

# **STRATHCLYDE FIRE & RESCUE**

## **Instruction**

### **PERSONNEL PROCEDURE No: 19/05 : 9 SEPTEMBER 2005**

#### **DISCIPLINARY PROCEDURES**

#### **UNIFORMED AND SUPPORT STAFF**

## **1. INTRODUCTION**

- 1.1 As of 2 August 2005, the Fire Services (Discipline) (Scotland) Regulations 1985 were abolished. From this date, the disciplinary procedures (Appendix One) came into force and apply to all disciplinary cases which arise after this date. However, consideration will be given to any existing warnings when deciding the appropriate stage of the new procedure to be applied. The revised Disciplinary Procedures will be implemented with immediate effect and have been negotiated and agreed with all trade unions. The Executive Committee of the Board of Strathclyde Fire and Rescue approved the procedures at their meeting on 1 September 2005.
- 1.2 A handbook has also been produced which communicates to managers their responsibilities in relation to dealing with disciplinary issues. The handbook covers areas such as investigations, suspension, guidance on preparing and conducting a hearing, deciding on the level of disciplinary action and appeals mechanisms. The handbook will be issued to all managers over the next few weeks although in the meantime a copy can be found on the intranet.

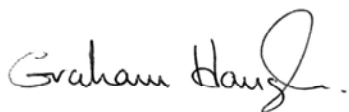
## **2. PRINCIPLES OF THE DISCIPLINARY PROCEDURES**

- 2.1 A number of important principles underpin the new policy, including:-
  - The procedure applies to ALL employees.
  - The principles of natural justice are fundamental to the application of these procedures.
  - No disciplinary action will be taken until the matter has been fully investigated and any decision thereafter to impose disciplinary action will not be taken by the same person who conducted the investigation.
  - Depending on the seriousness of the misconduct, disciplinary sanctions may be initiated at any stage and will not necessarily start at the level of the first written warning. Apart from gross misconduct, no employee will be dismissed for a first breach of discipline.
  - An employee will be informed in writing of the alleged offence(s), any disciplinary action taken, reason(s) for it, consequences of further misdemeanour and the procedure to be followed to submit an appeal.
  - No action in terms of the procedures will be taken against a Trade Union representative until the matter has been discussed with a full time official of the Union concerned. In these circumstances, guidance must be sought from the Assistant Chief Officer (Personnel and Development).

### 3. **DISCIPLINARY TRAINING**

- 3.1 Any manager dealing with a disciplinary case under the revised procedures should contact an Employee Relations Officer from Personnel and Development in the first instance.
- 3.2 For an initial period, an Employee Relations Officer will be present at all disciplinary hearings and disciplinary appeals.
- 3.3 An extensive training programme has been finalised and is aimed at managers responsible for dealing with disciplinary issues. Over the next few weeks, nominations will be requested for attendance at such courses.
- 3.4 Over the next few weeks, Employee Relations Officers will be carrying out briefings within their own areas of responsibility on the revised disciplinary procedures.
- 3.5 In the meantime, if you require further information on the disciplinary procedures please contact the Employee Relations Officer for the Command / Area on the numbers detailed below:-

East Command North/South Lanarkshire	01698 338528
Central Command North West Glasgow/North East Glasgow South Glasgow	01698 338322
West Command Renfrewshire & Inverclyde/East Ayrshire and East Renfrewshire/North and South Ayrshire	01698 338292
North Command Argyll & Bute/ East & West Dunbartonshire	01698 338591



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# STRATHCLYDE FIRE & RESCUE



## **DISCIPLINARY PROCEDURES**

## **FOR UNIFORMED AND SUPPORT STAFF**

**SEPTEMBER 2005**

## **DISCIPLINARY PROCEDURES**

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APPENDIX 'B'      Procedure to be followed at Appeal Hearings

### **REFERENCES**

ACAS Guidance on Discipline and Grievance

Managers' Handbook on Handling Discipline

Firefighter's Conditions of Service – 6<sup>th</sup> Edition

## **1 INTRODUCTION**

- 1.1 These disciplinary procedures have been prepared having regard to SFR Employees' Conditions of Service, ACAS Guidance on Discipline and Grievances at Work and to comply with the provisions of the Revised ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.2 Clear rules and procedures benefit both SFR as an employer and employees. Rules set standards of conduct and performance at work; procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with any alleged failure to observe them. The aim of these procedures is to ensure consistent and fair treatment for all employees involved in their operation.
- 1.3 Within the limitations of power delegated to them, Area Managers / Assistant Chief Officers will be responsible for the management of their Area / Department and will have the power to apply all forms of disciplinary sanction as described in these procedures including that of dismissal, subject to the employee's right of appeal against such disciplinary action. Area Managers / Assistant Chief Officers can delegate this responsibility as appropriate to other nominated senior managers.

