

Chief Officer Disciplinary Policy

The Council (we) strive to maintain effective working relationships with and between colleagues and Chief Officers (including the Chief Executive). We have a responsibility to maintain acceptable standards of behaviour at work and are committed to supporting and encouraging Chief Officers to achieve these standards. Where behaviours fall below what is considered acceptable, the Chief Officer Disciplinary Policy provides a framework to ensure standards of behaviour are applied in a fair, consistent and sympathetic manner.

The Chief Officer Disciplinary Policy should only be used when management advice and guidance has failed to produce the required improvement or when the matter is serious enough to require formal action.

For the purposes of this policy, reference to Chief Officer includes the Chief Executive, unless otherwise stated.

For conduct issues relating to Local Government Employees paid in accordance with the LGE pay structure (Grades 1 – 12) the Disciplinary Policy for LGE colleagues will apply and this policy will not be used.

Author

Corporate Services

Scope

This policy applies to all Chief Officers including the Chief Executive, Executive Directors and Service Directors.

Purpose

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

Review

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

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1. Policy Aims

- 1.1 The aim of this policy is to ensure there is a fair, effective and consistent method in place to deal with concerns surrounding conduct and to encourage improvement where conduct is believed to have fallen below acceptable standards, either through the implementation of the informal or formal stages of this process.
- 1.2 This policy is designed to:
- support Chief Officers, including the Chief Executive, in meeting the Council's standards of conduct;
 - provide a framework for establishing whether misconduct has occurred; and
 - support the management of misconduct issues.
- 1.3 "Chief Officer" is a Council employee who is within the scope of the Scottish Joint Negotiating Committee for Chief Officials and its Scheme of Salaries and Conditions of Service for Chief Officials including Executive Directors, Service Directors and the Chief Executive (unless expressly excluded in this policy). A "Chief Officer" is paid in accordance with the Chief Executive or Chief Official pay scales.
- 1.4 This Chief Officer Disciplinary Policy must be followed when a potential misconduct issue has been identified and not resolved through normal day to day supervision arrangements, or where more serious allegations arise. No disciplinary outcome will be decided until the appropriate steps outlined in this policy have been followed and the facts have been established. This policy relates only to matters of conduct and behaviour (see 1.9 below).
- 1.5 As this policy deals with Chief Officers, the Council Leader shall be notified by the Chief Executive or the Service Director HR (or another appropriate Chief Officer if a conflict of interests exists) if this policy is to be used in relation to the Chief Executive or an Executive Director.
- 1.6 The Chief Executive (or a designated Depute Chief Executive) will be responsible for the management and discipline of Chief Officers (with the exception of the Chief Executive). The Chief Executive may issue verbal or written warnings or take punitive disciplinary action in terms of this policy.
- 1.7 Where the Chief Executive is unable for any reason (for example – but not limited to – a conflict of interest) to take a decision or be part of a process under this procedure, the matter will require to be considered by Elected Members in accordance with this policy. Examples of conflicts of interest can be found in (but are not limited to) the Employee Code of Conduct.
- 1.8 The Council Leader, in consultation with the Service Director HR, will be responsible for the management and discipline of the Chief Executive. This will be in accordance with this Policy and the provisions contained within Appendix A of the Scottish Joint Negotiating Committee for Chief Officials Scheme of Salaries and Conditions of Service for Chief Officials (also referred to as the 'Gold Book').
- 1.9 This policy does not cover concerns regarding performance or capability as these are addressed within our Performance Management Policy. For the avoidance of doubt, the Council's Performance Management Policy applies to all Chief Officers including the Chief Executive.

2. Roles and Responsibilities

2.1 Relevant senior managers of Chief Officers and Chief Officers themselves must give high priority to both informal and formal aspects set out in the policy to ensure that they are completed as quickly as possible.

2.2 All Chief Officers are responsible for:

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

2.3 All managers of Chief Officers are responsible for:

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

3. Standards of Conduct

3.1 The standards of conduct all Chief Officers are expected to follow are set out in the Employee Code of Conduct and Disciplinary Code. It is expected that Chief Officers maintain these professional and reasonable standards of conduct at work. We also expect all colleagues to live Our Behaviours of Respect, Integrity and Flexibility.

