

*REVIEW OF WORKPLACE
INVESTIGATIONS
IN
CARDIFF COUNCIL*

MARCH 2015

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INTRODUCTION

Cardiff Council sets standards of performance and conduct for the workforce that are reinforced by its rules and regulations. Where a formal approach is needed, then procedures help Cardiff Council to follow the law, and be fair and consistent.

Disciplinary procedures may be used for problems with employees' conduct or performance, and the main aim should be to improve an employee's performance or correct their behaviour, and not punish them. Grievance procedures are used for considering problems or concerns that employees want to raise with the Council. Discipline and grievances are primarily about people, not just processes. Many potential disciplinary or grievance issues can, and should be, resolved informally, as that is normally less time consuming and damaging to working relationships. It is not known to what extent early resolution of workplace disputes happens in this organisation.

Workplace Investigations, as part of Grievance or Disciplinary procedures within Cardiff Council are designed to support effective management by enabling quick, cost-effective resolution of workplace issues. Feedback from the recent employee engagement roadshows indicated that some Council HR processes are taking too long to conclude, including disciplinary procedures. There is no monitoring or reporting of investigations at senior level, including the length of time investigations are taking, and a number of employees are suspended from duty on full pay for long periods of time.

Anecdotal evidence suggests that sickness absence levels are higher amongst people who are undergoing investigations. However, there is currently no means of reporting on these specific sickness absence levels, so the true extent of the problem is not known.

A further issue is that workplace Investigations are undertaken in addition to the "day job" for Investigating officers and Disciplinary Hearing Chairs. There is currently no training programme available in how to undertake an Investigation or Hearing, nor any coaching or mentorship scheme. A flawed or incomplete investigation can undermine the entire disciplinary process, and, in the worse case scenario, leaves the Council vulnerable to claims for unfair dismissal.

Cardiff Council Disciplinary Policy, Procedures & Guidance (1.CM.035) sets out actions that will be taken when the Council's rules, regulations and standards are breached. There have been a number of minor amendments to the Disciplinary Policy in recent months, and there now needs to be a wider review of this policy. The latest version (dated September 2014), is currently "on hold" pending the outcome of this Review, and forthcoming recommendations.

Cardiff Council's School Staff Discipline Procedure (1.CM.035- Schools) governs the Council's rules, regulations and standards for schools and is designed to be read alongside the Welsh Government Circular 002/2013 . The current version of the policy was produced in May 2014, and at the start of this Review there were no plans for further revision.

The Review

This Review into Workplace Investigations was undertaken by the author from October 2014 to December 2014. The focus was primarily on Disciplinary investigations in the Council that had taken place in the 18 month period 04 April 2013 to 09 October 2014. The reason for focussing on Disciplinary investigations rather than Grievances was, firstly, due to the current review of the Disciplinary policy, and secondly, due to the higher number of Disciplinary investigations compared to Grievance investigations. Organisational culture is considered to have a key influence on the balance and level of disciplinary and grievance cases, and this is further discussed in **Sections 3** and **5.3.2**.

The Review was based on a 3 part methodology:-

1. A contextual review of relevant documents;
2. A quantitative analysis of available HR People Services data on Disciplinary Investigations¹ between 04 April 2013 - 09 October 2014,
3. A qualitative survey of Council staff, Schools staff & Trade Unions involved in those Disciplinary Investigations.

The report is structured into 9 main sections, the contents of which are summarised in the following table.

Key recommendations arising from this Review are shown on pp 4-6.

¹ Excluding schools Child Protection Disciplinary investigations undertaken by Servoca Investigators

SECTION 1: BACKGROUND:	<ul style="list-style-type: none"> ○ Background to policy and HR People Service review ○ Policy background for Schools
SECTION 2: TERMS OF REFERENCE:	<ul style="list-style-type: none"> ○ The scope of the Review.
SECTION 3: CONTEXTUAL REVIEW OF RELEVANT DOCUMENTS:	<ul style="list-style-type: none"> ○ A summary of relevant policy, guidance and research documents from various sources on Workplace Investigations and Mediation.
SECTION 4: QUANTITATIVE ANALYSIS:	<ul style="list-style-type: none"> ○ Data sources in HRPS- recording/reporting, main issues. ○ Data on number of investigations, length of time and delays etc. Investigations and outcomes are shown per Directorate. ○ Grievance and Employment Tribunals are included for reference. ○ The section ends with a summary of main findings, proposals & recommendations for change.
SECTION 5: QUALITATIVE SURVEY:	<ul style="list-style-type: none"> ○ Survey respondents and response rates ○ Information is displayed under 9 themes- <i>Disciplinary Policy & Procedure; Early resolution; Staff Experience & Training; Roles; Suspensions; Investigation Interviews; Reports and Recording; Hearings and Appeals.</i> ○ Each themed sub-section is concluded with a summary of main findings, proposals & recommendations for change.
SECTION 6: SICKNESS & DISCIPLINARY INVESTIGATIONS:	<ul style="list-style-type: none"> ○ Data on sickness absence rates. ○ Qualitative survey information from the Attendance & Wellbeing Team and Occupational Health. ○ The section is concluded with a summary of main findings, proposals & recommendations for change.
SECTION 7: SCHOOLS:	<ul style="list-style-type: none"> ○ A synopsis on policy, guidance and data for schools. The qualitative survey follows the same thematic layout. ○ The section is concluded with a summary of main findings, proposals & recommendations for change.
SECTION 8: DISCUSSION & OPTIONS APPRAISAL:	<ul style="list-style-type: none"> ○ The future management of workplace investigations ○ Early resolution. Options appraisal with four options for change. ○ Independent Investigations team ○ A recommended option is included
SECTION 9: CONCLUSIONS	<ul style="list-style-type: none"> ○ The case for change. ○ Improving relationships. ○ Key principles for the future management of disciplinary investigations. ○ Changing culture and concluding comments
APPENDICES.	The Qualitative survey questions

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

- 1.1 Amend Disciplinary policy separating the all encompassing policy from the individual guidances contained therein.**
- 1.2 Increase emphasis on early resolution of issues to include:**
 - **Expansion of the internal mediation service**
 - **Introduction of Fast track Disciplinary process**
- 1.3 Changes to policy regarding:**
 - **Use of mediation at any stage of discipline and grievance procedure**
 - **Re-define Fraud in order to categorise minor misdemeanours**
 - **Amendment to the Disciplinary policy regarding the choice of workplace colleague as companion to the Employee at the Hearing. In accordance to the EAT ruling May 2013, it is the request to be accompanied that has to be reasonable and not the choice of workplace colleague.**
 - **Amendment to policy regarding attendance at Hearings between management and respondent witnesses.**
- 1.4 New addition to policy:**
 - **Introduction of Code of Conduct for hearings**
 - **Additional ground for Appeal “New Evidence coming to light”.**
- 1.5 Cross -reference the Discipline policy to the Attendance & Wellbeing policy and Fraud, Bribery & Corruption policy**
- 1.6 Consideration interface with Dignity at Work policy and a linkage to the workforce strategy including the Employee Charter**
- 1.7 The consequences of breaching policy should be clearly stated**

RECOMMENDATION 2: CHANGES TO OTHER POLICIES

- 2.1 Review the current Grievance policy 1. CM.040 and consider introduction of a Resolution policy which combines Grievance, Harassment and Bullying policies.**
- 2.2 Adoption of the Welsh Local Government protocol for Internal Workplace Mediation**
- 2.3 Amendment to the School Staff Procedure 1.CM.035 –Sch. to reflect changes to the revised Welsh Government Circular 002/2013**
- 2.4 Addition to the Attendance & Wellbeing policy re management of sickness during Disciplinary Investigations (including suspensions)**

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

- 3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process**
- 3.2 Define roles and responsibilities of staff within the Disciplinary Investigation process, including new roles of Observer, Assistant and Expert witness**
- 3.3 Develop enhanced guidance relating to Child Abuse and Police involvement**
- 3.4 Guidance on Employment Tribunals should be produced on preparation for ET including roles and expectations**

RECOMMENDATION 4: TRAINING

- 4.1 Enhance Cardiff Manager Development programme to include methods of early resolution**
- 4.2 Establish a Disciplinary Investigation development programme including e learning, formal training, coaching & mentorship.**
- 4.3 Instigate opportunities for observational experience for relevant staff in Disciplinary Hearings (by agreement of all attendees and carefully managed as a confidential process) and HRPS staff at Employment Tribunals.**

RECOMMENDATION 5: COMMUNICATION

- 5.1 Improve internal communication and establish database within HRPS re outcomes of Hearings & Employment Tribunals**
- 5.2 Improve future policy review by enhanced engagement of employees and communication to Directorates/schools**

RECOMMENDATION 6: MONITORING & REPORTING

- 6.1 Disciplinary Investigations (including suspensions and associated sickness absence) should be regularly monitored and reported at senior management level within Directorates.**
- 6.2 HRPS should review and collate corporate monitoring data in relation to Discipline.**

RECOMMENDATION 7: CHANGES TO DIGIGOV

- 7.1 Review and amend the Disciplinary Investigation process on Digigov to reduce the current issues, and enable accurate management reporting.**
- 7.2 Develop a prompt in Digigov to trigger a review of a suspension of an employee.**
- 7.3 Create an option tab in Digigov to link sickness absence to an investigation**

RECOMMENDATION 8: SICKNESS ABSENCE

- 8.1 Robust management of sickness absence during Disciplinary Investigation (including suspensions) managed by one HRPS officer.**
- 8.2 Revise the determination for fitness to participate in the investigation, to prevent blanket referrals to Occupational Health**

RECOMMENDATION 9: FUTURE MANAGEMENT WORKPLACE INVESTIGATIONS

- 9.1 Establish an Investigation team to deal with cases of complexity and/or potential Gross Misconduct.**
- 9.2 Consider business case to set up an Investigation unit as an arm's length company, in a trading model for income generation and longer term sustainability**

1. BACKGROUND TO THE REVIEW

1.1. HR People Services (HRPS) needs to continuously review and improve what it does, including policies that are developed and reviewed on behalf of the rest of the Council. There have been discussions in various fora regarding HR policies and the requirement to review them, ensuring that they meet customer requirements, and are in line with the need for the organisation to be able to react quickly and efficiently in austere times with Council budgets reducing. It is important that policy reviews take full account of the needs of Directorates as well as detailed discussions with the trade unions.

1.2 HRPS have recently undertaken a service review aimed at new ways of streamlined working, fit for future purpose, potential income generation, and cost saving opportunities. The resulting *Service Review Report and Action Plan* is currently awaiting ratification. Some key issues identified for the service include the need for customer feedback mechanisms, the importance of Trade Union partnership, improving consistency of advice and exploiting commercial opportunities. The action plan includes, for example,

- The need to review all key processes
- Reviewing the service level agreement to schools
- The need to explore market competitiveness
- Expanding the Manager Development Programme to up-skill managers
- Exploring income generation opportunities in relation to Mediation

1.3 In 2014, a report was sent to the Audit committee from Internal Audit & Risk Management entitled “*A fair and consistent approach to non benefit fraud investigation sanctions*”. The Audit Committee had raised a concern regarding the perceived variation of sanctions in Disciplinary Hearings, which required a response from HR People Services, and will be included in the scope of this Review. Cardiff Council Anti-Fraud, Anti- Corruption and Bribery Policy 1.CM.120 is currently under review, and a new Fraud, Bribery and Corruption policy is awaiting ratification.

1.4 Schools:

- 1.4.1 The Regulations covering staff disciplinary matters are contained in the *Government of Maintained Schools (Wales) Regulations 2005* and the *Staffing of Maintained Schools (Wales) Regulations 2006*. In January 2013, the Welsh Government issued guidance *Disciplinary and Dismissal Procedures for School Staff* (circular no 002/2013). The guidance was produced to help school governing bodies and local authorities implement effective staff disciplinary and dismissal procedures. In accordance with sections 35(8) and 36(8) of the Education Act 2002, this guidance is statutory, and governing bodies of all maintained schools in Wales must have due regard to it.
- 1.4.2 The framework for dealing with allegations of abuse against people who work with children is set out in *Safeguarding Children: Working Together Under the Children Act 2004* and the *All Wales Child Protection Procedures*. In July 2014, the Welsh Government issued *The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014*, and produced circular 009/2014 “*Safeguarding children in education: Handling allegations of abuse against teachers and other staff*”
- 1.4.3 The Regulations removed the requirement on the Governing body to appoint an independent investigator to investigate allegations of “*a child protection nature*” prior to the staff disciplinary and dismissal process, and replaced it with a duty to appoint an independent investigator to investigate allegations that a teacher or member of staff has “*abused*” a pupil (i.e. allegations of physical, sexual, or emotional abuse). This would be considered gross misconduct, and be subject to a staff disciplinary and dismissal hearing, and if substantiated may result in dismissal and referral to the Disclosure & Barring Service (DBS).
- 1.4.4 The Welsh Government is in the process of amending Circular 002/2013 *Disciplinary and Dismissal Procedures for School Staff*, in particular chapter 10, which deals specifically with handling child protection allegations to reflect the new regulations and the guidance in Circular 009/2014.

2. TERMS OF REFERENCE

2.1 To understand and summarise the main issues inherent in the current system of Workplace Investigations

- To explore strengths and areas for improvement for the efficiency and effectiveness of the management of investigations, in order to reduce the cost to the council in terms of the timescales involved in undertaking investigations, reduction of stress / sickness absence etc.
- To gather the views and experiences of a range of people involved with investigations such as Investigating Officers, HRPS officers, Trade Unions, and Chairs of Disciplinary Hearings.

2.2 To establish the current baseline position, focussing on production of quantitative data on timescales and outcomes for Disciplinary investigations between April 2013- October 2014.

- To explore current methods of data gathering
- Investigate current performance management and outline changes where applicable

2.3 To produce recommendations for beneficial change to procedure, in order to inform the current review of Cardiff Council Disciplinary Policy, Procedures & Guidance 1.CM.035

- Identify, where appropriate, the interface with other applicable policies e.g. Attendance & Wellbeing, Fraud, Bribery & Corruption, etc
- To highlight triggers for potential reviews of other applicable policies and procedures

- Address the issues that are not currently in agreement with the Trade Unions.

2.4. To identify how best to address the perceived inconsistency of Disciplinary sanctions in relation to fraud and financial impropriety issues, as raised by the Audit Committee.

2.5. To explore methods for improving skills and knowledge of Investigating Officers and Hearing Chairs, in order to deal with disciplinary investigations in a fair and just manner.

2.6 To discuss the potential viability of the establishment of a Specialist Investigation team for complex investigations.

2.7 Out of scope:

1. Review of the School Staff Discipline Procedure 1.CM.035- Sch. (May 2014)
2. Study of schools Child Protection Disciplinary cases undertaken by Servoca
3. Review of the Grievance policy 1.CM.040

3. CONTEXTUAL REVIEW OF RELEVANT DOCUMENTS

3.1 Policies & Guidance

3.1.1 **Code of Practice Disciplinary & Grievance Procedure (ACAS)**

The Advisory, Conciliation and Arbitration Service (ACAS) statutory code sets out principles for employers in handling disciplinary & grievance situations in the workplace. The Code is issued under s199 Trade Union and Labour Relations (Consolidation) Act 1992. A failure to follow the Code does not make a person or organisation liable to proceedings, but an Employment Tribunal is legally required to take the Code into account when considering cases. They may adjust any compensatory award by up to 25%, if they feel an employer has unreasonably failed to follow the guidance set out in the Code.

It is advisable that the ACAS guidance within the Code, continues to be embedded within any review of Cardiff Council policy.

3.1.2 **Discipline and Grievances at Work (ACAS Guide)**

This document provides more detailed good practice advice & guidance for dealing with disciplines and grievances in the workplace. Employment Tribunals are not required to have regard of this advice, however, the law on unfair dismissal requires employers to act reasonably. It urges the need to resolve some disciplinary issues informally- *“Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee’s conduct or performance. In some cases additional training, coaching and advice may be what is needed.”* The guidance details how to deal with the informal stage and goes on to say *“Consider at any stage whether the use of an independent mediator may be helpful”*

It is suggested that the ACAS good practice advice continues to be contained within Cardiff Council Guidance, in order to minimise the risk of unfair dismissal on grounds of “unreasonableness”

3.1.3. ***Evaluation of the ACAS Code of Practice on Disciplinary and Grievance Procedure*** **Rahim, N; Brown, A & Graham, J (ACAS Research paper)**

This paper reviews the Employers' understanding & use and impact of the ACAS Code of practice, since its introduction in 2009. The review concluded that application of the Code should encourage employers towards earlier resolution of matters, and that confidence in interpreting and applying the Code would be enhanced by training. It also describes the balance of grievance and disciplinary cases in an organisation as reflective of its organisational culture. Those organisations "*with just a handful of disciplinary cases were likely to have different considerations in thinking about organisational policy, compared to organisations that initiated hundreds of disciplinary cases in any given year*". Where there is a higher number of disciplinary cases compared to grievances, this could indicate "*a culture of formal, rather than early resolution of disciplinary issues: where the first step was recourse to a formal disciplinary or grievance procedure*".

The paper also discusses that the use of mediation can be "*in place of formal disciplinary action outlined in organisational policies, or after a formal grievance had reached an outcome*". It goes on to say where mediation was used in place of a formal disciplinary action it was reported to have worked successfully to resolve low level disputes between colleagues, not where relationships had deteriorated to the extent that they did not wish to communicate with one another. It states that "*employers could be encouraged to review the behaviours or offences that currently constitute formal disciplinary action as well as their decision-making about appropriate processes.*"

This is further discussed in section 5.3.2 Early Resolution

3.1.4 ***Accompaniment and representation in workplace discipline and grievance*** **Saundry R, Antcliff V & Jones C (ACAS Research paper)**

This research paper reports on the role of companions in Disciplinary Hearings, in particular the role that trade unions can play a key role in moderating disciplinary outcomes. Trade Unions were "*central to informal processes of dispute resolution, before, during and after the onset of formal procedure. They acted as an early*

warning system, a channel of communication and even as an additional arm of management in trying to ensure that unacceptable behaviours were corrected. However, this was crucially dependent on the nature of the relationship between trade union representatives, operational management and HR advisors and managers”

This is further discussed in section 5.3.8 Hearings

3.1.5 ***Facing Disciplinary Action: A guide for employees and their representatives (London Law centre)***

This publication is aimed at employees facing disciplinary action. Variation of sanctions in Disciplinary Hearings is discussed in this document and it states *“Inconsistency can make a dismissal unfair and can be an indicator of discrimination”* It goes on to say, however, *“tribunals do not expect employers to rigidly treat everyone the same way”*. There can be legitimate reasons for employees to be treated differently for the same offence, including mitigating circumstances, a cleaner disciplinary record or a difference in training. It states that *“rigid application of policy is not advisable”*.

Control measures to limit variation of sanctions are discussed in s. 5.3.8 Hearings.

3.2 Mediation

3.2.1 ***Mediation: A protocol for the use of Internal workplace mediation in Local Government in Wales Welsh Local Government Association (WLGA).***

This document was developed in 2013 by HR Directors in Wales, as a framework to encourage Local Authorities to resolve conflict by incorporating the use of mediation where appropriate. It includes recommendations for how mediation should be used, including commitment and buy in, policy and procedures, training & support and guidance.

3.2.2 ***“Win- Win” A study into the role and impact of mediation within Local Government (LGA/PMA)***

This Research was undertaken to assess the current use of workplace mediation within Local authorities across the UK. It reported that over 90% of Local Authorities are now using mediation regularly to resolve disputes. It goes on to

say that many Local Authorities are replacing their Grievance, Bullying and Harassment policies with a more progressive “ *Model Resolution policy*”. This can help a transition from a “grievance culture” to a “resolution culture”.

3.2.3 *Mediation: An Approach to resolving workplace Issues* (ACAS)

This guidance provides practical guidance in deciding whether, and in what circumstances, mediation may be suitable and the factors and processes in its implementation. It states that “*in some organisations mediation is written into formal discipline and grievance procedures as an optional stage.*” It goes on to say that although grievances most obviously lend themselves to the possibility of mediation, “*the line between disciplinary and grievance issues may in specific instances become blurred, in which case the employer may prefer to tackle the underlying relationship issues by means of mediation rather than impose a disciplinary sanction*”.

3.2.4 *Transforming conflict management in the public sector? Mediation, trade unions and partnerships in a primary care trust* Saundry R, MCardle L & Thomas P

Saundry et al. discuss how the involvement of unions as full contributors in the design and running of a scheme in an NHS Primary Care Trust proved transformative of the climate and culture of employment relations. It discusses the how there may be a perception that “*mediation might ‘get someone off’ a disciplinary.... but concerning the ‘fit’ of mediation with discipline and grievance, this was not the intention in any of the organisations. In fact, more commonly it was reported that unions ... could see exactly where it fitted with the process, and felt comfortable with where their role started and ended.*”

3.2.5 *Mediation and Early Resolution: A Case Study in Conflict Management* Richard Saundry and Gemma Wibberley (ACAS)

This case study discusses the experience of Trade Unions in those organisations where mediation has been introduced. Despite initial suspicion over alternative methods of resolving disputes, there have been positive results where Trade Unions have actually been trained as mediators leading to breaking down of barriers
Mediation is further discussed in Section 5.3.2 Early Resolution

4. QUANTITATIVE ANALYSIS

“When you can measure what you are speaking about, and express it in numbers, you know something about it” (Lord Kelvin)

4.1 Data sources

There are a number of data sources in HR People Services² (HRPS) in relation to Disciplinary and Grievance investigations, accessible and managed by HRPS staff only.

- Excel spreadsheets for each financial year stored in the Manage Secure folder (HR admin) on ‘ccfile1a’ shared drive.
- Digigov records
- Employment tribunals data kept on a separate spreadsheet/log in the Employee relations folder (HR admin) on ‘ccfile1a’ shared G drive.

4.2. Data recording in HRPS

The data during the study period (including schools investigations) was entered by HR officers on both the Excel spreadsheets and Digigov, and therefore adjustments were required by the author to take account of occurrences of double recording.

4.2.1 Excel spreadsheets for 2013/14 and 2014/15 :

These records are maintained by HRPS caseworkers in the Customer Service delivery team (Manage). Disciplinary and Grievances are entered on separate tabs on the spreadsheet. The spreadsheets contain information such as:- Service Area, Employee name & number, Post title & section, Investigating officer name, HR advisor name, Date of suspension (where applicable) Date investigation started, Date of hearing & outcome, Date of appeal & outcome. The 2013/14 spreadsheet also contained details of the allegation. The spreadsheets were the main source of data recording prior to the introduction of Digigov, but since September 2012, data has also been recorded on Digigov. However, schools data did not start to be recorded on Digigov until September 2014, so for the study period the Excel spreadsheet is the main data source for schools.

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Problems with Excel Spreadsheet data:

² Data in relation to fraud/ financial impropriety cases is also kept in a separate log/ database in Internal Audit.

- (i) *Missing data*: numerous examples amongst these records.
- (ii) *Data not uploaded* : Data is often kept separately by HR caseworkers in notebooks, and uploaded from time to time from their records. This practice makes it difficult for HR managers to view the data, and run a report to get an accurate and current picture at any one time.

4.2.2 *Digigov records*:

Disciplinaries and Grievances are entered separately onto the system. A report run on 27.10.14 included the following information:-Date initiated, Organisation, Service area, Case number, Respondent, Stage, Final action, HR caseworker, Investigating Officer, Case owner, Chair, Closure time.

Problems with Digigov data:

(i) *Multiple respondents*: Until June 2014, Digigov was not able to record these in respect of one single investigation, and therefore the data was entered separately. This gave the effect of multiple investigations on one specific date, when in fact it should be recorded as one investigation only, involving a number of people. For example, on 16th July 2013 there were 13 entries recorded for one Investigating Officer in one Directorate, giving the effect of 13 investigations instead of one with multiple respondents. It resulted in that Director having to close down 13 cases in their Digigov in-box. The number of actual investigations was therefore less than the 215 data entries. The number was adjusted by discounting 32 entries to give a total of 183 investigations between April 2013- October 2014 on Digigov.

(ii) *Missing data*: Numerous examples which prevent accurate management reports being run. The problems with inaccurate data entry is linked to the complexity of the Investigation process in Digigov (see section 5.3.7 Reports & Recording). An example of an inaccurate report was in response to the request for a report on the number of people suspended in the last 18 months. The Digigov report listed 4 names only, which is inaccurate, and does not match the spreadsheets (see section 5.3.5 Suspensions).

(iii) *Inaccurate information due to inflexibilities of Digigov*: HR officers have had to “work around” the system entering data to “over -ride” it in order to move the

process on. One example is the inability of being able to change the name of the Hearing Chair (there have been multiple entries of HR officers' names being entered into the system as "Hearing Chairs" and "Investigating Officers"). Another example of inaccurate data applies to dates the investigation started, due to the inability to go back in time and make amendments, or put on records after the investigation started. This results in any management report run from Digigov on the length of time the investigation has taken as being inaccurate.

(iv) *Time wasting*: HRPS officers report that they are spending a great deal of time entering and amending data on Digigov, on behalf of Investigating Officers, Hearing Chairs or Directors who struggle to cope with the difficulties of the Investigation process.

(v) *Inadequate details of informal stage*: Details of the informal stage e.g. use of mediation is not recorded.

This situation will not improve until the Digigov process is streamlined and simplified- see section 5.3.7

*"I can't work it out – can take one hour+ of my time so I get **** in HRPS to do it for me" (Hearing Chair)*

During the Qualitative survey, HRPS staff were asked their opinion of the accuracy of data in HRPS. 19(82%) of the staff described it as "*poor/really poor*". 9(40%) of the staff also stated that "*we don't capture things well*" and a fifth also said it was "*inaccurate*" and there was "*a need to improve*".

