

Disciplinary Procedure

Appendices

DETAILS OF THE DISCIPLINARY STAGES

1. Informal stage

- 1.1 Cases involving minor misconduct are usually best dealt with informally by the line manager. A quiet word is often all that is required and the informal approach means that minor problems can be dealt with quickly and confidentially. At this informal stage the manager should ensure that employees understand the position, and issue them a written note.
- 1.2 This notification would not form any part of their disciplinary record but it would be filed on their Personal Record File for 6 months.
- 1.3 There will, however, be situations where matters are more serious or where an informal approach has been tried but isn't working. At this point it may be appropriate to enter the formal stages of the procedure.

2. First formal stage

- 2.1 This stage will be conducted at Watch/Station Manager level or higher, or the equivalent support staff level of Supervisor or above.
- 2.2 The employee's line manager will initiate, conduct or delegate an investigation into the matter, after consultation and guidance from a member of discipline support. .
- 2.3 Following investigation a decision will be taken by the line manager to either:
 - Take no further action
 - Deal with informally
 - Proceed to a Stage 1 hearing
 - Refer to Stage 2 or 3
- 2.4 The decision to take no further action or deal with informally must be discussed with a member of discipline support.
- 2.5 Disciplinary hearings will be conducted in accordance with **Appendix 8** of this document.
- 2.6 The employee will be given a minimum of 7 days notice of the hearing. The letter should contain enough information for the employee to fully understand the case against them, including relevant documents; and the reasons why this is unacceptable. If the employee has difficulty reading, or if English is not their first language, the manager should explain the contents of the letter to them orally.
- 2.7 The employee has the right to be represented or accompanied and present their case in response to management.

- 2.8 Where, following a disciplinary hearing, an employee is found guilty of misconduct, the usual first step would be to give them a written warning setting out the nature of the misconduct and the change in behaviour required.
- 2.9 A verbal decision will normally be given at the end of the hearing and this will be confirmed in writing and issued to those concerned within 7 days. The employee should be informed that the warning is part of the formal disciplinary process and what the consequences will be of the failure to change behaviour. The consequences could be a final written warning and ultimately, dismissal.
- 2.10 A record of the warning will be kept, but it will be disregarded for disciplinary purposes after 6 months and will be removed from the personal record file after that time.
- 2.11 Employees have a right of appeal against the decision/written warning.

3. Second Formal Stage

- 3.1 This stage will be conducted at Group Manager level or higher, or the equivalent support staff level of Team Leader or above.
- 3.2 Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, the employee may be issued with a final written warning – but only after a further investigation and hearing.
- 3.3 Alternatively where misconduct is sufficiently serious, action may be initiated at this stage.
- 3.4 The procedure is the same as for stage 1 above except the notice of the hearing should be a minimum of 10 days and penalty that may be applied is greater.
- 3.5 The final written warning will give details and an explanation of the decision. It will warn the employee that failure to improve or modify behaviour may lead to dismissal or some other penalty.
- 3.6 Final Written warnings will be disregarded for disciplinary purposes after 18 months.
- 3.7 Employees have a right of appeal against the decision and final written warning, or a lesser penalty, where this is issued.

4. Third formal stage

- 4.1 This stage should be conducted at Area Manager level or higher, or the equivalent support staff level of Section Head or above. For the purposes of this procedure, there is a defined list of Section Heads who may conduct a Stage 3 hearing. They are: Administration Manager, Personnel Manager, Personnel Policy Manager, Strategic Head of ICT, Estates manager, Fleet Manager, Supply Chain Manager, Finance Officer.
- 4.2 The procedure is the same as for stages 1 and 2 above except the notice of the hearing should be a minimum of 21 days and penalty that may be applied is greater.

