

**Organisational Development, Human Resources &
Communications**

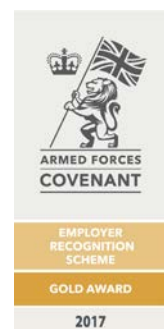
**DISCIPLINARY POLICY FOR ALL COUNCIL
EMPLOYEES**

(PART 1)

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PART 1 – DISCIPLINARY POLICY

1 INTRODUCTION

1.1 General

- 1.1.1 Disciplinary codes, policies and procedures are instruments to promote fairness and order in the treatment of employees in the workplace. They set standards of conduct at work. The associated Procedures help ensure that standards are adhered to and provide a fair method of dealing with alleged failures to observe them.
- 1.1.2 In preparing the *Disciplinary Policy* and the accompanying *Procedures* the Council has taken into account its legal obligations under the Employment Act 2008, Employee Relations Act 1999 and; ensured adherence to the ACAS Code of Practice.

1.2 Equal Opportunities Commitment

- 1.2.1 Under this policy, the Council will ensure that everyone receives equal consideration and that the needs of all are taken into account as per The Equality Act 2010, irrespective of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. For disabled workers Inverclyde Council will make reasonable adjustments so to allow participation in disciplinary procedure, as far as is reasonable, to the same standard as a non-disabled worker.

2 AIMS & PRINCIPLES

2.1 Aims

- 2.1.1 The aims of the Disciplinary Policy and Procedures are to provide:
- a sound and fair basis for the maintenance of discipline for all employees of the Council, ensuring that all rights are applied at each stage;
 - a clear understanding between management and employees of the need for discipline;
 - a mutually accepted, easy to follow and well-publicised procedure for dealing with breaches of discipline;
 - a framework which ensures any aspect of misconduct or incapability is managed to conclusion efficiently.
- 2.1.2 The Disciplinary Policy and Procedure will be reviewed in line with any new initiatives, changes in the legal position or good practice.

2.2 Principles

- 2.2.1 The principles of this policy are to:

- encourage and provide support and advice to an employee whose conduct or standard of work is unsatisfactory and to take corrective action thereby avoiding the need for disciplinary action;
- ensure anyone involved in the process is aware of their obligations;
- deal with disciplinary issues as quickly as possible;
- ensure consistency;
- ensure all those involved in chairing disciplinary hearings are trained to do so;
- deal with issues promptly and not unreasonably delay meetings, decisions or confirmation of those decisions;
- carry out if necessary, investigations to establish the facts in each case;
- inform employees of the basis of the problem and give them an opportunity to present their case in response before any decisions are made;
- ensure the right to appropriate representation; acceptable being a Trade Union Representative or a fellow Inverclyde Council Employee only;
- ensure that the level of management normally authorised to impose each form of disciplinary action are clearly defined;
- ensure all employees are provided with full information and details of any outcomes;
- allow employees to appeal against any formal sanctions applied.

2.2.2 This policy seeks to outline the fundamental aspects of the Council's approach to managing indiscipline; the supporting Disciplinary Procedures (Part 2) outline their practical application.

3 APPLICATION & SCOPE

3.1 This policy and associated procedures are applicable to all Local Government, Craft, Teacher and Chief Officer employees. That is, to those employed under the:

- Scottish Joint Council for Local Government Employees;
- Scottish Joint Council for Building & Civil Engineering Operatives, Engineering Craftsmen, Electricians & Plumbers;
- Scottish Negotiating Committee for Teachers (SNCT);
- Scheme for Salaries and Conditions of Service laid down by the Joint Negotiating Committee (JNC) for Chief Officials of Local Authorities (Scotland).

3.2 Where relevant, in application, consideration will be given to the Framework of Teachers Competence which is compulsory from the General Teaching Council for Scotland (GTCS) when considering the capability of teachers performance. Equally, consideration will be given to the Scottish Social Service Council (SSSC) Code of

Practice, the Health and Care Professionals Council (HCPC), and any other relevant statutory and governing professional bodies.

- 3.3 This policy and associated procedures are applicable to all Council employees, except the Chief Executive.

4 RESPONSIBILITIES

- 4.1 The Head of Organisational Development, Human Resources & Communications is responsible for the formulation of disciplinary rules and procedures including the classification of misconduct.
- 4.2 The Chief Executive, Corporate Directors and Heads of Service are responsible for ensuring that the rules and accepted standards of conduct are made known to all Council employees. Within the limitations of powers delegated to him/her, each Head of Service or Nominated Officer shall be responsible for the management of discipline.
- 4.3 Employees, for their part, are required to familiarise themselves with the rules and standards required during the course of their employment and to abide by them.

