

**REVIEW OF THE COUNCIL'S DISCIPLINARY POLICY AND
ASSOCIATED POLICIES & PROCEDURES**

REPORT OF CORPORATE DIRECTOR RESOURCES

AGENDA ITEM: 4

**PORTFOLIO: CORPORATE SERVICES AND PERFORMANCE
(COUNCILLOR GRAHAM HINCHEY)**

Reason for this Report

1. In response to recommendations in March 2015 from an internal review of Council workplace investigations, the current Disciplinary Policy and associated procedures have been subject to a detailed review involving key stakeholder groups, with a view to streamlining the current procedure, improve efficiencies and building in more standardised processes.

Background

2. The Council sets standards of performance and conduct for its employees that are reinforced by its rules and regulations and procedures, which help the Council comply with the law and be fair and consistent. The main aim of the Disciplinary Policy should be to improve an employee's performance or correct their behaviour, and not punish them. Grievance procedures are used by employees when they wish to raise problems or issues concerning their employment with the Council. Workplace investigations, as part of Grievance or Disciplinary procedures are designed to support effective management by enabling quick, cost-effective resolution of problems in the workplace. The last full review of Discipline & Grievance Policies took place in April 2010.
3. As part of the independent review of workplace investigations referred to above, between October and December 2014 a range of stakeholders from Directorates and Trade Unions examined some of the known issues in the current system:-
 - Many potential disciplinary or grievance issues can, and should be, resolved at an early stage, as that is normally less time consuming and damaging to working relationships. It was not obvious that early resolution was happening and evidence suggested that a large number of investigations were taking place. At that time for example,

the Environment Directorate had 60 employees under investigation in the 18 month study period.

- Disciplinary Investigations and Hearings are undertaken in addition to the “day job” for staff. There is currently no training programme available on how to undertake an Investigation or Chair a Hearing, nor any coaching or mentorship scheme.
 - A number of employees have been suspended from duty on full pay for long periods of time. There was little evidence of adequate review of suspensions to ensure continued appropriateness and limited monitoring data provided.
 - Some investigations are taking too long to conclude. Too many investigations have either no disciplinary action or a poor outcome. Evidence also suggests that sickness absence levels are higher amongst people who are undergoing investigations.
 - The Disciplinary policy is too long, is not user- friendly and is a mixture of policy and guidance. The current policy is an amalgamation of other policies that were previously separate. Whilst it is important to keep all aspects of the disciplinary procedures and processes together in one policy, the incorporation of separate policies has resulted in a document that is too long.
 - Roles are inadequately defined in the current policy. There is a lack of description and awareness of individuals’ roles in disciplinary investigations which contributes to unnecessary delays or functions/tasks not happening.
 - The investigatory process needs improvement. Investigating Officer reports vary in quality. As evidenced by examples 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.
 - Clearer guidance is needed to enable managers and Investigatory Officers to more effectively manage sickness absences (including those who are suspended) which could be associated with a disciplinary investigation.
4. The outcome of the review resulted in a series of recommendations relating to changes to disciplinary policy, changes to other related policies and procedures, and changes to guidance, training and communication. These recommendations then informed the more recent review of the various policies, procedures and processes which commenced in the summer. A formal consultation process seeking views on the proposals for change from Directorate representatives, Trade Unions and Equality Networks commenced in September 2015 and has now concluded. The opportunity was also taken to ensure that the proposed revisions aligned with the advice provided in the new ACAS

guidance on Conducting Workplace Investigations, published in November 2015.

5. A summary of the key changes proposed and agreed is outlined below:
 - The current corporate Disciplinary Policy has been reduced in length by extracting the guidance information from it.
 - A series of 6 new comprehensive guidance documents for Hearing Chairs, Investigating Officers, Presenting Officers, Managers, Employees and Witnesses have been produced to supplement the policy, ensure more consistent approach /consistent advice, and better support those involved with investigations.
 - Timescales have been revised regarding key decisions during an investigation.
 - Introduction of standardised preliminary assessment, to enable robust decision making regarding the appropriate course of action e.g. informal or formal procedure.
 - Introduction of a new formal Fast Track disciplinary procedure available for misconduct issues.
 - Introduction of a standardised format for suspension from duty, which evidences that all alternatives to suspension have been considered. Authority level to authorise suspension changed to Operational Manager.
 - Requirement to report and review a suspension, and the progress of an investigation every 4 weeks.
 - Hearings to be undertaken in accordance with a new code of conduct and confidentiality.
 - Agreed the principle of setting up a Disciplinary Investigation team within the Council to deal with those investigations which are more complex/involve potential gross misconduct, police/safeguarding concerns. Whilst the details of this will need to be further developed, this will be a virtual team, comprising of Directorate nominated staff who would receive additional specialist training.
6. In addition to reviewing policies and developing new guidance material, the opportunity is being taken to ensure that robust monitoring data is captured and reported to enable compliance to be monitored. Such data will be available for Directorate Management Teams and reported at Senior Management Team level and will also be reported into key Trade Union meetings e.g. SAJCs.
7. Additionally, the 2014 review of workplace investigations highlighted a higher number of disciplinary cases compared to grievances which is indicative of a culture of formal, rather than early, resolution of

disciplinary issues. As a result, the existing Grievance and Bullying & Harassment policies will be replaced with a more progressive “Resolution Policy” to support the cultural change that is required.

8. This new policy has an increased emphasis on early resolution of matters, with managers up-skilled, and Trade Unions involved collaboratively in order to resolve issues at an earlier stage, through a range of resolution methods such as additional training, support, coaching, advice, counselling and mediation.
9. The new Internal Mediation service (within HR People Services) has been expanded, and provisions of the service are detailed in the new Resolution policy. Mediation, whilst voluntary, can be used to prevent escalation to a formal procedure, as well as “repair” damaged relationships within a team after an investigation has concluded.

Issues

10. The vast majority of the proposed revisions have been agreed as part of the consultation. However a number of pinch points emerged in relation to the Disciplinary Policy and associated guidance, where different views were expressed by Directorates and Trade Unions, and relate to the following issues:
 - Role of HR People Services during the investigatory process and at Disciplinary Hearings
 - Use of Expired Warnings in Investigatory Reports and at hearings
 - Extensions to Current Warning Periods
 - Proposed Maximum Timescales for Investigations
 - Consequences for Non Compliance with Policy Timescales
 - Operation of new fast track procedure when a more serious issue emerges

There were no opposing views expressed by Directorate representatives or Trade Unions in relation to the new Resolution Policy

11. All these matters were referred to the Senior Management Team for consideration. Recommendations were made by the Senior Management Team in relation to use of expired warnings, extensions to current warning periods, non-compliance with timescales and proposed maximum timescales for completion of investigations and were accepted by the Trade Unions and therefore reflected in the revised policies and guidance.
12. Following some final operational changes to the new Fast Track process, there remained a final outstanding issue in relation to the role of HR People Services officers at the deliberation stage with the Chair of disciplinary hearings and appeals, which prompted further debate at both the Senior Management Team and amongst the Trade Unions.
13. The changes to policy already agreed as part of the consultation included:

- During the Hearing, HR People Services officers only answer questions on points of clarification on policy and procedure. They can provide procedural advice, but not express opinions on the merits of the case, the people involved or the evidence.
 - Hearing Chairs will be required to evidence how they reached their decision making by completing the 11 key questions on a grid
 - HR People Services officers' advice will be available in writing within the minuted record of the deliberations.
 - Hearing Chairs will be required to attend mandatory training, which will include guidance on deliberations & decision making.
 - New /Inexperienced Chairs can also attend an alternate Hearing in the role of "Observer"
 - Briefing & training for HR People Services officers on HR role in disciplinary process following case law judgements.
14. Following further discussion and through a partnership approach with the Trade Unions, the final position reached is that for a 12 month period, the Council will pilot that the HR Advisor will not be present with the Chair at the Hearing or Appeal when he/she is deliberating the facts and reaching a decision. If further HR advice is required, the Chair will call all parties to be present whilst the advice is given. (This is a similar practice to the policy in Schools).
- 15 In order that the pilot of this specific change is transparent, it has been further agreed that there will be mandatory training for key roles within this process e.g. Chairs, Investigating Officers, ongoing monitoring throughout the period, an interim review at 6 months and a full review in the light of operational experience after 12 months of implementation. Whilst all areas of the new arrangements applying from 1 April 2016 will be reviewed following 6 and 12 months of operational experience, a particular focus on this pilot area will be necessary.
- 16 To support this specific area of review, a framework for evaluation has been agreed against which the 6 month interim and 12 month full reviews will be measured. To include:-
- A minuted record of what the HRPS advice has been during the Hearing
 - Quantitative data on outcomes of Hearings/numbers of Appeals lodged/ reasons for overturn/Employment Tribunals
 - Number of Early Conciliation cases logged with ACAS
 - Comparison of pre implementation period outcomes
 - Qualitative survey to Hearing Chairs, HRPS Officer, Investigating Officer, Companions after the Hearings
 - Audit viewpoint in Fraud/Financial impropriety
 - Viewpoint in Child protection cases

Conclusion

17. The revised Disciplinary Policy is attached as Appendix A and the new Resolution Policy as Appendix B.

18. The 6 Guidance documents provide information relating to all the roles involved in the process and the requirements therein i.e. the manager of the employee under investigation, the employee themselves, the nominated investigating officer, the presenting officer who will present the case should matters proceed to a Disciplinary hearing, the officer who will be the hearing chair and any witnesses required through the process. .
19. As the changes agreed will represent a major cultural shift in how conduct issues will be addressed in the future, it will be important that sufficient preparations in relation to the briefing of managers, development of training programmes and system reconfigurations are put in place to ensure a smooth transition from the current to the revised arrangements can take place. It is therefore proposed that the new policies and procedures will take effect from 1 April 2016.

Policy Performance and Review Scrutiny Committee

20. In addition to Directorates, Trade Unions and Equality Networks, input into the proposals was also sought from Policy Review Performance Scrutiny Committee on 3rd November 2015. The principles of simplifying policies for the management of employees were welcomed and the changes proposed to the Discipline Policy (particularly the introduction of a new Fast Track approach as a speedier avenue to modify behaviour around misconduct issues), the development of new Guidance notes and the new Resolution Policy to assist in streamlining the process, were all well received.
21. The provision of relevant and key management information to monitor compliance was also welcomed in order to ensure that the number and length of some of the suspensions, and the time being taken to conclude current disciplinary and grievance issues is reduced in future. The letter from the Chair of the Scrutiny Committee together with the response from the Cabinet Member are attached at Appendix C

Implications for School Based Employees

22. The Welsh Government's statutory guidance for schools set out in Circular 0002/2013: Disciplinary and Dismissal Procedures for School Staff contains a model Disciplinary Policy. This model policy forms the basis of the Disciplinary Policy and Procedure which has been developed and consulted on across the Central South Consortium region and formally commended to school governing bodies. Whilst representatives from the NUT and NASUWT have been fully involved in the review of the Council policies, any further review of the school policies will be undertaken on a cross consortium basis. It is proposed that once approved by Cabinet, the revised Council policies, procedures and guidance can be used in the forthcoming school policy review.

Reason for Recommendations

23. Based on recommendations arising from an internal review of workplace investigations within the Council, the current Disciplinary Policy and associated procedures have been subject to a detailed review in order to facilitate a culture change towards how conduct issues will be addressed in the future by streamlining the current procedure, improve efficiencies and building in more standardised processes.

Financial Implications

24. The implementation of the revised policy and associated arrangements will be met from within existing resources. This includes the setting up of a Disciplinary Investigation Team which will be developed as a virtual team comprising nominated staff from directorates who are able to undertake investigations. In addition, the expansion of the internal Mediation Service within HR People Services will also be managed within existing resources as will any reconfiguration of systems and training requirements.

Legal Implications

25. Employment policy is a matter for Cabinet under the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007.11. From time to time, the Council's Employment Policies will be tested in the Employment Tribunal. Generally speaking there should not be a problem with a Policy in itself if it is fair, reasonable and complies with ACAS Codes and Guidelines. It is considered that the draft revised Discipline and new draft Resolution Policies meet this requirement.
26. The way in which the Council's policies are applied must also be reasonable. Employment policies can never cater for all of the infinitely variable sets of circumstances that arise in individual cases.
27. Thought must always be given to the detail of the case in question in deciding whether to apply the policy. Policy documents and guidance are vitally necessary for good and consistent management across the board and this is a significant consideration in Employment Tribunal proceedings. The new comprehensive Guidance documents will provide reassurance in this matter. Any departure from a policy should be only on an exceptional basis.

HR Implications

28. A fully inclusive consultation process has now concluded, involving key stakeholder groups such as Directorate representatives, Trade Unions and Equality Networks. The agreed changes will provide more positive and transparent management of workplace investigations, help streamline the process by introduction of new Fast Track Procedure and better support all those involved in the process by increasing availability of guidance, training and support. The new Resolution Policy is seeking

to change the culture from grievance to early resolution with key roles in this for managers, employees and Trade Unions.

29. A number of key areas have emerged from this review, which include the need for clearer roles and accountabilities for all those involved in this process, including HR People Services officers. The new guidance will assist this, alongside a range of Learning and Development initiatives which will be developed and put in place.
30. The proposals have been subject to an Equality Impact Assessment.

Trade Union Comments

31. The Trade Unions have fully participated in this comprehensive review and have reiterated importance of transparency in the process. They are keen that the new arrangements which would apply from 1 April 2016 take into account learning from previous experiences, and support the need for culture change across the Council in relation to how disciplinary matters are addressed in the future.

RECOMMENDATIONS

Cabinet is recommended to:

1. Approve the revised Disciplinary Policy (Appendix A), the new Resolution Policy (Appendix B) and the 6 new Guidance documents to support those involved in various aspects of the process, .
2. Agree that the revised arrangements to be implemented from 1 April 2016.
3. Note that there will be ongoing monitoring of the implementation of the revised arrangements
4. Agree that the new arrangements (particularly those referenced under paragraph 14) will be subject to an initial review after 6 months with a full review following 12 months of operational experience.
5. Agree that training be mandatory for those involved in this process e.g. Chairs, Investigating Officers
6. Agree that the revised Council policies, procedures and guidance can be used in the forthcoming schools policy review as part of the Consortium arrangements.

CHRISTINE SALTER

Corporate Director
15 January 2016

The following appendices are attached:

- Appendix A- Revised Disciplinary Policy
- Appendix B- New Resolution Policy (to replace the existing Grievance and Bullying & Harassment policies and procedures)
- Appendix C- Letter from Chair of Policy Review & Performance Scrutiny Committee and Response from Cabinet Member

All 6 Guidance Notes are available on request:

- Guidance for Investigating Officers
- Guidance for Presenting Officers
- Guidance for Managers
- Guidance for Witnesses
- Guidance for Hearing Chairs
- Guidance for Employees

The following Background papers have been taken into account

- Review of Workplace Investigations in Cardiff Council by Chris Synan, March 2015 –Full Report and Executive Summary
- Response from Chair of Policy Review & Performance Scrutiny Committee: 03 November 2015 on Review of Disciplinary Policy
- Equality Impact Assessment
- ACAS Guidance on Conducting Workplace Investigations, published November 2015



DISCIPLINARY POLICY

DATE DOCUMENT PUBLISHED	
APPROVED BY	Senior Management Team
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SECTION 1 - INTRODUCTION

Policy Statement

- 1.1 Disciplinary rules are necessary for the efficient and safe performance of work, and for the maintenance of good order and relations between the Council and its employees. This is essential to enable the Council to deliver quality services to the citizens of Cardiff.
- 1.2 An employee who breaches a particular disciplinary rule will be liable to Disciplinary action under the Council's Disciplinary Policy and Procedures. It is therefore essential that employees observe and abide by the Council's rules, regulations and standards.
- 1.3 This Disciplinary Policy and its related procedures and guidance notes sets out the actions that will be taken when those rules, regulations and standards are breached or where, other than related to capability, job performance does not reach an acceptable level.
- 1.4 This policy and procedures reflect, and are consistent with, the ACAS Code of Practice on Discipline and Grievance Procedures (2015).

