

Discipline (Conduct) procedure

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1 Introduction

- 1.1 To provide an exceptional service to London and continue to earn the trust of our communities, we must demonstrate that we are reaching the high standards of behaviour expected of all LFB staff continuously, and taking urgent action wherever we may have fallen short. A transparent, consistent, fair, inclusive and timely discipline process is essential when considering potential instances of misconduct.
- 1.2 All members of staff are responsible for ensuring that their behaviour meets the required standards, which are outlined on Hotwire. Any conduct or discipline concerns will be dealt with fairly, transparently, and inclusively, and all parties involved must show respect and demonstrate confidentiality throughout.
- 1.3 The Professional Standards Unit and its functions will be responsible for the operation of the discipline procedures within the LFB, and sanctions may range up to dismissal for the most serious instances of misconduct.
- 1.4 This document outlines the procedures and processes to use when it is alleged or suspected that a member of London Fire Brigade staff has failed to meet the required standards of behaviour or conduct. The procedure is intended to address concerns at the earliest possible stage and applies to all staff.
- 1.5 The purpose of the discipline policy and procedure is to address and resolve any potential misconduct in an unbiased way. The basis of this procedure is that the discipline process and framework is fair for both staff and managers, ensures promptness and consistency, decisions are made inclusively and with due regard to diversity, that decision making is transparent and objective, and that the integrity of the London Fire Brigade is upheld. These are crucial elements to ensuring the trust and confidence of the community in London, without which we could not deliver our requirements as an organisation.
- 1.6 All involved parties must follow this procedure in full. Any queries should be directed first to this procedure and the supplementary documents, before being escalated to line managers and to HR for advice. HR advice must be sought on any complex matters or where directed. All managers, at every level, who may be involved in disciplinary action shall be fully supported in relation to this discipline policy and procedure.
- 1.7 At all times, all parties must show respect and confidentiality. Where required, adjustments should be made to support involved staff, and there should be no unnecessary delays. It is recognised that a protracted process (including any suspension) will negatively impact both the LFB and staff.
- 1.8 The LFB operates a zero-tolerance approach to any allegation of bullying, harassment and discrimination. The Brigade will not tolerate or permit such behaviour, and all parties have a responsibility to address, challenge and report bullying, harassment and discrimination in all its forms. In all instances, bullying, harassment and discrimination will be gross misconduct. This includes (but not exclusively) any discrimination on the characteristics within the Equality Act 2010:
 - Age;
 - Gender reassignment;
 - Marital status;
 - Pregnancy or maternity;
 - Disability;

- Race;
- Religion or belief;
- Sex; and
- Sexual orientation.

1.9 This policy should be applied in line with the Brigade's values:

- Service – We put the public first.
- Courage – We step up to the challenge.
- Learning – We listen so that we can improve.
- Teamwork – We work together and include everyone.
- Equity – We treat everyone fairly according to their needs.
- Integrity – We act with honesty.

2 Process outline

2.1 The discipline process to be followed once a complaint is received is outlined below:

- Raising an allegation or complaint
 - Members of staff can raise allegations through a range of routes, including their line manager, the Professional Standards Unit, or through the external investigations line.
- Assessing the level of misconduct:
 - When an allegation is received or misconduct is suspected, the first step is to consider the likely level of misconduct based on the initial details of the alleged/suspected misconduct. This will inform how the allegations will be investigated and resolved.
- Considering suspension:
 - In exceptional circumstances, suspension is the appropriate course of action – this must never be used as a sanction, and a full Suspension Risk Assessment must be completed. The PSU must always be consulted where suspension is considered.
- Allocating informal and first formal stage allegations:
 - For misconduct that is considered by the receiving manager to be appropriate for the informal stage or the first formal stage, this will be handled by local management, with support from the Professional Standards Unit. The outcome must be shared with the PSU.
- Investigating formal misconduct:
 - For misconduct that is considered by the receiving manager to be appropriate for the second formal stage or third formal stage, the process will be managed by the Professional Standards Unit. All upheld grievances and misconduct allegations relating to bullying, harassment and discrimination must be dealt with at the third formal stage.
- Considering whether there is a case to answer:
 - At the conclusion of the investigation, the investigating manager will make an initial determination as to whether there is a case to answer relating to the allegations of misconduct.
- Considering whether the case is proven and any sanction:

- If a recommendation is made by the investigating manager that there is a case to answer relating to the allegations of misconduct, the decision manager will hear the case, decide the outcome and, if appropriate, issue the sanction.
- Considering any appeal:
 - In the case of an upheld allegation, the individual can appeal the outcome and decision based on new evidence, procedural unfairness, significant defect in procedure or severity of sanction.

