

People & Talent Procedure

Disciplinary Procedure

Version Control	Changes Made	Author
Version 1 August 2023	Refresh of appeal process	HR
Version 2 February 2025	Amend appeal process and incorporate operational and corporate procedures into one procedure. Include agreed outcomes as part of main procedure.	HR
Version 3 March 2026	Appendix added to include procedure relating to Principal Officers	HR

Introduction

Cumbria Fire and Rescue Service aims to deliver the best possible service to our communities and expects the highest levels of conduct and behaviour from our employees to achieve this. This document sets out the disciplinary procedure to be followed by managers when dealing with all acts of alleged misconduct within the workforce. Capability and performance issues should be dealt with in accordance with the Performance Management Procedure and attendance issues should be dealt with in accordance with the Absence and Wellbeing Procedure. All decisions to implement the disciplinary procedure will be made in good faith and in a genuine belief that there has been misconduct which has had an adverse effect on CFRS. The employee is entitled to be accompanied by a trade union representative or work colleague at every stage.

Scope

This procedure applies to all employees of CFRS.

Principles

This procedure is based on the following principles:

- Informal action will be considered, where appropriate, to resolve problems.

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- For formal action the employee will be advised of the nature of the allegation(s) against them and will be given the opportunity to state their case during the investigation process before any decision is made at a disciplinary hearing.
- Employees will be provided with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.
- At all formal stages of the procedure the employee will have the right to be accompanied by a trade union representative or work colleague. Employees may wish to arrange for accompaniment at informal meetings for support.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice or payment in lieu of notice. All mitigating circumstances will be considered in each case.
- An employee will have the right to appeal against any formal disciplinary action.
- There are 3 Stages to the discipline procedure, dependent on the alleged seriousness of the misconduct, the procedure may be implemented at any of the stages.

This procedure will ensure that CFRS:

- Meets all relevant legal requirements regarding any disciplinary decisions it takes in relation to employees
- Resolves effectively and in a timely manner wherever possible issues which affect the standards of conduct/behaviour of an employee
- Treats employees in a fair and consistent manner in relation to conduct and disciplinary issues
- Supports managers in carrying out their responsibilities in relation to the conduct of their employees
- Ensures that all employees are aware of and understand the behaviours and conduct required by CFRS

Process

1. When a potential misconduct situation occurs the first step is for the manager to make brief preliminary enquiries to assess whether further action may be required. This may include meeting with the employee and asking them for a response on the matter.
2. An attempt should be made to correct a situation and prevent it from getting worse through advice or informal action where appropriate.
3. Where alleged misconduct, if established, would be regarded as gross misconduct, consideration should be given to suspending the employee from work on normal contractual pay.
4. Where police investigations, criminal charges or convictions occur the manager should consider whether the conduct warrants disciplinary action due to any employment implications.
5. If, following the preliminary enquiries, a decision is made to progress the matter through the formal disciplinary procedure, a disciplinary meeting will be arranged at which the employee will be given the opportunity to state their case. The employee's representative should be consulted on the date of the meeting.
6. The employee will be given a minimum amount of notice of the meeting and must be told, in writing:
 - a. details of the allegation(s),

- b. that they are required to attend a disciplinary meeting (giving the place, date and time)
 - c. that they have the right to be accompanied by a trade union representative or work colleague.
 - d. If the allegation, if established, would constitute gross misconduct this must be stated in the letter.
7. In some cases further information than that provided by the preliminary enquiries will be needed. In these cases a disciplinary investigation will need to be carried out. The employee must be told in writing of the alleged misconduct.
 8. Within 7 calendar days of the formal meeting the manager will write to the employee confirming the outcome and outlining the next step including their right of appeal against the decision. Appeals are to be lodged within 7 calendar days.
 9. Appeals will be dealt with speedily whilst still allowing the employee reasonable time to prepare their case
 10. The outcome of the appeal meeting will be formally notified to the employee in writing within 7 calendar days.
 11. There is no further right of appeal.

Wellbeing:

Going through a disciplinary process can be very stressful; it is important that employers consider the wellbeing and mental health of their employees.

Looking out for the employee's wellbeing and offering support can help prevent:

- Absence.
- Mental health issues arising/getting worse.

In the first instance of the disciplinary procedure being initiated, a welfare officer should be identified for the employee, usually their line manager, or an alternative equivalent where appropriate. This manager should maintain regular contact with the employee and may also assist them to identify a trade union representative and/or colleague who can also provide support. All individuals/managers involved in the process need to prioritise sticking to agreed timescales wherever possible to minimise the impact on employees.

The manager may also signpost the employee to the Employee Support Pages if required. This includes information and resources on the following:

- Health and Wellbeing Helpline
- Mental Health Support
- Self-referral for counselling (should employees not wish their manager to make the referral for them)
- Alcohol and substance misuse
- Bereavement support
- Welfare officers

Employees who are exhibiting signs of stress or disclose their feelings/symptoms of stress to their manager, may benefit from the use of the service's managing stress resources which can be

found on the Health and Safety pages. This includes an individual stress risk assessment which can be completed by the employee with their line manager to try and identify what support could be provided to assist them. The Employee Support page also signposts to other organisations that can offer support in managing stress.

Line managers should also provide the employee with appropriate support when returning to the workplace if they have been absent at any time throughout the disciplinary process, including due to suspension or sickness absence. This can be a very difficult experience for individuals, and they may benefit from the support or resources listed above. Employees may also benefit from more regular contact with their manager to discuss how they are feeling and if they are finding any particular aspect of their return to work difficult.

Managers are encouraged to contact the HR team or Occupational Health for further information or relevant support when required.

