e. notice equivalent to the amount of leave requested).

#### **Written Notes/Minutes**

- 5.14 The employee will be given a copy of any notes/minutes taken at formal meetings (including interviews and hearing). The employee will be sent two copies, one for their records and one to sign, date and return to confirm their accuracy. If the employee disagrees with the notes or wishes to make additional comments they should annotate both copies and return one.
- 5.15 In some circumstances, (for example to protect a witness or where it would compromise the investigation) the Service reserves the right to withhold some information.

## **Investigation**

- 5.16 An investigation into the alleged Misconduct will always be carried out. An employee will not be asked to attend a formal disciplinary hearing until an appropriate investigation has been completed.
- 5.17 The purpose of the investigation is to:
- establish a fair and balanced view of the facts
  - allow the employee to provide an explanation
  - determine whether formal disciplinary action is required
- 5.18 The duration and extent of investigation required will depend on the nature and complexity of the allegations and will vary from case to case. It may involve interviewing the employee against whom an allegation has been made, as well as any witnesses and gathering any relevant documentation or evidence. In some cases, only a brief or informal investigation may be required where the facts of the matter are clear and / or the employee has made a full admission in relation to the allegations. The employee will be kept up to date on likely timescales throughout the investigation.
- 5.19 In cases involving On-Call Firefighters an investigation may be protracted due to the work commitments in the employee's primary employment and their availability to attend meetings. If the employee is unable to get time off from their primary employer, the Service will be as flexible as possible, e.g. consider holding meetings during the evening.
- 5.20 In the case of serious or complex allegations it may be appropriate to use a person external to the Service. Where an external investigator is used, they will be overseen by a nominated HWFRS manager and will follow the Service's disciplinary policy and procedures. In exceptional circumstances the Chief Fire Officer has the discretion to appoint an appropriate external person.
- 5.21 The Investigating Officer will produce an Investigation Report and file of evidence to be given to the Commissioning Officer, who will consider whether there is sufficient evidence to warrant further action.

## **Written Notification of Investigation Outcome**

- 5.22 The employee will be written to confirming the outcome of the investigation. If the matter is to be taken to a formal disciplinary hearing, the written notice will be sent within the timescales set out in Section 4.24 and will include:
- the time, date and venue of the proposed hearing
  - sufficient information about the alleged Misconduct, to enable the employee to prepare to put forward their case
  - whether the case is being dealt with as Misconduct or Gross Misconduct and the potential outcomes
  - details of any witnesses to be called by the Service
  - copies of all evidence and documents that will be referred to at the hearing (including the Investigation Report and any witness statements)
  - a date within which the employee should submit any documentation they would like to have taken into consideration at the hearing

## **Timescales**

- 5.23 The following timescales will be adhered to unless amended by mutual agreement.
- 5.24 The length of time between the employee receiving written notification of a disciplinary hearing and the hearing itself should be long enough to allow the employee and/or their companion to prepare and shall normally be no less than:
- 7 working days for the first formal stage
  - 10 working days for the second formal stage
  - 21 working days for the third formal stage
- 5.25 Following a disciplinary hearing, the employee will be sent written confirmation of the outcome within 7 working days.
- 5.26 If the Service is not able to respond to an employee within the time limits outlined in this procedure, the employee will be informed of when a response can be expected. Any response will be within a reasonable timescale.

## **Disciplinary Hearing**

- 5.27 The timing and location of the hearing should, where practicable, be agreed with the employee and/or their representative. The manager should hold the hearing in a private location and ensure both that there will be no interruptions and that the employee feels the issue is being treated confidentially.
- 5.28 At the hearing, the Hearing Officer will explain the allegations against the employee and go through the evidence that has been gathered.
- 5.29 The employee and/or their companion will be allowed to set out their case, present evidence, call relevant witnesses, ask questions and raise points about any information provided by the Service. They will finally be asked to present any mitigating circumstance that they would like the Hearing Officer to take into consideration.
- 5.30 If more time is required to consider the matter or if further investigations are necessary, the manager may adjourn the hearing.
- 5.31 A member of the HR & Development department will normally accompany the Hearing Officer at any hearing where Gross Misconduct is alleged to provide advice and guidance.