Aims and Objectives

The aims of this policy are to:

- 1.5 Ensure the consistent and fair approach to the application of the Council's rules, regulations and standards for all within the Council. No formal disciplinary action will be taken against an employee without some investigation or assessment to establish the facts.
- 1.6 Primarily help, encourage and support employees to improve their behaviour and conduct, rather than just a way of determining or imposing sanctions.
- 1.7 Ensure that managers, employees and their representatives are aware of their rights, responsibilities and obligations within the disciplinary process.

Scope of the Policy

- 1.8 The Policy applies to **all** current employees (not ex- employees) of the Council with the exception of its schools based employees. The principles will apply to temporary employees including those staff employed through Cardiff Works.

- 1.9 The policy does not apply to agency workers, volunteers or those engaged by the Council on contracts for service. However, where an allegation is made against an individual engaged on a contract for service, the principles of the policy and procedures will be adhered to and, following investigation, appropriate action will be taken. If an issue arises with an agency worker, the matter will be referred to that worker's agency, as they are the employer. A volunteer does not have a contract of employment, therefore their involvement with the Council will be discontinued.
- 1.10 If disciplinary action is being considered against a Trade Union official, the appropriate local Branch Secretary should be notified. If the local Branch Secretary is the subject of potential disciplinary action, then the Full Time Trade Union Officer must be notified. Advice must be sought and obtained from the Chief HR People Services Officer and Legal services, before a Trade Union official or Branch Secretary can be disciplined.

Awareness

- 1.11 All employees should be aware of standards of conduct and performance expected of them by the Council and any recognised professional code of conduct relevant to their role.
- 1.12 This Policy and its related procedures and guidance notes will be drawn to the attention of all employees. Those who have a responsibility to maintain discipline will be given training, and support as required. It is vital that all involved adhere to all aspects of this policy to limit the potential risk of a legal challenge through an Employment Tribunal.

Key Principles

- 1.13 Advice and guidance on the operation of this policy must be obtained from HR People Services before formal disciplinary action is taken against any employee. In the event of a dispute relating to the interpretation of the policy and/ or procedures, HR People Services will make the final decision on interpretation.
- 1.14 As a general principle, the implementation of the investigation and disciplinary process will be confined to the Service Area. A case that appears to be particularly complex or sensitive, may be referred to Cardiff Council Disciplinary Investigation Service (Appendix 3) or to Internal Audit where there are matters of fraud/financial impropriety.
- 1.15 The employee will be advised of the nature of the allegation(s) and given the opportunity to respond to them. In exceptional cases, this may not happen, e.g. Protection of Vulnerable Adults (POVA) and Protection of Children, where separate statutory processes exist.

- 1.16 At all stages of the Disciplinary Procedures, including the informal procedure, the employee will be given the opportunity to be represented by a companion. A companion is defined as an employee of the Council, a trade union representative or an official employed by a trade union in accordance with the ACAS Code of Guidance.
- 1.17 A professional employee facing disciplinary proceedings will not normally be entitled to legal representation at a Disciplinary Hearing, unless the internal proceedings create a legal barrier to working in their chosen profession. Where the issue of an employee's future ability to work in their profession is determined by an independent third party (for example Care Council Wales, Education Workforce Council) then the request for legal representation will not normally be agreed. This is because an internal disciplinary hearing is not normally regarded as determining an employee's civil rights, even if it results in dismissal. Any request to have legal representation at the Disciplinary Hearing will be considered on an exceptional basis only.
- 1.18 An allegation of a disciplinary offence must be dealt with at the time it occurs. It is unfair to stockpile them to deliberately impose a more serious disciplinary sanction on the employee concerned. However there may be occasions where, in order to establish whether an offence has been committed, there could be a period of monitoring employees, sanctioned by Internal Audit. If after that period of monitoring it is decided that a disciplinary offence has been committed, then it will not be regarded as stockpiling.
- 1.19 The policy sets out a series of outcomes that reflect either the progressive levels of disciplinary action having regard to previous action taken, or the seriousness of the allegations which are being considered. Prior to any disciplinary decision being taken, any mitigating factors and/ or circumstances must be taken into account.
- 1.20 No employee will be dismissed for a first breach of discipline except where the breach constitutes gross misconduct. In circumstances where previous disciplinary sanctions have been applied and remain "current" then this may also lead to dismissal. Reference to expired warnings may not be made.
- 1.21 Warnings, issued in accordance with this procedure, shall be time limited and will be disregarded for disciplinary purposes after a specified period of satisfactory conduct has been achieved. The effective date of the warning/dismissal is when the employee is likely to receive the written communication (date of the letter +3 days).
- 1.22 Employees have the right to appeal against any formal disciplinary action taken against them.

- 1.23 Where an employee raises a concern (formerly known as a grievance), during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the concern. Where the concern and disciplinary cases are related it may be appropriate to deal with both issues concurrently. Where such matters arise, a decision taken by the Service Area Manager will be communicated to those involved, following advice from HR People Services. If the disciplinary case is a matter of fraud, bribery or financial impropriety then the decision will be taken by the Audit manager.
- 1.24 In accordance with ACAS guidance, and with the agreement of all involved, the disciplinary procedure and other concerns that require resolution can be suspended if mediation is deemed to be an appropriate method of resolving the dispute.

SECTION 2 - ROLES and RESPONSIBILITIES

2.1 It is important that everyone clearly understands their roles and responsibilities within the Disciplinary procedure.

Employee Responsibilities

2.2 All Council employees are responsible for:

- Ensuring that their behaviour complies with the Council's Code of Conduct and any Service Area/ external Codes of Conduct/ Practice that govern the profession in which they are engaged.
- Ensuring they understand and comply with this policy and fully cooperate with the requirements of the procedures when they are in operation.
- Maintaining confidentiality at all times during any disciplinary proceedings, with the exception of any conversations which may be necessary with their companion.
- Behaving and acting in a way that is consistent with the Council's values of openness, fairness and working together with others, as defined by the Employee Charter.
- Participating in hearings (where applicable) in accordance with the key principles of confidentiality and code of conduct, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice.

Manager Responsibilities

2.3 In addition to their responsibilities as employees, Managers are also responsible for:

- Ensuring employees are aware of all relevant policies and procedures.
- Applying the Council's Disciplinary policy and procedures fairly, consistently and in a timely way.
- Seeking advice from HR People Services on all matters relating to conduct and discipline.
- Keeping adequate notes and records of all events and evidence to support the use of the policy.
- Undertaking a preliminary assessment of the likely level of seriousness of any allegation of misconduct.
- Ensuring that if the allegation is in relation to Fraud/Financial impropriety, a referral is made to Internal Audit
- Ensuring that where an issue is identified that relates to the Protection of Vulnerable Adults (POVA) or Protection of Children, a

referral is made to the POVA team or Childrens Access Point respectively.

- Determine whether an informal or formal disciplinary procedure is the most appropriate course of action, including a Fast Track procedure.

Investigating Officer Responsibilities

2.4 In addition to their responsibilities as employees, Investigating Officers are also responsible for:

- Conducting an appropriate investigation, reviewing progress updating the Head of Service and employee, and preparing the investigation report with recommendations.
- Ensuring that the allegation is correctly recorded in all despatched letters.
- Arranging any meetings and support required as part of the procedure, e.g. securing dates, despatching letters, inviting people to investigatory interviews and organising administrative support to make a record of the interviews.
- Ensuring HR People Services are invited to attend all formal meetings and that employees are aware of their right to representation at these meetings.
- Providing a 4 weekly review on progress of the investigation to the Chief Officer/ Director/ Assistant Director or nominated officer
- Where appropriate, providing a 4 weekly review on the suspension decision (in conjunction with the suspending manager) with recommendations to the Chief Officer/ Director/ Assistant Director or nominated officer
- Participating in hearings in accordance with the key principles of confidentiality and code of conduct, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice.

HR People Services Responsibilities

2.5 In addition to their responsibilities as employees, HR People Service Officers are responsible for:-

- Acting as advisor to all involved at all stages of the policy and procedures, and to ensure that the Council's Disciplinary Policy and Procedures are correctly applied.
- Providing all employees with information and advice as necessary throughout the process.
- Attending all formal meetings associated with the process.

- Answering questions on points of clarification of policy and procedure at interviews and hearings.
- Monitoring that the Chair's recommendations are actioned within Directorates, and support Service Areas to undertake any remedial action that may be necessary.
- Reviewing and monitoring disciplinary cases and outcomes.
- Reviewing and collating corporate monitoring data in relation to discipline for consideration by various groups, e.g. Senior Management Team, Works Council, etc.
- Reviewing the application of the policy and procedures in the light of operational experience.
- Participating in hearings in accordance with the key principles of confidentiality and code of conduct, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice.

Hearing Chair Responsibilities

2.6 In addition to their responsibilities as employees, Hearing Chairs are responsible for:

- Ensuring that the Disciplinary hearing is conducted in accordance with the key principles of confidentiality and code of conduct.
- Ensuring that the employee is fully informed of the circumstances and understands the allegations made against them.
- Ensuring that the employee is fully informed of their right of representation.
- Authorising attendance, where requested, of additional people at the hearing in the roles of Observer and/ or Assistant, with consent of the employee concerned.
- Considering all the evidence regarding the allegation(s) and make a decision whether, on the balance of probabilities, it is substantiated, taking into account any mitigating circumstances
- Evidencing and recording their decision making.
- Ensuring consistency of decision making
- Ensuring that where appropriate, recommendations for specific actions are communicated to the relevant Directorate.
- Participating in hearings in accordance with the key principles of confidentiality and code of conduct, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice.

Chief Officer/ Director/ Assistant Director Responsibilities

2.7 In addition to their responsibilities as employees, Chief Officers/ Directors/ Assistant Directors are responsible for:

- Nominating an appropriately trained and competent Investigating Officer within **7 calendar days**, if proceeding to a formal investigation.
- Undertaking an initial assessment (or their nominated representative) in relation to conduct which appears to amount to a criminal offence.
- Convening and chairing a meeting of a Police Referral Panel.
- Following receipt of the Investigating Officer's report, making a determination whether to instigate disciplinary proceedings against the employee concerned.
- Chairing a Hearing/Appeal and make appropriate disciplinary decisions where the employee is at an Operational Manager level.
- Monitoring and reporting on Disciplinary Investigations (including suspensions and associated sickness absence) within their Directorate.

Trade Union Representative Responsibilities

2.8 In addition to their responsibilities as employees, Trade Union Representatives are responsible for:

- Providing advice, support and representation to their members.
- Working with managers, HR People services and employees to ensure that the Disciplinary policy is adhered to.
- Working with all involved to facilitate timely and early resolution to matters.
- Attending interviews and hearings, and if unable to attend, suggest a suitable alternative date or a replacement Representative.
- Participating in hearings in accordance with the key principles of confidentiality and code of conduct, to enable the hearing to be conducted in a consistent and robust manner in the spirit of natural justice.

Suspension Contact Officer Responsibilities

2.9 In addition to their responsibilities as employees, Suspension Contact Officers are responsible for:

- Identifying and collecting any personal possessions left in the workplace to return to the employee. They must not include any items that could be considered pieces of evidence in the forthcoming investigation, such as work records or documents, which should be secured by the manager.

- Updating the employee on team news, providing minutes of meetings and Core Brief.

Presenting Officer Responsibilities

2.10 In addition to their responsibilities as employees, Presenting Officers are responsible for:

- Making all the practical arrangements for the Hearing e.g. date, venue, minute taker.
- Preparing for the Hearing and ensuring the “Disciplinary Pack” is circulated to the Hearing Chair, the Employee under Investigation & their Companion and the HR People Services representative in advance of the Disciplinary Hearing
- Presenting the case using documentary evidence where available and calling witnesses, or referring to witness statements as necessary. One of the witnesses called should be the Investigating Officer.
- Answering any questions asked by the Chair, the Employee or their Companion.
- Questioning the employee’s case as appropriate.
- Summing up the Management’s case highlighting the salient points.

SECTION 3 – PRELIMINARY ASSESSMENT PROCEDURE

- 3.1 Following an incident or where misconduct has allegedly occurred, the manager must make a preliminary assessment to determine, based on the information available at the time, the likely level of seriousness.
- 3.2 The initial assessment will consist of gathering preliminary pieces of information, and may involve discussion with individuals concerned (*Refer to Disciplinary Procedure: A Manager's Guide*).
- 3.3 The manager will then determine one of the following outcomes:-
 - a. No case to answer- there is no evidence to support the allegation.
 - b. Informal Procedure- due to the minor nature of the misconduct, actions are appropriate which may include written instruction/ advice/ training/ counselling/ coaching/ mentoring/ mediation etc. Actions must be recorded in DigiGov.
(Refer to Cardiff Council Resolution Policy)
 - c. Formal procedure- A Fast Track disciplinary process may be considered appropriate.
 - d. A formal disciplinary investigation will be required.
- 3.4 Where the manager considers that a formal investigation is appropriate, they must advise their Chief Officer/ Director/ Assistant Director, who should make a decision within **7 calendar days**.
- 3.5 Where the Chief Officer/ Director/ Assistant Director/Operational Manager considers that the employee may have committed an act(s) of gross misconduct or there is some other reason why suspension would be necessary, the suspension procedure must be considered (Section 6).

SECTION 4 – INFORMAL DISCIPLINARY PROCEDURE

- 4.1 Where appropriate, problems involving misconduct and poor performance should be addressed at least initially through an informal process. The manager must make every effort to try and resolve the difficulties with the employee concerned through the use of advice, providing clarification on roles and responsibilities and work instructions with the objective of encouraging and supporting employees to improve. (*Refer to Disciplinary Procedure: A Manager's Guide*)
- 4.2 Managers should refer to the Resolution policy, and advice can be sought from HR People Services to support them in dealing with such issues. Mediation may be an option for early resolution to address a range of issues, including relationship breakdowns or personality clashes and so preventing issues escalating unnecessarily. Mediation support can be requested via HR People Services.
- 4.3 It is important that managers deal with issues informally as they occur, to avoid stockpiling, or problems being escalated to more serious stages. A record of discussion of the outcome of the verbal or written instruction to improve must be retained on the employee's DigiGov file and, where possible, the record of discussion should be agreed and signed by all involved.
- 4.4 Employees must understand that the formal disciplinary procedure will be instigated should they fail to meet a reasonable standard of conduct despite the fact that informal discussions have taken place, or where misconduct is sufficiently serious as to merit immediate consideration under the procedure.

