

## report

meeting **NOTTINGHAMSHIRE AND CITY OF NOTTINGHAM  
FIRE & RESCUE AUTHORITY**

date **10 December 2004**

agenda item number

### REPORT OF THE CHIEF FIRE OFFICER

### RESCINDING OF DISCIPLINE REGULATIONS

#### 1. PURPOSE OF REPORT

To briefly set out the changes to the disciplinary process for uniformed personnel and seek approval of arrangements for managing the change process.

#### 2. BACKGROUND

2.1 The new Discipline Procedure is set out in the revised version of the Grey Book. They will apply from 1 October 2004. This attached report does not set out the procedure in detail as this is very clearly laid out in Section Six of the Grey Book.

2.2 The report does highlight those issues that will require local determination. These can be summarised as follows :

- § The process of investigation.
- § The levels of authority.
- § Co-ordinating the disciplinary process.
- § The role of Human Resources.
- § Preparation arrangements.

#### 3. DISCIPLINARY PROCEDURE – ISSUES FOR LOCAL APPLICATION

3.1 The NJC for Local Authority Fire and Rescue Services has, for the first time, incorporated a disciplinary procedure for the Fire Service within the national conditions for all firefighters and control staff. This intention was that this will replace the existing Disciplinary Regulations from 1 October 2004. However, subsequent advice from the National Employers (Circular NJC/07/04) advises that full implementation will be delayed until January 2005 to allow local arrangements to be put in place. The procedure does not cover those employees whose conditions of service are governed by the Gold Book. At a local level it is proposed that the arrangements are also extended to those staff covered by the NJC for Local Government Services – further details of which are set out in Para 3.10.6.

3.2 It is important to stress that the overriding purpose of the procedure is to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. Unlike the existing Disciplinary Regulations its main purpose is not punitive.

3.3 Whilst the procedure is prescriptive in terms of the process to be followed, there are certain issues which have been left to local determination by each Fire Authority. Agreement on these issues will be subject to the normal consultation and negotiation forums within individual Authorities.

3.4 The procedure is accompanied by guidance, which provides more detailed advice on the application of the procedure. This guidance is mandatory rather than advisory. A simplified briefing note is attached as Appendix A, this does not form part of the disciplinary procedure and is not incorporated into employment contracts, however it may be useful as a quick reference point.

3.5 The procedure has five stages :

- § Informal stage.
- § First formal stage.
- § Second formal stage.
- § Third formal stage.
- § Appeal stage.

3.6 With the exception of the final appeal stage, each stage may be enacted independently depending on the seriousness of the alleged disciplinary offence. This means that an alleged offence which may constitute gross misconduct may be heard at the third stage without recourse to the previous stages.

3.7 In terms of application, the following levels of management will be involved :

- § Informal stage will involve the line manager (generally the watch manager at station level).
- § The first formal stage will be heard at Station Manager level or above.
- § The second formal stage will be heard at Group Manager or equivalent level.
- § The third stage will be heard at Area Manager level (or higher level as deemed appropriate by the Fire Authority).
- § The right of appeal to the Secretary of State has been removed. Principal Officers will hear appeals against dismissal. Area and Group Managers may hear appeals at a lower level.

3.8 In terms of disciplinary action, the following sanctions may be applied :

- First formal stage – a verbal or written warning ;
- Second formal stage – up to a final written warning ;
- Third formal stage – sanctions less than dismissal i.e. a warning, demotion, disciplinary transfer or loss of pay up to a maximum of thirteen days or dismissal in the case of gross misconduct ;
- Appeal stage – the case is upheld, in which case the sanction will either be the same or a lesser penalty OR the case is not upheld.

3.9 Prior to the issue of any sanctions at any level there must be an investigation and hearing prior to the determination of outcome. The only exception to this is the Appeal stage which may be determined by a review process – a re-hearing will only be undertaken in exceptional circumstances (outlined in the procedure).

### 3.10 **Local Issues**

#### 3.10.1 Investigation

Under Paragraph 1.4(13) of the procedure, the line manager may both initiate and investigate the alleged offence. This would seem to be contrary to the principle of natural justice on which the procedure is based and it is therefore **RECOMMENDED** that an independent person, at the appropriate level, undertakes the investigation.