All managers who may be involved in disciplinary action shall be trained in the operation of the procedure.

Advice on the operation of these procedures will be available at any time from the Assistant Chief Officer (Personnel & Development).

- 1.4 Each Area Manager / Assistant Chief Officer is responsible for ensuring that all employees in the Area / Department are made aware of the standards of conduct and performance expected of them, particularly of what might constitute gross misconduct. These procedures, and also the service's Code of Conduct, set out the expected standards
- 1.5 The procedures will also be communicated to employees within the correspondence confirming their appointment and at induction.
- 1.6 All problems involving minor misconduct and poor performance should be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. It is essential that all problems of this nature are fully discussed and support will be provided with the objective of encouraging and helping employees to improve.
- 1.7 Each Area Manager / Assistant Chief Officer will ensure that employees are aware that support and counselling are available at all times, even where it has been necessary to take disciplinary action under these procedures. Where an employee is suspected of, or seeks help for, an addiction problem, support will be offered through SFR's Alcohol and Drugs Misuse Policy by referral to the service's Welfare Officer or external employee counselling service.

## 2 PRINCIPLES

The procedures set out in this document reflect the undernoted principles:

- 2.1 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.
- 2.2 The principles of natural justice are fundamental to the application of these procedures (see Section 6).
- 2.3 No disciplinary action will be taken until the matter has been fully investigated and any decision thereafter to impose disciplinary action will not be taken by the same person who conducted the investigation.
- 2.4 An employee placed on precautionary suspension will be entitled to full pay and maintenance of conditions.
- 2.5 Disciplinary action (i.e. issuing of a warning, action short of dismissal, dismissal etc) will not be taken against an employee until he / she has attended a properly convened hearing, accompanied by a trade union representative or fellow employee, and been given the opportunity to respond to the allegations. The employee should be advised, in writing, of the date and time of the hearing and reasonable time given to allow the employee to arrange to be represented, if they so wish. *It is the responsibility of the employee to arrange such representation.* The right of representation is restricted to a trade union representative or fellow employee.
- 2.6 Depending on the seriousness of the misconduct, disciplinary sanctions may be initiated at any stage and will not necessarily start at the level of first written warning. Apart from gross misconduct, no employee will be dismissed for a first breach of discipline.
- 2.7 Previously expired warnings will be removed from an employees file and disregarded for disciplinary purposes.
- 2.8 An employee will be informed, in writing of details of the alleged offence(s), any disciplinary action taken, the reason for it, consequences of further misdemeanour and the procedure to be followed to submit an appeal.
- 2.9 An employee will have the right of appeal against any disciplinary action. Appeals will not be heard by the manager who issued the disciplinary action. All appeals will normally end at Organisational level. An appeal against any disciplinary action taken by the Chief Officer will be to an appropriate Sub Committee of Board of Strathclyde Fire and Rescue.
- 2.10 Following an appeal, should any disciplinary action be reconsidered and revised, the employee will be notified accordingly and records amended. Should any disciplinary action be reconsidered and withdrawn, the employee will be notified accordingly, and no further reference will be made to it.
- 2.11 No action in terms of these procedures will be taken against a trade union representative until the matter has been discussed with a full time official of the union concerned. In these circumstances, guidance must be sought from the Assistant Chief Officer (Personnel & Development).

### **3 CONTEXT**

#### **3.1 Stages of Disciplinary Action**

##### **3.1.1 Informal Stage**

This is an informal discussion with the line manager to ensure that minor problems are dealt with quickly and confidentially. Therefore the employee does not have the right to be accompanied at such meetings. The employee will be advised of the line manager's concern regarding minor misconduct, unsatisfactory performance or attendance. The line manager will produce a diary note of the action taken. An informal warning will not be placed in the employee's personal record file and not form part of the disciplinary record.

