LONDON FIRE BRIGADE

Disciplinary procedure – Commissioner, directors, heads of service and assistant commissioners

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1 Introduction

1.1 The disciplinary procedure at Appendix 1 can be found in the Grey Book on Hotwire and covers conduct (disciplinary offences), attendance (sickness capability), and performance (capability).The attendance element of Appendix 1 no longer applies within London Fire Brigade, with effect from 1 July 2015 this has been replaced by Policy number 873 – Sickness capability policy which applies to the Commissioner, directors, heads of service, and assistant commissioners. The conduct and performance elements of Appendix 1 apply to directors, assistant commissioners and heads of service, with the exception of the Director of Finance and Contractual Services and the Head of Legal and Democratic Services. The disciplinary procedure (conduct and performance) for the Commissioner, Director of Finance and Contractual Service, and Head of Legal and Democratic Services is at paragraph 3 of this policy below.

2 Management levels of authority

2.1 Hearings conducted under the procedure at Appendix 1 (and Policy number 873 – Sickness capability policy) will be by a manager at a higher level to the officer who is the subject of the hearing. Appeal hearings will be conducted by a manager at a higher level to the Presiding Manager at the original hearing.

2.2 Members are involved in the procedure at Appendix 1 (and Policy number 873 – Sickness capability policy) as follows:

- Appeals where the Presiding Manager at the original hearing is the Commissioner. The appeal will be heard by a 1st Stage Member Appeals Committee.
- Hearings where the Commissioner is the subject of the hearing. The hearing will be conducted by a 1st Stage Member Appeals Committee.
- Appeals where the hearing is conducted by the 1st Stage Appeals Committee. The appeal will be heard by a separate 2nd Stage Appeals Committee.

3 Disciplinary procedure (conduct and performance) for Commissioner, Director of Finance and Contractual Services and Head of Legal and Democratic Services

3.1 In cases of alleged misconduct, gross misconduct or poor performance by either the Commissioner, Director of Finance and Contractual Services or the Head of Legal and Democratic Services, the matter shall be considered by a panel constituted by the London Fire Commissioner in accordance with the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015 ("the 2015 Regulations"). The panel shall consist of three members and at least two independent persons and shall receive an initial report in order to determine whether there is a case to investigate. The panel may wish to appoint an independent person to conduct an investigation. If the relevant officer does not agree with the person that the panel proposes to appoint, the Employers' Association will be asked to nominate an independent person to investigate.

3.2 The Commissioner, the Director of Finance and Contractual Services and the Head of Legal and Democratic Services are each to be treated as "the relevant officer" for the purposes of the 2015 Regulations.

3.3 Alleged misconduct or poor performance by the Director of Finance and Contractual Services or the Head of Legal and Democratic Services shall be reported to the Panel by the Commissioner. Alleged misconduct or poor performance by the Commissioner shall be reported to the panel by

the Head of Human Resource Management having consulted with the Head of Legal and Democratic Services.

3.4 Following an investigation as referred to in paragraph 3.1 above, the panel shall receive a written report and hear a formal presentation of the findings of the investigation from the independent investigator and shall make a recommendation to an ad hoc committee specifically appointed by the London Fire Commissioner for the purpose. The composition of the ad hoc committee shall be three members of the London Fire Commissioner, excluding members of the panel.

3.5 A decision upon a recommendation (whether for dismissal or otherwise) of the panel in relation to either the Commissioner, the Director of Finance and Contractual Services or the Head of Legal and Democratic Services must be approved at a meeting of the ad hoc committee referred to in paragraph 3.4 above.

3.6 Before the taking of a vote at the relevant meeting on whether to approve the panel's recommendation, the ad hoc committee must take into account in particular:

(a) Any advice, views or recommendations of the panel;

(b) the conclusions of any investigation; and

(c) any representations from the relevant officer.

