

Policy and Sustainability Committee

10:00 AM, Tuesday 30 August 2022

Employment Policies relating to 'Conduct'

Item number
Routine
Wards
Council Commitments

1. Recommendations

- 1.1 To approve the following policies:
 - 1.1.1 Disciplinary for Teaching Staff
 - 1.1.2 Disciplinary Policy for Local Government Disciplinary
 - 1.1.3 Personnel Appeals Committee – Disciplinary Appeals.

- 1.2 To note that these policies have been reviewed and revised to address the recommendations agreed following the Independent Inquiry and Whistleblowing Culture Review by Susan Tanner QC, with Pinsent Mason in 2021.

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Employment Policies related to ‘Conduct’

Conduct Employment Policies

2. Executive Summary

- 2.1 As part of the findings from the Independent Inquiry and Whistleblowing Culture Review in 2021, a number of employment policy recommendations were made including the recommendation to review conduct related employment policies and, where appropriate to revise.
- 2.2 This report focuses on the refreshed policies of Disciplinary for Teaching Staff, Local Government Disciplinary and Personnel Appeals Committee – Disciplinary Appeals Policies.
- 2.2 The revised Disciplinary Policy for Teaching Staff will replace the current Procedure, which was approved at Committee on 23 March 2004. The new Disciplinary Policy for Local Government will replace the current policy, which was approved at Committee on 25 June 2020, and the new Personnel Appeals Committee – Disciplinary Appeals will replace the current policy which was approved at Committee in 2015.

3. Background

- 3.1 These updated policies will action some of the policy-related recommendations of the Inquiry and Review which focus on conduct related policies, guidance and associated learning and systems.
- 3.2 In addition to the recommendations, we also sought feedback on the application and effectiveness of the existing policies through engagement with Trade Unions, line managers and Human Resources colleagues who are regularly involved in supporting the business through the relevant policies. Revisions have been made to policy and supporting documentation accordingly.

4. Main report

- 4.1 While the Disciplinary Policy for Local Government employees was more recently reviewed and approved in 2020, as good practice, we undertook to review it again through the lens of the Inquiry and Review recommendations. As a result, it was found that the policy remained fit for purpose.

- 4.2 Following a review and qualitative stakeholder feedback of the Disciplinary Policy for Teaching Staff, it was felt that no significant amendments to existing procedures were necessary. However, it was agreed that amendments to style, tone and language were required, in line with current approach to policy development at the Council and to bring consistency with the Disciplinary Policy for Local Government employees.
- 4.3 The policy and supporting documentation have been redesigned so that the structure is more concise, and clearer for users to follow. The policy sets out the guiding principles for handling conduct concerns, while the user guide outlines in detail the procedural guidance for both managers and colleagues.
- 4.4 Recommendations from the Inquiry and Review included a requirement for Nominated Officers and Investigation Officers to declare any conflicts of interest prior to the commencement of a formal process. Both Disciplinary policies have been updated to reflect this requirement, and further information as well as a link to the declaration form have been included in the accompanying user guides.
- 4.5 A similar approach of a refresh and rebrand was taken for the Personnel Appeals Committee – Disciplinary Appeals policy. It was also evident within this policy that there was an opportunity to make procedural improvements at several points of the existing process, which included providing more clarity for colleagues on timescales as well the main contacts.
- 4.6 All policies and supporting documents are compliant with the Scottish Negotiating Committee for Teachers (SNCT) and broad principles and recommended practice set out in the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice in relation to Disciplinary and Grievance.
- 4.7 Throughout the policy review project, we have worked with colleagues in Learning to ensure all learning resources and training modules and materials were aligned to the new policies. As a result, a revised e-learning course has been designed to support.

5. Next Steps

- 5.1 An implementation plan, including communications, will be put into effect to relaunch the policies and associated e-learning to raise awareness with colleagues and line managers of the processes to follow when managing disciplinary cases.

6. Financial impact

- 6.1 There is no material impact arising from this report.