3.1.1.2 At this stage the manager should also ensure that employees are clear about the expected outcomes, the processes by which they will be achieved and that failure to improve could lead to disciplinary action being taken.

##### **3.1.2 First Formal Stage (First Written Warning)**

3.1.2.1 This stage deals with cases of unsatisfactory conduct or performance.

3.1.2.2 Where the Manager conducting the disciplinary hearing (Chairperson) is satisfied that the employee is guilty of the allegations he / she will so advise the employee and issue a first written warning.

3.1.2.3 The Chairperson will also advise the employee of the future standards expected by management and of the consequences of failing to achieve this or of further instances of unsatisfactory conduct.

3.1.2.4 The Chairperson will arrange to progress any training or support requirements, which have been identified during the hearing.

3.1.2.5 A note of the warning will be retained in the employee's personal record file but will be disregarded for disciplinary purposes after a period of 6 months satisfactory service.

3.1.2.6 Where the Investigating Officer is of the opinion that there is no case to answer the matter will be terminated and the employee so advised. All notes relating to the investigation will be removed from an employee's file.

##### **3.1.3 Second Formal Stage (Final Written Warning)**

3.1.3.1 This stage deals with continued unsatisfactory performance or conduct, which has not been resolved following the application of stage one above or with matters of a more serious nature.

/...

3.1.3.2 Consideration of any disciplinary action will be handled as in 3.1.2.2 to 3.1.2.6 above. Where disciplinary action is taken, the employee will be issued with a final written warning which will be disregarded for disciplinary purposes after 18 months satisfactory service.

### **3.1.4 Third Formal Stage (Termination of Employment)**

3.1.4.1 This stage deals with continued unsatisfactory performance or conduct or serious misconduct, which has not been resolved at stage 2 or matters of gross misconduct, which, could justify summary dismissal.

3.1.4.2 A member of the Personnel and Development Department will attend all third stage hearings in an advisory capacity.

3.1.4.3 Where the Chairperson is satisfied that the employee is guilty of the allegations he / she will so advise the employee and terminate the employee's employment with SFR.

3.1.4.4 Where dismissal is because of gross misconduct the employment is terminated immediately and arrangements made to return property, clear lockers, desks or personal effects etc.

3.1.4.5 The Chairperson has the discretion to issue a lesser penalty in proportion to the offence committed and in place of dismissal. These lesser penalties include:-

- a warning;
- demotion (in the case of a uniformed employee this will be either within one role or no more than one role; a demotion of more than one role can only be done with the agreement of the employee);
- disciplinary transfer (in the case of uniformed employees this should include no loss of remuneration and unless the employee agrees otherwise it should be within the same duty system);
- loss of pay (up to a maximum of 13 days in respect of uniformed staff).

3.1.4.6 Notes of sanctions issued at Stage 3 in place of dismissal will remain on file but be disregarded for disciplinary purposes after a period of 18 months satisfactory service.

3.1.4.7 Appeals against dismissal or sanctions including demotion or loss of pay are to the Chief Officer. Appeals against a warning or disciplinary transfer will be made to an appropriate manager, as defined in sections 7.2 and 7.3.

### **3.1.5 Sequence of Warnings**

In cases of unsatisfactory conduct (including performance and attendance) it is usual for the disciplinary stages to occur sequentially (i.e. first, second and third stage). However, where an employees record improves following disciplinary action, only for it to deteriorate once again following the removal of a warning from file, the manager is entitled to consider dealing with the matter by immediately progressing to a higher formal stage than would normally be applied.

## **3.2 Factors to Consider**

3.2.1 When reaching a decision the Chairperson will take the following factors into consideration:-

- The nature of the offence / misconduct;
- The employee's current disciplinary record;
- The employee's experience;
- Previous decisions taken for similar offences;
- Length of service;
- Position within SFR;
- Any mitigating circumstances including external/personal circumstances
- The employee's general record.

## **3.3 Unsatisfactory Conduct and Gross Misconduct**

The nature of the offence generally falls into one of 2 categories, unsatisfactory conduct or gross misconduct.

