

**Organisational Development, Human Resources &
Communications**

***DISCIPLINARY PROCEDURES
For all Council Employees
(PART 2)***

Produced by:

Organisational Development, Human Resources & Communications
Inverclyde Council
Municipal Buildings
GREENOCK
PA15 1LX

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1 PURPOSE

1.1 Aims

- 1.1.1 The purpose of the *Disciplinary Procedures* is to ensure that the *Disciplinary Policy for all Council Employees* is adhered to and to provide a fair method of dealing with alleged failures to observe the *Disciplinary Policy (Part 1)*.

1.2 General

- 1.2.1 A list of all the *policies* and *guidelines* that relate to this Disciplinary Policy and Procedures can be found in Appendix 8 (Page 28).
- 1.2.2 There are numerous template letters relevant to these disciplinary procedures, these can be accessed from HR and appropriately adapted. Services must not create their own letters.

2 APPROACH TO HANDLING ALLEGED INCIDENTS OF INDISCIPLINE

- 2.1 Incidents of alleged indiscipline will normally come to light based on circumstances which come under the headings of capability or conduct, as outlined in the Disciplinary Policy (Part 1) (Section 5, Page 7).
- 2.2 When such circumstances arise, it is important to note that each case under consideration will vary in complexity, severity and substance, and should be categorised accordingly to determine:
- if a full investigatory hearing is required or delivery of the facts at a Disciplinary Hearing is sufficient;
 - whether or not suspension from duty (on full pay) is required;
 - who Disciplining Officer and Investigating Officer will be if needed;
 - whether or not HR involvement will be in person or on a remote advisory capacity.
- 2.3 With this in mind, managers who are handling such issues should apply the case categorisation outlined in paragraph 2.5 below. This may be done in conjunction with Human Resources.
- 2.4 The process of categorisation need not be lengthy; it may be a management decision within the service using professional judgement, or a short phone call to HR to discuss the circumstances, or, as required, a fuller conversation, or meeting with the HR Operations Team.
- 2.5 Case categories:

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

3 CASE CATEGORISATION & MANAGEMENT

3.1 General

- 3.1.1 This section outlines examples of what to consider when categorising a case. It also outlines the duration to be normally adhered to during the application of the procedures, and to what extent HR will be involved.

3.2 Category 1 – Not Complex Cases

- 3.2.1 These cases will normally be associated with incidents based on facts that are simple to establish or prove, or that have been readily admitted by the employee(s) involved, for example:

- attendance;
- timekeeping;
- minor misconduct incidents (one off acts or minor behavioural issues).

- 3.2.2 There will not always be a requirement for a separate Investigatory Hearing for cases in this category; normally a quick fact finding or information gathering exercise will be enough, for example;

- collation of records;
- short statements from witnesses;
- presentation of failed performance improvement plans.

- 3.2.3 Such information will be presented and subject to questions at a Disciplinary Hearing (full details in Section 5, Page 12).

- 3.2.4 Normally, HR involvement in these cases will be in the form of remote advice. Advice may be given at the start of the process to help managers correctly categorise the case, and as required to coach managers through the procedures, reviewing letters, etc. HR will not normally attend disciplinary hearings in this category.

- 3.2.5 Presuming a full investigation is not required, as is likely to be the norm with this category, then:

- the disciplinary hearing will normally be held within 14 days of the incident or culmination of incidences resulting in a decision being made to proceed to a disciplinary hearing;
- any appeals against outcomes will be submitted within 14 days of outcomes being received, and heard within 14 days of the appeal being received. Employees will be given notice in writing at least seven days in advance of an appeal hearing, unless a variation is mutually agreed, of the time and place of the appeal. This is with the exception that if appeals require to be heard by the Human Resource Appeals Panel (Officers) or the Human Resources Appeals Board (Elected Members), that the relevant Board/Panel will be convened as soon as possible.

3.2.6 Cases in this category should normally be concluded within 6 weeks from original incident.

3.3 Category 2 - Moderately Complex Cases

3.3.1 These cases will normally be associated with:

- potential progression of live disciplinary sanctions;
- misconduct incidents considered more than minor;
- misconduct incidents related to previously demonstrated acts or behaviours;
- incidents which involve more than one employee;
- incidents which are contested by the employee;
- incidents which involve witnesses, complaints or evidence which require full consideration at the investigatory stage.

3.3.2 These cases may require an Investigatory Stage in the form of a full Investigatory Hearing.

3.3.3 Where the case is considered to be Category 2 but where it is not considered practical or necessary to hold a full Investigatory Hearing, a data gathering approach similar to that outlined in the Category 1 section should be followed and form the basis of the Disciplinary Hearing.

3.3.4 HR may be involved in person at Investigatory Hearings and Disciplinary Hearings for cases within this category; this will be as and when required and will depend on the details of the case and whether or not it is agreed between a manager and an HR Service Manager Operations that professional HR advice will be required in person at the hearings. HR advice will be available remotely throughout the application of the procedure regardless.