This initially may be a role undertaken by existing Investigating Officers, who have the training and experience to undertake this task – however the longer term aim must be to provide appropriate training to the roles of Watch Manager and Station Manager to ensure competence and confidence at this level. It is therefore RECOMMENDED that investigating officers work with managers during the first year of enactment of the procedure on all issues that have reached the formal disciplinary stage. Human Resource Advisors will provide advice and support to managers during the investigation stage, as appropriate.

### 3.10.2 Levels of Authority

Under Stage Three of the procedure, the guidance allows Authorities to determine the level at which officers may be authorised to dismiss or decide upon actions short of dismissal. The procedure refers to a minimum of Area Manager but also refers to Brigade Manager or Members of the Employing Authority (Para 2.4: 51). Presumably this scope takes into account the differing command structures within individual Authorities. It is RECOMMENDED that this Authority is invested in the role of Area Manager, with the appeal stage being reviewed/heard at Brigade Manager level.\*

\* For roles of Station Manager and above the levels of authority will be prescribed by the need to engage the next level of management at each stage. It is possible for an officer at an equivalent level to the investigating officer to conduct a hearing. This means that the authority to dismiss/apply sanctions short of dismissal may be invested in the Brigade Manager, with appeal to Members of the Fire Authority. This point will be clarified in the procedures to be applied.

### 3.10.3 Co-ordination

As with the implementation of any new procedure, there is likely to be a period of uncertainty as roles and responsibilities change. At the present time co-ordination of disciplinary issues is undertaken through the office of the Brigade Investigating Officer. This role will not exist under the new procedure. In order to ensure consistency of approach and advice it is RECOMMENDED that the Head of Human Resources co-ordinates all aspects of the formal procedure and maintains a record of all on-going formal disciplinary stages and records of disciplinary actions.

### 3.10.4 Role of Personnel

The complexities of employment law, specifically that related to unfair dismissal, means that professional guidance is paramount in dealing with disciplinary issues. The resources available within the Personnel Section to become involved in all investigations or hearings is prohibitive. However, advice and support should be readily available, when needed, to support managers involved in disciplinary matters.

It is also RECOMMENDED that a Personnel Officer attend formal hearings in an advisory capacity at Stage 2 hearings and above (i.e. the stage at which final written warnings could be issued). However, Personnel Officers may become involved at any stage, as circumstances dictate, to provide support, advice or guidance to managers on the implementation of the procedure.

### 3.10.5 Preparation

In order to ensure that the Service is prepared for the implementation of the new Disciplinary Procedure, a series of training events will be undertaken to explain the new process. The most urgent need will be briefing sessions for Watch Managers and Station Managers as they will become involved in disciplinary matters for the

first time. This briefing is to be undertaken by the Personnel Section and will take place on a district by district basis.

The Briefings can then be supplemented by "skills development" training which will be co-ordinated by the Management Development Officer over the next few months.

Procedural arrangements and standard letters will be prepared by the Personnel Section.

### 3.10.6 Integration

The existing procedure used for support staff is a County Council procedure which was taken over as part of the conditions of service transferred when the CFA was constituted in 1998. This procedure has subsequently been updated by the County Council but not incorporated into Fire Authority agreement. It is therefore proposed that the Service commence negotiations with UNISON with the aim of integrating (as far as possible) a single disciplinary procedure for all Service employees.

### 3.10.7 Capability

It should be noted that the national disciplinary procedure does not provide a detailed process for dealing with capability issues. A separate procedure is to be developed. In the absence of a national procedure, in the near future there may need to be work undertaken on a local/regional basis and negotiated separately with the representative bodies. Again the intention will be to implement a single process for all Service employees.

## **4. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

## **5. PERSONNEL IMPLICATIONS**

The procedure and guidance will be incorporated into the contract of employment.

## **6. EQUAL OPPORTUNITY IMPLICATIONS**

The national scheme complies fully with the ACAS Code of Practice on managing discipline within the workplace and takes account of potential equality issues.

