

Disciplinary

Procedure



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WEST LoTHIAN COUNCIL
DISCIPLINARY PROCEDURE

(Covering all employees except the Chief Executive and Teachers)

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WEST LOTHIAN COUNCIL
DISCIPLINARY PROCEDURE

(Covering all employees except the Chief Executive and Teachers)

1. INTRODUCTION

- 1.1 The council and trade unions agree that discipline is essential for the conduct of the council's affairs and for the safety and well-being of all employees. It is further agreed that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations.
- 1.2 This procedure takes full account of the provisions contained within the various Schemes of Pay and Conditions of Service as applied to council employees. The procedure also reflects the guidance contained within the [ACAS Code of Practice on Disciplinary and Grievance Procedures](#).
- 1.3 Within the limitation of powers delegated by the council, the Depute Chief Executive is responsible for the management and discipline of the Service. The Depute Chief Executive may delegate authority within the terms of this procedure to nominated officers who may issue oral or written warnings or take punitive disciplinary action as defined in paragraph 7.2 of this procedure. A list of authorised officers (by designation) will be produced and made available to the trade unions.
- 1.4 The Chief Executive is responsible for the management and discipline of Chief Officers. The Chief Executive may delegate authority to the Depute Chief Executive in the case of disciplinary action against a Head of Service. Disciplinary matters in regard to Chief Officers will be dealt with in accordance to the procedural variations set out at Section 14 of this document.

2. COUNSELLING

- 2.1 The council and the trade unions accept that this procedure should be viewed as a means of encouraging improvement in an individual's conduct or performance and not merely as a method of applying sanctions. Supervisors play an important role in the day-to-day management of employees and should seek to deal with minor lapses in conduct or performance through informal counselling in the first instance.
- 2.2 Counselling should normally be a one-to-one discussion between employee and his/her supervisor. The supervisor should discuss with the employee:
- the standards required;
 - the manner in which the employee has failed to meet those standards;
 - the possible reasons for the failure; and
 - the improvement required of the employee.

The supervisor should also consider taking other action that might assist the employee to achieve this improvement (e.g. closer supervision, additional training etc). Counselling does not form part of the formal disciplinary procedure and no formal warnings can be given.

- 2.3 The supervisor will complete a Record of Counselling form (see Appendix 1). The form will be treated as confidential and kept in a secure place out with the employee's personal file. No record of counselling will be kept on the employee's personal file. The employee will also be given a copy of the form.

'Record of Counselling' forms are also available on-line.

- 2.4 Where counselling does not result in the required improvement or where the alleged failure to meet the required standards is considered to be of a more serious nature, the formal procedure will be followed.

3. DISCIPLINARY PROCEDURE - GENERAL

- 3.1 Whenever formal disciplinary action is being contemplated the points of procedure set down in paragraphs 3.2 - 3.5 will be adhered to.

3.2 Investigation

- 3.2.1 A disciplinary hearing will not be convened until the circumstances of the case have been fully investigated.

- 3.2.2 The officer conducting the investigation will seek to establish the facts by carrying out investigatory interviews with relevant persons and, where possible, obtain written, signed statements from witnesses who will be advised that they may be requested to appear at any subsequent disciplinary hearing.

- 3.2.3 An employee who is the subject of a disciplinary investigation may be accompanied by a trade union representative at an investigatory interview. Alternatively the employee may be accompanied by a work colleague or some other person of their choice.

- 3.2.4 The representative's role at the investigatory interview will be limited to the opportunity to make a statement at the end of the Investigatory Interview and not to respond to any questions addressed to the employee.

- 3.2.5 If, following investigations a disciplinary hearing is considered to be unjustified, any written statements obtained and any other documents relating to the investigation will be destroyed (with the exception of matters as detailed at 3.2.6 below).