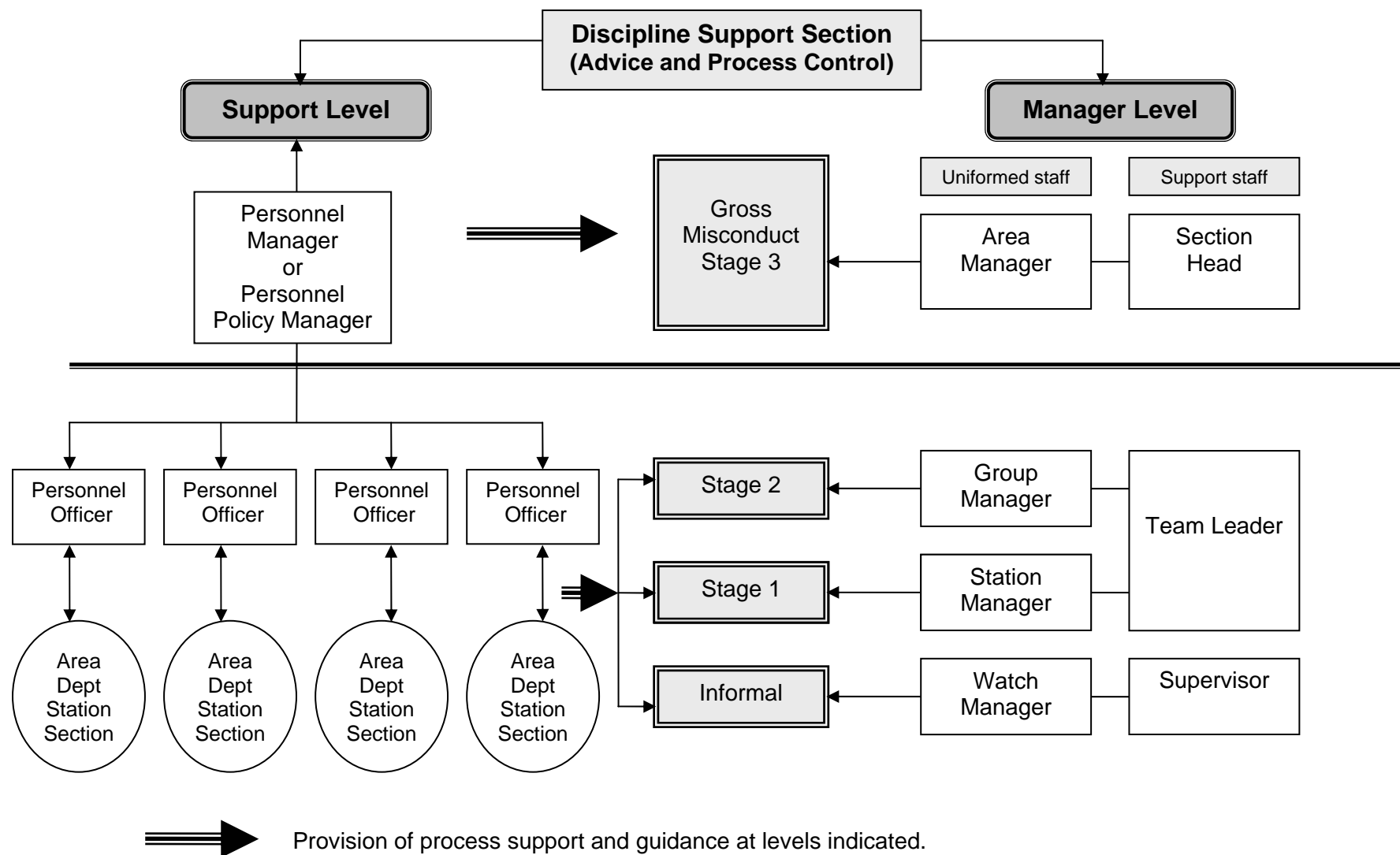
- 4.3 Where employees fail to improve or where misconduct is sufficiently serious, following an investigation and hearing, employees may be dismissed if the case against them is proven.
- 4.4 Alternatively, a decision may be made to award a penalty less than dismissal, or in serious cases, as an alternative to dismissal. These penalties are:
- a warning
 - demotion, (either within role or no more than one grade/role; a demotion of more than one role/grade 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 should be within the same duty system)
 - Loss of pay up to a maximum of 13 days
- 4.5 Employees have a right of appeal against the decision/penalty awarded.