Should further clarification be required please contact the HR Team hr@cumbriafire.gov.uk

Guidance

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Introduction

This guidance supports the processes outlined in the Discipline procedure for managing employee misconduct.

Minor breaches of conduct will be dealt with informally by managers as part of their responsibility to establish and maintain standards of conduct. Where the matter is more serious, or the employee's conduct continues to be unacceptable, despite the manager's informal intervention, the formal Disciplinary Procedure will be used.

Where unacceptable performance is not due to issues of conduct e.g. health, lack of skills or qualifications, or because the job has changed in nature, the Absence Procedure or Performance Management Procedure should be followed.

Where employees are seconded to CFRS from an external organisation they will be subject to the disciplinary procedure applicable to their employer.

Where CFRS employees are seconded to an external organisation they will be subject to the CFRS Disciplinary procedure.

Addressing conduct issues informally and preliminary enquiries

It is the responsibility of all employees to conduct themselves in an appropriate manner and for managers to continuously and consistently monitor this. When a potential misconduct/gross misconduct situation occurs the first step is for the manager (or their nominee) to make brief preliminary enquiries to assess whether further action may be required. This may include meeting with the employee and asking them for a response on the matter. If holding a preliminary meeting with an employee it is important that the employee is aware of the reason for the meeting being held, bearing in mind that all facts may not be available at this stage. In some circumstances it may be necessary to speak to any key witnesses (e.g. clients or members of the public).

If a preliminary meeting is to be held with the employee it is important to inform them of the purpose of the meeting and that they can bring a trade union representative or work colleague to the meeting to accompany them if they so wish. If the employee confirms that they are a member of a recognised Trade Union every effort should be made to have a trade union representative present. Unavailability of the representative will not unreasonably delay the meeting.

It may be appropriate, depending on the circumstances and the nature of the misconduct, to attempt to correct a situation and prevent it from getting worse through advice or informal action, without using the formal stages of the Disciplinary Procedure. In these circumstances, managers should ensure that the employee understands the reason for the meeting and that if the misconduct re-occurs formal action may be taken.

A note of any preliminary meeting should be made and kept by the manager for reference purposes, a copy should also be shared with the employee. This note will form part of management's case at any subsequent investigatory interview and or formal disciplinary meeting.

In exceptional circumstances it may be that a preliminary meeting cannot be completed because of circumstances outside the control of CFRS.

A preliminary meeting is not an investigatory interview therefore following the preliminary investigations, if it is decided that a more thorough investigation is required then a disciplinary investigation will need to take place as soon as possible and investigatory interview with the employee concerned.

The Role of the Commissioning Manager

It is important that the discipline procedure is applied consistently and fairly. To aid this, a service Commissioning Manager is available to provide advice and guidance when the issue is believed to be of a level that warrants the implementation of a formal stage of the procedure. The Commissioning Manager will normally be the Head of People & Talent, or another nominated person of sufficient seniority.

The relevant manager who has conducted any preliminary enquiries will present the information to the Commissioning Manager for consideration.

If the issue involved an Area Manager or above, a Principal Officer would commission an independent investigation.

Following presentation of the information related to the incident to the Commissioning Manager they will:

- determine whether a formal investigation should be completed.
- advise the line manager to proceed with the investigation or they will appoint an Investigation Officer (IO) and contact the newly appointed IO to inform them and provide indicative timescales for completion of the investigation which will vary depending on the scope of the investigation.
- draw up and agree the allegation(s) to be included in the notification of disciplinary investigation letter.
- Provide advice in relation to possible suspension from duty and complete a suspension risk assessment and regular suspension reviews in consultation with the manager.

Where appropriate, reference should be made to the relevant service policy, Code of Conduct, Code of Ethics, or procedure that the misconduct has breached.

Additionally, the Commissioning Manager will provide direction on any appeal that is submitted.

Precautionary Suspension

If the alleged misconduct, if established, would be regarded as gross misconduct, consideration must be given whether to suspend the employee from work on normal pay. For those on zero hours or on-call contracts this will be based on 12 weeks average pay. Details of the reason for suspension must be given to the employee as soon as possible. Suspension in itself is a

precautionary measure and not a form of disciplinary action and will only apply when other alternatives have been considered. (See appendix 2).

The manager should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours, or the Designated Adult Safeguarding Manager (DASM) of any complaints involving vulnerable adults.

It may be necessary to seek advice from the HR Team on the appropriate course of action.

Police Investigations, Criminal charges or convictions

If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself a 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.

The fire and rescue service is a public serving organisation and expects the highest possible standards of its employees and as such would consider very seriously the implications of such conduct on their role and on the reputation of the service.

Any employee of the service arrested in connection with or charged or cautioned with a criminal offence whilst on or off duty, must ensure that his or her line manager is informed at the first opportunity, stating the reason for the arrest and/or the nature of the charge. Failure to do so may result in disciplinary action.

Where it is thought that the conduct warrants disciplinary action the commissioning manager will determine whether suspension and the appointment of an appropriate manager would be necessary to conduct a disciplinary investigation to determine the facts. The commissioning manager will then consider whether the conduct is sufficiently serious to warrant convening a disciplinary hearing.

Where following the above, the conduct requires prompt attention; the service need not await the outcome of the prosecution before taking fair and reasonable action. This action should arise from a properly conducted investigation and disciplinary hearing.

Where the police are involved, they will not be asked to carry out any investigation on behalf of the service and they will not be present at any meeting or disciplinary hearing.

Where the employee is charged with, or convicted of, a criminal offence and refuses or is unable to cooperate with the Service disciplinary procedure, this will not deter the service from taking action. The employee should be given every opportunity to put forward their case and attend the disciplinary hearings. Ultimately the employee will be advised that a decision will be taken on the basis of information available and could result in dismissal.