SECTION 5 – FAST TRACK DISCIPLINARY PROCEDURE

- 5.1 The Fast Track Disciplinary Procedure is applicable for incidents/ misconduct which would normally result in verbal or written warning. It allows for matters to be dealt with in a timely manner.
- 5.2 It is applicable where the employee has admitted in full all allegations made against them.
- 5.3. The Fast Track Disciplinary Procedure is **not suitable** for
- a) Circumstances where there is potential gross misconduct.
 - b) Cases of repeat misconduct where the employee has already received a written warning.
 - c) Any matters that include a safeguarding issue, a Police matter or fraud / financial impropriety.
- 5.4. Where it would appear that a Fast Track Disciplinary Procedure may be applicable, the manager, HR People Services officer, the employee and their companion **must consent to a Fast Track disciplinary process in writing by completing the Fast Track consent form.**
- 5.5. This process does not require an appointment of an Investigating Officer or submission of a full investigation report. A Fast Track Decision meeting should be held as soon as possible after consent to proceed has been received from all parties. Any delay to the procedure should be for exceptional circumstances only. The Fast Track Decision meeting is the opportunity for the employee and/ or companion to put forward comments and statements including mitigating circumstances. No witnesses will be called. The outcome of the Fast Track Decision meeting must be recorded in DigiGov. The employee will have a right of appeal to the decision in the form of a review. (*Refer to Disciplinary Procedure: A Manager's Guide*).
- 5.6. It is **not acceptable** for a manager to actively seek new evidence with the sole intention of making a Fast Track Procedure ineligible.
- 5.7. Line managers may not deal with any cases in which they are implicated, and an independent manager must be appointed.

SECTION 6 - SUSPENSION PROCEDURE

Key Principles

- 6.1 There may be occasions where it may be appropriate that the employee is removed from their job or place of work whilst an investigation is conducted.
(Refer to Disciplinary Procedure: A Manager's Guide)
- 6.2 Suspension from duty is a neutral act and any removal of an employee from the workplace should be regarded initially as a precautionary measure. It is not a disciplinary sanction, does not imply that the employee has committed an act of misconduct, nor does it prejudice the outcome of any disciplinary investigation or proceedings that may arise.
- 6.3 To avoid any breach of the mutual duties of trust and confidence that exists between the employee and the Council, there must be reasonable grounds for suspension. Other than in exceptional circumstances, suspensions should not be authorised without prior consultation with HR People Services.
- 6.4 The decision to suspend should be determined as quickly as possible. There must be a preliminary examination to establish the facts before suspension is actioned and all other options must be considered before a suspension is authorised. The circumstances surrounding any decision to suspend must be fully documented using the Suspension from Duty Form.
- 6.5 Where a suspension is implemented, the employee must be treated reasonably and fairly. The matter should be treated as confidential, as far as possible, so as not to cause unjustified harm to the employee's reputation.
- 6.6 It is recognised that an employee suspended or under investigation may feel anxious and/or stressed. The employee will have the right of representation throughout this process and they should be advised of various forms of support that are available e.g. Employee Counselling service and Employee Assistance Programme.
- 6.7 The decision to suspend must always be confirmed to the employee in writing including the reasons, and why the other options are not appropriate. *(Refer to Disciplinary Procedure: A Manager's Guide)*.
- 6.8 Where a Trade Union Official is to be, or has been suspended, the appropriate Branch Secretary must be informed. If it is deemed necessary to suspend a Branch Secretary from duty, the appropriate Full Time Trade Union Official must be notified. Advice from HR People Services and Legal Services must be sought and obtained before a Trade Union Official or Branch Secretary can be suspended.

Terms and Conditions of suspension

- 6.9 The terms and conditions of the suspension will be confirmed in the “Suspension from Work” letter. Whilst suspended, the employee’s normal terms and conditions of employment will continue to apply, including rules relating to annual leave and sickness reporting.
- 6.10 All suspensions shall be based on full average earnings but, in wholly exceptional circumstances, the Council reserves the right to suspend an employee on less than full pay or with no pay at all. Such exceptional circumstances could include the physical inability of the individual concerned to report for work should the suspension be lifted (for reasons other than certified sickness). Where employees are moved to alternative duties, an average of any additional payments that they would normally receive will be payable to ensure that employees are not financially disadvantaged.
- 6.11 Suspensions shall not be time limited but there is a clear expectation that all investigations, should be carried out as quickly as possible, and in sufficient time so that any disciplinary hearing deemed necessary can be conducted within **12 weeks** of the start of the investigation, and with reasonable notice of the hearings given to the employee and their companion. An investigation may only be extended in exceptional circumstances, e.g. where the outcome of a court case is pending.

Contact and Review

- 6.12 The suspension decision will be reviewed **every 4 weeks** by the Chief Officer/ Director/ Assistant Director or nominated Officer and the employee will be updated accordingly. A suspension that is without reasonable and proper cause, or unnecessarily protracted, may amount to a breach of the implied terms and conditions, entitling the employee to resign and claim constructive unfair dismissal.
- 6.13 Contact with the suspended employee will be maintained by a specified Contact Officer, at least **every 4 weeks**, or as mutually agreed in writing, to reduce feelings of isolation. (*Refer to Disciplinary Procedure: A Manager’s Guide*).
- 6.14 The restriction to enter the workplace will only apply to the employee concerned. It will not apply to their companion. Where a suspended employee requires access to Council systems or documentation in order to prepare for their defence, they should contact HR People Services who will liaise with the relevant service area in order to obtain the information, and where appropriate arrange supervised access to the Council’s system.

Protection of Vulnerable Adults/Protection of Children

- 6.15 When an issue is identified that relates to the Protection of Vulnerable Adults (POVA), a referral should be made to the POVA team. Where the matter relates to a child protection issue, a referral should be made to the Children's Access Point following the All Wales Child Protection Procedures 2008. In both situations, matters will be dealt with in accordance with interagency protocols.
- 6.16 A multi-agency professional strategy meeting will be convened and appropriate actions agreed. Minutes of Strategy meetings can only be released with the agreement of all attendees, and all personal information relating to the service user must be blanked out to protect confidentiality. Where service users are involved, a decision will need to be taken as to whether this should take precedence over all other considerations.

Alleged Fraud/Financial Impropriety

- 6.17 Fraud is defined as any illegal act characterised by deceit, concealment or violation of trust by parties/organisations to obtain money, property or services; to avoid payment or loss of services; or to secure personal or business advantage.
- 6.18 Under the Financial Procedural Rules, Managers are required to notify Internal Audit whenever any matters arise which involve, or are thought to involve, breaches of security, theft or irregularities concerning cash, stores or other property belonging to the Council.
- 6.19 Management will determine and agree with Internal Audit who will lead the investigation i.e. Directorate or Internal Audit. (*Refer to Fraud, Bribery & Corruption Policy & Disciplinary Procedure: A Manager's Guide*).

Police Involvement in allegations against Council employees

- 6.20 The Chief Officer/ Director/ Assistant Director should make an initial assessment in relation to conduct which appears to amount to a criminal offence. The normal presumption should be to refer the matter to the Police.
- 6.21 If there is a suspicion or an allegation that a serious crime may have been committed (or is about to be committed), e.g. murder, rape, other serious sexual offences, arson, burglary, fraud, violent assault, etc. then the Chief Officer/ Director/ Assistant Director (or their nominated representative) should refer the matter to the police immediately.
- 6.22 If, however, after carrying out their initial assessment the Chief Officer/ Director/ Assistant Director (or their nominated representative) is satisfied that the conduct complained of amounts to a criminal offence,

but is of a lesser order than the activities described in the preceding paragraph, they are required to convene a meeting of a Police Referral Panel as quickly as possible to discuss the suspicion or allegation and the results of their preliminary assessment.

Police Referral Panel

- 6.23. With the exception of Child Protection and Protection of Vulnerable Adult issues (which have their own referral processes), the mechanism for referral will be via a Police Referral Panel which comprises officers from the employee's Service Area, HR People Services, Legal Services and Corporate Services (i.e. the Risk & Audit Manager where allegations concern Fraud and/ or Financial impropriety). The Panel will be **chaired** by the Service Area Chief Officer/ Director/ Assistant Director (or nominated senior representative).
- 6.24 The Police Referral Panel will meet and discuss the issues concerned to determine if the matters should be referred. If the decision is to refer the matter to the Police, the relevant Chief Officer/ Director/ Assistant Director (or their nominated representative) should contact them without delay to formally put the matter into their hands.
- 6.25 The Police Referral Panel will decide whether the employee concerned should be informed that the matter is being, or has been, referred to the Police. Advice will be sought from the Police where appropriate.
- 6.26 Having referred the matter to the Police, the Chief Officer/ Director/ Assistant Director (or their nominated representative) should initiate the Disciplinary Investigatory Procedure so that the internal investigation is conducted at the same time as the Police investigation.
- 6.27 The Police may ask for an internal disciplinary investigation to be delayed and/ or deferred pending the completion of their investigation to avoid the internal investigation interfering with their investigation. If and when such a request is received, advice and guidance must be sought from HR People Services and Legal Services.
- 6.28 Due to the length of time that some Police investigations can take, the Council reserves the right to conduct its own internal investigations and/ or to instigate disciplinary proceedings against employees who are the subject of ongoing Police investigations.
- 6.29 If the decision of the Police Referral Panel is not to refer the matter to the Police, the Chief Officer/ Director/ Assistant Director should follow the Disciplinary Investigatory Procedure in the normal way.

SECTION 7 – INVESTIGATORY PROCEDURE

Purpose

- 7.1 This procedure is to be used to ensure that when a suspicion or allegation of misconduct by an employee comes to the attention of the Council, an adequate investigation, conforming to the rules of natural justice is carried out as quickly as is reasonably practicable.
- 7.2 The purpose of the investigation is to ascertain the facts as far as is reasonably possible, enquire into the circumstances surrounding the alleged misconduct, give the employee the opportunity to offer an explanation, interview all relevant individuals, take a balanced view of the information which emerges and prepare an investigation report detailing the main findings, and making recommendations which may include, amongst others, whether or not disciplinary proceedings should be initiated.
- 7.3 The standard that applies for workplace investigations is for the Investigator to have reached a genuine belief based on reasonable grounds, on the evidence obtained and on the balance of probability, after having carried out as much investigation as was reasonable in the circumstances.

Key Principles

- 7.4 The Chief Officer/ Director/ Assistant Director must nominate an appropriately trained and competent Investigating Officer within **7 calendar days**, and assess the scope of the investigation to ensure the Investigating Officer is provided with the time / resources required to complete the task within the prescribed timescales, wherever possible. The individual appointed to conduct a disciplinary investigation must be aware of and familiar with the Council's Disciplinary Policy and Procedures.
- 7.5 All investigations must be proportionate to the concerns or allegations being considered. They should be carried out as quickly as possible, and in sufficient time so that any disciplinary hearing deemed necessary can be conducted **within 12 weeks** of the start of the investigation, and with reasonable notice of the hearings given to the employee and their companion.
- 7.6 The Service Area is responsible for making arrangements to closely monitor the progress of the investigation, **review it every 4 weeks** and either party will notify the other if a delay in the process is anticipated giving reasons. Extending the investigation beyond **12 weeks** is allowed but only in exceptional circumstances, and where there is reasonable justification. Such reasons should be communicated to all involved.

- 7.7 The Investigating Officer cannot chair any subsequent disciplinary hearing or subsequent appeal, convened as a result of their investigation. Any manager interviewed as part of the process cannot chair any subsequent hearing or appeal.
- 7.8 The Council reserves the right under the Employment Code of Practice & Data Protection Act where it is deemed appropriate to monitor employees as part of a disciplinary investigation. Any such monitoring will be done in line with the Council's Policy/ Procedures on Monitoring Employees. Before contemplating any form of monitoring it is essential that the Investigating Officer seeks advice from Internal Audit/ Monitoring Officer/Legal.
- 7.9 Individuals who have very serious concerns about any aspect of the Council's work should raise their concerns under the Whistleblowing Policy.
- 7.10 The Investigating Officer must assess all the evidence that has been collected and prepare a written report for the Chief Officer/ Director/ Assistant Director, making any recommendations as appropriate which will include whether or not the matter should proceed to a disciplinary hearing.
(Refer to *Disciplinary Procedure: An Investigating Officer's Guide*)

Chief Officer/ Director/ Assistant Director Consideration

- 7.11 Once the report is submitted to the Chief Officer/ Director/ Assistant Director, any further allegations identified will be the subject of a separate investigation.
- 7.12 Following receipt of the Investigating Officer's report, the Chief Officer/ Director/ Assistant Director will make a determination within **7 calendar days** (unless there are exceptional circumstances) whether to instigate disciplinary proceedings against the employee concerned, advise the employee accordingly in writing within **7 calendar days** of the decision being made.
- 7.13 If the decision is made that the matter should not proceed then a letter should be sent to the employee notifying them of this within **7 calendar days** of the decision being made.

SECTION 8 - DISCIPLINARY HEARING

- 8.1 If following a disciplinary investigation, the decision is made to instigate disciplinary proceedings against the employee concerned, it will usually proceed to a disciplinary hearing.
- 8.2 Arrangements for a disciplinary hearing (i.e. date/time/venue) should be made by the Presenting Officer as soon as possible after the decision to proceed following discussion with the employee and their companion (where applicable). Any delays to this should be notified to all involved. (*Refer to Disciplinary Procedure: A Hearing Chair's Guide*).
- 8.3 To ensure impartiality, a disciplinary hearing must be chaired by a manager who has not had any involvement in the circumstances giving rise to the act of alleged misconduct for which the disciplinary hearing has been convened.
(N.B. "Involvement" means **direct** involvement in the case such as carrying out the investigation or witnessing the alleged misconduct. It does not mean that any officer who has some prior knowledge of a case should be prevented from chairing a hearing).
- 8.4 Employees should be notified in writing **14 calendar days*** in advance of the hearing. At the same time they will receive copies of all the relevant documentation that will be presented to the Chair of the hearing, including the Investigating Officer's report concerning the allegations to be considered. In addition to administrative details concerning the arrangements for the hearing, the letter should also refer to the seriousness of the disciplinary allegations and possible outcomes if proven.
- * Where the disciplinary pack contains excessive amounts of information this must be provided to the employee (and their companion) between 14 to 28 calendar days in advance of the hearing.*
- 8.5 The employee is required to submit documents on which they intend to rely upon at the hearing to the Presenting Officer at least **7 calendar days** in advance of the hearing. This will ensure that the Chair receives the bundle of all relevant documents 48 hours (2 working days) prior to the hearing. This will give them the opportunity to review all the information and start to become familiar with the case details beforehand. The Chair should not make enquiries on the case prior to the hearing.
- 8.6 The purpose of the disciplinary hearing is for the Chair to consider all the evidence regarding an allegation, and to make a decision whether, on the balance of probabilities, the allegation against the employee is substantiated. If the allegation is substantiated, the Chair should determine an appropriate sanction, dependant on the seriousness of the allegation and taking into account any mitigating circumstances provided.

- 8.7 Requests for attendance at a Hearing in the roles of “Observer” (developmental purposes) or “Assistant” (complex cases only) must be made to the Chair **7 calendar days** prior to the date of the hearing. Attendance for either role will be at the discretion of the Chair and must be with the consent of the employee under investigation.
- 8.8 Where there is more than one employee subject to disciplinary action, hearings may be held separately or together depending on the circumstances of the case. Where it is decided to hold them together, the agreement of all involved must be obtained beforehand. If disciplinary hearings are held individually, then the outcome should be reserved until all hearings have been completed and jointly considered. The same hearing Chair should be used to ensure consistency.
- 8.9 Where possible, the Chair’s decision, including appeal rights, must be communicated to the employee verbally either on the day or within **24 hours** of the conclusion of the hearing. Where it is not possible to provide the decision verbally, the employee should be informed of the reason(s) for the delay. In complex cases the time may be extended but all involved should be notified where this is the case. Once communicated, the Chair’s decision is final.
- 8.10 The decision including appeal rights, will be confirmed in writing within **7 calendar days** of the hearing.
- 8.11 The Council reserves the right to conduct a disciplinary hearing in the absence of the employee in circumstances where reasonable efforts have been made to secure that individual’s attendance. The employee will be notified in writing of the outcome and their right of appeal.