Gross misconduct

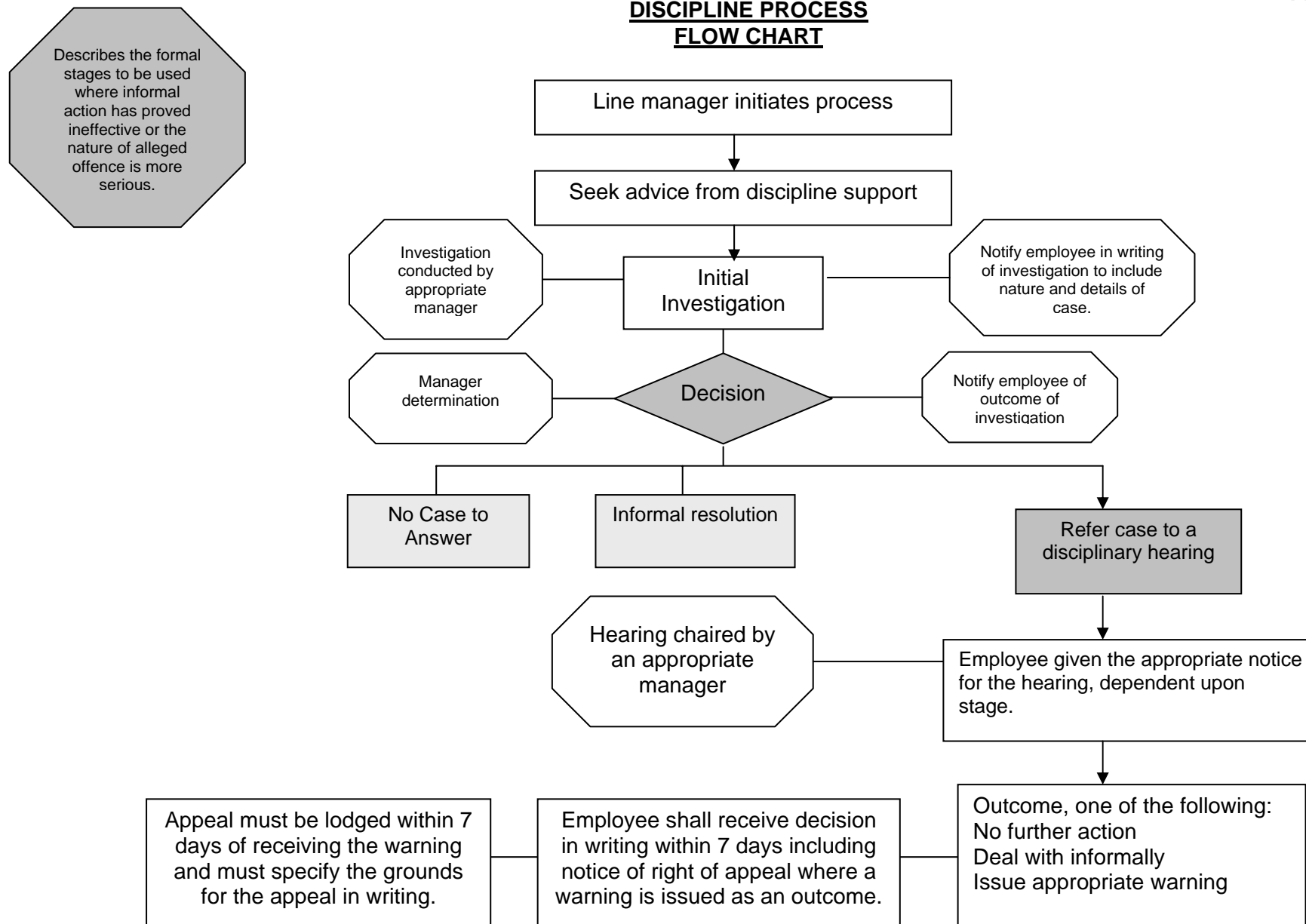
- 5.1 Where there are allegations of gross misconduct, that make an employee potentially liable for dismissal, it is important to establish the facts before taking any action. This must only be done following consultation and guidance from Discipline Support. Examples of offences constituting gross misconduct are outlined in **Appendix 4**.
- 5.2 A period of suspension with full pay may be considered helpful or necessary while the investigation is taking place, although it should only be imposed after careful consideration and should be kept under review.
- 5.3 It should be made clear to the employee that the suspension is a precautionary matter, not disciplinary action in itself, and does not involve any prejudgement of the case.
- 5.4 Employees will have the opportunity to put their case at a disciplinary hearing before a decision is taken regarding any action.