5 TYPES OF INDISCIPLINE

5.1 *General*

- 5.1.1 It is deemed acceptable that both capability and conduct are fair reasons for dismissal provided that the disciplinary procedures have been followed. It is therefore relevant to include an explanation of each of these within this policy.
- 5.1.2 Misconduct in general terms relates to behaviour and actions during the course of employment. Capability in general relates to the ability of an employee to carry out their duties (performance).
- 5.1.3 Generally if disciplinary action is applied, it will be for *either* capability or conduct. However, there may be occasions where a lack of capability has lead to an incident or action of misconduct or gross misconduct, and thus both capability and conduct may be considered together.

5.2 *Misconduct*

- 5.2.1 Unsatisfactory Conduct (other than gross misconduct)

Instances which are less serious than 'gross misconduct', are termed 'unsatisfactory conduct'. Such misconduct normally leads to warnings and disciplinary action short of dismissal, **please note however that an accumulation of unsatisfactory conduct can lead to dismissal.**

- 5.2.2 Examples of misconduct under this heading may include:

- bad timekeeping;
- unauthorised absence from work;
- unsatisfactory record of attendance;

- unacceptable standard of work performance;
- misuse of Council equipment.

5.2.3 The above list is neither exhaustive nor exclusive, nor does inclusion in this section preclude such misconduct being included as gross misconduct.

5.3 Gross Misconduct

5.3.1 The definition as to whether an employee's conduct can be construed as gross misconduct will depend on full consideration of all the facts and circumstances.

5.3.2 Gross misconduct is generally seen as misconduct serious enough to make any further working relationship and trust between the employee and employer untenable, and thus may result in dismissal.

5.3.3 The following list of examples of gross misconduct is intended only to ensure that employees and management recognise the nature and seriousness of breaches of discipline which may be regarded as gross misconduct:

- breach of confidentiality;
- theft, fraud or deliberate falsification of records;
- physical violence or bullying;
- deliberate damage to Council property;
- discrimination or harassment;
- serious negligence which causes unacceptable loss, damage or injury;
- being charged with and/or convicted of a criminal offence which, in the opinion of the Council, demonstrates unsuitability for continued employment with the Council either in the current post or any other post;
- any relevant matters brought to the attention of the Council as a result of the Protection of Vulnerable Groups Scheme (PVG);
- serious acts of insubordination;
- indecent or immoral behaviour;
- refusal to carry out reasonable instructions;
- a serious breach of health and safety rules including willful endangering of life by contravention of the Council's health and safety policy or related procedures;
- causing loss damage or injury through serious negligence;
- bringing the Council into disrepute; including by means of Social Media;
- a serious breach of trust and confidence;

- serious incapability at work brought on by alcohol or illegal drugs;
- distribution of illegal drugs;
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- acts of bribery as covered by the Bribery Act 2010.

5.3.4 The above list is neither exhaustive nor exclusive. It seeks to provide a broad spectrum of possible scenarios; each situation will be assessed and categorised on its own merit.

5.4 Capability - Performance

- 5.4.1 In the context of this policy, capability relates to an employee's ability to perform their duties. Capability in general relates to application of effort, quality of work, general performance or similar issues which may result in disciplinary proceedings being instigated.
- 5.4.2 Normally, disciplinary proceedings under this heading will be applied following the exhaustion of a performance management process where the necessary level of performance has not been achieved.

5.5 Capability - Ill-health

- 5.5.1 If an employee's health affects their ability to carry out their duties, and where this is medically confirmed by the Council's Occupational Health Provider, this will not be handled using this policy.
- 5.5.2 Where ill health is impacting on performance/capability at work, medical advice will be sought from the Council's Occupational Health Provider as to whether or not an employee is likely to be able to perform their duties given the medical position. Where it is agreed that there is no prospect of a return to substantive duties, outcomes are likely to be reasonable adjustments, redeployment, ill health retirement, or as a last resort, termination on the grounds of incapacity (Some Other Substantial Reason).
- 5.5.3 There may be exceptions to this and all matters relating to ill health will be handled sensitively and in line with the Council's Attendance Management guidelines and to avoid any unlawful discrimination as defined by law.

