

WEST MIDLANDS FIRE SERVICE

**DISCIPLINARY**

**PROCEDURE**

**2004**

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## **WEST MIDLANDS FIRE SERVICE**

### **Disciplinary Procedure for Uniformed and Support Staff**

#### **1. PURPOSE**

- 1.1 The procedures are written to help and encourage all employees to achieve and maintain their standards of conduct and to ensure consistent and fair treatment for all employees in the organisation.
- 1.2 The aim is to ensure that appropriate action can be taken without unnecessary delay, but in a framework which also ensures fairness for both employees and managers.
- 1.3 The guiding principle of the procedures is that, in every case except dismissal, the aim is to obtain improvement and remedy problems. Each case shall be treated on its merits in the light of the particular circumstances involved. The basis of this procedure is that the principle of natural justice both applies, and is clearly seen to apply, at every stage. Natural Justice is that:
  - A person knows the nature of the allegation against them;
  - They are given the opportunity to state their case;
  - And that the disciplinary body acts in good faith.
- 1.4 In the workplace, expected standards of conduct are usually maintained through the normal day-to-day relationships between supervisors and employees. Good management practice should ensure that all employees are aware of acceptable standards of behaviour and conduct and that they receive appropriate support to ensure that these are maintained.
- 1.5 Minor breaches of conduct can be dealt with successfully in an informal way and will remind the employee of the standards of conduct and behaviour that are expected. Early intervention and action are essential to avoid matters escalating.
- 1.6 If an employee does not respond to informal action, or there is a more serious allegation of misconduct, then it may be necessary to use the formal disciplinary procedure. This procedure is a framework to ensure that managers deal with disciplinary matters in a fair and consistent way.

#### **2. PRINCIPLES**

- 2.1 This is a harmonised disciplinary procedure that applies to both uniformed staff and support staff.
- 2.2 In the event of disciplinary action, the emphasis should be to encourage an improvement in behaviour rather than merely punish the employee. A full investigation of facts and an opportunity for the individual to explain their action and state their case should be undertaken.
- 2.3 Privacy and confidentiality shall be observed in all actions taken under this procedure.

- 2.4 At all stages the employee shall be kept fully informed of the allegations made against him/her and will have adequate opportunity to provide an explanation or rebuttal.
- 2.5 In accordance with the Employment Relations Act 1999 the employee has the right to be accompanied by a trade union representative or fellow worker. It is the responsibility of the employee to arrange his/her own representation.  
**(Appendix 6 gives more detail on representation).**
- 2.6 Staff who are interviewed or appear at a hearing as a witness do not need to be represented as they are merely providing facts and information and are NOT being investigated themselves. However, they may be accompanied at a hearing by a fellow worker or trade union representative if they feel the need for support. Additional support may also be available in exceptional cases, for example, where a witness is concerned about their personal safety or the consequences of giving evidence. Witnesses must answer questions for themselves; it is neither appropriate nor permitted for anyone to speak on their behalf.
- 2.7 Discipline Support must be informed and consulted when considering any formal disciplinary action to ensure correct and consistent use of procedures.
- 2.8 Allegations of misconduct, rather than poor performance, made during an employee's probationary period shall be dealt with in accordance with the disciplinary procedure.
- 2.9 Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on the union's functions. Normal standards apply but, if disciplinary action is considered, the case should be discussed, after obtaining the employee's agreement, with a senior trade union representative or permanent union official.

### **3. FORMAL PROCEDURE**

- 3.1 There are formal steps to be taken when implementing the disciplinary procedure. These include the fact-finding process; suspension, if applicable; the hearing; the penalties that can be applied; and the appeal procedure.
- 3.2 **Appendix 1** outlines the detail at each stage of discipline process, including timescales.  
**Appendix 2** is a discipline process flowchart.  
**Appendix 3** outlines the managerial level that has authority to deal with the disciplinary stages and the level at which advice and support is given.
- 3.3 These are formal procedures that must be strictly observed by all parties. Failure to do so may invalidate the proceedings.

### **4. FACT FINDING**

- 4.1 Where appropriate, the Line Manager should undertake an investigation, with the support of the discipline section. It should involve all parties and quickly establish the facts.

- 4.2 This will normally be concluded within a two week period. If there are exceptional circumstances which mean that the investigation will take longer to complete the Line Manager should consult with the Discipline Support.
- 4.3 The decision whether to proceed with formal disciplinary action will be taken by the appropriate level of manager.
- 4.4 The employee must be kept informed of progress and likely timescales.
- 4.5 If appropriate, evidence will then be prepared and information exchanged with the employee, their representative, and relevant managers.
- 4.6 The disciplinary hearing should be arranged as soon as practicable giving notice of not less than 7 days for the first formal stage, 10 days for the second formal stage and 21 days for the third formal stage.
- 4.7 Where an employee is the subject of a criminal investigation this will not always prevent a disciplinary hearing taking place, provided that this does not prejudice any police enquiry or possible prosecution. Cases involving criminal matters should be discussed with Discipline Support to determine the most appropriate course of action.
- 4.8 If no formal disciplinary action is to be taken then no correspondence connected with the investigation should be kept on the employee's personal file, unless this is relevant to support and informal resolution.