3 Raising an allegation or complaint

- 3.1 Unaddressed misconduct can result in significant issues between staff, or a loss of confidence from the community we serve. Members of staff can raise an allegation or complaint through their line manager, another senior manager in the LFB, or through the Professional Standards Unit. Speaking up and sharing concerns is an important responsibility of all staff in the LFB, and staff are encouraged and expected to ensure concerns and complaints are raised promptly.
- 3.2 Staff who are concerned about raising a concern internally can contact the external independent investigation service. The external service will explore the concern and explain the options to the member of staff. With their permission, they will share the key information with the PSU to establish how to proceed. The PSU will make the final decision on how an allegation proceeds or where it will be investigated.
- 3.3 Complaints made by members of the public will come through the Brigade's compliments and complaints contact route. Any allegations of misconduct received will be provided to the PSU, who will consider the allegation and contact the individual's line management chain.
- 3.4 For apparent cases of misconduct, where, in the judgement of the receiving manager the issue is likely at the Informal or First Formal Stage (which would not result in a formal sanction greater than a written warning), the disciplinary procedure may be initiated by the receiving manager. The line manager will ensure that an investigation will be conducted by themselves or another appropriate manager. Advice can be sought from the PSU.
- 3.5 Where, in the line manager's judgement, the sanction could be greater than a first written warning and the level of misconduct may align with the Second or Third Formal Stage, the matter must be directed to the Professional Standards Unit, who will manage the process.
- 3.6 To ensure that there is a clear view of conduct activity and trends across the Brigade, whenever misconduct is suspected or alleged it must be sent to the Professional Standards Unit using the Conduct Reporting Form. This applies even to the informal and first formal stages of discipline.
- 3.7 Where a grievance has been fully investigated and the grievance decision manager believes that there may be a case to answer for misconduct, this can proceed directly to a discipline hearing without a further investigation. The PSU will confirm the appropriate route. This only applies where a grievance is resolved and moves directly to the discipline procedure – previously upheld grievances will not be considered for this procedure.
- 3.8 The discipline and grievance oversight panel will review all instances of misconduct to ensure the consistent and transparent application of these procedures. For advice, managers and staff can contact the PSU, their Employee Insight Advisor, or the HR Helpdesk.

4 Suspension

- 4.1 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. It is important to remember that suspension is a neutral act – it is not a punishment.
- 4.2 If an employee is to be suspended they should be informed of the reasons for the suspension, that suspension is not disciplinary action, and that they will be asked to return to work for an investigative meeting or disciplinary hearing as soon as possible. It is also appropriate at this stage to decide any conditions which will apply during the period of suspension, for example, communications channels, availability to attend meetings, facilities to meet with their representative, etc.
- 4.3 If suspended, the member of staff should inform any other associated organisation with whom they have secondary employment, including other Fire and Rescue Services.
- 4.4 Where an employee is suspended, they will receive full pay unless they commence sick leave in which case their pay will be in accordance with the rules of the sick pay scheme. The member of staff must remain available for duty and co-operate with the investigation. They must receive written confirmation of their suspension on the day it takes effect.
- 4.5 Suspension can have a significant impact on the health and wellbeing of a member of staff, and therefore suspension should only be imposed after careful consideration, should be regularly reviewed, and should be kept as brief as possible. Moving the member of staff to other duties should be considered as an alternative if appropriate.
- 4.6 Before any suspension, the PSU must be consulted and a Suspension Risk Assessment (SRA) must be completed and authorised. The SRA must be regularly reviewed through the period of suspension and the member of staff should return to work at the earliest opportunity.
- 4.7 Suspension must be considered on its own merits – some potential circumstances for suspension would be a risk to other staff, property or the public, or there is a risk the member of staff may interfere or influence the investigation.