6 CATEGORISATION FOR CASE MANAGEMENT

6.1 Categories

- 6.1.1 To ensure efficient application of procedures, at the point which an alleged incidence of indiscipline occurs, an assessment will be made of its severity which will determine how the remainder of the procedures are followed:

Category 1	Not Complex Case
Category 2	Moderately Complex Case
Category 3	Complex Case

6.1.2 Full details of how this method of case management is applied in practice are outlined in the supporting Disciplinary Procedures (Part 2) (Section 3, Page 5).

6.1.3 It is important to stress that this approach is not a pre-emption of overall disciplinary hearing outcomes.

7 TIMESCALES AND RECORD KEEPING

7.1 Once a category of discipline has been established, this will help determine if an investigation is required and what timescales the remainder of the process is likely to be completed within, as outlined the Disciplinary Procedures (Part 2) (Section 5, Page 12).

7.2 A detailed minute of meetings is not required as the investigation report and/or the disciplinary hearing outcome letter are sufficiently detailed.

8 INVESTIGATORY STAGE

8.1 General

8.1.1 Case Categorisation will normally determine whether or not a full Investigatory Hearing is required. This stage is essentially about gathering the facts of the case. Full details are outlined in the accompanying Disciplinary Procedures (Part 2) (Section 4, Page 8).

8.2 Suspension During Investigatory Process

8.2.1 There may be instances where suspension with full pay is necessary following an incident. Normally this will be where there is good reason to believe that the individual's presence at work might:

- impede or inhibit the investigation;
- prejudice a subsequent dismissal on grounds of gross misconduct if challenged before an employment tribunal;
- present an immediate risk to colleagues, service users, pupils, the public or the Councils resources (physical or intellectual).

8.2.2 Details of the application of suspension and associated time limits are outlined in the Disciplinary Procedures (Part 2) (Section 5.3, Page 13).

8.3 Investigations Involving Residential Clients Allegations

8.3.1 In all cases involving children in residential accommodation, advice should be sought from the Chief Social Work Officer prior to arranging any interview of the child. Full details are documented in the supporting Disciplinary Procedures (Part 2) (Appendix 7, Page 27).

8.3.2 It is the Council's policy that clients in residential accommodation are not called to any disciplinary hearing as attendance at such hearings could be detrimental to their care.

9 DISCIPLINARY STAGE

9.1 General

- 9.1.1 Where a decision has been made to proceed to a disciplinary hearing, a hearing will be set up in line with the associated Disciplinary Procedures (Part 2) (Section 5, Page 12).
- 9.1.2 The categorisation process outlined in Section 6 of this Policy will allow a decision to be made as to what level of manager is most appropriate to chair a disciplinary hearing, as outlined in the table below. Normally, the following levels of management will be authorised to issue specific disciplinary sanctions when acting as Disciplining Officers in accordance with the following scheme of delegation:

Level of Management	Maximum Disciplinary Sanction
Chief Executive, Corporate Director & Heads of Service	All levels up to and including Dismissal.
Service Managers & Head Teachers	Up to Final Written Warning + other sanctions short of dismissal.
All Other Managers (Team Leaders, Supervisors)	Up to Written Warning + other sanctions short of dismissal.

- 9.1.3 It is anticipated that there will be occasions where Team Leaders and Supervisors may seek authority from more senior managers to issue a final written warning during a hearing.

9.2 Potential Outcome: No Action Taken

- 9.2.1 It may be deemed appropriate not to apply any disciplinary outcomes following the hearing. In which case this will be confirmed to the employee as per the Disciplinary Procedures (Part 2) (Section 5.4, Page 14).

9.3 Potential Outcomes: Improvement Note

- 9.3.1 It may be deemed necessary not to issue a formal sanction as a result of a disciplinary hearing, in which case, Disciplining Officers may consider it appropriate to issue an Improvement Note.
- 9.3.2 This is not a formal disciplinary sanction rather a step to establish quite literally an improvement plan which, if adhered to, represents a satisfactory outcome. Further details are outlined in the supporting Disciplinary Procedures (Part 2) (Section 5, Page 12). Normally an Improvement Note will cover a period of up to 6 months.

9.4 Potential Outcomes: Formal Disciplinary Sanctions & Time Limits

- 9.4.1 The following formal sanctions may be applied as a result of a disciplinary hearing:

Level of Sanction	Duration Live
Written Warning	9 Months
Final Written Warning	12 months
Dismissal	Effective Immediately

9.4.2 It may also be considered appropriate to apply other punitive measures in addition to formal warnings, such as:

- demotion;
- redeployment into a suitable alternative post;
- transfer;
- suspension without pay;
- withholding pay increments;
- extension of a live warning;
- in the case of absence related incidents - the retrieval of occupational sickness pay.