3.3.1 Unsatisfactory conduct - cases involving minor misconduct or unsatisfactory performance / attendance which, if repeated, can subsequently lead to dismissal. Examples of unsatisfactory conduct might include:-

- poor timekeeping;
- unauthorised absence;
- repeated or serious failure to follow instruction;
- misuse of company facilities e.g. e-mail and internet;
- negligence resulting in minor damage / loss;
- abuse of time recording equipment;
- poor work performance;
- minor breach of health and safety rules;
- persistent short term intermittent sick absenteeism;
- breaches of The organisation's Equality Policy.

3.3.2 Gross Misconduct – acts, which constitute gross misconduct, are those resulting in a serious breach of contractual terms. Examples of gross misconduct might include:-

- theft or fraud;
- physical violence or bullying;
- deliberate or serious damage to property;
- serious misuse of SFR's property or name;
- deliberate accessing pornographic, offensive or obscene material;
- bringing SFR into disrepute;
- unfit for work through alcohol or drugs;
- negligence causing injury or serious damage or serious loss;
- serious breach of health and safety rules;
- serious breach of confidence;
- fighting;
- false particulars given to secure employment (which could have influenced decision to appoint);
- serious breaches of SFR's Equality Policy.

The above lists only are not exhaustive.

Where the conduct in question occurs outside of the working environment, disciplinary action will only be considered where it has a material bearing on an employees contract of employment, brings the reputation/image of the organisation into disrepute or fails to comply with the Code of Conduct.

- 3.4 Personnel Procedure 3/2002 – Policy on Alcohol and Drugs Misuse should be considered when dealing with matters involving alcohol or drugs.

### **3.5 Levels of management responsible for discipline procedures**

- 3.5.1 It is important that managers understand, and adhere to, their levels of responsibility within these procedures.

As a general rule, the following principles will apply:-

- |                     |  |
|---------------------|--|
| <b>First Stage</b>  | Disciplinary hearing to be chaired by the line manager (or equivalent managerial level) of the employee subject to disciplinary action.  |
| <b>Second Stage</b> | Where the procedure has reached the second formal stage the hearing should normally be conducted by a manager who is not a line manager but is at the same or higher level, subject to consideration of the organisational structure and line management responsibility. |
| <b>Third Stage</b>  | (including allegations of gross misconduct) disciplinary hearing to be chaired by an Assistant Chief Officer / Area Manager or, where appropriate, Chief Officer.  |

The following table considers the disciplinary process as it may apply to a Firefighter and is provided in explanation to the above:-

<b>Level of Action</b>	<b>Investigation</b>	<b>Chair Hearing</b>	<b>Appeal To</b>
Formal Stage 1	Watch Manager	Station Manager	Group Manager
Formal Stage 2	Station Manager	Group Manager	Area Manger
Formal Stage 3	Group Manager	Area Manager	Chief Officer

Similar tables of responsibility will be developed for each Area / Directorate and communicated to employees.

Allocation of Investigation responsibilities will be determined by the Area / Directorate management with due regard to the nature of the allegation.

In cases of unsatisfactory conduct and absence it is appropriate for a Watch Manager to inform the employee that a failure to improve could lead to disciplinary action. In accordance with section 3.1.1, a diary note will be made.

3.5.2 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. The investigating officer will normally present the management case.

### **3.6 Unsatisfactory Work Performance**

3.6.1 Where there are issues of performance, account should be taken of the review of the employee's Personal Development Record, 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 Personal Development Record, are not proving effective. An employee who is found to be performing unsatisfactorily should be provided with improvement measures in writing, prior to any disciplinary action being taken. This should detail the following:-

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement;
- a review date;
- support the employer will provide to assist the employee.