## **7. RISK MANAGEMENT IMPLICATIONS**

The implications of failing to properly implement the procedure may result in a high level of appeals against disciplinary the process or action taken. Ultimately this could result in a claim of unfair dismissal through the Employment Tribunal process.

## **8. RECOMMENDATIONS**

That Members agree the recommendations contained within the body of the report.

## **9. BACKGROUND PAPERS FOR INSPECTION**

None.

Paul Woods  
**CHIEF FIRE OFFICER**

### A SIMPLIFIED BRIEFING NOTE FOR THE DISCIPLINE PROCEDURE

*This note is for guidance only. It does not form part of the disciplinary procedure or the employment contract of any person covered by the Grey Book. It is not to be used as an aid to interpreting the meaning of the procedure itself. The procedure must be referred to and used if any issues come up that are covered by it.*

#### First formal stage

##### Initiate

1. This stage should be used in performance/attendance cases where informal support and action based on the Personal Development Records (PDR) has not resolved the problem. This stage should also be used in cases of conduct where the nature of the alleged offence may warrant a sanction no greater than a warning.
2. This stage should be conducted at Watch/Station Manager level or higher. Should the employee's line manager be at Watch/Station Manager level or above, this stage will be initiated at a higher level of line manager, see paragraphs 1.4 and 1.9 of the guidance.

##### Investigate

3. The Watch/Station Manager or higher shall:
  - Initiate, conduct or delegate an appropriate investigation.
  - The employee shall be notified in writing immediately of the investigation and the nature and details of the case. However in exceptional circumstances that notification may be delayed.
  - Keep a record.
  - Ensure the investigation is completed in good time.
4. Upon completion of the investigation the Watch/Station Manager or higher shall notify the employee of the outcome of the investigation and decide from the following what action to take:
  - Drop the matter
  - Deal with the matter on an informal basis
  - Proceed to a stage 1 hearing
  - Refer the case to the stage 2 or 3 process

##### Hearing

5. The employee shall be given a minimum of seven days' notice of a hearing. The letter should contain enough information for the employee to fully understand the case against them with all relevant details and the reasons why this is unacceptable. The notification should also include copies of all the evidence/information relevant to the hearing. The employee will be advised of their right to be accompanied at the hearing.
6. The Station Manager or higher shall preside at the hearing and shall first explain the process, the case against the employee and go through the evidence/information that has been gathered.
7. The Station Manager or higher shall consider the employee's case in full.
8. At the conclusion of the hearing the Station Manager or higher shall decide from the following what action to take:
  - Drop the matter.

Deal with the matter on an informal basis.

Take appropriate action, which will depend in particular on whether the issue is one of conduct, performance or attendance.

In conduct cases a warning may be issued which may remain on the employee's record for a minimum of six months (determined by the disciplinary panel in individual cases).

## **Decision**

9. The employee shall receive the decision of the hearing in writing. This should be as soon as possible after the conclusion of the hearing and in any event within seven days.
10. Where a warning is issued the Station Manager or higher shall inform the employee, in writing, of the decision. At the same time the employee will also be advised of the appeal process.
11. The employee should appeal within seven days of receiving the warning. The notice of appeal must be in writing and should specify one or more of the grounds of appeal set out in paragraph 3.1 of the Guidance.
12. The appeal hearing shall be arranged at the next level. The employee shall be given not less than 10 days notice of the appeal hearing.

## **Second formal stage**

### **Initiate**

1. This stage should be used in performance/attendance cases where support and action based on the PDR has not resolved the problem. This stage should also be used in cases of conduct where the nature of the alleged offence may warrant a sanction no greater than a final written warning.
2. This stage should be conducted at Group Manager level or higher. Should the employee's line manager be at Group Manager level or above this stage will be initiated at a higher level of line manager, see paragraphs 1.4 and 1.9 of the Guidance.

### **Investigate**

3. The Group Manager or higher shall:
  - Initiate, conduct or delegate an appropriate investigation.
  - The employee shall be notified in writing immediately of the investigation and the nature and details of the case. However in exceptional circumstances that notification may be delayed.
  - Keep a record.
  - Ensure the investigation is completed in good time.
4. Upon completion of the investigation the Investigating Manager shall notify the employee of the outcome of the investigation and decide from the following what action to take:
  - Drop the matter.
  - Deal with the matter on an informal basis.
  - Refer the matter to a stage 1 hearing.
  - Proceed with a stage 2 hearing.
  - Proceed with a stage 3 hearing.