Employees have a right of appeal against the dismissal, or a lesser penalty where this is issued.

DISCIPLINE SUPPORT STRUCTURE



DISCIPLINE PROCESS FLOW CHART



OFFENCES CONSTITUTING GROSS MISCONDUCT

The following are examples of gross misconduct that may lead to summary dismissal, i.e. dismissal without notice. This list is not exhaustive and there may be other offences of a similar gravity resulting in a serious breach of contractual terms that could constitute gross misconduct.

- theft or fraud
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of the Authority's property or name
- deliberately accessing pornographic, offensive or obscene material
- unlawful discrimination or harassment
- bringing the Authority into serious disrepute
- serious incapacity at work brought on by misuse of alcohol or illegal drugs
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of confidence

POLICY ON THE PRECAUTIONARY SUSPENSION OF STAFF

1. Principles of treatment

- 1.1 On occasions it is necessary to suspend staff on a precautionary basis where allegations of misconduct/gross misconduct have been made.
- 1.2 Such decisions are not taken without full consideration of the circumstances and facts known at the time and with proper regard for the welfare of the staff member concerned. This policy sets out the welfare and other facilities available to individuals in such circumstances.
- 1.3 A suspension may only be invoked where the allegations made are of a serious nature or amount to gross misconduct, (an illustrative list of offences are set out at Appendix 3 of the Disciplinary Procedure). The decision may be made either at the start of an investigation or at any time thereafter should it become apparent that the overall circumstances make this course of action necessary in the best interest of the Fire Authority and/or individuals involved.
- 1.4 Consideration will always be given as to whether an alternative action to suspension is appropriate and available.
- 1.5 Decisions to suspend staff will be made by the Personnel Manager or the Personnel Policy Manager; or in their absence, the duty Principal Officer.
- 1.6 Welfare support will be offered to the individual at the time of suspension and beyond.
- 1.7 Whilst suspended the employee will be excluded from Fire Service premises for work purposes. They may attend for meetings with their representatives and have access for welfare, social/sporting purposes, subject to approval.
- 1.8 Individuals have a right to be represented at any meeting by a representative of the recognised unions, or a fellow worker.
- 1.9 The employee will be kept apprised of progress of the investigation and the likely timescales involved at regular intervals.
- 1.10 During investigation the decision to suspend will be reviewed by Discipline Support in liaison with the Personnel Manager or Personnel Policy Manager.

2. Entitlements/Conditions of employees subject to suspension

2.1 Attendance at Fire Service premises

You should not attend fire service premises whilst suspended, unless asked to do so by the Investigating Officer or your line manager, or for purposes of representation. Depending on the circumstances you may be allowed access for welfare or social/sporting purposes, subject to managerial approval.

2.2 Support facilities

You will have unrestricted access to your representative and, if required, any personal friends. Welfare support will be available through your line manager.

In addition, depending on the circumstances, regular contact may be maintained through visits from managers and/or your work colleagues. These visits are to ensure your well being and to update you on work issues.

2.3 Investigation updates

The Investigating Manager will provide these to you and your representative (if requested) at regular intervals.

2.4 Identity card

You must surrender this at the time of suspension. It will be returned to you if the suspension is lifted.

2.5 Pay and allowances

You will receive your normal pay and any incremental entitlement (subject to normal conditions) and allowances, which you would have been entitled to had you been at work.

2.6 Annual Leave

You may book annual leave whilst suspended subject to management approval. If your suspension is lifted then normal carry over arrangements at the end of the leave year will apply.

2.7 Sickness Reporting

If you are ill you should report this, following the normal sickness reporting procedures. Normal sick pay rules and entitlements will apply from the date you report sick. It does not, however, override the conditions of your suspension.

Sickness absence does not excuse you from attending a disciplinary hearing and advice will be sought from the Occupational Health to determine if you are fit to attend. If this view differs from your own GP or Consultant, independent advice will be sought.