SECTION 9 - POSSIBLE DISCIPLINARY OUTCOMES

(Refer to Disciplinary Procedure: A Hearing Chair's Guide for applicable letters)

- 9.1 The possible outcomes of a disciplinary hearing are detailed below.
- 9.2 Disciplinary action is cumulative where previous misconduct has occurred and previous disciplinary warnings are current and have not expired. Expired warnings cannot be referenced.
- 9.3 If an employee has more than one allegation proven at a disciplinary hearing, the resultant disciplinary action will need to reflect the most serious allegation.

Verbal Warning – Valid for 3 Calendar Months

- 9.4 This sanction will be appropriate for a first minor breach or where actions taken/ agreed under the informal stage have proven to be ineffective.
- 9.5 The person issuing the verbal warning must ensure that the person receiving it understands:
 - Why the verbal warning has been issued.
 - The improvements required.
 - That it is a formal warning, valid for 3 calendar months, specifies the expiry date and is issued in accordance with the Council's Disciplinary Policy and Procedures and there is a right of appeal.
 - That if within the 3 calendar months they commit the same or different disciplinary offence, further disciplinary action will be contemplated.
 - That the record of the warning will be kept on their DigiGov file but that it will be disregarded for any future disciplinary purposes after 3 calendar months, providing there has been the required improvement whilst the warning was in place.
- 9.6 Once this warning has been communicated to the employee verbally, a record of it should be made on the relevant proforma, agreed and signed by all involved where possible and retained on the employee's DigiGov file for 3 calendar months.

Written Warning – Valid for 6 Calendar Months

- 9.7 This sanction will be appropriate if during the validity of the verbal warning, the required levels of improvement have not been achieved, the employee commits the same or further disciplinary offences or if the nature of the offence is serious enough to warrant action at this level.
- 9.8 A written warning will be valid for 6 calendar months with the expiry date specified. The reasons why the warning has been issued, the improvements required and the right of appeal must be included in the decision letter. A copy of the letter (including details of allegations heard, evidence considered and conclusions reached) will be placed on the employee's DigiGov file and will be disregarded for any future disciplinary purposes after 6 calendar months, providing there has been the required improvement whilst the warning was in place.

Final Written Warning – Valid for 18 Calendar Months

- 9.9 This sanction will be appropriate if, during the validity of the written warning, the required levels of improvement have not been achieved, the employee commits the same or further disciplinary offences or if the nature of the offence is serious enough to warrant action at this level.
- 9.10 A final written warning will be valid for 18 calendar months with the expiry date specified. The reasons why the warning has been issued, the improvements required and the right of appeal must be included in the letter. A copy of the letter (including details of allegations heard, evidence considered and conclusions reached) will be placed on the employee's DigiGov file and will be disregarded for any future disciplinary purposes after 18 calendar months, providing there has been the required improvement whilst the warning was in place.

Dismissal or Demotion to a lower grade position

- 9.11 This sanction will be appropriate if, during the validity of the final written warning, the required levels of improvement have not been achieved, the employee commits the same or any further disciplinary offences or if the nature of the offence is serious enough to warrant action at this level.
- 9.12 If an employee is dismissed or resigns in the course of an investigation/ disciplinary process involving a child protection/ vulnerable adult allegation a referral must be made to the appropriate body. In the case of teachers the General Teaching Council for Wales and for care professionals the Care Council for Wales/Health and Care Professions Council.

- 9.13 The decision may be either dismissal (with or without notice) or, in exceptional circumstances, demotion. **This will however be dependant on the existence of suitable vacancies within the Directorate.** Where, as an alternative to dismissal, the decision is demotion, a final written warning must also be issued.
- 9.14 Where demotion is proposed, the employee's agreement in writing must be obtained, otherwise the employee may make a claim for an unlawful deduction from wages. However the employee should be made aware that if they do not agree to the demotion, then the alternative will be dismissal.
- 9.15 The decision (including details of allegations heard, evidence considered and conclusions reached) must be communicated to the employee in writing and the right to appeal confirmed.

No Action

- 9.16 Where the Chair finds no case to answer, there is a standard letter available that must be issued to the employee within **7 calendar days** of the decision being made. This letter will not be retained on the employee's DigiGov file except where necessary to prove that a sufficient investigation has taken place (e.g. complaints relating to abuse of children / vulnerable adults) and will clearly mark that the allegation was unsubstantiated.

SECTION 10 - DISCIPLINARY APPEALS PROCEDURE

- 10.1 Employees subject to any formal disciplinary action have the right of appeal against the decision and should be notified of this in writing. Appeals must be made within **7 calendar days** from receipt of the written decision from the original hearing.
- 10.2 Employees with access to DigiGov can lodge an appeal using the system. Employees not on DigiGov can appeal via email or in writing. Only the employee has the right of appeal and they should identify the grounds on which they are appealing in that there was either :
- a) **A PROCEDURAL FLAW** clearly indicating what the flaw was and how the policy was not correctly followed / applied; and/ or
 - b) The **FINDINGS** were inconsistent with the evidence presented, providing written reasons for this; and/ or
 - c) The **SANCTION** was inappropriate, providing written reasons for this; and/ or
 - d) **NEW EVIDENCE** has come to light either since, or not considered at the disciplinary hearing, which could have a bearing on the original disciplinary sanction, providing written reasons how this could have a bearing on the case.
- 10.3 Appeals against a verbal warning, written warning and final written warnings will take the form of a review hearing. Appeals against dismissal or demotion will take the form of a complete rehearing.
(Refer to Disciplinary Procedure: A Hearing Chair's Guide)
- 10.4 The Service Area concerned must arrange the appeal hearing (i.e. date/ time/ venue) within **7 calendar days** of receipt of the appeal. Any delays to this should be notified to the employee and their companion (where applicable). If the employee or their companion is unable to attend on the proposed date, they can propose an alternative date/ time providing that it is reasonable and is no more than **7 calendar days** after the date originally proposed for the hearing.

Appendix 1: DISCIPLINARY RULES

- 1.0 The Council's Disciplinary Rules set out below are divided into misconduct and gross misconduct. The lists are intended to be examples only and are neither exclusive nor exhaustive. It has to be recognised that there may well be other acts of misconduct not listed below that would give rise to disciplinary proceedings. In determining the appropriate outcome, each case should be judged objectively, based on the merits of the evidence provided and any mitigation.
- 2.0 The proven degree of the alleged misconduct will determine whether the act is misconduct or gross misconduct. Incidences of misconduct will not normally result in dismissal, but this depends on the seriousness of the incident. However where the employee already has in place unspent warnings, the commission of a proven act of misconduct could result in a final written warning or dismissal.
- 3.0 Proven gross misconduct may result in dismissal without notice unless there are mitigating circumstances.
- 4.0 These Disciplinary Rules should be read alongside the Council's Disciplinary Policy and Procedures.
- 5.0 **Examples of Misconduct**

(Note: in certain circumstances the examples below may be considered to constitute gross misconduct)

- Failure to comply with the Council's Code of Conduct and any specific professional code of conduct and/ or local agreed working arrangements which may exist within Service Areas.
- Minor breaches of any of the Council's employment Policies or Procedures.
- Persistent poor timekeeping.
- Unauthorised absence from work.
- Refusal to comply with a reasonable instruction.
- Failure to comply with requirements within Council procedures, e.g. sickness absence reporting procedures, flexible working schemes / procedures.
- Showing a lack of professional courtesy to colleagues, citizens, service users, suppliers or anyone outside of the Council.
- Misuse or unauthorised use of Council resources, vehicles, equipment and facilities

- Inappropriate use of Council time, e.g. excessive use of time for personal correspondence, telephone calls and emails/ internet use.
- Failure to observe Council IT standards, policies and guidance on the use of IT facilities.
- Failure to disclose an outside interest, gift, benefit or hospitality which would cause loss of confidence in the employee or the Council.
- Failure to declare any other paid work or employment undertaken which conflicts with the Council's interests (in accordance with the Officer's Personal Interests & Secondary Employment Policy) or which results in contravention of Health & Safety or employment legislation.

6.0 Examples of Gross Misconduct

- Gross misconduct is an act or omission that is of such a nature or so serious that, if proven, could lead to summary dismissal (dismissal without notice). The following acts, and offences of a similar nature, will be regarded as gross misconduct.

6.1 Breach of Trust

- Omission or conduct liable to lead to serious loss of confidence in the public service and/ or bring the Council into disrepute.¹
- Criminal offences committed at work.
- Conduct that is a serious abuse of position, e.g. misuse of personal position for personal gain.
- Being an accessory to, condoning or failing to report a serious, potentially criminal disciplinary offence, e.g. an incident of abuse/ suspected abuse of a child or vulnerable adult; failing to report that a colleague was obtaining financial or other reward from Council clients.
- Behaved in a way that has harmed a child/ vulnerable adult, or may have harmed a child/ vulnerable adult.
- Behaved towards a child/ vulnerable adult in a way that indicates that they are unsuitable to work with children/ vulnerable adults.

¹ Refer to Disciplinary Policy Managers Guidance for further information

6.2 **Misuse of Property**

- Theft, or attempted theft, from the Council, its employees, partner organisations or service users, or from premises being visited during the course of employment.
- Unauthorised possession and/ or use of the Council's property, or the property of its employees, e.g. unauthorised use of a Council Identification Card to gain unauthorised access to property, receiving money or other considerations for the use of that property.
- Malicious damage to, or any other unlawful act which involves the property of the Council or its employees.

6.3 **Dishonesty and Fraud**

- Failure to disclose material information or knowingly making a false statement or omission when applying for a job.
- Falsification of time sheets, bonus sheets, expense claim forms, car allowance claims, etc with the intention of defrauding the Council.
- Persistent and/ or serious abuse of the Council's Flexible Working Hours Scheme or any of the other Flexible Working policies and/ or procedures.
- Fraudulently claiming benefits to which the employee is not entitled to.
- Deliberate disregard of the Council's Financial Procedures and Rules or Contracting Procedures or general instructions concerning the collection, transfer, security and paying in of monies, the issue and receipt of tickets and the completion and submission of associated documents.
- Undertaking other paid employment whilst receiving sick pay from the Council during a period of sickness or unauthorised absence, without prior management agreement.
- Whilst on sick leave, indulging in activities that are likely to be inconsistent with the stated reason for absence and/ or which is unlikely to be conducive to recovery.

6.4 **Health and Safety**

- Any act, omission or negligence of H&S legislation or Council H&S related policies & procedures.

6.5 Unacceptable behaviour at work

- Verbal abuse (e.g. swearing) and physical violence (e.g. fighting), whether actual or threatened towards colleagues, service users, citizens, suppliers.
- Inciting others to commit violent acts or acts of gross misconduct.
- Sexual misconduct/ activities whilst on duty.
- Harassment or discrimination on the grounds of race, gender, disability, religious belief, sexual orientation, age, ethnicity, caring responsibilities, membership of a trade union, employment status, marital status, spent convictions other than for jobs excluded by law.
- Bullying, intimidation or victimisation, including inciting racial hatred.
- Wilful and/ or repeated refusal to carry out or comply with a reasonable order, instruction or contractual requirement.
- Sleeping whilst on duty (unless undertaking paid sleeping-in duties).
- Raising issues under the Council's Resolution Policy that subsequently are proven to be malicious or vexatious.

6.6 Alcohol and Drug Use

- Consumption of alcohol or the taking of illegal/ unprescribed drugs or intoxicating substances at work in circumstances where it could constitute a health and safety hazard, where it would be in breach of a position of responsibility and trust.
- Incapacity whilst at work due to the influence of alcohol or non-prescription drugs.

6.7 Confidentiality

- Unauthorised disclosure of confidential and personal information including that which may be of use within a contract tendering situation or quotation procedure.
- Deliberate breach of personal data.

6.8 Use of Information Technology systems

- Serious breach of the Council's IT Policy, e.g. accessing internet sites containing pornographic, racist or other discriminatory images/ text/ material, loss of confidential or sensitive data through negligence, loss of important or expensive equipment through negligence, accessing/ utilising Council's IT for private use and/ or personal gain.

6.9 **Conduct Outside of Work**

- Committing an act of gross misconduct outside work/ working hours or being convicted of a criminal offence which would prevent an employee from continuing to do their job or which affects their suitability to perform their work and/ or which damages the relationship of trust that has to exist between the Council and its employees.
- Acting in a way outside of work that would bring the Council into disrepute, e.g. committing acts of discrimination.

6.10 **Failure to declare an interest**

- Failure to comply with the requirements of the Local Government Act 1972 which requires an employee or office holder to declare an interest where it comes to their knowledge that a contract in which they have any direct or indirect pecuniary interest has been, or is proposed to be, entered into by the Council.

6.11 **Defamation**

- Making defamatory statements in the course of employment (e.g. making statements that are or could be slanderous or libellous) whether orally, written, or in electronic communication. (A defamatory statement is a statement that will injure the reputation of another in the estimation of members of society generally).

Appendix 2: AUTHORITY LEVELS & APPEAL ARRANGEMENTS

GRADE OF EMPLOYEE SUBJECT TO DISCIPLINARY PROCEDURES	MINIMUM LEVEL AUTHORISED TO SUSPEND FROM DUTY	MINIMUM LEVEL AUTHORISED TO CHAIR A HEARING AND MAKE APPROPRIATE DISCIPLINARY DECISIONS	MINIMUM LEVEL AUTHORISED TO CONSIDER AN APPEAL	
			Verbal, Written and Final Written Warnings	Dismissal or Relegation
1. All employees up to and including Grade 10	Operational Manager	Any Officer nominated by the Chief Officer/ Director/ Assistant Director to undertake the delegated task. The officer must be at a more senior level than the employee subject to the disciplinary action.	Operational Manager	Chief Officer/ Director/ Assistant Director
2. Operational Manager	Chief Officer/ Director/ Assistant Director	Chief Officer/ Director/ Assistant Director	Corporate Director	Corporate Director
3. Chief Officer/ Director/ Assistant Director	Corporate Director	Corporate Director	Chief Executive	Panel of Elected Members*
4. Corporate Director	Chief Executive	Chief Executive	Panel of Elected Members*	Panel of Elected Members*
5. Chief Executive	Member Investigating Committee and Independent Officer	Member Investigating Committee and Independent Officer	Panel of Elected Members*	Panel of Elected Members*

* Where Elected Members are involved the Monitoring Officer, in consultation with the Chief HR Services Officer, will organise a meeting of a panel of elected members appointed to hear the disciplinary case at the earliest opportunity. The Panel will contain not more than 5 and not less than 3 Members.

Appendix 3: DISCIPLINARY INVESTIGATION SERVICE

The Disciplinary Investigation Team

1. The Disciplinary Investigation team, based internally in the Council, will be set up to deal with disciplinary investigations that are more complex/potential gross misconduct investigations, those involving the police and safeguarding concerns but excluding schools' child protection cases (refer to Welsh Government Guidance: "*Disciplinary & Dismissal procedures for Schools Staff*").
2. The Team will exist as a "**virtual team**", comprising of staff nominated by each Directorate to deal with these investigations. Nominated staff from HR People services would also be part of the virtual team, and Internal Audit would be involved where there are matters of Fraud/Financial impropriety.
3. Members of the team would receive any additional and higher levels of training as required, to develop their knowledge and expertise.
4. Each Directorate would commit to enabling their nominated team member to be released from their day job during the period of the investigation, to ensure they are undertaken thoroughly, and as quickly, as possible. Directorates would manage their own cover arrangements.
5. Where appropriate, investigations could be cross Directorate if required, to increase impartiality.