7. Stakeholder/Community Impact

- 7.1 These policies meet our legal obligations in relation to formal consultation. The trade unions have been engaged on the new policies and are content with the proposed changes.
- 7.2 In addition to formal consultation, these policies have been assessed for possible impacts on vulnerable groups, people with protected characteristics, equality and human rights and economic factors as part of our integrated impact assessment. As there were no substantial changes to the policies, no impacts were identified through the assessment process.

8. Background reading/external references

- 8.1 N/A

9. Appendices

- 9.1 Disciplinary Policy - Teaching Staff
- 9.2 Disciplinary Policy (LGE)
- 9.3 Personnel Appeals Committee – Disciplinary Appeals

Disciplinary Policy (Teaching Staff)

The Council (we) strive to maintain effective working relationships with and between colleagues. We have a responsibility to maintain acceptable standards of behaviour at work and are committed to supporting and encouraging colleagues to achieve these standards.

Where behaviours fall below what is considered acceptable, the Disciplinary Policy provides a framework to ensure standards of behaviour are applied in a fair, consistent and sympathetic manner.

It is recognised that, in most cases, potential issues of misconduct will be dealt with through the normal day to day discourse between colleagues and their manager. The Disciplinary Policy should only be used when management advice and guidance has failed to produce the required improvement or when the matter is serious enough to require formal action.

Author

Employee Relations & Policy, Human Resources, Corporate Services.

Scope

This policy applies to all Teaching staff whom terms and conditions of employment are regulated by the SNCT.

Purpose

The purpose of this policy is to provide direction and support to colleagues with poor conduct, and where appropriate, take disciplinary action against such colleagues in a firm, fair and consistent manner to ensure there is a change in behaviour.

Review

The policy will be reviewed as and when a change to the existing policy deems this necessary, primarily as a result of: changes to legislation or statute; agreement of new national terms and conditions of service or Government Policy; organisational change; or resulting from changes agreed through Trade Union Consultation.

Local Agreement

This policy is a local collective agreement between the Council and our recognised Trade Unions. We will make every effort to ensure that it is maintained as a local collective agreement. Any changes will be made by agreement. If we cannot agree, either party can end the local collective agreement by giving four months' notice in writing, with the policy ceasing to apply to staff at the end of that period.

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1. Policy Aims

The aim of this policy is to ensure there is a fair, effective and consistent method in place to deal with concerns surrounding conduct and to encourage improvement where conduct is believed to have fallen below acceptable standards, either through the implementation of the informal or formal stages of the process.

This policy is designed to:

- support colleagues in meeting the Council’s standards of conduct;
- provide a framework for establishing whether misconduct has occurred; and
- support managers in managing misconduct issues.

This Disciplinary Policy and User Guide must be followed when a potential misconduct issue has been identified and not resolved through normal day to day supervision arrangements, or where more serious allegations arise. No disciplinary outcome will be decided until the appropriate steps outlined in this policy have been followed and the facts have been established.

The policy and user guide takes full account of the provisions contained within the Scheme of Salaries and Conditions of Service for Teaching Staff and incorporates all of the principles and provisions of the disciplinary framework issued by the Scottish Negotiating Committee for Teachers (SNCT).

This policy relates to matters of conduct and behaviour. Where concerns exist around a Teachers performance, the GTCS Code of Practice on Competence should always be followed. Where the concern relates to the performance of an administrative, managerial or leadership function of a promoted post the procedures will mirror the arrangements laid out in the GTCS Code, especially in respect of support offered. There are more details on the Code in the accompanying User Guide.

2. Roles and Responsibilities

Managers and colleagues must give high priority to both informal and formal aspects set out in the policy to ensure that they are completed as quickly as possible.

All employees are responsible for:

- meeting and maintaining the required standards of conduct; and
- meeting and maintaining any externally set occupational registration requirements and/or professional standards of conduct.

All managers are responsible for:

- making sure that they and their team members are aware of the Council's required standards of conduct;
- making sure that they and their team members are aware of any externally set occupational requirements and/or professional standards;
- enforcing these and taking action to improve conduct where necessary; and
- handling any disciplinary issue sensitively, fairly and within a reasonable timescale.