3.3.5 Where a full investigatory hearing is required:

- the Investigatory Hearing should take place normally within 14 days of the incident or culmination of events occurring;
- any Disciplinary Hearing should take place normally within 14 days of the investigatory process concluding or the incident occurring if a full investigation is not required;
- any appeals against outcomes will be submitted within 14 days of outcomes being received, and heard within 14 days of the appeal being received, or as soon as the relevant appeals board can be convened. Employees will be given notice in writing at least seven days in advance of an appeal hearing, unless a variation is mutually agreed, of the time and place of the appeal. This is with the exception that if appeals require to be heard by the Human Resource Appeals Panel (Officers) or the Human Resources Appeals Board (Elected Members), that the relevant Board/Panel will be convened as soon as possible.

3.3.6 Cases in this category should normally be concluded in less than 8 weeks from the original incident.

3.4 Category 3 - Complex Cases

3.4.1 These cases will normally be associated with:

- incidents of an altogether more serious nature;
- incidents which have occurred during the course of a live warning;
- incidents which involve more than one employee;
- incidents which are contested by the affected employee;
- incidents which involve witnesses, complaints or evidence which require full consideration of the Investigatory Stage.

3.4.2 These cases will always require an Investigatory Stage in the form of a full Investigatory Hearing.

3.4.3 HR may be involved in person at Investigatory Hearings and HR must be involved at all Disciplinary Hearings for cases within this category; this will be as and when required and will depend on the details of the case, whether the line manager was relatively experienced and had been through appropriate discipline training and whether or not it is agreed between a manager and an HR Service Manager Operations that professional HR advice will be required in person at the hearings. HR advice will be available remotely throughout the application of the procedure regardless:

- the investigatory hearing will normally be heard within 28 days of the incident occurring;
- the disciplinary hearing will normally be heard within 28 days of the investigatory hearing concluding;
- any appeals against outcomes will be submitted within 14 days of outcome being received, and heard within 14 days of the appeal being received if the appeal is against action short of dismissal, or as soon as the relevant committee can be convened in cases of dismissal. Employees will be given notice in writing at least seven days in advance of an appeal hearing, unless a variation is mutually agreed, of the time and place of the appeal. This is with the exception that when appeals are to be heard by the Human Resource Appeals Panel (Officers) or the Human Resources Appeals Board (Elected Members), that the relevant Board/Panel will be convened as soon as possible.

3.4.4 Cases in this category should normally be concluded within 12 weeks of the incident occurring.

4 CONDUCTING THE INVESTIGATION/INFORMATION GATHERING STAGE

4.1 Approach to Investigation Stage/Information Gathering

4.1.2 Where an incident or event has occurred and a manager considers that it is potentially a matter of indiscipline as outlined in the supporting Disciplinary Policy (Part 1) and believes that the policy needs to be applied, they should contact the HR

Operations Team, to discuss the circumstances and to agree on a case category which will determine the next steps:-

- Once it has been agreed that the disciplinary procedures should be applied, the employee should be made fully aware, in writing that incidents are being investigated under the disciplinary process and be invited to either an Investigatory Hearing or Disciplinary Hearing. Where employees have access to email, letters should be sent as email attachments to minimise delay.
- It is the employee's responsibility at this stage to notify and arrange support and attendance from their representative should they wish. Should the representative be a work colleague then it is that individual's responsibility to obtain permission to attend the hearing from their manager.

4.1.3 If a trade union representative is being considered under these procedures, the full time Trade Union official should be informed promptly by management (telephone call will suffice). In most cases this information will be known, (i.e. who is a trade union representative). If it is not known, affected employees should make management aware.

4.2 Full Investigatory Hearing Not Required

4.2.1 Where, following case categorisation, it has been decided that an Investigatory Hearing is not required, a Disciplinary Hearing will normally be heard.

4.2.2 The information pertinent to the case should be gathered by the Disciplining Officer, for example:

- attendance/timekeeping records;
 - evidence of existing live warnings;
 - evidence of failed performance improvement plans;
 - evidence of conduct/capability concerns;
 - evidence of damage caused by an employee.
- This information will be provided to the employee ahead of the Disciplinary Hearing, normally as a supporting document attached to an invite to a Disciplinary Hearing.
 - The invite to the hearing will include details of the conduct/capability incidents, the employees right to be accompanied, and the date, time and location of the hearing.
 - Employees should confirm their attendance at the scheduled meeting by contacting the Disciplining Officer by phone or email, at which stage they should also, ideally, advise if they will be accompanied by a representative and who that will be.
 - Normally a decision will be made at this hearing on whether or not to apply a Disciplinary Sanction and the employee will be informed verbally of the final outcome at the end of the hearing.
 - An outcome letter will then be issued to the employee whether or not a sanction has been applied, either concluding the matter, or confirming the sanction. The letter will describe the reasons supporting the final decision taken by the Disciplinary Officer

and details of the employees right to appeal. This letter may be sent by email to minimise delay.

4.2.3 The guidelines for conducting a Disciplinary Hearing are outlined in Appendix 3 (Page 21).

4.2.4 It is the responsibility of the Employee or their representative to take minutes of the hearing if they so chose. The investigatory facts report and/or the Disciplinary Hearing outcome letter represent the only formal detailed documentation. No further minutes, notes or reports will be provided.

