
Report To: Policy and Resources Committee **Date:** 24 September 2013

Report By: Head of Organisational Development, Human Resources and Communications **Report No** HR/13/13/AM

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Subject: Revised Disciplinary Policy and Procedures

1.0 PURPOSE

- 1.1 The purpose of this report is to propose revised Disciplinary Policy and Procedures for all employees of the Council.
- 1.2 The report also satisfies an outstanding remit to review the Disciplinary and Appeals Process that was remitted to the Chief Executive.
- 1.3 This report follows the Organisational Development Strategy Theme 3 – Employer of Choice (Modern and Innovative HR Policies).

2.0 SUMMARY

- 2.1 Following a review of the disciplinary policies approved previously by the Council for Local Government Employees, Teachers and Chief Officers this report has taken into consideration the need to consider the amalgamation of the 3 existing policies and to review the current arrangements while maintaining the high standards of operation and ensuring that the process is as efficient and effective as possible

Appendix 1, the revised Disciplinary Policy and Appendix 2, Disciplinary Procedures have been developed to cover all employees of the Council.

- 2.2 Current arrangements require refresh and revision to ensure they reflect best practice, adhere to statutory and to Advisory, Conciliation, and Arbitration Service (commonly shortened to ACAS) guidelines and are as efficient and effective as possible.
- 2.3 The ACAS code of practice *Disciplinary and Grievance Procedures* now requires three stages to be followed :
 - Letter - to employee including allegations and date of hearing
 - Meeting - disciplinary hearing during which employee has opportunity to respond
 - Appeal - one stage appeal
- 2.4 The main changes to the policy and the process are detailed in Appendix 3. A summary of the changes is shown below :
 - Reduction in the number of policies from 3 to 1
 - The categorising of disciplinary cases and investigations based on complexity of the discipline to be undertaken and how the revised process should be applied
 - Employee Representation to be changed to trade union representative or work colleague
 - When Human Resources become involved in a disciplinary based on the case

complexity

- Review of how the level of sanction is applied at employee level.
- Introducing the option of incremental sanction approach
- Replacing verbal/oral warning with an improvement note
- Revising Appeal process including an Officers panel for misconduct dismissals with gross misconduct remaining with elected members

2.5 Throughout this process discussions have taken place with the trade unions since December 2012. The trade unions were asked to respond to the proposals so that their comments could be included in this report. Their responses are attached as Appendices 4,5 and 6.

3.0 RECOMMENDATIONS

3.1 That the Committee agree the attached Disciplinary Policy and associated Procedures, Appendix 1 and Appendix 2, to be introduced from 1st January 2014.

3.2 That the Committee note that employees who may be involved in the disciplinary process will receive training before January 2014 if the revised Policy is agreed by the Committee.

Head of Organisational Development,
Human Resources and Communications

4.0 BACKGROUND

4.1 Members may recall that there is an outstanding remit to this Committee to review the disciplinary procedures and appeals process. This report fulfils that remit.

4.2 The Council currently has three separate Disciplinary policies covering Local Government Employees, Craft, Teachers and Chief Officers. The content of the policies and procedures is similar and it was considered appropriate to review all policies together. When members consider any revisions it should be recognised that the Council process traditionally goes well beyond best practice and statutory procedures.

4.3 The provisions governing discipline at work are now to be found in:

- *The Employee Relations Act 1999*
- *The Employment Act 2008*

The previous statutory procedures which you may recall included a staged approach to disciplinary matters – stage1, stage2, stage3 – have been removed.

4.4 The ACAS code of practice *Discipline and Grievance Procedures* remains best practice and is expected to be followed. The three main stages in handling a disciplinary matter expressed in the ACAS procedures are:

- Letter - to employee including allegations and date of hearing
- Meeting – disciplinary hearing during which employee has opportunity to respond
- Appeal - one stage appeal

4.5 The review looked at the content of the 3 policies, the most recent legislation, changes that required to be considered through operational experience and also to ensure that the Policy and Procedures could be easily understood. The revised policy and procedures are attached as Appendices 1 and 2; Appendix 3 summarises the changes.