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

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

3.3 The above policies are available on the Orb along with supporting guidance.

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

3.5 The Council has a statutory duty to notify some external registration bodies and professional bodies when misconduct has taken place or when disciplinary action has been taken. These external bodies include (but are not limited to):

- The Scottish Social Services Council;
- The Care Inspectorate;
- Police Scotland; and
- Disclosure Scotland.

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

Misconduct

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

Gross misconduct

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

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

4. Informal Resolution

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

4.2 Informal resolution under this policy in relation to any Chief Officer (other than the Chief Executive) should be a one-to-one discussion between the Chief Officer and another Chief Officer, or between a Chief Officer and the Chief Executive. During informal resolution the required standards should be discussed, the manner in which the Chief Officer has failed to meet those standards and the possible reasons for that failure including the identification of any underlying problems within or out with the workplace. The Chief Officer leading the informal resolution and/or Chief Executive may seek guidance from the Service Director HR working closely with Legal Services in relation to any such discussion.

4.3 Informal resolution should indicate clearly to the Chief Officer the improvement required and considerations should include whether there are actions or support (other than disciplinary action) which might assist the Chief Officer to achieve this improvement.

4.4 It should also be made clear how the Chief Officer's progress is to be monitored and when the position will be reviewed. Informal resolution does not form part of the formal disciplinary procedure therefore no formal warnings can be given as part of the informal resolution process.

4.5 The Chief Executive or Chief Officer shall make a record on the relevant HR database showing the date of and reason(s) for the informal resolution interview and shall inform the Chief Officer accordingly.

4.6 Informal resolution under this policy in relation to the Chief Executive should be a one-to-one discussion between the Chief Executive and the Council Leader. The process noted above should

be followed in relation to the Chief Executive with support from the Council Leader. The Council Leader may seek guidance from the Service Director HR working closely with Legal Services in relation to any such discussion.

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

5. Formal Stages – Chief Officers (excluding the Chief Executive)

DISCIPLINARY PROCEDURE - GENERAL

- 5.1 Where disciplinary action is contemplated regarding a Chief Officer; the Chief Executive or other relevant Chief Officer shall act as nominated officer. Where the Chief Executive is unable for any reason to take a decision or be part of a process under this procedure (for example, where there is a conflict of interest or other unfairness), the matter will require to be dealt with by Elected Members in accordance with Part 6 of this policy (Formal Stages – Chief Executive).
- 5.2 Where the Chief Executive or other relevant Chief Officer is unable to be part of a process under this policy and the process cannot therefore be fairly or practically followed, the process at Part 6, Formal Stages – Chief Executive, will apply to the Chief Officer.
- 5.3 The Service Director HR and/ or Monitoring Officer, in consultation with the Council Leader, will determine whether a conflict exists, or that the process cannot be fairly or practically followed.

Investigation

- 5.4 A disciplinary hearing shall not be convened until the circumstances of the case have been fully investigated.
- 5.5 The Chief Executive or other relevant Chief Officer (the Nominated Officer) may suspend a Chief Officer on full pay where it is considered necessary to enable a full investigation to take place.
- 5.6 The Nominated Officer shall appoint a suitable officer(s) to act as the investigating officer. This officer may be a Council officer or a special appointment from outside the Council. In selecting the investigating officer, the Nominated Officer shall consider the extent to which professional advice (related to the Chief Officer's position) is required.
- 5.7 The officer conducting the investigation shall seek to establish the facts by carrying out investigatory interviews with relevant persons and, where possible, shall obtain written, signed statements from witnesses who will be advised that they may be requested to appear at any subsequent disciplinary hearing.
- 5.8 Chief Officers have the right to be accompanied at investigation interviews by an accredited trade union representative/official or work colleague.
- 5.9 Where it is considered appropriate, due to the nature of investigation, the investigating officer may also agree to requests from other witnesses in the investigatory process to be accompanied by a colleague or trade union representative.