4.3 Full Investigatory Hearing Required

4.3.1 Where, following case categorisation, a full Investigatory Hearing is required, a manager should prepare a case management plan e.g.:

- who will carry out the Investigatory Hearing (Investigating Officer – Note this may be the manager);
- who will be conducting any subsequent hearing (normally a more senior employee and always an employee not involved in the investigation);
- whether or not suspension should be considered;
- who needs to be interviewed (witnesses, colleagues);
- what documentary or other evidence is required, how it will be obtained;
- what the timescales are.

4.3.2 Managers should contact HR for guidance throughout this stage as required.

- Once a case management plan has been established, a hearing should be convened with the employee under consideration, who should be made fully aware in writing by the Investigating Officer, that the purpose of the investigation is to establish the facts of the case under the disciplinary process.
- The employee should be presented with as much information as possible in advance of the hearing – anything that will be referred to during the hearing. This is to allow the employee a full understanding of the facts under consideration and to allow them to assess them.
- Should further information come to light between the invite to Investigatory Hearing being sent out and the actual hearing taking place, it may be included and therefore form part of the Investigatory Hearing.
- The employee should confirm attendance at the meeting by a phone call to the Investigatory Officer and advise if being represented.
- It is anticipated that Investigatory Hearings will normally go ahead at their first scheduled date and time.
- Investigatory Hearing formats are not standardised, they will vary in content and duration depending on each case. Generally they will involve a series of questions to the employee and/or witnesses, presentation of evidence pertinent to the case

etc; as much as is necessary to allow the Investigatory Officer to develop a full and balanced opinion of the incidents under investigation.

- 4.3.3 The necessary time off with pay will be granted to employee witnesses to attend the hearing. However, it is the responsibility of the Employee under consideration to make the necessary arrangements to call any witness, and to ensure that where witnesses are Council employees, that they have received authorisation to leave their place of work from their manager.

4.4 *Investigating a Residential Client's Allegations against an Employee*

- 4.4.1 There is a specific process that should be followed if dealing with allegations from a residential client, please refer to Appendix 7 (Page 27) for this. It is essential that circumstances such as these are handled in line with the guidance.

4.5 *Outcomes of Investigatory Stage*

- 4.5.1 Where an Investigatory Hearing has taken place, all evidence produced by the Investigating Officer should be assessed carefully by the Disciplining Officer. Upon conclusion of the Investigatory Stage, the recommendation to the Disciplinary Officer will be to either:

- conclude the matter or;
- recommend that the matter proceeds to a Disciplinary Hearing.

- 4.5.2 There may be occasions whereby Investigatory Officers decide to make other recommendations instead of those listed in section 4.5.1 above, such as:

- training;
- mediation;
- coaching;
- other support.

4.6 *Informing the Disciplining Officer*

- 4.6.1 Upon conclusion of the Investigatory Stage the Investigatory Officer will make recommendations to the Disciplining Officer.
- 4.6.2 The Disciplining Officer should have been identified as a result of the categorisation and case management process.
- 4.6.3 The Disciplining Officer will decide whether or not to take the Investigating Officers recommendation based on their assessment of the outcomes of the Investigatory Stage.
- 4.6.4 If the decision of the Disciplining Officer is that no further action is required, they will notify the employee in writing (email to minimise delays).

5 DISCIPLINARY STAGE

5.1 *Notification of Disciplinary Hearing*

5.1.1 Where the Disciplinary Officer, having either considered the recommendations of the Investigatory Officer, or as a result of case management, concludes that there is a question of substance about the employee's conduct or performance, then a Disciplinary Hearing should be arranged:

- The employee will be advised in writing of the Disciplinary Hearing arrangements, the reasons for the hearing and details of his/her rights to be represented.
- Enclosed in this letter will include appropriate copies of evidence (i.e. any investigative report, witness statements, etc) that will be used throughout the hearing so that the Employee has adequate time to review and prepare their case.
- It is important to note that when misconduct is readily admitted by the Employee at the outset this does not automatically close the matter. The Disciplinary Officer must still probe the reasons behind the offence and consider any mitigating circumstances.

5.2 *Disciplinary Action Short of Dismissal*

5.2.1 Having reviewed the evidence, the Disciplining Officer may decide to take no further action.

5.2.2 Having concluded that Disciplinary Action is appropriate as a result of the Disciplinary Hearing, careful consideration should be given by the Disciplinary Officer to the following prior to deciding the appropriate level of sanction to apply:

- the employee's current disciplinary record;
- any relevant mitigating circumstances, e.g. health or domestic problems, which might have influenced the employee's conduct or behaviour;
- length of service;
- whether the intended disciplinary action would be reasonable having regard to all of the circumstances.

5.2.3 Where it is decided that informal action (Improvement Note, see Disciplinary Policy (Part 1), Section 9.3, Page 11) is appropriate – this should be issued in writing and the Improvement Note monitored in line with the Disciplining Officer's time line. An improvement note can cover a period of up to 6 months.