- 3.2.6 Where investigations concern matters relating to the safety and well-being of child and/or protected adult in receipt of client services, the documents will be kept in a separate record. The documents will be available for inspection by the employee and the employee may add a personal note to the record.

- 3.2.7 If there is a further disciplinary investigation relating to the employee, the documents referred to in paragraph 3.2.6 above will be examined and, where considered relevant, may be taken into account to the extent required by the circumstances of the case. Where an unsubstantiated allegation is taken into account in any disciplinary decision, the written notification will indicate this fact and the reasons for doing so.

3.3 Convening a Disciplinary Hearing

3.3.1 If, following investigations, a disciplinary hearing is considered necessary, the employee concerned will be given at least ten working days written notice of the hearing. The letter will advise the employee of:

- the fact that it will be a formal disciplinary hearing;
- the nature of the complaint(s) with sufficient details;
- the names of any witnesses who will present evidence at the hearing;
- the right to call witnesses or submit statements or other documentation subject to the names of any such witnesses and/or any written submissions being provided in advance to the officer conducting the hearing; and
- the right to be accompanied/represented at the hearing by a trade union official or some other person of their choice.

3.3.2 Copies of any written statements made by individuals who are not available to give evidence in person at the disciplinary hearing will normally be enclosed with the letter referred to in paragraph 3.3.1 above. Where this is not possible, the written statements will be made available prior to the hearing.

3.3.3 In cases of alleged harassment or bullying both the complainant and the person against whom the complaint has been made are entitled to be accompanied/ represented at the hearing by a trade union representative or other person of their choice.

3.4 Conducting a Disciplinary Hearing

3.4.1 As far as possible, the Investigating Officer will not also conduct the disciplinary hearing.

3.4.2 The officer conducting the hearing will ensure that the employee is presented with the facts gathered during the investigation. The investigating officer normally presents the facts and will remain in attendance at the hearing until the presentation of evidence is completed. The officer conducting the hearing may be advised by an officer from Human Resources.

3.4.3 Witnesses, if any, will be called to give their evidence and, after questioning by both parties, will withdraw but will be subject to recall.

3.4.4 The employee, assisted by their representative, if any, will be given adequate opportunity to put forward an explanation and/or defence.

3.4.5 The officer conducting the hearing, assisted by any advisory staff, will consider all the evidence presented with a view to arriving at a decision that is reasonable in all the circumstances.

3.5 Action following a Disciplinary Hearing

3.5.1 Except in cases of oral warnings, any disciplinary action will be notified or confirmed in writing within five working days of the hearing. The letter notifying or confirming such action will be handed to the employee personally or sent by recorded delivery.

3.5.2 A copy of this letter will be sent to the employee's representative, if any.

3.5.3 Where the nominated officer considers that no formal disciplinary action is justified, he/she will inform the employee accordingly and no documents relating to the hearing will be placed on the employee's personal file.

4. ORAL WARNINGS

4.1 Minor offences relating to conduct or performance will result in the employee concerned being given an oral warning by the appropriate nominated officer. The employee will be advised:

- that the warning constitutes the first stage in the formal procedure;
- of the reasons for the warning and the likely consequences of further offences;
- of the date from which the warning will normally be disregarded for disciplinary purposes; and
- of the right of appeal against an oral warning (see section 10 below).

4.2 The nominated officer will complete a 'Record of Oral Warning' form (see Appendix 2). The employee will be given a copy of the form and the original will be placed in the employee's personal file. 'Record of Oral Warning' forms are available on-line.

5. WRITTEN WARNINGS

5.1 A written warning may be issued where:

- an employee who has been issued with an oral warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs; or
- the misconduct or failure in performance is considered to be sufficiently serious to warrant this form of disciplinary action.