Further information on roles and responsibilities can be found in the User Guide.

3. Expectations of Conduct

The standards of conduct we are all expected to follow are set out in the Employee Code of Conduct. We are expected to maintain these professional and reasonable standards of conduct at work.

The standards of conduct required from all colleagues are set out in a range of policies including (but not limited to) the:

- Employee Code of Conduct
- Disciplinary Code
- Anti-bribery Policy
- Policy on Fraud Prevention
- ICT Acceptable Use Policy

These policies are available on the Orb along with supporting guidance. Colleagues who don't have access to the Orb can access them on the external website, or request copies from their manager, askHR, or their trade union representative if they are a member.

Occupations which are governed by rules and professional standards of conduct set by external regulatory bodies must also be adhered to. Failure to meet and maintain these may result in disciplinary action being taken, up to and including dismissal.

The Council has a statutory duty to notify some external registration and professional bodies when certain types of misconduct has taken place or when some forms of disciplinary action has been taken. These external bodies include:

- The General Teaching Council
- The Care Inspectorate
- Police Scotland
- Disclosure Scotland

If you think you need to contact a regulatory body surrounding disciplinary action that's been taken, you should contact askHR. You can find out more about this on the Orb.

Misconduct

Misconduct is behaviour that is considered unacceptable at work. It can also include unacceptable behaviours outside work if it impacts on your contract of employment.

Gross misconduct

Gross misconduct is behaviour and/or conduct that is so serious that your employment with us will normally be brought to an end without notice or pay in lieu of notice (summary dismissal). Gross misconduct can also occur out with the workplace.

There are more details surrounding misconduct and gross misconduct in the Disciplinary Code, including examples of each.

4. Support and Counselling

Managers should always consider whether it is possible to resolve minor conduct issues informally. This is most likely to be possible and appropriate where the alleged misconduct is not of a serious nature.

Minor cases of misconduct and most cases of poor performance may be best dealt with by informal advice, coaching and counselling rather than through the disciplinary procedure. Line managers need to ensure that problems are discussed with the objective of encouraging and helping colleagues to improve. It is important that colleagues understand what has to be done, how performance and conduct will be reviewed and over what period. Colleagues should be made aware of what action will be taken if their performance or conduct does not improve.

In many circumstances, a confidential conversation between the colleague and the line manager is all that's necessary to resolve an issue. On other occasions, it may be appropriate to hold a series of conversations, which could form part of regular one-to-one meetings, to ensure the necessary support and review is in place.

The purpose of these discussions is to ensure that the colleague understands the nature of the concerns, to provide them with the opportunity to respond, to look at what supports the colleague might require and, where appropriate, to explain the improvement expected of them.

A request to attend these meetings should not be unreasonably refused by the colleague. Similarly, any requests to be accompanied by a work colleague or trade union representative at such a meeting should not unreasonably be refused.

Further information on resolving minor conduct issues informally can be found in the User Guide.

5. Formal Stages

Where more serious or repeated misconduct occurs, this should be dealt with using the formal stages of the policy. At this stage, a Nominated Officer (senior manager with the authority to dismiss for more serious conduct) will be appointed to manage the formal stages and chair any disciplinary proceedings.

A potential conflict of interest might arise from relationships and or allegiances, which may influence one's judgments or actions. The Declaration of Independence form should be completed by the Nominated Officer and the Investigating Officer prior to the commencement of formal process. Further details can be found in the User Guide.

Disciplinary Policy

The Council (we) strive to maintain effective working relationships with and between colleagues. We have a responsibility to maintain acceptable standards of behaviour at work and are committed to supporting and encouraging colleagues to achieve these standards.

Where behaviours fall below what is considered acceptable, the Disciplinary Policy provides a framework to ensure standards of behaviour are applied in a fair, consistent and sympathetic manner.