5.2.4 Where it is decided that a formal disciplinary sanction is appropriate, the following options should be considered as outcomes:

Formal Disciplinary Outcomes	Duration Live
Written Warning	9 Months
Final Written Warning	12 months

5.2.5 It may also be considered appropriate to implement other punitive action in addition to formal warnings, such as:

- demotion (see Section 5.3 below);
- redeployment;
- transfer;
- suspension without pay (see Section 5.3 below);
- withholding pay increments;
- extension of a live warning;
- in the case of absence related incidents - the retrieval of occupational sickness pay.

5.2.6 The above list is not exhaustive; Disciplining Officers may consider other sanctions not listed in conjunction with HR.

5.2.7 Summary of Disciplinary Outcomes:

- The right to appeal against disciplinary outcomes applies to all formal disciplinary sanctions.
- Generally, the steps in the procedure will be progressive, for example an improvement note, a written warning, a final written warning, and dismissal. However, there will be instances where more serious action, including dismissal, is warranted at an earlier stage (see Section 5.3 below).
- Only in exceptional circumstances (i.e. where the misconduct is so serious verging on gross misconduct) will the expiry periods outlined above (section 5.2.4) be deviated from. In such circumstances, the Disciplining Officer must ensure the employee is made aware of the revised expiry period, the reasons for this decision, and that any recurrence may lead to dismissal.
- There may also be occasions where the Employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the Employee's disciplinary record should be borne in mind in deciding how long any potential warning should last. An example may be where an Employee has been issued with a warning for poor attendance, has no absences during this period but on expiry of the warning they revert back to having a poor attendance record.

5.3 Dismissal & Other Punitive Action

5.3.1 If, after carrying out a Disciplinary Hearing, the Disciplining Officer considers that:-

- a) an Employee, who has previously received a Final Written Warning should be dismissed, suspended without pay or demoted or;
- b) the gravity of an incident of indiscipline in itself warrants dismissal, suspension without pay, or a demotion;

the Disciplining Officer shall proceed to take disciplinary action but shall seek advice from the Head of Organisational Development, Human Resources and Communications on the suitable form of letter to be sent to the Council Employee concerned.

- 5.3.2 Suspension without pay as a Disciplinary Sanction shall not normally exceed a period of two weeks. Only in exceptional circumstances (i.e. where the misconduct is so serious verging on gross misconduct) will the expiry period be deviated from.
- 5.3.3 Summary dismissal is not to be taken literally. Allegations which may constitute gross misconduct will still need to be investigated and considered during a formal disciplinary hearing before a decision to dismiss is taken.
- 5.3.4 The right to appeal against punitive action and dismissal applies in all cases.

5.4 *Informing the Employee*

- 5.4.1 All Disciplinary Action taken as a result of a Disciplinary Hearing will be confirmed in writing to the employee (email as appropriate to minimise delays).
- 5.4.2 The written confirmation will:
 - state details of the nature of the misconduct giving rise to the action;
 - confirm the level of disciplinary action taken and how long this action will be held on record;
 - confirm the likely consequences of further misconduct or incapability;
 - inform of the right of appeal and how it should be made and to whom;
 - inform that the appeal must be made in writing within 14 days from the date of receipt of the letter confirming the disciplinary action.

6 APPEALS

6.1 *Appeals against Disciplinary Sanctions Short of Dismissal*

- 6.1.1 All appeals against disciplinary sanctions short of dismissal must be submitted within 14 days of the disciplinary outcome being received , and must clearly outline the grounds for appeal. Emails or letters are acceptable.
- 6.1.2 Appeals against written warnings and final written warnings will be heard where possible by the next level of management, normally, within 14 days of receipt of the appeal letter. Where possible, employees will be given 7 days notice of any appeal hearings.
- 6.1.3 Appeals against final written warnings which include other punitive action will be heard by the Human Resources Appeals Board (Elected Members), which will be convened as soon as possible.
- 6.1.4 All letters relating to appeals can be issued by email to minimise delays.
- 6.1.5 All appeal panels will normally include an HR Advisor.

- 6.1.6 The format for Appeal Hearings at this level, will in most cases replicate the procedure outlined in Appendix 5 (Page 24)

6.2 Appeals against Dismissal

- 6.2.1 An Appeal against a dismissal must be lodged with the Head of Organisational Development, Human Resources and Communications within 14 days of receipt of the letter confirming the action has been taken and must clearly outline the grounds for appeal. Emails or letters are acceptable.
- All appeals against misconduct or gross misconduct dismissal will be heard by the Human Resource Appeals Board (Elected Members).
 - All appeals against dismissal on the grounds of all matters relating to attendance or non-attendance, e.g., capability will be considered by the Council's Human Resources Appeals Panel (Officers).
 - The Head of Organisational Development, Human Resources and Communications will acknowledge receipt of the appeal letter and arrange for the appeal to be heard by the Board/Panel as soon as possible.
 - The Employee will be given notice in writing at least 7 days in advance, unless a variation is mutually agreed, of the time and place of the appeal.
- 6.2.2 Appendix 4 (Page 22) details the procedure to be followed at the Human Resource Appeals Board (Elected Members).