3.7 In any case where an officer is dissatisfied with a finding and/or disciplinary penalty (whether dismissal or otherwise) approved in respect of the officer by the ad hoc committee, the officer may, within 7 days of receiving notification of the finding and/or disciplinary penalty, give written notice of an appeal against the decision. The appeal will be considered and decided upon at a meeting of the London Fire Commissioner, but no member who has been previously involved in the case may take part in the consideration of, and decision in relation to, the appeal.

Appendix 1 – Disciplinary procedure and guidance

Introduction

1 This procedure applies in cases of conduct, unsatisfactory work performance and poor attendance. For further details please refer to the guidance. The guidance covers the scope of the procedure; the requirement to undertake an appropriate investigation; the stages of the procedure; the sanctions available to the employer; the rights of the employee; and the appeal mechanism; etc.

2 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.

3 Employees have a statutory right to be accompanied by a fellow employee or trade union official at all formal stages of the procedure.

Informal stage

4 This is an informal discussion with the line manager. The separate formal stages of initiating action, investigation, hearing and decision 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, attendance or performance and may put this in writing although it would not form part of the disciplinary record.

5 At the informal stage the manager should ensure that employees are clear of the expected outcomes and the process by which they will be achieved.

First formal stage

6 An employee's line manager, at Sub/Station officer level or above, may initiate the disciplinary process and investigate. Where, following a disciplinary meeting, the employee is found guilty of misconduct; the usual first step would be to give them a warning.

7 A warning must give details and an explanation of the decision. It should warn 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 should be disregarded for disciplinary purposes after six months.

8 Where the issue is one of unsatisfactory performance or unsatisfactory attendance, please refer to the guidance.

9 A warning may only be given to an employee by their Station Commander or above.

Second formal stage

10 Where there is a failure to improve or change behaviour 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 after a further investigation and hearing.

11 A final written warning must give details and an explanation of the decision. It should warn 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.

12 A final written warning may only be given to an employee by their Group Commander (or equivalent) or above.

Third formal stage

13 Where employees continually fail to improve, or where the offence is sufficiently serious, there should be an investigation and hearing. The sanctions available may include dismissal. Alternatively, the outcome may be a sanction less than dismissal (see guidance for details). Employees must be told they have the right to appeal and details of the appeals process.

14 Any sanction up to dismissal may only be given to an employee by their Area/Brigade Manager.

Gross misconduct

15 Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and thus potentially liable for summary dismissal. It is still important to establish the facts before taking any action. Please refer to the guidance for further information.

General issues

16 Other general issues to be aware of include the following:

(a) Grievance during a disciplinary procedure.

(b) Disciplinary action against trade union representatives.

(c) Criminal offences.

(d) Suspension.

Further details are given in the Guidance.

DISCIPLINARY PROCEDURE GUIDANCE

1 Introduction

1.1 Preamble

1 The disciplinary procedures will be made available to all employees, for instance on a notice board and in the staff handbook and will be referred to in contracts of employment. Management will do all they can to ensure that every employee knows and understands the procedures, including those employees whose first language is not English or who have trouble reading. This will be done as part of each employee's induction process.

2 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 standards of conduct, attendance and job performance. The aim is to ensure consistent and fair treatment for all employees in the organisation. Disciplinary procedures are a legal requirement in certain circumstances (see Appendix 1).

3 The procedure should be supplemented locally by more detailed guidance, for example on the conduct of hearings. Every effort should be made to jointly agree such guidance.

4 All managers, at every level, who may be involved in disciplinary action, shall be fully trained and competent in the operation of the procedure. Responsibility for the appropriate level of disciplinary action must be in accordance with the relevant role map, the role of the manager and levels of delegated authority.

5 The basis of this procedure is that the principle of natural justice both applies, and is clearly seen to apply, at every stage. The aim is to ensure that appropriate action can be taken without unnecessary delay, but in a framework which also ensures fairness for both employees and managers.

6 The guiding principle of the procedure is that, in every case except dismissal, the aim is to obtain improvement and remedy problems. Each case shall be treated on its merits in the light of the particular circumstances involved.