4.6 The Trade Unions – Unison, G.M.B., Unite, UCATT and Teachers Unions have been fully consulted on the proposed changes being put to the Committee. The objective of a single policy and a simplified approach where appropriate were acceptable but listed below are the areas where the trade unions were not supportive:

- UCATT, Unite & GMB - A submission has been made and is attached as Appendix 4
- Unison - A submission has been made by the EIS and is attached as Appendix 5
- Teaching Unions – A submission has been made by the EIS and is attached as Appendix 6

4.7 In respect of teachers, only the Scottish Negotiating Committee for Teachers (SNCT) governs changes to terms and conditions applicable to Teachers but with certain matters devolved locally to the LNCT the local negotiating committee. In respect of disciplinary procedures the SNCT issue guidelines for Local Authorities to consider but the actual policy is determined by each individual Council.

5.0 PROPOSALS

5.1 Following the request of the Council to undertake a review, all policies and procedures in respect of discipline were considered and proposals developed. The proposals have been submitted to and agreed by the Corporate Management Team and discussed with the trade unions whose response is noted in para 4.6 of the report

- 5.2 It is proposed that in the interests of fairness and equality a single Disciplinary Policy and set of procedures is introduced that covers all employees. At the same time a single policy has allowed the policy and procedures to be reviewed and refreshed and it is proposed that the attached Disciplinary Policy and Disciplinary Procedures (Appendices 1 and 2) be introduced for all employees. The main changes to the current arrangements have been summarised in Appendix 3.
- 5.3 To allow time for the introduction of the new policy and for employee training to be carried out by HR and through the Council's E learning facility, it is proposed that the policy is introduced from 1st January 2014.

6.0 IMPLICATIONS

- 6.1 Finance: There are no financial implications for the Council.
- 6.2 Human Resources: All Human Resources implications have been included in the report.
- 6.3 Legal: The Head of Legal and Democratic Services has been consulted prior to this report being brought to the committee.
- 6.4 Equalities: The policy and procedures apply equally to all employees and all the protected characteristics under the Equality Act 2010 by addressing accessibility and offering support to disabled employees.

7.0 CONSULTATION

- 7.1 The trade unions' comments are attached as appendices.

8.0 LIST OF BACKGROUND PAPERS

Appendix 1 - Disciplinary Policy
Appendix 2 - Disciplinary Procedures
Appendix 3 - Summary of the changes to existing arrangements
Appendices 4,5 and 6 -Trade union submissions

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 led 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 10).
- 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 7).

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 12).

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 26).
- 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 10).

- 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 13).

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 10). 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 11), 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 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 warnings and other punitive action, these will be considered by the Council's Human Resources Appeals Panel (Officers).

10.3 In the case of appeals against dismissal on the grounds of misconduct (i.e. accumulation of misconduct issues), these will be considered by the Council's Human Resources Appeals Panel (Officers).

10.4 In cases of appeal against dismissal on the ground of gross misconduct, these will be considered by the Council's Human Resources Appeals Board (Elected Members).

10.5 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.

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

- 14.1 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 18) outline how this should be managed.
- 14.2 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.

15 TRAINING AND REVIEW

- 15.1 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)

Organisational Development, Human Resources & Communications

***DISCIPLINARY PROCEDURES
For all Council Employees***

(PART 2)

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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 27).
- 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 6).
- 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 10).

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 will always be involved in person at Investigatory and Disciplinary Hearings of cases within this category as they require direct specialist support:

- 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 20).

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 26) 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 10) 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 written or final written warnings which include other punitive action will be heard by the Human Resources Appeals Panel (Officers), 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 23)

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 dismissal will be heard by the Human Resources Appeals Panel (Officers).
- All appeals against gross misconduct dismissal will be heard by the Human Resource Appeals Board (Elected Members).
- 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 relevant 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 21) details the procedure to be followed at the Human Resource Appeals Board (Elected Members) and Appendix 5 (Page 23) details the procedure to be followed by the Human Resources Appeals Panel (Officers).

7 LIST OF APPENDICES

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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)**

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 (MISCONDUCT)

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.

Summary of Proposed Changes

Proposed Change	Current Practice	Benefits of Proposed Change
One Policy for all Council Employees	Currently 3: LGE & Craft, Teachers and Chief Officers.	<ul style="list-style-type: none"> ▪ Standard approach which ensures all employee rights are covered. ▪ Consistency ▪ Ease of reference
Defining Incapacity in terms of ill-health and performance and outlining the difference between capacity and conduct.	Not defined.	<ul style="list-style-type: none"> ▪ Allows officers to categorise more easily. ▪ Is in line with best practice. ▪ Clearly removes issues of genuine ill-health from the procedures.
Categorisation of Cases based on complexity and impact: Cat'1 – Not complex Cat'2 – Moderately complex Cat'3 - Complex	All cases handled in same way.	<ul style="list-style-type: none"> ▪ All affected employees retain their rights and opportunities to present case. ▪ Reduced HR support as appropriate ▪ Efficient and equally effective
Representation - only Trade Union Rep or work colleague.	Anyone can represent employee.	<ul style="list-style-type: none"> ▪ Should limit unnecessary. ▪ Is compliant with ACAS guidelines.