9.4.3 The above list is not exhaustive, disciplining officers may consider other measures not listed in conjunction with the HR Advisor. The procedures must be followed in terms of notifying employees of the outcomes of any hearings and their right to appeal. Consideration will be given to a number of factors, outlined in the Disciplinary Procedures (Part 2) (Section 5.2.2, Page 12), before any sanction is applied.

9.5 Dismissal – Payments in Lieu.

9.5.1 When an employee is summarily dismissed without notice on the grounds of gross misconduct, no payment will be made in lieu of notice.

9.5.2 When an employee is dismissed for misconduct (as opposed to summary dismissal on the grounds of gross misconduct), payment may be made in lieu of notice or the employee will be required to work their notice period.

9.5.3 Accrued contractual annual leave will be paid upon termination of employment.

10 APPEALS

10.1 In the case of appeals against written and final written warnings these will normally be considered by the next level of management up from that which issued the warning.

10.2 In the case of appeals against dismissal on the grounds of all matters relating to attendance or non-attendance e.g. capability, these will be considered by the Council's Human Resources Appeals Panel (Officers).

10.3 In cases of appeal against dismissal on the ground of misconduct (i.e. accumulation of misconduct issues) , gross misconduct, final written warnings and punitive action, these will be considered by the Council's Human Resources Appeals Board (Elected Members).

10.4 All punitive sanctions may be held in abeyance depending on the circumstances until the appeals process has been exhausted. If the appeal is not-upheld, backdating of sanction will be to the original date of the outcome decision being issued.

- 10.5 Letters of Appeal must be submitted within 14 days of the outcome letter being received, those received outwith this time scale will be considered time barred and will not take place.

11 VACANCY CAUSED BY DISCIPLINARY ACTION OR IMPRISONMENT

- 11.1 Where the disciplinary action taken is dismissal and the employee lodges an appeal, consideration should be given to not filling the post on a permanent basis until the appeals procedure is completed.
- 11.2 Where an employee is charged with or convicted of, a criminal offence, consideration must be given to the nature of the offence and the likely impact on the workplace should the employment relationship be continued.
- 11.3 If an employee is imprisoned, it will be necessary for the Corporate Director or Head of Service to consider the specific circumstances and the needs of the Service to have the employee's duties performed. The matter should then be discussed with the Head of Organisational Development, Human Resources & Communications.

12 CONFIDENTIALITY

- 12.1 All matters relating to discipline are confidential and no employee of the Council will disclose any information to anyone else within or outside the Council not involved in the case proceedings, including in circumstances where an employment reference has been requested, without the approval of the Head of Organisational Development, Human Resources & Communications, or in the case of Chief Officers, the Chief Executive (or any delegated officer whom they deem appropriate).
- 12.2 Notwithstanding the above, if through the course of disciplinary proceedings, information comes to light, which raises concerns about the welfare of a child or vulnerable adult, the Council has a statutory obligation to report these concerns to the appropriate authorities.

13 CONTRACT OF EMPLOYMENT

- 13.1 Reference to the *Disciplinary Policy and Procedures* are included in an employee's Contract of Employment and Conditions of Service.

14 REDUNDANCY

- 14.1 When the Displacement Selection Criteria Matrix is being applied in relation to the *Voluntary Severance Policy* consideration to any live disciplinary records will be given.

15 OBLIGATION TO INFORM REGULATORY BODIES & THE RIGHT TO LEGAL REPRESENTATION

- 15.1 The Council will inform regulatory/inspectorate organisations and/or government bodies such as the Scottish Social Services Council (SSSC), General Teaching Council (Scotland) (GTCS), Health and Care Professionals Council (HCPC), Police Scotland, Scottish Ministers, and any other organisations who become relevant in the future, of any disciplinary outcomes or proceedings as required in line with the individual requirements of each body. The supporting Disciplinary Procedures (Part 2) (Appendix 1, Section 9, Page 17) outline how this should be managed.

- 15.2 Where relevant, appropriate representation at Disciplinary Hearings may be extended to allow a legal advisor in circumstances where the potential outcome of the proceedings would perhaps prevent employees from practicing their chosen career either by being legally barred or making employment in their employment sector highly unlikely in the future.

16 TRAINING AND REVIEW

- 16.1 All officers and elected members involved in the application of the Disciplinary Policy and Procedures will be trained to ensure consistency of application and full understanding. The policy, procedure and associated training materials may be changed, in consultation, periodically to reflect best practice and the law.

(End)