5 Assessing the level of misconduct

- 5.1 When misconduct is suspected or an allegation is received, it is important to establish the likely level of misconduct promptly and transparently as this will inform how the matter is handled. This action will normally be considered by the line manager in the first instance, before being confirmed by the PSU. Some initial enquiries may need to take place to understand the nature of the allegation or suspected misconduct before it can be properly assessed – see the guidance on local management investigations for more information. The outcome of all local management investigations must be shared with the PSU.
- 5.2 The likely level of action in cases of alleged/suspected misconduct is situational and will depend on a range of factors. The level of alleged/suspected misconduct may change throughout the process if new information comes to light. If the level of misconduct changes, then this should be shared with the PSU.
- 5.3 For cases deemed to be at the Informal and First Formal Stage, these will normally be handled by the line management chain, and cases at the Second and Third Formal Stages will be handled by the Professional Standards Unit. The PSU will have final determination over which stage an allegation should be managed through and may refer allegations back to the line management chain.

- 5.4 The manager should consider the facts of the matter as presented taking account that on occasion facts may be disputed, and should do so without bias or presumption of an outcome. The below tables provide some examples of each level of misconduct, which is not exhaustive.

6 Informal stage

- 6.1 Cases involving minor misconduct are usually best dealt with informally by the line manager, and a private conversation conducted in an appropriate manner and environment is often all that is required. The informal approach means that minor problems can be dealt with quickly and confidentially. Where issues involve performance, supportive action and specialist advice may be more appropriate. Instances of bullying, harassment and discrimination cannot be considered at the informal stage.
- 6.2 Whatever informal process is used, the line manager needs to make clear to the employee the nature of the minor misconduct, why it is unacceptable and the action to be taken. The line manager needs to ensure that the employee understands the message delivered, if necessary by giving them a written note. This note is held on the Personal Record File, but will not form part of the disciplinary record for the individual.
- 6.3 There will, however, be situations where matters are more serious or where an informal approach has been tried but isn't working. At this point, it may be appropriate to enter the formal stages of the procedure.

7 First formal stage

- 7.1 The First Formal Stage is for an isolated example of misconduct which falls short of the standards expected. This is for first offences that are minor in nature. If a member of staff is found to have committed misconduct at this stage, the usual sanction would be a formal written warning as part of the disciplinary process and their disciplinary record, which will remain live for six months. A written warning can only be issued following an investigation.
- 7.2 Some examples of misconduct at this level include:
- Poor timekeeping with minor consequences;
 - Failure to follow instructions with minor consequences;
 - Minor misuse of Brigade assets such as stationery; or
 - Failure to notify sick absence promptly and through the proper channels.

8 Second formal stage

- 8.1 Where there is a failure to improve or change behaviour in the timescale at the First Formal Stage, or where an offence is sufficiently serious, action may be initiated at this stage. If a member of staff is found to have committed misconduct at this stage, a formal written warning or final written warning can be issued – a written warning can only be issued if a full investigation and hearing has taken place. The final written warning will be live for eighteen months.
- 8.2 Some examples of misconduct at this level include:
- Unauthorised absence of a short duration with minor consequences;
 - Failure to declare a security incident (e.g. unauthorised disclosure of sensitive information);
 - Poor behaviour, swearing or rudeness to colleagues, members of the LFB or the public;

- Minor breach of LFB policy, Staff Code, Regulations, policies/procedures and rules of the LFB in force at the time; and
- Repeated instances of the examples provided under the First Formal Stage, or any instance of the examples provided under the First Formal Stage that has a more significant impact than minor consequences.

9 Third formal stage

9.1 Where staff continually fail to improve, or where the offence constitutes gross misconduct or is otherwise sufficiently serious, action may be initiated at this stage. If a member of staff has committed misconduct at this level, the usual sanction is dismissal.

9.2 If there is sufficient mitigation, the following sanctions can be issued in exceptional circumstances:

- A final written warning of less than eighteen months;
- A first written warning;
- Demotion (no more than one grade; a demotion of more than one grade can only be done with the agreement of the member of staff);
- Disciplinary transfer (which should involve no loss of remuneration and unless the employee agrees otherwise should be within the same working pattern); or
- Loss of pay up to a maximum of thirteen days.