It is recognised that, in most cases, potential issues of misconduct will be dealt with through the normal day to day discourse between colleagues and their manager. The Disciplinary Policy should only be used when management advice and guidance has failed to produce the required improvement or when the matter is serious enough to require formal action.

Author

Employee Relations & Policy, Human Resources, Corporate Services.

Scope

This policy applies to all Council colleagues, except Teachers and Chief Officers

Purpose

The purpose of this policy is to provide direction and support to colleagues with poor conduct, and where appropriate, take disciplinary action against such colleagues in a firm, fair and consistent manner to ensure there is a change in behaviour.

Review

The policy will be reviewed as and when a change to the existing policy deems this necessary, primarily as a result of: changes to legislation or statute; agreement of new national terms and conditions of service or Government Policy; organisational change; or resulting from changes agreed through Trade Union Consultation.

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1. Policy Aims

The aim of this policy is to ensure there is a fair, effective and consistent method in place to deal with concerns surrounding conduct and to encourage improvement where conduct is believed to have fallen below acceptable standards, either through the implementation of the informal or formal stages of the process.

This policy is designed to:

- support colleagues in meeting the Council's standards of conduct;
- provide a framework for establishing whether misconduct has occurred; and
- support managers in managing misconduct issues.

This Disciplinary Policy and User Guide must be followed when a potential misconduct issue has been identified and not resolved through normal day to day supervision arrangements, or where more serious allegations arise. No disciplinary outcome will be decided until the appropriate steps outlined in this policy have been followed and the facts have been established.

This policy relates to matters of conduct and behaviour. Where concerns exist around performance, these should be managed through the Performance Management Policy instead, however, please seek advice from the HR Case Management team for advice, if you are unsure.

2. Roles and Responsibilities

Managers and colleagues must give high priority to both informal and formal aspects set out in the policy to ensure that they are completed as quickly as possible.

All employees are responsible for:

- meeting and maintaining the required standards of conduct; and
- meeting and maintaining any externally set occupational registration requirements and/or professional standards of conduct.

All managers are responsible for:

- making sure that they and their team members are aware of the Council's required standards of conduct;
- making sure that they and their team members are aware of any externally set occupational requirements and/or professional standards;
- enforcing these and taking action to improve conduct where necessary; and
- handling any disciplinary issue sensitively, fairly and within a reasonable timescale.

3. Expectations of Conduct

The standards of conduct we are all expected to follow are set out in the Employee Code of Conduct. We are expected to maintain these professional and reasonable standards of conduct at work.

The standards of conduct required from all colleagues are set out in a range of policies including (but not limited to) the:

- Employee Code of Conduct
- Anti-bribery Policy
- Policy on Fraud Prevention
- ICT Acceptable Use Policy

These policies are available on the Orb along with supporting guidance. Colleagues who don't have access to the Orb can access them on the external website, or request copies from their manager, askHR, or their trade union representative if they are a member.

Occupations which are governed by rules and professional standards of conduct set by external regulatory bodies must also be adhered to. Failure to meet and maintain these may result in disciplinary action being taken, up to and including dismissal.

The Council has a statutory duty to notify some external registration bodies and professional when misconduct has taken place or when disciplinary action has been taken. These external bodies include:

- The Scottish Social Services Council
- The Care Inspectorate
- Police Scotland
- Disclosure Scotland

If you think you need to contact a regulatory body surrounding disciplinary action that's been taken, you should contact askHR. You can find out more about this on the Orb.

Misconduct

Misconduct is behaviour that is considered unacceptable at work. It can also include unacceptable behaviours outside work if it impacts on your contract of employment.

Gross misconduct

Gross misconduct is behaviour and/or conduct that is so serious that your employment with us will normally be brought to an end without notice or pay in lieu of notice (summary dismissal). Gross misconduct can also occur outwith the workplace.

There are more details surrounding misconduct and gross misconduct in the User Guide, including examples of each.

4. Informal Resolution

Managers should always consider whether it is possible to resolve minor conduct issues informally. This is most likely to be possible and appropriate where the alleged misconduct is not of a serious nature.