In some cases the nature of the alleged offence may not justify disciplinary action. If the employee is in custody or on remand, the service will make a decision whether, in light of the needs of the service, the employee's job can be held open.

Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, the service will consider whether alternative work is appropriate and available.

Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the disciplinary procedure, this will not deter it from taking action. The employee may choose not to respond to any further questions in such cases the employee will be advised in writing that unless further information is provided a disciplinary decision will be taken on the basis of the information available and could result in dismissal. People Management advice should always be sought in these cases.

Allegations

Managers must be clear and specific when allegations are being made and should, throughout the disciplinary process, be consistent about the nature of the misconduct which is being investigated. New allegations that come to light during the investigatory stage can be added to the process and brought to the employee's attention in writing. If the new allegations are subsequently found to be not relevant, they should not be referred to in the investigation report.

Any disciplinary sanction must be imposed only in respect of allegations that were properly investigated and brought to the employee's attention in writing as part of the proceedings.

Any complaint or incident involving financial irregularity must be immediately notified to The Head of People and Talent before proceeding with any disciplinary procedure or action. Serious cases may also need to be reported to the police who might then conduct a criminal investigation.

Any complaint involving suspected sexual, physical or emotional abuse against children and/or vulnerable adults must be investigated using CFRS Safeguarding Procedures; this may involve a joint approach with the Police.

The manager should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours, or the Designated Adult Safeguarding Manager (DASM) of any complaints involving vulnerable adults.

The Right to be Accompanied

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.

In addition, it is good practice for employees to be provided with the opportunity to be accompanied at the investigation stage (including preliminary enquiries) for support, although this should not unduly delay the process.

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.

An employee or 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 whoever is accompanying the employee 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.

Employers should cater for an employee's and/or companions' reasonable specific requirements at a hearing, for example, providing for wheelchair access if necessary.

Before the hearing takes place, the employee will inform the hearing manager who they have chosen to accompany them at least 3 days prior to the hearing.

The companion should be allowed to address the hearing in order to:

- Put the employee's case.
- Sum up the employee's case.
- Respond on the employee's behalf to any view expressed at the hearing.

The companion can also confer with the employee during the hearing and participate as fully as possible in the hearing, including asking witnesses questions. The companion 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.

Disciplinary Investigation

In some cases, further information than that provided by the preliminary enquiries will be needed. In these cases, a disciplinary investigation will need to be carried out. The employee must be told in writing of the alleged misconduct.

The purpose of the investigation is to establish the facts, to ask the employee for an explanation, to determine what happened and to obtain sufficient information for management to decide what action to take i.e., formal or informal action, welfare support, implementation of one of the service's other policies or to take no action at all. Consideration should be given as to whether it would be beneficial for the employee to be allocated a Welfare Officer within CFRS as a point of contact / means of support.

Not all cases will need lengthy investigation and it will not therefore be necessary to appoint an independent investigator(s) in straightforward cases e.g., persistent lateness. In these cases, the manager would normally investigate. In potential gross misconduct cases separate Investigating Officer(s) may be required and in some cases this may be an external investigating officer. (See Appendix 1 for further guidance on investigations). Whoever is responsible for the investigation, it should be completed as quickly as possible but should be thorough. It should be carried out by an employee(s) of appropriate seniority in a confidential manner.

The investigation should include:

- Holding a preliminary interview with the employee concerned at the earliest possible opportunity.
- Interviewing all witnesses

- Obtaining relevant documentary evidence
- Producing an investigation report

Upon completion of the investigation the Investigating Officer will be required to present the report back to the Commissioning Manager. The Commissioning Manager will then seek advice from HR before deciding from the following what action to take:

- Request that further investigation is carried out for clarity.
- Not proceed with the matter
- Deal with the matter on an informal basis.
- Refer the matter to a stage 1 hearing.
- Refer the matter to a stage 2 hearing.
- Refer the matter to a stage 3 hearing.

The Investigating Officer does not form any part of the decision-making process

Trade Union Officials

Normal disciplinary procedures apply in full to trade union officials. However, no formal disciplinary action should be taken against a trade union official until the circumstances of the case have been discussed with a full-time official i.e. The Regional Officer, or Convenor of the union concerned.

Overlapping Workplace Complaints and Disciplinary Cases

A workplace complaint raised during the course of the disciplinary procedure (including a claim of harassment) will be referred to the Commissioning Manager who will decide whether the matter should be considered separately, or as part of the disciplinary process.

Where the employee's complaint relates to the disciplinary case it will be investigated as part of the disciplinary process and will not suspend the disciplinary procedure.

If the complaint is not linked to the disciplinary proceeding, the processes can run in parallel, there is no need to suspend the disciplinary process whilst the workplace complaint is resolved.

Workplace complaints raised about the disciplinary proceedings will be dealt with at appeal stage if the disciplinary proceedings have been concluded and an appeal has been received.

Agreed Outcomes

On some occasions it may be appropriate to deal with the matter via an agreed outcomes procedure and the service has a local agreement in place for this purpose. Please refer to Appendix 4 for further details of the agreed outcomes procedure.

Holding a Formal Disciplinary Meeting

Where, on completion of an investigation/preliminary enquiries meeting, there are reasonable grounds to believe that there could be a case to answer the employee will be invited to attend a formal disciplinary meeting chaired by a more senior manager.

Employees should make every effort to attend the meeting and is entitled to be accompanied by a trade union representative or work colleague.