7 LIST OF APPENDICES

APPENDIX 1	IMPORTANT ROLES AND OTHER MATTERS
APPENDIX 2	PRECAUTIONARY SUSPENSION GUIDE
APPENDIX 3	DISCIPLINARY HEARING PROCEDURE
APPENDIX 4	HUMAN RESOURCES APPEALS BOARD (ELECTED MEMBERS) PROCEDURE
APPENDIX 5	HUMAN RESOURCES APPEALS PANEL (OFFICERS) PROCEDURE (ALL MATTERS RELATING TO ABSENCE)
APPENDIX 6	PVG – STATUTORY DUTIES
APPENDIX 7	INVESTIGATING A RESIDENTIAL CLIENT'S ALLEGATIONS AGAINST AN EMPLOYEE
APPENDIX 8	OTHER RELEVANT POLICIES & PROCEDURES

IMPORTANT ROLES AND OTHER MATTERS

1. *Use of CCTV or audio recordings*

- 1.1 The use of **covert** recordings by Employees and/or their management will not be accepted as evidence in any investigations, disciplinary proceedings or appeal hearings.
- 1.2 CCTV or audio recordings may be used and are acceptable to:
 - confirm a Employee's presence in a given area or premises covered by CCTV provided the Employee is aware that the area is covered by CCTV;
 - accept recorded conversations provided both parties (Employee and manager) agree to such recordings.
- 1.3 All parties will be given the opportunity to view/hear any CCTV footage/recordings which are being used in disciplinary proceedings. Where necessary, this will be done separately from a disciplinary hearing.

2. *HR Advisor*

- 2.1 Where an HR advisor is present at either the Investigatory, Disciplinary or Appeal Hearings. They will play an active role including questioning those present.

3 *Disciplinary Incidents Raised as a Result of Information from Non-Council Employees*

- 3.1 It is possible that incidents will arise during the course of employment whereby an employee's conduct or capability is investigated as a result of information or complaints received from the Public, Service Users, Service Users Families, Pupils or their Parents/Carers/Guardians etc.
- 3.2 There is a Corporate Complaints Handling Procedure as well as a service specific complaint handling procedures which enable non-employees to raise concerns about services or employees delivering services. (CHCP and Education for example have different procedures depending on the client group and the nature of complaint etc). It is important that the Council considers these incidents fully; in many cases this is a legal requirement.
- 3.3 If any of these complaints received about employees are considered by management to merit further investigation under this Disciplinary Policy & Procedure, the complaint will be used as part of the investigatory/fact finding stage. Normally this information will be in the form of email or letter and information will be anonymised as much as possible to ensure there are no data protection issues arising.
- 3.4 In very exceptional circumstances, it may be necessary for Investigatory Officers to meet with non-employees to gather further information - this should only be done following agreement by the Head of Organisational Development, Human Resources & Communications and/or Head of Legal & Democratic Services. It is anticipated that this will be a rare event.

4. *Conduct outwith the workplace*

- 4.1 It is also important to note that an employee's conduct outside of the workplace may also lead to them being considered under the Disciplinary Policy (Part 1), the Council's Code of Conduct is key in this respect and all employees and managers should familiarise themselves with their obligations.

5. *Acceptable Delays in Proceedings*

5.1 *Due to Witnesses*

- 5.1.1 Unavailability of witnesses to attend hearings will not allow proceedings to be delayed anymore than 5 working days, where necessary they will be asked to provide written statements to minimise delays.

5.2 *Due to Representation*

- 5.2.1 For the Disciplinary Hearing, where representation cannot be arranged for the proposed date, the Disciplining Officer may accept an alternative date and time proposed by the employee providing it's reasonable and within 5 working days of the original time set. It will only be acceptable in exceptional circumstances for a maximum of 2 rescheduled dates to be proposed. The third scheduled date will be the final one, that is, that the hearing will go ahead in the employee's absence.

5.3 *Due to Sickness/Ill-Health*

- 5.3.1 If sickness intervenes during any stage of the process, consideration should be given to the nature and anticipated length of the absence, and the nature of the matter under investigation. The matter should be discussed with the Head of Organisational Development, Human Resources & Communications or nominated officer, to consider whether the investigation may be progressed or held in abeyance pending the employee's return to work. It is required that the employee will be referred to the Council's Occupational Health Advisor to ascertain if the disciplinary procedure may continue.
- 5.3.2 Should the employee continue to register their unavailability to attend a Disciplinary Hearing, consideration will be given to reaching a decision on the evidence available in the absence of the employee.

6. *Evidence available post-Discipline but pre-Internal Appeal*

- 6.1 Where information becomes available after the outcome of a Disciplinary Hearing but prior to the Appeal stage, the Disciplining Officer should consider this new information and whether it would have influenced the decision reached at the Disciplinary Hearing, notifying the employee and Appeal Chair accordingly.