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

### **3.7 Absence from Work**

- 3.7.1 When dealing with absence from work, it is important to determine the reasons why the employee has not been at work. Reference should be made to the Managing Attendance policy. If there is no underlying capability issue, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.
- 3.7.2 Where the matter is being treated as a conduct issue the employee should be informed that failure to improve could lead to disciplinary action being taken. A copy of any correspondence should be kept and used as the basis for monitoring and reviewing performance over the agreed period e.g. six months.
- 3.7.3 If the absence is due to an underlying health problem, the issue becomes one of capability, and the employer should take a sympathetic and considerate approach. When thinking about how to handle these cases, it is helpful to consider:-
- how soon the employee's health and attendance will improve;
  - whether alternative work is available;
  - the effect of the absence on the organisation;
  - how similar situations have been handled in the past; and
  - whether the illness is a result of disability in which case the provisions of the Disability Discrimination Act 1995 will apply.
- 3.7.4 Where it is established that a major factor relating to an employees conduct is an addiction problem (alcohol, drugs misuse, gambling etc) consideration will be given to a disciplinary referral to an appropriate agency rather than taking disciplinary action.
- 3.7.5 Detailed guidance on managing attendance is provided in the service's Managing Attendance Policy and Procedure.

### **3.8 Capability**

- 3.8.1 Under the employment Relations Act 1996, a lack of capability is potentially a fair reason to dismiss.

Capability in relation to an employee means his/her capability assessed by reference to his/her skill, attitude, health or any other physical or mental quality. For the purposes of this policy the focus is on employees who are not capable of meeting the service standards of performance.

Performance must relate to the position that the employee has attained and the work he / she is employed to do. Issues of capability relating to performance may include a general failure to reach the services standards, inability to manage employees, lack of qualification or a general incompetence or inefficiency.

### **3.9 Criminal Offences**

- 3.9.1 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.

## **4. PRECAUTIONARY SUSPENSION**

- 4.1 Where the allegation involves gross misconduct or where remaining on duty may adversely affect an investigation or harm the interests of the employee or other parties, the employee may be placed on precautionary suspension. This will subsequently be confirmed in writing, explaining the reasons for the suspension and that it in no way prejudices an allegation.
- 4.2 At the meeting held to confirm the precautionary suspension the employee will be advised of any conditions which will apply including communication channels, required availability to attend meetings etc.
- 4.3 Precautionary suspension will be on full pay and conditions.
- 4.4 Where an employee placed on precautionary suspension consequently reports sick, payment will be in accordance with SFR's Sick Pay Scheme.
- 4.5 It is important that employees are not placed on precautionary suspension for longer than necessary, as this is neither reasonable nor helpful to the parties involved. The objective is to resolve any disciplinary complaints as close as possible to the point of origin with due recognition of the need to thoroughly investigate the matter.
- 4.6 Where the circumstances surrounding the case are such that the employee remains on precautionary suspension for over four weeks he / she will be issued with a further letter confirming extension of the arrangements. This letter will be issued at four weekly intervals thereafter.
- 4.7 Precautionary suspended employees will be excluded from all work premises, except for related meetings with the Trade Union representative or colleague representative.
- 4.8 Full pay for employees precautionary suspended from the retained duty system will be calculated on the basis of their retained payments averaged over the previous 12-week period.

## **5. THE INVESTIGATORY STAGE**

- 5.1 Prior to any employee being required to attend a disciplinary hearing, all relevant facts must be collected.
- 5.2 Formal investigations will be undertaken in accordance with the Handbook for Managers on Handling Disciplinary Matters. The appropriate Area Manager / Assistant Chief Officer will appoint an investigating officer who will collect all available evidence, interview all the parties involved, including the employee in question, and where appropriate prepare signed statements. The investigating officer will then decide whether there are grounds to convene a disciplinary hearing.
- 5.3 Any investigation will commence as soon as possible. Its duration will depend on the complexity of the investigation and the number of witnesses.
- 5.4 The employee involved will be advised at an early stage of the reasons for, and the scope of, the investigation, as well as the right to be accompanied at any interview. On conclusion of the investigation, the employee will be informed of the outcome.
- 5.5 Where the decision is to take no further action in terms of the disciplinary procedures the employee will be so advised and, all references to the investigation will be removed from the employee's personal file.
- 5.6 Where an incident / situation occurs involving the suspected or actual misappropriation or embezzlement of cash, monies etc, the matter will be investigated in accordance with Finance Procedure No 01/2002 'Procedure for Suspected Theft or Known Defalcation'.