9.3 Some examples of gross misconduct at this level include:

- Any form of harassment, victimisation, bullying, or discrimination, or any breaches of the Equality Act in how staff or members of the public are treated;
- Theft, fraud, other offences of dishonesty, and/or corrupt practices such as bribery or accepting a bribe;
- Assault, physical violence and/or threatening behaviour;
- Serious acts of failure/refusal to carry out legitimate management instructions;
- Serious breaches of health and safety regulations and/or endangering others;
- Unfit for work through the influence of alcohol or illegal drugs;
- Serious damage to, or unauthorised/improper use of, Brigade equipment, name, badge, logo, information, vehicles, property, premises or funds;
- Conduct inside or outside work which would bring the Brigade into serious disrepute;
- Deliberately accessing and/or displaying, and/or distributing, and/or otherwise being in possession of, pornographic, offensive or obscene material;
- Breaches of confidentiality (subject to the Public Interest Disclosure Act 1998 and Policy number 569 - Confidential reporting ("whistleblowing") policy);
- Criminal charges or convictions which, in the LFC's view, makes the employee unsuitable for their type of work or unacceptable to other employees or the public;
- Engaging in private or unpaid work on LFB premises or during hours when contracted to work for the LFB or during periods of sick leave without express LFB permission;

- Engaging in outside employment (paid or unpaid) without permission, including holding office or being a major shareholder in a company, where this is in breach of the conditions applicable to the employee's staff group;
- Utilising for private advantage (which includes in the course of outside employment) contacts, equipment, or any information not available generally to the public, acquired in the course of LFC employment;
- Causing loss, damage or injury through serious negligence;
- Failing to notify the Brigade if you are arrested, charged or convicted in connection with any criminal offence (including driving offences) whilst in the LFC's employ; and
- Serious breach of LFB policy, Staff Code, Regulations, policies/procedures and rules of the LFB in force from time to time.

9.4 In each instance, the level of misconduct will be influenced by the impact and consequences of the misconduct, and the intention behind any action. Managers must be able to explain and justify the proposed level of misconduct – advice can be sought from the PSU.

9.5 Bullying, harassment and discrimination must always be considered as gross misconduct and managed under the Third Formal Stage.

10 Levels of management

10.1 The investigation and decision managers must be at least one rank or grade higher than the subject of the allegation. The lowest levels of line management who can take action within the procedure is set out below. The lowest level at the informal stage would be leading firefighter/FRS C/assistant control commander. Subject to training, competence, and levels of delegated authority, the formal stages are as follows:

	Investigation	Conduct hearing/take action
Informal/Formal Stage One	Sub/Station Officer FRS C Control Commander	Station Commander FRS D Control Commander
Second Formal Stage	Station Commander FRS D Control Commander	Group Commander FRS E Senior control commander
Third Formal Stage	Group Commander FRS E Senior control commander	Deputy Assistant Commissioner FRS G Deputy Assistant Commissioner for Control

10.2 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. Where the procedure has reached the second formal stage or higher, the hearing should be conducted by a manager who is not the investigating manager but is at the same or higher level.