7 On issues of conduct the procedure may be initiated at any stage depending on the seriousness of the case. Where issues concern unsatisfactory performance and/or attendance the stages in the procedure would normally be followed in sequence and account should be taken of the Personal Development Record (PDR).

8 On issues of incapacity at work brought on by misuse of alcohol or drugs, separate remedial procedures should be considered as an alternative.

1.2 Scope

9 This guidance covers the scope of the procedure (conduct, attendance and job performance); the requirement to undertake an appropriate investigation; the stages of the procedure; the sanctions available to the employer; the rights of the employee; and the appeal mechanism; etc.

10 The disciplinary procedure is designed to cover behaviour which is contrary to that necessary for ensuring a safe and efficient workplace, and for maintaining good employment relations. Such behaviour could include, but is not limited to:

(a) bad behaviour, such as fighting or drunkenness

(b) unsatisfactory work performance

(c) harassment, victimisation or bullying

(d) misuse of company facilities (for example e-mail and internet)

(e) poor timekeeping

(f) unauthorised absences

(g) repeated or serious failure to follow instructions

11 Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms. Examples of gross misconduct might include:

(a) theft or fraud

(b) bribery or accepting a bribe;

(c) physical violence or bullying

(d) deliberate and serious damage to property

(e) serious misuse of the London Fire Commissioner's property or name

(f) deliberately accessing pornographic, offensive or obscene material

(g) unlawful discrimination or harassment

(h) bringing the London Fire Commissioner into serious disrepute

(i) serious incapacity at work brought on by misuse of alcohol or illegal drugs

(j) causing loss, damage or injury through serious negligence

(k) a serious breach of health and safety rules

(l) a serious breach of confidence.

1.3 Time limits

12 Time limits applicable to the different stages of the procedure are set out in the guidance below. These may be varied by mutual agreement.

1.4 Initiating formal disciplinary action

13 For apparent cases of misconduct, where, in the judgement of the line manager the issue is one which would not result in a formal sanction greater than a written warning, the disciplinary procedure may be initiated by the line manager, who will ensure that an investigation will be conducted by themselves or another appropriate manager.

14 Where, in the line manager's judgement, the sanction could be greater than a written warning, the procedure should be initiated by a manager not lower than the Station Commander who will ensure that an investigation will be conducted by themselves or another appropriate manager.

15 Where there are issues of performance including poor attendance, account should be taken of the outcome of the review of the PDR, which is designed to offer support and assistance. In these cases the disciplinary process should only be used where actions to remedy unsatisfactory performance, based on the developmental PDR, are not proving effective.

1.5 Investigation

16 An investigation should be carried out to establish the facts promptly. It is important to keep a written record for later reference. Having established the facts, the manager will decide whether to drop the matter or deal with it in accordance with the procedure, which may include reference back to the informal stage. Where necessary technical expertise relevant to the case should also be made available.

17 Where the employee is to be interviewed as part of an investigation they should be advised of the purpose of the meeting in advance and that they may be accompanied. When making these arrangements this should not frustrate the investigation.

1.6 Information for the employee before a disciplinary hearing

18 In advance of any disciplinary hearing the manager will write to the employee. The letter should contain enough information for the employee to fully understand the case against them with all relevant details (e.g. dates, times, location, etc.) and the reasons why this is not acceptable. If the employee has difficulty reading, or if English is not their first language, the manager should explain the content of the letter to them orally. The letter should also invite the employee to a hearing at which the problem can be discussed, and it should inform the employee of their right to be accompanied at the meeting (see Para 1.10). The employee will be given copies of any documents that will be produced at the hearing.

19 At all stages employees shall be fully informed.

1.7 Hearings

20 The timing and location of the hearing should where 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:

(a) seven days for first formal stage

(b) ten days for the second stage

(c) twenty-one days for the third stage

21 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.

22 At the hearing, the process will be explained to the employee. The case against the employee will be stated including the evidence. The employee and/or their representative will be given every opportunity to set out their case and answer any allegations that have been made. The employee will also be allowed to ask questions, present evidence and/or information, call witnesses and character witnesses where appropriate and be given an opportunity to raise points about any information provided by witnesses.