## **If the employee is unable to attend the Disciplinary Hearing**

- 5.32 An employee who cannot attend a hearing should inform the Hearing Officer in advance of the meeting and as soon as reasonably possible. The employee may offer a reasonable alternative time within seven calendar days of the original date, unless extended by mutual agreement.
- 5.33 If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged (e.g. illness) another meeting will be arranged. A decision may be taken in the employee's absence if they fail to attend a disciplinary meeting without good reason.



- 5.34 If the employee is unable to attend a hearing within a reasonable period, they will be provided with the opportunity to submit written comments and / or to send representations (as per Section 2.14) on their behalf to the meeting. The employee should be advised in advance that a decision may be taken on the evidence available in the absence of comment/representation.
- 5.35 Where an employee is unable to attend a disciplinary hearing due to illness and where the sickness absence is prolonged or uncertain, Occupational Health should be asked to give a view as to when the employee is likely to be fit enough to attend. If an employee unreasonably refuses to co-operate with Occupational Health, the Service reserves the right to consider any disciplinary allegations in the employee's absence. The Service may also withhold occupational sick pay and / or suspension pay in such circumstances.

### **Outcome of Disciplinary Hearing**

- 5.36 If no Misconduct is evidenced, a letter confirming the findings and a copy of the notes of the hearing will be sent to the employee.
- 5.37 If the employee is issued with a formal sanction the written notice will include:
- the nature of the Misconduct
  - the sanction awarded and how long the warning will remain in force
  - the change in behaviour required and timescales for improvement
  - consequences if there is no improvement (i.e. further formal disciplinary action)
  - their right to appeal and the process of how to do so

## **6. Disciplinary Procedure – Appeal Stage**

- 6.1 Employees who have had formal disciplinary action taken against them have the right to appeal the decision.
- 6.2 Where an informal action has been taken there is no right of appeal, as this is merely a written record of the discussion that's taken place.
- 6.3 The appeal should be made no later than 7 working days after the employee has received written confirmation of the outcome.
- 6.4 The appeal should be made in writing, addressed to the Head of HR & Development, giving the grounds for appeal including evidence and/or rationale for the appeal.
- 6.5 Grounds for appeal can be one or more of the following:
- there was a defect in the procedure;
  - the issue is not proven on the balance of probabilities;
  - the disciplinary sanction was too severe;
  - there is a dispute about evidence given at the original meeting, which has not been fully considered at the original hearing;
  - new evidence has come to light since the meeting which may have an impact on the decision.

The employee will be required to clearly set out the specifics of the above or other grounds in their letter of appeal. Where the grounds for appeal are unclear clarity will be sought.

- 6.6 The Appeal Officer will have available all the documents presented at the original disciplinary meeting. They will also have a copy of the notes from the meeting, the letter confirming the outcome of the original disciplinary meeting, the letter of appeal and all other relevant information.
- 6.7 An appeal can be conducted either by way of a review (where the Appeal Officer is simply checking how the original disciplinary was managed) or a re-hearing (where the Appeal Officer looks at matters afresh and comes to their own judgment on what should happen). A full re-hearing will not normally be granted and only take place in the following instances (this is not necessarily an exhaustive list):
- there was a procedural defect at the original meeting which was so serious as to render the original disciplinary meeting unfair or,
  - new evidence of a substantial nature has come to light which needs to be heard in full or,
  - there is a dispute about significant evidence given by one or more witnesses at the original meeting which was not adequately considered (in these cases it may be necessary to rehear the witness evidence at the appeal).
- 6.8 The outcome of the appeal will be either:
- The case against the employee is upheld (in whole or part); the sanction will then be the same or a lesser penalty.
  - The case against the employee is not upheld.