*"The spreadsheets give us a better visual record for cross referencing"
"Not reliable" "I can't find out how many gross misconducts lead to dismissals"
"We need to have management information " (HRPS)*

In HRPS, there are no data reports regularly produced on Disciplinary and Grievances from either the Excel spreadsheets, or Digigov. Internal Audit reports to the Audit Committee in relation to fraud /financial impropriety cases. Directors are not required to report on Disciplinary/Grievance Investigations and therefore, no-one has total oversight regarding the progress of investigations, either at Directorate level or within HRPS. During the Qualitative survey, Hearing Chairs were asked whether they felt that Disciplinary Investigations should be monitored and reported at senior management level within Directorates. 15 out of 17 (88%) Hearing Chairs interviewed felt that there should be regular monitoring and reporting arrangements in place, with the remainder saying “*Probably*”.

It is agreed that there is a lack of awareness in Directorates regarding the number of ongoing investigations and their progress, coupled with a lack of timely and regular reviews of employees suspended from duty (see section 5.3.5 Suspensions).

It is of concern that there is no awareness between sickness absence rates and the linkage with Disciplinary Investigations.

(See Section 6 Sickness & Disciplinary Investigations)

“It’s Audit’s role to report in financial investigations. In non- financial investigations should be the role of the Directors” (Audit)

Recommendations and further feedback in relation to Data reporting can be found in section 5.3.7 Recording and Reporting

Accuracy of data included in this report from the three data sources should be viewed with some caution. The author has attempted to improve the accuracy of reported data by manually checking information, where feasible.

A total of **260 Investigations** were found between 04 April 2013 and 09 October 2014, recorded in the three data sources

Table 1: Records of Disciplinary Investigations 04 April 2013 – 09 October 2014 (Source:- Excel spreadsheets)			
Source	No. records	No. duplications	Remainder
2013-14 excel spreadsheet	147	92 records were duplicated in Digigov	55
2014-15 excel spreadsheet	101	79 records were duplicated on Digigov	22
Total			77

Table 2: Records of Disciplinary Investigations 04 April 2013 – 09 October 2014 (Source- Digigov 27.10.14)			
Source	No. records	No. duplications due to multiple respondents	Remainder (number Investigations)
Digigov: 04 April 2013- 09 October 2014	215	32	183

4.3.1 Length of time:

The three sources of Investigation records were examined to establish the length of time the investigation took. Unfortunately, information was limited to the 2013/14 Excel spreadsheet for the following reasons:-

(i) *Inaccurate information in Digigov* :The Digigov database report ran on 27.10.14 recorded only the date that the investigation was entered onto the Digigov system not the date that the investigation started. The date of the Hearing was also not given, and the closure time is the length of the investigation at the date the report was run, not necessarily the end of the investigation. Therefore, it was not possible to produce accurate information in relation to length of time from this source.

(ii). *Insufficient data in Excel Spreadsheet 2014/15*: was entered onto the spreadsheet, to produce accurate information in relation to length of time from this source

Table 3: Length of time Disciplinary Investigations April 2013-March 2014 (Source: Excel Spreadsheet 2013/14)				
Source	No. records	Total Length of time	Range	Mean
2013-14 excel spreadsheet	69	Start to End Investigation = 1035 weeks	3-54 weeks	15 weeks
2013-14 excel spreadsheet	64	Start Investigation to Hearing Date = 1679 weeks	5-194 weeks	26 weeks ³

4.3.2 The 2013/14 Excel spreadsheet had only 69 records with start and end dates of the investigation entered, and only 64 records had start of Investigation and Hearing dates entered. The mean length of time for an Investigation was 15 weeks, and from the start of the Investigation to the Hearing date was 26 weeks. This figure includes two investigations in the Education and Lifelong Learning Directorate, one which lasted 194 weeks until the Hearing date (including a period of maternity leave), and another lasting 94 weeks- so the mean figures are skewed. Excluding these two cases, the mean length of time from start of the investigation to Hearing date is reduced to **22 weeks**, which is still very lengthy.

Section 8.7 Disciplinary Policy Procedures & Guidance Notes states:-

“All investigations must be carried out as quickly as possible and in sufficient time so that any disciplinary action deemed necessary can be conducted within 8 weeks of the start of the investigation...”

4.3.3 Twenty one (30%) investigations were concluded within an 8 week period, However, only 8 (12%) Investigations with recorded data had start date to Hearing date within an 8 week period.

³ See adjusted figure in section 4.3.2

4.3.4 *Delays*: During the qualitative survey, opinions were gathered from HRPS, Trade Unions, Investigating Officers and Hearing Chairs regarding perceptions of causes of delays.

Table 4: <u>Delays to Investigations</u> (Source: Qualitative survey)				
Reasons for delay	Rank order given by HRPS	Rank order given by Trade Unions	Rank order given by Investigating Officers	Rank order given by Hearing Chairs⁴
Trade Unions	1	5	3	1
Sickness absence	2	4	2	3
Grievances	3			
Pressure of day Job for Investigating Officer (IO)	4	6	4	7
Availability of parties	5		1	2
Schools Governing body committee	6			
Directors	7	2	7	8
Servoca (schools)	8			
Police involvement	9		6	
HRPS	10			6
IO Inexperienced/ anxious	11	1		
Appointment of IO		3	10	
Process			5	4
Person under investigation			11	5
Digigov			8	
Typing up/ agree notes			9	

The top ranking reasons for delays include Trade Unions, Sickness absence, availability of parties, and the Investigating Officer’s inexperience/ pressure day job

*There is different advice with different HR officers. There can be deliberate delays (Audit)
 “Investigations are taking too long and costing us money Go on for too long- in one case one year” (Hearing Chairs)*

⁴ Delays to arrangement of Hearing rather than investigations

4.3.5 Two Directorates recorded the highest number of investigations when viewed as a percentage of their head count. They were Change & Improvement⁵ and Environment, with percentage values of 12% and 10% respectively. The remainder were between 1-3% number by headcount. The highest number of investigations (91) is in the Education & Lifelong Learning Directorate.

Table 5: <u>Disciplinary Investigations by Directorate- % total by headcount (All sources)</u>						
Directorate	No.on Digigov	No. on 2013-14 sheet	No. on 2014-15 sheet	total	Directorate headcount	% cases by headcount
CHANGE & IMPROVEMENT	5			5	43	12%
ENVIRONMENT	57	1	2	60	616	10%
STRATEGIC PLANNING HIGHWAYS TRAFFIC&TRAN	12	1		13	399	3%
CHILDREN SERVICES	13	1		14	417	3%
COMMUNITIES HOUSING & CUSTOMER SERVICES	30	5		35	1155	3%
SPORT LEISURE & CULTURE	13	1		14	784	2%
RESOURCES	8			8	373	2%
HEALTH & SOCIAL CARE	11	1	1	13	793	2%
FINANCE	5			5	328	1%
HR PEOPLE SERVICES	1			1	103	1%
EDUCATION & LIFELONG LEARNING	27	45	19	91	8188	1%
Not specified	1			1		
Total	183	55	22	260		

⁵ There were only 5 cases in this Directorate.

4.3.6 Outcomes Analysis:

The 260 investigations were examined for outcomes. There were:-

- 118 Investigations with completed outcomes recorded on Digigov
- 43 Investigations with completed outcomes recorded on 2013-14 spreadsheet
- 9 Investigations with completed outcomes recorded on 2014-15 spreadsheet

Total number of 169 Investigations with completed outcomes. Of the remaining 91 investigations, 67 were “in progress”, 20 outcomes were not recorded, with a further 4 “errors”⁶

Table 6: <u>Final Outcome Analysis Disciplinary Investigations</u> (All sources)				
Recorded Outcome of Investigation	Digigov (n=118)	2013-14 spreadsheet (n=43)	2014-15 Spreadsheet (n=9)	Total (n=169)
<u>Disciplinary Action</u>				
Dismissed with/ without notice	19	11	0	30
Final Written Warning	18	3	0	21
Written warning	11	5	0	16
Verbal Warning	8	3	3	14
				(81) 48%
<u>No Disciplinary Action</u>				
• No case to answer	19	7	2	28
• No further action	17	4	0	21
• Dealt with Informally	2	1	2	5
				(54) 32%
<u>Investigation not completed/abandoned</u>				
• Employee resigned before investigation completed	9	6	2	17
• Investigation not progressed within reasonable timescales	5	0	0	5
• Withdrew allegation	1	0	0	1
• Did not proceed – evidence issue	0	1	0	1
• Investigating Officer left before investigation completed	1	0	0	1
				(25) 15%
Dismissed under sickness	4	2	0	6 (3%)
Transferred or redeployed	2	0	0	2
Terminated contract	1	0	0	1
Total	117	43	9	169

⁶ An “Error” indicates flawed information

Less than half (48%) of the investigations with recorded outcomes resulted in some disciplinary action being taken. These include some cases that went to Disciplinary Hearing and resulted in no case to answer/ dealt with informally. A further 54 (32%) Investigations resulted in no disciplinary action being taken, with another 25 (15%) not being completed or abandoned.

This indicates that potentially there are a significant number of cases that could be dealt with by means other than a disciplinary investigation.

4.4 Grievances

Data regarding Grievances is shown below for reference only, and the investigations have not been studied in any depth. 61 Grievances were recorded on the three data sources. 22 (36%) did not have the outcomes recorded, with the results for the remaining 39 cases shown in table 7.

Table 7: <u>Outcome Analysis Grievances April 2013 –October 2014</u> (All sources)				
Outcome	Source			
	Digigov (n=21)	2013/14 Excel Spreadsheet (n=12)	2014/15 Excel Spreadsheet (n=6)	Total (n=39)
Upheld	4 (19%)	2 (17%)	0	6 (15%)
Not upheld	15 (71%)	5 (42%)	4 (67%)	24 (61%)
Partially upheld	2 (9%)	0	2 (33%)	4 (10%)
Withdrawn	0	2 (17%)		2 (5%)
Dealt under Disciplinary policy	0	2(17%)		2 (5%)
Resolved other means	0	1		1
Total	21	12	6	39

24(61%) cases were not upheld and there were only 10 (26%) Grievances that were either upheld or partly upheld. There were 6 Appeals recorded on the Digigov report, of which 4 were not upheld and 2 were partially upheld.

The Grievance policy is not currently under review. However, the Author recommends this policy is considered for review or inclusion in a wider Resolution policy.

4.5 Employment Tribunals

4.5.1 These records are maintained by HRPS officers in the Employee Relations Team. A log is kept of cases where there is an Employment Tribunal (ET) claim and contains information on Date, Directorate, Nature of the claim and the outcome e.g. “settled” or “proceeded to Tribunal”. There are no management reports run on this data, other than the protected characteristics data monitoring.

4.5.2 The 2013/14 spreadsheet data was examined. There were 21 cases listed, of which 7(33%) were in connection with a Disciplinary matter. Three of the 7(43%) were in the Education & Lifelong Learning Directorate. The number of disciplinary cases going to Employment Tribunal is relatively low.

Table 8: <u>Outcome Analysis ET claims 2013/14</u> (source: Spreadsheet HRPS)					
ET Claim	Directorate	Outcome			
		Withdrawn by claimant	Struck out by ET	Won by the council at ET	Settled with compensation awarded
Unfair Dismissal	Education & Lifelong Learning			1	
Unfair Dismissal	Education & Lifelong Learning		1		
Unfair Dismissal	Education & Lifelong Learning				1
Unfair Dismissal	Health & Social Care	1			
Constructive Dismissal	Health & Social Care	1			
Unfair Dismissal	Environment	1			
Unfair Dismissal	Childrens	1			

4.5.3 HRPS staff were asked during the Qualitative survey re issues relating to Employment Tribunals and Training & Guidance. Issues raised included:-

- Information and data is not shared sufficiently between the Employee Relations Team and the Customer Service Delivery (Manage) team
- Opportunities for observational experience is required
- Lack of guidance in relation to Employment Tribunals and the role of HR in risk management.
- Information in relation to investigations are held in a number of different places and often hard for the Employee Relations Team to find

SUMMARY OF FINDINGS

- 1. Numerous examples of missing data from the Excel Spreadsheet**
- 2. Accurate management reports cannot be run from Digigov due to:-**
 - (i) Multiple respondents recorded as multiple entries of investigations prior to June 2014.**
 - (ii) Numerous examples of missing data**
 - (iii) Inaccurate information has been entered by HRPS officers to “work around” the inflexibilities of the Digigov system**
- 3. There is a great deal of HRPS officer time being spent entering and amending data on Digigov. This situation will not improve until the process is streamlined and simplified.**
- 4. 19(82%) of the HRPS staff describe accuracy of data recording in all systems as “poor/really poor”.**
- 5. In HRPS, there are no data reports regularly produced**
- 6. Directors are not required to report on Disciplinary/Grievance Investigations and therefore, no-one has total oversight regarding the progress of investigations**
- 7. The mean length of time for an Investigation in 2013/14 was 15 weeks and from the start of the Investigation to the Hearing date was 26 weeks (adjusted to 22 weeks to take into account two very long investigations)**
- 8. Only 21(30%) investigations were concluded within an 8 week period, and only 8 (12%) Investigations reached Hearing date within an 8 week period.**
- 9. Top ranking reasons for delays include Trade Unions availability, Sickness absence and Investigating Officer Inexperience/ pressure day job.**
- 10. The highest number of investigations is in the Education & Lifelong Learning Directorate.**
- 11. Change & Improvement and Environment have the highest percentage investigations compared with number of employees, with percentage values of 12%(5 cases) and 10% (60 cases) respectively.**
- 12. Less than half (48%) of the investigations with recorded outcomes(81) resulted in some disciplinary action being taken.**
- 13. 24(61%) Grievance cases were not upheld and only 10(26%) were either upheld or partially upheld.**

PROPOSALS

1. Data on spreadsheets in HRPS should be phased out to leave one data source.
2. There should be amendments to the Digigov Disciplinary process to enable accurate data entries.
3. Disciplinary Investigations should be monitored and reported at senior management level within Directorates. This should include suspensions, progress of investigations and associated sickness absence.
4. HRPS should review and collate corporate monitoring data in relation to discipline.
5. Guidance on Employment Tribunals should be produced on preparation for ET, including roles and expectations
6. Improvements to HRPS internal communication in relation to outcome of Employment Tribunals, as part of HRPS service review.

KEY RECOMMENDATIONS

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

- 3.4 Guidance on Employment Tribunals should be produced on preparation for ET including roles and expectations

RECOMMENDATION 5: COMMUNICATION

- 5.1 Improve internal communication and establish database within HRPS re outcomes of Hearings & Employment Tribunals

RECOMMENDATION 6: MONITORING & REPORTING

- 6.1 Disciplinary Investigations (including suspensions and associated sickness absence) should be regularly monitored and reported at senior management level within Directorates.
- 6.2 HRPS should review and collate corporate monitoring data in relation to Discipline.

RECOMMENDATION 7: CHANGES TO DIGIGOV

- 7.1 Review and amend the Disciplinary Investigation process on Digigov to reduce the current issues, and enable accurate management reporting.

5.0 QUALITATIVE SURVEY

5.1 *Methodology*:

A qualitative survey was undertaken with those Council staff that had an involvement with Disciplinary Investigations April 2013- October 2014. The questions for the survey were developed by taking into consideration background knowledge and information from the contextual review. A pilot of the questionnaire was initially undertaken in HRPS, and survey questions are shown in the appendices.

- HR People Services (HRPS) (Appendix 1)
- Mediators in HRPS (Appendix 2)
- Attendance & Wellbeing Team HRPS (Appendix 3)
- Occupational Health HRPS (Appendix 4)
- Trade Unions (GMB, Unison, Unite) (Appendix 5)
- Internal Audit & Risk Management (Appendix 6)
- Chairs of Disciplinary Hearings (Appendix 7)
- Investigating Officers (Appendix 8)

(See Section 7 for Schools survey)

5.2. *Response Rate*:

Tables 9 & 10 detail the numbers of people who participated per staff group, the method of information gathering and the non- respondents, giving a total response rate. 66 HRPS, Trade Unions and Hearing Chairs were identified- 6 people declined or did not respond, leaving 58 people. 53 (91%) HRPS, Trade Unions and Hearing Chairs received a face to face interview.

Table 9: <u>Response rate and method HRPS/Trade Unions/Audit/Hearing Chairs</u>						
Survey	Face to Face Interview	Email return	Tel. Interview	Took part	Response Rate	No response/declined
Pilot study (2)	2			2		
HRPS OFFICERS/OM (24)	22	1		23	96%	1
Mediation (2)	2			2		
Attendance & Wellbeing (3)	3			3		
Occupational Health (2)	2			2		
TRADE UNIONS (8) Unison, GMB, Unite	7			7	87%	1
INTERNALAUDIT (2)	2			2		
CHAIRS OF HEARINGS (23)	13	2	2	17	74%	6
total	53	3	2	58		8

Investigating Officers:

From the data sources, 101 Investigating Officers were originally identified: 21 were discounted as 9 had left the service, 3 were on maternity/long term sickness absence, 3 were surveyed in their capacity as a hearing Chair, and 6 were not appropriate as the investigation had just commenced.

This left 80 people as a potential interview group.

Due to the large numbers of Investigating Officers they were contacted by email and asked to return the survey by email. However, 19 (24%) of the Investigating Officers contacted the author and requested a face to face interview, and one person requested a telephone interview.

Table 10: <u>Investigating Officers response rate and Information gathering method</u>						
Survey	Face to Face Interview	Email return	Tel. Interview	Total no.	Response Rate	No response/declined
INVESTIGATING OFFICERS (80)	19 (24%)	31 (39%)	1	51	64%	29 (36%)

A total of 109 participants took part in the corporate survey out of a potential group of 146 people, giving an overall response rate of 75%, with staff group response rates ranging from 64%- 96%.

72 (66%) of the total number of survey participants had face to face interviews.

5.3 THEMES

Information is displayed in this section under nine themes- *Disciplinary Policy & Procedure; Early resolution; Staff Experience & Training; Roles; Suspensions; Investigation Interviews; Reports and Recording; Hearings and Appeals*. Each themed sub-section is concluded with a summary of main findings and detailed recommendations for change.

5.3.1 Disciplinary Policy and Procedure

Review of the policy: In HRPS, the Employee Relations Team undertake consultation and face to face meetings with the Trade unions, to review the policy. The caseworkers involved with Disciplinary Investigations are not based within this team, but within the Manage team. The HRPS Manage staff interviewed stated that they are only involved with policy review once the overview is completed. Whilst the separation of caseworkers from the Employee relations Team does free up staff capacity to deal with policy change, it does mean that the people with the greatest/most recent experience of disciplinary investigations, (and practical experience of the application of the policy) feel they are insufficiently in-putting into policy improvements, which needs to be addressed as part of HR Service Review.

There are two issues which were not agreed during the current policy review with the Trade unions, and they are discussed in section 5.3.8 Hearings.

Length of policy: The current policy document is an amalgamation of other policies that were previously separate e.g. suspension policy, dealing with police etc. It is important to keep all aspects of the disciplinary procedures and processes together in one policy, however the act of pulling the separate policies together has resulted in a document that is too long. 10 (43 %) HRPS staff commented that the policy was now very long. 10(59%) of Hearing Chairs also felt it was too long, together with 25 (49%) of investigating Officers. One of the issues for new Investigating Officers was that they felt that they had to read all 73 pages of the policy document, so as to ensure that they had not missed any vital information. This point is especially true as there is new information in the FAQ section that does not appear in the main body of the policy. This also applies to the person under investigation as the document could feel overwhelming. Other comments were there was a lack

of clarity and a smaller policy cross referencing to other relevant policies (e.g. Attendance & Wellbeing policy) and with separate (enhanced) guidance would be preferable.

*“It is wordy and daunting for people who receive it” Takes too long to read”
“There should be the policy and then a separate code of guidance that explains how to complete each stage” (Hearing Chair)*

“There is lots of narrative about stages . Need a process map for each stage. I needed HR guidance to read through it” “Difficult to send out to some staff in a hard copy” “It is clear enough to be able to make a decision” (Investigating Officers)

*“ Lot of amendments required. This is the result of merged policies which at 73 pages is too long. Needs to be short and sharp with supporting information”
(Audit)*

Ease of use : 52% of Investigating Officers found the policy “hard” or “fairly hard” to use with the remainder saying it was ok. Most of the criticism was in relation to the style. The current policy is a mixture of policy and guidance, and it is difficult to easily locate the guidance in order to understand how to undertake an aspect of an investigation e.g. conducting an interview. The current guidance is inadequate for staff new to the procedures, and improving the guidance without separating it from the policy would result in a document between 100-200 pages long. A different style to the guidance would be helpful with flowcharts etc.

*“It’s hard to find stuff “ It’s too cumbersome”
It has a lack of “teeth” to deal with head teachers and Trade Unions” (HRPS)*

“There should be an overarching policy with expectations regarding time limits with guidance for investigating officers and staff that is people friendly.”

“It is clear enough to be able to make a decision” Having only 4 options of sanctions makes it easier” “ It is too formal needs to be a different style with references to appendices- overkill for situations” (Hearing Chairs)

“Confusing in the layout”

“Didn’t know what stage I was at – had an informal been done?”

“A lot of information -It takes a while to familiarise yourself and due to the length there is a danger of some not reading/ absorbing the whole thing”

“Contents page is very good as the page numbers are hyperlinked”

“Unintelligible not obvious what we should do, needs process map in appendix it’s unwieldy” (Investigating Officers)

Issues in relation to Disciplinary Rules : The general opinion from all respondents was that the disciplinary rules were satisfactory, although 15 (65%) HRPS officers stated they had had some issues with them especially in the definition of misconduct versus gross misconduct. The Trade Unions would welcome more definition of “*bringing the council into disrepute*”

“*The Welsh Government guidance has different definition of theft*” (HRPS)

“*The Flexi issue is defined as fraud*” “*Minor misconduct v gross misconduct is a problem There is insufficient expansion of rule and /or detail of the allegation*” (Trade Unions)

“*The Rules cover most cases*” “*Very useful and should be used more by IO’s so they are clear between misconduct and gross misconduct*”

“*They are comprehensive and helpful- may be an issue of interpretation and where it fits*” “*It is difficult to interpret Gross misconduct v Breach of Trust.*”

“*More guidance on social media e.g. facebook use – this is a grey area*” (Hearing Chairs)

“*They are ok but you need to go a long way in before you get to them. Not in logical order*” (Investigating Officers)

Location of Frequently Asked Questions (FAQ’s): The majority of respondents welcomed the addition of the FAQ’s as a useful information resource. However, there were concerns from a number of respondents regarding the new information that appeared in the FAQ’s, which was not included in the main body of the policy. As there would be a likelihood for people not to read the FAQ’s, then vital information could be missed. There was overwhelming response across all categories of respondents that they should not be located within the policy, as they could only be updated when the policy was reviewed every few years. They would be more usefully placed on the HRPS website (e.g. A-Z services) and the information could be updated in a timely manner.

Policy not adhered to: During the review, it was apparent that there were numerous examples of the Disciplinary policy not being adhered to throughout the process, without any apparent consequences e.g. breaching investigation timescales, lack of suspension reviews, lack of supporting information to appeals etc. The consequences of breaching the policy should be clearly stated.

Other Issues and comments

- Child Protection- HRPS officers stated that more guidance is required
- Fraud & Police involvement- improved guidance is required which includes:-
 - advice on statement taking to make a referral to the police to avoid tampering with evidence
 - clarity of roles in police referral panel
 - timescales
 - informing employee if police not taking the matter forward

SUMMARY OF FINDINGS

- 1. HRPS staff in Customer service delivery(manage) team feel they are insufficiently in-putting into policy improvements.**
- 2. 10(43 %) of HRPS staff , 10(59%) of Hearing Chairs and 25(49%) Investigating Officers stated the policy was too long.**
- 3. More than half Investigating Officers found the policy “hard” or “fairly hard” to use.**
- 4. 15(65)% HRPS officers stated they had some issues with the definition of misconduct versus gross misconduct in the disciplinary rules. The Trade Unions would welcome more definition of “*bringing the council into disrepute*”**
- 5. There is new information that appeared in the FAQ’s, which was not included in the main body of the policy. FAQ’s should be in guidance or on a website, not in the policy.**
- 6. Timeframes for the Investigations as stated in the policy are not realistic and are not adhered to or reported on**
- 7. The current policy makes a distinction between the necessity to attend a hearing for witnesses for management, and witnesses for the respondent.**
- 8. Improved guidance is required for Child Protection and Fraud & Police involvement which includes advice on statement taking prior to a referral to the police(to avoid tampering with evidence).**

PROPOSALS

- 1. Change to Discipline policy to separate policy and guidance (with enhancement to guidance)**
- 2. Guidance -change of style with less narrative and use of flowcharts and Appendices**
- 3. FAQ's should go onto HRPS website to enable regular updating or guidance**
- 4. Review of the timeframes for investigations – into complex and non complex**
- 5. Improved guidance on review of progress of Investigation, Reporting & Monitoring arrangements (including suspensions).**
- 6. Improvements to future policy review: Enhance internal communication in HRPS to enable feedback/input issues to inform required changes to disciplinary policy. Employees (and their representatives) should be involved in the development of rules and procedures (ACAS guidance)**
- 7. Improved communication to Directorates regarding policy changes**
- 8. The consequences of breaching the disciplinary policy should be specified**
- 9. Improved guidance required relating to Child Protection and Police involvement**

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

- 1.1 Amend Disciplinary policy separating the all encompassing policy from the individual guidances contained therein**
- 1.5 Cross -reference the Discipline policy to the Attendance & Wellbeing policy and Fraud, Bribery & Corruption policy**
- 1.7 The consequences of breaching policy should be clearly stated.**

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

- 3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process**
- 3.3 Develop enhanced guidance relating to Child Abuse and Police involvement**

RECOMMENDATION 5: COMMUNICATION

- 5.1 Improve internal communication and establish database within HRPS re outcomes of Hearings & Employment Tribunals**
- 5.2 Improve future policy review by enhanced engagement of employees and communication to Directorates/schools**

5.3.2 Early Resolution

Application of the ACAS *Code of Practice on Disciplinary and Grievance Procedures* guides employers towards earlier resolution of workplace disputes, and the need to resolve some disciplinary issues informally.