The following minimum notice periods apply (although this can be shorter or longer if all parties are in agreement):

- Stage 1 – 7 calendar days
- Stage 2 – 10 calendar days
- Stage 3 – 21 calendar days

At the meeting the manager should explain the allegations against the employee and go through the evidence that has been gathered. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. Where the manager or employee intends to call relevant witnesses, they should give advance notice that they intend to do this.

Organising a Formal Disciplinary Meeting

- Manager to notify employee in writing. This notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting as well as details of the time, venue and attendees.
- the employee can request a postponement, normally within five days of the original date if their chosen representative cannot attend.
- copies of any relevant information and witness statements should be made available to the employee at least 7 calendar days prior to the disciplinary meeting, or sooner if possible
- The hearing manager should ensure that there is a record made of the hearing. Audio/video recordings of hearings are not permitted. The covert recording of any meetings or conversations is forbidden and if undertaken will be considered as an act of gross misconduct. An HR Advisor will attend the hearing and if necessary, a note taker. Employees will be given a copy of the meeting notes following the hearing.
- the employee should submit any relevant papers and witness statements at least 7 calendar days in advance of the meeting, together with the names of any additional witnesses they wish to attend the meeting. Failure to adhere to the above may result in the evidence not being considered.
- arrange for an additional rooms to be available for the employee and their representative and for any witnesses
- if the employee concerned is a trade union representative discuss the case with a trade union full-time official.

Structure of the meeting

The disciplinary meeting will be conducted by a manager who has not already been involved in the process.

The disciplinary meeting will be conducted as follows:

Introductions will take place; the purpose of the meeting will be explained, and an explanation will be given as to how the meeting will be conducted.

The approach will be formal, but polite and the meeting will be a two-way process with the objective of ascertaining the true facts of the case.

The allegation(s) will be outlined by the original manager/investigating officer, and the evidence presented. This will include reference to any witness statements and the calling of witnesses as required. There will then be opportunity for questions to be asked related to the evidence presented.

The employee will be given the opportunity to state their case, present evidence and call witnesses. Opportunity for questions at this stage will again be given.

The manager/investigating officer will summarise their case, followed by the employee.

The meeting will adjourn, and a decision will be reached by the hearing manager. If necessary, the meeting may be adjourned in order to carry out further investigations. If this does occur the meeting will be reconvened as soon as possible, and the individual will be informed of the outcome of the further investigations. They will also be given the opportunity to comment on and/or question this.

Following the adjournment, the employee will then be recalled, will be informed of the decision and, if applicable, the sanction which is to be imposed. The employee will also be advised at this stage of their right of appeal and the time limit for any such appeal.

All decisions will be confirmed, in writing, no later than 7 calendar days following the date of the disciplinary meeting. The letter will include (in the event of a warning being given):

- a. the reason for the warning,
- b. the effective time period of the warning,
- c. the consequences of any further breach of discipline,
- d. the right of appeal, and
- e. the time limit for any such appeal.

Absence of Individuals from Disciplinary Meetings or Appeals due to sickness

If an employee first reports sick on the day of the meeting and the employee informs CFRS they are unfit to attend, the meeting will usually have to be postponed.

The matter may need to be referred to Occupational Health to obtain advice on their condition/fitness.

The disciplinary meeting should then be rearranged according to this information.

Failure to Attend a Disciplinary Meeting

Where an employee simply fails to attend their disciplinary meeting they should be written to and informed of the following:

- a. That the meeting has been rearranged for a specific later date and time.
- b. That if they are unable or unwilling to attend the meeting, without good cause, the meeting will proceed in their absence.
- c. A representative may attend in their absence to present their case.
- d. Any written submission which the employee may wish to submit will be considered.

Witnesses / Written Statements

Witnesses will be required to attend the meeting and asked to state their evidence in front of the parties so that the employee and the manager have an opportunity to ask them questions.

In exceptional cases, however, this may be impracticable or unacceptable (e.g. in the case of children/vulnerable adults). In these circumstances the employee should be shown a copy of the witnesses' statements so that they are fully aware of what is being alleged against them.

Where evidence about an employee's alleged misconduct has been obtained in the form of written statements, either the statements themselves or a summary of their content will be given to the employee. In exceptional circumstances CFRS reserves the right to conceal the identity of any or all of the parties if there is a legitimate reason to do so, such as where there may be a risk to the safety of others if the identity of witnesses is disclosed. In those circumstances, consideration will be given to providing a summary of the information to the employee.

What to consider before deciding on any disciplinary action?

When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to:

- whether the rules of CFRS indicate what the likely penalty will be as a result of the particular misconduct

- the penalty imposed in similar cases in the past
- whether standards of other employees are acceptable, and that this employee is not being unfairly singled out
- the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
- any mitigating circumstances which might make it appropriate to adjust the severity of the penalty
- whether the proposed penalty is reasonable in view of all the circumstances
- whether any training, additional support or adjustments to the work are necessary

Each case must be looked at on its own merits and any relevant circumstances taken into account. Such relevant circumstances may include health or domestic problems, provocation, justifiable ignorance of the rule or standard involved or inconsistent treatment in the past.

Disciplinary Penalties

Employees will not be dismissed for a first breach of discipline except in the case of gross misconduct.

Where, following a disciplinary meeting the manager establishes that no misconduct has taken place; the employee will be informed that there is no case to answer and no disciplinary action to take.

Where it is established that an employee has committed a disciplinary offence the following disciplinary action may be taken:

Stage 1 - Written Warning

In cases of first minor breaches of discipline the employee should be given a recorded written warning. A formal written warning may only be given to an employee by a Station Manager, equivalent, or above.