In many circumstances, a confidential conversation between the colleague and the line manager is all that's necessary to resolve an issue. On other occasions, it may be appropriate to hold a series of conversations, which could form part of regular one-to-one meetings, to ensure the necessary support and review is in place.

The purpose of these discussions is to ensure that the colleague understands the nature of the concerns, to provide them with the opportunity to respond and, where appropriate, to explain the improvement expected of them. A record should be retained of these discussions to support the process and ensure

clarity. The retention period will vary depending on the relevant timescales for improvement but should not exceed 3 months.

As informal resolution is not formal disciplinary action, the team member does not have the right to be accompanied by a work colleague or trade union representative although requests would be considered in some circumstances, and where it is agreed that their attendance would be beneficial to informal resolution.

Further information on achieving informal resolution can be found in the User Guide.

5. Formal Stages

Where more serious or repeated misconduct occurs, this should be dealt with using the formal stages of the policy. At this stage, a Nominated Officer (senior manager with the authority to dismiss for more serious conduct) will be appointed to manage the formal stages and chair any disciplinary proceedings.

A potential conflict of interest might arise from relationships and or allegiances, which may influence one's judgments or actions. The Declaration of Independence form should be completed by the Nominated Officer and the Investigating Officer prior to the commencement of formal process. Further details can be found in the User Guide.

Establishing the facts

The Nominated Officer will appoint an Investigating Officer to gather facts about the alleged misconduct, which will include interviewing the colleague and any relevant witnesses.

The investigation should be completed without unnecessary delay and the findings will be reported back to the Nominated Officer. It is then the role of the Nominated Officer to decide whether there is a case to answer at disciplinary hearing

An indicative timescale for completion of the investigation will be provided and clearly explained to the colleague at the outset. This will be provided with the understanding that timescales may need to change (typically extended) where, for example, new information comes to light that requires further investigation or where there are unavoidable delays. It's the responsibility of the Nominated Officer to ensure the colleague is kept informed of progress and of any delays.

It is the Nominated Officer's role to appoint an appropriate Investigating Officer for the case, considering any expertise required and any potential conflicts of interest. The Investigating Officer and Nominated Officer cannot be the same person.

Colleagues may be accompanied at investigation interviews by an accredited trade union representative/official or work colleague.

Formal hearing

If the Nominated Officer decides that there is a disciplinary case to answer, then the colleague who the allegations are being made about will be notified in writing giving at least 7 days' notice and asked to attend a disciplinary hearing.

The notification should contain details of the alleged misconduct, the Investigating Officer's report, witness statements and any other relevant evidence gathered at the investigation stage, so that the colleague and their representative can prepare fully for the disciplinary hearing. The notification should also include the possible consequences to the allegations being upheld following the disciplinary hearing.

If the alleged misconduct is upheld, the Nominated Officer can issue one of a number of possible sanctions, which are:

- written warning;
- final written warning;
- punitive action short of dismissal (such as final written warning and demotion); or
- summary dismissal.

Where serious or gross misconduct is alleged, a Nominated Officer will consider temporarily redeploying the colleague or, where this is not appropriate, suspending the colleague on full pay as a precautionary measure. Where a Nominated Officer has not yet been appointed or is not available, a Head of Service can decide to suspend until the Nominated Officer has conducted an initial review of the case. Where a period of precautionary suspension with pay is considered necessary, this should be as brief as possible, kept under review and it should be made clear that precautionary suspension is not considered disciplinary action.

At formal stages of the process, colleagues have the right to be represented by:

- an accredited trade union representative;
- another Council colleague; or
- an official employed by a trade union.

If a colleague prefers to be accompanied by another Council colleague, they will be allowed reasonable time off with pay to act as the companion. Separate arrangements apply if their representation is a trade union official.

Further information on how the formal stages should be managed can be found in the User Guide.

6. Appeals

Where an employee feels that disciplinary action taken against them is unfair, they can appeal against the decision. The appeals process differs slightly, depending on the level of the action taken.