11 Investigating

- 11.1 Once the level of alleged/suspected misconduct has been assessed and suspension considered, an investigation must be carried out. An investigation is to establish the necessary facts promptly to inform the right outcome.
- 11.2 Where the level of misconduct is deemed to be at either the Informal or First Formal Stage, the line or receiving manager is expected to conduct the investigation. If the misconduct involves the line manager or the involvement of the line manager may compromise the integrity of the investigation, an independent investigating manager can be appointed by the receiving manager or the PSU. This independent manager must be fully briefed. At the Second and Third Formal Stages, the PSU will normally manage the investigation. Sensitive and particularly contentious investigations may be conducted by the independent external service commissioned by the Brigade.
- 11.3 The investigating manager will consider the nature of the allegations. At this stage, the subject of the allegations should be notified of the allegations and impending investigation – this can be delayed on an exceptional basis where sensitivity is a significant concern.
- 11.4 The investigation may cover interviews with the complainant, respondent or witnesses, written submissions, documents, CCTV recordings and a range of other information. The investigation must be proportionate and appropriate, focussing solely on the matters raised in the complaint or allegation.
- 11.5 The investigating manager will decide whether they need to meet with the complainant to clarify their concerns. The investigating manager may need to interview the subject(s) of the allegations as part of the investigation. Both the complainant and respondent have the right to be accompanied by a fellow employee (who is not otherwise a witness or potential witness) or trade union official of their choice – see the 'Representation' section for more information. Witnesses may also be accompanied, at the discretion of the investigating manager. The individual accompanying the witness is not a representative, but a companion to provide wellbeing and pastoral support – this is most appropriate in instances of bullying, harassment and discrimination. Those being interviewed should be advised of the purpose of the interview and that they may be accompanied.
- 11.6 The investigating manager will have discretion as to what interviews are required but must keep a record of why an interview was held (or, where appropriate, not held).
- 11.7 If an interview is to be held, any location must provide privacy and be fully accessible and supportive for the individuals interviewed. It may be appropriate to conduct the interview at another location, and a notetaker should be considered – a notetaker is required for all Second and Third Formal Stage interviews with the complainant and respondent.
- 11.8 The member of staff interviewed must be reminded that their statements will be taken in writing and may inform the outcome of the disciplinary process so complete honesty is required, including in any initial fact finding. The note from the interview should be produced and circulated after the meeting. It should be signed by the interviewing manager and the interviewee and will form part of the final investigation report for any hearing.
- 11.9 It is also important to clarify that an investigation meeting is to clarify the facts of the allegation, and that the interview is confidential – no information relating to the misconduct can be shared with anyone outside of the process. Unauthorised sharing of any information relating to a discipline investigation will be considered misconduct.

11.10 The interview must be fact-based, avoiding speculation or guessing. The interviewer cannot direct or lead the subject of the interview, they must keep questions relevant to the matter at hand. The interviewer must not partake in any activity that is harassing or threatening and must ensure they are not biased or discriminatory in their approach.

12 Representation

12.1 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 although this should not frustrate the process.

12.2 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.

12.3 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 fulfil that responsibility. This should cover the investigation interview and hearing and allow time for the representative to familiarise themselves with the case and confer with the employee before and after the investigation interview and 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.

12.4 Employers and managers should cater for an employee's disability at a meeting/hearing; they should also cater for a representative's disability, for example providing for wheelchair access if necessary. Managers should also enquire as to any special needs relating to disability and ensure suitable arrangements are put in place in advance of the interview meeting or hearing.

12.5 Before the meeting/hearing takes place, the employee shall be asked to confirm if they will be represented and tell the manager who they have chosen as a representative.

12.6 The representative can confer with the employee during the interview meeting or hearing and participate fully in the meeting/hearing, including asking witness questions. The representative should also be allowed to address the meeting/hearing in order to:

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

12.7 The representative has no right to answer questions on the employee's behalf, or to address the hearing if the employee does not wish it, or to prevent the employer from explaining their case.

12.8 A meeting may be rescheduled once to meet the availability of the member of staff or their representative – if the representative of choice is not available for an individual, then an alternative should be sought to avoid delaying the process. The reschedule should not normally be longer than seven days after the originally proposed date, unless by mutual agreement.

13 Investigation outcome

13.1 Once the investigating manager feels they have gathered all relevant, reasonable and proportionate information, an investigation report should be produced. This report must cover the nature of the allegations, the notes from all interviews, and a recommendation as to whether the allegations should proceed to a hearing or if there is no case to answer. Where necessary

technical evidence relevant to the case should also be made available. The report and its outcomes must be shared with the PSU but must not be discussed with any other individual.

- 13.2 The investigation report will form the basis for the evidence provided to any hearing.
- 13.3 At the conclusion of the investigation, the investigation manager will decide:
 - Whether the allegation is upheld and should proceed to a hearing;
 - whether the allegation is upheld but should be considered at a lower level at a hearing; or
 - whether the allegation is not upheld and no further action should be taken.
- 13.4 The PSU must be consulted before an outcome is issued from an investigation to ensure the investigation report covers the required information to proceed to a hearing.
- 13.5 If the allegation is not upheld, after consulting with the PSU, the investigating manager should write to the respondent and confirm the outcome, including the investigation report. The complainant is not entitled to know the outcome of the process.