## 5. **SUSPENSION**

- 5.1 If the allegations involve gross misconduct, or where a continued presence in the workplace may prejudice an investigation or harm the interests of the employee or others, suspension from work or transfer to another location of the employee against whom the allegations are made may be considered and imposed. **(See Appendix 4 for offences constituting gross misconduct and Appendix 5 for the policy on the suspension of staff).**
- 5.2 Such a suspension is precautionary and is not a disciplinary penalty in itself.
- 5.3 During suspension the employee shall receive their normal pay. Normal pay includes all the guaranteed earnings that would be paid during a period of normal working, including allowances, but excludes any payments not paid on a regular basis.
- 5.4 Where an employee is suspended and they commence sick leave, their pay will be in accordance with the rules of the sick pay scheme
- 5.5 A formal notice will be issued following the decision to suspend and the employee will receive advice on their entitlements and conditions of suspension. They will be asked to return to work for a disciplinary hearing as soon as possible. It is also appropriate at this stage to discuss any conditions which will apply during the period of suspension, for example, communications channels, availability to attend meetings, facilities to meet with their representative.
- 5.6 Leave which has already been arranged during a period of suspension will be taken and permission to take additional leave may be sought.

## **6. HEARINGS**

- 6.1 All parties should receive notice of the time, date and location of the hearing in accordance with the requirements set out in **Appendix 1**, although it is acknowledged that in complex cases more time may be required. This should include details of the allegations and all supporting documents.
- 6.2 Where the employee indicates that they cannot attend at the specified time then, provided that the explanation is reasonable, alternative arrangements may be made. In accordance with the Employment Relations Act 1999, an alternative date must be offered by the employee and be within 5 days of the original hearing date. If the employee fails to attend, or does not give a reasonable explanation, the hearing may proceed in their absence.
- 6.3 Evidence shall be presented to a manager who will be advised and supported by a Personnel Officer. The manager hearing the evidence will not be junior to the person presenting the allegations. The panel will have had no prior involvement in the investigation. The Personnel Officer's role is to advise on procedure and ensure fairness and consistency. A note-taker will also be present. At Stage 3 hearings the proceedings will be taped and transcribed.  
***(Guidance on the roles of the people involved in the hearing is attached in Appendix 7).***
- The employee and the person making the allegation shall be given an opportunity to make statements, call witnesses, and question as appropriate. The presiding manager will then adjourn the hearing to consider the evidence presented and make a decision as to misconduct. ***(Guidelines on the conduct of the hearing are attached in Appendix 8).***
- 6.4 The outcome of the hearing will be confirmed in writing to the employee as soon as possible, but in any case within seven days.
- 6.5 In exceptional circumstances, or where senior managers are being investigated, fact finding and hearings may be conducted by people external to the organisation.

## **7. PENALTIES**

- 7.1 If there is misconduct warranting disciplinary penalties the employee should be given an opportunity to make a statement in mitigation. The Personnel Officer will give details of their record of service. The officer conducting the hearing may adjourn to consider any additional information and to decide the appropriate level of penalty.  
***(Details of penalties available are attached at Appendix 9).***
- 7.2 A letter confirming the outcome of the hearing and any penalties should be placed on the employee's personal file for the appropriate period. Once this period has expired all correspondence relating to the discipline will be removed from the personal file and forwarded to Discipline Support.
- 7.3 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. No correspondence relating to the disciplinary matter shall be placed on the employee's personal file. However, the disciplinary file will be kept confidentially by Discipline Support for audit and quality assurance purposes.

## 8. APPEALS

- 8.1 Natural justice requires that employees have a right of appeal against any decisions/penalties imposed under this procedure, but it does not give the right for the whole case to be re-heard. The principle is that the evidence is presented at the original hearing and the appeal is confined to the outcomes from that hearing.
- 8.2 In the case of penalties other than dismissal the penalties will not be implemented until any appeal process has concluded.
- 8.3 Notification of the intention to appeal against any decision/penalty, including dismissal, must be submitted in writing to Discipline Support within 7 working days of receipt of the written confirmation of the penalty.
- 8.4 The employee must submit a written statement outlining the grounds of the appeal. These would normally be one or more of the following:
- There was a defect in the procedure
  - The issue was not proven on the balance of probabilities
  - The penalty was too severe, giving reasons
  - New evidence has come to light which has an impact on the decision
- 8.5 Discipline Support will review the grounds for appeal to determine if these are valid and, if so, whether a review of the decision or a full or part rehearing is appropriate.
- 8.6 The appeal only covers those elements raised by the employee in their grounds of appeal. Normally a rehearing in full will only be appropriate where the employee was not in attendance at the original hearing but may also be considered in the following circumstances (this is not an exhaustive list):
- There was a procedural defect in the hearing
  - New evidence has come to light that needs to be heard in full
  - There is a dispute about evidence given by witnesses where it is necessary to hear these witnesses again.
- 8.7 Reviews or part/full rehearsals will be conducted at a corporate level higher than the first hearing.
- 8.8 Where an appeal is conducted as a review, 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. The Appeal Manager will reach findings based on the documentation and submissions from the parties. There is no requirement for attendance by the parties involved; however, they will be informed of the date of the review.
- 8.9 Where an appeal involves a part/full rehearing, the case will be presented by the senior manager who conducted the original disciplinary hearing, advised by the Personnel Officer also involved in the hearing.  
**Appendix 10** details the procedure and conduct of appeal hearings.
- 8.10 The employee has the right to attend the appeal hearing, accompanied by a trade union representative or fellow worker.
- 8.11 Appeals against dismissal will be heard by a Principal Officer.