2.8 Other employment

The taking of other employment whilst suspended is not permitted.

2.9 Details of allegations

Initial details of the allegations, as known at this stage, will be forwarded to you as soon as possible, together with written confirmation of the precautionary suspension.

2.10 Further information

If you need further information or have any queries about this guidance contact your line manager or Personnel Officer in the first instance who will be pleased to assist.

REPRESENTATION

1. Employees have a statutory right to be accompanied by a fellow worker or trade union official of their choice at all formal stages of the procedure.
2. In addition, it is good practice for employees to be provided with the opportunity to be accompanied at the investigation stage, although this should not frustrate the process.
3. Fellow workers or trade union officials do not have to accept a request to accompany an employee, and they should not be pressurised to do so.
4. An employee or lay trade union official who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfill that responsibility. This should cover the hearing and allow time for the representative to familiarise themselves with the case and confer with the employee before and after the hearing. A request for reasonable paid time off by a trade union official to accompany an employee employed by another fire authority in the same region shall be given due consideration by the respective employers.
5. Employers should cater for an employee's disability at a meeting/hearing; they should also cater for a representative's disability, for example providing for wheelchair access if necessary.
6. Before the meeting/hearing takes place, the employee will tell the manager who they have chosen as a representative.
7. The representative should be allowed to address the meeting/hearing in order to:
 - put the employee's case
 - sum up the employee's case
 - respond on the employee's behalf to any view expressed at the hearing
8. The representative can also confer with the employee during the meeting/hearing and participate as fully as possible in the meeting/hearing, including asking witnesses questions. The representative has no right to answer questions on the employee's behalf, or to address the hearing if the employee does not wish it, or to prevent the employer from explaining their case.

ROLES IN THE DISCIPLINARY HEARING

The Presiding Manager (Chairperson)

- Oversees the hearing, hears the evidence, ensures that the hearing is conducted in accordance with the procedure, and makes a decision regarding misconduct. Also responsible for deciding the level of penalty to be imposed.
- May directly question all parties involved in the hearing.
- Will write to the employee after the hearing to inform them of the outcome and confirm any penalties and their right of appeal.
- Is responsible for ensuring the accuracy of the notes taken at the hearing.
- Can instruct line managers to put appropriate training or practices in place to ensure there are no further breaches of discipline.

The Personnel Officer

- Advises the presiding manager on the procedure and the level of penalties, to ensure fairness and consistency.
- May direct questions to or clarify points with all parties involved in the hearing through the Chairperson.
- Gives details of the record of service, including previous disciplinary penalties (where they are still active), and commendations etc.

Manager who conducted the fact-finding investigation

- Presents the allegations and introduces evidence and witnesses to support the case.
- May direct questions to, or clarify points with, the employee or representative through the Chairperson.

The trade union representative/fellow worker

- Supports the employee against whom allegations are made and acts as advisor and advocate, but must not answer questions on behalf of the employee.
- May direct questions or clarify points through the Chairperson.

GUIDE TO CONDUCTING A DISCIPLINARY HEARING

STAGE	BY WHOM	ACTION
Introduction	Presiding Manager	<ol style="list-style-type: none"> 1. Introduces the panel and Manager who has prepared the facts. Identifies the representative/fellow worker of the employee. 2. Explains the purpose of the notetaker – to keep a record and play no part in the proceedings.
Purpose of the hearing	Presiding Manager	<ol style="list-style-type: none"> 1. Explains the hearing is in accordance with the Disciplinary Procedure to investigate allegations of misconduct against an employee. 2. Invites the Personnel Officer to explain the procedure.
Procedure	Personnel Officer	<ol style="list-style-type: none"> 1. Explains the procedure as follows: <ol style="list-style-type: none"> a) The allegations will be read, if required by the employee. b) The employee (or representative) will have an opportunity to make a statement in response to the allegations. c) Witnesses may be called by either side to refute or support the allegations. d) The panel, employee and Manager may question the witnesses. e) Once the evidence has been presented the Chairperson will adjourn to consider the findings. f) If misconduct is evidenced, the Chairperson will consider the employee's record of service and any mitigation before determining the appropriate penalty. 2. Confirms that the employee understands the procedure.
Allegations	Presiding Manager	<ol style="list-style-type: none"> 1. Confirms that the employee has received a copy of the allegations and has read and understands the content. 2. Reads the allegations, if the employee requires. 3. Confirms whether or not the employee will be calling any witnesses and asks for details. 4. Confirms that all parties are ready to commence the hearing.