Appeal against Written Warning or Final Written Warning

Appeals should be made in writing to the relevant manager or another manager one level above the manager who issued the original warning, indicating the grounds of appeal within 14 calendar days of receiving the outcome of the disciplinary hearing.

The appeal hearing should be arranged without reasonable delay, normally within 4 weeks of receipt of the appeal submission or as soon as reasonably possible if that timescale cannot be met.

Appeals against dismissal and action short of dismissal

Where an employee wishes wants to appeal against dismissal or action short of dismissal, they must do so in writing, using the Notification of Appeal form. This should be sent along with any documents relevant to the appeal within 14 calendar days of receiving the outcome of the disciplinary hearing.

Arrangements will be made for the appeal to heard within a month or as soon as reasonably possible if that timescale cannot be met. Committee Services will issue the agenda and papers for the meeting of the Personnel Appeals Committee no less than 5 calendar days in advance of the appeal hearing.

Further information on the appeals process and where to submit appeals to can be found in the User Guide.

Establishing the facts

The Nominated Officer will appoint an Investigating Officer to gather facts about the alleged misconduct, which will include interviewing the colleague and any relevant witnesses.

The investigation should be completed without unnecessary delay and the findings will be reported back to the Nominated Officer. It is then the role of the Nominated Officer to decide whether there is a case to answer at disciplinary hearing

An indicative timescale for completion of the investigation will be provided and clearly explained to the colleague at the outset. This will be provided with the understanding that timescales may need to change (typically extended) where, for example, new information comes to light that requires further investigation or where there are unavoidable delays. It's the responsibility of the Nominated Officer to ensure the colleague is kept informed of progress and of any delays.

It is the Nominated Officer's role to appoint an appropriate Investigating Officer for the case, considering any expertise required and any potential conflicts of interest. The Investigating Officer and Nominated Officer cannot be the same person.

Formal hearing

If the Nominated Officer decides that there is a disciplinary case to answer, then the colleague who the allegations are being made about will be notified in writing giving at least 10 working days' notice and asked to attend a disciplinary hearing.

The notification should contain details of the alleged misconduct, the Investigating Officer's report, witness statements and any other relevant evidence gathered at the investigation stage, so that the colleague and their representative can prepare fully for the disciplinary hearing. The notification should also include the possible consequences to the allegations being upheld following the disciplinary hearing.

If the alleged misconduct is upheld, the Nominated Officer can issue one of a number of possible sanctions, which are:

- oral warning;
- written warning;
- final written warning
- punitive action short of dismissal (such as final written warning and demotion); or
- summary dismissal.

Where serious or gross misconduct is alleged, a Nominated Officer will consider temporarily redeploying the colleague or, where this is not appropriate, suspending the colleague on full pay as a precautionary measure. Where a Nominated Officer has not yet been appointed or is not available, a Head of Service can decide to suspend until the Nominated Officer has conducted an initial review of the case. Where a period of precautionary suspension with pay is considered necessary, this should be as brief as possible, kept under review and it should be made clear that precautionary suspension is not considered disciplinary action.

At formal stages of the process, colleagues have the right to be represented by:

- an accredited trade union representative;
- another Council colleague; or
- an official employed by a trade union.

If a colleague prefers to be accompanied by another Council colleague, they will be allowed reasonable time off with pay to act as the companion. Separate arrangements apply if their representation is a trade union official.

Further information on how the formal stages should be managed can be found in the User Guide.

6. Appeals

Where an employee feels that disciplinary action taken against them is unfair, they can appeal against the decision. The appeals process differs slightly, depending on the level of the action taken.

Appeals against Oral, Written or Final Written Warning

Appeals should be made in writing to the relevant manager or another manager one level above the manager who issued the original warning, indicating the grounds of appeal within 10 working days of receiving the outcome of the disciplinary hearing.

The appeal hearing should be arranged without reasonable delay, normally within 10 working days of receipt of the appeal submission or as soon as reasonably possible if that timescale cannot be met.