5.10 If following investigations, a disciplinary hearing is deemed by the Nominated Officer to be unjustified then they shall inform the Chief Officer accordingly and, in these circumstances, the relevant documents shall be held on the relevant HR database to ensure that the Council can meet all its future responsibilities and obligations.

5.11 Where the investigation concerns matters relating to the safety and wellbeing of young and/or vulnerable people in receipt of client services the documents shall be available for inspection by the Chief Officer who may add a personal note to the record. If there is a further disciplinary investigation relating to the Chief Officer, the documents shall be examined and, where considered relevant, may be taken into account to the extent required by the circumstances of the case. Where a previous allegation is taken into account in any disciplinary decision, the written notification shall indicate this fact and the reasons for doing so.

5.12 The investigating officer will usually be required to prepare a report of their findings.

Convening a Disciplinary Hearing

5.13 If, following investigations, a disciplinary hearing is deemed necessary, the Chief Officer concerned shall be given at least seven calendar days' notice in writing of the hearing and shall also be informed in the same letter of:

- the fact that it will be a formal disciplinary hearing;
- the nature of the complaint(s) together with the relevant supporting documentation including Investigation Report;
- the name(s) of any witness(es) who will present evidence at the hearing and copies of their written statements. Copies of any written statements made by individuals who are not available to give evidence in person at the disciplinary hearing will also be enclosed;
- the right to call witnesses or submit statements or other documentation subject to the names of any such witnesses and/or any written submissions being provided in advance to the Chief Executive or other relevant Chief Officer;
- that it is the Chief Officer's responsibility to request the attendance of any witnesses they wish to call at the hearing;
- the right to be accompanied/represented at the hearing by a trade union official/representative or work colleague (who must not be involved in the same disciplinary proceedings);
- Whether dismissal is a possible outcome.

Conducting a Disciplinary Hearing

5.14 The Chief Executive or other relevant Chief Officer who is acting as the Nominated Officer shall ensure that the facts gathered during the investigation are presented to the Chief Officer who is the subject of the Disciplinary Hearing. These facts may be presented by the investigating officer and, if so, this officer shall remain in attendance at the hearing until the presentation of evidence is completed.

5.15 The Nominated Officer will be advised by the Executive Director of Corporate Services and/or the Service Director HR.

5.16 Witnesses, if any, shall be called to give their evidence and, after questioning by both parties, shall withdraw but shall be subject to re-call.

5.17 The Chief Officer, assisted by their representative, if any, shall be given adequate opportunity to put forward an explanation and/or defence.

5.18 The Nominated Officer shall consider all the evidence presented with a view to arriving at a decision which is reasonable in all the circumstances.

Action following a Disciplinary Hearing

- 5.19 Except in the case of verbal warnings, any disciplinary action shall be notified or confirmed in writing within seven calendar days of the hearing and the outcome notifying or confirming such action shall be handed to the Chief Officer personally, sent electronically or sent by recorded delivery.
- 5.20 A copy of this outcome shall be sent to the Chief Officer's representative, if any.
- 5.21 If, following a disciplinary hearing, the Nominated Officer considers that no formal disciplinary action is justified they shall inform the Chief Officer accordingly and in these circumstances the documents shall be held on the relevant HR database to ensure that the Council can meet all its future responsibilities and obligations.

VERBAL WARNINGS

- 5.22 In the case of a minor conduct issue the Nominated Officer may give a verbal warning to the Chief Officer and inform them that this warning constitutes the first stage in the formal procedure.
- 5.23 The Chief Officer shall be informed of the reason(s) for the warning and of the likely consequences of further conduct issues. The Chief Officer shall also be informed of the date from which the warning will normally be disregarded for disciplinary purposes and the right of appeal against a verbal warning.
- 5.24 The Nominated Officer shall make a written record of the warning. A copy of this record shall be placed on the Chief Officer's personal file and a further copy given to the Chief Officer.
- 5.25 A verbal warning will be disregarded for disciplinary purposes after 6 months.