#### **Issuing sanctions when an employee has appealed**

- 6.9 In cases of Gross Misconduct, dismissal will be summary (i.e. immediate without notice or pay in lieu of notice) following the initial disciplinary hearing. If the employee is subsequently reinstated on appeal this will be with immediate effect. The effect of reinstatement is to treat the employee as if they had never been dismissed. Therefore the Service will pay the employee any monies due for the period between dismissal and appeal, taking into account any sums paid by way of notice monies, and also reinstate pension and other benefit schemes.
- 6.10 In other cases of dismissal, employees will be given contractual notice of dismissal or payment in lieu of notice following the initial disciplinary hearing. Every effort will be made to conclude any appeal process within the notice period. Where it has not been possible to conclude the appeal process within the notice period, notice may be extended for a reasonable period with a view to concluding the appeal process within the notice period. If the dismissal is not upheld on appeal, the employee will be reinstated.
- 6.11 In cases of sanctions other than dismissal, the sanctions will not be implemented until the internal appeal process has been concluded.

## **7. Data Protection**

- 7.1 The Service will process any personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with the [Data Protection SPI](#).
- 7.2 In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure.
- 7.3 Inappropriate access or disclosure of employee data constitutes a data breach and should be reported to Fire Control immediately upon discovery, as per the [Information Security Incident Management SPI](#). It may also constitute a disciplinary offence, which will be dealt with under this Disciplinary Procedure.
- 7.4 For further information on how the Service handles your personal information please refer to the [Privacy Notice Register](#).

## **8. Monitoring**

- 8.1 Summary details of discipline cases will be anonymously recorded by the HR & Development department, in order to monitor and analyse the levels of discipline cases, the reasons for discipline cases arising, how effectively, fairly and timely they are being dealt with and to make recommendations for any steps that need to be taken by the organisation to address any issues identified.
- 8.2 Following the conclusion of a discipline case the Service reserves the right to use the outcomes and circumstances of the case to improve standards and behaviours across the Service (anonymised).

## **9. Review**

- 9.1 The Disciplinary Policy and Procedure will be reviewed by the HR and Development Department within 5 years of the policy being issued, or when there are legislative changes.

## Discipline Procedure for Principal Officer / Statutory Officer roles

### Introduction

The discipline procedure for Principal Officer / Statutory Officer roles will be based on the Service’s current disciplinary procedure.

### Investigation Process

A preliminary investigation into allegations of misconduct of a Principal Officer / Statutory Officer will be conducted by a designated independent person at Principal Officer / Statutory Officer level.

If the preliminary investigation determines a potential case to answer a formal investigation will be conducted. An appropriate Officer will be appointed by the Chief Fire Officer. Where appropriate an external designated independent person at the appropriate level may be appointed.

### Disciplinary Process

The formal stages of the Disciplinary procedure shall normally be dealt with by the appropriate Officer / Member:

Stage	Allegation against level	Investigation	Disciplinary and /or action	Hearing	Appeal
Stage 1 and 2	Assistant Chief Fire Officer / Director	Internal Principal Officer or external designated independent person	Deputy Chief Fire Officer		Chief Fire Officer
	Deputy Chief Fire Officer / Treasurer / Monitoring Officer	External designated independent person	Chief Fire Officer		Member Panel of Fire Authority Appointments Committee
	Chief Fire Officer	External designated independent person	Member Panel of Fire Authority Appointments Committee		Group Leader Panel of Fire Authority
Stage 3	Assistant Chief Fire Officer / Director	Internal Principal Officer or external designated independent person	Chief Fire Officer		Member Panel of Fire Authority Appointments Committee
	Deputy Chief Fire Officer / Chief Fire Officer / Treasurer / Monitoring Officer	External designated independent person	Member Panel of Fire Authority Appointments Committee		Group Leader panel of Fire Authority

A Member Panel of the Fire Authority Appointments Committee will be arranged by the Monitoring Officer / Legal Advisor to the Fire Authority as appropriate.