The quantitative analysis in section 4 has shown that between April 2013 and October 2014, there were 260 disciplinary investigations recorded compared to only 61 grievances for the same period. This higher number of disciplinary cases compared to grievances, is indicative of a culture of formal, rather than early resolution of disciplinary issues in Cardiff Council. The Contextual Review of the relevant research papers and documents shown in section 3, clearly provides the background evidence needed to endorse a change in culture.

During the qualitative survey, staff were asked their opinions of Early Resolution.

1. Managing staff behaviours & opportunities for Early Resolution

It was found that there was overwhelming evidence and agreement from all parties, for the resolution of matters at an early stage. A common issue expressed was that managers were not managing their staff adequately.

HRPS staff considered that managers should be encouraged to more proactively manage or challenge behaviours. 16(69%) HRPS staff felt they could identify situations where early resolution would have been an option- they cited interpersonal relationships/ bad management/ bullying. One officer stated the "*Formal process is a trail of destruction*". It was considered that there was insufficient training & guidance for managers in relation to this. More than half felt that a template document specifying expected improvements for staff behaviours would be useful.

Trade Unions also felt there were opportunities lost stating there "*is an epidemic of people being escalated. Managers need to manage people*". One Trade union felt that there were sometimes issues for unions when a member insists on putting a grievance in.

“There have been a couple where clearly the manager took sides and prejudiced - the opportunity for resolution was lost. Some managers are over zealous re disciplinary before mediation – it is about individuals”

“I feel that issues such as poor timekeeping could be dealt with by the line manager and not involve others in an investigation; this could go against performance management” (Hearing Chair)

“Cases have been referred in respect of “problem employees” as managers occasionally don’t want to deal with the issue and would rather the matter be investigated and hope that the employee is dealt with by someone else” (Investigating Officer)

Investigating Officers: 29 (57%) Investigating Officers felt that there had been opportunities for early resolution that would have prevented acceleration to an Investigation.

Hearing Chairs: Significantly, even when a case had proceeded to a disciplinary Hearing, 10 (59%) of the Hearing Chairs stated that could identify situations that could have been resolved at an earlier stage.

“It is rare to chair a hearing for one instance out of the blue. Usually it is difficult behaviours/ relationships and the ability for managers to sort out. This would give the chance to facilitate a more appropriate sanction”

“The informal stage is a grey area with the Trade Unions- it should involve someone independent to look at it. Often an individual wants to go to a grievance hearing to speak to manager. Trade Unions have a huge responsibility to act responsibly at this stage” (Hearing Chairs)

“There used to be a facility to give a verbal warning with the approval of the Chief Officer/Director. This was a better way of dealing with it. We have a record of discussion/ coaching”

“At the Preliminary Stage I wanted to clarify with the person reporting the allegation but was informed that I could not do this as it was part of the Investigation. However if I had been able to do so there would have been no need to undertake an investigation” (Investigating Officers)

The management of staff behaviours should be more closely linked to the Behavioural Competency Framework in the Personal Performance and Development Review (PPDR). There is also an opportunity for linkage to Dignity at Work policy and defining a “*Respectful workplace*”.

(see Section 8 Discussion- Workforce Strategy Employee Charter)

2. Role of Mediation

Mediation is a voluntary process using an independent mediator to resolve issues between two or more parties, that agree to participate. The mediator aims to enable the parties to reach an agreement.

HRPS Mediators: There are currently two trained mediators in HRPS and they were interviewed as part of the qualitative study. They undertook “*Meditation and Conflict Resolution*” (ILM endorsed) training in 2012, and between them have been involved in 6 mediations since that date. There are only informal arrangements in place for referrals for mediation – through HR officers who become aware of spotting conflict and ask the manager to contact HRPS. This is partly due to the work capacity of the mediators who are employed in other roles in HRPS. Mediation has been used successfully to prevent escalation to an investigation, but has only been used once to “repair” damaged relationships after an investigation has concluded. Mediation is not recorded or reported on, neither has there been any formal evaluation of its effectiveness. It is not known to what extent Directorates pay for external mediation services. Both mediators felt there was currently insufficient training for managers on conflict resolution. Development of a larger mediation service is currently being considered by HRPS (**section 3.1.6**). There can be downsides to being a mediator in HRPS with a potential conflict in roles. The Welsh Local Government Association (WLGA)⁷ recommends mediators are drawn from a wider range of service areas than just HR. The 2013 ACAS guide “*Mediation: An Approach to resolving workplace Issues*” also discusses the suitability of HR professionals to become mediators- “*Although many HR practitioners would make good mediators with the kind of skills they are likely to have, there could be a direct conflict with their role if they are selected as mediators- they could be responsible for handling an ongoing or subsequent grievance, for example.*”

HRPS officers/ Trade Unions/Hearing Chairs/Investigating Officers: About a third of HRPS officers had experience of mediation being used at an informal stage, with about a half being aware of mediation used post investigation. Trade Unions were unanimous in their support of mediation, stating that more of it was

⁷ Mediation: A protocol for the use of Internal Workplace Mediation in Local Government in Wales- October 2013

needed. They stated that they had been told that once the investigation process has begun, mediation cannot be used. This is in conflict to ACAS guidance which states *“it is useful to be clear about whether the discipline and grievance procedure can be suspended if mediation is deemed to be an appropriate method of resolving the dispute.”* In addition, they welcomed the chance to use mediation after the hearing. Neither Hearing Chairs nor Investigating Officers had experienced the use of mediation after the commencement of the investigation. 7(42%) Hearing chairs reported they had recommended the use of mediation after the Hearing. The HRPS mediators stated in interview that they had undertaken mediation only once after a Hearing. It is unlikely in these times of budget restrictions that external mediation is being commissioned. (see section 5.3.8 Hearings- Recommendations of Chair)

It is apparent, therefore, that either the recommendations of the Hearing Chairs are not being implemented, or any “mediation” is not undertaken by trained mediators, so may not be effective,

Role of the Trade Union Representative in Early Resolution: The ACAS Research paper *“ Accompaniment and representation in workplace discipline and grievance”* found that effective trade union representation allowed for early identification of problems and informal approaches to resolution stating *“this prevented certain issues from escalating and helped avoid formal disciplinary action and dismissals”* They were also described as *“a channel between manager and employee”*. Research has shown that the most successful mediation schemes are those with the involvement of unions as full contributors in the design and running of a scheme.

The culture in Cardiff Council:

It is suggested that the culture in Cardiff Council of higher numbers of disciplinary investigations compared to grievances has arisen in part due to:-

1.Lack of understanding of methods of early resolution –the *“basket of solutions”* which includes such things as additional training, coaching, advice, counselling and the role of mediation in disciplinary, and not just grievance, issues.

2.Lack of real alternative options available to managers, due to the current limited mediation service and lack of training on conflict resolution.

For a cultural change to occur, there needs to be a review of the behaviours or offences that currently constitute formal disciplinary action. In addition, the role of the Trade Unions and the nature of the relationship between trade union representatives, operational management and HR advisors and managers will be key to a successful change. (see section 9.2)

As a consequence of cultural change, research informs that many Local Authorities are replacing their Grievance, Bullying and Harassment policies with a more progressive “ *Model Resolution policy*”.

3. *Fast Track Disciplinary Process*

Data in this report shows that investigations are taking a considerable amount of time to undertake, causing sickness absences from work, and many have no disciplinary actions as an outcome. It is recommended that the use of a fast track disciplinary process be developed, for cases to be dealt with in a timely manner e.g. within one month of the initial assessment. This process could be used for situations regarded as ‘Misconduct’ which would normally result in a verbal or written warning. It could also include a situation where the employee against whom the allegation has been made has *admitted it in full*. Proceeding along this route would still need to be agreed by all parties i.e. the Employee, their representative and the manager.

It would exclude situations where the allegation is potential gross misconduct for example, a safeguarding issue, a Police matter or a serious fraud. An Investigating Officer will not need to be appointed but the manager, as Disciplining Officer, would gather all relevant supporting information and meet with the employee (and their representative). The outcome would be decided at a Fast track Hearing.

There are examples of Fast Track disciplinary procedures being used successfully in other Authorities. The author recommends that any fast track process is developed in conjunction with the Trade Unions and managers.

SUMMARY OF FINDINGS

- 1. 16(69%) HRPS staff, 14 (61%) Investigating Officers and 10 (59%) of the Hearing Chairs felt they could identify situations where early resolution would have been an option**
- 2. The management of staff behaviours should be closely linked to the workforce strategy- Behavioural Competency Framework in the Personal Performance and Development Review (PPDR).**
- 3. There are two trained mediators in HRPS who have undertaken 6 mediations since 2012. There are only informal arrangements in place for referrals for mediation, and a lack of awareness of the trained mediators within HRPS.**
- 4. Mediation is not recorded or reported on, neither has there been any formal evaluation of its effectiveness**
- 5. The Welsh Local Government Association protocol recommends mediators are drawn from a wider range of service areas than just HR.**
- 6. 7(42%) Hearing chairs reported they had recommended the use of mediation after the Hearing. However only one mediation was reported to have taken place post Hearing. It is apparent, that the recommendations of the Hearing Chairs are not being implemented.**
- 7. There is a need for robust decision making early on using a basket of solutions to reduce the number of unnecessary investigations**
- 8. There is a need for a fast track disciplinary process to deal with minor misconducts**

PROPOSALS

- 1. Review the current Disciplinary policy 1 CM 035 and the Grievance policy 1.CM.040 and re-define the informal stage, role of mediation and fast track processes.**
- 2. Consideration for the introduction of a Resolution policy which combines Grievance, Harassment and Bullying.**
- 3. Amendment of Disciplinary policy to allow suspension of discipline and grievance procedure at any stage, if use of mediation is an appropriate method of resolving the dispute**
- 4. Adoption of the Welsh Local Government protocol for Internal Workplace Mediation June 2013**
- 5. Expand the mediation service by increasing the number of trained mediators in the council, drawn from a wider range (other than HRPS) of Directorates and Trade Unions**
- 6. Clarification of whose role it is to carry out recommendations of Chair**
- 7. Consider interface with Dignity at work policy- to include definition of “*Respectful workplace*” and linkage to Employee Charter**
- 8. Introduction of Fast track Disciplinary process**

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

1.1 Amend Disciplinary policy separating the all encompassing policy from the individual guidances contained therein.

1.2 Increase emphasis on early resolution of issues to include:

- **Expansion of the internal mediation service**
- **Introduction of Fast track Disciplinary process**

1.3 Changes to policy regarding:

- **Use of mediation at any stage of discipline and grievance procedure**
- **Re-define Fraud in order to categorise minor misdemeanours**

1.5 Cross -reference the Discipline policy to the Attendance & Wellbeing policy and Fraud, Bribery & Corruption policy

1.6 Consideration interface with Dignity at Work policy and a linkage to the workforce strategy including the Employee Charter

RECOMMENDATION 2: CHANGES TO OTHER POLICIES

2.1 Review the current Grievance policy 1. CM.040 and consider introduction of a Resolution policy which combines Grievance, Harassment and Bullying policies.

2.2 Adoption of the Welsh Local Government protocol for Internal Workplace Mediation

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process

RECOMMENDATION 4: TRAINING

4.1 Enhance Cardiff Manager Development programme to include methods of early resolution

4.2 Establish a Disciplinary Investigation development programme including e learning, formal training, coaching & mentorship.

5.3.3 Staff Experience & Training

Level of Experience

Table 11: <u>Level of Experience HRPS Caseworkers</u>⁸				
	0	1-10	10-50	More than 50
Investigations	1	6 (37%)	6 (37%)	2
Hearings	1	7	7	1
Appeal Hearings	2	11	3	0
Employment tribunals	6 (37%)	10		
Schools investigations	2	9	5	

There was a good range of experience amongst caseworkers, although experience for the officers in the Employees relations team was not recent. Experience of the managers above Lead manager level was not included, as again it was not recent.

Table 12: <u>Level of Experience Hearing Chairs</u>				
	0 hearings	1 hearing	2-10 hearings	10+ hearings
Hearing		2 (12%)	10 (59%)	5 (29%)
Appeal Hearing	11 (65%)	3 (18%)	2 (12%)	1 (6%)

The majority of Chairs interviewed had a lot of experience of conducting Hearings, although they were much less likely to have conducted an Appeal hearing.

Table 13: <u>Level of Experience Investigating Officers</u>					
First investigation	2-5 Investigations	6-10 Investigations	More than 10 Investigations	Hearings	Fraud/Financial Impropriety Investigation
19 (37%)	20 (39%)	6 (12%)	6 (12%)	Yes 40 (78%) No 11 (21%)	Yes 17 (33%) No 34 (67%)

A high proportion of Investigating Officers were either on their first investigation or were relatively inexperienced. However more than three quarters of them had experience of attending a Hearing, which in view of their lack of experience many found to be a daunting experience.

“HR supported the Chair, the employee was supported by the Union but as Investigating Officer I was not supported. I felt that I should have been offered support at the Hearing”

“Very intimidating experience for both sides” (Investigating Officer)

⁸ Including Service Delivery lead Managers

Level of Training & Guidance

(i) Investigating Officers

Support during Investigation: 46 (90%) respondents stated that they received help/guidance from a HR Officer. The most popular areas of help were in relation to planning of interview questions, outlining the procedures, and preparation of the Investigating Officer's report. Investigating Officers also found help received from another experienced Investigating Officer was particularly beneficial.

"I had a different HR officer each time with a different level of support. Generally support was only given when I asked specific questions".

"With little experience I could have done with more proactive advice from HR e.g. Examples of a good and bad report"

"Right from the start my assigned case worker has been an absolute rock and provided me with guidance and support".

Training in the role of Investigating Officer: 1 person stated they had shop steward training through the Union, 2 people attended informal training by HR, 2 people were qualified accredited counter fraud specialists who had attended ACAS training/Investigative interviewing etc. The remaining 34 (67%) stated they had received no training at all.

"High level of responsibility to align roles and get it right when peoples' jobs are on the line- Lead me to think what kind of organisation do I work for? I think less of the Council now because of it"

"Disciplinary are such a serious matter for all involved, but especially the individual being investigated for gross misconduct as it could literally change their life".

12 people stated they had attended *Discipline, Grievance and Sickness Skills Workshop* training (but it does not cover Investigations). One Directorate sent in the following comment:- *"Three of my staff attended the Discipline, Grievance and Sickness Skills Workshop and found it very poor with regards to carrying out Investigations/Disciplinaries. Even without adding the use of Digigov to the process there is a lot of uncertainty in the disciplinary and Grievance processes and*

procedures e.g. what is and is not permissible in an investigatory/disciplinary hearing”

Audit stated during interview that they will be offering training in relation to Financial procedural and investigations, and that shortly a module will be going onto the learning pool.

Preferred method of training for Investigating Officers: Investigating Officers were asked what method of training they would choose to have. Respondents were given a range of options and could select more than one method of learning. The majority of people favoured a combination of methods and stated that there should be a range available. Many people felt that the formal training course should include role play of investigative interviewing and a “mock” Hearing, although observational opportunities to see a real Hearing would be preferable if this coincided with the timing of their own Investigation.

(ii) Hearing Chairs

Preferred method of training for Disciplinary Hearing Chair: The same range of learning methods were suggested to Hearing Chairs, with Coaching/mentorship and opportunity for observational experience being the favoured methods.

Table 14: Preferred method of Learning: Investigating Officers & Hearing Chairs		
Method of Learning	No. Investigating Officers selecting this method	No. Hearing Chairs selecting this method
Formal training course	41	7
Coaching/ Mentorship	36	10
Opportunity for observational experience	35	10
Written guidance	31	5
E-Learning	18	6

(iii) HRPS officers

Some HRPS officers also commented on their own lack of learning opportunities and training

*“We don’t get training you’re put out there” “We don’t have shadowing”
The only training is on the policy” “ I feel vulnerable”
“ We are intimidated by Trade Union reps, who apologise afterwards”*

The gravity of many of the Disciplinary Investigations must be acknowledged, together with the potential impact on the employee under investigation (including dismissal from employment). In view of this, there is a high level of responsibility upon the shoulders of the Investigating Officer to ensure that a full, thorough and fair Investigation has been conducted in circumstances that are less than ideal i.e. on top of their day job. It is of concern that there is no training provided to Investigating Officers or Hearing Chairs to undertake such an important role.

SUMMARY OF FINDINGS

- 1. There is a good range of Investigations experience amongst HRPS caseworkers in Manage team. Experience for the officers in the Employees relations team (who produce the policy) was not recent.**
- 2. 19(37%) Investigating Officers were on their first Investigation, with a further 20(39%) having done 2-5 investigations. However, 40(78%) of them had experience of attending a Hearing. A number of Investigating Officers requested face to face interviews with the author. Some remained in a stressed state from undertaking the Investigation & Hearing, needing to “de-brief” and were vociferous regarding their (negative) experiences.**
- 3. 46(90%) Investigating Officers stated that they received help/ guidance from HR**
- 4. 34(67%) Investigating Officers stated they had received no training in running investigations with the remainder having training in the policy only**
- 5. The Rank order of preference for training methods for Investigating Officers were 1.Formal training course 2.Coaching/ Mentorship 3.Opportunity for observational experience 4.Written guidance 5. E-Learning**
- 6. The Rank order of preference for training methods for Hearing Chairs was Equal first. Coaching/ Mentorship &.Opportunity for observational experience 3.Formal training course 4. E-Learning . 5 Written guidance**
- 7. HRPS officers commented on their own lack of learning opportunities and training**

PROPOSALS

1. A Disciplinary Investigation development programme is established using a range of learning methods. This should be offered to Managers, Investigating Officers, Hearing Chairs and HRPS Officers. The programme should include the following elements which is recommended to be formal learning in short sessions backed up by e-learning modules and relevant guidance :-

Training for managers : Early resolution, Handling Difficult conversations positively. Understanding the Role of mediation Managing persistent and difficult behaviours

Investigating Officers: Planning an Investigation, Conducting investigation interviews including role play, Analysing evidence & Report writing, Preparing for a Disciplinary Hearing, Presenting at a Disciplinary Hearing including role play. Financial procedural and investigations (undertaken by Audit)

Hearing Chairs: Preparing for a Disciplinary Hearing, Conducting a Disciplinary Hearing, including Role play, Consistent decision Making, Conducting an Appeal hearing

HRPS officers should have the opportunity to attend any of the above training (and/ or be involved in the delivery of the training) so that they have knowledge of what information is given to personnel

2. The production of guidance alone would not meet the needs of the majority of People, as staffing groups are diverse. The potential for internal coaching & mentorship should be explored in addition.
3. Instigate programme of opportunities for observational experience in Disciplinary Hearings by agreement of all attendees and carefully managed as a confidential process.
4. Opportunities for observational experience for HRPS staff at Employment Tribunals should be provided
5. Further discussion is needed to match the requirement for training to the level of investigation. An incremental approach may be preferable, but it is suggested that a full training programme is mandatory for Officers dealing with the most serious/complex investigations.

KEY RECOMMENDATIONS

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

- 3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process**
- 3.4 Guidance on Employment Tribunals should be produced on preparation for ET including roles and expectations**

RECOMMENDATION 4: TRAINING

- 4.1 Enhance Cardiff Manager Development programme to include methods of early resolution**
- 4.2 Establish a Disciplinary Investigation development programme including e learning, formal training, coaching & mentorship.**
- 4.3 Instigate opportunities for observational experience for relevant staff in Disciplinary Hearings (by agreement of all attendees and carefully managed as a confidential process) and HRPS staff at Employment Tribunals.**

5.3.4 Roles

Roles and policy

The current Disciplinary policy briefly describes the roles of the Chair, HRPS and the presenting officer, but it is only in relation to Disciplinary Hearings. The FAQ at the end of the policy includes some description of the roles of Trade Unions witnesses etc. However, there is no broader description in relation to other roles in disciplinary investigations as a whole, and some roles are not described at all e.g. the Director/Head of service. The absence of role description has led to people not being aware of whose responsibility certain functions are. This includes, amongst other things, the maintenance of standards of Investigations, and the monitoring, reviewing and reporting aspects. This can lead to unnecessary delays to the Investigation, or the function not being undertaken, which is a risk for potential challenge to the Council as an Employment tribunal.

1.Role of HR : Section 1.7 Disciplinary policy states that the HRPS role is to:-

- Act as advisors to managers
- Ensure procedures correctly applied
- Provide employees with information and advice
- Review and monitor disciplinary cases and outcomes
- Support service areas to undertake remedial action
- Review and collate monitoring data in relation to disciplinary
- Review application of policy

It does not specify any role in relation to asking questions either in interviews or in hearings and appeals. Respondents were asked their opinion:-

HRPS : 11(48 %) officers stated they should be able to ask any questions, 10(43%) felt that HR officer could ask any questions but via the Investigating Officer/ Chair only, and 2(9%) felt that only questions that clarify issues could be asked. During the qualitative survey, it became apparent that there was variation in practice for some HR caseworkers in relation to their role. One example is in relation to the HRPS caseworker involvement with the Investigation Report (see section 5.3.7)

Trade Unions: There was 100% agreement that HR should not ask questions that direct the investigation or provide evidence, but should only be answering in relation to procedures and policy.

Hearing Chairs: 12(70%) Hearing Chairs felt that HR officers could ask any questions, 3(18%) felt they could ask any questions but via the Chair only, and 2(12%) stated that it was not their role to ask questions.

There should be careful consideration of the role of HRPS officers in asking questions, as the risk is that they may become secondary Investigating Officers/Chairs, which can be perceived to be in conflict with their role. Questions are usually prepared in advance by both the Investigating Officers/Chairs, and that is the most relevant time for a HRPS officer to have input into providing advice re the questions. Any questions invited of HRPS from the Chair or Investigating Officer should be on matters of clarification, rather than new lines of questioning. It would be helpful to clarify this aspect of the HRPS role in the policy, as there is currently wide variation in practice amongst the different Officers. Other responsibilities for the HRPS officer should also be clearly specified in the Policy guidance e.g. referral of disciplinary matters to Professional bodies.

2. Role of Internal Audit in fraud or financial impropriety cases

There is a lack of clarity over the role of Internal Audit in relation to the Disciplinary cases that involve fraud /financial impropriety. It is unclear as to whether the role is a lead one or a supporting one. It is the author's opinion that Internal Audit should take the role of lead Investigating Officer in serious fraud/financial impropriety cases, owing to their level of expertise in these matters, as accredited counter fraud specialists. However, it is advised that further discussion with Audit should take place. The definition of "fraud" needs re-defining in the policy in terms of the disciplinary rules, as it covers relatively minor misdemeanours of flexi- time to serious theft of money. There should be cross referencing to the new "*Fraud, Bribery and Corruption Policy*" which will shortly be issued, pending cabinet approval.

3. *Role of the Director/Head of Service*

This is not currently described in the policy. The responsibilities should be clearly defined, including the timeliness of their decision making, as they are cited as one of the reasons for delays to the investigation.

4. *Role of Contact Officer*

Within the policy, there is limited description of the role of the person appointed as contact officer to an employee suspended from duty. In the qualitative survey, **HRPS officers** were asked regarding the role of a contact officer. There was a wide variation in answers, some conflicting, including advising on changes in the workplace, to updating on progress of investigation (or not updating on progress of investigation!), getting information from the Investigating Officer etc.

Trade Unions stated they had issues with contact officers not making contact with their members on suspension.

It is concluded that clarification of this contact officer role is essential, especially in the situation where by an employee needs to make contact with work colleagues who are potential witnesses, and is prevented from making a direct contact. There needs to be stipulation regarding the frequency of contact and recording a contact. (see section 5.3.5 Suspensions)

5. *New roles:*

The author recommends the creation of three new roles in relation to Disciplinary Hearings:-

(i) *Observer* It is suggested that a formal role of “observer” at a hearing could be developed. This would be for an individual to gain experience and would equally apply to HRPS staff, Trade Union representatives and Investigating officers. The attendance of observer at a Hearing would require the consent of the employee under Investigation, and the Chair would have the final say over the number of people attending the Hearing, which would be strictly limited. The Observer would be bound by confidentiality and would not be able to speak during the Hearing. Respondents were asked their opinion during the survey. There was conclusive support from HR and Trade Unions for this idea together with agreement from 59 (87%) of the Hearing Chairs and Investigating Officers.

(ii) *Assistant* It is suggested that a formal role of “assistant” at a hearing could be developed. This would be to assist an individual deal with complex cases that produce large volumes of information.. It would equally apply to Trade Union representatives and Investigating officers. The Chair would have the final say over the number of people attending the Hearing and it would require the consent of the employee under Investigation. The Assistant would be bound by confidentiality and would not be able to speak during the Hearing. The majority supported this idea although it was not as popular as the observer role. 18(78%) of HRPS staff supported it as did 12(70%) Hearing Chairs and 31(61%) Investigating Officers. The opinion of the Trade Unions was less clear. 5(71%) were undecided and the remainder had a split opinion with 1(14%) in agreement and 1(14%) not in agreement.

(iii) *Expert Witness*: This role would be to provide expert advice linked to the professional expertise of an individual. The Chair could call an Expert Witness to the Hearing as required to provide any clarification in relation to matters of expertise, where they had not been called as a witness to the Investigation. This could be applicable to Safeguarding/ Financial impropriety cases, for example.