14 Information for the employee before a disciplinary hearing

- 14.1 In advance of any disciplinary hearing the presiding manager will write to the employee. The letter should contain enough information for the employee to fully understand the case against them with all relevant details (e.g., dates, times, location, etc.) and the reasons why this is not acceptable. If the employee has difficulty reading, or if English is not their first language, the manager should explain the content of the letter to them orally. A third party should be considered to help explain the letter if required.
- 14.2 The letter should also require the employee to attend a hearing at which the disciplinary matter will be considered, and it should inform the employee of their right to be accompanied at the hearing. The employee must be given copies of any documents that will be produced at the hearing, including the investigation report. At all stages the employee shall be fully informed.

15 Hearings

- 15.1 In advance of the hearing being scheduled, the presiding manager must ensure that they have fully read and understood the investigation report. The report is the responsibility of the presiding manager from this point forwards, and they must therefore ensure that it is comprehensive and covers any questions the presiding manager may have. If the report is not sufficient for the presiding manager, it should be sent back to the investigating manager with an explanation of the additional information required.
- 15.2 The timing and location of the hearing should where practicable be agreed with the employee and/or their representative. The length of time between the written notification and the hearing should be long enough to allow the employee and/or their representative to prepare and shall in any event be not less than:
 - Seven days for first formal stage;
 - ten days for the second stage;
 - twenty-one days for the third stage.
- 15.3 The manager should hold the hearing in a suitable private location and ensure both that there will be no interruptions and that the employee feels the issue is being treated confidentially.

- 15.4 Any challenges to the nature and basis of the process and hearing should be considered in advance of the hearing taking place.
- 15.5 At the hearing, the process will be explained to the employee. The case against the employee will be stated including the evidence. The employee and/or their representative will be given every opportunity to set out their case and answer any allegations that have been made. The employee will also be allowed to ask questions and present evidence and/or information, as well as call witnesses. Witnesses should not normally be required at a hearing as their information should be considered in the investigation. The employee must be given an opportunity to raise points about any information provided by witnesses.
- 15.6 An employee and/or their representative who cannot attend a hearing should inform the manager in advance with their reasons as soon as possible. If the employee fails to attend through circumstances outside their control, and unforeseeable at the time the hearing was arranged (e.g., illness), the manager should arrange another hearing. A decision may be taken at a hearing in the employee's absence if they fail to attend the rearranged hearing without good reason. An employee's representative may attend on their behalf, if the employee is unable to attend. If an employee's representative cannot attend on a proposed date, the employee has a statutory right to suggest another date so long as it is reasonable and is not more than seven days after the date originally proposed by the employer. This seven-day time limit may be extended by mutual agreement.
- 15.7 For Stage Two and Stage Three hearings, the hearing will be conducted by a presiding manager, supported by an independent manager from the London Fire Brigade and accompanied by an HR or PSU representative.
- 15.8 Neither the independent manager or the HR/PSU representative will act as decision makers. The Independent Manager will provide the perspective of a manager in the organisation to provide additional assurance, and the HR/PSU representative will provide advice to ensure the hearing adheres to the guidance. They can ask questions to clarify, and their advice can be requested.
- 15.9 The presiding manager will be solely responsible for the final decision and must ensure their rationale for any decision is properly recorded.
- 15.10 For witnesses who are called to the hearing, account should be taken of the matters referred to in paragraphs 49 and 57. Adjustments must be considered, such as witnesses giving evidence via video call or from elsewhere on the site if there is a wellbeing concern.

16 Decision making

- 16.1 Following the hearing, the presiding manager must decide whether action is justified or not, and whether the allegation is therefore proven or not proven on the balance of probabilities. Where it is decided that no action is justified the employee should be informed within seven days in writing, and confirmation issued to the PSU.
- 16.2 Where it is decided that action is justified the presiding manager will need to consider what form this should take. Before making any decision, the presiding manager should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and other relevant factors. The intended action must be reasonable under the circumstances.
- 16.3 Examples of actions the manager might choose to take are set out against each of the Formal stages above. It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee's misconduct or unsatisfactory performance – or its continuance – is sufficiently

serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation or individual(s) within the organisation or third parties, it may be appropriate to move directly to a final written warning.