## **6. THE DISCIPLINARY HEARING**

- 6.1 All hearings and decisions will observe the principles of natural justice i.e.
  - a) The right of the employee to know the allegation against him / her;
  - b) The right of the employee to prepare and personally submit a response to the allegations made;
  - c) The right of the employee to be treated fairly and in good faith
  - d) The right of the employee to have a full and fair hearing
- 6.2 A case does not have to be proven beyond all reasonable doubt as with civil courts but rather the Chairperson must make a reasoned decision based on the balance of probability and the evidence available at the time of the hearing. The following guidelines will help managers to determine if a dismissal is fair in the circumstances:-
  - the employer must have established a genuine belief that the employee has committed the act of misconduct;
  - the belief must be based upon reasonable grounds;
  - the employer must have carried out as much investigation as was reasonable into all the circumstances of the case.

- 6.3 Once a decision has been taken by the investigating officer to proceed with a disciplinary hearing, the employee should be advised in writing of the arrangements and grounds for the hearing, including the right of representation. Minimum notice to allow for preparation by the employee's representative is shown at 6.4 for each stage. It is the responsibility of the employee to ensure representation and that his / her representative is present at any stage of the procedure. Before the hearing takes place, the employee will advise management of the name of the representative.
- 6.4 The timing and location of the hearing should, where applicable, be agreed with the employee and / or their representative. It will normally be held in a private location with no interruptions. 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 7 days. This period for preparation may be extended by mutual agreement.
- 6.5 The employee will be provided with a copy of any written evidence that will be used at the hearing including any investigatory report, witness statements and details of any witnesses who will be called. The employee will also provide SFR with any written evidence together with the names of any witnesses who will be led in his / her defence in reasonable time before the hearing.
- 6.6 The employee will be given the opportunity at the hearing to present his / her case, call witnesses and explain his / her views on the circumstances. The hearing will be conducted in line with the procedures to be followed at a disciplinary hearing as set out in the Appendix 'A'.
- 6.7 If new evidence comes to light during the hearing, it is the responsibility of the chairperson to suspend or adjourn the hearing to enable the points raised to be investigated. On completion of any further investigation, the hearing will be reconvened and all parties advised of the findings.

In the event of an employee or his / her representative refraining from offering an explanation or contesting any allegation, the chairperson will require to draw his / her own conclusions from the information available and reach a decision on the appropriate action to be taken.

- 6.8 On conclusion of the hearing, the Chairperson will call a recess and consider all of the evidence as well as the employee's disciplinary and general record, length of service, actions taken in any previous similar cases, the explanation given by the employee and other relevant factors. Where practicable, the chairperson should reconvene the hearing and advise the employee and his / her representative of the decision reached. Written confirmation of disciplinary action being taken will be issued within seven days of the conclusion of the hearing and will contain advice as to the employee's right of appeal, to whom any appeal should be submitted and the designated time limit. It will also include details of the reason for the action, any required remedial action, the timescale for improvement and any support, which will be provided by the service. All relevant paperwork will be filed in the employee's personal record file.
- 6.9 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. In confirming the date for the rearranged hearing, the manager will also advise the employee that a decision may be taken in their absence if they fail to attend. An employee's representative may attend on their behalf, if the employee is unable to attend.

6.10 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 manager. This seven-day time limit may be extended by mutual agreement.

6.11 Where a grievance is raised during a disciplinary procedure

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).

## **7. APPEALS**

7.1 All decisions made at stages 1, 2 and 3 of the procedure carry a right of appeal.

7.2 The right of appeal at stages 1 and 2 is to a manager at a higher level than the person who issued the disciplinary action.

7.3 The right of appeal at stage 3 is to the Chief Officer unless the disciplinary action was issued by the Chief Officer. In these circumstances, the appeal would be referred to an appropriate Sub Committee of the Board of Strathclyde Fire and Rescue.

7.4 Employees are required to submit an appeal, in writing, no later than seven days after receipt of their letter confirming disciplinary action. The letter of appeal will specify one or more of the grounds set out in 7.6 and provide full details of the specific reasons for submitting the appeal. Appeals at stage three will conclude when the matter has been considered by the Chief Officer. Most issues considered at this level could be pursued by the employee within the external E.T. process. If an employee wished to pursue the matter externally, they should continue to do so through the ET timescales.