SUMMARY OF FINDINGS

1. Little or no description of peoples' roles in disciplinary investigations, resulting in people not being aware of whose responsibility certain functions are, which contributes to unnecessary delays or tasks not happening.
2. *Role of HR*: Variation in HRPS practice was evident. 11 (48 %) HRPS officers stated they should be able to ask any questions but all the Trade Unions felt that HR should not ask questions. There is a risk that HRPS officers will be perceived as secondary Investigating Officers, which can be perceived to be in conflict with their role. Questions should be asked on matters of clarification, rather than new lines of questioning.
3. *Role of Audit* : The role of Audit in serious fraud/financial impropriety cases is unclear and warrants further discussion. The definition of "fraud" needs re-defining in the policy in terms of the disciplinary rules, as it covers relatively minor misdemeanours
4. *Role of the Director/Head of Service*: The responsibilities should be clearly defined, including monitoring & reporting and the timeliness of their decision making, as they are cited as one of the reasons for delays.
5. *Role of Contact Officer*: Frequency, type and level of contact should be defined. (section 5.3.5 Suspensions)
6. The creation of the *New roles of Observer, Assistant and Expert Witness* were favourable received by the majority of respondents.

PROPOSALS

1. Disciplinary Investigation guidance should include of roles and responsibilities of HRPS/ Trade Unions/Investigating Officers/Hearing Chairs/Witnesses/ Director/Head of service. This must include the maintenance of standards and reporting responsibilities.
2. Audit take the role of Investigating Officer in serious fraud/financial impropriety cases due to their level of expertise.
3. Fraud should be re-defined in the disciplinary policy to separate minor misdemeanours. Audit's role should be clarified and cross referenced to the Fraud Bribery & Corruption policy
4. Creation of expert witness role for Hearings. Audit could attend Hearings in this role as or when required by the Hearing Chair
5. New roles of Observer and Assistant at a Disciplinary Hearing are created. The parameters of these roles to be clearly defined.

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

1.3 Changes to policy regarding:

- **Re-define Fraud in order to categorise minor misdemeanours**

1.5 Cross -reference the Discipline policy to the Attendance & Wellbeing policy and Fraud, Bribery & Corruption policy

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process

3.2 Define roles and responsibilities of staff within the Disciplinary Investigation process, including new roles of Observer, Assistant and Expert witness

5.3.5 Suspensions

The Disciplinary policy states that suspension from duty is a neutral act regarded as a precautionary measure. It is not a disciplinary sanction and should be used as a last resort, following a preliminary examination and consideration of other options. Employees are suspended on full average earnings and legally the suspension is not time limited, but should be regularly reviewed. The ACAS Code of Practice states that:-

“In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible”

A Digigov report was run in October 2014 in response to a request for the number of suspensions between April 2013 and October 2014. This report was inaccurate as it only reported 4 suspensions, one of which was discounted as it before April 2013. All three names supplied were also recorded on the Excel spreadsheets. Therefore, the 2013/14 and 2014/15 Excel spreadsheets were studied to obtain the required information.

Table 15: <u>Number Suspensions by Directorate April 2013- October 2014</u> (Source 2013/14 & 2014/15 Excel spreadsheets)			
Directorate	No. on 2013-14 Excel spreadsheet	No. on 2014- 15 Excel spreadsheet	total
EDUCATION & LIFELONG LEARNING	26	4	30
STRATEGIC PLANNING HIGHWAYS TRAFFIC&TRAN	3	0	3
COMMUNITIES HOUSING & CUSTOMER SERVICES	3	0	3
HEALTH & SOCIAL CARE	2	0	2
CHILDREN SERVICES	1	0	1
SPORT LEISURE & CULTURE	1	0	1
total	36	4	40

40 people were recorded as being suspended from duty at some stage during the study period, which represents 15% of the total number of investigations. 30 (75%) of the suspensions occurred in the Education and Lifelong Learning Directorate.

Information on the 2014/15 Excel Spreadsheet did not have any reportable outcomes to date, therefore the 2013/14 Excel Spreadsheet alone was used as a data source. Data was available on start and end dates for 32 (89%) out of the 36 recorded suspensions on the 2013/14 Excel Spreadsheet, to enable calculation of the length of time.

Table 16: Length of time suspensions April 2013-March 2014 (Source: Excel Spreadsheet 2013/14)				
Source	No. records	Total Length of time all cases	Range	Mean
2013-14 excel spreadsheet	32	Start to End suspension= 1253 weeks	8-194 weeks	39 weeks ⁹

The mean length of time for paid suspensions was 39 weeks. This figure includes two suspensions in the Education and Lifelong Learning Directorate, one which lasted 194 weeks (including a period of maternity leave), and another lasting 94 weeks so the figures are skewed. Excluding these two cases reduces the mean length of suspension time to 32 weeks (8 months), which is still very lengthy.

The Disciplinary policy (FAQ's p66) states "*an unjustified period of suspension may amount to a breach of the implied term of trust and confidence, entitling the employee to resign and claim constructive unfair dismissal*". Therefore, the Council as employer, is at risk if the suspension is unnecessarily protracted or without proper cause. There was evidence that this aspect of the policy regarding the length of the suspension, is frequently breached.

Table 17: Outcome of Investigation where Employee was suspended Apl 2013- Oct 2014 (Source 2013/14 & 2014/15 spreadsheets)			
Outcome of Investigation	2013-14 Excel spreadsheet (n=36)	No. on 2014-15 Excel spreadsheet (n=4)	Total (n=40)
Dismissed without notice	15		15 (37%)
Final Written Warning	2		2 (5%)
Written warning	3		3 (7%)
Verbal Warning	2		2 (5%)
No case to answer/informal means	6		6 (15%)
Employee resigned	3		3(7%)
Suspension lifted but no outcome yet	2	1	3 (7%)
Suspension continuing but no outcome yet	1	3	4 (10%)
Don't know/not recorded	2		2 (5%)
Total	36	4	40

⁹ Figure adjusted to 32 weeks when two cases are excluded

Only 15 (37%) employees under suspension resulted in dismissal from employment, a further 7(17%) receiving some other form of disciplinary sanction. However, 6(15%) people who were suspended at some stage, ended with no case to answer or were dealt with informally.

Preliminary Examination prior to Suspension

HRPS officers were asked what they considered constituted a preliminary examination prior to a suspension. Opinions ranged from gathering of the facts/ looking at alternatives to a risk assessment. Three HRPS officers had developed a risk assessment template, but this has not been shared or adopted as standard practice. There was overwhelming agreement that there is insufficient guidance on a preliminary examination available, and a standard template to record decision making would be useful.

Trade Unions commented they had never seen a written preliminary examination prior to a suspension. The majority of Hearing Chairs and Investigating officers felt that suspensions were largely justified in the cases they had come into contact with. It is concluded that written evidence of alternatives considered as part of a preliminary examination, is not standardised practice.

Contact and Review during suspension

The contact officer role is an important one, to reduce the feelings of isolation for the employee on suspension from duty. (see section 5.3.4 Roles) During interview, both **Occupational Health** and the **Trade Unions** described situations where employees felt “abandoned”

“One case example in schools- the person was not allowed to talk to colleagues, she lost all her peer support and was not informed of a contact person”
(Occupational Health)

It became apparent during the survey, that in the experience of the personnel being interviewed, little or no reviews of suspensions are taking place by Directorates. A suspension should be reviewed to ensure that it is still appropriate, and to re-consider alternatives to suspension. The policy is specific on the need for, and timeframe of the review, but again, there is no apparent consequence to this breach of policy. It should be specified in the policy, and the guidance should reflect who should review a suspension, and how it should be done.

“Don’t think people consider all the options.” They should be reported on and held to account “Need to be clear on consequences of not reviewing”
(HRPS)

“A suspension can last a long time if an investigation is complicated and complex.” “I would not necessarily have known that I needed to review. I would expect reminder from HR on such matters.”
(Investigating Officers)

Suspensions and sickness absence

People who are suspended and subsequently report sick, are not captured on Digigov as a sickness absence. People who are suspended and sick are doubly disadvantaged, as it is likely that neither their suspension is reviewed, nor do they receive a sickness contact visit from the Attendance & Wellbeing team (who would not be aware of them). During the interview with Occupational Health, they described how people who were suspended frequently talked about their feelings of isolation. (Section 6 Sickness and Disciplinary Investigations)

SUMMARY OF FINDINGS

- 1. 40 people were recorded as being suspended from duty at some stage during the study period, which is 15% of the total number of investigations. 30(75%) of the suspensions occurred in the Education and Lifelong Learning Directorate**
- 2. Data from the 2013/14 excel spreadsheet showed the mean length of time for paid suspensions was 39 weeks. Adjusting the figure to remove two very long suspensions reduces the mean length of suspension time to 32 weeks (8 months),**
- 3. Only 15(37%) employees under suspension were dismissed from employment. Surprisingly, 6(15%) people who were suspended at some stage, ended with no case to answer/ dealt with informally.**
- 4. There is insufficient guidance on what constitutes a preliminary examination prior to suspension.**
- 5. The policy is specific on the need for, and timeframe of, a review of suspension, but there is no apparent consequence to this breach of policy**
- 6. An unjustified period of suspension may amount to a breach of the implied term of trust and confidence, entitling the employee to resign and claim constructive unfair dismissal. Therefore, the Council as employer, is at risk.**
- 7. People who are suspended and subsequently report sick, are not captured on Digigov as a sickness absence. It is likely that they will neither have their suspension reviewed, nor receive a sickness contact visit.**

PROPOSALS

- 1. Guidance on what constitutes a preliminary examination prior to suspension. Consider use of a standardised risk assessment/template for decision making.**
- 2. Clarify the role and responsibilities of the Contact officer.**
- 3. Develop a prompt in Digigov to trigger a review of a suspension**
- 4. Monitor and report on review of the suspensions regarding the length of time and appropriateness. Reporting at Directorate level to senior management. Policy and guidance should state how they should be undertaken and by whom.**
- 5. Guidance for managers on returning employees to the workplace following suspension, including use of mediation, where appropriate.**

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

1.1 Amend Disciplinary policy separating the all encompassing policy from the individual guidances contained therein.

1.3 Changes to policy regarding:

- **Use of mediation at any stage of discipline and grievance procedure**

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process

RECOMMENDATION 6: MONITORING & REPORTING

6.1 Disciplinary Investigations (including suspensions and associated sickness absence) should be regularly monitored and reported at senior management level within Directorates.

6.2 HRPS should review and collate corporate monitoring data in relation to Discipline.

RECOMMENDATION 7: CHANGES TO DIGIGOV

7.1 Review and amend the Disciplinary Investigation process on Digigov to reduce the current issues, and enable accurate management reporting.

7.2 Develop a prompt in Digigov to trigger a review of a suspension of an employee.

5.3.6 Investigation Interviews (source: Qualitative survey)

Audio recording in interviews: Information in relation to “tape” recording currently sits in the FAQ’s and not in the main body of the policy. It states that consent must be obtained from the employee and must not be covert, as this could be a breach of Article 8 Human Rights Act 1998. Tape recording could proceed if the employee and their representative consent, but it is not a common practice, and most interviews are recorded by a note- taker. However, two of the Investigating Officers interviewed were accredited Counter Fraud Specialists, who had extensive experience of using audio recording. Both of them would advocate recording employee interviews as an improvement on the current disciplinary processes.

20(87%) **HRPS officers** interviewed agreed that audio recording interviews would be a good thing, to establish what was said and it would be there to refer to if there were issues. The few that disagreed felt it may stunt the interview. 38(74%) Investigating officers also felt it would be a good idea. The main objections came from the majority of the **Trade Unions** - ...*“it would frighten the life out of members and cause stress” “Need to be duplicate copies of tapes for Trade Unions so there is no tampering with evidence” “It would be more costly”*. However one **Trade Union** was in agreement with audio recording stating that it would make sure witnesses stick to what they say, and would add integrity to the process.

Note taking in Investigation Interviews : Respondents were asked how note taking in interviews could be improved.

“Standard agreed format” “HR to take notes” “Have a confidentiality agreement “ (HRPS)

“Training” “Audio recording !” (Investigating Officers)

“Professional shorthand people” “Impartial note taker” “Being handed a copy of the questions as going into the room” “Dedicated people who can work straight on the laptop” (Trade Unions)

Further work would be required to ascertain any potential financial savings by audio recording versus note taking. If audio recording is used, it is likely there would be a reduction of delays in agreement of the interview notes. Copyright issues would need to be addressed.

Other issues in relation to Interviews:

(i) **Confidentiality:** A number of **Investigating Officers** raised the issue of confidentiality as a particular problem. This arises where investigations are within a Directorate and people know each other as colleagues outside the investigation. There is significant risk of collusion amongst witnesses where confidentiality has not been emphasised.

*I knew all the witnesses as they were colleagues.....a lot of their answers would be "You know him A****, you know what he's like". So very often I had to remind them that assume I don't know them or the individual. It was very awkward during and afterwards. (Investigating Officer)*

(ii) **Witnesses:** Some **Investigating Officers** described the difficulty of interviewing witnesses who were reluctant to be part of the investigation. The policy should state that there is an "expectation of co-operation" which covers attendance at interviews and Hearings.

"Engaging with witnesses who are reluctant to be involved although in many cases their testaments are essential to corroborate accusations etc."

"Some of the staff interviewed were interviewed as witnesses to relatively minor offences, but which added up to a significant whole. They felt nothing personal against the member of staff being investigated and felt they would be looked badly upon if called to the hearing". (Investigating Officers)

(iii) **Lack of Experience:** Managing the interview was an issue for some officers due to lack of experience, which could be addressed through appropriate training in Investigative interviewing (see section 5.3.3 Staff Experience and Training)

"I was not prepared- the questions were prepared but not the script that you say at the time. I went through the prepared questions with HR."

"An individual under investigation refusing to answer questions, continually asking for the interview to be adjourned and requesting their union rep answer the questions for them." (Investigating Officers)

SUMMARY OF FINDINGS

- 1. Audio recording interviews was favoured by 20(87%) HRPS officers and 38(74%) Investigating officers. Two, out of three, of the Trade Unions disagreed; the remaining one Trade Union was in agreement with audio recording.**
- 2. Note-taking in Investigation Interviews can be improved by a standard agreed format, professional shorthand people or people who can work straight on the laptop.**
- 3. Confidentiality is a problem where investigations are within a Directorate, and people know each other as colleagues outside the investigation. There is significant risk of collusion amongst witnesses**
- 4. Investigating Officers had difficulty interviewing witnesses who were reluctant to be part of the investigation.**
- 5. Managing the interview was an issue for some Investigating officers due to lack of experience.**

PROPOSALS

- 1. Improve the accuracy of records of Investigation interviews and Hearings, by exploration of audio recording and transcribing, versus the cost of a pool of experienced note takers with appropriate IT equipment. Exploration of a costed clerking service could be part of an options analysis.**
- 2. Provide guidance on a standard agreed format for recording notes of interviews.**
- 3. Provide guidelines on the appropriateness of selecting Investigating officers within a Directorate.**
- 4. Produce written information for witnesses at Investigation interviews. This would include issues such as the expectation of co-operation in the proceedings and a confidentiality agreement.**
- 5. Liaise with audit regarding Investigative interviewing training for Investigating Officers.**

KEY RECOMMENDATIONS

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process

3.2 Define roles and responsibilities of staff within the Disciplinary Investigation process, including new roles of Observer, Assistant and Expert witness

RECOMMENDATION 4: TRAINING

4.2 Establish a Disciplinary Investigation development programme including e learning, formal training, coaching & mentorship

5.3.7 Reports and Recording

Digigov: The issues with Digigov data are reported in Section 4 Quantitative Analysis. Respondents were asked during the survey what issues they had with recording the Disciplinary investigation information onto Digigov. The level of dissatisfaction amongst respondents was high.

(i) *Standard letters*- (19) 83% **HRPS officers**, 16 (94%) **Hearing Chairs** and 34(67%) **Investigating Officers** who use the Digigov Investigation process had problems with the standard letters. They included:-

1. The information in Digigov affects the wording of the letter so most letters have to be re-drafted.
2. The system does not make it easy
3. Layout is poor
4. The wrong letter can be generated dependant on allegation
5. Digigov letters do not print out in a suitable format/font
6. When you make an appointment for an interview Digigov automatically invites everyone to the interview unless you physically delete each individual from the list. There have been a number of incidents where the names of all witnesses were sent to the individuals under investigation, and seeing the Home address is a data protection issue
7. Any delays in inputting the Digigov process will prevent the use of the standard letters

*“I’ve never sent one letter that I haven’t had to amend from Digigov . The way the letters are generated needs editing as they are too prescriptive”
“You end up doing too much I use HR to do these” (Hearing Chairs)*

“ You can’t change the letter once approved” “Generating letters on digigov is very slow as it kept freezing and after changes were made and saved, these changes were removed when I went back into the letter”

“I think the default as a fail safe mechanism should be no-one is invited to an interview and you have to manually choose who you wish to invite”.

“Meeting arrangements were complicated” “Can’t change date historically so had to put in fictitious date which generated notification to employee inviting them to interview wrongly” (Investigating Officers)

(ii) *Disciplinary process*- 19 (83%) **HRPS officers**, 100% **Hearing Chairs** and 45(88%) **Investigating Officers** had problems with the process for reporting Investigations on Digigov. **It is not a process that Council staff will use on a very regular basis, so there is not the opportunity to become familiar with a complex system, hence the need for a process that is straightforward.**

The issues raised during the interviews included:-

1. It is ok as a recording process but not for managing them as cases are not standard . It is too complex, not suitable and takes longer. Need to simplify it to what is relevant only
2. There is not enough space in boxes to include information
3. Supporting information cannot be attached
4. The process is too restrictive so the result is unprofessional
5. There are sensitive issues on display
6. HR Officers need to chase a lot to get workflow going. Things are not closed so sits in the in box
7. Lack of visibility for Directors
8. It needs to be logical there are too many alternatives – the tabs are not clear
9. Autosave would be useful
10. Needs to be a linear process -it is too clunky and not user friendly
11. Can't see the timelines of when things are done in the investigation
12. Options for informal actions should be extended
13. There is no joining up of the policy, templates or Digigov .
14. When an area has not been filled in, and you cannot proceed to the next stage without it, there is no flagging of what has not been filled in, or where.
15. The guidance notes on how to use the disciplinary application need to be clearer

"It should come off Digigov It can go under the radar and for people who are hands off this is not helpful" "It's horrible" "Its cumbersome and not user friendly when you're not doing it regularly" "Historically a chair only needed to send a letter out. Now the process is lengthy. I use WORD and transfer it in"
(Hearing Chairs)

"No-one appears to have had training on how to use Digigov for the Disciplinary process and even HR are not able to advise when problems occur with the system." "14 different people were involved which caused a problem as it had to be separately entered into Digigov for printing and caused a problem"
"We don't get asked input for the development of Digigov"
(Investigating Officers)

Investigating Officers Reports: At the conclusion of the investigation, the Investigating Officer produces a report of the findings for consideration by the Director. There is currently a template (4.C. 432) available on the Cardiff Improvement System (CIS) and also within Digigov. There is a difference in practice with some people uploading a Word document version of 4.C.432 into Digigov, and others using the Digigov template.

Quality of the report

HRPS, Trade Unions and **Hearing Chairs** were asked in the survey what was their opinion of Investigating Officer reports. The majority felt that they were very variable in quality.

“Too brief “ “very difficult to follow and not in line with the policy – parts missing”

“One Investigating Office lost a witness statement and it was a Data Protection issue” “too many sloppy reports” (Trade Unions)

“Pretty good they have put a lot of effort into them and done them in their own time for serious issues”

“One I had things were in a mess with the layout of the report- who advised the IO? QA not reliable”

“It varies greatly according to the experience of the IO, who supports them and the offence”

“Some reports do not have the analysis of the findings and this can cause the investigation to fail.” (Hearing Chairs)

HRPS officers were questioned regarding what happens when the Investigating Officer’s report was not up to the required standard. It was apparent that there was variation in HRPS practice. 9(39%) said they would go through the report with the Investigating Officer, 5(22%) would make recommendations for amendments and 3(13%) admitted to re-writing the report. A further 3(13%) stated that HR officers should not re-write the report. Nearly half the HRPS officers felt that the Director should decide whether the report was fit for purpose, sending it back to the Investigating Officer if improvements were required. However, if there are inadequate reports reaching the Hearing Chairs then it would suggest that

Directors are not robustly applying any degree of standard setting at the stage when the decision to proceed to a hearing takes place.

HRPS staff were asked who they felt was setting the standard for Investigating Officer's reports. 8(35%) felt "*HR*", 7(30%) said "*no-one*", 5(22%) said "*the policy*" and the remaining three said the "*Investigating Officer*"

The following improvements to the Investigation template were suggested by respondents:-

1. Have clear guidance for completion and regarding how much information and detail required in each section.
2. The report format in Digigov is poor- better to upload a document report
3. Improve the language of the template with some description under the FINDINGS so there are facts presented followed by analysis and judgement that lead to recommendations.
4. Can feel repetitive
5. It would be useful for those who have not undertaken an investigation to see an anonymised one

SUMMARY OF FINDINGS

1. 19(83%) HRPS officers, 16(94%) Hearing Chairs and 34(67%) Investigating Officers who use the Digigov Investigation process had problems with the standard letters.
2. 19(83%) of HRPS officers, 100% Hearing Chairs and 45(88%) Investigating Officers had problems with the process for reporting Investigations on Digigov
3. It is not a process that Council staff will use on a very regular basis, so there is not the opportunity to become familiar with a complex system, hence the need for a process that is straightforward.
4. Investigating Officer reports are very variable in quality. There is variation in HRPS practice in relation to the report. 9(39%) said they would go through the report with the Investigating Officer, 5(22%) would make recommendations for amendments and 3(13%) admitted to re-writing the report A further 3(13%) stated that HR officers should not re-write the report.
5. Directors are not robustly applying any degree of standard setting at the stage when the decision to proceed to a hearing takes place, evidenced by the number of poor reports at Hearings.
7. It is unclear who is “setting the standard” for Investigating Officer’s reports. 8(35%) of HRPS staff said “HR”, 7(30%) said “no-one”, 5(22%) said “the policy” and the remaining three said the “Investigating Officer”

PROPOSALS

1. Review the Digigov Disciplinary Investigation process for use as a simple recording tool, not management of the case. A simplified process would enable more accurate data entry so that management reports can be produced. Any costs incurred would be offset by considerable reduction in wastage of staff resources.
2. Cross reference the use of the Digigov process to the Policy Guidance
3. Produce guidance on completion of the Investigating Officer’s report template with anonymised report samples available
4. Clarify HR role in relation to Investigating Officer’s reports
5. Specify the role and responsibility of Directors to monitor quality of the Investigating Officer’s report.

RECOMMENDATIONS

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

- 3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process**
- 3.2 Define roles and responsibilities of staff within the Disciplinary Investigation process**

RECOMMENDATION 7: CHANGES TO DIGIGOV

- 7.1 Review and amend the Disciplinary Investigation process on Digigov to reduce the current issues, and enable accurate management reporting.**

5.3.8 Hearings

Following submission of the Disciplinary report to the Director/Head of service, a decision is then made as to whether disciplinary proceedings should be instigated or not. Where they are instigated, a Disciplinary Hearing is held.

Length of time to Hearing

Data can be found in section 4.3.1 Table 3. In many instances the length of time from the completion of the Investigation report to the Hearing date was greater than the length of the investigation, highlighting problems and delays with this stage. Most common delays arise due to practical arrangements including availability of all parties and a suitable venue. This responsibility currently lies with the Presenting Officer and it can be particularly time consuming. There is a current contradiction in the policy regarding who should arrange the note-taker for the Hearing, which should be addressed. See section 5.3.6 Investigative Interviews

Preparing for the Hearing

The vast majority of **HRPS staff, Trade Unions, Hearing Chairs** and **Investigating Officers** interviewed were in favour of the production of guidance documents for Presenting officers. This would include how to prepare the Hearing pack and how to present the case.

Employees at a Hearing have a statutory right to representation from a companion defined in a list of approved categories under the Employment relations Act 1999. These include trade union officials, certified union representatives or fellow workers. The Disciplinary policy currently states that “*the work colleague should not be somebody who may prejudice the hearing*”. However, an Employment Appeal Tribunal ruled in May 2013 that “*there is no requirement for the choice of companion to be reasonable, as long as the choice came from the approved category*”- in other words it is the request to be accompanied that has to be reasonable, and not the choice of the work colleague.

Amendment is required to the Disciplinary policy to reflect this ruling.

There should be further guidance on preparation of witnesses for a Hearing. The idea of producing information for witnesses on “*What to expect in a Hearing*” was well received by all parties. In the current Disciplinary policy there is an anomaly between the requirement for a management witness to attend (mandatory), and the attendance for a witness for the employee under investigation (optional). This should be addressed as to enable cross examination of witnesses, and in the interests of natural justice for the Hearing, the requirement to attend should be equal to both.

Conducting the hearing

21(91%) **HRPS staff**, 100% **Trade Unions** and 12 (70%) **Hearing Chairs** were in favour of production of guidance for how to conduct a Hearing. In addition, a standard script for Chairs would be welcomed- this is commonly in use in Schools.

Decision making

At the conclusion of the Hearing, the Chair uses 10 key questions (as listed in the policy) to aid decision making. The majority of Hearing Chairs find them helpful. However, it is recommended that:-

- The wording of the 10 key questions is reviewed
- They are presented in a Template format to enable recording of decision making (Schools use a template)

Variation in Sanctions

As stated in section 1.7, Audit Committee had previously raised a concern regarding the perceived variation of sanctions in Disciplinary Hearings. The majority of **HR officers** interviewed and some Hearing Chairs acknowledged that there could be variations, but that it was inevitable due to mitigating circumstances. The majority of the **Trade Unions** felt that there was general consistency, although one case of extreme variation was cited, where a person was dismissed by one Hearing Chair and the Appeal Chair found “*no case to answer*”.