5.2 A letter of formal warning will be issued in the name of the officer who conducted the disciplinary hearing and will state:

- that a formal written warning is being given;
- the nature of the unsatisfactory matters dealt with at the hearing;
- the date of any previous oral warning where appropriate;
- the action required by the employee to remedy the matter;
- that subsequent failure in conduct or performance will normally result in more serious disciplinary action;
- that a copy of the warning letter will be placed on the employee's personal file;
- the date from which the warning will normally be disregarded for disciplinary purposes (see paragraph 11.1); and
- the employee's right of appeal (see paragraph 10.1).

6. FINAL WARNINGS

6.1 A final written warning may be issued where:

- an employee who has been issued with a written warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs; or
- the misconduct or failure in performance is of a serious nature warranting this form of disciplinary action.

6.2 The nominated officer who conducted the disciplinary hearing will issue a final written warning. The letter will contain all the information described in paragraph 5.2 above. It will also state that any subsequent failure in conduct or performance will normally result in dismissal.

7. PUNITIVE DISCIPLINARY ACTION

7.1 Punitive disciplinary action may be taken where:

- following a final warning, the employee fails to achieve and maintain the required improvement in conduct or performance or a further act or omission warranting disciplinary action occurs, or
- failure in conduct or performance occurs of a sufficiently serious nature to justify such disciplinary action without prior warning(s).

7.2 Punitive disciplinary action refers to any of the following sanctions:

- the withholding of an annual increment in conjunction with a final written warning;
- suspension without pay for a period normally not exceeding three working days, in conjunction with a final written warning;
- demotion and/or transfer to another job, place of work or service, in conjunction with a final written warning;
- dismissal with due notice; or
- summary dismissal i.e. dismissal without notice, only in cases of gross misconduct (see section 8).

7.3 Where the possibility of punitive disciplinary action arises, the Depute Chief Executive (or another senior nominated officer) will hold a disciplinary hearing with the employee concerned. Following consultation with the Head of Corporate Services, the hearing will be convened and conducted in accordance with the procedure set down in paragraphs 3.2 - 3.5 above. The Head of Corporate Services may, with the agreement of the Depute Chief Executive, attend or be represented at the hearing in an advisory capacity.

7.4 Where punitive disciplinary action is taken, the decision will be notified or confirmed in writing in the name of the officer who conducted the disciplinary hearing and the letter will:

- refer to previous warnings, if appropriate;
- state clearly the punitive disciplinary action taken and the effective date;
- specify the reasons for this action;
- refer to the employee's right of appeal to the Council's Appeals Committee and indicate the date by which notice of appeal should be received; and

- where appropriate, refer to the employee's right to submit a claim of unfair dismissal to an Employment Tribunal and indicate the time limit for submission of such a claim.

7.5 In the case of dismissals, the Chair of the Council Executive will be informed of the action taken.

8. GROSS MISCONDUCT

8.1 An employee will normally be given a final written warning regarding their conduct or performance before dismissal is considered. It is recognised however that an employee may be dismissed without previous warning where gross misconduct is deemed to have occurred.

8.2 For the purpose of this procedure gross misconduct is behaviour of such a nature that the council is unable to tolerate the continued employment of the individual concerned.

8.3 Where gross misconduct is alleged, the Depute Chief Executive or another senior nominated officer, in consultation with the Head of Corporate Services, may suspend the employee on full pay:

- pending further investigations into the circumstances of the case, and/or
- when it is considered to be undesirable for the employee to remain at work prior to the disciplinary hearing.

In the case of alleged gross misconduct against a Depute Chief Executive, the Chief Executive may suspend the Chief Officer on full pay subject to the considerations above.

Written confirmation of the suspension will be forwarded to the employee by recorded delivery within three working days and will state the reasons for the suspension. Suspension in these circumstances will not be regarded as a form of disciplinary action.

8.4 An employee suspended in the circumstances described in paragraph 8.3 will receive full pay during the period of suspension. For this purpose full pay will consist of an employee's normal salary or wage, including elements such as shift allowance, enhanced hours allowance and contractual overtime, where appropriate.