Benefits of a Disciplinary investigations team

- a) Ready, willing and engaged Investigating Officers.
- b) Fewer Investigating Officers doing investigations on top of day job with reduced level of stress on staff.
- c) Improved sickness absence levels.
- d) Expertise developed so improved quality with fewer investigations flawed.
- e) Improved impartiality.
- f) Reduced cost of delivering training programme to fewer staff.
- g) Improved consistency of HR People Services advice from Investigation team officers.
- h) Reduced length of suspensions improved cost to Council.
- i) Reduced length of investigations improved cost to Council.
- j) Consistency of decision making.

Future potential

Dependent upon the capacity of the team, there could be potential income generation for the council, if the team offered a costed service to other Local Authorities/ schools.



RESOLUTION POLICY

(Replacing Grievance Policy 1,CM.040 &
Harassment Policy and Procedure 1.CM.109)

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APPROVED BY	
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SECTION 1 – INTRODUCTION

POLICY STATEMENT

- 1.1 This Resolution policy provides an opportunity to link dispute resolution to the Council's values and vision. It replaces the Council's Grievance and Harassment Policies and Procedures, offering a new name and a new focus.
- 1.2 The City of Cardiff Council, like many organisations, has a workforce which is made up of people from increasingly diverse backgrounds, with differing opinions, values and expectations about work. The Council recognises that from time to time, employees may have problems, concerns or complaints about aspects of their employment, e.g. working conditions or working relationships with colleagues, which they wish to raise and have resolved.
- 1.3 It also recognises that it has a responsibility to deal with any such concern raised in a timely manner to maintain discipline, good order, motivation and morale amongst employees in the interests of effective service delivery, to reduce the risk of time consuming formal proceedings and associated sickness absence costs.
- 1.4 The foundation of all forms of **acceptable behaviour** at work is the respect in which we hold every individual working within the Council, and the value we place on their individual contribution to our common purpose. Every individual is entitled to fair and equitable treatment and the Council is committed to providing a caring and supportive working environment which is free from all forms of harassment, discrimination, bullying and intimidation (hereinafter referred to as **unacceptable behaviour**). The trade unions are also fully committed, to taking a major role in preventing all forms of unacceptable behaviour at work (Appendix 1).
- 1.5 This statement of policy underpins a commitment to developing a culture of personal and managerial integrity and professionalism, in which dignity, courtesy and respect are valued, and unacceptable behaviour is identified and dealt with quickly, fairly and sensitively.
- 1.6 It offers a collaborative approach that balances the rights of individuals with their interests and needs. In doing so, it brings the core principles of mediation to the forefront and encourages constructive resolution and positive working relationships. By making mediation available at each stage (even where cases may be escalated to formal actions) greater flexibility is offered to all parties.
- 1.7 This policy and procedure, is consistent with the principles outlined in the ACAS Code of Practice on Discipline and Grievance Procedures (2015).

AIMS AND OBJECTIVES

The aims of this policy are to:

- 1.8 Enable a transition in the organisation from a grievance culture to one that is focussed on innovation - a resolution culture.
- 1.9 Demonstrate a commitment to positively resolving conflict and taking concerns seriously by confronting the conflict, but not in a way that leads people to defensive positions.
- 1.10 Encourage free communication between employees and their respective managers to secure constructive and lasting solutions to workplace concerns, quickly and informally, to the satisfaction of all parties involved. This will increase the levels of staff morale, commitment and productivity.
- 1.11 Help reduce levels of formal procedures, where appropriate, and absences due to stress or stress related illnesses.
- 1.12 Ensure that managers, employees and their companions are aware of their rights, responsibilities and obligations within the resolution process.
- 1.13 A companion is defined as an employee of the Council, a trade union representative or an official employed by a trade union.

SCOPE OF THE POLICY

- 1.14 The Policy applies to **all** current employees of the Council with the exception of school based employees. The policy does not apply to agency workers, volunteers or those engaged by the Council on Contracts for Service. It aims to provide a single framework for the resolution of individual as well as collective concerns about any aspect of their employment with the Council without fear of reprisal and/or recrimination.
- 1.15 Application of this policy is suitable for concerns or disagreements between all work colleagues within or between teams and service areas, between managers and members of their team, or actions/inactions of the employer.
- 1.16 This policy also covers **unacceptable behaviour** in any situation, as the result of which an employee's employment with the Council may be affected. It is not confined **to unacceptable behaviour** occurring in the workplace or during working hours, but extends to situations that occur outside the working environment which arise out of, or may affect, the working relationship between employees and the Council as the employer.
- 1.17 Employees cannot use this Policy and Procedure if the nature of the concern relates directly to their substantive grade (see **Regrading Policy 1. CM.240**) or constitutes an appeal against disciplinary decisions taken against them (see **Disciplinary Policy 1. CM 035**).

AWARENESS

- 1.18 This Policy will be drawn to the attention of all employees. The Council has a duty of care to its employees, and service users, and is legally responsible for ensuring that the behaviour and conduct of employees in the course of their employment is acceptable.
- 1.19 The Council acknowledges that the decision to raise a concern will normally rest with the employee. The Council has a duty of care and management have the right to initiate a preliminary assessment, if they have concerns with regards to an employees conduct, even if a concern has not been raised.
- 1.20 Failure to recognise or investigate incidents of unacceptable behaviour does not excuse the Council from liability and could have serious legal consequences under health and safety and employment legislation. Therefore officers **must** adhere to all aspects of this policy to limit the potential risk of a legal challenge.
- 1.21 All employees have a duty to comply with this policy and to be aware of their personal obligations by eliminating all forms of unacceptable behaviour.

KEY PRINCIPLES

- 1.22 At all stages of the Resolution Procedures, including the informal procedure, employees will be given the opportunity to be represented by a maximum of 2 companions (with the exception of a mediation meeting). Where there are 2 companions, one must take the role of an Observer (refer to Disciplinary Procedures: Hearing Chair's Guide p7)
- 1.23 When concerns or complaints arise, they will be resolved through informal procedures wherever possible.
- 1.24 The Council recognises that the offence may not be intentional. An individual may be subject to unacceptable behaviour, and the person causing the alleged distress may be unaware that their behaviour is offensive or causing a problem.
- 1.25 Differences in culture, attitude and experience or the misinterpretation of social signals can result in differences in perception, and what may be perceived as unacceptable to one person may be perceived by others as normal social behaviour.
- 1.26 An employee will not prejudice their employment, opportunities for progression, promotion or training within the Council by making a complaint of unacceptable behaviour, when it is made in good faith, or by any subsequent investigation.
- 1.27 Where more than one employee has the same concern, then the procedure should be applied on a group basis, where agreed by a group of employees

(collective concern). A group concern will be subject to one procedure and will be treated as a single application albeit from a group of employees.

- 1.28 Records should be kept of each stage of the procedure and checked for accuracy by all parties. Employees should be given copies of any resolution meeting records including any formal minutes. In certain circumstances the Council may withhold some information, for example to protect a witness. All such records will be regarded as confidential and retained in accordance with the provisions of the Data Protection Act 1998.
- 1.29 The Council undertakes to observe and maintain confidentiality wherever possible in dealing with cases of alleged unacceptable behaviour. In this context, confidentiality means that information will be disclosed only on a “need to know basis”
- 1.31 All parties will endeavour to deal with concerns as quickly as possible and within the timescales stated. Should it be necessary, the time limits can be extended or modified with the agreement of all the parties.
- 1.32 Where an employee formally raises a concern or complaint under this policy during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the concern. However, where the concern and the disciplinary matters are related it may be appropriate to deal with both concurrently if directly relevant to the outcome of the disciplinary hearing. Where this situation arises, a decision taken by the Service Area Manager will be communicated to the relevant parties, following advice from HR People Services. If the disciplinary case is a matter of fraud, bribery or financial impropriety then the decision will be taken by the Audit manager.
- 1.33 Where a concern relates to a difference in the interpretation and/or application of a particular Council policy, procedure or agreement, consideration of the matter may be adjourned with the consent of all the parties to enable appropriate advice and guidance to be sought. When this has been received, consideration of the concern will be resumed at the point at which it was adjourned.
- 1.34 The Council reserves the right to deal with any unusual or urgent concern outside the normal Resolution Procedure in exceptional circumstances, but will only exercise that right, following consultation with all parties.
- 1.35 Employees have the right to appeal against the formal resolution decision.
- 1.36 The Council recognises the possibility that concerns may be brought with malicious, vexatious or spurious intent. If there is evidence to support such intent, this may result in disciplinary action being taken against the complainant.
- 1.37 This policy and the procedure will be reviewed in the light of operational experience every 12 months.

SECTION 2 - ROLES and RESPONSIBILITIES

2.1 It is important that everyone clearly understands their roles and responsibilities within the resolution procedure.

EMPLOYEE RESPONSIBILITIES

2.2 All Council employees are responsible for:

- a) Behaving and acting in a way that is consistent with the Council's values of openness, fairness and working together with others, as defined by the Employee Charter.
- b) Ensuring that their behaviour complies with the Council's Code of Conduct and any Service Area/ external Codes of Conduct/ Practice that govern the profession in which they are engaged.
- c) Ensuring they read, understand and comply with this policy and fully cooperate with the requirements of the procedures when they are in operation.
- d) Demonstrating an active commitment to this policy and its aims
- e) Raising a concern with their manager in a timely way, clearly stating the basis of the concern including the resolution required.
- f) Undertaking to resolve the concern informally before resorting to the formal stages of the procedure.
- g) Maintaining a written record of the incidents that have caused distress including the time, date, place and a full description of what happened including the names of the people concerned and names of any witnesses.
- h) Maintaining confidentiality at all times during any resolution proceedings, with the exception of any conversations which may be necessary with their companion, and if there is a requirement to share information in relation to safeguarding concerns.
- i) Only raising concerns in good faith. If the Council finds that an employee has made allegation maliciously or vexatiously, it may consider taking disciplinary action against the employee.

MANAGER RESPONSIBILITIES

2.3 **In addition to their responsibilities as employees**, Managers are also responsible for:

- a) Ensuring employees are aware of all relevant policies and procedures.
- b) Taking positive steps in maintaining an environment which is free from unacceptable behaviour, and to treat those for whom they are responsible fairly and with dignity, courtesy, and respect at all times.
- c) Taking the initiative in identifying unacceptable behaviour and taking reasonable corrective or preventative action in accordance with this policy and procedures. It is not acceptable for any manager to ignore unacceptable behaviour. Managers have a responsibility to "ask and act".
- d) Dealing with minor concerns as part of normal day to day operational management.

- e) Dealing with concerns promptly, fairly and consistently in accordance with the procedure and detailed timescales and with advice from HR People Services.
- f) Working with the employee to resolve the matter informally in the first instance, if safe to do so.
- g) Demonstrating a commitment to release employees during working hours for mediation. Special arrangements should be made for shift workers by agreement.
- h) Keeping adequate notes and records of all events and evidence to support the use of the policy.
- i) Writing formally to the employee following consideration of their concerns, detailing their response, explaining the reasons behind their decision (see Appendix 4)

HR PEOPLE SERVICES RESPONSIBILITIES

2.4 In addition to their responsibilities as employees, HR People Service Officers are responsible for:-

- a) Providing support and advice to managers and employees at all stages of the policy and procedures, including the informal, and to ensure that the Council's Resolution Policy and Procedures are correctly applied.
- b) Supporting Directorates to undertake any necessary remedial action by collating management information on cases/ outcomes
- c) Collate and review corporate monitoring data for consideration by various groups, e.g. Senior Management Team, Works Council.
- d) Reviewing the application of the policy and procedures in the light of operational experience.

MEDIATION SERVICE RESPONSIBILITIES

2.5 In addition to their responsibilities as employees, Mediators are responsible for:-

- a) Assessing whether or not cases are appropriate for mediation.
- b) Provide support and guidance to employees entering into mediation.
- c) Co-ordinating, assigning and mediating cases that are deemed suitable.
- d) Maintaining confidentiality at all times, with the exception of the duty to disclose where there are safeguarding concerns. Notes taken by the mediator are destroyed at the end of the mediation process.
- e) Facilitating a written agreement between parties.
- f) Evaluating the effectiveness of the mediation service.

TRADE UNION REPRESENTATIVE RESPONSIBILITIES

2.6 **In addition to their responsibilities as employees,** Trade Union Representatives are responsible for:

- a) Providing advice, support and representation to their members.
- b) Working with managers, HR People services and employees to ensure that the Resolution policy is adhered to.
- c) Working with all parties to facilitate timely and early resolution to matters.
- d) Encouraging the use of informal procedures if appropriate, including promoting the use of mediation to re-establish and maintain working relationships.

SECTION 3 – RESOLUTION PROCESS

APPROACHES TO RESOLUTION

- 3.1 This policy provides employees with the opportunity to take personal responsibility to resolve or discuss their concerns in a supportive, constructive and empathetic forum to enable relationships to be rebuilt.
- 3.2 Employees may seek advice and support from HR People Services or the Trade Union at any time. Being accompanied by a companion does not mean that the formal process has been triggered.
- 3.3 The different approaches to resolution include:-