- 16.4 In cases of gross misconduct, dismissal is the usual sanction even if the member of staff has not previously received a warning for misconduct. Mitigation must be considered.
- 16.5 Following the meeting/hearing the decision should be confirmed in writing as soon as possible, and in any case within seven days. The decision shall include a description of the nature of the issue, the findings and, where applicable the sanction, any required remedial action and the timescale for improvement. Except in cases of dismissal, where the issues relate to performance and in other cases where appropriate the decision shall include the following:
 - The improvement that is required;
 - the timescale for achieving this improvement;
 - a review date; and
 - all support the employer will provide to assist the employee.
- 16.6 Employees should also be informed that if there is no improvement, further stages, leading ultimately to dismissal, may be invoked and advise them of their right to appeal.

17 Recording the decision

- 17.1 Decisions must be recorded and thoroughly explained. The record of the decision and rationale must be kept with the investigation report and all supporting documentation. All material must be provided to the PSU at the conclusion of the process.
- 17.2 Some outcomes must be recorded on the employee's disciplinary record – HR will add the necessary sanctions and written warnings to the E-PRF.

18 Appeals

- 18.1 Employees who have had disciplinary action taken against them will be given the opportunity to appeal. Members of staff will be allowed to appeal no later than seven days after they have been informed of the decision.
- 18.2 The appeal shall be heard by a higher level of manager, or a manager at the same level if a higher-level manager cannot be sourced.
- 18.3 Appeals must be submitted in writing. The grounds of appeal will normally be one or more of the following:
 - There was a defect in the procedure such that the hearing was unfair (which must be outlined in the appeal letter submitted by the individual);
 - The allegation/complaint is not proven on the balance of probabilities;
 - The disciplinary sanction was too severe; and
 - New evidence has come to light since the hearing which will have an impact on the decision.
- 18.4 The Appeal Manager will conduct the appeal hearing as a rehearing in full or part where required. Some examples of when a rehearing would be required:
 - If there was a procedural defect at the original hearing that made the hearing unfair;
 - if new evidence has come to light which needs to be heard in full;

- if there is a dispute given by a witness at the original hearing.
- 18.5 In cases of a re-hearing, it may be necessary to rehear the witness evidence at the appeal. Otherwise, the appeal hearing should be conducted as a review of the process.
- 18.6 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. A member of the HR or PSU functions will attend any appeal hearing relating to a Stage Two or Stage Three Disciplinary hearing.
- 18.7 At the appeal hearing the employee and/or their representative will first put their case by explaining the grounds of appeal and presenting any relevant evidence. The management case will then be put, responding to the grounds of appeal, normally by the presiding manager who conducted the original hearing. Relevant witnesses may be brought by either side and be questioned by all parties if required, at the decision. The final decision on whether a witness is required to give evidence and be questioned at the appeal hearing rests with the Appeal Manager.
- 18.8 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; or
 - The case against the employee is not upheld.
- 18.9 At any appeal against dismissal, if the employer's representative is legally qualified, the employee's representative may, if the employee wishes, also be a legal representative.
- 18.10 In cases of gross misconduct dismissal will be summary (immediate and without a notice period) following the hearing. If the employee is reinstated on appeal, pay will be reinstated and backdated with no loss of continuous service or pension rights.
- 18.11 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.
- 18.12 In cases of sanctions other than dismissal, the sanctions should not be implemented until any appeal process has been concluded.

19 Confidentiality

- 19.1 The integrity of the conduct process depends on trust and confidentiality. It is the responsibility of all parties involved to maintain confidentiality throughout the process and afterwards. Any breach of confidentiality by any party will be considered as misconduct and managed through this process.

20 Anonymous reporting

- 20.1 Members of staff can make anonymous complaints to the PSU or the external investigation line. The PSU will proceed with managing and investigating an anonymous complaint but may need to make contact with the anonymous complainant for more information. If no contact can be made

and the allegation cannot be substantiated as a result, then it cannot proceed to a hearing or decision.