7. *Grievances Raised during Proceedings (Including Bullying & Harassment Claims)*

- 7.1 Where an Employee raises a grievance in the lead up to, or during the disciplinary process and it is considered related, it may be appropriate to deal with both issues concurrently, or temporarily suspend the Disciplinary Hearing for a short period while the grievance is heard. Advice must be sought from the Head of Organisational Development, Human Resources & Communications, or nominated officer, to determine the appropriate process to be followed in such circumstances. If, however, the two issues are unrelated, the disciplinary process should continue and the grievance heard separately. If there is a Bullying and Harassment complaint

by an employee about a manager an officer independent from the employee/manager relationship will be called upon to investigate.

8. *Addiction*

- 8.1 Where it is required to take account of an addiction problem at any stage throughout the formal disciplinary process, consideration should be taken of the Council's Policies on Misuse of Alcohol & Misuse of Drugs in the Workplace prior to any decision making. The Council may also seek advice from Occupational Health Providers and/or support from specialist services for independent, specialist opinion.

9. *Notification to Regulatory Bodies*

- 9.1 The Council will inform regulatory/inspectorate organisations and/or government bodies such as the Scottish Social Services Council, General Teaching Council (Scotland), Police Scotland, Scottish Ministers, Health Care Professionals Council (HCPC) 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.

10. *Notification to Disclosure Scotland – Protection of Vulnerable Groups (PVG) Scotland Act (2007)*

- 10.1 The PVG Act aims to provide a robust system by which unsuitable people are identified and prevented from doing regulated work with children or protected adults. To facilitate this aim, it is necessary for organisations to pass on information to Disclosure Scotland that indicates an individual may be unsuitable to do regulated work so that it can be properly evaluated and appropriate action taken. The process of providing such information to Disclosure Scotland is called 'making a referral'.
- 10.2 The referral process to Disclosure Scotland is entirely separate from any dispute or appeal against disciplinary action or dismissal.
- 10.3 It is an offence not to make a referral within 3 months of the criteria for referral being met. The criteria is set out in the Act itself and will be referred to relevant officers handling the case.
- 10.4 Failure to refer can result in a fine and a prison sentence of up to 5 years. Individuals within organisations may be prosecuted, alongside the organisation itself, if it can be demonstrated that the offence was committed with their consent, connivance or through their negligence.
- 10.5 Any officers dealing with cases which may involve a referral to Disclosure Scotland, must do so in conjunction with the Head of Organisational Development, Human Resources & Communications.
- 10.6 The Council will also notify Disclosure Scotland where an Employee resigns in anticipation of punitive disciplinary action, is transferred to any alternative post, or were on a fixed term/temporary contract which has or was due to expire.

PRECAUTIONARY SUSPENSION GUIDE

1. An immediate supervisor shall have the necessary delegated powers to apply a precautionary suspension to any employee who is considered to be creating a situation whereby he or she is a personal danger to themselves, to other employees, to the general public, and/or the property of the Council.
2. To protect the interest of all parties, where possible, the supervisor should apply the suspension in the presence of another supervisor or officer.
3. The supervisor should ask the employee to accompany him/her to an unoccupied office or quiet location. The supervisor should state clearly to the employee the reasons he/she has for suspecting the employee is unfit for work.
4. This shall entail the employee leaving or being sent from the workplace and reporting immediately to their line manager if possible, during the next working day.
5. If the employee is incapable, either through alcohol or drug misuse, the supervisor should insist that the employee does not drive a vehicle and to that end the supervisor should do the following:
 - If the employee drives a Council vehicle, permission to do so must be withdrawn immediately.
 - Arrange transportation through a friend or relative of the employee.
 - If suitable transportation cannot be arranged and the employee is co-operating calmly, allow the employee to remain on Council premises in a restricted area until transportation is available.
 - If the employee refuses the above, or is uncooperative, appropriate assistance should be summoned. The individual cannot be physically restrained from leaving the premises but the Council reserves the right to protect third parties and property and will notify the Police if the circumstances warrant.
6. There is no appeal against a precautionary suspension.
7. Precautionary suspension is an immediate solution to a risk situation and should be stopped as soon as possible, this may mean working at a different location or on different duties. At all times Services must liaise with HR.

DISCIPLINARY HEARING PROCEDURE

The procedure for conducting a hearing shall be led by the Disciplinary Hearing chairperson (Disciplining Officer) who may be accompanied by an HR Representative as an Advisor. Both the Employee and the Investigating officer will be in attendance throughout the entire process, although the Investigating Officer will not be required to be present when advising the employee of the outcome.