The warning will:

- set out the nature of the misconduct and the change in behaviour required
- inform the employee that a written warning may be considered if there is further misconduct
- confirm that the warning will remain "live" for a period of 6 months
- during this period, CFRS may rely on such a warning in the event of further misconduct on the part of the employee
- state that the employee may appeal against the warning within 7 calendar days, and confirm who they should submit their appeal to

Stage 2 – Final Written Warning

In cases of misconduct following a previous written warning, or as a first stage for more serious offences, employees will receive a final written warning. A final written warning may only be given to an employee by a Group Manager (or equivalent) or above.

The warning will:

- set out the nature of the misconduct and the change in behaviour required
- inform the employee that a final written warning may be considered if there is further misconduct
- confirm that the warning will remain "live" for a period of 18 months from the date of issue, after which time it will be expunged from the employee's records
- during this period, CFRS may rely on such a warning in the event of further misconduct on the part of the employee
- state that the employee may appeal against the warning within 7 calendar days, and confirm who they should submit their appeal to

Stage 3 – Dismissal or other sanction

Where further misconduct occurs following a final written warning that remains "live" the employee may be dismissed with notice or with pay in lieu of notice.

For serious matters (possible gross misconduct) the employee may be dismissed summarily, without notice or pay in lieu of notice.

Any sanction up to dismissal may only be given to an employee by an Area Manager, equivalent, or above.

There may be occasions when, having taking into account all appropriate circumstances, it is decided that another sanction is appropriate. This may include:

- Transfer
- Demotion/Loss of seniority

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

The employee may appeal against any sanction imposed on them within 7 calendar days.

Gross Misconduct

Some acts, termed 'gross misconduct', are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. The following examples of gross misconduct are not exhaustive or exclusive:

- Theft or fraud
- Deliberate falsification of records

- Fighting at work, physical violence
- Physical conduct/inappropriate physical contact with clients
- Assault on/abuse of another person
- Deliberate serious damage to CFRS property
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious/persistent incapability through alcohol or illegal drugs
- Negligence causing/with the potential to cause unacceptable loss, damage or injury
- Serious infringement of health and safety rules
- Conduct prejudicial to CFRS interests or which may damage or prejudice CFRS reputation or integrity or bring CFRS into serious disrepute
- Discrimination, harassment or bullying directed towards other employees, clients or members of the public
- Serious misuse of CFRS property or name
- Serious breach of confidence (e.g., serious breach of Data Protection, or CFRS Code of Practice on Computer Security, or CFRS Code of Conduct or appropriate Professional Codes).
- Conduct outside of work which makes the employee unsuitable for their type of work or is calculated or likely to destroy CFRS trust and confidence in the employee taking into account the nature of the offence, the nature of the work to be done, the extent to which it involves contact with employees, partner agencies and the general public, and the status of the employee

Where appropriate if an employee is dismissed for gross misconduct managers may have a statutory duty to refer to the Disclosure and Barring Service where applicable. Please refer to Safe Recruitment guidance for more information.

Promotion

Employees who have live disciplinary sanctions are not eligible to apply for promotion (including acting up and temporary promotions).

Appeals

Making an appeal

Employees who have had a disciplinary sanction awarded 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.

Where an employee appeals against disciplinary action taken against them, they must put their grounds of appeal in writing to the original hearing manager. 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 probabilities.
- The disciplinary sanction was too severe.
- New evidence has come to light since the hearing which will have an impact on the decision.

It will not be sufficient for the employee to cite one or more of the generic reasons quoted above as grounds for their appeal. They should provide sufficient details/evidence to enable the appeal manager/appeal panel, where applicable, to make a decision as to whether or not a review or rehearing is required.

Following receipt of an appeal

The original hearing manager should contact the Commissioning Manager who will identify a higher-level manager to either conduct a review or arrange an appeal re-hearing. This manager should have had no prior involvement in the original decision/investigation process. Normally the appeal manager will conduct the appeal hearing as a rehearing (in full or part), where this is required. A rehearing would normally be required in the following instances (this is not necessarily an exhaustive list):

- 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 these cases it may be necessary to rehear the witness evidence at the appeal. Otherwise the appeal hearing will be conducted as a review.

Appeal Review Meeting

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.

Following the invite the original hearing manager (in liaison with HR) and the appellant must each submit the following documents to the appeals manager at least five calendar days prior to the hearing:

- A full written statement of the case including the grounds upon which the appeal is presented (or resisted, as appropriate).
- Copies of any documents the party concerned intends to use in evidence and.
- The identities of any witnesses the party concerned intends to call.

At the appeal review the employee and/or their companion will first put their case by explaining the grounds of appeal and presenting any relevant evidence. The management case will then be put forward, in response 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.

Appeal Rehearing Meeting

Where a re-hearing is required, the same process will be followed as per the original hearing. The appeal manager will re-hear all of the evidence and arrive at their own decision based on the evidence presented to them.

Appeals Against Dismissal

Appeals against dismissal for misconduct will be heard by a panel of appropriate Senior Officers. The appeal panel may go ahead if two of the three members are available.

Appeal Outcome

The outcome of the appeal will be either:

- The case against the employee is upheld (in whole or part); the sanction will then be the same or a lesser penalty.
- The case against the employee is not upheld.

The appeal must not result in an increase in a sanction against the employee.

The outcome of the appeal should be confirmed by the appeal manager on the day, or it will be communicated to the employee by no later than seven calendar days of the date of the appeal hearing or review. This decision will be final.

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

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.

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

On completion of any appeal, the appeal manager should ensure that a copy of the outcome letter and all paperwork is forwarded to the Service Centre for filing on the employee's record.

Keeping Written Records

Notes should be taken of all key points raised during disciplinary meetings and appeals and a copy given to the employee. In certain circumstances (for example to protect a witness) some information may be withheld. This information may be required at an Employment Tribunal.