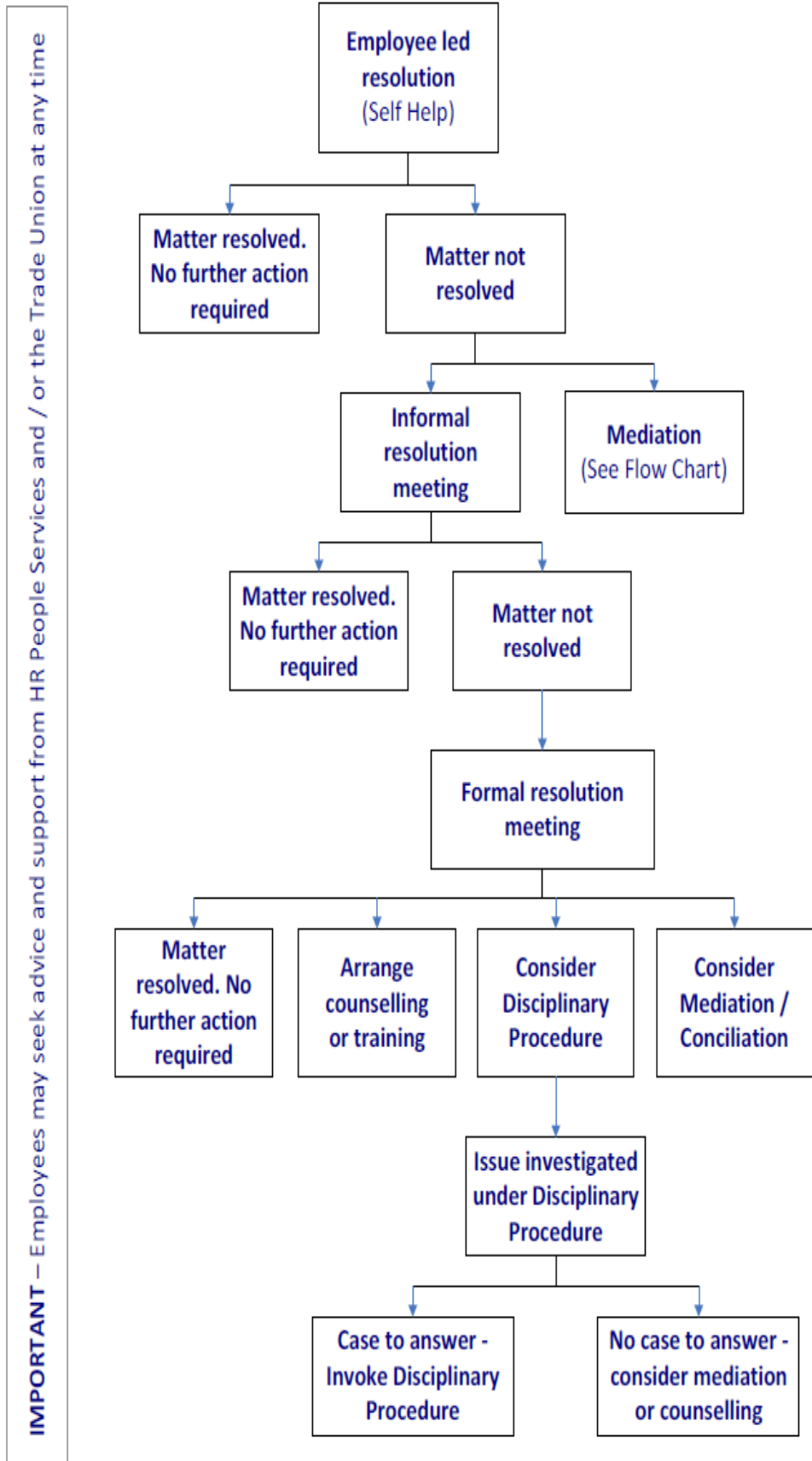
Informal

- a) **Self Help** – in the first instance, and when considered safe to do so, the expectation is that the employee communicates directly with the person with whom they have a concern. This can lead to an effective resolution as it is likely the individual will modify their behaviour once they are made aware of the concern.
- b) **Resolution meeting** – An employee can meet informally with their line manager, to express their feelings and concerns. The manager and employee can together identify concerns and agree solutions, which could include a number of options, such as instigation of a separate policy (see section 7 Additional Guidance or resolution flow chart)
- c) **Mediation** - employees volunteer to engage in the structured process with the assistance of a neutral third party (mediator), to meet with the two parties (separately then together), in an attempt to resolve the concerns and to build agreement on how interactions will occur into the future. The focus is on rebuilding the relationship and not on finding fault of either party.

Formal

- d) **Formal Resolution Meeting** – If informal resolution has not resolved the concern then employees can move forward to the formal procedure, where they can expect to receive a formal recommendation for resolution from a manager.
- 3.4 The type of resolution approach will depend upon:-
- The seriousness of the concern(s) being raised
 - The willingness of parties to engage in meeting or mediation
 - Whether there have been previous attempts to resolve the situation

Resolution Processes



SECTION 4 – INFORMAL RESOLUTION PROCEDURE

- 4.1 The person causing the alleged distress may be unaware that their behaviour is perceived as such and a simple explanation may be sufficient to resolve the matter.
- 4.2 Employees can seek the advice and support of HR People Services and/or their Trade Union at any stage.

EARLY RESOLUTION – EMPLOYEE LED

- 4.3 The best approach for an employee with a concern or disagreement in work is to face it in a calm and rational way, using a planned approach.
- 4.4 Incidents of alleged unacceptable behaviour can usually be resolved informally and this will be encouraged wherever possible. If the concern is in relation to another employee's behaviour, employees are encouraged to approach the individual causing them concern themselves, and make it clear, in a respectful manner, that they find their behaviour distressful.
- 4.5 Where the concern is not in relation to unacceptable behaviour, but another matter, employees are still encouraged to engage in constructive discussions and try to resolve the dispute on their own in the first instance.
- 4.6 Communicating directly to the employee causing concern can also be done with the support of a companion or their line manager, as a facilitated conversation. Where employees ask a companion to speak to the alleged individual on their behalf, this should be carried out in as low key and non-confrontational manner as possible.
- 4.7 Alternatively, employees may feel more comfortable writing a letter/ email to the person concerned, explaining that the behaviour/concern is causing distress. A companion could help the employee write such a letter/ email if they wish.
- 4.8 If the individual causing distress is the employee's line manager they should raise their concern with a member of the next level of management. In all cases, the seniority of the investigating manager will be equal to or greater than the alleged individual.

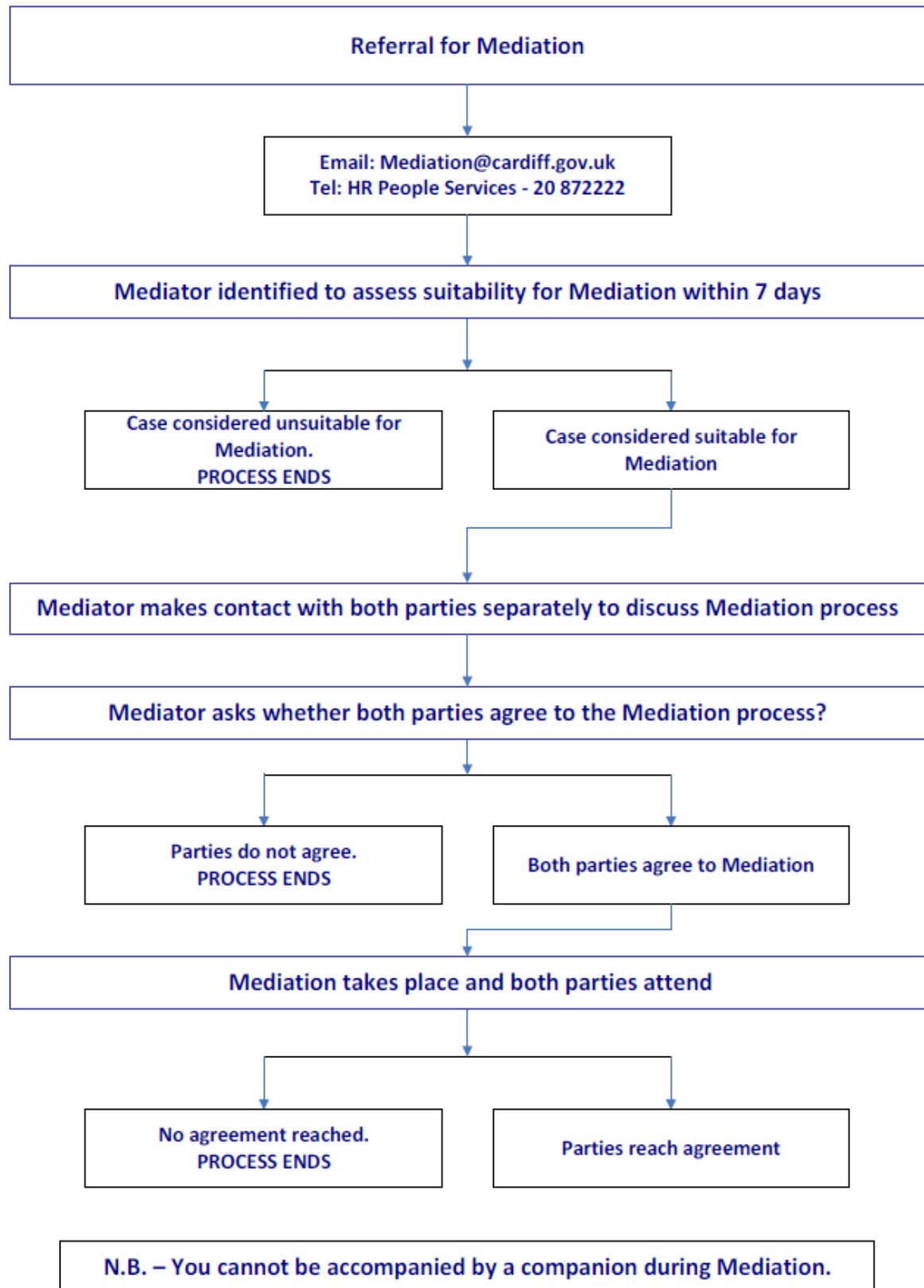
INFORMAL RESOLUTION MEETING

- 4.9 **Mediation may also be considered at this early stage, or at any other time in the process**, as an alternative to a manager-led resolution.
- 4.10 If the matter has not been resolved by speaking to the individual, or it was not possible to do so, then the employee should raise the matter with their line manager, as soon as possible. Employees are encouraged to act promptly and try not to wait until the situation is intolerable, in order to protect their personal wellbeing.
- 4.11 The Council expects employees and managers to work together to try and resolve concerns informally in the first instance, as this can lead to the matter being resolved quickly and with minimum distress to the parties involved.
- 4.12 The manager should meet with the employee and allow them to explain the concern (s) and provide evidence/ information relating to their concerns, and discuss the impact these concerns are having on them/ their role. You can be accompanied by a companion at this meeting if you wish, but being accompanied by a companion does not mean that the formal process has been triggered. It is important that the manager agrees the guidelines for the meeting which should be based on openness, honesty and mutual respect, ensuring confidentiality. The focus on the meeting is to build on the positives rather than focusing just on the negatives, and this can be achieved by de-personalising the situation where possible.
- 4.13 During the meeting it will be important to identify any factors that may have led to the situation. The employee may state how they would like to see the matter resolved. However, the manager and the employee should identify and explore potential solutions to the concern(s), taking into consideration all the pros and cons for the various options. This approach can be empowering as an individual can have a say in the solution.
- 4.14 The outcome being sought by the employee will be personal to them and will be dependant on the nature of the concern(s) raised, but must also be reasonable and achievable. The employee/manager may find solutions to the concern(s), which are applicable to any party, and may include the following (but is not intended to be an exhaustive list):-
- Provide on the job coaching
 - Provide training / Development
 - Give additional support internal/external
 - Clarify revised working instructions
 - Provide new/additional information
 - Undertake clarification of roles within a team
 - Make adjustment of working arrangements/work environment
 - Undertake modification of behaviours
 - Reconfirm employees responsibilities e.g. Equal Opportunities (refer to other policies and the Employee Charter)

- Referral for mediation
- Facilitated discussions between employees

- 4.15 If the manager needs to explore the concern(s) further by speaking to other employees, gathering more information or seeking advice from HR People Services, this should be done within **7 calendar days** of the initial meeting.
- 4.16 The manager should meet with the employee to explain the findings and agree the appropriate course of action. A written note of the agreed actions should be recorded in DigiGov and a copy given to the employee.
- 4.17 Where the employee is dissatisfied with the outcome of the informal stage they can initiate the formal process in DigiGov or by completing the Formal Resolution Application (RS1) (Appendix 2).

Flowchart for Mediation Process



MEDIATION

THE VALUE OF MEDIATION

- 4.18 A protocol to help encourage and support Local Authorities in the use of mediation has been developed by the HR Directors network and endorsed by the WLGA (Welsh Local Government Association) (see section 7). It demonstrates the commitment of Local Government in Wales to supporting the concept of workplace mediation, and encourages organisations to resolve more workplace disputes quickly and effectively without recourse to costly formal processes.
- 4.19 Cardiff Council recognises the value of mediation to resolve workplace disagreements. With the assistance of the WLGA, an internal pool of qualified and accredited mediators has been developed to ensure a consistent approach to the mediation process across the Council.

WHAT IS MEDIATION?

- 4.20 Mediation is a confidential voluntary process that helps two or more individuals in a disagreement, attempt to resolve the concern and to reach an agreement themselves. They are taken through the 'mediation' process by a trained mediator who is responsible for the process of seeking to resolve the problem, but not for determining the outcome as this is arrived at, agreed upon and owned by the individuals involved.
- 4.21 The mediation process provides an opportunity for the parties to take responsibility with discussing situations in a supportive, constructive and empathetic forum and agree the way forward in a safe and confidential environment away from the usual workplace.
- 4.22 The focus for mediation is to agree what will happen in the future, rather than what has happened in the past. The emphasis is on making a forward looking agreement, outlining mutually acceptable future behaviour between the parties.
- 4.23 Mediation is different because it is about collaborating rather than blaming. Any agreement made during mediation comes from those involved and not the mediator. The mediator is not there to judge, to say one person is right and the other is wrong, or to tell those involved in mediation what they should do. Mediation is:
- Less formal
 - Flexible
 - Voluntary
 - Morally binding but normally has no legal status
 - Confidential
 - Unaccompanied
 - Owned by the parties involved.

- 4.24 Due to the voluntary and informal nature of mediation there are some limits to what can be resolved through mediation. Mediation is most effective if it is used early on to enable relationships to be rebuilt. However, **mediation may be requested or recommended at any stage of this policy.**
- 4.25 Mediation can also be effectively used following the conclusion of a disciplinary investigation, where relationships within a team/service have been adversely affected.

WHEN IS MEDIATION APPROPRIATE?

- 4.26 The following is not intended to be an exhaustive list, but to act as a guide for employees who wish to refer a case for mediation. The more of the following points that apply, the more likely that mediation is appropriate:-
- The parties both voluntarily want to use mediation to resolve their concern.
 - The parties are committed to maintaining a working relationship.
 - The parties have the willingness to be open, honest and respectful.
 - The parties can not work through their concerns alone.
 - One or both parties wish to avoid formal procedures.
 - The concerns are affecting other employees and/or service delivery.

WHEN IS MEDIATION NOT APPROPRIATE?

- 4.27 As a guide, mediation is not deemed appropriate where one or both parties are not voluntarily committed to resolving their disagreement. Other areas that may deem mediation not an appropriate option are;
- As a first resort to abdicate managerial responsibilities
 - Criminal activity (e.g. serious discriminatory behaviour or physical assault)
 - Domestic abuse (including emotional/ financial)
 - An alternative to a formal disciplinary process – allegations of gross misconduct
 - Formal negotiations concerning employment rights.
 - There is a risk to health and wellbeing
 - Where one party wants an apology rather than agreement
 - Previous attempts at mediation on the same concern has not been reached

SUPPORT DURING MEDIATION (Reasonable adjustments)

- 4.28 Mediation is most successful when no companion is present, as an open and frank discussion controlled by the mediator to ensure fairness and appropriate behaviour is key. However, the exception to this is where a companion may be needed for reasonable adjustments, for example,
- A hearing impaired employee
 - A non-English speaker, (or a person who does not have sufficient command of the language to express their feelings) who may need an interpreter.

HOW TO MAKE A REFERRAL FOR MEDIATION

- 4.29 Any employee of the Council can request mediation support personally or on behalf of other employees, providing they have discussed the referral with the individual(s) involved.
- 4.30 The referral can be made by sending an email to mediation@cardiff.gov.uk or where the individual has no access to a PC by contacting HR People Services mediation service, confirming the names and contact details of the individuals to be involved in the mediation process. The mediation service will assess the suitability of each case for mediation and this may involve a discussion with the manager to establish what steps have already been taken to address the concern. The assessment will be made within **7 calendar days** of receiving the initial enquiry.

