

<b>REPORT TO:</b>		Management Review Committee	
<b>DATE:</b>		10 April 2019	
<b>PORTFOLIO:</b>		Cllr Joyce Plummer - Resources	
<b>REPORT AUTHOR:</b>		Kirsten Burnett, Head of HR	
<b>TITLE OF REPORT:</b>		Revised Disciplinary Procedure	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>No</b>	Not applicable	
<b>KEY DECISION:</b>	<b>No</b>	If yes, date of publication:	

## 1. Purpose of Report

- 1.1 To seek formal approval of a revised Disciplinary Procedure.

## 2. Recommendations

- 2.1 That Management Review Committee approves the proposed procedure.
- 2.2 That the Head of Policy and Organisational Development implements the new procedure, including training for managers via the Hyve e-learning system.

## 3. Reasons for Recommendations and Background

- 3.1 The current policy has been in place since 2014. As it is a key (and contractual) HR policy, it is good practice to review this regularly. In addition, there is a gap in our local procedures for Chief Officers, as they are excluded from the current procedure and are covered by specific JNC terms and conditions.
- 3.2 A number of further changes are suggested to add clarity and learn from previous cases.
- 3.3 The key changes are as follows:

<b>2. Scope</b>	
2.2a	Reference to the Constitution covering the 3 statutory officers.
2.2b	Link to Appendix 4 for the procedural differences applying to Chief Officers on JNC terms and conditions.
2.2c	Link to PIP for staff on probation.
<b>3. General Principles</b>	
3.2	Addition of an overall statement of responsibility.
3.6	Clarification of what is meant by working days.

<b>4. Informal</b>	
4.3	Clarification that there is no right to be accompanied at informal meetings.
<b>5. Formal</b>	
5.1	Amend to state that meeting will establish broad areas of concern – allows for flexibility depending on circumstances and differentiates this from a more formal investigation process.
5.4	Reference to covert surveillance. (The GMB union has asked for further discussion around how surveillance, including overt CCTV, is used in practice and this will be an item at the next JNCC. This does not affect this proposed policy.)
<b>6. Suspension</b>	
6.1	Clarify that suspension may be considered at outset of or during the investigation.
<b>7. Investigation</b>	
7.1	Clarification of the purpose of investigation and role of investigating officer.
7.3	Include reference to investigation meeting and notice requirements.
7.4	What will happen if the employee is not well enough to attend investigation meeting.
7.5	Deals with how any new allegations will be dealt with.
<b>9. Disciplinary sanctions</b>	
9.1	Clarification that the date of actual misconduct will determine whether a warning is live, not the date of the hearing.
9.3e	Reference to lease car in dismissal cases.
9.5	Further guidance re cyclical trends – an expired warning will not be relied on to dismiss but may be part of the reason why a hearing manager did not reduce a sanction.
<b>10. Appeals</b>	
10.2	Deals with new evidence produced at appeal stage.
10.4	Deals with appeals being a review rather than a rehearing unless exceptional circumstances.
<b>11. Gross Misconduct</b>	
11.1	<p>Additions:</p> <ul style="list-style-type: none"> <li>h. unauthorised possession or removal of Council property or data, or property belonging to another employee or customer, or deliberately or negligently causing the loss of such property or data;</li> <li>m. posting derogatory, offensive, discriminatory or defamatory comments online (for example on social media) about the Council, its employees or customers;</li> <li>n. attending work with alcohol or illegal drugs in the system above the workplace cut-off levels;</li> <li>o. bringing illegal drugs or other illegal substances or weapons on to Council premises, workplaces or vehicles;</li> <li>s. unauthorised absence, or unacceptable attendance or punctuality, including failure to return from a period of annual leave or other approved leave of absence;</li> </ul>

<b>12. Right to be accompanied</b>	
12.2	Ability for Council to limit choice at investigation stage.
12.3	Note that it is the Council's discretion (not a statutory right) to allow a rep at investigation stage, providing this does not unduly delay matters.
12.4	No right at informal meetings.
12.7	What happens if a rep is not available.
<b>14. Witnesses</b>	
14.1	Additional detail about expectations on witnesses.
14.4	What happens if an employee wishes to call a witness.
<b>15. Grievances</b>	
15.2	Additional clarity on how the council will deal with overlapping grievance / disciplinary issues.
<b>16. Criminal matters and conduct outside work</b>	
16.	2 separate sections are now merged.
16.2	Link to Whistleblowing Policy
16.3	Need to inform manager if convicted of an offence which may be relevant to Council role.
<b>20.</b>	<b>Data protection – new section</b>
<b>21.</b>	<b>Safeguarding – new section</b>
<b>Appendices</b>	
Appendix 1	Shorter – focus on key details
Appendix 4	Chief Officers' procedure
Appendix 5	Template investigation report

#### **4. Alternative Options considered and Reasons for Rejection**

4.1 **None.**

#### **5. Consultations**

5.1 There has been extensive consultation with Trade Unions via JNCC and the policy changes agreed.

#### **6. Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	None
<b>Legal and human rights implications</b>	The policy is in line with relevant employment legislation and case law. It forms part of the contract of employment and the proposed changes will apply in line with our collective bargaining arrangements.
<b>Assessment of risk</b>	
<b>Equality and diversity implications</b> <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	See CFA, attached.

## **Customer First Analysis – Disciplinary Procedure**

### **1. Purpose**

- The purpose of the policy is to outline the expected standards of conduct and to outline what will happen if the conduct of employees falls below that what is expected.
- The policy is designed to benefit employees and managers by providing a fair and consistent process for dealing with conduct matters in a timely manner. It also aims to support employees to make the necessary changes to improve conduct. It also ensures compliance with employment legislation.
- Managers in consultation with HR are responsible for applying the policy.
- Inconsistent or bias application of the policy would prevent the effectiveness of the policy from a corporate perspective. This would also put the council at risk if employment legislation is breached.

### **2. Evidence**

- The application of the policy is monitored every year as part of the annual [Workforce Report](#).
- Evidence on the fairness/ consistency of the policy can also be gathered through complaints and appeals against its application and sanctions.
- Information on its application is broken down into the Equality groups and reflected in the workforce plan.
- This information is widely available to stakeholders, managers/trade union and staff.

### **3. Impact**

Through equality monitoring, any trends in the disproportionate application of the policy can be identified and addressed. No specific negative impact has been identified.

### **4. Actions**

- Continual monitoring and dissemination of the application with the equality groups and reflected in the workforce report.
- Consultation with Trade Unions (e.g. through LJCC) on its consistent application and review the reasons for appeals/complaints regarding its application.
- Ensure that reasonable adjustments are considered for those with protected characteristics.
- Training for Managers on the consistent application of the policy.

Kirsten Burnett  
Head of HR  
25 May 2018