WRITTEN WARNINGS

- 5.26 A written warning may be issued:
- where a Chief Officer who has been issued with a verbal warning fails to achieve and maintain the required improvement in conduct or where a further act or omission warranting disciplinary action occurs, or
 - where the misconduct is considered to be sufficiently serious to warrant this form of disciplinary action.
- 5.27 A letter of formal written warning shall be issued by the Nominated Officer following the disciplinary hearing and shall state:
- that a formal written warning is being given;
 - the nature of the unsatisfactory matter(s) dealt with at the hearing;
 - the date of any previous verbal warning where appropriate;
 - the action required by the Chief Officer to remedy the matter;
 - that subsequent failure(s) in conduct will normally result in more serious disciplinary action;
 - that a copy of the warning letter will be placed on the Chief Officer's personal file;
 - the date from which the warning will normally be disregarded for disciplinary purposes. A written warning will be disregarded for disciplinary purposes after 9 months; and
 - the Chief Officer's right of appeal.
- 5.28 A written warning will be disregarded for disciplinary purposes after 9 months.

FINAL WRITTEN WARNINGS

- 5.29 A final written warning may be issued:
- where a Chief Officer who has been issued with a written warning fails to achieve and maintain the required improvement in conduct or where a further act or omission warranting disciplinary action occurs; or
 - where the misconduct is of a serious nature warranting this form of disciplinary action.
- 5.30 A letter of final written warning shall be issued by the Nominated Officer following the disciplinary hearing.
- 5.31 A final written warning will be disregarded for disciplinary purposes after 12 months.

DISCIPLINARY ACTION SHORT OF DISMISSAL

- 5.32 Disciplinary action short of dismissal may be taken where:
- following a final warning, the Chief Officer fails to achieve and maintain the required improvement in conduct or a further act or omission warranting disciplinary action occurs, or
 - a failure in conduct occurs of a sufficiently serious nature to justify such disciplinary action without prior warning(s).
- 5.33 Disciplinary action short of dismissal refers to any of the following sanctions:
- demotion and/or transfer to another job, place of work or service area, in conjunction with a final written warning.
- 5.34 Where disciplinary action short of dismissal is taken, the decision shall be notified or confirmed in writing by the Nominated Officer and the letter shall:
- refer to previous warnings, if appropriate;
 - state clearly the disciplinary action taken and the effective date;
 - specify the reason(s) for this action;
 - refer to the Chief Officer's right of appeal to the Personnel Appeals Committee and indicate the date by which notice of appeal should be received.
- 5.35 A warning in relation to disciplinary action short of dismissal is to be disregarded for disciplinary purposes after 18 months. If the action is demotion or transfer to another job, the demotion or transfer is permanent.

DISMISSAL

- 5.36 Dismissal may be taken where:
- following a final warning, the Chief Officer fails to achieve and maintain the required improvement in conduct or a further act or omission warranting disciplinary action occurs, or
 - a failure in conduct occurs of a sufficiently serious nature to justify such disciplinary action without prior warning(s).
- 5.37 Dismissal refers to:
- dismissal with due notice; or
 - summary dismissal i.e. dismissal without notice. This should only be in cases of gross misconduct.
- 5.38 Where a decision to dismiss is taken, the decision shall be notified or confirmed in writing by the Nominated Officer and the letter shall:

- refer to previous warnings, if appropriate;
- state clearly the disciplinary action taken and the effective date;
- specify the reason(s) for this action;
- refer to the Chief Officer's right of appeal to the Personnel Appeals Committee and indicate the date by which notice of appeal should be received.

Criminal Offences

- 5.39 In all cases where disciplinary action is being contemplated due to an alleged or proven criminal offence, the matter shall be investigated as thoroughly as the circumstances permit. Further information regarding criminal offences and disciplinary matters can be found in the Council's Disciplinary Code and Employee Code of Conduct.
- 5.40 In cases of suspected irregularities relating to the finances of the Council or to any other funds managed by the Council, the Service Director of Finance and Procurement (or other appropriate senior officer) shall be informed and, if appropriate, an audit investigation shall be carried out. The Nominated Officer may suspend the Chief Officer on full pay.