Managers must keep a record of all disciplinary cases. This record should include:

- the complaint against the employee
- the employee's defence
- findings made and actions taken
- the reason for actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the disciplinary procedure
- any subsequent developments
- notes of any formal meetings

These records are to be kept confidential and retained in accordance with this procedure and the General Data Protection Regulations 2016.

Equality

Managers should be aware of their personal responsibility in ensuring that discrimination in any form does not impact on their handling of a case of misconduct.

Managers should consider providing flexibility in arranging the date and venue of a meeting or appeal.

Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion or witness if they are disabled) e.g. the provision of a support worker or advocate with knowledge of the disability and its effects.

Appendix 1 – Investigations

Investigations

CFRS are committed to ensuring that where necessary, disciplinary investigations are carried out without delay.

In most cases preliminary enquiries will be carried out by the manager of the employee who is the subject of disciplinary action. They will gather all relevant evidence and prepare a summary of their findings based on the evidence seen.

Enquiries and Investigations must be given the highest priority and carry it out without undue delay whilst ensuring that the facts are investigated thoroughly.

The manager should inform the Local Authority Designated Officer (LADO) of any complaints involving suspected child protection cases within 24 hours or the Designated Adult Safeguarding Manager (DASM) of any complaints involving vulnerable adults.

The employee/witnesses are required to co-operate with the investigation and any subsequent meeting. They have a duty to:

- i) Meet with the investigator
- ii) Put forward their own account and explanation of the events at issue
- iii) Answer the investigator's questions about the events

Appointment of an Investigating Officer

In cases of gross misconduct the commissioning manager may consider it necessary to appoint an independent investigating officer (IO) who has not been connected in any way with the case. The IO should be of sufficient seniority to reflect the importance of the matter and to ensure credibility. It is not the IO's responsibility to decide what, if any, penalty should be awarded as a result of the investigation.

Carrying Out an Investigation

Whilst there is a need to ensure that the facts of a case are thoroughly investigated, there are obvious benefits for the employee and for managers if disciplinary issues are dealt with quickly and effectively.

The investigation should include:

- a. Holding an interview with the employee/s concerned at the earliest possible opportunity.
- b. Interviewing all witnesses, including clients and members of the public and obtaining appropriate statements. It is important that relevant information such as dates, times, witnesses and other basic facts are incorporated into the statement. The statement should

then be signed and dated by the witness and the witness informed that their statement will be used at any subsequent disciplinary meeting, appeal or Employment Tribunal.

- c. Obtaining relevant documentary evidence e.g.: time sheets, notes of meetings, photographs, policy documents, relevant memoranda etc.

Conducting the Investigation Interview(s):

- Ensure that the employee /witness has been given reasonable written notice of the meeting and that they are aware of the reason for the meeting
- Ensure the meeting place is appropriate – comfortable, private, free from interruptions. It may be useful for the interview to take place at a ‘neutral’ location
- Consider making any reasonable adjustments as necessary
- Consider using a note taker
- Explain the purpose of the interview
- Ensure the employee has had the opportunity to be represented
- Ensure that the employee/witness understands the purpose of the interview
- Give the opportunity for the employee to describe their version of events
- Ask clarification questions and summarise events
- Ask the employee if they can identify any witnesses or documentary evidence
- Make the employee aware of support available to them
- If it becomes apparent during the course of investigation that a person is at risk e.g. victimisation or intimidation, inform the appropriate Manager immediately
- If any losses involving cash, property, store or other financial or potentially fraudulent matters are suspected or alleged during the course of the investigation, inform the Manager and Internal Audit immediately

Following the investigation interviews a statement should be prepared for the employee/witness to agree. The statement is not intended to be a verbatim record. Amendments can be made to the statement by mutual agreement and it may be possible for reasonable additions to be added in after the investigatory interview, where they serve the purpose of clarifying events. Once agreed, the statement shall then be included in the Investigation Report. Employees/witnesses will be required to sign copies of their statements. Email confirmations of accuracy will suffice. If there is a need to go back to the employee to clarify events or ask further questions after the interview has ended, this can be via phone or email if appropriate, as long as a written summary is agreed and included with the Investigation Report.

Recording equipment is not permitted in investigation interviews.

An investigation report should be prepared summarising the findings of the investigation in order for a decision to be made on the appropriate next stages of the process. The report should contain a summary of all of the evidence however it is not the Investigating Officer’s role to determine what the next step should be.

The Investigation report, when completed, should be sent to the Commissioning Manager.

Attendance at Meetings

The Investigating Officer will be called to attend disciplinary meetings to present their report and to answer questions on the report. The Investigating Officer does not form any part of the decision-making process.

Maintaining Contact

The Manager must keep the employee informed of progress on the case. If the investigation is likely to be delayed the Manager must make the employee aware as soon as possible.

Appendix 2 – Suspension

Suspension

It is impossible to predict the full range of circumstances which will arise in disciplinary cases. Emphasis will always be on a fair resolution within an appropriate timescale. 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, this is usually after a preliminary enquiries meeting has taken place.

Suspension should not be an automatic response to any allegation of misconduct however serious, and must only be undertaken as a last resort, where other reasonable alternatives have been ruled out. An employee should only be suspended if the employer has reasonable and proper cause to do so. Circumstances which may lead to restriction of duties or suspension include, but are not limited to:

- Cases where allegations, if proven, may be regarded as gross misconduct.
- Where there has been a significant breakdown of the employment relationship
- Where there are risks to property or other parties
- Where there is reasonable concern that evidence may be tampered with, or witnesses may be intimidated
- There is a risk of significant harm to children or vulnerable adults.