Appeals against dismissal and action short of dismissal

Where an employee wishes to appeal against dismissal or action short of dismissal, they must do so in writing, using the Notification of Appeal form. This should be sent along with any documents relevant to the appeal within 14 calendar days of receiving the outcome of the disciplinary hearing.

Arrangements will be made for the appeal to be heard within a month or as soon as reasonably possible if that timescale cannot be met. Committee Services will issue the agenda and papers for the meeting of the Personnel Appeals Committee no less than 5 calendar days in advance of the appeal hearing.

Further information on the appeals process and where to submit appeals to can be found in the User Guide.

Personnel Appeals Committee – Disciplinary Appeals

The Personnel Appeals Committee will hear an appeal against a decision to dismiss or take other forms of punitive disciplinary action as defined in the Council’s disciplinary policy.

The Personnel Appeals Committee will have delegated power from the Council to decide disciplinary appeals and will be the Council’s final arbiter on such matters.

The Personnel Appeals Committee will comprise of nine members the City of Edinburgh Council who have been trained in the relevant policies and procedures. In relation to the hearing of any appeal the following provisions will apply:-

- Where the Convener or Vice-Convener of any Standing Committee or Sub-Committee which has a service responsibility for the decision, which is the subject of appeal, is also a member of the Personnel Appeals Committee, he/she will be excluded from hearing that appeal;
- Where a vacancy exists at any meeting of the Personnel Appeals Committee, that vacancy may be filled for that meeting by another member of the Council from within the same political group who has undergone the relevant training;
- Where a meeting of the Personnel Appeals Committee is adjourned for any reason only those members in attendance at the original hearing will be eligible to attend the re-convened hearing;
- Three members will form a quorum at meetings of the Personnel Appeals Committee.

Author

Employee Relations & Policy, Human Resources, Corporate Services.

Scope

This policy applies to all Council colleagues, former council employees and Elected Members.

Purpose

This policy outlines the process for colleagues to follow when lodging an appeal against a decision to dismiss or other forms of punitive disciplinary action, and how the Personnel Appeals Committee will consider these appeals.

Review

The policy will be reviewed as and when a change to the existing policy deems this necessary, primarily as a result of: changes to legislation or statute; agreement of new national terms and conditions of service or Government Policy; organisational change; or resulting from changes agreed through Trade Union Consultation.

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1. Lodging an appeal

Notice of an appeal against disciplinary action must be submitted **within 14 calendar days** of the appellant receiving written confirmation of the decision arising out of the disciplinary hearing.

The notice of appeal must be submitted on the **Notification of Appeal Form** and may be lodged by the appellant, or their representative as set out in the Disciplinary Policy. Any additional documents relevant to the appeal should be sent with the Notification of Appeal Form.

The Notification of Appeal Form, and any associated papers, must be sent to the Service Director – Legal and Assurance who will then send on to the Service Director – HR for assessment.

The appellant should also provide the name of any witness they wish to attend the hearing. Only witnesses who were present at the previous disciplinary hearing will be allowed to attend the appeal.

2. Procedure before the appeal hearing

Following notification of an appeal, the Service Director – Legal and Assurance will acknowledge receipt of the appeal. The Service Director – HR will arrange for an assessment to be carried out on whether the appeal meets the requirements for competency, in accordance with the Council's Disciplinary Policy.

The Service Director – HR will advise the Service Director – Legal and Assurance of the outcome within 7 calendar days of receiving the appeal form. The Service Director – HR can seek further information from the appellant.

Within 2 calendar days of receiving the assessment outcome from the Service Director – HR, the Service Director – Legal and Assurance will:

- a) advise the appellant and their representative if they meet the requirements for appeal; and
- b) notify the relevant Nominated Officer of the appeal and send them the appellant's appeal papers.

Within 14 calendar days of receiving this notification, the Nominated Officer of the appeal must provide a written response to the appeal which should be sent to the Service Director – Legal and Assurance using the Appeal Response Form.