STAGES OF MEDIATION

- 4.31 If mediation is to proceed, HR People Services will assign an impartial qualified mediator to the case. The stages of mediation are as follows:-

Before mediation:

- **Individual contact with mediator**
With parties involved to explain the mediation process and role of mediator
- **Agreement from both parties to proceed with mediation**

During mediation:

- **Individual meeting with mediator**
Parties involved explore their individual concerns and set ground rules for joint meeting
- **Joint meeting with mediator and parties involved**
Each to have uninterrupted time to explain, hear and explore concerns
- **Written agreement between the parties**
Parties generating options for resolution
- **Closure of mediation**
Parties sustain confidentiality on return to workplace
- **Review of written agreement**
Organised by both parties and does not involve the mediator

- 4.32 Mediation will generally last for 1 full day. However, in more complex cases or cases involving more than 2 parties, it may last for up to 2 or 3 days. Managers must release employees during working hours to attend mediation on full pay. Special arrangements should be made for shift workers, by agreement.
- 4.33 Any party, including the mediator, can end mediation at any time during the process if they feel it is appropriate to do so e.g. information may emerge which results in the mediator concluding that mediation is no longer a suitable option (see 4.36).

WHAT HAPPENS AFTER MEDIATION?

- 4.34 Any notes taken by the mediator will be destroyed once the mediation process is complete. The only documentation to be retained will be the written agreement (Appendix 5) if one is reached, and this will be held by the parties engaged in the mediation process. Only with expressed consent of the parties may the agreement be shared with the manager.
- 4.35 Part of the written agreement will involve a review period, agreed and organised by both parties. Generally the mediator does not become involved with the review period as the process is owned by the individuals.
- 4.36 If mediation does not end in agreement, or it has been stopped, then HR People Services will provide information to the individuals involved on alternative options available which may help settle the concern.
- 4.37 Agreement to mediation does not prevent the employee from submitting a formal grievance subsequently, bearing in mind the responsibility to raise their concern within a reasonable amount of time.

SECTION 5 – FORMAL RESOLUTION PROCEDURE

- 5.1 A requirement of this policy is that there must be evidence that actions have been taken to resolve concern(s) informally, before proceeding to any formal part of the procedure.
- 5.2 Where the informal process has failed to resolve the concern, the employee can initiate the formal resolution procedure in DigiGov, or fully complete the Formal Resolution Application form (RS1), detailing the action they have taken to try and resolve the matter.
- 5.3 On completion, the RS1 should be forwarded to the next level of management (i.e. the level above the manager who sought to resolve the matter at the informal stage).
- 5.4 The nature of the concern should be detailed and reference made to specific occurrence(s) with dates if possible. The names of any individuals who are willing to act as witnesses should also be included.

FORMAL RESOLUTION MEETING

- 5.5 Management have a responsibility to act promptly, and the person with whom the formal resolution application has been lodged must meet with the employee as soon as possible but not later than **14 calendar days**, after receiving the request. Employees can choose to have companions with them during formal resolution meetings.
- 5.6 The manager will make arrangements (e.g.date/venue) to convene Formal Resolution Meetings with both parties individually (see **Appendix 4** for standard letters). The meetings will also include HR People Services and a confidential note taker.

N.B. Managers should also refer to the applicability of other relevant policies

FORMAT OF RESOLUTION MEETING

- 5.7 The manager who has received the RS1 will meet the relevant parties separately and produce a brief report.

OUTCOME

- 5.8 The manager, having gathered and considered all information will make a determination whether to :-

- (a) Take no further action - where the facts suggest the concern raised is unsubstantiated, felt to be unjustified or the evidence is inconclusive **OR**
- (b) Resolve the matter by the use of mediation if not previously undertaken or where it is considered that a conciliatory meeting between the two parties, accompanied by appropriate members of management and companions, will be sufficient **OR**
- (c) Arrange counselling or training or any other applicable remedial action for the employee against whom the concern raised, where it is felt to be sufficient to correct the behaviour or resolve the situation **OR**
- (d) Instigate disciplinary procedures - where the facts of the case suggest that the complaint is substantiated **and** that disciplinary action may be appropriate based on the information shared at the meeting, In this circumstance the Manager should proceed under the Disciplinary Policy 1.CM.035 by undertaking an assessment to consider appropriateness of disciplinary action. (Refer to the Disciplinary Procedure: A Manager's Guide).

5.9 Failure to take appropriate action could lead to claims of discrimination being taken against the Council at an employment tribunal. A decision to uphold the complaint and take non-disciplinary action should only be taken in cases of unacceptable behaviour where the behaviour complained of is of a very minor nature, and was either unintentional or a one-off occurrence. In cases of this kind, a judgement should be made as to whether a positive outcome may be more speedily effected through counselling the offender. **This option should not be used to avoid the responsibility to take disciplinary action where this is appropriate.** However, due regard must be paid to the feelings of the complainant who may need support to understand the decision in such cases.

5.10 The Manager will communicate their decision, and provide the rationale in writing to the employee (and their companion, if applicable) and the employee against whom the concern was against, using the outcome template letter 4.C.455 (**Appendix 4**). This should be done within **14 calendar days** of the meeting. The manager should ensure all minutes are uploaded in DigiGov and a copy given to the employee.

5.11 Depending on the nature and severity of the complaint, consideration should be given to the need to temporarily transfer or suspend the employee who is being complained about. Normally this would be in cases where the incident has caused an intolerable working situation.

5.12 Where suspension from duty is being considered, managers must undertake a preliminary assessment to consider appropriateness of suspension from duty (refer to Disciplinary Procedure: A Manager's Guide).

- 5.13 The manager's assessment will be submitted to the Chief Officer/Assistant Director/Director for a decision whether to proceed with a Disciplinary Investigation. The appointed Investigating Officer will take into account the Formal Resolution report.
- 5.14 It must be clear to all parties however, that disciplinary procedures will only be invoked when a management assessment finds this to be the appropriate cause of action i.e. disciplinary action is not an automatic outcome of using the formal procedure.
- 5.15 Where the decision is to uphold the concern and instigate disciplinary proceedings, the complainant may experience mixed feelings, and it is important to be aware of this and to continue to offer counselling and support.
- 5.16 Where the Council's Disciplinary Procedure is invoked as a result of a concern of unacceptable behaviour, the normal channels of appeal will be open to the individual subject to any disciplinary sanction in relation to decisions on disciplinary penalties and to any sanctions imposed.

APPEAL

- 5.17 If the employee is dissatisfied with the decision communicated to them, they have a right of Appeal. Employees with access to DigiGov can lodge an appeal using the system. Employees not on DigiGov will need to complete and return the **Resolution Appeal Form (RSA) (Appendix 3)** which will be included with the decision letter. This must be initiated within **14 calendar days** of the decision being communicated. Employees will need to identify the grounds on which they are appealing and provide details to support those grounds. The completed form must justify the grounds for the appeal in that there was either :
 - a) **A PROCEDURAL FLAW** clearly indicating what the flaw was and how the policy was not correctly followed / applied; and/ or
 - b) The **FINDINGS** were inconsistent with the evidence presented, providing written reasons for this; and/ or
 - c) **NEW EVIDENCE** has come to light either since, or not considered at the formal resolution meeting, providing written reasons how this could have a bearing on the case.
- 5.18 The requirement for indicating the grounds of appeal on the form is to ensure that the appeal can focus on the principle concern(s) of concern thus speeding up the process for **all** parties. Failure to fully complete and return this form could result in a delay to the Appeal being heard.

(See Disciplinary Policy 1.CM.035)

APPEAL RESOLUTION MEETING

5.19 To allow concerns to be resolved locally, the appeal will involve a more senior manager, if necessary from outside the service area. They will make initial contact with the employee (and their companion, if applicable) as soon as is possible but not later than **14 calendar days** after receiving the request in their DigiGov worklist. Also present at this meeting will be HR People Services and a confidential note taker (arranged by the manager).

FORMAT OF MEETING

5.20 The purpose of the meeting is to enable the manager to consider the employee's presentation only on the points raised for the appeal, including any relevant documentation. Generally the appeal resolution meeting will follow the same format as the formal resolution meeting (paragraph 5.7).

COMMUNICATION OF APPEAL DECISION

5.21 The manager, after due consideration of the concern will communicate their decision and provide the rationale in writing to the employee (and their companion, if applicable) using the appeal outcome template letter 4.C.458 (**Appendix 4**). This should be done within **14 calendar days** of the meeting. This decision will be final and there are no other appeal rights within the Council.

SECTION 6 UNACCEPTABLE BEHAVIOUR IN SERVICE DELIVERY BY SERVICES USERS/ CONTRACTORS

Where an employee of the Council experiences unacceptable behaviour not by another employee of the Council, but by a service user/contractor, refer to the following policies:-

- Violence at Work Policy (1.CM.056)
- Complaints Policy (1CM.047)
- Redeployment Policy and Procedure (1.CM.207)



SECTION 7 – ADDITIONAL GUIDANCE

Related Policies and documents

Document	Reference
Attendance & Wellbeing Policy	1.CM.049
Code of conduct	5.C.014
Complaints Policy	1.CM. 047
Disciplinary Policy	1. CM 035
Domestic Abuse workplace policy	
Employee Charter	
Equal Opportunities Policy	4.HR.152
Redeployment Policy	1.CM.207
Regrading Policy	1. CM.240
Social Media and online user policy	
Stress Management Policy	1.CM.118
Violence at Work Policy	1.CM.056
Whistleblowing Policy	1.C.M.015

Additional Guidance & Support

Internal

- Employee Counselling Service (5.AS.ACM.L.008)
- Employees Assistance programme
- Cardiff Council Disciplinary Procedure: A Manager's Guide
- LGBT Employees Group (lgbtemployeegroup@cardiff.gov.uk.)
- Disabled Employees (disability_network@cardiff.gov.uk)
- Black & Minority Ethnic Employees (bmenetwork@cardiff.gov.uk)
- Women in Cardiff council (womensnetwork@cardiff.gov.uk)
- Employees who are carers (carersnetwork@cardiff.gov.uk)

External

- Mediation: A protocol for the use of Internal workplace mediation in Local Government in Wales (October 2013) www.wlga.gov.uk
- Discipline & Grievances at Work: An ACAS guide
- Managing conflict at Work (ACAS)
- Mediation: A guide for Trade Union representatives TUC/ACAS
- Equality and Human Rights Commission (www.equalityhumanrights.com)
- Hate Crime Reporting Service (Safer Wales) www.saferwales.com or Tel. Cardiff 2046 1564
- MIND
- Live Fear Free helpline 0808 8010 800
- Education Support Partnership www.educationsupportpartnership.org.uk

1.0 Unacceptable behaviour can range from violence and bullying to more subtle behaviour such as ignoring an individual at work. It can subject an individual or a group to unwelcome attention, intimidation, ridicule, offence or loss of privacy. It is unwanted by the recipient and continues after an objection is made, although a single incident may be serious enough to constitute harassment and justify a concern being raised. There are certain forms of unacceptable behaviour, which, in the interest of clarity, are explained below:-

2.0 Harassment – The Council will regard harassment as being any of the following;

- Unwanted conduct, whether verbal or not, which affects the dignity of the individual at work; or
- Any form of verbal or non-verbal conduct which could be regarded as bullying or intimidating behaviour.
- Unwanted conduct or behaviour witnessed by others- the “third party “ effect.

Harassment can take many forms and can exist where any of the circumstances outlined above apply. It can be visual (including electronic transmission), verbal or physical and may be focussed on an individual's sex, race, ethnic group, religion, personal beliefs, nationality, sexual exclusion, and/or physical contact.

The Equality Act 2010 s26 uses a single definition of harassment to cover the relevant protected characteristic as ‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating and intimidating, hostile, degrading, humiliating or offensive environment for that individual’.

The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

The most commonly experienced forms of harassment are described in the following paragraphs:-

3.0 Bullying - is a psychological form of persecution, which is present behind all forms of harassment and discrimination. Where it has a focus such as race or gender it becomes racial or sexual discrimination or harassment. Where it has no such focus, it is bullying. It may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

Examples of bullying / harassing behaviour include:

- Spreading malicious rumours, or insulting some by word or behaviour
- Copying memos that are critical about someone to others who do not need to know
- Ridiculing or demeaning someone – picking on them or setting them up to fail.
- Exclusion or victimisation.
- Unfair treatment.
- Overbearing supervision or other misuse of power or position.
- Unwelcome sexual advances – touching, standing too close, and the display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected.
- Making threats or comments about job security without foundation.
- Deliberating undermining a competent worker by overloading and constant criticism.
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.

Bullying and harassment are not necessarily face to face. They may also occur in written communications, email, phone and automatic supervision methods such as computer recording of downtime from work or the number of calls handled if these are not applied to all workers. (see Social Media policy)

Bullying and harassment can make someone feel anxious and humiliated. Feelings of anger and frustration at being unable to cope may be triggered. Some people may try to retaliate in some way. Others may become frightened and de-motivated. Stress, loss of self-confidence and self-esteem caused by harassment or bullying can lead to job insecurity, illness, absence from work, and even resignation. Almost always job performance is affected and relations in the workplace suffer.

4.0 Other forms of unacceptable behaviour - the following are further examples of specific types of harassment or bullying:

- Any derogatory or offensive behaviour or language which relates directly to political beliefs or membership of a trade union, and real or suspected infection with HIV.
- Any derogatory or offensive behaviour or language which relates directly to any medical condition e.g. real or suspected infection with HIV.
- Inappropriate reference to a person's appearance or character traits, invasion of privacy or practical jokes which cause physical or psychological distress.
- Conduct that is derogatory, patronising, belittling or humiliating to others and is therefore, inappropriate in an environment which is committed to encouraging opportunity for personal and intellectual development.

- Any pattern of behaviour or verbal and non verbal communication that unjustifiably causes distress, patronises, offends, unfairly excludes or insults an individual, directly or indirectly.

5.0 Victimization

The Council undertakes to support and protect anyone seeking advice, making a concern of unacceptable behaviour, or assisting in an investigation, from the threat of victimisation. Retaliation against an individual involved in such proceedings is a disciplinary offence and will not be tolerated. Where appropriate either this policy or the Council's **Whistleblowing Policy 1.C.015** will operate.

APPENDIX 2

THE CITY OF CARDIFF COUNCIL FORMAL RESOLUTION APPLICATION (RS1)
--

EMPLOYEE INFORMATION:

Full Name:		Employee No.:
Job Title:		
Directorate/School:		
Line Manager:	Line Manager's Manager:	

WHAT STEPS HAVE YOU TAKEN TO RESOLVE THE MATTER INFORMALLY ?
(include dates of meeting with manager and/ or other relevant persons)

HAVE YOU TRIED MEDIATION? Yes <input type="checkbox"/> No <input type="checkbox"/> If No, why?

LINK TO OTHER PROCESSES:

Is this concern related to any other process?	Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, which process
Please provide details:	

TYPE OF CONCERN:

Individual concern: Yes <input type="checkbox"/> No <input type="checkbox"/>	Collective concern: Yes <input type="checkbox"/> No <input type="checkbox"/> Please attach a page listing all the names, employee number and job titles of the other people who are party to this application.
---	--

CONCERN AGAINST:

An employee(s): Yes <input type="checkbox"/> No <input type="checkbox"/> (please provide names and job titles)	
---	--

NATURE OF PERCEIVED CONCERN:

<ul style="list-style-type: none">• Please list using bullet points:
--

Please supply full details of your concern on a separate sheet and attach it to this form. Copies of any relevant documents that relate to this concern should also be attached to the form.

PLEASE NOTE:

- (1) The Resolution Meeting will only relate to concerns raised on the RS1 form.
- (2) Where your concern is against another individual or individual(s) then they will be provided with a copy of this form to enable them to respond to the allegations.

WITNESSES

<p>Can you supply the names of any individuals who are willing to act as witnesses?</p> <ul style="list-style-type: none">• Please list using bullet points:

WHAT OUTCOME ARE YOU SEEKING IN RELATION TO EACH SPECIFIC CONCERN AS OUTLINED ABOVE?