Changes	Current Practice	Benefits of Change
Defining which level of Management can impose sanctions.	Only Teachers policy defines this, the other 2 are silent.	<ul style="list-style-type: none"> ▪ Fits in with case categorisation ▪ Clear and unambiguous ▪ Consistency
Improvement Note as Informal outcome to Disciplinary Hearings replaces oral/verbal warning	Letter of Concern, which is more or less the same thing, exists under Attendance Management but is not generally used in Discipline.	<ul style="list-style-type: none"> ▪ Gives lower level cases an outcome that is not formal but sends a message ▪ Opportunity to improve without a formal sanction being imposed with associated procedures (hearings, appeals etc) ▪ Efficient and equally effective ▪ Duration up to 6 months
Types and Duration of Warnings to become: Written Warning - 9 Months Final Written Warning -12 months + other sanctions such as demotion, redeployment, restricting pay increments etc.	Currently 3 levels;- <ul style="list-style-type: none"> • Verbal warning – live 6 months • Written Warning – live 6 months • Final Written Warning – live 12 months + other punitive action	<ul style="list-style-type: none"> ▪ Consistency ▪ Incremental approach ▪ Reflects seriousness when aligned to new improvement note approach
Limiting delays in proceedings (witnesses, reschedules etc)	Do not define. Can make end to end process too long and difficult to co-ordinate panels and officers.	<ul style="list-style-type: none"> ▪ Ensures all involved have an idea of potential duration from outset. ▪ Minimises un-necessary delays for trivial reasons. ▪ Ensures rights are protected – compliant with ACAS

Changes	Current Practice	Benefits of Change
Expressing who can be investigating / disciplining/ appeal officer in general terms.	Not Currently defined.	<ul style="list-style-type: none"> ▪ Avoids any debate who should be involved ▪ Allows for a smooth transition from one stage to the next
Calling of Witnesses – outlining responsibilities.	Not clearly defined and leads to inconsistency.	<ul style="list-style-type: none"> ▪ Ensures process does not endure due to when witness available. ▪ Ensures balance as management side witnesses are generally called quickly.
Records of Proceedings.	Don't produce as standard in practice however, not expressed in policy.	<ul style="list-style-type: none"> ▪ Minimises work load while maintaining effectiveness ▪ Ensures consistency ▪ Employee/rep' free to take notes
Suspension to allow investigation does not need witness if required	Teachers practice is that must be accompanied – others are silent.	<ul style="list-style-type: none"> ▪ Getting a witness is not always practical if there is an immediate risk ▪ Suspension is not punitive so no rights being affected
<p>All appeals held by officers including misconduct dismissal. Only gross misconduct dismissals heard by HR Appeal Board</p> <p>Note: punitive action short of dismissal also officer led appeal</p>	All appeals – for punitive action/dismissal - heard at HR Appeals Board.	<ul style="list-style-type: none"> ▪ Builds on trial period where appeals against absence warnings held by officers. ▪ Efficient and effective ▪ Still ensures independence as Management Appeals Panel will not previously have been involved.

4th September 2013

Dear Alasdair,

Submission on behalf of GMB, Unite, UCATT – Revised Disciplinary Procedure

GMB, Unite and UCATT have had full consultation on the proposed changes to the Disciplinary Policy and although most of the changes were agreed; there are three areas which we find unacceptable.

- 1) All Dismissal Appeals, not just Gross Misconduct, should be heard by the Elected Members.
- 2) Written Warnings should remain at 6 months, not increased to 9 months.
- 3) Minutes of disciplinary to be provided.

HR Appeals Board

GMB, Unite and UCATT strongly disagree with this change, and find this change to potentially have the most severe impact on our Members, should they find themselves dismissed. Our Members have a view that the elected members being completely independent and not answerable to the officers, will be more likely to give them a fairer hearing.

Written Warning

The argument was that the council believed that an incremental approach was fairer. The trades unions listed would therefore agree, 3 month Verbal, 6 month Written and 9 month Final.