Employee Statement	Employee (or representative)	<ol style="list-style-type: none"> 1. Has the opportunity to make a statement in response to the allegations. 2. If the employee does not contest the allegations, consideration should be given as to whether the Manager needs to present the supporting evidence. 3. If the employee does not wish to hear the evidence, this decision should be recorded in the notes and the hearing may proceed to 'Findings'.
Manager's evidence	Manager Witness Chairperson	<ol style="list-style-type: none"> 1. The manager who conducted the fact finding presents the evidence to support the allegations as follows: <ol style="list-style-type: none"> a) Provides a brief overview of the circumstances. b) Calls and questions witnesses to support the allegations. c) Refers to documentary evidence (circulated before the hearing). d) Answers questions from the panel and employee (or representative). e) Summarises the evidence. 2. The Chairperson confirms that all the evidence has been presented, that there are no further questions, and asks witnesses to leave the hearing.
	Employee (or representative) Witness	<ol style="list-style-type: none"> 1. The employee and/or their representative present the evidence to refute the allegations. 2. The employee or their representative calls and questions witnesses to support the case. 3. The panel and the Manager may question the witnesses. 4. The employee must answer questions directed to him/her from the panel or the Manager. The representative is not entitled to answer on their behalf.
Clarification of outstanding issues	Presiding Manager	<ol style="list-style-type: none"> 1. If necessary, may recall witnesses to the hearing. 2. May adjourn the hearing to take advice from the Personnel Officer. 3. Will give the employee an opportunity to clarify any points. 4. Confirms that all parties are satisfied they have had a full and fair hearing.

Findings	Presiding Manager	<ol style="list-style-type: none"> 1. Adjourns the hearing to consider the evidence and determine whether there is misconduct. 2. The Personnel Officer will advise as appropriate. 3. Reconvenes the hearing and advises the employee of the decision. 4. If there is misconduct, asks the Personnel Officer for the record of service.
Record of Service	Personnel Officer	<ol style="list-style-type: none"> 1. Gives details of the length of service, posts held, commendations, previous misconduct, and any relevant information from the personal file.
Mitigation	Employee (or representative)	<ol style="list-style-type: none"> 1. Has the opportunity to make a statement or offer any further evidence.
Penalty	Presiding Manager	<ol style="list-style-type: none"> 1. Adjourns the hearing to consider an appropriate penalty. 2. The Personnel Officer will advise on the penalties available as appropriate. 3. Reconvenes the hearing and advises the employee of the penalty. 4. Advises that the decision and penalty will be confirmed in writing. 5. Advises of the right of appeal.
Final Actions	Presiding Manager	<ol style="list-style-type: none"> 1. Ensures that all management witnesses are advised of the outcome of the hearing as soon as practicable. 2. Writes to the employee to advise of the decision and penalties.

DISCIPLINARY PENALTIES

1. Counselling / Verbal warning

It may be appropriate, in cases of minor misconduct, to take no further action beyond counselling the individual. This shall be recorded and kept on the personal file for a period of no more than 6 months.

2. Written warning

There are two levels of written warning. These remain on file for a specified period and will be disclosed at a future disciplinary hearing if they are still 'live' at the time of the misconduct. Once the period has expired they are removed from the personal file and no further reference is made to them.

Written warning – to be kept on the personal file for a maximum 6 months

Final Written warning – to be kept on the personal file for a maximum 18 months.

3. Payback of time (Support Staff)

This may be appropriate, for example, where an employee has not been attending a college course that is funded (or part-funded) by West Midlands Fire Service. They may be required to refund the cost of the course and/or to make up the time given to them to attend.

It might also be appropriate where damage has been caused to property to pay for the cost of repair/replacement.

If an individual has been abusing the flexible working hours scheme they will be removed from the scheme and may be required to make up time owing or to refund the equivalent in salary.