Member Panel of the Fire Authority hearings will comprise of a panel of three Members.  
All Members will be appropriately trained in the Authority's disciplinary and appeals process.

The HR SMB Lead or a nominated HR representative shall have responsibility for the provision of professional HR advice to the Member Panel of the Fire Authority.

## **Examples of Misconduct and Gross Misconduct**

This Document contains descriptions of conduct which may result in disciplinary action and is designed to assist in informing the application of the Disciplinary Procedure.

### **Revision**

The descriptions have been drawn together by the Service and will be revised from time to time with reference to national legislation, Service requirements and employment caselaw.

### **Application**

The list is not exhaustive and there may be other conduct which triggers disciplinary action because of the nature of the role the individual performs for the Service or the specific offence. Similarly there will be other conduct listed which results in more serious action than that identified in the following list because of the role that the individual is employed to perform or the circumstances surrounding it.

Examples of **minor matters** which may result in invoking the informal disciplinary procedure for the first occurrence:

- Poor timekeeping, late attendance and excessive breaks
- Failure to follow the procedures for sickness absence reporting
- Poor attitude, behaviour or failing to contribute to activities in the workplace in a positive manner

The following will constitute behaviour which is considered to be Misconduct and will generally trigger disciplinary warnings. It should be noted that any Misconduct may be treated more seriously if it has been repeated or because of the particular responsibilities carried by the employee concerned:

### **Misconduct**

- Failure to improve issues raised during the informal stage
- Frequent and/or persistent absence from work or lateness without reasonable cause
- Unauthorised Absence from work
- Insubordination/refusal to carry out reasonable instructions
- Breach of the Service's Policies and Procedures
- Failure to represent the values of the Service or consistent presentation of poor attitude and behaviours towards others (both inside and outside of the workplace)
- Data protection breaches and misuse of the Service's information
- Abusive or offensive words or behaviour to other work colleagues or members of the public (including through Social Media channels, and electronic communications such as email, Facebook, Twitter, WhatsApp etc, comments made in a work group could well meet the test of being made "in the course of employment", even if they are made outside of working hours or using personal mobile devices.) And/or where the activity or behaviour is not in the course of employment but has the potential to bring the Service into disrepute

- Misuse of employment-related facilities
- Inappropriate behaviour at work
- Loss of, or damage to, Service property

### **Gross Misconduct**

Gross Misconduct is action which on its own goes to the root of the employment contract and which, if proven, destroys the trust and confidence held by the employer in the employee. Gross Misconduct will normally result in dismissal without notice for a single offence. The types of offences which are considered to fall into this category include:

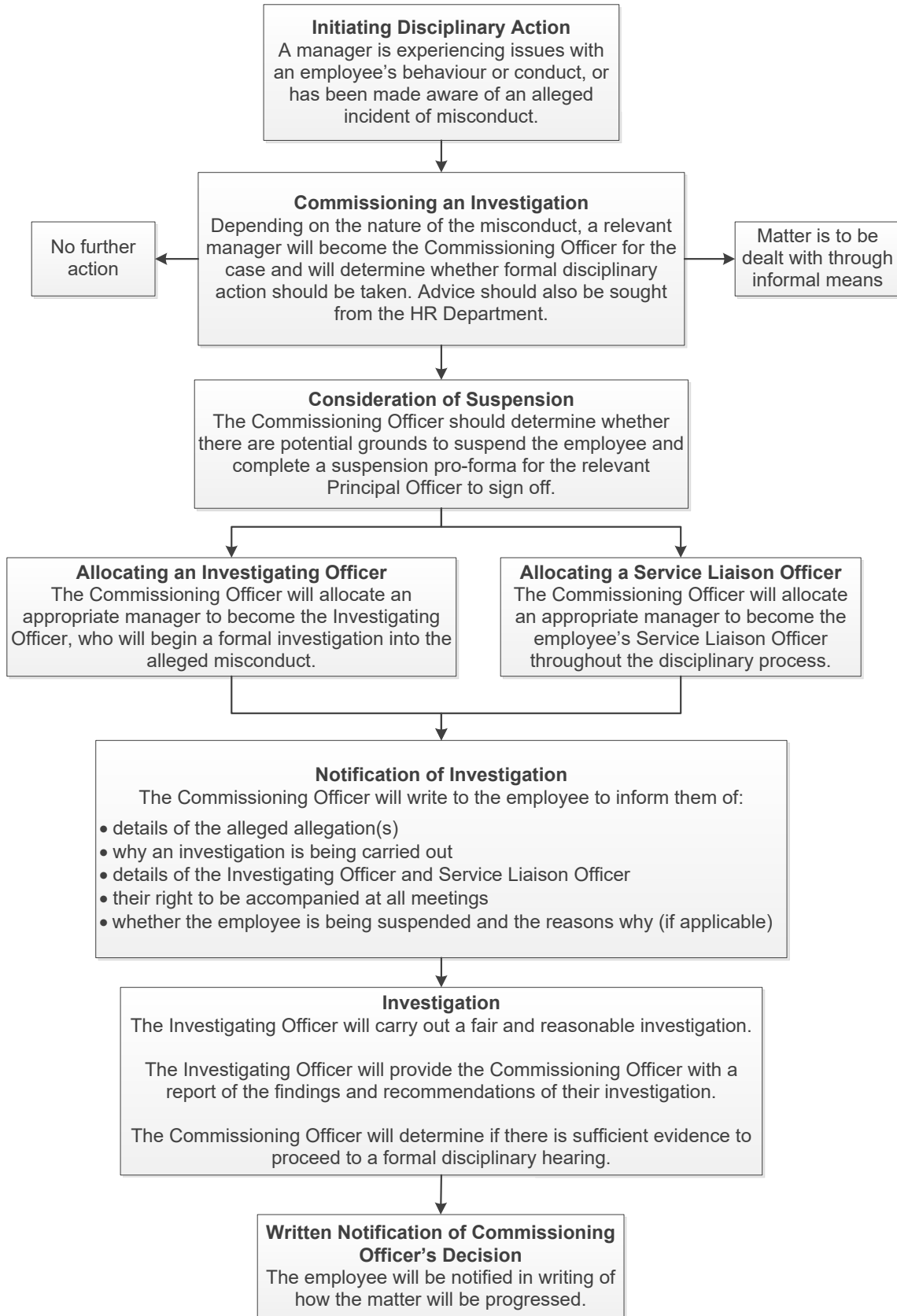
- Bullying and harassment
- Serious negligence resulting in unacceptable loss, damage or injury
- Intentional serious breach of regulations or improper conduct in relation to job responsibilities
- Bringing the Service into serious disrepute or could result in action against the Service for negligence or breach of trust
- Provision of false information
- Theft, fraud or deliberate falsification of records or the Service's documents
- Assault or attempted assault or physical violence
- Serious incapability at work brought on by alcohol or illegal drugs
- Malicious damage to the Service's property
- Intentional and / or malicious refusal to comply with reasonable instructions or requests made by a line manager or other authorised person within the work place
- Any breach of health and safety rules which places an employee or others in danger
- Intentional misuse of confidential information of the Service other than that in which would be covered by the Whistleblowing SPI
- Fraudulent misuse of the Service property or name
- Improper disorderly or unacceptable conduct at, during or arriving for work or at any event connected to work
- Absence with false reason
- Wilful refusal or failure to comply with any Service policy or instruction
- Serious breach of trust and confidence
- Deliberate attempts to undermine or damage the reputation of the Service

### **Summary**

Each offence will be dealt with on its own merits and in relation to the circumstances. This may result in the application of disciplinary penalties beyond those indicated in the preceding document.