Minutes of Disciplinary

This was used in the past and we wish it to be used in the future. Most council's provide Minutes as it helps with clarity on what was said and therefore eliminates any potential ambiguity for all parties concerned.

Regards,

Louise Gilmour

Paul Bennett

Allan Cameron

GMB Scotland

UCATT

Unite

APPENDIX 5

Unison Inverclyde Branch

Comments on Revised Disciplinary Procedure

It is important to state that Unison have engaged constructively with officers during the discussions and negotiations around proposed changes to the Council's disciplinary policies and procedures. As a result most of the changes proposed have been agreed not just by Unison but by the other Trade Unions as well. Many of these proposed changes provide clarity making the procedures more lucid. There is however one proposal which we find detracts from this and that is in relation to the future role of the HR Appeals Board regarding dismissals.

Elected members are being asked to agree that all appeals against dismissal (except in cases of gross misconduct) will be heard by an HR Appeals Panel and not, as is presently the case, the HR Appeals Board. The term panel being more than slightly misleading as in practice the 'panel' will comprise of a single Corporate Director accompanied by and HR Officer who will act as an advisor.

This proposed change is effectively an extension of a previous Council decision (and one which Unison opposed at the time) relating to appeals against dismissals which were absent related. Since that decision appeals against absence related dismissals have been heard by a single officer.

This new proposal is not a welcome one and one which we would ask Elected members to consider very carefully. The policy of dismissal appeals being heard by Elected members is a long-standing arrangement within Local Government and for good reasons. It is built on the principle that where someone loses their job – as serious as it gets – then it is the employer's duty and responsibility to ensure that the decision to dismiss was the correct one. Not, as would be the case here, the duty and responsibility of a paid official.

In many cases where grounds for appeal are set out, they focus on issues such as mitigation, severity of the decision, proportion or alternative disposals and not necessarily on whether the decision to dismiss was legally fair. In our view, Elected members with their varying degrees of experience in the workplace or industry, are collectively better placed to determine whether a decision to dismiss was the right one in all the circumstances. In deciding whether a decision to dismiss was the correct one, it is important to do so after discussion, dialogue, debate and proper deliberation. This is why committee's or boards are tasked with this responsibility. A single officer may take a professional view but it will still be based on an individual perspective and not a collective one.

Perception also has its place here. Many employees take the view, rightly or wrongly, that having been dismissed by one chief official it is highly improbable that a second chief official will reach a different decision at appeal. The perception also is that elected members are more removed from senior managers and chief officers and so are more objective, neutral and impartial. We are not suggesting there is any evidential basis for this view but it remains an important perception amongst the workforce. If an employee loses their job they are entitled to have a strong degree of faith and belief in

the system of appeal and in our view that can only be achieved if the current arrangements remain in place.

It has been suggested that one benefit of this proposed change will be to make the process of appeal more efficient since Elected members are not always available to meet during normal business hours. It's not really for Unison to comment on the accuracy of this, however it is a matter of fact that all council committee's and meetings of the full council are convened during normal business hours and these bodies meet far more frequently than the HR Appeals board. In any event all of the Trade Unions have indicated their willingness to attend meetings of the HR Appeals board in the evening if that would help.

We would end by restating our belief that this proposal represents an attempt by officers to dilute the duty of members in taking important decisions. Dismissal is a potentially life-changing event with very serious consequences for the affected employee. The process of appeal is not something which should be treated as a mere efficiency measure and we would ask members to reject this proposed change.

The Educational Institute of Scotland

Inverclyde Local Association

Beinn Ime, 40 Merino Road, Greenock PA15 4BY Tel: 01475 725124 Fax: 01475 725124

Ref: TT/INV/EIS

Date: 03/09/2013

Disciplinary Policy: Teachers Trade Unions' submission

Disciplinary policies for teachers are a matter which is devolved to LNCTs. This means that any changes must be negotiated through the formal LNCT. This has not taken place.

We already have a comprehensive and robust policy in place for teachers and so see no need to change the present policy.

We were told that there should be a change in sanctions that can be imposed by Head Teachers i.e. they should now be allowed to impose final written warnings. We were told that this "reflects way other council's going". I have checked with my colleagues in all other councils. Only 2 allow this and none of the others are moving to this. They still limit the sanctions that Head Teachers can impose to verbal or written warnings.

It is totally unacceptable that we are being asked to negotiate with the authority and we are given information which is totally inaccurate.

We would ask therefore that if the council wishes to discuss changes to the discipline policy for teachers it does so through the correct channel which is the formal LNCT.