A decision to suspend an employee will usually be undertaken by the Commissioning Manager and advice must be sought from HR. A suspension risk assessment must be completed prior to a decision being taken to suspend, to demonstrate that due consideration has been given to the suspension and that any alternatives to suspension have been fully considered. The completed suspension risk assessment should include review periods – a form available for use is shown at Appendix 3. The service will endeavour that all periods of suspension are kept to a minimum and will be reviewed as necessary.

Suspension is usually undertaken at a meeting by the line manager or relevant on duty Area Manager and is followed up with a letter, which is given to the employee by hand or posted to their home address afterwards. When suspending an employee, they should be given the opportunity to be accompanied by a trade union representative or work colleague at all meetings. However, the non-availability of such a person should not unreasonably delay the process. The employee should be told that a serious issue has been reported that could potentially lead to an allegation of gross misconduct. An outline of the complaint or incident should be given to the employee to allow them the opportunity to respond. Once the employee has given a response, the meeting may be adjourned for the response to be considered and for advice to be taken, if necessary. If a satisfactory explanation is not given at the meeting the employee should be suspended, pending a full investigation into the allegation(s). A separate investigatory interview will need to take place at a later date but as soon as possible following the suspension.

It is also appropriate at this stage to highlight any conditions which will apply during the period of suspension, for example, communications channels, availability to attend meetings, facilities to

meet with their companion, etc. In all cases of suspension, all property, keys, fobs, mobiles, access to ICT equipment should be returned and ICT accounts suspended. If required, supervised access to the workplace can be arranged via the person's line manager e.g. to collect personal belongings.

It should be made clear to the employee that where the decision to suspend is taken as a precautionary measure under the Disciplinary Procedure, it is not a presumption of guilt and is not a form of disciplinary action. However, any breaching of the conditions of the suspension as outlined in the suspension letter will be dealt with immediately and as a serious matter.

Employees who are suspended should be offered appropriate support and contact should be maintained with them through the person outlined in the suspension letter. This may be their line manager or some other neutral party. Sources of support can be found in the Wellbeing section above.

Suspensions must be recorded on the HR system by the employee's line manager or Commissioning Manager where appropriate and should be kept under regular review, a minimum of once per month is recommended. The Commissioning Manager is responsible for ensuring that suspension is reviewed by seeking information from the IO. At each review the continuing need to suspend should be considered and recorded.

Where an employee is suspended, they will receive full pay unless they commence sickness absence, in which case their pay will be in accordance with sickness entitlements and absence management procedure. If the employee is absent from work due to sickness it may be appropriate in certain circumstances to delay the suspension until the employee is fit enough to return to work i.e. the employee is absent from work due to sickness as an alternative to suspension. Any employee who is signed off as sick during a period of suspension may have their suspension rescinded temporarily until such time as they become fit for work. Every case will be assessed on an individual basis and advice should always be sought from HR.

Full pay for those employees on the On-call duty system will be calculated on the basis of their daily rate in accordance with the relevant Collective Agreement or policy.

Consideration should be given to any information provided to colleagues to explain the absence of the individual. It is important that a need-to-know approach is adopted in order to maintain confidentiality. A suggested approach to this would be to bring the team together and simply inform them that the employee is absent from work at present and the arrangements that may be put in place to cover their work. They should also be informed that when asked about the employees' absence to relay the same information.

During the investigation the investigating officer and/or the employee may suggest that the matter is deal with under the Agreed Outcomes policy; in which case, the investigating officer should refer back to the commissioning manager for a decision. The Agreed Outcomes policy provides further information on this process.

Appendix 3 – Suspension Risk Assessment

DETAIL OF CASE UNDER CONSIDERATION:			
Date:			Nature of allegation against employee assessed for suspension:
Commissioning Manager:			

ASSESSMENT:

Hazard (Hazards will carry individual weighting)	Detail	Likelihood <input type="checkbox"/>			
		Highly Unlikely (1)	Unlikely (2)	Likely (3)	Highly Likely (4)
Is there a risk to individual (i.e. physical or emotional well-being)?					
Is there a risk to other employees (i.e. physical, emotional, trust)?					
Is there a risk to others (i.e. community members)?					
If <u>not</u> suspended would this pose a political risk?					
If <u>not</u> suspended would this pose a risk to Fire and Rescue Service reputation?					
Would suspension be in the public interest?					
Is the allegation one that may lead to or involve significant legal action i.e. fine, imprisonment, ASBO, etc. (not minor traffic offences)?					
Other risks (specify). Disruption /Interference with investigation through discussion and influence with colleagues					

CONTROL MEASURES:	Yes	No
Would the implementation of control measures lessen the risk?		

Control Measure 1		Responsible Manager
Control Measure 2		Responsible Manager
Control Measure 3		Responsible Manager

OVERALL ASSESSMENT:

This is a value judgement based upon the evidence presented and professional judgement.

Overall Risk Assessment <input checked="" type="checkbox"/>	Very Low (8-12)	Low (13-16)	High (17 - 25)	Very High (26 - 32)
	Suspension <u>not</u> required			

OUTCOME:

Do Not Suspend <input type="checkbox"/>	Suspension <input type="checkbox"/>
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Appendix 4 – Agreed Outcomes Procedure

Introduction

CFRS will make an informed assessment as to whether this local agreement covering agreed outcomes is an appropriate mechanism to resolve a disciplinary issue.

Each case will be considered on its merits and the principle of natural justice will ensure due consideration is given.

Scope

This local agreement covers all employees of CFRS.