“I have heard this and agree that sanctions need to be the same across the board; sometimes advice is not consistent”

“I hope the HR advisor would have done their research re sanctions . I know there have been previous Appeal Hearings where I have not agreed with the previous sanctions”

“It would be good to have a knowledge bank of circumstances/outcomes that could be anonymised and shared”. (Hearing Chairs)

Following the concern raised by Audit Committee, Internal Audit put forward a proposal that they attend all Hearings where the case has been one of fraud or financial impropriety. Respondents were asked during the survey their opinion regarding this proposal. **HRPS** consider the attendance of audit at all of these hearings to provide advice to Chair would be highly resource intensive. Having Internal Audit on *“both sides of the table”* could create issues, and Chairs may find the presence of 2 advisors (i.e. Internal Audit and HRPS) rather confusing.

Trade Unions were also 100% in agreement that they did not consider it necessary for Internal Audit to attend all hearings. Half of the **Hearing Chairs** interviewed felt that Internal Audit should attend all hearings, 31% disagreed, and the remainder felt there was an occasional need.

Audit would either be present at a Hearing as Presenting Officer in cases of Fraud /Financial impropriety, or could be called to attend a Hearing by the Chair as an Expert Witness (see section 5.3.4 Roles)

It is suggested that attendance of Internal Audit at all Hearings as a sole control measure, would not substantially reduce the variation of sanctions.

Improved control measures would include :-

- The robust use of a decision making template by Hearing Chairs
- Ensuring that HRPS advisors have previous Hearing outcomes readily available (from HRPS database), for communication to Hearing Chairs
- Improved internal communication within HRPS regarding outcomes of Hearings & Employment tribunals (see HRPS Service review 1.2).
- Audit leading the investigation in serious fraud/financial impropriety cases (in which case they would be presenting at the Hearing.)
- Opportunities for observational experience for Hearing Chairs (See section 5.3.3 Staff Experience & Training)
- Opportunity for Internal Audit to be called to Hearings as required in the role of an Expert Witness

Outcome of Hearings

Data can be found in Section 4.3.8 Table 6. There is a significant amount of staff time (both HRPS and Investigating Officers) being spent on work with no disciplinary outcome, including cases that have proceeded to Disciplinary Hearing. This calls into question the decision- making regarding the need to proceed to a disciplinary investigation in the first instance, and not having exhausted other means of resolution (see section 5.3.2 Early Resolution). It is imperative that the number of disciplinary hearings are reduced, as levels of available Operational Manager resources will fall with budget restrictions.

Recommendations of the Hearing Chair

Following the Hearing, Chairs may make recommendations for specific actions such as Mediation or Counselling. There is some evidence that recommendations are not passed to Directorates, or acted upon (see Section 5.3.2 Role of Mediation) There is a lack of clarity regarding whose role and function it is to ensure that this happens. It is suggested that the Hearing Chair should take responsibility for ensuring recommendations are passed to Directorates, and the HRPS officer should follow up to ensure they have been actioned.

Issues in dispute between HRPS and the Trade Unions

As stated in section 3 there are currently two issues (relevant to Hearings) that were not agreed between HRPS and the Trade Unions, during the last 12 month review of the Disciplinary policy.

Issue 1: Witnesses attending the Hearing should not be accompanied (apart from exceptional circumstances- (i) Adult & Child Protection cases (ii) advocacy under reasonable adjustments (iii) serious fraud cases)

During the qualitative survey, 19 (83 %) **HRPS staff**, 11(65%) **Hearing Chairs** and 34(67%) **Investigating Officers** were in support of witnesses having accompaniment, in addition to the exceptional circumstances. The reasons given are connected to perceived intimidation by witnesses during questioning by the Trade Unions at the Hearing, and the need for moral support (although the person accompanying would have no role in asking questions). The opinion of the Trade Unions, and those other staff who were not in favour, is that firstly, the witness would have had representation during the investigatory interview and should stand by their statement. Secondly, it is the role of the Chair to control the conduct of the Hearing and prevent witness intimidation.

The ACAS Research paper “ *Accompaniment and representation in workplace Discipline and Grievance*” found that “ *companions were solely used as a source of support and to observe proceedings*” it goes on to say... “ *non - union companions tended to be seen as playing a negative role in formal hearings*”. The role of an accompaniment to a witness is unclear, and it is concluded, therefore, that it is the conduct of the Hearing that needs addressing, rather than the presence of an additional person.

The ACAS *Guide to Disciplines & Grievances in Work* states that “ *It is possible that the disciplinary meeting may not proceed smoothly- people may get upset or angry.... Clearly during the meeting there may be some letting off steam and this can be helpful in finding out what has actually happened. However, abusive language or conduct should not be tolerated*”.

The author recommends that a **Code of Conduct for Hearings** is introduced. The Code would define the level of professional behaviour expected from all parties, and that “letting off steam” does not tip into behaviour that is neither unacceptable nor in the spirit of natural justice. The application of the Code will also ensure that Hearing Chairs consistently and robustly manage and prevent any potential intimidation of personnel by any party.

Issue 2: There should be one, not two, Trade union representatives attending the Disciplinary Hearing.

As previously stated, the Right of Representation at a Hearing is a statutory one, and a companion may be a fellow worker, a trade union representative or an official employed by a trade union. The ACAS Code of Practice does not describe the need for two Representatives. It is suggested that the potential need for a second Trade Union representative can only be for two reasons, either:-

- There is a new Trade Union representative that needs to gain experience by shadowing and observing an experienced Representative
(*Observer Role*)

OR

- The case is complex and the Trade Union Representative has a need for an Assistant to deal with large volumes of information.
(*Assistant Role*)

Both of these roles are described under “new Roles” in section 5.3.4 Roles.

The author recommends that where a second Trade Union representative is required, a request to the Hearing Chair for an “*Observer*” or an “*Assistant*” to attend is made. This ensures that the second Trade Union Representative has a specific role, which does not include the ability to raise questions during the Hearing.

SUMMARY OF FINDINGS

1. The length of time from the completion of the Investigation report to the Hearing date was often greater than the length of the investigation, highlighting problems and delays with this stage. Most common delays arise due to practical arrangements including availability of all parties and a suitable venue.
2. Respondents in favour of producing guidance for presenting case, preparing a pack for hearing and information for witnesses
3. The employee at a Hearing has a right of representation which can be a work colleague. The Employment Appeal Tribunal ruled in May 2013 that *“there is no requirement for the choice of companion to be reasonable, as long as the choice came from the approved category”* A work colleague cannot be excluded on the grounds that they may prejudice the Hearing, as currently stated in the policy
4. Perceived Variation in Sanctions at Hearings can be controlled by robust use of a decision making template by Hearing Chairs, ensuring that HRPS advisors have previous Hearing outcomes readily available, opportunities for observational experience for Hearing Chairs and Audit lead the investigation in serious fraud/financial impropriety cases.
5. A lack of clarity regarding whose role it is to pass recommendations from the Hearing Chair and ensure they are actioned
6. Issues in dispute with Trade Unions-
 - (i) Management witnesses having accompaniment at a hearing: The majority of HRPS staff, Hearing Chairs and Investigating Officers were in support of this. However, ACAS guidance states that *“non - union companions tended to be seen as playing a negative role in formal hearings”* and the role of an accompaniment to a witness is unclear. It is the conduct of the Hearing that needs addressing, rather than the presence of an additional person.
 - ii) Two Trade Union Representatives at a Hearing: The ACAS Code of Practice does not describe the need for two Representatives. Where there is a need for a new Trade Union representative to gain experience by shadowing and observing an experienced Representative, this is covered by the “observer” role. Where the case is complex and the Trade Union Representative has a need for an Assistant to deal with large volumes of information, this is covered by the “Assistant” role.

PROPOSALS

- 1. Explore the options available to undertake note taking and practical arrangements for interviews and Hearings in a more timely and accurate manner.**
- 2. Production of guidance for presenting Officers on all aspects of Disciplinary Hearings including preparation of the Hearing pack , how to present a case etc**
- 3. Produce information leaflet on the role and expectations of the witnesses at the Hearing.**
- 4. Guidance for Chairs on conducting hearing together with a standard script**
- 5. Amendment to the Disciplinary policy regarding the choice of workplace colleague as companion to the Employee at the Hearing. In accordance to the EAT ruling May 2013, it is the request to be accompanied that has to be reasonable and not the choice of workplace colleague.**
- 6. Introduction of Code of Conduct for hearings. Any second Trade Union Representative at a hearing must have a specific role of Observer or Assistant**
- 7. Review the wording of the 10 key questions and produce a template to record decision making**
- 8. Create a database of previous Hearing outcomes for internal use in HRPS. Information should be readily available by the HR advisor for communication to the Chair, where appropriate.**
- 9. Change to policy regarding attendance at Hearings between management and respondent witnesses. This is not in the interests of natural justice for the Hearing and should be amended.**

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

1.1 Amend Disciplinary policy separating the all encompassing policy from the individual guidances contained therein.

1.3 Changes to policy regarding:

- **Amendment to the Disciplinary policy regarding the choice of workplace colleague as companion to the Employee at the Hearing. In accordance to the EAT ruling May 2013, it is the request to be accompanied that has to be reasonable and not the choice of workplace colleague.**
- **Amendment to policy regarding attendance at Hearings between management and respondent witnesses.**

1.4 New addition to policy:

- **Introduction of Code of Conduct for hearings**

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process

3.2 Define roles and responsibilities of staff within the Disciplinary Investigation process, including new roles of Observer, Assistant and Expert witness

RECOMMENDATION 4: TRAINING

4.3 Instigate opportunities for observational experience for relevant staff in Disciplinary Hearings (by agreement of all attendees and carefully managed as a confidential process)

RECOMMENDATION 5: COMMUNICATION

5.1 Improve internal communication and establish a database within HRPS re outcomes of Hearings

5.3.9 Appeals

Employees subject to formal disciplinary action have the right of appeal against the decision, which is considered by a higher level of management who had no previous involvement in the Hearing decision.

Appeals can take the form of :-

- A review (where the appeal is against a verbal, written or final written warning)
- A complete re-Hearing (where the appeal is against a dismissal or demotion)

During the period April 2013 – October 2014, 13 employees appealed the decision of the Hearing and underwent an Appeal Hearing. Data on Hearing and Appeal Hearing dates was available for 11 (85%) of the 13 cases.

Table 18: <u>Length of time from Disciplinary Hearing to Appeal hearing (All sources)</u>			
No. records	Total Length of time	Range	Mean
11	110 weeks	2-27 weeks	10 weeks

The mean length of time from the Hearing to the Appeal Hearing was 10 weeks. Claims to an Employment Tribunal have to be within 3 months of a person's employment ending, which would be dated around the time of the Hearing. The implication of the length of time from Hearing to Appeal is that in many cases, a submission to ET would need to take place before the Appeal has been heard. This may be considered to be unreasonable of the employer.

Grounds for Appeal:

According to the Disciplinary policy the grounds for Appeal are:-

- Procedural flaw
- Inconsistent findings
- Inappropriate sanction

The grounds do not currently include “*New Evidence coming to light since or not considered at original Hearing*”. This is a current ground for appeal in the Schools Staff Discipline procedure, and for consistency should be added to the corporate policy.

The majority of respondents interviewed felt that it was usual for people to supply very little accompanying evidence with their appeal form. The policy is not rigidly applied, and appeals are allowed to proceed despite the lack of information. The procedure should be clarified to specify who should scrutinise the appeal notification, and make the decision for the requirement for appeal, and whether it is a Review or re-Hearing, based on the information supplied.

Outcomes of Appeals:

Data was available on the outcome of the Appeal Hearing for the 13 employees.

Table 19: <u>Outcome of Appeal Hearings</u> April 2013- October 2014 (All sources)				
Source	Number of Appeals	Decision at Hearing	Original Decision upheld on appeal	% Appeal Not upheld
2013/14 Excel spreadsheet	4	Dismissal (2) Final Written Warning (1) Written Warning (1)	3 ¹⁰	75%
2014/15 Excel spreadsheet	1	Dismissal (1)	1	100%
Digigov	8	Dismissal (8)	8	100%
Total	13		12	92%

11 (85%) of the people who appealed the decision of the Hearing had been dismissed from employment, and none of these dismissed employees had their Appeal upheld. Two employees had not been dismissed, and one of them had their original decision overturned on Appeal, which was changed from a Final Written Warning to a Written warning. Both of these people had periods of sickness absence associated with their investigation (see section 6 Sickness & Disciplinary Investigations).

¹⁰ Final Written Warning commuted to Written Warning on appeal

SUMMARY OF FINDINGS

1. 13 employees appealed the decision of the Hearing and underwent an Appeal Hearing.
2. The mean length of time from the Hearing to the Appeal Hearing was 10 weeks. Any submission to an Employment Tribunal would often need to take place before the Appeal, due to the Employment Tribunal's submission timescales. This may be considered to be unreasonable of the employer.
3. The grounds of Appeal do not currently include "*New Evidence coming to light since or not considered at original Hearing*". This is a current sanction in the Schools Staff Discipline procedure.
4. Very little accompanying evidence is supplied with the appeal form. The policy is not rigidly applied, and appeals are allowed to proceed despite the lack of information.
5. Eleven of the 13 people who appealed the decision of the Hearing had been dismissed from employment. None of the dismissed employees had their Appeal upheld. Two had not been dismissed, and one of them had their original decision overturned changed from a Final Written Warning to a Written Warning

PROPOSALS

1. Amend the grounds for appeal to include "*New Evidence coming to light either since, or not considered, at original Hearing*".
2. Improved guidance for the appeal procedure to specify who should scrutinise the appeal notification, request more information if required and make the decision for the proceedings.

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

- 1.4 New addition to policy:
 - Additional ground for Appeal "*New Evidence coming to light*".

RECOMMENDATION 3: CHANGES TO DISCIPLINARY GUIDANCE

- 3.1 Develop detailed Guidance for each stage of a Disciplinary Investigation Process

6 SICKNESS AND DISCIPLINARY INVESTIGATIONS

6.1 *Data*

6.1.1 Records were examined for the 275¹¹ people who had been under Disciplinary investigation between April 2013 and October 2014, to see if they had any periods of recorded sickness absence.

6.1.2 68 (25%) people did not have any sickness absence recorded. The remaining records were then further examined to establish whether there was any likely association (or causal effect) between the disciplinary investigation and the sickness absence.

6.1.3 The sickness absence was discounted for a further 110 people because it either:-

- Fell outside the investigation period¹² OR
- Was for a cause that was unlikely to be associated with a disciplinary investigation e.g. surgery/ fractured bones, minor sicknesses/infection etc.

6.1.4 This left a group of **97** people¹³ where there was an apparent association between the disciplinary investigation and the sickness absence, and represents 35% of the original group.

Reported reason for absence

6.1.5 43 (44%) of the 97 people had a reported reason for absence as “*Stress*”. The remainder had a variety of reasons recorded - sometimes as “*other*” or sometimes the condition was *stress related* e.g. stomach pains/headaches or an exacerbation of a pre-existing condition that is effected by stress e.g. angina

¹¹ The number of people exceeded the number of investigations due to multiple respondents

¹² Four people had long term sickness absences for stress/conditions associated with stress, immediately after the investigation period. They have been included as it was apparent that the absence was a direct consequence of the investigation

¹³ This figure excludes people who are suspended as part of the investigation, as Digigov cannot report a person who is suspended as having a sickness absence (see section 5.3.5 Suspensions)

6.1.6 Some people had more than one period of sickness absence during the period of the investigation. The data was based on the start and end date of the absence, and was therefore initially calculated in calendar days.

6.1.6 Table 20 illustrates that the total number of days lost for the 97 people was 6,155 calendar days. Based on a figure of 224 working days per calendar year, this figure was reduced by 40% to give an approximate number of total working days lost as 3,633 days, which is an average of 37 working days per person.

Table 20: Sickness levels Staff during Disciplinary Investigation period (Source: Digigov)			
No. records	Total Length of time calendar days	Working Days lost (40% reduction)	Average working Days lost per person
97	6,155 days	3,633 days	37

6.1.7 Sickness absence levels for the Council (Table 21) are calculated by dividing full time equivalent staff by total sickness days (short and long term), and reported quarterly. There are approximately 10 working days lost per person to sickness absence.

Table 21: <u>Cardiff Council Sickness Data reporting</u> (Source: HRPS)			
	Staff FTE average	Total sickness FTE days lost	Average working Days lost per person
2013/14 (April 2013- March 2014)	11677	118854	10.18
2014/15 (Q1 & Q2 2014)	11221	73086	10.06

6.1.8 The average of 37 working days lost per person undergoing a disciplinary investigation, is therefore more than three times the average of working days lost in the Council.

6.1.9 There is anecdotal evidence that some sickness absences for Investigating Officers and witnesses are also directly attributed to the Investigation, but this data has not been studied. It is possible that Investigations are causing an even higher level of sickness absence than demonstrated here.

6.2 Qualitative Survey

6.2.1 Attendance & Wellbeing (AWB) Team

Three members of the Attendance & Wellbeing Team were interviewed. Two of them had experience of participation in Disciplinary Investigations (including schools) and Hearings. No-one had attended an Employment tribunal. The AWB team commented that they were not “*sickness absence experts*” and had not received specialist additional training. They were, however, in a position to know the whole situation of the employee from contact visits and discussion with the manager. They do not receive any feedback in relation to the outcome of investigations.

Role of AWB team:

The Team can be asked to make a referral to Occupational Health re the fitness of the individual to be investigated and attend or take part in interviews, although the Manage team can also do the referral. They undertake a contact visit as part of sickness policy, and advise on the Employee counselling service. The Team have issues of not feeling involved in the investigation, yet are expected to manage the visit, which then does not feel co-ordinated. There is a dilemma with the contact visit in trying to keep it separate from investigation, which is likely to be the focus and main concern of the employee. In some instances e.g. Schools investigations, the Caseworker deals with the sickness absence. The AWB team favoured joint visiting by the caseworker and AWB team. The author recommends that one HRPS Officer deals with the sickness absence and the investigation together.

Policy:

The AWB team considered that there was insufficient guidance regarding the management of sickness during Disciplinary Investigations, in particular which policy is applicable, and how to manage persistent sickness absences that fall into a disciplinary matter. The Attendance & Wellbeing policy guidance does not make reference to Disciplinary Investigations at all, and there needs to be clarity and cross referencing between the Disciplinary policy and the Attendance & Well Being policy. The Attendance & Well Being policy is currently under review.

Reporting & Recording:

There is currently no reporting on the interface between sickness absence and investigations. There is no mechanism to record the reason for the absence on Digigov as being in connection with an Investigation. There is also no recording of a sickness absence when an employee is suspended from duty, as their pay would otherwise be affected. Other improvements suggested by the AWB team included one letter being sent to the employee, instead of two letters from both teams.

6.2.2 Occupational Health:

One Occupational Health Nurse Manager and one Occupational Health Nurse practitioner were interviewed. With regards to Disciplinary investigations, their role is to determine the person's fitness to continue with an investigation where they have reported sick from work. The largest group of people they see are those who are stressed (which is not a medical condition). Some people have never had a previous history of stress, and some have medical issues or a pre-existing condition which may be aggravated by stress. The other group of people they see are those who have been through the disciplinary process, and then report sick from work.

Fitness to attend:

The Society for Occupational Medicine recommend that an employee is fit to attend an investigation meeting if the following criteria are met:-

- Employee has the ability to understand the issue being addressed
- Employee has the ability to distinguish right from wrong
- Employee is able to instruct a representative to represent their interests
- Employee is able to understand and follow the proceedings, if necessary with extra time and written explanation

The employee would have to be incapable of consenting to, or understanding the procedure, as they were in a condition that impaired their judgment, but this case would be rare. In December 2012, the Faculty of Occupational Medicine of the Royal College of Physicians issued updated "*Ethics Guidance for Occupational*

Health Practice". The Guidance is explicit in that in addition to consideration of the worker's health, there should also be consideration for the " *need of the employer to reach a conclusion in the interest of the organisation and the other workers*".

Occupational Health's default position in determining an employee's fitness to participate is as follows:- *"Even if a person is signed off from work with stress, that does not mean they are unfit to meet, as 'fitness for work' and 'fitness to meet' are different levels of fitness. In the majority of situations, individuals are likely to be fit to meet with management, and that doing so, is in their best interests to facilitate a resolution. Delaying the process is known to be counterproductive, as a protracted matter only risks a further decline in psychological / emotional wellbeing. Meeting is widely regarded as the best way forward to achieve a resolution in any stress symptoms, and is the lesser of the two evils when compared with the alternative of no action, and the matter dragging on indefinitely."*

Therefore either attendance at an interview, OR continuing the investigation without the individual, will be better for the individual's health in the longer term. Occupational Health feels that a "blanket referral" to them prolongs the investigation process. They also commented that even after their advice to proceed has been given, it can seem to take a long time. The longer someone remains off work the less likely a full return is possible. It is also likely that the employee's condition may deteriorate from, for example, a "reactive" anxiety to a more entrenched mental health condition. Actions designed to reduce any delays to this process would be preferable. It is recommended that the individual under investigation is approached and given the option of agreeing to continue with participation with the interview. Only those who are unsure, or where it is not clear, would be referred to Occupational Health.

Attendance & Wellbeing Policy:

Occupational Health stated they had previously requested that fitness to attend investigation interviews should be included in the Attendance & Wellbeing Policy

6.2.3 HRPS/Trade Unions/Investigating Officers/Audit: People going on sickness absence during the investigation was reported as a common issue. **Audit** stated this was a particular problem in relation to Investigation Interviews. **Trade Unions** felt that 90% of the absences were for genuine reasons and not “delaying” tactics. One Trade Union respondent felt that the sickness absence should be “discounted” if there was no case to answer in the investigation. 13 (57%) **HRPS officers** felt that the sickness should be covered by one HR officer, rather than the caseworker and the AWB team. **Investigating Officers** were questioned about their experience of dealing with the HRPS officers in relation to sickness absence. 24 (47%) stated that two officers were involved, although many did not know, as they were not communicated with.

“Same officer would make the process easier” “ There were two officers, but both not discussing what is going on “ (Investigating Officers)

SUMMARY OF FINDINGS

- 1. 97 people (35%) were identified as having an apparent association/causal effect between the investigation and the sickness absence.**
- 2. 43(44%) had a reported reason for absence as “Stress” Some people had more than one period of sickness absence during the period of the investigation**
- 3. The total number of days lost for the 97 people was 6,155 calendar days. Reducing it by 40% gives an approximate number of 3,633 days total working days lost, which equates to average 37 working days per person.**
- 4. This average is more than three times the average of working days lost per person for the Council.**
- 5. *Role of Attendance & Wellbeing (AWB) Team* There is insufficient guidance regarding the management of sickness during Disciplinary Investigations. 13 (57%) HRPS officers felt that the sickness should be covered by one HR officer rather than the caseworker and the AWB team.**
- 6. There is no mechanism to record the reason for the sickness absence on Digigov as in connection with an Investigation. This is not reported on.**
- 7. *Occupational Health’s* default position is that a person on sickness absence would be fit to proceed with an investigation unless there were genuine health concerns. Delaying the process for a prolonged period is likely to be more damaging to their health, especially their mental health, than continuing with it.**

PROPOSALS

- 1. There should be robust management of sickness absence during Disciplinary Investigation in view of the amount of working days lost per person.**
- 2. Addition of an appendix to the Attendance & Wellbeing policy regarding sickness absence and Disciplinary & Grievance investigations. There should be cross referencing between the Discipline and Attendance & Wellbeing policies.**
- 3. There should be clarification /change to paragraph 15.9 in the Disciplinary policy which is contradictory. Use of a flow chart in relation to sickness absence would be helpful.**
- 4. Digigov should be amended to include a specific tab or question “ Is the Absence in connection with an Investigation”, to enable reporting.**
- 5. One HRPS officer should deal with the Investigation and the Sickness Absence**
- 6. There should be regular monitoring and reporting on people under investigation as part of sickness absence monitoring.**
- 7. There should be revised determination for fitness to participate in the Investigation to prevent blanket referrals to Occupational Health**
- 8. There should be sickness absence monitoring of people who are suspended and sick including sickness contact visits.**

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

- 1.1 Amend Disciplinary policy separating the all encompassing policy from the individual guidances contained therein.**
- 1.5 Cross -reference the Discipline policy to the Attendance & Wellbeing policy**

RECOMMENDATION 2: CHANGES TO OTHER POLICIES

- 2.4 Addition to the Attendance & Wellbeing policy re management of sickness during Disciplinary Investigations (including suspensions)**

RECOMMENDATION 6: MONITORING & REPORTING

- 6.1 Disciplinary Investigations (including suspensions and associated sickness absence) should be regularly monitored and reported at senior management level within Directorates.**
- 6.2 HRPS should review and collate corporate monitoring data in relation to Discipline.**

RECOMMENDATION 7: CHANGES TO DIGIGOV

- 7.3 Create an option tab in Digigov to link sickness absence to an investigation**

RECOMMENDATION 8: SICKNESS ABSENCE

- 8.1 Robust management of sickness absence during Disciplinary Investigation (including suspensions) managed by one HRPS officer.**
- 8.2 Revise the determination for fitness to participate in the investigation, to prevent blanket referrals to Occupational Health**

7. SCHOOLS

7.1 Disciplinary and Dismissal procedures for school staff

- 7.1.1 The regulations and guidance governing Disciplinary procedures for teachers and other school staff can be found in Background section 1.4.
- 7.1.2 The introduction of *The Staffing of Maintained Schools (Wales) (Amendment) Regulations* in July 2014, and the circular 009/2014 “*Safeguarding children in education: Handling allegations of abuse against teachers and other staff*” have removed the requirement on the governing body to appoint an independent investigator to investigate allegations of ‘*a child protection nature*’ prior to the staff disciplinary and dismissal process, and replace it with a duty to appoint an independent investigator to investigate allegations that a teacher or member of staff has “*abused*” a pupil..
- 7.1.3 Servoca currently manage the Independent Investigation Service for child abuse allegations against school staff, and report back to the Welsh Government. The changes have resulted in Servoca effectively changing their threshold and are now managing the most serious cases only, not including those of a “*Safeguarding*” nature that they formerly dealt with.
- 7.1.4 The governing body (chair) must not appoint an independent investigator until the headteacher (or chair if the allegation is about the headteacher) has held an initial discussion with the Local Authority Designated Officer (LADO). If the allegations could result in a potential gross misconduct, then there is a requirement to appoint an independent investigator unless:-
- Beyond reasonable doubt the allegation is demonstrably false
 - Beyond reasonable doubt the allegation is unfounded
 - The allegation has been substantiated
 - The member of staff is convicted of a criminal offence

7.1.5 The list of persons considered as not being independent for the purposes of the independent investigation has been extended to include:

- a member of the maintaining Local Authority
- a trustee of the school (if applicable)
- a member of the diocesan authority (if applicable)
- a person who appoints the foundation governors (if applicable)

This, therefore, now precludes reciprocal arrangements between schools (within the same Local Authority) for “independent” investigations.