1. The Investigating Officer shall be asked to put forward their case in the presence of the Employee and their representative and may call such witnesses as are required.
2. The Employee or his/her representative shall be given the opportunity to ask questions of the Investigating Officer and any witnesses called by him/her.
3. The disciplinary panel/chair shall then have the opportunity to ask questions of the investigating officer and any witnesses called by him/her.
4. The Investigating Officer shall have the opportunity to ask further questions of the witness, to make points of clarification arising from questions from the Employee, their representative and/or members of the Disciplinary Panel.
5. The Employee or his/her representative shall be asked to put forward their case in the presence of the Investigating Officer and may call any witnesses required.
6. The Investigating Officer shall be given the opportunity to ask questions of the Employee and any witnesses called by him/her.
7. The disciplinary panel shall then have the opportunity to ask questions of the Employee, their representative, or any witnesses called.
8. The Employee, or his/her representative, shall then have the opportunity to ask further questions of the witnesses and to make points of clarification arising from questions from the investigating officer and/or members of the disciplinary panel.
9. The investigating officer and the Employee (or their representative) shall be given the opportunity, if they wish, to sum up their case, introducing no new material, with the employee summing up first.
10. The chair/panel should consider the content of both submissions during an adjournment. The adjournment is important and may be used constructively to research precedents or to investigate the appropriate remedial action.
11. The Employee, and his/her representative, shall normally then be invited back into the meeting to be advised of the outcome of the disciplinary hearing. In exceptional circumstances it may be necessary to delay decision making.

Note: if, during the disciplinary hearing, the factual basis of the allegations is contested or new facts emerge it may be necessary to adjourn the meeting to allow further investigation, then to reconvene the meeting when this has been done.

APPENDIX 4

HUMAN RESOURCES APPEALS BOARD (ELECTED MEMBERS) PROCEDURE (GROSS MISCONDUCT & MISCONDUCT DISMISSALS, FINAL WRITTEN WARNINGS & PUNITIVE ACTION)

Prior to the appeal hearing both the employee (and their representative) and Service representative (i.e. Disciplining Officer) must provide all evidence they intend to use during the appeal process to the Committee Section. This allows members of the appeals board to have adequate opportunity to review background papers in advance of the hearing.

There may be present, at all times, the appellant, his/her representative and the Service representative along with an HR representative. The HR representative will take an active role in the process by contributing to the case put forward, asking and responding to questions, etc. The procedure to be followed will be:

1. The Service representative shall put forward its case in the presence of the appellant and his/her representative and call such witnesses as may be required.
2. The appellant's representative or the appellant (if not represented) shall have the opportunity to ask questions of the Service representative or any witnesses called by the Service.
3. The members of the Human Resources Appeals Board (Elected Members) shall then have the opportunity to ask questions of the Service's representative and any witnesses called by the Service.
4. The Service representative shall have the opportunity to ask further questions of the witness, to make points of clarification arising from questions from the appellant's representative and members of the Human Resources Appeals Board (Elected Members).
5. The appellant, or his/her representative, shall put the case in the presence of the Service representatives and may call any witnesses required.
6. The Service representative shall have the opportunity to ask questions of the appellant or his/her representative and any witnesses called by the appellant or his/her representative.
7. The members of the Human Resources Appeals Board (Elected Members) shall then have the opportunity to ask questions of the appellant's representative, the appellant, or any witnesses called.
8. The appellant, or his/her representative, shall have the opportunity to ask further questions of the witnesses and to make points of clarification arising from questions from the Service representative and members of the Human Resources Appeals Board (Elected Members).
9. The appellant or his/her representative shall have the opportunity, if they wish, to sum up their case, again introducing no new material. The Service representative shall then have the opportunity, if they wish, to sum up their case, introducing no new material.
10. The Service representative, the appellant and his/her representative, and any advisers if present, shall then withdraw.

11. The Human Resources Appeals Board (Elected Members), in the presence of the officer(s) appointed to assist the Board, shall then deliberate in private, only recalling if necessary the Service representative, the appellant and his/her representative to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
12. The decision of the Human Resources Appeals Board (Elected Members) is normally expressed on the day and will be conveyed in writing to the appellant and the Service representative.
13. The Human Resources Appeals Board (Elected Members) is authorised to uphold or reject appeals against disciplinary action or to order the varying of the disciplinary action taken. The decision to be announced by the Board shall be one of the following as appropriate:
 - That the grounds of the appeal have been substantiated and the appeal is upheld.
 - That the grounds of the appeal have been substantiated in part and the appeal is upheld in part that
 - That the grounds of the appeal have not been substantiated and the appeal is not upheld.

HUMAN RESOURCES APPEALS PANEL (OFFICERS) PROCEDURE (DISMISSALS IN RELATION TO ALL ATTENDANCE AND NON-ATTENDANCE MATTERS)

Prior to the appeal hearing both the employee (and their representative) and Service representative (i.e. Disciplining Officer) must provide all evidence they intend to use during the appeal process to the appeals board. This allows members of the appeals board to have adequate opportunity to review background papers in advance of the hearing.