However, where an employee considers that the appeal was not considered properly within the context of this procedure in that they believe that the procedure was flawed or the decision perverse, they may refer their concerns to the Clerk of the Board of Strathclyde Fire and Rescue who will consider the matter and determine if there is any reason for the matter to be reviewed by an appropriate sub-committee.

7.5 The letter of appeal must give full details of the grounds for appeal and why the employee considers the Chairperson's decision to be unfair in the circumstances.

- 7.6 The grounds of appeal will normally be one or more of the following:
- There was a defect in the procedure;
  - The issue is not proven on the balance of probability;
  - The disciplinary sanction was too severe in the circumstances;
  - New evidence has come to light since the hearing, which will have an impact on the decision.
- 7.7 The Appeal Chairperson will conduct the appeal as a re-hearing or a review depending on the reason for the appeal.
- 7.8 Examples of circumstances where a re-hearing would be required include:
- There was a procedural defect at the original hearing such that the hearing was unfair;
  - New evidence has come to light which needs to be heard in full;
  - There is a dispute about evidence given by one or more witnesses at the original hearing. In such cases it may be necessary to re-hear the witness evidence at the appeal.
- 7.9 In cases where the above criteria do not apply, the appeal would be held as a review with the Chairperson considering the record of the disciplinary hearing, the employee's reasons for appeal and any other relevant documents and the verbal submissions from management to the appellant (including Trade Union representative).
- 7.10 As with the original hearing the appeal hearing will observe the spirit of natural justice described in section 6 above.
- 7.11 The decision of the Chairperson will be either 1) the case against the employee is upheld (in whole or part), the sanction will then be confirmed or a lesser penalty substituted, or 2) the case against the employee is not upheld.
- 7.12 Where the Chairperson is of the opinion that a dismissal or any other sanction involving a financial loss is unfair in the circumstances the employee will be reinstated and all monies lost repaid.
- 7.13 Where the Chairperson is of the opinion that a decision to dismiss was fair and reasonable in the circumstances but nevertheless uses the Chair's discretion the employee will be reinstated or re-employed as decided. The Chair may consider the time from leaving SFR to the successful appeal date or part thereof, as one of punitive suspension with loss of pay accompanied by an appropriate warning. Note of this warning and unpaid suspension will be disregarded for disciplinary purposes after a period of 18 months satisfactory conduct.
- 7.14 The sanctions applied at stages 1, 2 and 3, apart from dismissal, will not be implemented until 7 days after the employee has been advised of the decision. Where an appeal is received within this period, implementation will be left in abeyance until the appeals procedure has been exhausted. Where no appeal is received within the 7 days the sanction will be implemented.

- 7.15 The procedure to be followed in considering an appeal against disciplinary action is shown at Appendix 'B'.
- 7.16 Appeals will be dealt with as soon as possible and normally within 28 days of receipt of the application. Notification will be given in writing at least 10 days in advance, unless otherwise mutually agreed, of the date, time and location for the appeal hearing.
- 7.17 Should the applicant fail to appear on the set date the Chairperson will dismiss the appeal unless, prior to the date of the hearing, the appellant has requested a further date for the appeal to be held.

## **8. NOTICE**

### **8.1 Dismissal without notice**

When an employee is summarily dismissed without notice on the grounds of gross misconduct, no payment will be made in lieu of notice. Gross misconduct is generally seen as misconduct serious enough to invalidate the employment contract between the employer and the employee and make any further working relationship and trust impossible. It is normally restricted to very serious offences as defined in section 3.3.2 e.g. physical violence, theft or fraud.

### **8.2 Dismissal with notice**

An employee dismissed for repeated or continued misconduct, as opposed to summary dismissal on the grounds of gross misconduct, will be entitled to notice. Before deciding to make a payment in lieu of notice, consideration should be given to the circumstances since it may be appropriate for the employee to work the period of notice. Minimum periods of notice are laid down by law, however if the contractual period is greater, then this will apply.

## **9. FURTHER ADVICE**

- 9.1 Further advice and guidance is available from the Personnel and Development Department and employees' trade union representatives.

PROCEDURE TO BE FOLLOWED AT DISCIPLINARY HEARINGS

There may be present at all times, the employee, his / her representative and management representative.