7.1.6 Following the issuing of circular 002/2013 *Disciplinary and Dismissal Procedures for School Staff*, Cardiff Council produced a revised policy in May 2014- “*School Staff Procedure 1.CM.035 –Sch.*” Welsh Government is now updating circular 002/2013, and in light of this, **there should be consideration for further review of Cardiff Council School staff procedure.**

7.1.7 There is a potential for any Disciplinary Investigation Guidance produced for Corporate staff to be of equal value for use by Schools staff.

7.2 Data

7.2.1 Quantitative data in relation to Schools Investigations can be found in section 4 Quantitative Analysis. The extract from Table 5 shown below, indicates that the highest number of investigations is in the Education & Lifelong Learning Directorate with 91 recorded investigations.

Extract from Table 5 (section 4.5.4) : <u>Disciplinary Investigations by Directorate- % total by headcount</u>						
Directorate	No.on Digigov	No. on 2013-14 sheet	No. on 2014-15 sheet	total	Directorate headcount	% cases by headcount
EDUCATION & LIFELONG LEARNING	27	45	19	91	8188	1%

7.2.2 Reasons for delays to investigations are shown in Table 4 in section 4.3.5. Investigations by Servoca ranked in the top 10 reasons for delay as suggested by HRPS officers. Delays can also be caused to school investigations as they can only proceed during term time.

“Yes. It was unfortunate that the school’s holidays are excluded and delays the process.” (Investigating Officer)

7.3 Qualitative survey

Methodology & Response Rate: A qualitative survey was undertaken with those Schools staff that had an involvement with Disciplinary Investigations between April 2013 and October 2014. The survey questions are shown in the appendices.

- Investigating Officers (excluding Servoca Investigators) (Appendix 9)
- Trade unions: (National Association Head Teachers –NAHT;
National Union Teachers- NUT;
National Association of Schoolmasters
Union of Women Teachers – NASUWT) (Appendix 10)

A total of 12 participants took part in the schools survey. Table 22 details the number of people who participated per staff group, the method of information-gathering and the non- respondents, giving a total response rate.

Table 22 : Investigating Officers (Schools) response rate and Information gathering method							
Survey	Face to Face Interview	Electronic return	No response	Telephone Interview	Declined	Total no. participants	Response Rate
INVESTIGATING OFFICERS (22) (Schools)	1	7	11		3	8	36%
TRADE UNIONS (NAHT,NUT, NASUWT)	4					4	100%
total						12	46%

Three schools **Trade Unions** participated in the survey, including three Branch Secretaries and one full time official.

31 **Investigating Officers** were identified who had undertaken non Child - Protection investigations. 9 were discounted, as 6 had since left the service, 1 was on long term sickness absence and 2 were not appropriate, as the investigation had just commenced, leaving 22 as a potential interview group. Three Investigating Officers declined to participate. Despite multiple requests, responses were received from only 8 people. 7 returned their response by email, with one Investigating Officer requesting a face to face interview.

Due to the low response rate from the Investigating Officers (36%), any conclusions drawn from their responses should be viewed with caution.

Themes

7.3.1 *Policy:* Respondents were asked to comment on the School Staff Discipline Procedure (1.CM.035-Sch), including whether schools had formally adopted the policy. 2 (50%) of the Trade Union participants interviewed had not seen the policy, and they were not aware that it had been rolled out. Most of the Investigating Officers had used the policy, and found it satisfactory.

Adoption of the policy by schools is via the Governing body and a database is kept in HRPS of the schools that have adopted it. 7 out of 8 Investigating Officers reported that their schools had adopted the policy. The issue for the Trade Unions was communication from HRPS regarding which school had adopted a different version of the policy, and they stated that the information was not very forthcoming.

“Why did it take so long to produce this version after the Welsh Government guidance? I had a comprehensive training course through NAHT 2 months (March 2013)after WG guidance”

“The old version of the policy is being used -There should be a proforma being returned from the Clerking service regarding which policy is being used”

“The principal is that the Council one is adopted unless it is a Faith school. We are not informed by HR and can’t access the list remotely... Have asked for it to be produced for a member- have to ask individually” (Trade Unions)

Respondents were asked whether the development of guidance documents to the policy would be helpful. This was well received by the Trade Unions and 6(75%) Investigating Officers. The remaining 2(25%) Investigating Officers felt that they had received sufficient guidance.

7.3.2 *Early resolution:* Only 3 (37%) Investigating Officers felt that there could have been opportunities for early resolution in the cases that they dealt with, but all welcomed the idea of a range of solutions. Likewise, all Trade Unions welcomed the ideas of Early resolution

“I like the idea of a basket of solutions- Less expensive and more creative. Half way between mediation and investigation An empowering and enabling way as a solution to be very creative” (Trade Union)

Respondents were asked about their opinion regarding the role of mediation. Trade Unions were aware of mediation being used but did not know there were trained mediators in HRPS. Investigating Officers had little experience of mediation, although one person was aware that ACAS mediation service had been used in one school. Some respondents commented that mediation could be helpful to return an employee to the workplace following the termination of the investigation

“Our members don’t always understand what it is” (Trade Union)

“Mediation afterwards may have been useful. One member of staff ended up being seconded to other school and never came back” (Investigating Officer)

7.3.3 *Training :*

a. Training for Investigating Officers: **Trade Unions** favoured a variety of methods of learning for Investigating Officers, including e-learning, guidance and observational experience. **Investigating Officers** also favoured a range of learning methods with equal divisions between all the methods. All Investigating Officers stated they had not received formal training in their role.

“HR were outstanding in their help. However they cannot do the job for you.”

“When discussing which witnesses to interview I was given advice which could have opened the door to dispute of the outcome/consequences for the member of staff.(had there been a dismissal) the decision could have been jeopardised because not all witnesses had been interviewed”

“We wrote the second report together”

“The HR officer assigned to the cases was extremely experienced and very helpful – I feel that her support, guidance and advice was fantastic training”

(Investigating Officers)

b. Training for Staff disciplinary and dismissal committee: Currently the Committee receive a training session from HRPS. **Trade Unions** were asked whether they should receive more training, but they did not feel this was the answer, as a cultural change is required.

7.3.4 Roles:

a. Role of HR: The opinion of the **Trade Unions** was that HRPS were there to give advice on law and procedure, to enable people to make decisions, and that it was ok for them to clarify questions, but not to lead questioning.

“HR officers should understand they can’t collude and change advice or alter minutes. Must know rules, regulations and policies and not overstep the mark”

b. Role of Audit: There was a mixed response from the **Trade Unions**, but one Union felt that Internal Audit should take lead role in fraud cases. The majority of Investigating Officers had no experience of dealing with audit.

c. New roles: Observer & Assistant at a Hearing.- 7(87%) **Investigating Officers** were in favour of the Observer role at a Hearing. There was a split 50:50 view in favour of the Assistant role.

7.3.5 *Suspension*: Table 15 in section 5.3.5 illustrates that 30 (75%) of the total number of suspensions between April 2013 and October 2014, occurred in the Education and Lifelong Learning Directorate. Of the 26 suspensions that occurred in 2013 in that Directorate, 10 (38%) were recorded as being investigated by Servoca.¹⁴

Trade Unions were asked about preliminary assessments prior to suspensions and they felt that there should be a risk assessment, but they can be too arbitrary. They are more common with Child protection situations. Only 4(50%) **Investigating Officers** had experienced the person they were investigating being suspended. They all felt the suspensions were appropriately reviewed, but the Trade Unions had the opposite opinion and stated they didn't know what a review looked like. Other issues were the length of the suspensions - they can "*drag on endlessly*" and it was hard for a school to get continuity if the head teacher was suspended. In Child protection cases, as a matter of practice, the allegation is not known.

It was felt by the **Trade Unions** that the role of the contact person could be vastly improved and defined, as either the person doesn't contact them or they don't get enough information.

"It is draconian to prevent contact with employees who are not involved as witnesses This has got to be improved"

"Suspension is an isolating experience hard not to be in school to put notes together"
(Trade Unions)

7.3.6 *Interviews*: **Trade Unions** were generally not in favour of audio recording in interviews, stating that it would be intimidating to employees. One Trade Union suggested managing audio recording in this manner: "*One way would be to give copy of tape to Trade Union, Investigator, interviewee and when the transcription is agreed, then the tape would be destroyed at an appropriate point*". The option of trained note takers was preferred by the Unions.

¹⁴ Some investigations may have dual investigators with Servoca undertaking the Child Protection aspect

5 (62%) **Investigating Officers** were in favour of audio recording interviews. One additional Investigating Officer also agreed, but only in cases of very serious allegations. Some Investigating Officers commented that they had problems getting notes agreed and finding a suitably trained note taker. One interviewee commented that there was inadequate training in this aspect of the investigation

7.3.7 *Reports:* **Trade Unions** commented on the variability of the Investigating Officers reports, with factual inaccuracies in some of them. They felt that guidance to completing the report was required. 6(75%) **Investigating Officers** had used the current report format on the CIS system. 7 of the 8 Investigating Officers had not used Digigov for the investigation process, so were unable to comment on it

7.3.8 *Hearings:* **Trade Unions** were asked their opinion regarding the knowledge and effectiveness of the staff disciplinary and dismissal committees. The general opinion was that they were variable, and that it was a problem for how some committees were constituted in small schools. The only training available is from HRPS prior to the hearing, and they felt that knowledge can be an issue, unless the committee have experience in their outside work. The Trade Unions stated that they experienced variations in sanctions at the Hearing, as the Committee seemed to err on the side of minimal sanctions – *“there is an aversion to taking away a livelihood”*. Nearly all the **Investigating Officers** had experience of presenting at a hearing.

“There was a problem with Governors taking and supporting the employee under investigation without knowing the facts”

“It was a horrible experience as everything was from my point of view and I had to present it directly to someone I still work with on a daily basis.”
(Investigating Officers)

Trade Unions and **Investigating Officers** were in agreement with regards to the production of guidance documents in how to conduct a hearing/ present at a hearing, together with information leaflets for witnesses.

7.3.9 *Sickness:* 5 (62%) **Investigating Officers** had experienced the person that they were investigating going on sickness absence. The majority stated they had sufficient guidance from HRPS in how to deal with it .The sickness absence was dealt with by the same HRPS officer who was also the caseworker for the investigation. This is in contrast to the corporate process, where the Attendance and Wellbeing team deals with absences. There appeared to be fewer issues with the sickness being managed in this way.

SUMMARY OF FINDINGS

1. Cardiff Council produced a revised policy in May 2014 (*School Staff Procedure 1.CM.035 –Sch*), following the issuing of Welsh Government circular 002/2013. Trade Unions stated that the information was not forthcoming from HRPS regarding which school had adopted a different version of the policy.
2. The introduction of *The Staffing of Maintained Schools (Wales) (Amendment) Regulations* in July 2014 changed the duty to appoint an independent investigator to investigate allegations where a teacher or member of staff has “abused” a pupil. Welsh Government is now updating circular 002/2013. This change of Regulations appeared not to be known in HRPS until January 2015.
3. Servoca currently manage the Independent Investigation Service for child abuse allegations against school staff, and report back to the Welsh Government. The changes have resulted in Servoca managing the most serious cases only, and does not include those of a “Safeguarding” nature they formerly dealt with.
4. The list of persons considered as not being independent for the purposes of the independent investigation has been extended to include a member of the maintaining LA, a trustee of the school (if applicable), a member of the diocesan authority (if applicable) and a person who appoints the foundation governors (if applicable).
5. Education & Lifelong Learning Directorate have the largest number of recorded investigations (91) between April 2013 and October 2014.
6. The qualitative survey had a low response rate (36%) from the Investigating Officers, and any conclusions drawn from the responses should be viewed with caution.
7. Only 3(37%) of the Investigating Officers felt that there could have been opportunities for early resolution, but all welcomed the idea of a range of solutions. All respondents were unaware of the trained mediators in HRPS.
8. All Investigating Officers stated they had not received formal training in their role and favoured a range of learning methods, with equal divisions between all the methods.
9. The Education and Lifelong Learning Directorate account for 30(75%) of the total number of suspensions between April 2013 and October 2014. Of the 26 suspensions that occurred in 2013, 10 (38%) were recorded as being investigated by Servoca
10. Trade Unions felt that the knowledge and effectiveness of the staff disciplinary and dismissal committees was variable, and that it was a problem for how some panels were constituted in small schools. There were variations in sanctions at the Hearing as the Committee seemed to err on the side of minimal sanctions.

PROPOSALS

1. The Schools Disciplinary policy should be updated in a timely manner with regards to handling child protection allegations to reflect the *The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014* and the guidance in Circular 009/2014 ‘*Safeguarding Children in Education: Handling allegations of abuse against teachers and other staff*’.
2. The list of which school has adopted which version of the disciplinary policy should be readily available in an accessible format for Trade Unions.
3. Ensure there is adequate communication to schools regarding new versions of the policy and applicable guidance
4. Opportunities for Early resolution methods (such as Restorative approaches) for use in schools should be explored.
5. The opinions gathered in the qualitative survey with schools are broadly similar to those raised during the corporate survey. The recommendations stated earlier in this report under “Themes” are therefore equally applicable in schools.

KEY RECOMMENDATIONS

RECOMMENDATION 1: CHANGES TO CARDIFF COUNCIL DISCIPLINARY POLICY

- 1.1 Amend Disciplinary policy separating the all encompassing policy from the individual guidances contained therein.
- 1.2 Increase emphasis on early resolution of issues to include:
 - Expansion of the internal mediation service
 - Introduction of Fast track Disciplinary process

RECOMMENDATION 2: CHANGES TO OTHER POLICIES

- 2.3 Amendment to the School Staff Procedure 1.CM.035 –Sch. to reflect changes to the revised Welsh Government Circular 002/2013

RECOMMENDATION 5: COMMUNICATION

- 5.2 Improve future policy review by enhanced engagement of employees and communication to Directorates/schools

8. DISCUSSION & OPTIONS APPRAISAL

8.1 The Future management of Workplace Investigations

Currently, workplace investigations are generally undertaken within the Directorate that employs the person under investigation. The main reason for this practice is the perception that the Investigating Officer would have knowledge of the role of the person being investigated, and would be able to understand the implications of the allegations in relation to the person's role. It is also suggested that Directorates need to "*own their issues*" and that this may not happen if the Investigation happens outside of a Directorate. However, it is the role of the Hearing Chair to state recommended improvement actions to a Directorate. The HRPS role (as stated in the Disciplinary policy), includes reviewing and monitoring the outcome of a disciplinary case, and supporting service areas to undertake remedial action. This practice thus ensures that a Directorate "owns its issues".

There are some disadvantages to Investigations being undertaken within a Directorate:-

- (i) *Impartiality* : There can be too much prior knowledge of a situation (or people involved) and a risk to the impartiality of the investigation, especially if a line manager has been appointed as Investigating Officer.
- (ii) *Confidentiality*. There is a risk of everyday conversations being held about the investigation outside of the process. One Investigating Officer (who was the line manager of the person under investigation and all the witnesses) described being approached in a corridor and questioned about the investigation.
- (iii) *Workplace relationships*: A further complication is the management of the workplace relationships both during, and after the investigation has concluded. It has been evidenced that there is a lack of mediation after the Hearing to return an employee to their workplace. This is further compounded if it was the line manager who undertook the investigation.

8.1.1 Opinions from Qualitative survey :

Respondents were asked their opinion of the relative merits of Investigations being undertaken within Directorates or independently. The opinions of **HRPS** officers and **Hearing Chairs**, were equally divided between investigations taking place inside or external to the Directorate, or a combination of the both. Conversely **Trade Unions** were 100% in agreement for the setting up of an independent Investigations team. This was mainly due to the loss of confidence regarding the impartiality and confidentiality of investigations within Directorates. The majority of **Investigating Officers** favoured a combination approach, with minor misdemeanours dealt with within Directorates, and more complex investigations dealt with by an "Investigations team". When respondents were asked specifically whether they agreed with an *Investigations team dealing with cases of potential gross misconduct*, there was a much higher level of agreement. 13(76%) of the **Hearing Chairs** and 43(84%) of **Investigating Officers** were in favour of it.

"The sooner we get a team the better" (Trade Unions)

*"Outside the directorate for gross misconduct to reduce risk of process flaws"
"Should be an expert to do either the presentation or the process "
(Hearing Chairs)*

"Any mistake in what is a fairly complicated process could ruin the case and a genuine misdemeanour or more serious issue could go unpunished. Costing time and money for many council departments" (Investigating Officers)

Occasionally there are examples of some reciprocal arrangements between Directorates where there is a commonality of understanding, for example, Health & Social Care and Childrens services. These arrangements have often been for cases of potential gross misconduct, thus requiring a high level of impartiality and confidentiality.

Reciprocal arrangements to date between schools have been rare. The changes to the status of an independent investigator as a result of the Regulations introduced in July 2014, has made this option even more remote, by excluding a member of the maintaining Local Authority as an independent investigator

8.1.2 *Early Resolution*

One key issue during the Early resolution phase is the consideration for whether the matter needs to proceed to a disciplinary investigation. The current process has resulted in too many cases being accelerated, so this remains a crucial point for decision making. Too often the individual manager is making this decision without recourse to consulting with Trade Unions, and sometime minimal consultation with HRPS.

The author recommends consideration for the introduction of a Disciplinary Decision Panel, if there is insufficient future improvement in the reduction of the number of disciplinary investigations. The panel would comprise of HR/ Trade Union and independent person (i.e. officer not associated with the service in which the matter has occurred). This is largely based on the model that was adopted for decision making in Job Evaluation and is a good example of managers, Trade Unions and HRPS working very co-operatively together with good outcomes. The panel would consider a preliminary report submitted to them that and make a decision based on evidence that:-

- No further action is necessary because there is no evidence to support the allegation that an incident/misconduct occurred
- Other action is appropriate to deal with the matter – this could include counselling, mentorship, training, mediation etc
- The Fast Track Disciplinary process may be appropriate
- A formal investigation will be required, with due consideration being given to the need to suspend or redeploy the employee whilst the investigation is ongoing.

Although this may appear to be a resource intensive approach, time would be saved by personnel later on as a result of not going down a lengthy investigation route resulting in “ *no case to answer*”.

8.2 Options Appraisal for change

8.2.1 Option 1: Minimal change - Maintaining the status quo, with some improvements in sanctions in Hearings due to improved internal HRPS communication, and resolution of the two issues with Trade Unions. The model includes the following elements:

- Disciplinary and Grievance Investigations would continue to be generally held within Directorates
- Continue to be in addition to the “day job” for Investigating officers and Disciplinary Hearing Chairs.
- Small adjustments to Disciplinary Policy only, with no division between policy and guidance
- Training continues to be on the policy only, with no additional training in undertaking disciplinary investigations or Disciplinary Hearings.
- No change to informal stage or other procedures
- No change to Digigov or reporting requirements
- Minor changes to policy only

BENEFITS	<ul style="list-style-type: none"> ➤ Reviewed policy may be easier to follow than former version ➤ Some staff already familiar with procedures. <p>Some improvements in sanctions in Hearings due to improved internal HRPS communication</p>
RISK	<ul style="list-style-type: none"> ➤ No reduction in numbers of investigations ➤ Insufficient improvements to length of time for investigations ➤ No change in levels of sickness absence ➤ Continued lack of visibility of investigations and suspended employees ➤ On top of “day job” for Investigators so flawed or incomplete investigations leave Council vulnerable to claims for unfair dismissal. ➤ No training available so continued levels of inexperienced staff dealing with some complex investigations ➤ No reduction in length of time for suspensions ➤ Continued high levels of stress amongst staff. ➤ Reduced level of support from HRPS as level of resource declines ➤ Continued inconsistency of HRPS advice due to lack of training & guidance ➤ Inaccurate data reporting from Digigov ➤ No improvement in staff time to complete Digigov process
FINANCIAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ Local Authority staff time to establish new policy
LEGAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ None

8.2.2 Option 2 : Moderate change This option would include all the changes listed in Option 1. Disciplinary Investigations would continue to generally be held within Directorates, and be in addition to the “day job” for Investigating officers and Hearing Chairs. There would be no change to early resolution procedures(apart from expansion of the Mediation service), and no changes to Digigov or reporting requirements . The new additional elements to this option would be:

- The current disciplinary policy would be separated into policy and enhanced guidance.
- Formal training provided in undertaking disciplinary investigations, including e-learning, coaching & mentorship.

BENEFITS	<ul style="list-style-type: none"> ➤ Some reduction in numbers of flawed investigations as knowledge increased ➤ Reduction in inconsistency of sanctions at Hearings as guidance available ➤ Some reduction in numbers of investigations if mediation used more frequently ➤ Staff understand roles and responsibilities better ➤ Some improvement in consistency of HRPS advice as training & guidance available ➤ Some reduction in staff stress levels due to coaching & mentorship ➤ Impact of reduced number of HRPS staff lessened as more guidance/support available from other means
RISK	<ul style="list-style-type: none"> ➤ Investigation on top of “day job” so investigations could be rushed/incomplete ➤ Insufficient improvements to length of time for investigations ➤ Insufficient improvements to numbers of investigations as limited early resolution ➤ Little reduction in sickness absence ➤ Continued lack of visibility of investigations and suspended employees ➤ Inaccurate data reporting from Digigov ➤ Does not address issues of impartiality or confidentiality ➤ No improvement in staff time to complete Digigov process ➤ School staff policy excluded from review
FINANCIAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ Local Authority staff time to establish new policy ➤ Local Authority staff time to produce & establish new guidance ➤ Cost of delivering training programme ➤ Cost to Directorates of large numbers of staff undergoing training
LEGAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ None

8.2.3 Option 3: Substantial Change- This option would include all the changes listed in option 2 with the addition of :-

- Early resolution procedures introduced
- Changes to Digigov investigation process
- Reporting requirements by senior management
- Internally based Investigation team to deal with cases of potential gross misconduct and people suspended from duty.

BENEFITS	<ul style="list-style-type: none"> ➤ Fewer number of investigations as more resolved earlier ➤ Fewer Investigating Officers doing investigations on top of day job ➤ Reduced level of stress on staff ➤ Improved sickness absence levels ➤ Expertise developed so fewer investigations flawed and Improved impartiality and justice ➤ Reduced cost of delivering training programme to fewer staff ➤ Reduction in inconsistency of sanctions at Hearings ➤ Staff understand roles and responsibilities better ➤ Improved consistency of HRPS advice from Investigation unit officers ➤ Reduced length of suspensions improved cost to council ➤ Reduced length of investigations improved cost to council ➤ Accurate data reporting from improved Digigov process ➤ May be income generation option
RISK	<ul style="list-style-type: none"> ➤ Long term sustainability investigation unit with reduced council resources ➤ Long term sustainability training with reduced council resources ➤ Restriction on providing Independent investigators for schools due to protocol changes
FINANCIAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ Local Authority staff time to establish new policy and procedures ➤ Staff time to run the Disciplinary panel ➤ Cost to amend Digigov <p>Cost to establish Investigation unit</p>
LEGAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ Legal advice may be required

Independent Investigation Team

The introduction of an Independent Investigation Team would address the issues of impartiality, confidentiality and workplace relationships. It was established during the qualitative survey, that the introduction of an Investigation unit to deal with cases of potential gross misconduct would be largely well received, especially from the Trade Unions. The potential model for an Investigation team would need further discussion & consultation, as there would be a number of options for its establishment. The Team would be based internally in the Council.

Funding options

Option 1: A “**virtual team**” comprising of staff nominated by Directorates who would deal with investigations. These nominated people would receive additional training and a range of support mechanisms.

Option 2: **Staffing seconded from Directorates** (including HRPS) to form an actual team. This would be proportionally according to demand ascertained from the numbers of investigations previously undertaken, so could include people on part time secondments.

Option 3: **Top slicing Directorate budgets**: Funding to set up a Team proportionally based on previous percentage of Investigations undertaken. No additional charging to the Directorate for usage of the service.

Option 4: **Corporate funding , with cross charging to Directorates**: Charging would be according to usage of the service. Charging Directorates for an Investigation service is likely have an impact on increasing early resolution methods, and reducing numbers accelerating to investigation..

Option 5: **Corporate funding with no charge to Directorates** : This would be an attractive option for Directorates, as there would be no spend on their individual budget. This option would potentially only be feasible if a business model was considered with income generation (see Option 6).

Option 6. **Externally funded:** An established team with sufficient capacity could also offer a service external to the council (to other Local Authorities, for example) as an income generation option, which could fund or offset costs an internal service.