23 An employee and/or their representative who cannot attend a hearing should inform the manager in advance, as soon as possible. If the employee fails to attend through circumstances outside their control, and unforeseeable at the time the hearing was arranged (e.g. illness), the manager should arrange another hearing. A decision may be taken at a hearing in the employee's absence if they fail to attend the rearranged hearing without good reason. An employee's representative may attend on their behalf, if the employee is unable to attend. If an employee's representative cannot attend on a proposed date, the employee has a statutory right to suggest another date so long as it is reasonable and is not more than seven days after the date originally proposed by the employer. This seven-day time limit may be extended by mutual agreement.

1.8 Decision on outcome and action

24 Following the hearing the manager must decide whether action is justified or not. Where it is decided that no action is justified the employee should be informed. Where it is decided that action is justified the manager will need to consider what form this should take. Before making any decision the employer should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and other relevant factors. The intended action must be reasonable under the circumstances.

25 Examples of actions the manager might choose to take are set out in paragraphs 2.2 to 2.5. It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee's misconduct or unsatisfactory performance – or its continuance – is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss even though the employee has not previously received a warning for misconduct.

26 Following the meeting/hearing the decision should be confirmed in writing as soon as possible, within seven days. The decision shall include a description of the nature of the issue, any required remedial action and the timescale for improvement. Except in cases of dismissal, where the issues relate to performance and in other cases where appropriate the decision shall include the following:

(a) the improvement that is required

(b) the timescale for achieving this improvement

(c) a review date

(d) all support the employer will provide to assist the employee

27 Employees should also be informed that if there is no improvement, further stages, leading ultimately to dismissal, may be invoked.

1.9 Level of management

28 The lowest levels of line management who can take action within the procedure is in accordance with the role maps. The lowest level at the informal stage would be the leading firefighter. Subject to training, competence, and levels of delegated authority, the formal stages are as follows:

	Investigation	Conduct hearing/take action
Formal stage 1	Sub/Station Officer	Station Commander*
Formal stage 2	Station Commander	Group Commander
Formal stage 3	Group Commander	Area/Brigade Manager

* In cases of unsatisfactory performance and absence it is appropriate for a Sub/Station officer to inform the employee that a failure to improve could lead to disciplinary action being taken.

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

1.10 Representation

30 Employees have a statutory right to be accompanied by a fellow employee or trade union official of their choice at all formal stages of the procedure.

31 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.

32 Fellow employees or trade union officials do not have to accept a request to accompany an employee, and they should not be pressurised to do so.

33 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.

34 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.

35 Before the meeting/hearing takes place, the employee will tell the manager who they have chosen as a representative.

36 The representative should be allowed to address the meeting/hearing in order to:

(a) put the employee's case

(b) sum up the employee's case

(c) respond on the employee's behalf to any view expressed at the hearing

37 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.

2 Stages of disciplinary action

2.1 Informal stage

38 Cases involving minor misconduct or unsatisfactory performance or attendance are usually best dealt with informally by the line manager. A quiet word is often all that is required. The informal approach means that minor problems can be dealt with quickly and confidentially. Where issues involve performance, or in some cases attendance, supportive action, reference to the PDR and specialist advice may be more appropriate.

39 At this informal stage the manager should ensure that employees understand the position, if necessary by giving them a written note. This would not form any part of their disciplinary record but it would be filed on their Personal Record File.

40 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.

2.2 First formal stage

41 The employee's line manager will investigate the matter. If required a meeting/hearing may be held at which the relevant manager will make a decision. The employee has the right to be represented and present their case in response to management.

42 Where, following a disciplinary hearing an employee is found guilty of misconduct, the usual first step would be to give them a warning setting out the nature of the misconduct and the change in behaviour required.

43 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. The employee should also be informed that they may appeal against the decision. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after six months.

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

(a) the performance problem

(b) the improvement that is required

(c) the timescale for achieving this improvement

(d) a review date

(e) all support the employer will provide to assist the employee

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

46 When dealing with absence from work, it is important to determine the reasons why the employee has not been at work. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.