8.5 In certain circumstances (e.g. where an incident occurs on a nightshift or in an isolated location) it may be necessary for a supervisor who has not been delegated formal powers of suspension to effectively suspend an employee on full pay by sending the employee home or removing them from duty without consulting an authorised senior officer. In such circumstances the Depute Chief Executive or another senior nominated officer will be informed as soon as possible and will consult the Head of Corporate Services before deciding whether or not to formally suspend the employee concerned on full pay.

9. PVG REFERRAL

9.1 Where, as a result of disciplinary action, a decision is taken to either dismiss an employee in a regulated position or take action short of dismissal that involves the employee being transferred to a non-regulated position; the Nominated Officer must consult the HR Services Manager on whether it is appropriate to convene a PVG referral panel in accordance with section 6 of the [Policy and Procedure on Protection of Children and Protected Adults](#)

9.2 Where it is determined that a PVG panel should be convened, the Nominated Officer is responsible for requesting that the Head of Corporate Services arranges a meeting of the PVG Referral Panel.

10. CRIMINAL OFFENCES

- 10.1 Where an employee fails to disclose a criminal conviction received prior to commencing or during the course of employment with the council, where such disclosure is required, the matter may be dealt with under the terms of this Disciplinary Procedure.
- 10.2 In addition to disclosing criminal convictions, employees who carry out regulated work with children or protected adults are required to disclose details of any police caution, criminal charge, involvement in a police investigation or disciplinary action by a professional or regulatory body occurring either prior to commencing or during employment with the council. Failure to do so may be dealt with under the terms of this Disciplinary Procedure.
- 10.3 An employee will not be disciplined solely because they have been charged with or convicted of a criminal offence. In all such cases consideration will be given to whether the alleged or proven offence is of a serious nature and the relevance of the offence to the employment relationship between the council and the employee.
- 10.4 In all cases where disciplinary action is being contemplated due to an alleged or proven criminal offence, council officers will investigate the matter as thoroughly as the circumstances permit.
- 10.5 In cases of suspected irregularities relating to the finances of the council or to any other funds managed by the council, Head of Finance will be informed and, if appropriate, an audit investigation will be carried out. The Depute Chief Executive or another senior nominated officer may suspend the employee on full pay in accordance with paragraph 8.3.
- 10.6 Following investigations, the Depute Chief Executive or another senior nominated officer may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.
- 10.7 Where investigations reveal insufficient information to justify holding a disciplinary hearing, consideration of the case will be deferred until further information is available. In these circumstances the employee may be suspended on full pay until further notice.

11. APPEALS AGAINST DISCIPLINARY ACTION

Appeals Against Warnings

- 11.1 Appeals against warnings, oral or written, may be made to the Depute Chief Executive and submitted in writing, indicating the grounds of the appeal, within ten working days of the employee receiving confirmation of the warning.
- 11.2 Appeals against warnings will be heard as soon as possible and normally within ten working days of receiving the written notice of appeal.
- 11.3 Appeals against warnings will be heard by the Depute Chief Executive or a nominated officer who is more senior than the officer who issued the original warning. In the case of appeals against final warnings, the Depute Chief Executive will hear those appeals personally. The employee will be given at least three working days notice in writing of the appeal hearing and will be informed of their right to be accompanied at the hearing by a trade union official or some other person of their choice. The appeal hearing will be conducted in accordance with the procedural rules governing the operation of the Council's Appeals Committee, appropriately adapted for the purpose, contained in paragraphs 5.1 - 6.14 of Appendix 3 to the procedure.
- 11.4 The officer hearing the appeal may confirm, amend or withdraw the disciplinary action

but may not substitute disciplinary action of a more serious form than that originally imposed.

- 11.5 The decision will, if possible, be made known to the employee at the end of the appeal hearing and will in any case be confirmed in writing within three working days. There will be no further right of appeal.
- 11.6 Where, in exceptional circumstances a warning is issued by the Depute Chief Executive in person, any appeal will be referred for consideration by the Council's Appeals Committee.