### **Hearing**

5. The employee shall be given a minimum of ten days' notice of a hearing. The letter should contain enough information for the employee to fully understand the case against them with

all relevant details and the reasons why this is unacceptable. The notification should also include copies of all the evidence/information relevant to the hearing. The employee will be advised of their right to be accompanied at the hearing.

6. A Group Manager or higher (independent of the Investigating Manager) shall preside at the hearing.
7. The management case against the employee will be presented, normally by the Investigating Manager.
8. The employee and/or their representative will present the employees case.
9. The Presiding Manager shall consider the evidence/information presented.
10. At the conclusion of the hearing the Presiding Manager shall decide from the following what action to take:
  - Drop the matter.
  - Deal with the matter on an informal basis.
  - Take appropriate action, which may include a sanction no greater than a final written warning (to remain on the employee personal record file for no longer than eighteen months), or a lesser sanction.

### **Decision**

11. The employee shall receive the decision of the hearing in writing. This should be as soon as possible after the conclusion of the hearing and in any event within seven days.
12. Where a final written warning or other sanction is issued, the Presiding Manager shall inform the employee, in writing, of the decision. At the same time the employee will also be advised of their rights of appeal.
13. The employee should appeal within seven days of receiving the warning. The notice of appeal must be in writing and should specify one or more of the grounds of appeal set out in paragraph 3.1 of the guidance.
14. The appeal hearing shall be arranged at the next level. The employee shall be given not less than ten days' notice of the appeal hearing.

### **Third formal stage**

#### **Initiate**

1. This stage should be used in all cases where the employee is subject to a final written warning and/or where the alleged offence is sufficiently serious that it may warrant dismissal or other sanction short of dismissal.
2. This stage should be conducted at Area Manager level or higher. Should the employee's line manager be at Area Manager level or above this stage will be initiated at a higher level of line manager, see paragraphs 1.4 and 1.9 of the guidance.

#### **Investigate**

3. The Area/Brigade Manager shall :
  - Initiate, conduct or delegate an appropriate investigation.
  - The employee shall be notified in writing immediately of the investigation and the nature and details of the case. However in exceptional circumstances that notification may be delayed.
  - Keep a record.

Ensure the investigation is completed in good time.

4. Upon completion of the investigation the Investigating Manager shall notify the employee of the outcome of the investigation and decide from the following what action to take :
  - Drop the matter.
  - Deal with the matter on an informal basis.
  - Refer the matter to a stage 1 or 2 hearing as appropriate.
  - Proceed with a stage 3 hearing.

### **Hearing**

5. The employee shall be given a minimum of twenty-one days' notice of a hearing. The letter should contain enough information for the employee to fully understand the case against them with all relevant details and the reasons why this is unacceptable. The notification should also include copies of all the evidence/information relevant to the hearing. The employee will be advised of their right to be accompanied at the hearing.
6. An Area/Brigade Manager or higher (independent of the Investigating Manager) shall preside at the hearing.
7. The management case against the employee will be presented, normally by the Investigating Manager.
8. The employee and/or their representative will present the employees case.
9. The Presiding Manager shall consider the evidence/information presented.
10. At the conclusion of the hearing the Presiding Manager shall decide to :
  - Drop the matter.
  - Deal with the matter on an informal basis.
  - Take appropriate action, which may include dismissal or other action short of dismissal.

### **Decision**

11. The employee shall receive the decision of the hearing in writing. This should be as soon as possible after the conclusion of the hearing and in any event within seven days.
12. Where the employee is dismissed or an alternative disciplinary sanction is issued the Presiding Manager shall inform the employee, in writing, of the decision. At the same time the employee will also be advised of the appeal process.
13. The employee should appeal within seven days of receiving the warning. The notice of appeal must be in writing and should specify one or more of the grounds of appeal set out in paragraph 3.1 of the Guidance.
14. The appeal hearing shall be arranged at the next level. The employee shall be given not less than ten days' notice of the appeal hearing.