--

Please note that an outcome of disciplinary action may not be necessary or appropriate.

IS IT YOUR INTENTION TO BE ACCOMPANIED?: YES NO

(If "Yes", please supply below the name, address and status of your Companion (an employee of the Council, a trade union representative or an official employed by a trade union. Please provide their address below.)

*Companion's name and status: _____ _____	Contact Details: Telephone No: _____ Work Location: _____
--	--

Signed: _____ **Date:** _____

APPENDIX 3

CITY OF CARDIFF COUNCIL FORMAL RESOLUTION APPEAL (RSA)

Employee's Name		Employee Number	
Job Title			
Service Area			
Location			
Date of Formal Resolution meeting			
Manager of Resolution Meeting			
Do you wish to have representation at the appeal? If yes, please state who will be representing you.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Name:			

I wish to lodge an appeal against the outcome of the Formal Resolution Meeting held under the Council's Resolution Policy and Procedure. The details of my appeal are shown below.

The reason(s) for my appeal is (please tick those which apply)

- Procedural Flaw**
- Findings inconsistent with evidence**
- New Evidence that has come to light/not previously considered**

Please provide information and detailed reasons as to why you are not satisfied with the original decision.

Please continue on a separate sheet, if required

Signature:		Date:	
-------------------	--	--------------	--

PLEASE FORWARD THE COMPLETED FORM TO PERSON NAMED IN THE DECISION LETTER.

FOR SERVICE AREA USE ONLY	
Date received	
HR People Services Representative Allocated To Advise at Appeal:	
Manager Allocated to Hear the Appeal:	
Appeal Meeting Date:	
Outcome of Appeal:	

APPENDIX 4

STANDARD LETTERS

My Ref: 4.C.452/1

INVITE TO EMPLOYEE RAISING CONCERN

Date:

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

RESOLUTION MEETING

In response to your Formal Resolution Application form (RS1) submitted (date), I am writing to inform you that I would like to meet with you to discuss your concern. Also in attendance will be (Name) from HR People Services and (Name) to take the minutes.

I will meet with you separately from the employee against you have a concern.

The details of the meeting are as follows:

Date:

Time:

Location:

Your concern is being considered in accordance with the formal procedure of the Resolution Policy, a copy of which is enclosed for your attention.

You have the right to be accompanied by a companion (an employee of the Council, a trade union representative or an official employed by a trade union). Please note that if you are being accompanied by an employee of the Council they will need to obtain permission from their line manager for time off to attend.

Could you please confirm that you will be able to attend the meeting and do not hesitate to contact me if you require any further information.

Yours sincerely

Manager

My Ref: 4.C.453

INVITE TO EMPLOYEE CONCERN RAISED AGAINST

Date:

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

RESOLUTION MEETING

A concern has been submitted against you by (name). A copy of the RS1 form is enclosed. I am writing to inform you that I would like to meet with you to discuss the concerns raised. Also in attendance will be (Name) from HR People Services and (Name) to take the minutes.

I will meet with you separately from the employee who has raised the concern against you.

The details of the meeting are as follows:

Date:

Time:

Location:

The concern is being considered in accordance with the formal procedure of the Resolution Policy, a copy of which is enclosed for your attention.

You have the right to be accompanied by a companion (an employee of the Council, a trade union representative or an official employed by a trade union). Please note that if you are being accompanied by an employee of the Council they will need to obtain permission from their line manager for time off to attend.

Could you please confirm that you will be able to attend the meeting and do not hesitate to contact me if you require any further information.

Yours sincerely

Manager

My Ref: 4.C.454

INVITE TO WITNESS

Date:

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

RESOLUTION – REQUEST TO PROVIDE WITNESS STATEMENT

A concern has been raised by (name). Within their submission you have been identified as a relevant witness. I am writing to inform you that I would like to meet with you to gather a witness statement. Also in attendance will be (Name) from HR People Services and (Name) to take the minutes.

I will arrange to meet with you separate from other parties.

The details of the meeting are as follows:

Date:

Time:

Location:

The concern is being considered in accordance with the Resolution Policy and Procedure, a copy of which is enclosed for your attention.

You have the right to be accompanied by a companion (an employee of the Council, a trade union representative or an official employed by a trade union). Please note that if you are being accompanied by an employee of the Council they will need to obtain permission from their line manager for time off to attend.

Could you please confirm that you will be able to attend the meeting and do not hesitate to contact me if you require any further information?

Yours sincerely

Manager

Date:

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

OUTCOME OF RESOLUTION MEETING

I refer to the resolution meeting that you attended on (date) at which you were accompanied by (name). Also present at the meeting was (Name) of HR People Services and (Name) to take minutes.

I have considered all of the written documentation that has been presented along with your presentation of the concerns at the meeting. It was also necessary for me to gather information from relevant people/witnesses who were able to provide information regarding your concern. The people/witnesses whom I have gathered information from are (list).

After careful consideration of all of the evidence, documentation and your verbal presentation to me, I have to advise you that I uphold/ cannot uphold the concern(s) that you have raised.

The rationale for my decision is as follows. I have addressed the concerns as you raised them in your RS1 form which was received by the Council on the (date).

List each concern individually and give conclusions reached for each with the full rationale for the decision and for any recommendations made.

Should you be dissatisfied with this outcome, the Council’s Resolution Policy and Procedure (a copy of which you will have previously received) allows an appeal. Please find enclosed an appeal form (RSA). You must fully complete this form (in DigiGov if you have access) including the grounds for your appeal. You have **14 days calendar** from the decision being communicated to you to lodge an appeal.

Yours sincerely

Manager

My Ref: 4.C.456/1 *INVITE TO EMPLOYEE SUBMITTING RESOLUTION APPEAL*

Date:

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

RESOLUTION APPEAL MEETING

In response to your Formal Resolution Appeal form (RSA) dated (date), I am writing to inform you that I would like to meet with you to discuss your appeal against the formal resolution outcome of your concern(s). Also in attendance will be (Name) from HR People Services and (Name) to take the minutes.

will meet with yourself and the employee whom you have a concern against separately

The details of the meeting are as follows:

Date:

Time:

Location:

Your concern is being considered in accordance with Appeal procedure of the Resolution Policy, a copy of which you will have been provided with previously.

You have the right to be accompanied by a companion (an employee of the Council, a trade union representative or an official employed by a trade union). Please note that if you are being accompanied by an employee of the Council they will need to obtain permission from their line manager for time off to attend.

Could you please confirm that you will be able to attend the meeting and do not hesitate to contact me if you require any further information.

Yours sincerely

Manager

My Ref: 4.C.458/1

OUTCOME OF RESOLUTION APPEAL

Date:

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

OUTCOME OF RESOLUTION APPEAL

I refer to the appeal meeting that you attended on (date) at which you were accompanied by (name). Also present at the meeting was (Name) of HR People Services and (Name) to take minutes.

I have considered all of the written documentation that has been presented along with your presentation of the concerns at the meeting. It was also necessary for me to gather information from relevant people who were able to provide information regarding your concern. The people who I have gathered information from are (list).

After careful consideration of all of the evidence, documentation and your verbal presentation to me, I have to advise you that I uphold/ cannot uphold your appeal.

The rationale for my decision is as follows. I have addressed the concerns as you raised them in your RSA form which was received by the Council on the (date).

List each concern individually and give conclusions reached for each with the full rationale for the decision and for any recommendations made.

I wish to advise you that this decision is final under the Council's Resolution Policy and there is no further right of appeal.

Yours sincerely

Manager

APPENDIX 5

MEDIATION AGREEMENT

CONFIDENTIAL

This is a summary of the agreement that has been made between (name) and (name) on (date).

(Name) and (name) have agreed the following action points;

-
-
-
-
-
-
-

If either of the parties cannot undertake for whatever reason, the above action points, they will make alternative arrangements by mutual agreement.

The actions in this agreement will be reviewed on (date / how regular) and may be revised if both parties agree.

The contents of this agreement will remain confidential between the parties.

SIGNED:

SIGNED:

DATE: _____

DATE: _____

SIGNED:

Mediator

DATE:

My Ref: T: Scrutiny/PRAP/Comm Papers/Correspondence

Date: 13 November 2015

Councillor Graham Hinchey,
Cabinet Member, Corporate Service & Performance,
Cardiff Council,
County Hall
Cardiff
CF10 4UW



County Hall
Cardiff,
CF10 4UW
Tel: (029) 2087 2087

Neuadd y Sir
Caerdydd,
CF10 4UW
Ffôn: (029) 2087 2088

Dear Councillor Hinchey,

**Policy Review & Performance Scrutiny Committee: 3 November 2015
Review of Disciplinary Policy**

Following your attendance at the Policy Review and Performance Scrutiny Committee on 3 November 2015 to present the Council's policy development work on Disciplinary Policy, Members wish to thank you for your time in facilitating the scrutiny. They found the presentation from Lynne David and Cath Synan most interesting and have asked that, as Chair of the Committee, I relay how pleased they are to be a planned part of the consultation.

The Committee recognises the Council's work over a number of years toward simplification of its policies for the management of staff. In line with this ethos they welcome the reduction in the Disciplinary Policy from 72 to 32 pages, supplemented by five more informal branded guidance booklets as a positive change in supporting senior managers to discipline staff. They are pleased that following an 18 month review, having consulted all Welsh Authorities and 8 large English cities, you are proposing improved management information reporting, and the creation of a bespoke Investigations Team to undertake complex investigations. Particularly pleasing is that Cardiff are considered to be blazing a trail with this revised approach to disciplinary policy.

Members are pleased to hear the Employee Assistance Programme offering staff a twenty four hour, seven day a week, counselling support service will be launched before Christmas; and that the new Resolution Policy recommends a 'preliminary assessment' to determine 'major' and 'minor' disciplinary incidents so that minor incidents can be assigned to the new Fast Track Disciplinary procedure.

Members are united in their view that the number of suspensions reported over the 18 month period covered by the Disciplinary Review is surprisingly high. They note with some concern the finding that a high proportion of disciplinary to grievance cases indicates a heavy reliance on the implementation of formal proceedings to resolve matters. As such they wish to endorse your view that Operational Managers need instruction to address the figures, and may require compulsory training in the new policy.

The Committee feels that the new policy's downward shift in permission to suspend, to Operational Manager level is appropriate, given that investigations are mostly undertaken within Directorates by managers with an understanding of the issues. They consider this shift has the added benefit of retaining an appeal mechanism to Director/Chief Officer level.

Members feel the new proposals are certainly a step in the right direction; however feel there is an opportunity to set clear targets to be reported upon in quarterly performance monitoring reports, in the same manner as sickness absence targets. Such performance indicators should be developed for: the number of grievances logged; the number of actual suspensions as an outcome of disciplinary action; and the length of time taken to resolve disciplinary cases. Members aspire to reduce resolution time to 4 weeks.

The Committee accepts your suggestion that it monitors how implementation of the new policy is impacting on levels of disciplinary cases. They will factor this into future work programming, and wish to monitor the change in management culture through a disciplinary indicator as a part of quarterly Council performance reports.

For future reference, the Committee notes that certain Directorates have high levels of disciplinary cases relative to headcount, which is largely due to the immediate escalation to formal proceedings, and will monitor to establish that the new Fast Track approach is assisting in reducing the number of formal cases.

Finally, the Committee feels very strongly indeed that, where schools personnel are under disciplinary investigation, governing bodies require more solid advice in undertaking Disciplinary action.

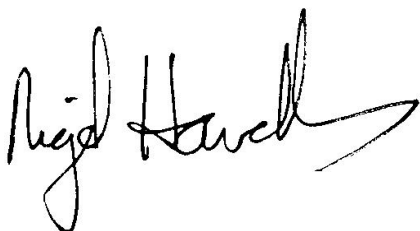
To re-cap, the Committee wishes to monitor:

A disciplinary performance indicator developed with clear target, and progress reported as a part of quarterly Council performance reports for:

- the number of grievances logged;
- the number of actual suspensions as an outcome of disciplinary action; and
- the length of time taken to resolve disciplinary cases.

Finally, on behalf of the Committee, I wish to thank you and the officers for your continued support for the internal challenge of important issues that can improve the quality of services the Council is delivering to its customers.

Yours sincerely,



**COUNCILLOR NIGEL HOWELLS
CHAIR, POLICY REVIEW AND PERFORMANCE SCRUTINY COMMITTEE**

cc

Members of the Policy Review & Performance Scrutiny Committee;
Lynne David, Operational Manager, Centre of Expertise;
Chris Synan, Operational Manager.
Joanne Watkins, Cabinet Business Manager;
Gareth Newell, Head of the Cabinet Office;
Matt Swindell, Principal Administrative Officer

**SWYDDFA CYMORTH Y CABINET
CABINET SUPPORT OFFICE**



Fy Nghyf / My Ref: CM32751
Eich Cyf / Your Ref: T: Scrutiny/PRAP/Comm
Papers/Correspondence
Dyddiad / Date: 08 December 2015

Councillor Nigel Howells
Chair, Policy Review & Performance Scrutiny Committee
Scrutiny Services
Room 263
County Hall
Cardiff
CF10 4UW

Annwyl / Dear Councillor Howells

**Policy Review & Performance Scrutiny Committee: 03 November 2015
Review of Disciplinary Policy**

Thank you for providing the opportunity to seek the views of the Policy Review and Performance Scrutiny Committee on 03 November 2015 in relation to the review of the Council's Disciplinary Policy and associated procedures. As a key stakeholder group, I felt it was important that you had the opportunity to contribute to this review and gain your views on the changes being proposed. As consultation with Directorates, Trade Unions and the Equality Networks is continuing, we will ensure that your views are considered.

I am pleased that you support the principle of simplifying policies for the management of staff. I would hope that the revisions finally agreed to the Disciplinary policy, the new Resolution policy and the 5 new comprehensive guide notes will assist to streamline this process considerably.

I too am concerned by the number and length of some of the suspensions and the time being taken to conclude disciplinary and grievance issues currently. I firmly believe that the streamlined approach and additional guidance to support the process will help to address this. As referred to at the meeting, the need for transparency and compliance with these processes will be key. Consequently the provision of timely management information will be important for consideration at both Directorate and Senior Management Team meetings.

The new Fast Track process will ensure that there is a speedier avenue to modify behaviour around misconduct issues and this will be a key piece of data to monitor.

Thank you for your suggestions regarding a disciplinary indicator as part of the Quarterly Council Performance reports and this will be explored.

ATEBWCH I / PLEASE REPLY TO: Swyddfa Cymorth Y Cabinet / Cabinet Support Office,
Ystafell / Room 514, Neuadd y Sir / County Hall,
Glanfa'r Iwerydd / Atlantic Wharf, Caerdydd / Cardiff,
CF10 4UW Ffon / Tel (029) 2087 2479

I acknowledge the comments you have made regarding HR support for schools cases and I have asked Officers to review how best to realign resources in order to support a key customer.

Yn gwyir,
Yours sincerely,

A handwritten signature in black ink, appearing to read 'G J Hinchey'.

Councillor / Y Cyngorydd Graham Hinchey
Cabinet Member for Corporate Services & Performance
Aelod Cabinet dros Wasanaethau Corfforaethol a Perfformiad

cc Members of the Policy Review & Performance Scrutiny Committee;
Lynne David, Operational Manager, Centre of Expertise;
Chris Synan, Operational Manager.
Joanne Watkins, Cabinet Business Manager;
Gareth Newell, Head of the Cabinet Office;