Any documents relevant to the appeal response should be sent with the Appeal Response Form. The Nominated Officer should also provide the name of any witness they wish to attend the hearing. Only witnesses who were present at the previous disciplinary hearing will be allowed to attend the appeal.

On behalf of the Service Director – Legal and Assurance, Committee Services will make arrangements for an appeal to be heard **within a month** of receiving notification of the appeal, or as soon as possible if that timescale cannot be met, however all parties will be informed of any delays and the reasons. They will issue the agenda and papers for the meeting of the Personnel Appeals Committee a maximum of 10, and not less than 5, calendar days in advance of the appeal hearing.

The timescales in this policy may be varied by mutual agreement.

3. Representation and attendance at an appeal

The appellant will have the right to be represented at the appeal hearing by:

- an accredited workplace trade union representative;
- another Council employee; or
- an official employed by a trade union.

The Nominated Officer or other appropriate senior officer will act as the Council's representative at the appeal hearing and may be accompanied by an HR Consultant.

On behalf of the Service Director – Legal and Assurance a representative(s) from Committee Services will act as Clerk to the Personnel Appeals Committee.

On behalf of the Service Director – HR a representative(s) from HR will act as Adviser to the Personnel Appeals Committee.

Witnesses will be excluded until called unless it is agreed by the committee that they should be present from the start of the hearing.

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. Procedure at the appeal hearing

Presentation of Appeal

The appellant or their representative will put forward their case in the presence of the Council's representative(s) and may call witnesses.

The Council's representative(s) will have the opportunity to ask questions of the appellant, their representative(s) and their witnesses.

The members of the Personnel Appeals Committee will have the opportunity to ask questions of the appellant, their representative(s) and their witnesses.

The appellant or their representative(s) will have the opportunity to re-examine their witnesses on any matters referred to in their questioning by the members of the Personnel Appeals Committee, or the Council's representative(s).

Presentation of Response

The Council's representative will put forward the case, in the presence of the appellant and their representative, and may call witnesses.

The appellant or their representative will have the opportunity to ask questions of the Council's representative(s) and their witnesses.

The members of the Personnel Appeals Committee will have the opportunity to ask questions of the Council's representative(s) and their witnesses.

The Council's representative(s) will have the opportunity to re-examine their witnesses on any matter referred to in their questioning by members of the Personnel Appeals Committee, the appellant or their representative.

Summing Up

Firstly, the appellant or their representative and then the Council's representative will have the opportunity to sum up their cases if they so wish. The summing up will not introduce any new matters.

Decision

If at any stage new facts are alleged or new evidence produced, the Personnel 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.

At the conclusion of the evidence the Committee Services representative will advise the appellant and their representative that the decision of the Committee will be provided in writing **within 10 calendar days**. The Council's representative, their HR Consultant, the appellant and their representative and any witnesses will then withdraw.

The Personnel Appeals Committee, together with their Adviser(s), will deliberate in private.

Committee Services will write to both parties to advise them of the Personnel Appeals Committee decision, and the reason(s) for their decision, **within 10 calendar days** of the date of the hearing.

There is no further internal right of appeal.

5. Possible outcomes in disciplinary appeals

The decision of the Personnel Appeals Committee will be one of the following, as appropriate:-

- that the disciplinary decision was fair and the appeal is not upheld; or
- that the disciplinary decision was unfair and the appeal is upheld.

Disciplinary Decision was Fair

If the disciplinary decision was fair and the appeal is not upheld then the disciplinary action will remain in place.

Disciplinary Decision was Unfair

If the disciplinary decision was unfair and the appeal is upheld, the Personnel Appeals Committee can decide to withdraw the disciplinary action completely or to replace it with a lesser sanction as follows:

- (a) appeal against dismissal -
- reinstatement to former post, or
 - reinstatement to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant, or
 - a lesser penalty may also be given in accordance with the Council's disciplinary policy e.g., a final written warning.

Any salary/wages due to the appellant will be repaid in full.

- (b) appeal against action short of dismissal -
- replace with lesser penalty in accordance with the Council's disciplinary policy e.g., a final written warning.