Appeals Against Punitive Disciplinary Action

- 11.7 Appeals against punitive disciplinary action may be made to the Head of Corporate Services, with a copy to the Depute Chief Executive, and will be submitted in writing, indicating the grounds of the appeal, within ten working days of the employee receiving written notification of the disciplinary action or, in the case of appeals against dismissal with due notice only, within ten working days of the effective date of dismissal. In all cases the date by which the Head of Corporate Services should receive notice of an appeal will be included in the written notification.
- 11.8 The Head of Corporate Services will arrange for the appeal to be considered by the Council's Appeals Committee within twenty working days of receipt of the letter of appeal or as soon as possible thereafter. The appeal will be heard in accordance with the procedure set out in Appendix 3 to this procedure.

Effect of Appeals on Disciplinary Record

- 11.9 If as a result of an appeal, whether at local or national level, any disciplinary action is withdrawn or modified, any written reference thereto on the employee's personal file will be expunged or appropriately amended and the employee and their representative, if any, notified accordingly.
- 11.10 Employees will have a right of access to their personal file to ensure the written reference has been removed or appropriately amended.

12. DISREGARD AND EXPIRY OF DISCIPLINARY RECORDS

- 12.1 Warnings and other formal disciplinary action short of dismissal will normally be disregarded for disciplinary purposes after a period of satisfactory employment. The relevant periods will be as follows:

Disciplinary Action	Disregard Period
Oral Warning	after six months
Written Warning	after twelve months
Final Written Warning (with or without punitive action short of dismissal)	after twenty four months

- 12.2 In determining the level of disciplinary action to be taken in any particular case, account may be taken of a previous disciplinary sanction on record if further

misconduct has occurred within the disregard period. This may result in a higher level of disciplinary sanction being applied in respect of the further incident of misconduct.

- 12.3 Following the disregard period, a record of the disciplinary action will remain on the employee's file and may be taken into account for disciplinary purposes after the expiry of the normal disregard period in the event that the misconduct for which the warning was issued related to the safety and well-being of children and/or protected adults in receipt of client services from the council and is considered to be relevant to the individual circumstances under consideration.
- 12.4 A decision not to disregard a record of disciplinary action where the misconduct relates to the safety and well-being of children and/or protected adults will be notified to the employee at the time the warning is issued. This will also be confirmed to the employee in writing.
- 12.5 The employee has a separate right of appeal against the decision not to disregard in accordance with the arrangements for hearing appeals against disciplinary action.

13. TRADE UNION OFFICIALS

- 13.1 A disciplinary hearing involving an employee who is an accredited trade union representative will not be convened until the circumstances have been discussed with a full-time official of the trade union concerned. Where the possibility of disciplinary action against a trade union representative arises, the Head of Corporate Services will be consulted at the earliest opportunity.
- 13.2 Where gross misconduct is alleged of an accredited trade union representative, the employee may be suspended on full pay after consultation with the Head of Corporate Services. A full-time official of the trade union concerned will be informed of this action as soon as possible and written confirmation of the suspension will be sent to the trade union within three working days. A copy of this letter will be forwarded to the Head of Corporate Services.

14. TIME LIMITS

- 14.1 The time limits contained within this procedure may be varied by mutual agreement.