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

(a) how soon the employee's health and attendance will improve;

(b) whether alternative work is available;

(c) the effect of the absence on the organisation;

(d) how similar situations have been handled in the past; and

(e) whether the illness is a result of disability in which case the provisions of the Equality Act 2010 will apply.

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

2.3 Second formal stage

49 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. Alternatively where the offence is sufficiently serious, action may be initiated at this stage. The final written warning will give details and an explanation of the decision. It should warn 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 against the final written warning which should be disregarded for disciplinary purposes after eighteen months. Where a lesser sanction is issued, the same right of appeal applies.

50 A final written warning may only be given to an employee by their group commander or above.

2.4 Third formal stage

51 Where employees fail to improve or where the offence is sufficiently serious, following an investigation and hearing, employees may be dismissed by their [Deputy Assistant Commissioner/Brigade Manager/Members of the Employing Authority]. Employees must be told they have the right to appeal and details of the appeals process.

52 Alternatively where there has been a failure to improve as required or, in exceptional cases, at the first offence, following the investigation and hearing, a decision may be made by their Area or Brigade manager to award a sanction less than dismissal, or in serious cases, as an alternative to dismissal. These sanctions are:

(a) A warning.

(b) Demotion (either within role or no more than one role; a demotion of more than one role can only be done with the agreement of the employee).

(c) Disciplinary transfer (which should involve no loss of remuneration and unless the employee agrees otherwise should be within the same duty system).

(d) Loss of pay up to a maximum of thirteen days.

2.5 Gross misconduct

53 If a manager considers an employee guilty of gross misconduct, and thus potentially liable for summary dismissal, it is still important to establish the facts before taking any action. A short period of suspension with full pay may be helpful or necessary, although it should only be imposed after careful consideration and should be kept under review. It should be made clear to the employee that the suspension is not a disciplinary action and does not involve any prejudgement (see paragraph 3.5 below on suspension).

54 It is a core principle of reasonable behaviour that employers should give employees the opportunity of putting their case at a disciplinary hearing before deciding whether to take action. This principle applies as much to cases of gross misconduct as it does to ordinary cases of misconduct or unsatisfactory performance.

55 A simplified briefing note for the discipline procedure can be found at Appendix B.

3 General issues

3.1 Appeals

56 Employees who have had disciplinary action taken against them will be given the opportunity to appeal. Employees will be allowed to appeal no later than seven days after they have been informed of the decision.

57 The appeal shall be heard by a higher level of manager. Arrangements for the final appeal stage against dismissal should be determined locally but be consistent with the principle that the corporate level involved should be higher than the level which heard the previous stage.

58 Where an employee appeals against disciplinary action taken against them they must put their grounds of appeal in writing. The grounds of appeal will normally be one or more of the following:

(a) There was a defect in the procedure.

(b) The issue is not proven on the balance of probabilities.

(c) The disciplinary sanction was too severe.

(d) New evidence has come to light since the hearing which will have an impact on the Decision.

59 Normally the Appeal Manager will conduct the appeal hearing as a rehearing (in full or part), where this is required. Otherwise the appeal hearing will be conducted as a review. A rehearing would normally be required in the following instances (this is not necessarily an exhaustive list):

(a) There was a procedural defect at the original hearing such that the hearing was Unfair.

(b) New evidence has come to light which needs to be heard in full.

(c) There is a dispute about evidence given by one or more witnesses at the original hearing. In these cases it may be necessary to rehear the witness evidence at the appeal.

60 Where the appeal hearing is conducted as a review, the Appeal Manager will have available all the documents presented to the original hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original disciplinary hearing, the letter of appeal and all other relevant information. The Appeal Manager will reach findings based on the documentation and the submissions at the appeal hearing from the parties.

61 At the appeal hearing the employee and/or their representative will first put their case by explaining the grounds of 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.

62 The outcome of the appeal will be either:

(a) The case against the employee is upheld (in whole or part); the sanction will then be the same or a lesser penalty.