Further Option for more detailed Analysis: Business case for Investigation unit as arm’s length company

A future opportunity would be the establishment of a business case to set up an Investigation unit as an arm’s length company, in a trading model. The Unit could provide cost effective investigations to other Local Authorities or organisations. The external income stream would then directly fund the level of support to independent investigations as required by Schools and Directorates within the Council. This option could be part of a staged approach following on from

8.2.3 Option 3

BENEFITS	<ul style="list-style-type: none"> ➤ Disciplinary investigation would be independent ➤ Potential for a professional service at cost effective price ➤ Potential Income generation for the council ➤ External income stream fund service to Cardiff Council ➤ Service could provide independent investigations for schools ➤ Service may be expanded to provide training & development
RISK	<ul style="list-style-type: none"> ➤ Market for investigation service not known
FINANCIAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ Local authority staff time to establish business case ➤ Legal costs ➤ Local authority staff time to effect HR & Payroll changes
LEGAL IMPLICATIONS	<ul style="list-style-type: none"> ➤ Legal advice will be required

PROPOSALS

- 1. It is recommended that Option 3 is implemented, as this will provide the biggest impact in the short to medium term, and represent value for any financial investment by reduction of wasted resource and potential income**
- 2. This could be a staged approach leading to a further option for an Investigation unit as an arm's length company , as this would potentially give longer term sustainability as a business model, provide an opportunity for an external funding stream and enable delivery of a service to Schools.**

KEY RECOMMENDATIONS

RECOMMENDATION 9: FUTURE MANAGEMENT WORKPLACE INVESTIGATIONS

- 9.1 Establish an Investigation team to deal with cases of complexity and/or potential gross misconduct.**
- 9.2 Consider business case to set up an Investigation unit as an arm's length company, in a trading model for income generation and longer term sustainability**

9 CONCLUSIONS

9.1 *The case for change*

This review has evidenced that there needs to be a change to the way that workplace investigations are managed in the Council. Maintaining the status quo is not an option, as there is considerable cost in terms of wastage of staff resource on unnecessary work, and cost in terms of high sickness absence, and the length of time people are on paid suspensions from duty.

Too many investigations: Few issues are dealt with effectively at an early enough stage, which is resulting in too many investigations. The highest number of investigations (91) was in the Education & Lifelong Learning Directorate, although this represents only 1% of their headcount. The Environment Directorate had 60 of its employees under investigation in an 18 month period, which is 10% of their headcount.

Lack of early resolution: Managers are inadequately trained to deal with issues effectively at an early enough stage, and there are too few options available to them. 16 (69%) HRPS staff, 29 (57%) Investigating Officers and 10 (59%) of the Hearing Chairs, felt they could identify situations in disciplinary investigations, where early resolution would have been an option. Mediation is currently a limited option, with a general lack of awareness of the two trained mediators in HRPS.

Investigations taking too long: Of the 64 cases studied on the 2013/14 excel spreadsheet with recorded data, the mean length of time from investigation start date to hearing date is 22 weeks (adjusted figure from 26 weeks). This is often not proportionate to the allegation, with no options for dealing with matters in a quick, effective manner. Less than a third of investigations were concluded within an 8 week period. Delays are frequent, often caused by sickness absence or availability of Trade Unions and other parties.

Suspensions from duty are too long: 40 people (15%) were recorded as being suspended from duty at some stage during the study period. 30 (75%) of the suspensions occurred in the Education and Lifelong Learning Directorate. The mean length of time for paid suspensions was 39 weeks, adjusted to 32 weeks (excluding two very long suspensions). 15(37%) employees under suspension were dismissed from employment and 6(15%) people who were suspended, ended with no case to answer/ dealt with informally. There was little evidence of adequate review of suspensions to ensure continued appropriateness. An unjustified period of suspension may amount to a breach of the implied term of trust and confidence, entitling the employee to resign and claim constructive unfair dismissal. People who are suspended and subsequently report sick, are not captured on Digigov as a sickness absence.

Too many investigations have either no disciplinary action or a poor outcome:

Of the 169 cases that had recorded outcomes, 54 (32%) resulted in either “no disciplinary action/case to answer” and a further 25(15%) were abandoned/ incomplete, making a total 79 cases (47%). This indicates that potentially there are a significant number of cases that could be dealt with by means other than a disciplinary investigation. In addition, 24 (61%) Grievance cases were not upheld and only 10(26%) were either upheld or partially upheld.

Inadequate training in undertaking an investigation: 34 (67%) Investigating officers had received no training in undertaking an investigation. They are sometimes dealing with complex situations, with potentially life changing outcomes for the employee under investigation. This level of responsibility, without training, leads to a high level of stress for the Investigating officers. Both Investigating Officers and Hearing Chairs would prefer that a range of different learning methods was available including formal training, e-learning, written guidance, coaching & mentorship .

Lack of management reporting: There is no requirement to report on investigations within Directorates, so no-one has overall oversight of the issues. It is unclear who has overall responsibility for setting the standard of investigations.

Quality of data: A total of 260 Investigations were found between 04 April 2013 and 09 October 2014, recorded in three data sources in HRPS (Two excel spreadsheets and Digigov.) There were problems with missing data, and with inaccurate information entered by HRPS officers to “work - around” the inflexibilities of the Digigov system. The accuracy of the data was manually checked where feasible. 19(83%) of the HRPS staff described accuracy of data recording in all systems as “*poor/really poor*”. No data reports on investigations are regularly produced in HRPS and accurate management reports cannot be run from Digigov due to the aforementioned issues. As stated in the current disciplinary policy HRPS should review and collate corporate monitoring data in relation to discipline.

Digigov process overly complicated: The process for recording Investigations on Digigov is too complex - 19 (83%) HRPS officers, all the Hearing Chairs, and 45 (88%) Investigating Officers reported problems with it. There is a great deal of HRPS officer time spent entering and amending data on Digigov, and this situation will not improve until the process is streamlined and simplified.

Disciplinary policy is too long & not user friendly: The current document is a mixture of policy and guidance, resulting in more than half the Investigating officers interviewed finding that format hard/fairly hard to use. Nearly half HRPS staff stated that the policy was too long. Generally, staff supported the idea of the production of detailed guidance to undertake disciplinary processes. 15(65%) HRPS officers stated they had some issues with the definition of misconduct versus gross misconduct in the disciplinary rules

Roles inadequately defined: There is a lack of description and awareness of peoples’ roles in disciplinary investigations. This contributes to unnecessary delays or functions/tasks not happening. Further clarification is required for the role of HRPS, Director, Audit and the contact officer (during a suspension).

Investigating Officers Reports: Investigating Officer reports are very variable in quality. As evidenced by the number of poor reports at Hearings, Directors are not robustly applying a degree of standard setting at the stage when the decision to proceed to a hearing takes place. It is unclear who is “setting the standard” for Investigating Officer’s reports, with opinions in HRPS divided.

Sickness and Disciplinary Investigations: 97 (35%) of the 275 people under investigation had a sickness absence recorded which could be associated with their investigation. The total number of days lost was 6,155 calendar days, (about 3,633 working days) - average 37 working days per person. There is no mechanism to record in Digigov the reason for the sickness absence as being in connection with an Investigation. There are blanket referrals to Occupational Health for determination of fitness to proceed, which causes delays. Their default position is that either attendance at an interview, OR continuing the investigation without the individual, will be better for the individual's health in the longer term. It is recommended that the individual under investigation is approached and given the option of agreeing to continue with participation with the interview. Only those who are unsure, or where it is not clear, would be referred to Occupational Health.

Variation in hearing sanctions as raised by Internal Audit: This issue can be addressed by control measures described within Section 5.3.8. Rigid application of policy without taking into consideration mitigating factors is not advised.

9.2 Improving Relationships

During the qualitative survey, there were expressions of gratitude from many Investigating officers for the level of support they received from the HR officer during their investigation. However, there were also some negative comments about the relationship with HRPS, in particular by Schools and Trade Unions. There has been some apparent loss of confidence in the way that workplace investigations have been managed, with criticisms of “*procedural flaws*”, “*lack of communication*” and “*inconsistent HRPS advice*”. This has been in relation to some historic cases, but also criticisms of cases that were happening during the course of this review. This sense of “injustice” has resulted in some “challenging” behaviour from the Trade Unions, often in Disciplinary Hearings. This has led to fraught relationships at times.

9.3 Key Principles for Future Investigations :

1. Managers should be up-skilled through the Manager Development programme to resolve issues at an earlier stage -a range of resolution methods will be available
2. Fast track disciplinary process available for more minor misdemeanours
3. Trade Unions will be involved collaboratively to resolve issues at an earlier stage.
4. Robust decision making regarding which situations need investigation. If there is insufficient improvement in the reduction of the number of disciplinary investigations, a panel forum should be considered.
5. Misconduct issues that need investigating will be dealt with by staff who are trained and supported to do so.
6. Policy and guidance is clear with peoples' roles and responsibilities well defined
7. Employees under investigation have better levels of communication, support and sickness management
8. Hearings are undertaken in accordance with a code of conduct
9. More complex or potential gross misconduct investigations are dealt with by an investigation team with higher levels of training and expertise. Investigations are undertaken as quickly as possible without compromising quality
10. The whole process is backed up by a management information system that is accurate and simplified, to enable proficient monitoring and reporting arrangements.

9.4 Changing Organisational Culture

The future management of workplace investigations is set within a period of rapid organisational change and the need for changes in culture. A workforce strategy is currently being formulated and awaiting ratification. It sets out a framework of six key priority areas to create this culture, and achieve improvements.

It is suggested that implementation of all recommendations from this Review will be a key example of evidencing the workforce strategy in action.

Working in partnership with Trade Unions – a collaborative approach will be essential for the increased robustness of Early resolution of issues reducing unnecessary investigations, stress and sickness absence.

Employee voice -This review is a good example of consultation and listening to the employees to influence change and improvement. Many elements will be found in the emerging *Employee Charter*.

Learning & Development- Learning & Development will be key to “making a difference” to increased confidence in the quality and consistency of future investigations.

Performance Review- the up-skilling of managers to deal with staff behavioural issues through performance review, will be an essential early resolution mechanism.

9.5 Conclusion

More than 120 staff who had been involved in undertaking investigations over the previous 18 months, have been involved in this review, with in excess of 100 hours of face to face interview time spent actively listening to them. Their experience of undertaking investigations has shaped the recommendations.

Although this Review has focussed on Disciplinary investigations, many key principles and recommendations for improvements would apply equally to management of Grievance procedures. The findings will therefore be helpful in informing the future review of the Grievance Policy.

For future positive management of workplace investigations, the Key Recommendations listed at the front of this Review need to be implemented, together with the cultural change, for a reformed service. This will restore confidence in the disciplinary process, instil a sense of “natural justice”, and lead to improved outcomes.

10. REFERENCES

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APPENDIX 1

Questions for HRPS Officers

1. It is for the Local Authority to maintain the standards and criteria of a sound investigation. What do you believe are those standards?
2. Who is responsible for maintaining the standards of an investigation?
3. Overall the Directorate / Board of Governors
4. During an investigation what do you consider are the essential areas of contact with HRPS?
5. Do you think that Investigations should be kept within Directorates or undertaken independently? If not, what are the exceptions?
6. What do you consider are the principles of impartiality?
7. Do you think investigations could be categorised e.g. complex/non complex? If so, how?
8. What is your opinion of investigations that take place where a person is suspended being dealt with by an expert team?
9. In your opinion, what are the main differences and similarities between investigations in schools and outside of schools
10. Have you had experience of significant delays occurring during a disciplinary investigation? If so, at what stage do they most commonly occur?
11. In your opinion what are the top three reasons for delays occurring?
12. Have you been involved in contributing to current / past policy reviews?
13. Do you have any general comments about the current disciplinary policy (Sep 2014 version)
14. Do you feel there is anything specifically missing from the policy?
15. To what degree do you consider there should be incorporation or any overlap with the schools disciplinary policy?
16. Do you think the addition of a page in the DP specifying the relevant legislative framework would be helpful?
17. Do you think the addition of a glossary of terms e.g. stockpiling would be helpful?
18. In your opinion are the timeframes for each stage in an investigation explicit in the policy and easily understood?
19. What issues, if any, have you experienced in relation to disciplinary rules as stated on page 14?
20. In your opinion, would it be useful to have any more specific examples of what constitutes e.g. gross misconduct
21. What is your opinion regarding the development of specific guidance documents e.g. for Investigating Officers?
22. Do you feel there is sufficient guidance within the policy regarding how to deal with delays?
23. Do you feel there is sufficient guidance within the policy regarding how to deal with Child protection/POVA situations?
24. Do you feel that FAQ's should sit within the policy or be located elsewhere e.g. in guidance documents or on website?
25. Do you feel the use of flow charts in the policy would be helpful?
26. What issues have you experienced in relation to the policy?
27. Do you have any issues with regards to any of the standard letters e.g. wording?
28. Do you think there is anything missing from the letters e.g. a standard phrase that you are frequently adding in?
29. Do you have any issues with regards to Digigov Investigation process. If yes please specify
30. What changes, if any do you think should be made to the Disciplinary application on Digigov?
31. What changes, if any do you think should be made to the Grievance application on Digigov?
32. Who do you feel should be responsible for monitoring and reporting the progress of investigation?
33. What is your opinion regarding the accuracy of data in HRPS on disciplinary investigations
34. What advice do you give if an allegation is withdrawn
35. What advice do you give if an individual wishes to lodge an objection to a process or procedure? Is there guidance?
36. What advice do you give if an employee is sick during an investigation?
37. Do you work in conjunction with the sickness team?
38. What is your opinion of undertaking a joint contact visit to an employee under investigation with the sickness team?
39. What advice do you give if an individual such as a witness wishes to remain anonymous?
40. Do you feel there is sufficient guidance within the policy in relation to anonymity both with regards to witnesses and or where an allegation is anonymous?
41. Do you make reference to the whistle-blowing policy?

APPENDIX 1

42. What improvements do you feel could be made to resolve issues of managing difficult staff behaviours during an informal stage to prevent acceleration to investigations?
43. What advice do you give at the informal stage?
44. Do you feel there is sufficient guidance available for this?
45. Do you feel that a template document specifying expected improvements for behaviours would be useful?
46. In your opinion, who do you feel should tell the person that they are under investigation?
47. Would a standard letter be helpful here?
48. What is your experience of the role of mediation at an informal stage in respect of prevention of escalation to investigations?
49. Have you experience of using mediation at a later stage once the formal process has begun?
50. Can you describe what would constitute a prelim investigation prior to a suspension
51. Do you feel there is sufficient guidance available for this
52. What training for managers are you aware of that you think would be relevant to deal with this informal stage?
53. What additional training for managers do you feel would be helpful?
54. Can you describe the circumstances of a case that you consider could have been resolved at an earlier stage?
55. What issues have you experienced in relation to the informal stage?
56. When making considerations for suspension of an employee from duty, do you feel that it would be useful to have specific guidance in relation to decision making?
57. Would a template to record the preliminary examination be useful?
58. Do you think that a standard script for managers to use during suspensions would be useful?
59. What advice do you give on securing property/IT account on an individual who has been suspended?
60. Do you feel this would be helpful to include in any guidance
61. What advice do you give to an employee on suspension who wishes to access information to prepare their defence?
62. Would this advice be useful to include in the suspension letter?
63. Who do you think should review the suspension?
64. How do you think the suspension review should it be done?
65. Do you think a Digigov prompt to the inbox to review the suspension would be useful?
66. What advice/guidance do you give as to the role of the person appointed as contact officer to the suspended employee?
67. Do you feel this would be helpful to include in any guidance?
68. What issues have you experienced in relation to suspensions?
69. What is your opinion of tape recording in interviews?
70. In what ways could note taking in interviews be improved?
71. What experience have you had of interview notes not being agreed?
72. What advice /guidance would be helpful here?
73. Do you feel it would be helpful to have more information in the policy and/or guidance regarding the order of people to be interviewed.
74. What advice do you give when individuals ask for friends to accompany them to interviews (When they are not members of a TU or work colleague not appropriate)?
75. What advice /guidance would be helpful here?
76. What advice do you give when individuals fail to attend interviews?
77. What advice /guidance would be helpful here?
78. What issues have you experienced in relation to investigation interviews?
79. What is your opinion of the quality of Investigating Officer's reports?
80. Approximately what percentage of reports are submitted without any involvement or oversight from HRPS?
81. In your opinion do you feel that the HRPS caseworker should see all Investigating Officer's reports prior to it being sent to the Director/Head of service?
82. What happens if the Investigating Officer's report is not fit for purpose prior to it going to the Director/Head of service?
83. Is the employee and/ or their TU representative informed when Investigating Officer's report is sent to the Director/Head of service?

APPENDIX 1

84. What happens if the Investigating Officer's report is not fit for purpose after it is sent to the Director/Head of service?
85. Who do you feel is setting standard for Investigating Officer's reports?
86. Do you feel there is any area for improvement with regards to the current format of report?
87. What is your opinion of the Director/Head of service meeting the Investigating Officer (once the report is completed) as a formal stage of the process?
88. What is your opinion of the Director/Head of service meeting the employee to give decision following the Investigating Officer's report?
89. What is your opinion of the Director/Head of service giving the employee a copy of the IO report at this stage?
90. What issues have you experienced in relation to Investigation reports?
91. Investigating Officer : what do you feel are the relevant skills required of investigators?
92. What training do you think the Investigating Officer should have?
93. Chair of Disciplinary Hearing: What do you feel are the relevant skills of the Chair
94. What training do you think the Chair should have?
95. The HRPS role is stated within the policy to *act as advisors to managers, ensure procedures correctly applied, provide employees with information and advice review and monitor disciplinary cases and outcomes supporting service areas to undertake remedial action, review and collate monitoring data, reviewing application of policy* It does not specify any role in relation to asking questions either in interviews or in hearings and appeals. What is your opinion?
96. In what ways could improvements to the relationship with TU's be made?
97. What issues have you experienced in relation to peoples' roles?
98. What has been your experience of fraud/ financial impropriety cases?
99. What has been your experience of the role of audit in (i) investigations interviews (ii) hearings
100. Do you feel there is sufficient advice regarding referral to the police panel in the policy?
101. What is your experience of running parallel investigations
102. Do you feel there is sufficient guidance and information in relation to involvement with police within the policy?
103. Who do you think should be updating legal/audit in relation to police involvement?
104. What issues have you experienced in relation to fraud/ financial impropriety cases or police involvement?
105. Do you feel that a standard script and/or procedure sheet for Chairs (similar in style to one used in POVA meetings for example) would be useful?
106. Do you consider that a guidance document for Chairs of Hearings would be useful?
107. What is your opinion of the 10 key questions for Chairs as defined in the policy?
108. Do you feel they could be improved, if so how?
109. When advising the Chair at hearing, do you have access to information detailing allegations/sanctions at previous hearings?
110. What is your experience of variations in sanctions at Disciplinary Hearings?
111. In what ways do you feel it could be improved?
112. Do you consider that a guidance document for Presenting officers on how to prepare a disciplinary pack for a hearing would be useful?
113. And on how to present a case at a hearing?
114. What advice do you give to the Investigating officer on how they should prepare witnesses for a hearing?
115. What do you think the policy should say?
116. Do you feel it would be helpful to have a booklet for use by witnesses on "*What to expect in a Hearing*" ?
117. Do you feel that management witnesses should have a support present with them at the Hearing if they request it ?
118. It is suggested that a formal role of "observer" at a hearing could be developed. This would be to gain experience and would equally apply to HRPS, Trade Union reps and investigating officers. Attendees would be at the discretion of the Chair. What is your opinion of this idea?
It is suggested that a formal role of "assistant" at a hearing could be developed. This would be to assist an individual deal with large volumes of information in very complex cases. It would equally apply to Trade Union reps and investigating officers. Attendees would be at the discretion of the Chair. What is your opinion of this idea? *NB the Observer/assistant role could be combined*

APPENDIX 1

- 119 What is your opinion on the use of expert witnesses at hearings e.g. audit?
- 120 Do you consider there is sufficient guidance on the use of expert witnesses?
- 121 In the policy, there is a difference regarding the necessity to attend a hearing between witnesses for management and witnesses for the respondent. What is your opinion of this?
- 122 Do you consider there is sufficient guidance within the policy with regards to engagement with solicitors?
- 123 What issues have you experienced in relation to DH
- 124 "*New evidence coming to light*" is not currently a category for grounds of appeal. What is your opinion in adding in this additional category?
- 125 What has been your experience of the amount of supporting evidence submitted for grounds of appeal?
- 126 Do you consider the grounds for appeal are consistently and rigorously adhered to?
- 127 Do you think there should be an automatic right of appeal without the qualifying grounds?
- 128 In your opinion who do you think should decide on whether an appeal should proceed?
- 129 Do you think there should be any changes to the policy with regards to appeals?
- 130 What issues have you experienced in relation to appeal hearings?
- 131 In your opinion, do lessons learned from ET's get sufficiently feedback to (i) HRPS staff
(ii) Directorates
- 132 In your opinion, do lessons learned from ET's inform policy change?
- 133 What data reporting from ET's takes place?
- 134 What guidance do you have available in relation to ET's?
- 135 What training do you think is applicable in relation to ET's?
- 136 Do you think that ET's should be included in the Disciplinary policy?
- 137 What issues have you experienced in relation to ET?
- 138 Do you consider that you have sufficient feedback in relation to the outcome of investigations?
- 139 What is your opinion regarding the merit of setting up an Investigations team?
- 140 What are the most common issues experienced by you in relation to investigations?

APPENDIX 2

Questions for HRPS Mediators

1. Has the WLGA Internal workplace Mediation protocol been adopted?
2. Do you consider there to be sufficient guidance within the Grievance policy on the use of mediation?
3. Have you any experience of working with a Resolution policy?
4. Has one been previously considered for Cardiff?
5. How is the availability of a mediation service currently communicated to managers?
6. How many mediations have you been involved in during the last 12 months?
7. How many mediations have you been involved in since undergoing mediation training?
8. Who determines when and how mediation is used ?
9. Do you undertake mediations alone or in pairs?
10. Can you describe a situation you were involved in, where effective mediation prevented escalation to a grievance/disciplinary
11. What would you estimate is the percentage success rate?
12. Do you offer coaching & support to managers?
13. Have you been involved with mediation at different points in a disciplinary investigation process?
14. Have you been involved in mediation to repair relationships after formal process over?
15. Are there joint consultative arrangements with TU's regarding mediation currently in place?
16. Where do you record use of mediation?
17. Do you collect or report on data involving mediations?
18. How often are external mediators used?
19. Where is the data recorded?
20. How is mediation effectiveness evaluated?
21. What mediation training did you undertake?
22. What training do you think any additional mediators should have?
23. Do you consider the current training for managers on conflict resolution to be appropriate and/or sufficient?
24. Are you aware of any other appropriate training for managers?
25. Are you aware of a database list of mediators kept by the WLGA ?
26. Do you have a database of trained mediators from other Local Authorities?
27. What is your opinion of the merits of an increased mediation service?
28. Guidance suggests that there should be range of mediators in a Local Authority from areas in addition to HRPS. Where do you consider other mediators should come from specifically e.g. Directorates/ service areas / all Directorates service areas?
29. Where do you think such a service should sit HRPS/OH/ L& D?

APPENDIX 3

Questions for the Attendance & Wellbeing Team

1. What is your opinion of complex investigations being dealt with by an expert team?
2. What specifically do you feel is the role of the Attendance and Well Being team in relation to investigations?
3. What is your experience of the level of your involvement during an investigation?
4. What are the most common issues experienced by you in relation to investigations?
5. Have you been involved in contributing to current / past policy reviews?
6. Do you consider there is sufficient guidance available regarding sickness absence during investigations
7. If not, specify the policy or policies that require more guidance
8. Do you have any general comments about the current disciplinary policy (Sep 2014 version)
9. Do you feel there is anything specifically missing from the policy?
10. In your opinion are the timeframes for each stage in an investigation explicit in the policy and easily understood?
11. Should the timeframes differ when a person is on sickness absence?
12. Do you feel there is sufficient guidance within the policy regarding how to deal with delays?
13. Do you feel the use of flow charts in the policy would be helpful?
14. Which policies should be cross referenced with regards to sickness and disciplinarys?
15. Is there reporting on sickness absence and Investigations together?
16. Do you have any specific data?
17. Can you suggest any improvements to Digigov processes that would enhance data collection
18. Do you feel that standard letter when person on sickness absence during an investigation would be helpful?
19. Do you share information with the Investigating Officer regarding sickness absence?
20. Do you consider that you have sufficient feedback in relation to the outcome of investigations?
21. During an investigation, what advice do you give to
22. (i)employees on sickness absence (ii) your colleagues case managing the investigation (iii) the Investigating Officer (iv) Chair of DH?
23. Do you provide advice at the informal stage of an investigation
24. If yes, under what circumstances?
25. In your opinion, who do you feel should tell the person that they are under investigation?
26. What is your experience of the role of mediation at an informal stage in respect of prevention of escalation to investigations?
27. Can you give me examples of a circumstances of a case where the investigation has increased a pre-existing illness/ chronic condition
28. Can you give me examples of a circumstances of a case where the pre-existing illness/ chronic condition has hampered or restricted an investigation?
29. What suggestions can you make to improve this situation(s)
30. Where an employee is off sick and under investigation:-
31. Who do you think should take the lead Contact officer role?
32. What is your understanding of Occupational Health guidance in this circumstance?
33. What has been your experience of people reporting sick for hearings
34. Employee?Witnesses?
35. Do you feel there should be specific training in relation to management of sickness absence and investigations ?