4. Loss of pay (Uniformed staff)

A stoppage of pay must not exceed 13 days pay.

5. Disciplinary Transfer to another post

On occasion, it may be appropriate to transfer an individual to another post. Disciplinary transfers should involve no loss of remuneration and unless the employee agrees otherwise should be within the same duty system. Discussions should take place with the personnel department and it will be their responsibility to identify and make arrangements for the transfer.

6. Demotion

This can be either within role/grade or no more than one role/grade. A demotion of more than one role/grade can only be done with the agreement of the employee.

7. Dismissal

This can be either with or without notice. Dismissal will normally only arise from allegations of gross misconduct that is of such gravity that the employee's continued employment would be wholly inappropriate.

APPEAL REVIEWS/HEARINGS
PROCEDURE & CONDUCT

1. Appeal Reviews

- 1.1 Appeal Reviews will be conducted as a review of paper documents and submissions only. The Appeal Manager will reach findings based on the documentation and submissions from the parties. There is no requirement for the parties involved in the original hearing to attend.
- 1.2 The Appeal Manager will have available all the documents presented to the original hearing, as well as a copy of the record of the hearing, the letter confirming the outcome, the letter of appeal and the written statement of the grounds for the appeal.
- 1.3 Reviews will be conducted at a corporate level higher than the first hearing.
- 1.4 The Appeal Manager will be supported and advised by a different Personnel Officer than was involved in the original hearing.
- 1.5 The outcome of the appeal will be either:
 - The case against the employee is not upheld.
 - The case against the employee is upheld (in whole or part). The sanction will then be the same or a lesser penalty.
- 1.6 The outcome of the appeal will be confirmed in writing as soon as possible, but in any case within 7 days of the decision.

2. Appeal Hearings

- 2.1 Notice of appeal hearings will be in accordance with whatever stage of discipline is being appealed, i.e., 7 days notice will be given for appeals against findings at stage 1, 10 days for stage 2 and 21 days for stage 3.
- 2.2 Part/full rehearings will be conducted at a corporate level higher than the first hearing.
- 2.3 The Appeal Manager will be supported and advised by a different Personnel Officer than was involved in the original hearing.
- 2.4 The employee will put their case by explaining the grounds of the appeal and presenting any relevant evidence. The management case will then be put, responding to the grounds of appeal, normally by the manager who conducted the original hearing. Relevant witnesses may be brought by either side, and be questioned by all parties.
- 2.5 The outcome of the appeal and confirmation in writing will be as outlined in paragraphs 1.4 and 1.5 above.
- 2.6 In cases of gross misconduct dismissal will be summary following the hearing. If dismissal is not upheld on appeal, the employee will be reinstated and pay will be backdated.

QUALITY ASSURANCE

It is essential to ensure that the standards and penalties are applied consistently and to the same standard across the service. To ensure this is achieved Discipline Support will ensure that:

- Guidance on the process is adopted and applied correctly.
- Guidance is given to investigating managers conducting an investigation.
- Appropriate levels of discipline are applied to each individual case.
- Advice and direction on the process is given at a disciplinary meeting.
- Penalties given are administered and placed on Personal Records files.
- Effective arrangements are in place to remove spent penalties from files*.
- Standard letters are available to all managers involved in the process.

Discipline Support will ensure that standards applied are sampled for their quality and consistency by:

- Debriefing cases with all personnel involved in investigating, process and presiding.
- Review the outcomes and penalties awarded by contrasting and comparing conduct issues against the penalties applied.
- Assessing submitted grounds for appeal arising from disciplinary matters.
- Publicising the outcomes of disciplinary action taken across the organisation.
- Providing reports on good and poor practices back to Human Resources.
- Identifying and reporting training/skills gaps to the Training Centre.

* Disciplinary records removed from Personal Record Files may be kept within Discipline Support for a determined period based on the circumstances of the case. However, these cannot be used for disciplinary purposes and will remain under the control of Discipline Support only. The criteria for whether a file may be kept are where a case involves:

- Financial documents
- Potential litigation
- H&S@W related issues
- Harassment and bullying
- Breaches of law
- Also, for assessing eligibility for the Long Service and Good Conduct Medal.