The Chairperson will explain the process to those present.

If present, a representative from Personnel and Development will be in attendance and act in an advisory capacity to the Chairperson.

The representative from Personnel and Development will outline to all present, the procedures to be followed during the disciplinary hearing.

The management representative will put forward their case in the presence of the employee and his / her representative, and call such witnesses as may be required.

The employee's representative or the employee (if not represented) will have the opportunity to ask questions of witnesses called. All witnesses for either the employee or management must be made known prior to the case commencing.

The management representative will have the opportunity to ask further questions to clarify points arising from questions from the employees' representative.

The employee or his / her representative will put his / her case in the presence of the management representative and may call any witnesses as required.

The management representative will have the opportunity to ask questions of any witnesses called by the employee or his / her representative.

The Chairperson will then have the opportunity to ask questions of the employees representative, the employee or any witnesses called.

The employee or his / her representative will have the opportunity to ask further questions of the witness, to make points of clarification arising from questions from the management representative and the chair of the hearing.

The management representative followed by the employee or his / her representative will have the opportunity, if they wish, to sum up their case introducing no new material.

The management representative, the employee and his / her representative and any advisers if present, will then withdraw.

The Chair in the presence of the representative from Personnel and Development will then deliberate in private, only recalling if necessary the management representative, the employee and his / her representative to clarify points of uncertainty on evidence already given. If recall is necessary, **both** parties have to return even if only one of the parties is required to clarify any point.

The Chair will recall the management representative, the employee and his / her representative and announce its decision. This will be confirmed in writing. The representative from Personnel and Development will advise of the right of appeal where appropriate.

**Appendix 'B'****PROCEDURE TO BE FOLLOWED AT APPEAL HEARINGS**

There may be present at all times, the employee, his/her representative and the management representative.

The Chairperson will explain the process to those present.

In all cases, a representative from Personnel and Development will be in attendance and in act in an advisory capacity to the Chairperson.

The representative from Personnel and Development will outline to all present, the procedures to be followed during the appeal hearing.

The management representative will put forward managements case in the presence of the employee and his/her representative and call such witness(es) as may be required.

The employee's representative or the employee (if not represented) will have the opportunity to ask questions of the management representative and management witnesses.

The Chairperson and where in attendance the Advisor, will have the opportunity to ask questions of any witnesses and of the management representative.

The employee or his/her representative will put his/her case in the presence of the management representative and may call any witnesses required.

The management representative will have the opportunity to ask questions of any witnesses called by the employee or his/her representative and of the employee.

The Chairperson and Advisor will then have the opportunity to ask questions of the employee representative, the employee or any witnesses called.

The management representative followed by the employee or his/her representative will have the opportunity, if they wish, to sum up their case introducing no new material.

The management representative, the employee and his/her representative will then withdraw.

The Chairperson in the presence of any advisor will then deliberate in private, recalling if necessary the management representative, the employee and his/her representative to clarify points of uncertainty on evidence already given. If recall is necessary, both parties have to return even if only one of the parties is required to clarify any point.

The Chairperson will recall both sides and announce the decision on the appeal unless further time is required to make a decision in which case all parties will be so advised that another meeting will be required to impart the decision. The final decision will be confirmed in writing.

The Chairperson is authorised to uphold or reject appeals against disciplinary action or to order the varying of the disciplinary action taken. The form of the decision to be announced by the Chairperson will be one of the following as appropriate:-

- (1) The grounds of the appeal have been substantiated in part and the appeal be upheld
- (2) That the grounds of the appeal have been substantiated in part and the appeal is upheld to the extent that.....
- (3) That the grounds of the appeal have not been substantiated and the appeal is not upheld.

Note:-

Where the decision of the Chairperson is to vary the disciplinary action to a period of unpaid suspension, the duration of the suspension will normally be a matter for the determination of the Chairperson at his/her complete discretion having due regard to the circumstances of the case. In the case of uniformed staff however, the maximum of unpaid suspension is 13 days.

Where the grounds of an appeal against dismissal have been substantiated in part and the Chairperson varies the disciplinary action previously taken to action other than dismissal, the appellant shall be deemed to have been reinstated to the employ of the Service with effect from the date of the dismissal.