Principles

If, at the end of an investigation into a potential disciplinary issue, the employee accepts all the allegations made against them then there is no need to automatically proceed to a Disciplinary Hearing.

If the facts of the allegation are not in dispute and the employee has accepted their wrongdoing either prior to or during an investigation, the manager can propose that the matter is dealt with by way of an agreed outcome meeting where what needs to be determined is the level of sanction.

Agreed outcomes are only appropriate where both parties are agreeable to the process. If either the employee or their representative is unhappy with a proposal for an agreed outcome, then the normal disciplinary process must be followed. The employee will be written to asking to consider this process and ask for agreement in writing.

Procedure

Where there is agreement to an agreed outcome as being the acceptable way forward for both parties, the following principles should be followed:

- Both parties must be in written agreement to proceed in this way.
- The Commissioning Manager must be aware of and agree to the proposal for an agreed outcome.
- Cases must not interfere with, or compromise 'due process' e.g. audit.
- A meeting should be held at which both parties (i.e. the employee and representative and the Investigating Manager) will be present, together with an HR Advisor. The Disciplinary Manager may or may not be present but must be aware of the fact that the meeting is taking place and have given authority for a particular sanction to be applied.

- At the meeting, all information relevant to the allegations(s) must be available and both parties must have a full opportunity to discuss all the issues, in accordance with the normal justice.
- The meeting can be adjourned and reconvened at any time if, for example, there is a need to obtain more information.
- On conclusion of the meeting, the employee will be required to sign a written acceptance of his/her misconduct and the relevant disciplinary sanction proposed. The sanctions available are the same as those contained in the disciplinary procedure.
- Following the meeting, the employee must be allowed a 'cooling off' period of 7 calendar days, for the purpose of allowing them to consider their decision to accept the agreed outcome, and change their mind if they so wish.
- In the event that the employee does change their mind, the right of appeal will re-commence the normal disciplinary process

Appendix 5 – Procedure for complaints relating to Chief Fire Officer and Principal Officers

Introduction

This sets out the procedure to follow for complaints relating to potential misconduct of the Chief Fire officer and Principal Officers. The guiding principles of the disciplinary procedure outlined above apply to this appendix.

Scope

This applies to:

- Chief Fire Officer CFO
- Assistant Chief Fire Officer ACFO

At all stages an employee has the right to be accompanied by either a Trade Union Representative or work based colleague.

Informal Stage

In line with CFRS procedure, informal resolution should be considered in the first instance.

The relevant line manager should carry out preliminary enquiries with advice from the HR Team.

If the allegation relates to the CFO or ACFO the Head of Legal should be consulted in order to establish an appropriate independent person to carry out this discussion.

The Police, Fire and Crime Commissioner should be notified of any allegations relating to Principal Officers from the outset, even if they can be resolved informally.

For additional guidance, please refer to the preliminary enquiries section of the main policy.

Formal Stage

Any formal or serious concerns of misconduct should be notified to His Majesty's Inspectorate of Constabulary and Fire & Rescue Service (HMICFRS) via the service Lead Inspector. A suspension risk assessment should be completed to establish whether the subject can remain in work (either with or without restrictions).

Unless the allegation is linked to the CFO, a Principal Officer not connected with the case will act as Commissioning Manager and instruct an Investigating Officer and agree terms of reference, with advice from the HR Team. Should the case relate to the CFO then the Head of Legal Service will act as Commissioning Manager.

Investigations should be carried out externally for concerns relating to the CFO / Principal Officers outlined above. The Investigating Officer will provide a report to the Commissioning Manager setting out their findings for a decision in relation to next steps.

Please refer to the investigations section of the main policy.

Wellbeing Support

CFRS have an extensive means of resources available to all staff regardless of rank within the organisation. This is accessible via the wellbeing hub: <https://www.cumbriafire.gov.uk/cfrs-wellbeing-hub> Information is readily available on suicide from Every Life Matters.

As with any CFRS employee facing a potential conduct investigation a Welfare Officer should be assigned to the member of staff to be their main point of contact throughout the process. In cases affecting the CFO this can be extended outside of CFRS utilising the separation of a peer from the PFCC's office (if needed). Counselling support is also available which can either be arranged by the employee's line manager, HR Team or via a self-referral

Additional information regarding wellbeing support is outlined in the main policy.

Hearing

The appropriate make up of a disciplinary hearing will depend upon the position of the subject.

In cases involving the CFO a hearing should consist of a Senior Executive of the Office of The Police, Fire and Crime Commissioner plus an appropriate external independent person.

In cases involving an ACFO a Principal Officer unconnected to the case should act as Hearing Manager plus a Senior Executive of the Office of the Police, Fire and Crime Commissioner.

Advice should be sought from the HR Team before proceeding. Additional information regarding structure of the disciplinary hearing, notification times, process and sanctions are outlined in the main policy.

The outcome should also be communicated to HMICFRS and the Police, Fire and Crime Commissioner.

Appeal Process

An appeal must be submitted in writing within seven days of the decision being communicated.

The appropriate make up of a disciplinary appeal panel will depend upon the position of the subject

In cases of appeals against dismissal involving the CFO the appeal panel should consist of a Senior Executive of the Office of The Police, Fire and Crime Commissioner unconnected to the case plus an appropriate external independent person.

In cases involving appeals against dismissal involving an ACFO a Principal Officer unconnected to the case should act as Hearing Manager plus a Senior Executive of the Office of the Police, Fire and Crime Commissioner.

Advice should be sought from the HR Team before proceeding. Additional information regarding structure of the appeals, review of sanction and rehearings are outlined in the main policy.

The outcome should also be communicated to HMICFRS and the Police, Fire and Crime Commissioner.

The outcome of any appeal is final.