15. PROCEDURAL VARIATIONS FOR CHIEF OFFICERS

- 15.1 The following variations apply to the disciplinary process for Heads of Service and Depute Chief Executives:
 - the Chief Executive is responsible for the management and discipline of Chief Officers. The Chief Executive may delegate authority to the Depute Chief Executive in the case of disciplinary action against a Head of Service;
 - where the possibility of punitive disciplinary action against a Chief Officer occurs, the Chief Executive or Depute Chief Executive as appropriate, will hold a disciplinary hearing with the officer concerned;
 - where gross misconduct is alleged against a Chief Officer, the Chief Executive or Depute Chief Executive may suspend the officer on full pay in the circumstances outlined at paragraph 8.3 of this procedure;

- appeals against warnings issued by the Depute Chief Executive may be made to the Chief Executive;
- appeals against warnings or punitive action issued by the Chief Executive may be made to the Head of Corporate Services with a copy to the Chief Executive in accordance with the procedures set out in paragraphs 10.2.1 – 10.2.2

RECORD OF COUNSELLING

(Please PRINT)

Employee's Name:
Designation:
Place of Employment:

Counselling:
Date of meeting:
Matters Discussed:
Action required by employee:
Action required by manager (if any):
Monitoring arrangements:

Manager's Name (please PRINT):	
Designation:	
Signed:	Date:

A copy of this record should be given to the employee.

In accordance with the Data Protection Act 1998, this record should be treated as confidential and kept in a secure place out with the employee's personal file.

**DISCIPLINARY PROCEDURE
RECORD OF ORAL WARNING**

(Please PRINT)

Employee's Name:
Designation:
Place of Employment:

Oral Warning:	
Reason(s) for Issuing Oral Warning:	
Date Issued:	
Date to be Normally Disregarded:	
Date to be Expunged:	

I confirm that I issued an oral warning as indicated above in accordance with the council's Disciplinary Procedure.	
Manager's Name (please PRINT):	
Designation:	
Signed:	Date:

A copy of this Record of Oral Warning should be given to the employee.

EMPLOYEE APPEALS COMMITTEE

PROCEDURE FOR CONSIDERATION OF APPEALS AGAINST DISCIPLINARY ACTION

(Covering all employees except the Chief Executive, and Teachers)

1. TERMS OF REFERENCE

- 1.1 The Employee Appeals Committee will be convened to hear an appeal against a decision to:
- (a) dismiss or take other forms of punitive disciplinary action as defined in paragraph 7.2 of the disciplinary procedure; or
 - (b) issue a warning, oral or written, where, exceptionally, the warning has been issued by a Depute Chief Executive or the Chief Executive in person.
- 1.2 The Employee Appeals Committee has delegated power to decide appeals and will be the council's final arbiter on such matters.

2. CONDITIONS RELATING TO AN APPEAL

- 2.1 For the Employee Appeals Committee to be convened notice of appeal against disciplinary action must be lodged with the Head of Corporate Services within ten working days of the appellant receiving written notification of the decision arising out of the disciplinary hearing.
- 2.2 The notice of appeal, which must be in writing, may be lodged by the appellant or their trade union or by some other person of the appellant's choice.
- 2.3 The appellant and their representative, if any, will be given a minimum of ten working days' notice in writing of the date, time and place of the appeal hearing.

3. MEMBERSHIP OF THE EMPLOYEE APPEALS COMMITTEE

- 3.1 The Employee Appeals Committee comprises a panel of eight members. Five members are called to Employee Appeals Committee meetings and three form a quorum.
- 3.2 Where a meeting of the Employee Appeals Committee is adjourned for any reason, only those members in attendance at the original hearing will be eligible to attend the reconvened hearing.

4. REPRESENTATION AND ATTENDANCE OF OFFICERS

- 4.1 The Depute Chief Executive (or representative) will represent the council at the appeal hearing. The council may be represented by the Chief Executive in the case of an appeal by a Head of Service or Depute Chief Executive.