21 Whistleblowing

- 21.1 Members of staff looking to raise serious concerns about unethical or potentially unlawful behaviour within the LFB can raise their concerns through the whistleblowing procedure. This is not a second route for complaints if the discipline process does not find in a claimant's favour, but a route for significant, serious concerns to be raised and addressed in confidence.

22 Arrests/charges/convictions

- 22.1 To ensure the ability of the Brigade to maintain the trust of London, all staff must notify their manager and the PSU in writing if they are arrested, charged or convicted in connection with any criminal offence (including driving offences) whilst employed in the LFB.
- 22.2 If a member of staff 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 member of staff unsuitable for their type of work. Similarly, a member of staff should not be dismissed solely because they are absent from work as a result of being remanded in custody while awaiting trial.

23 Grievances raised in process

- 23.1 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.

24 Disciplinary action against trade union representatives

- 24.1 Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on the union's functions. Normal standards apply but, if disciplinary action is considered, the case should be discussed, after obtaining the employee's agreement, with a senior trade union representative or permanent union official.

25 Malicious or vexatious complaints

- 25.1 If, after investigation, it is clear that a complaint had not been made in good faith but is a vexatious complaint that has been made maliciously and/or to pursue a personal grudge against someone else and/or deflect attention away from the reporting of alleged misconduct, then it will be dealt with in accordance with the discipline procedure and may be considered as gross misconduct.
- 25.2 A vexatious complaint is one that is pursued regardless of its merit, solely to harass, annoy or subdue somebody. It is something without foundation, frivolous, repetitive, burdensome or unwarranted. It can be something that is used to delay the progress of another case or in retaliation of a grievance brought against them.

26 Records

26.1 Records will be kept on your electronic personal record file (e-PRF) and retained in accordance with Policy number 0788 - Electronic personal record files (e-PRF). Personal data shall be processed in accordance with Policy number 351 – Data protection and privacy policy.

27 Help and support

27.1 Help, support and guidance is available on Hotwire and from the people below, so you can discuss your concern towards a resolution and the options available.

27.2 **Local support** is available from:

- Your line manager or someone in your local management chain. They may also be the person you are able to agree a resolution outcome with.
- Your local trade union representative.
- A member of one of the Brigade's Equality Support Groups (ESG).
- Safe to Speak team CCSafeToSpeakUp@london-fire.gov.uk.

27.3 **Professional Standards support** is available from:

- The Professional Standards Adviser on extension 31880 who will provide advice and guidance regarding the informal resolution process, complaints process and can advise you of the support measures. They are able to provide independent support, advice and arrange mediation.

27.4 **Support for your wellbeing** is available from:

- Counselling and Trauma Service (CTS) who provide professionally accredited confidential counselling to all staff to help with their psychological well-being. You can contact them during office hours on extension 35555.
- Mental Health First Aiders drawn from staff across the Brigade, who whilst are not trained counsellors, are there to provide emotional support should you need it. To contact a Mental Health First Aider please e-mail LFBMHFA@london-fire.gov.uk.
- Occupational Health who provide professional medical advice to all staff to help and support their wellbeing. To arrange to see them then contact the HR Helpdesk on extension 89100.

27.5 This policy may also be available on request in other alternative accessible formats as set out in Policy number 290 – Guidance note on translation and interpretation. Please contact Communications on extension 30753 and by email to communications.team@london-fire.gov.uk to discuss your needs and options.

Document history

Assessments

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

EIA	08/02/24	SDIA	04/03/24	HSWIA	28/02/24	RA	
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Audit trail

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

Page/para nos.	Brief description of change	Date
	PN481 has been cancelled and the content incorporated into this policy.	09/02/2024
Page 18	EIA and SDIA dates added.	11/02/2024
Page 4, para 1.9 Page 17, para 26.1 Page 17, para 27.5	Values included. Data protection details added. Access to alternative policy format details added.	08/04/2024

Subject list

You can find this policy under the following subjects.

Discipline	Conduct

Freedom of Information Act exemptions

This policy/procedure has been securely marked due to:

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