(b) The case against the employee is not upheld.

63 At the final appeal against dismissal, if the employer's representative is legally qualified, the employee's representative may, if the employee wishes, also be a legal representative.

64 In cases of gross misconduct dismissal will be summary following the hearing. If the employee is reinstated on appeal, pay will be reinstated and backdated.

65 In other cases of dismissal, employees shall be given contractual notice of dismissal following the 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.

66 In cases of sanctions other than dismissal, the sanctions should not be implemented until any appeal process has been concluded.

3.2 Where a grievance is raised during a disciplinary procedure

67 In the course of a disciplinary process, an employee might raise a grievance that is related to the case. If this happens, the manager should consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Depending on the nature of the grievance, the manager may need to consider bringing in another manager to deal with the disciplinary process (see ACAS Code Para 33 and 34).

3.3 Disciplinary action against trade union representatives

68 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.

3.4 Criminal offences

69 If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. The manager should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the

employee unsuitable for their type of work. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody.

3.5 Suspension

70 It is impossible to predict the full range of circumstances which will arise in disciplinary cases. Emphasis will always be on a speedy and fair resolution. In some cases it may be appropriate to suspend an employee from the workplace while an investigation or preparation for a disciplinary hearing takes place.

71 If an employee is to be suspended they should be informed of the reasons for the suspension, that suspension is not disciplinary action, and that they will be asked to return to work for an investigative meeting or 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, etc.

72 Where an employee is suspended 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.

73 Full pay for those employees on the retained duty system will be calculated on the basis of their retained payments averaged over a twelve-week period.

Appendix 2 - Other legal issues

1 It should be noted that the appeal stage against dismissal or other serious sanction short of dismissal is part of the statutory procedure and if the employee pursues an employment tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal.

2 Managers and employees will normally be expected to go through the dismissal and disciplinary procedure unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as violent, abusive or intimidating behaviour, or they will be harassed. There will always be a certain amount of stress and anxiety for both parties when dealing with any disciplinary case, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.

3 Equally, the procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad but in the case of managers, wherever possible they should consider appointing another manager to deal with the procedure.

Document history

Assessments

An equality, sustainability or health, safety and welfare impact assessment and/or a risk assessment was last completed on:

EIA	06/02/24	SDIA	L - 21/07/23	HSWIA		RA	

Audit trail

Listed below is a brief audit trail, detailing amendments made to this policy/procedure.

Page/para nos.	Brief description of change	Date
Throughout	Reviewed as current, no changes made.	29/01/2010
Policy	This policy is being renamed from 392d to 392b due to PN392a, PN392b and PN392c being merged into PN392a.	28/05/2010
Throughout	The main body of this policy has been updated to reflect the change in department names as agreed by the Top Management Review (October 2010).	06/05/2011
Page 11 para 47	"Disability Discrimination Act" replaced by "Equality Act 2010" in line with current legislation.	14/10/2011
Throughout	This policy has been reviewed as current, no changes were necessary.	31/01/2013
Page 16	SIA date added.	31/10/2013
Page 6 para 11	Added (b) "bribery or accepting a bribe".	29/04/2014
Page 16	Subject list and FOIA exemptions tables updated.	22/12/2014
Pages 1-3	Process at section 3 revised following 2015 Regulations; approved by 02/12/15 Authority (FEP 2543). Also removed reference to Deputy Commissioner and added references to PN873 – The sickness capability process.	18/12/2015
Throughout	Role to rank changes made.	16/10/2019
Throughout	Reviewed as current.	17/07/2023
Page 16	SDIA added.	08/08/2023
Page 1	Owner and responsible work team updated.	05/04/2024
Page 16	Equality impact assessment date added.	23/04/2024

Subject list

You can find this policy under the following subjects.

Appeals	Discipline and conduct

Freedom of Information Act exemptions

This policy/procedure has been securely marked due to:

Considered by: (responsible work team)	**FOIA exemption**	**Security marking classification**