- 4.2 The appellant will have the right to be represented at the appeal hearing by a trade union official or by some other person of their choice. Should the appellant wish to have another party present, a request should be put to the committee.
- 4.3 Committee Services will act as Clerk to the Employee Appeals Committee.
- 4.4 The Head of Corporate Services or representative will act as adviser to the Employee Appeals Committee. At least one adviser to the committee will be present, to be determined on a case-by-case basis.
- 4.5 If an appeal hearing is adjourned, all parties involved will ensure that, other than in exceptional circumstances, the original representatives attend the re-convened hearing for continuity purposes.
- 4.6 Where the appeal relates to disciplinary action taken in respect of inappropriate behaviour towards children or other vulnerable groups, the Chief Social Worker or his/her nominee will act as an adviser to the Employee Appeals Committee on child protection and related matters.
- 4.7 In the case that any party attends a hearing remotely, they will be responsible for ensuring privacy of their surroundings.

5. PROCEDURE PRIOR TO APPEAL HEARING

- 5.1 Following submission of a written notice of appeal, the appellant or their representative will be required to submit to Committee Services:

Within two weeks of council's confirmation of a hearing:

- A proforma with basic information regarding their appeal.

Within four weeks of council's confirmation of a hearing:

- a written statement indicating the grounds of the appeal;
- copies of any written statements made by witnesses for the appellant which were considered at the original disciplinary hearing;
- a copy of any other documents to be placed before the Employee Appeals Committee; and
- the names of any witnesses to be called to give evidence on behalf of the appellant.

- 5.2 The Depute Chief Executive will submit to Committee Services, at least four weeks prior to the hearing date:

- a written statement of the case against the appellant;
- copies of any written statements made by witnesses for the council which were considered at the original disciplinary hearing;
- a copy of any other documents to be placed before the Employee Appeals Committee; and
- the names of any witnesses to be called to give evidence on behalf of the council.

- 5.3 In cases involving dismissal where the decision to dismiss was taken after consideration of medical evidence, whether direct or indirect, a report by the Medical Adviser will be submitted to the committee in addition to the information in 5.2 at least four weeks prior to the hearing date. The Medical Adviser will attend the appeal hearing

as a witness on behalf of the service. Independent medical evidence may be introduced on behalf of the appellant.

- 5.4 Each party's submission will be shared with the other party as soon as practicable.
- 5.5 Each party will be responsible for ensuring attendance of their representatives and witnesses.
- 5.6 Committee Services will issue the agenda for the meeting of the committee, which will contain all the documents submitted under paragraphs 5.1 and 5.2 and, where appropriate, 5.3 above, not less than five working days in advance of the appeal hearing. Documents submitted after the deadlines in 5.1 and 5.2 may only be considered with the committee's permission.
- 5.7 The committee may order such other information and/or documents to be submitted as it may consider appropriate.

6. PROCEDURE TO BE FOLLOWED AT APPEAL HEARING

- 6.1 Witnesses will be excluded until called unless it is agreed that they should be present from the start of the hearing. This decision rests with the two parties. If no agreement can be reached, witnesses will be excluded by default.
- 6.2 The council's representatives will present the case, in the presence of the appellant and their representatives, and may call witnesses.
- 6.3 The appellant or their representatives will have the opportunity to ask questions of the council's representatives and witnesses.
- 6.4 The Employee Appeals Committee members will have the opportunity to ask questions of the council's representatives and witnesses.
- 6.5 The council's representatives will have the opportunity to re-examine witnesses on any matter referred to in their questioning by Employee Appeals Committee members, the appellant or their representatives.
- 6.6 The appellant or their representatives will put the case in the presence of the council's representatives and may call witnesses.
- 6.7 The council's representatives will have the opportunity to ask questions of the appellant, their representatives and witnesses.
- 6.8 The Employee Appeals Committee members will have the opportunity to ask questions of the appellant, their representatives and witnesses.
- 6.9 The appellant or their representatives will have the opportunity to re-examine witnesses on any matters referred to in their questioning by the members of the Employee Appeals Committee or the council's representatives.
- 6.10 The council's representatives, then the appellant or their representatives, will have the opportunity to sum up their cases if they so wish. The summing up will not introduce any new evidence.
- 6.11 If at any stage new facts are alleged or new evidence produced, the Employee Appeals Committee, either at the request of one or both parties or of its own volition, may adjourn the hearing for such period as it may deem reasonable. If any new and important medical evidence is produced, the hearing may be adjourned for a period of not more

than 14 days to allow the appropriate medical reports to be submitted.