There may be present, at all times, the appellant, his/her representative and the Service representative along with an HR representative. The HR representative will take an active role in the process by contributing to the case put forward, asking and responding to questions, etc. The procedure to be followed will be:

1. The Service's representative shall put forward its case in the presence of the appellant and his/her representative and may call witnesses.
2. The appellant or his/her representative shall have the opportunity to ask questions of the Service's representative and of any witnesses called by the Service.
3. All officers in attendance at the Appeal, including Adviser, shall then have the opportunity to ask questions of the Service's representative and witnesses.
4. The Service's representative shall have the opportunity to ask further questions of the witnesses, to make points of clarification arising from questions from the appellant's representative and officers hearing the Appeal.
5. The appellant, or his/her representative, shall put his/her case in the presence of the Service's representative and may call witnesses.
6. The Service's representative shall have the opportunity to ask questions of the appellant or his/her representative and of any witnesses called by the appellant or his/her representative.
7. All officers in attendance at the Appeal, including Adviser, shall then have the opportunity to ask questions of the appellant, the appellant's representative, or any witnesses called.
8. The appellant, or his/her representative, shall have the opportunity to ask further questions of the witnesses, to make points of clarification arising from questions from the Service's representative and officers attending the Appeal.
9. The Service's representative and the appellant or his/her representative shall have the opportunity, if they wish, to sum up their case, introducing no new material.
10. The Service's representatives, the appellant and his/her representative, and any advisers if present, shall then withdraw.
11. The Human Resources Appeals Panel (Officers), in the presence of the Officer(s) appointed to assist the Board, shall then deliberate in private, only recalling if necessary, the Service's representatives, the appellant and his/her representative, to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

12. The Human Resources Appeals Panel (Officers), shall recall the Service's representative, the appellant and his/her representative and announce their decision on the appeal, which will be confirmed in writing.
13. Under the Council's Scheme of Delegation the Human Resources Appeals Panel (Officers), is authorised to uphold or reject appeals against disciplinary action or to order the varying of the disciplinary action taken. The form of the decision to be announced by the Human Resources Appeals Panel (Officers), shall be one of the following as appropriate:-
 - That the grounds of the appeal have been substantiated and that the appeal be upheld.
 - That the grounds of the appeal have been substantiated in part and that the appeal be upheld to the extent that
 - That the grounds of the appeal have not been substantiated and the appeal be not upheld.

PVG STATUTORY DUTIES

1. While it is important to emphasize the supportive role given to employees and their families who find themselves experiencing difficulties, it should also be noted that there is a statutory requirement for the Council, and by implication, its employees, to protect children and vulnerable adults.
2. If any Council employee hears information or directly sees things which makes them worried about a child or adult being ill-treated, exploited, neglected or abused, all employees are responsible for taking at least one of the following actions:
 - speak promptly with your line manager or another manager and talk through your concern;
 - you or your line manager should then contact:

 Inverclyde Community Care and Health Partnership: Child Protection Team/ Receiving Services Team (for children) or Information Worker (for vulnerable adults) Tel: 714100 in office hours; or CHCP: Standby Service out of office hours Tel: 0800-811-505, or your nearest police office 01475 492500 (24 hours) or online inverclydechildprotection.org
3. It is essential that concerns are passed to the appropriate agencies that will have staff qualified to make assessments and decisions about what action, if any, might be needed to protect the child or adult and assist the family while they are addressing their difficulties.
4. When contacting the appropriate agency employees should give as much information as possible about the child or adult and his or her family. Employees must not delay in taking action or passing on information as it could ensure the safety of a vulnerable child or adult.
5. Employees must be aware we are all responsible for the care of the vulnerable in our society.

APPENDIX 7

INVESTIGATING A RESIDENTIAL CLIENT'S ALLEGATIONS AGAINST AN EMPLOYEE

If a client in residential accommodation makes an allegation of misconduct by an employee, or is stated by others to have been a witness or a victim of misconduct by an employee, they may require to be interviewed and a statement taken.

- Where the allegation has resulted in a Child Protection Investigation carried out in terms of the Council's Child Protection Procedures, advice should be sought from the Service manager responsible for said investigation as to whether an interview is appropriate.
- 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.
- Arrangements must be made that a senior member of the Service and the child's Social Worker or a Human Resources Advisor together interview the client.
- The senior member of the Service and the child's Social Worker or Human Resources Advisor should plan the interview in advance to avoid, as far as possible, leading questions. Where the client is a child, advice should be sought on the form of questions most appropriate for that child from the Chief Social Work Officer.
- The senior member of the Service (or Investigating Officer) should write a full account of the interview immediately following the interview.
- Immediately following the interview, the senior officer of the service should make a professional judgment, based on the interview and how it was conducted, on whether the client understands the allegation being made and its implications. This should take into account, so far as is apparent, the client's state of mind at the time of the interview. This professional judgment should be written and attached to the client's statement.
- 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. This is accepted by both management and the recognised trade unions

OTHER RELEVANT POLICIES & PROCEDURES

If necessary, the following documents, policies, procedures and guidelines should be consulted:

1. Code of Conduct and Confidential Reporting Procedure (Whistle Blowing)
2. Managing Attendance Policy
3. Discrimination, Harassment, Victimisation Policy
4. Bullying & Harassment Policy
5. Misuse of Alcohol in the Workplace Policy
6. Misuse of Drugs in the Workplace Policy
7. Financial Regulations and Standing Orders for Contracts
8. Anti-Fraud and Irregularity Policy
9. Information Technology Policy and Associated Codes of Practice.
10. Violence & Lone Working Policy
11. Managing Poor Performance Guidelines
12. Appraisals at Inverclyde

List is not exhaustive.