APPENDIX 4

Questions for Occupational Health

1. Can you describe the current process following a referral to Occupational Health where the reason for the request is to determine fitness to continue with an investigation?
2. Who usually makes the referral?
3. Do you generally have sufficient detail at the point of referral?
4. If not what detail should you have
5. What issues, if any, do you have with the current process/what is currently happening?
6. The current version of the Disciplinary policy has a paragraph on sickness which says: The Council's aim is to proceed with all disciplinary matters with the minimum of delay. The disciplinary process may therefore continue during an employee's sickness absence, which will not preclude the Council from starting or completing the process, including the collection of statements, conducting interviews or hearings. This will be on an exceptional basis depending on the nature of the illness and the likely length of the absence. Occupational Health Service advice will be sought where appropriate. What is your opinion should anything be added or amended?
7. Is there a commonality of exceptions where you advise not to proceed with the investigation ?
8. Do you have requests to determine fitness at the hearing stage of an investigation?
9. Are there any issues related to requests at this stage?
10. The disciplinary policy Sep 2014 has a FAQ which states
What if an employee becomes absent due to sickness before the hearing can take place? *Depending on the circumstances, the disciplinary process may continue during an employee's sickness absence and advice from the Council's Occupational Health Service may be sought in these cases* What is your opinion should anything be added or amended?
11. The Attendance and Wellbeing policy does not make reference to investigations. Do you feel it should?
12. Do you have data in Occ Health on referrals made to determine fitness to continue with an investigation?
13. Do you have access to digigov?
14. Do you think we should record reason on digigov to link absence for work related stress specifically linked to an investigation?

APPENDIX 5

Questions to the Trade Unions

1. Do you have any general comments about the current disciplinary policy (Sep 2014 version)
2. What issues have you experienced in relation to the current policy?
3. What are the current main areas of disagreement in relation to the current version of the policy?
4. Do you feel there is anything specifically missing from the policy?
5. In your opinion are the timeframes for each stage in an investigation explicit in the policy and easily understood?
6. In your opinion what are the top three reasons for delays occurring during a disciplinary investigation?
7. What issues, have you experienced in relation to disciplinary rules as stated on p14?
8. Do you feel there is sufficient guidance within the policy regarding how to deal with Child protection/POVA situations?
9. Do you feel that FAQ's should sit within the policy or be located elsewhere e.g. in guidance documents or on website?
10. What is your opinion regarding the development of specific guidance documents e.g. for Investigating Officers?
11. To what degree do you consider there should be incorporation or any overlap with the schools disciplinary policy?
12. What issues do you have regarding people who go sick whilst under investigation
13. And who go sick and are suspended?
14. Can you suggest any improvements?
15. Do you feel there is sufficient guidance within the policy in relation to anonymity both with regards to witnesses and or where an allegation is anonymous?
16. Any other issues in relation to the policy?
17. What improvements do you feel could be made to resolve issues e.g. difficult staff behaviours during an informal stage to prevent acceleration to investigations?
18. How do you feel matters should be dealt with?
19. What is your experience of the role of mediation at an informal stage in respect of prevention of escalation to investigations?
20. Have you experience of using mediation being used at a later stage once the formal process has begun?
21. What training for managers are you aware of that you think would be relevant to deal with this informal stage?
22. What do you feel about the idea of a resolution policy?
23. Do you have any comments in relation to preliminary assessments prior to suspensions?
24. Any comments/issues in relation to the act of suspension
25. Have you experienced any issues in relation to employees on suspension who wishes to access information to prepare their defence?
26. Have you experienced any issues in relation to the person appointed as contact officer to the suspended employee?
27. What do you think is the role of the contact person when an employee is suspended
28. Any other issues/ experiences in relation to suspensions?
29. What is your opinion of tape recording in interviews?
30. In what ways could note taking in interviews be improved?
31. What is your opinion when individuals ask for friends to accompany them to interviews (When they are not members of a TU or work colleague not appropriate)?
32. Or if individuals fail to attend interviews?
33. Have you experienced any other issues in relation to investigation interviews?
34. What issues have you experienced in relation to Investigation reports?
35. Do you feel there is any area for improvement with regards to the current format of report?
36. Do you think that the employee and/ or their TU representative should be informed when Investigating Officer's report is sent to the Director/Head of service?
37. What is your opinion of the Director/Head of service meeting the Investigating Officer (once the report is completed) as a formal stage of the process?
38. What is your opinion of the Director/Head of service giving the employee a copy of the IO report at this stage?
39. What training do you think the Investigating Officer should have?

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40. What training do you think the Chair of Disciplinary Hearing should have?
41. The HRPS role is stated within the policy to *act as advisors to managers ensure procedures correctly applied, provide employees with information and advice, review and monitor disciplinary cases and outcomes, supporting service areas to undertake remedial action, review and collate monitoring data, reviewing application of policy*. It does not specify any role in relation to asking questions either in interviews or in hearings and appeals. What is your opinion?
42. In what ways could improvements to the relationship with HRPS be made?
43. Any other issues to do with roles?
44. What has been your experience of the role of audit in (i) investigations interviews (ii) hearings
45. What is your opinion of audit attending all hearings in relation to fraud/financial impropriety
46. Do you feel there is sufficient guidance and information in relation to involvement with police within the policy?
47. What issues have you experienced in relation to fraud/ financial impropriety cases or police involvement?
48. Do you consider that a guidance document for Chairs of Hearings would be useful?
49. What is your experience of variations in sanctions at Disciplinary Hearings?
50. Do you consider that a guidance document for Presenting officers on how to prepare a disciplinary pack for a hearing would be useful?
51. And on how to present a case at a hearing?
52. Do you feel it would be helpful to have a booklet for use by witnesses on "*What to expect in a Hearing*" ?
53. In the policy, there is a difference regarding the necessity to attend a hearing between witnesses for management and witnesses for the respondent. What is your opinion of this?
54. Do you feel that witnesses should have a support present with them at the Hearing if they request it ?
55. What issues have you experienced in relation to DH
56. It is suggested that a formal role of "observer" at a hearing could be developed. This would be to gain experience and would equally apply to HRPS, Trade Union reps and investigating officers. Attendees would be at the discretion of the Chair. What is your opinion of this idea?
57. It is suggested that a formal role of "assistant" at a hearing could be developed. This would be to assist an individual deal with large volumes of information in very complex cases. It would equally apply to Trade Union reps and investigating officers. Attendees would be at the discretion of the Chair. What is your opinion of this idea?
NB the Observer/assistant role could be combined
58. What is your opinion on the use of expert witnesses at hearings e.g. audit?
59. What is your opinion of the current appeals process?
60. "*New evidence coming to light*" is not currently a category for grounds of appeal under the corporate policy, but is in the schools guidance. What is your opinion in adding in this additional category?
61. Do you think there should be an automatic right of appeal (for those who request it) without the need to provide grounds?
62. Do you think there should be any changes to the policy with regards to appeals?
63. What issues have you experienced in relation to appeal hearings?
64. Do you wish to make any comments in relation to ET's?
65. Do you wish to make any comments in relation to schools investigations?
66. Do you think that Investigations should be kept within Directorates or undertaken independently?
67. What is your opinion regarding the merit of setting up an Investigations team?
68. What is your opinion of investigations that take place where a person is suspended being dealt with by an investigations team?

APPENDIX 6

Questions for Internal Audit

1. What exactly were the issues the Audit committee raised?
2. In what ways do you feel consistency of sanctions could be improved?
3. Do you have any general comments about the current disciplinary policy (Sep 2014 version)
4. What issues if any, have you experienced in relation to the policy?
5. In your opinion are the timeframes for each stage in an investigation explicit in the policy and easily understood?
6. Do you feel there is sufficient guidance within the policy regarding how to deal with delays?
7. What is your opinion regarding the development of specific guidance documents e.g. for Investigating Officers?
8. Who do you feel should be responsible for monitoring and reporting the progress of investigation?
9. Do you feel it would be helpful to have guidance on securing property/IT account on an individual who has been suspended?
10. What is your opinion of tape recording in interviews?
11. In what ways could note taking in interviews be improved?
12. What issues have you experienced in relation to investigation interviews?
13. Who do you feel is setting standard for Investigating Officer's reports?
14. In your opinion do you feel that the HRPS caseworker should see all Investigating Officer's reports prior to it being sent to the Director/Head of service?
15. Have you experienced issues in relation to Investigation reports?
16. What do you feel is the role of audit in (i) investigations interviews (ii) hearings
17. What is your opinion on audit in a role of expert witness in a hearing?
18. What is your opinion regarding the development of a Specialist team that deals only with Investigations?
19. Do you feel there is sufficient guidance and information in relation to involvement with police within the policy?
20. What is your experience of running parallel investigations?
21. Do you feel there is sufficient advice regarding referral to the police panel in the policy?
22. Who do you think should be updating legal/audit in relation to police involvement during an investigation?
23. What issues, if any, do you experience in relation to Schools
24. What issues, if any, do you experience in relation to ET's
25. Do you receive data on investigations?
26. What training could be provided to improve management of fraud /financial impropriety case?
27. Any other issues that audit have?

APPENDIX 7

Questions for Hearing Chairs

1. Do you think that Investigations should be kept within Directorates or undertaken independently?
2. What is your opinion regarding the merit of setting up an independent Investigations team, to deal with cases of potential gross misconduct?
3. Do you feel that Directorates would pay for such an Investigation service?
4. What training do you think the Investigating Officer should have?
5. What training do you think the Disciplinary Hearing Chair should have?
6. Do you have any general comments about the current disciplinary policy ? (Sep 2014 version)
7. Is there anything in the policy that you would prefer to see elsewhere?
8. Do you feel there is anything specifically missing from the policy?
9. Have you experienced any issues in relation to disciplinary rules as stated on page 14 of the policy?
10. Do you have any issues with regards to the Disciplinary Investigation process on Digigov.?
11. Do you have any issues with regards to any of the standard letters in Digigov e.g. wording?
12. What changes, if any, do you think should be made to the Disciplinary application on Digigov?
13. What is your opinion of the quality of Investigating Officer's reports?
14. Do you feel there is any area for improvement with regards to the current format of report?
15. Do you feel that Disciplinary Investigations should be monitored and reported at senior management level within Directorates (e.g.similar to sickness absence reporting)?
16. In your experience, do you feel that there have been opportunities for early resolution in any case that you have dealt with, that would have prevented acceleration to an investigation/hearing?
17. Have you come across situations where mediation has been tried after the investigation has commenced?
18. Have you ever recommended the use of mediation after the Hearing has concluded to return the employee to the workplace?
19. In your experience do you consider that suspensions are appropriately reviewed during investigations?
20. Have you come across situations where you considered that the suspension of the employee was not justified?
21. Have you come across situations where you considered that the length of time for suspension of the employee was not appropriate?
22. Have you had experience of significant delays occurring during the arranging of a disciplinary Hearing?
23. Do you consider that a guidance document for Chairs of Hearings would be useful?
24. Do you feel that a standard script and/or procedure sheet for Chairs (similar in style to one used in POVA meetings for example) would be useful?
25. What is your opinion of the 10 key questions for Chairs as defined on
26. p 42 in the policy?
27. Do you feel they could be improved, if so how?
28. Do you use a template with the 10 key questions on to evidence decision making?
29. When being advised by HR at the hearing, do you have access to information detailing allegations/sanctions at previous hearings?
30. It has been suggested that there are variations in sanctions at Disciplinary Hearings. What is your opinion of this?
31. Do you consider that a guidance document for Presenting officers on how to prepare a disciplinary pack for a hearing would be useful?
32. Do you consider that a guidance document for Presenting officers on how to present a case at a hearing would be useful?
33. Have you experienced any issues regarding behaviour/conduct of individuals during the hearing? If yes, please describe
34. The HRPS role is stated within the policy "*to act as advisors to managers,*
35. *ensure procedures correctly applied, provide employees with information and advice, review and monitor disciplinary cases and outcomes supporting service areas to undertake remedial action , review and collate monitoring data, reviewing application of policy*". It does not specify any role in relation to asking questions either in interviews or in hearings and appeals. What is your opinion?
36. Do you feel it would be helpful to have a leaflet for use by witnesses on "What to expect in a Hearing" ?

APPENDIX 7

37. Do you feel that management witnesses should have a support present with them at the Hearing if they request it ?
38. In the policy (FAQ 37 pp 69/70), there is a difference regarding the necessity to attend a hearing between witnesses for management and witnesses for the respondent. What is your opinion of this?
39. What has been your experience of the role of audit in hearings?
40. It has been suggested that Audit attend all Hearings where the case is one of fraud /financial impropriety. What is your opinion of this?
41. It is suggested that the role of an expert witness be developed. The expert witness could be called to the Hearing by the Chair, to provide information or clarification in connection with matters relating to their professional expertise e.g. Audit/ Health & Safety etc. What is your opinion of this?
42. It is suggested that a formal role of "observer" at a hearing could be developed. This would be for an individual to gain experience and would equally apply to HRPS, Trade Union reps and investigating officers. Attendees would be by prior agreement of the Chair and require the consent of the employee. The observer would not be able to speak in the hearing and would be bound by confidentiality. What is your opinion of this idea?
43. It is suggested that a formal role of "assistant" at a hearing could be developed. This would be to assist an individual deal with large volumes of information in very complex cases. It would equally apply to Trade Union reps and investigating officers. Attendees would be by prior agreement of the Chair and require the consent of the employee. The assistant would not be able to speak in the hearing and would be bound by confidentiality. What is your opinion of this idea?
44. NB the Observer/assistant role could be combined and could work alongside one Trade union rep rather than two
45. Have you experienced any other issues in relation to disciplinary Hearings?
46. "New evidence coming to light " is not currently a category for grounds of appeal in the corporate policy but is in the Schools Disciplinary policy. What is your opinion in adding in this additional category?
47. What has been your experience of the amount of supporting evidence submitted for grounds of appeal?
48. Do you consider the grounds for appeal are consistently and rigorously adhered to?
49. Do you think there should be an automatic right of appeal without the qualifying grounds?
50. In your opinion who do you think should decide on whether an appeal should proceed?
51. Do you think there should be any changes to the policy with regards to appeals?
52. Have you experienced any other issues in relation to appeal hearings?

APPENDIX 8

Questions for Investigating Officers (Non -Schools)

1. What are the biggest issues for you when undertaking Investigations?
2. Do you think that Investigations should be kept within Directorates or undertaken independently?
3. What is your opinion regarding the merit of setting up an independent Investigations team, to deal with cases of potential gross misconduct?
4. Do you feel that Directorates would pay for such an Investigation service?
5. Did you receive help/guidance from another member of staff with the Investigation?
6. What were the main areas you received help/guidance with?
7. What is your opinion regarding the development of specific guidance documents for Investigating Officers?
8. Did you receive any training in the role of Investigating Officer/ how to conduct a Disciplinary Investigation?
9. What training do you think the Investigating Officer should have? (Options offered)
10. Do you have any general comments about the current disciplinary policy ? (Sep 2014 version)
11. How easy was it to use?
12. Do you think the addition of a glossary of terms e.g. “stockpiling” would be helpful?
13. What issues, if any, have you experienced in relation to disciplinary rules as stated on page 14 of the policy?
14. Do you feel that FAQ's should sit within the policy or be located elsewhere e.g. in guidance documents or on the website?
15. Do you feel there is anything specifically missing from the policy?
16. In your experience, do you feel that there have been opportunities for early resolution in any case that you have dealt with, that would have prevented acceleration to an investigation/hearing?
17. Have you come across situations where mediation has been tried after the investigation has commenced?
18. Have you undertaken an investigation where the person was suspended from duty?
19. In your experience do you consider that suspensions are appropriately reviewed during investigations?
20. Have you come across situations where you considered that the suspension of the employee was not justified?
21. Have you come across situations where you considered that the length of time for suspension of the employee was not appropriate?
22. Have you ever experienced significant delays to an investigation? If so what were the causes?
23. Have you experienced the person you were investigating going on sickness absence during the investigation?
24. If yes, did you receive sufficient help /guidance in relation to sickness absence?
25. What is your opinion of tape recording in interviews?
26. What experience have you had of interview notes not being agreed?
27. In what ways could note taking in interviews be improved?
28. What other issues, if any, did you experience in relation to the interviews?
29. What problems or difficulties, if any, have you experienced using the current format of Disciplinary Investigation report 4.C. 432?

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30. Do you have any issues with regards to the Disciplinary Investigation process on Digigov.?
31. Do you have any issues with regards to any of the standard letters in Digigov e.g. wording?
32. What changes, if any, do you think should be made to the Disciplinary application on Digigov?
33. Following submission of your Investigation report to the Head of service/Director, have you ever experienced significant delays before a decision has been made?
34. Do you consider that a guidance document for Presenting officers on how to prepare a disciplinary pack for a hearing would be useful?
35. Do you consider that a guidance document for Presenting officers on how to present a case at a hearing would be useful?
36. Do you feel it would be helpful to have a leaflet/booklet for use by witnesses on "What to expect in a Hearing" ?
37. Do you feel that management witnesses should have a support present with them at the Hearing if they request it ?
38. In the policy (FAQ 37 pp 69/70), there is a difference regarding the necessity to attend a hearing between witnesses for management and witnesses for the respondent. What is your opinion of this?
39. It is suggested that a formal role of "observer" at a hearing could be developed. This would be for an individual to gain experience and would equally apply to HRPS, Trade Union reps and investigating officers. Attendees would be by prior agreement of the Chair and require the consent of the employee. The observer would not be able to speak in the hearing and would be bound by confidentiality. What is your opinion of this idea?
40. It is suggested that a formal role of "assistant" at a hearing could be developed. This would be to assist an individual deal with large volumes of information in very complex cases. It would equally apply to Trade Union reps and investigating officers. Attendees would be by prior agreement of the Chair and require the consent of the employee. The assistant would not be able to speak in the hearing and would be bound by confidentiality. What is your opinion of this idea?
NB the Observer/assistant role could be combined and could work alongside one Trade union rep rather than two
41. Have you experienced any other issues in relation to Disciplinary Hearings?
42. What has been your experience of the role of audit in Fraud/Financial Impropriety cases
43. Do you feel there is sufficient guidance and information in relation to involvement with police e.g. running parallel criminal/ civil investigations within the policy?
44. What issues have you experienced in relation to fraud/ financial impropriety cases or police involvement?

APPENDIX 9

Questions for Investigating Officers (Schools)

1. Do you have any general comments about the current schools disciplinary policy ? (1.CM.035-Sch May 2014 version)
2. Have you seen/ used this version of the policy?
3. Were you involved in the consultation of this policy?
4. Has your school formally adopted this version of the policy?
5. Do you feel that the addition of FAQ's would be helpful?
6. Do you feel there is anything specifically missing from the policy?
7. In your experience, do you feel that there have been opportunities for early resolution in any case that you have dealt with, that would have prevented acceleration to an investigation/hearing?
8. Have you used a mediator from HR to resolve any issues at the informal stage?
9. Have you used an external mediation service e.g. ACAS?
10. Would you welcome the opportunity of more options for early resolution?
11. What are the biggest issues for you when undertaking Investigations?
12. Do you think that Investigations should be kept internally within school or undertaken independently?
13. What is your opinion regarding the merit of setting up an independent Investigations team, to deal with, for example, cases of potential gross misconduct or complex cases?
14. Do you feel that schools would pay for such an Investigation service?
15. Have you undertaken an investigation where the person was suspended from duty?
16. In your experience do you consider that suspensions are appropriately reviewed during investigations?
17. Have you come across situations where you considered that the suspension of the employee was not justified?
18. Have you come across situations where you considered that the length of time for suspension of the employee was not appropriate?
19. Have you ever experienced significant delays to an investigation? If so what were the causes?
20. Have you experienced the person you were investigating going on sickness absence during the investigation?
21. If yes, did you receive sufficient help /guidance in relation to sickness absence?
22. Were two HR officers involved- one managing the sickness absence and one managing the disciplinary investigation?
23. What is your opinion of tape recording in interviews?
24. What experience have you had of interview notes not being agreed?
25. In what ways could note taking in interviews be improved?
26. What other issues, if any, did you experience in relation to the interviews?
27. Do you use the current format of Disciplinary Investigation report 4.C. 432?
28. Have you had any experience of using the Disciplinary Investigation process on Digigov.?
29. Do you have any issues with regards to using the Disciplinary Investigation process on Digigov.?
30. Did you receive help/guidance from another member of staff with the Investigation?
31. What were the main areas you received help/guidance with?

APPENDIX 9

32. What is your opinion regarding the development of specific guidance documents for Investigating Officers?
33. Did you receive any training in the role of Investigating Officer/ how to conduct a Disciplinary Investigation?
34. What training do you think the Investigating Officer should have?
35. Have you had experience of presenting at a governing body's staff disciplinary and dismissal committee?
36. Did you experience any issues whilst presenting at a governing body's staff disciplinary and dismissal committee?
37. Do you consider that a guidance document for Presenting officers on how to prepare a disciplinary pack for a hearing would be useful?
38. Do you consider that a guidance document for Presenting officers on how to present a case at a hearing would be useful?
39. Do you feel it would be helpful to have a leaflet/booklet for use by witnesses on "*What to expect in a Hearing*" ?
40. It is suggested that a formal role of "observer" at a hearing could be developed. This would be for an individual to gain experience and would equally apply to HRPS, Trade Union reps and investigating officers. Attendees would be by prior agreement of the Chair of the Committee and require the consent of the employee. The observer would not be able to speak in the hearing and would be bound by confidentiality. What is your opinion of this idea?
41. It is suggested that a formal role of "assistant" at a hearing could be developed. This would be to assist an individual deal with large volumes of information in very complex cases. It would equally apply to Trade Union reps and investigating officers. Attendees would be by prior agreement of the Chair of the Committee and require the consent of the employee. The assistant would not be able to speak in the hearing and would be bound by confidentiality. What is your opinion of this idea? NB the Observer/assistant role could be combined and could work alongside one Trade union rep rather than two
42. Have you had any experience of the role of audit in Fraud/Financial Impropriety cases?
43. Do you feel there is sufficient guidance and information in relation to involvement with police e.g. running parallel criminal/ civil investigations within the policy?
44. What issues, if any, have you experienced in relation to fraud/ financial impropriety cases or police involvement?
45. Do you have any other comments about Investigations?

APPENDIX 10

Questions for Trade Unions (Schools)

1. Who is responsible for maintaining the standards and criteria of a sound investigation?
2. What do you believe are those standards?
3. During an investigation what do you consider are the essential areas of contact with HRPS?
4. Do you have any general comments about the current disciplinary policy ?
5. Do you have any issues regarding the clarity of which policy has been adopted by an individual school?
6. In your opinion are the timeframes for each stage in an investigation explicit in the policy and adhered to?
7. In your opinion what are the top three reasons for delays occurring during a disciplinary investigation?
8. What is your opinion regarding the development of specific guidance documents e.g. for Investigating Officers?
9. What issues do you have regarding people who go sick whilst under investigation
10. And who go sick and are suspended?
11. Can you suggest any improvements?
12. Any other issues in relation to the policy/procedure?
13. What improvements do you feel could be made to resolve issues e.g. difficult staff behaviours during an informal stage to prevent acceleration to investigations?
14. How do you feel matters should be dealt with?
15. What is your experience of the role of mediation at an informal stage in respect of prevention of escalation to investigations?
16. Have you experience of using mediation being used at a later stage once the formal process has begun? Or after a hearing?
17. What training are you aware of that you think would be relevant to deal with this informal stage?
18. Have you come across the sue of a resolution policy in other authorities?
19. Do you have any comments in relation to preliminary assessments prior to suspensions?
20. Any comments/issues in relation to the act of suspension
21. Have you experienced any issues in relation to employees on suspension who wishes to access information to prepare their defence?
22. What Is your opinion regarding the use of a contact officer to the suspended employee?
23. Any other issues/ experiences in relation to suspensions?
24. What is your opinion of tape recording in interviews?
25. In what ways could note taking in interviews be improved?
26. What is your opinion when individuals ask for friends to accompany them to interviews (When they are not members of a TU or work colleague not appropriate)?
27. Or if individuals fail to attend interviews?
28. Have you experienced any other issues in relation to investigation interviews?
29. What issues have you experienced in relation to Investigation reports?
30. Do you feel there is any area for improvement with regards to the current format of report?
31. What training do you think the Investigating Officer should have?

APPENDIX 10

32. The HRPS role is stated within the policy to *act as advisors to managers, ensure procedures correctly applied, provide employees with information and advice, review and monitor disciplinary cases and outcomes supporting service areas to undertake remedial action, review and collate monitoring data reviewing application of policy.* It does not specify any role in relation to asking questions either in interviews or in hearings and appeals. What is your opinion?
33. How would you describe the relationship with HRPS?
34. Any other issues to do with roles?
35. What has been your experience of the role of audit in investigations relating to Fraud /Financial Impropriety
36. Do you feel there is sufficient guidance and information in relation to involvement with police ?
37. What issues have you experienced in relation to fraud/ financial impropriety cases or police involvement?
38. What is your experience of the quality of the Chairing at the staff disciplinary and dismissal committees?
39. Have there been any issues regarding the engagement of Committee members in the process?
40. Have there been any issues regarding the appropriate knowledge of Committee members in the process?
41. What is your experience of variations in sanctions at Disciplinary Hearings?
42. Have there been any issues relating to the Clerking at staff disciplinary and dismissal committees?
43. What training do you think the staff disciplinary and dismissal committee should have?
44. Do you consider that a guidance document for staff disciplinary and dismissal committee would be useful?
45. Do you feel it would be helpful to have a booklet for use by witnesses on "*What to expect in a Hearing*" ?
46. What is your opinion on the use of expert witnesses at hearings e.g. audit?
47. What is your opinion of the current appeals process?
48. Do you think there should be any changes with regards to appeals?
49. What issues have you experienced in relation to appeal hearings?
50. Do you wish to make any comments in relation to ET's?
51. Do you think that non Child protection Investigations should be undertaken independently?
52. What is your opinion regarding the merit of setting up an Investigations team?
53. Are you aware of any policy or process changes that works well in other Local Authorities ?