- 6.12 At the conclusion of the evidence the council's representatives, the appellant and their representatives and any witnesses will withdraw.
- 6.13 The Employee Appeals Committee, together with the officers appointed to assist the Committee, will deliberate in private, only recalling the council's representatives and the appellant and their representatives 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.
- 6.14 The Employee Appeals Committee will, if practicable, announce its decision to the parties at the conclusion of the hearing, and will include brief reasons for its decision. In any event the decision will be notified, in writing, to the appellant and their representative by Committee Services within three working days of the date of the hearing, including brief reasons for the committee's decision.

7. POWERS OF THE EMPLOYEE APPEALS COMMITTEE IN DISCIPLINARY CASES

- 7.1 The form of the decision of the Employee Appeals Committee will be announced and confirmed in one of the following, as appropriate:
- "that the grounds of the appeal have been substantiated and the appeal be upheld"
 - "that the grounds of the appeal have been substantiated in part and the appeal be upheld to the extent that
 - "that the grounds of the appeal have not been substantiated and the appeal be not upheld".
- 7.2 If the appeal is upheld, the disciplinary action will be withdrawn and any monies due to the appellant will be payable in full. Where the appeal was against a decision to dismiss, the appellant will be reinstated to their former post or, exceptionally, if this is not practicable, to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant.
- 7.3 If the appeal is substantiated in part, the disciplinary action will be withdrawn and an alternative, less serious form of disciplinary action substituted. Where the appeal was against a decision to dismiss (disciplinary or otherwise), the appellant will be either:
- reinstated to their former post or a similar post on no less favourable terms except that a lesser disciplinary penalty will apply; or
 - re-engaged in some other post on terms and conditions which may be determined by the Employee Appeals Committee.
- 7.4 If the appeal is not upheld, the disciplinary action will stand and be regarded as confirmed.
- 7.5 Where the appeal is against a dismissal and that appeal is not upheld, the Employee Appeals Committee may decide that the appellant will be offered re-employment with the council on such terms and conditions as the Employee Appeals Committee may determine.
- 7.6 For the purposes of paragraphs 7.2 – 7.5 above the terms 'reinstatement', 're-engagement' and 'offer of re-employment' will be defined as follows:
- 'reinstatement' is the restoration of the contract of employment between the

appellant and the council as if the dismissal had never taken place. Thus, the outstanding salary/wages for the period the contract ceased to operate will be payable in full unless the council impose an alternative disciplinary penalty of a financial nature i.e. a period of suspension without pay or the withholding of an annual increment. In addition, all rights arising out of continuous employment will be restored as necessary to ensure reinstatement is without detriment;

- 're-engagement' is the engagement of the appellant to another post and/or in another location with effect from the date of dismissal on terms and conditions which may be less favourable than those of the appellant's former post e.g. demotion to a lower graded post. Thus, salary/wages for the period since the dismissal took effect may be payable in accordance with the terms and conditions of re-engagement determined by the Employee Appeals Committee. In addition, all rights arising out of continuous employment will be restored; and
- 'an offer of re-employment' is an offer to employ the appellant under a new contract of employment from a future date which may be determined by the Employee Appeals Committee. The Employee Appeals Committee may also determine the post, its grade, location and other terms and conditions of employment. If an offer of re-employment on the specified terms is accepted, the appellant's continuity of service will be regarded as broken, and continuous employment will be calculated for future purposes from the date re-employment takes effect.

8. REPORTING TO THE FULL COUNCIL

The decision of the Employee Appeals Committee will be reported to the full council at the earliest opportunity.

9. TIME LIMITS

The time limits in this procedure may be varied by mutual agreement.

**Committee Services
October 2024**