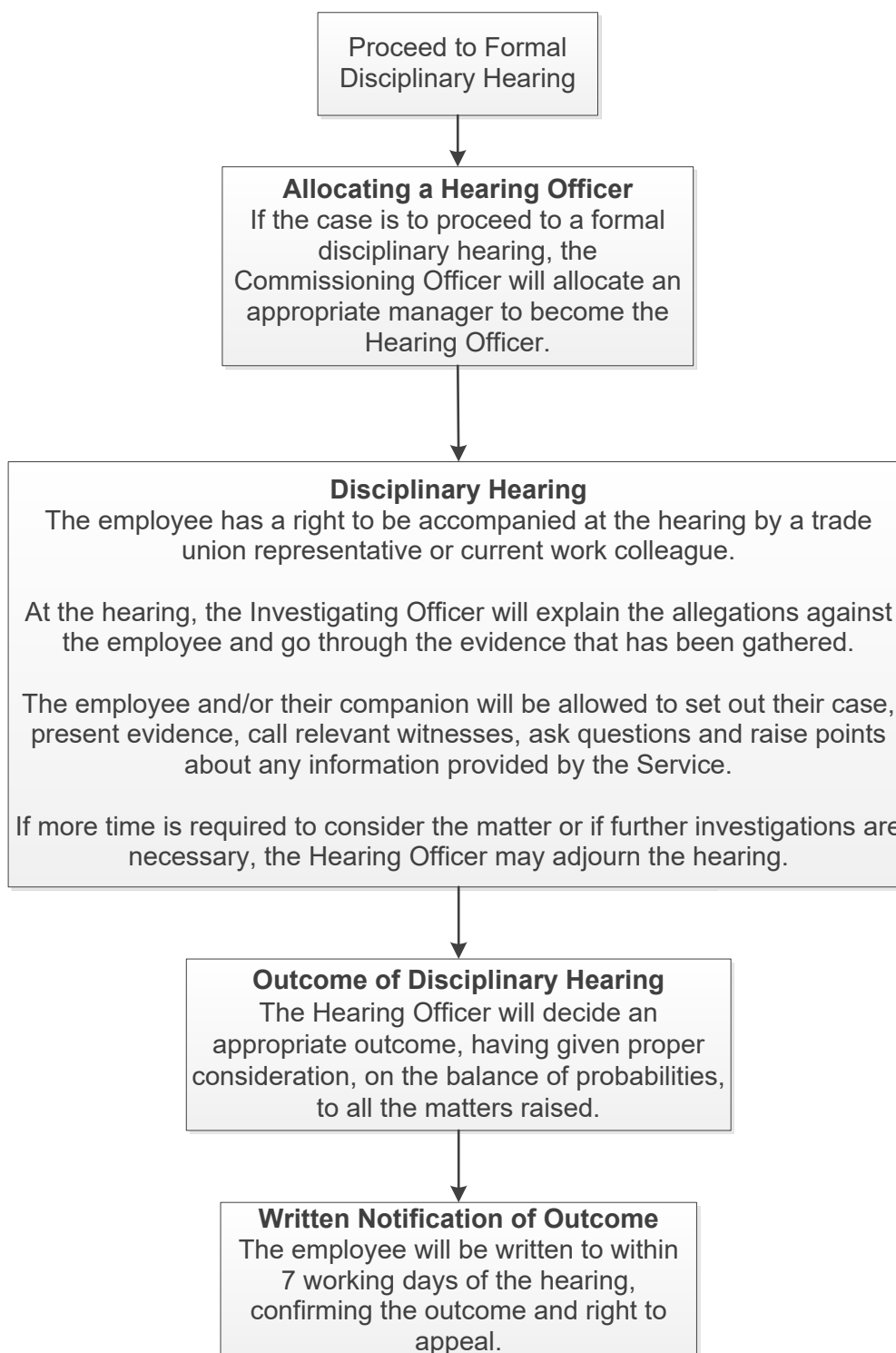
Clarification and advice regarding the above can be obtained from the HR Team.

**Formal Disciplinary Process**



(Continued on next page)





## Appeal Process