Appeals

Appeals to the Personnel Appeals Committee

- 5.41 Appeals against warnings, verbal or written, and punitive disciplinary action shall be considered by the Personnel Appeals Committee in accordance with the Council's Procedure for Hearing Disciplinary Appeals at the Personnel Appeals Committee.
- 5.42 Appeals shall be submitted in writing, indicating the grounds of the appeal, within fourteen calendar days of the Chief Officer receiving written notification of the warning or disciplinary action. In the case of appeals against dismissal, appeals shall be submitted in writing within fourteen calendar days of the effective date of dismissal.
- 5.43 The decision of the Personnel Appeals Committee is final and there is no further right of appeal.

Effect of Appeals on Disciplinary Record

- 5.44 If, as a result of an appeal any disciplinary action is withdrawn or modified, any written reference thereto on the Chief Officer's personal file shall be appropriately amended and the Chief Officer and their representative, if any, notified accordingly.
- 5.45 The Chief Officer will have a right of access to their personal file to ensure the written reference has been removed or appropriately amended.

Expiry of Warnings

- 5.46 Warnings and other formal disciplinary action short of dismissal shall normally be disregarded for disciplinary purposes after a period of satisfactory employment. The relevant periods in respect of verbal, written, final written and punitive action short of dismissal are contained in this policy.
- 5.47 Disciplinary warnings are cumulative. If the Chief Officer has a current live warning any further disciplinary action taken could have the effect of leading to a higher-level warning being issued, or to the Chief Officer being dismissed.

- 5.48 If the sanction short of dismissal - demotion and/or transfer to another job, place of work or service area is issued however there is no alternative suitable vacant post available or the Chief Officer refuses the alternative post, consideration will require to be given to potential dismissal.
- 5.49 A decision not to disregard a warning for disciplinary purposes may be taken in circumstances where:
- a Chief Officer's persistent misconduct warrants such action; or
 - the misconduct for which the warning was issued related to the safety and well-being of young and/or vulnerable people in receipt of client services from the Council and is considered to be relevant to the individual circumstances under consideration.
- 5.50 In the case of 5.49, a decision to have regard to a warning out-with the above time scales may be taken only if the warning was issued in accordance with paragraph 5.51 below. Where such a decision is taken, the written notification shall indicate that the earlier warning has been taken into account and the reasons for doing so.
- 5.51 The timescales for warnings to subsist as captured within this policy shall not apply to a warning where, in the view of the Chief Executive or other relevant Chief Officer following consultation with the Service Director, Human Resources, the sensitivity of the particular misconduct gives rise to such concern that the warning should be available for future consideration. A decision not to disregard the warning or punitive action short of dismissal shall be notified to the Chief Officer at the time the warning or punitive action short of dismissal is issued.

Trade Union Officials

- 5.52 Where a disciplinary investigation involves a Chief Officer who is an accredited trade union representative, a senior official of the appropriate Trade Union should be notified at the earliest possible time. Any subsequent disciplinary hearing involving a Chief Officer who is an accredited trade union representative shall not be convened until the circumstances have been discussed with a senior official of the Trade Union concerned.
- 5.53 Where a Chief Officer who is an accredited trade union representative is suspended on full pay a senior official of the Trade Union concerned shall be informed of the suspension as soon as possible and written confirmation of the suspension shall be sent to the Trade Union.

Time Limits

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

6. Formal Stages - The Chief Executive

- 6.1 When faced with an allegation(s) of misconduct against the Chief Executive, initial consideration will be given to the allegation(s) by Chief Official Personnel Assessment Committee (the Assessment Committee) to determine whether the matter should be formally investigated and whether suspension is appropriate.
- 6.2 Elected members, professional advisers and any other individual involved with the investigation or disciplinary process will declare any personal interest they have in the case and consideration will be given to them not taking part in any proceedings depending on the nature of that interest.

- 6.3 The allegation(s) will initially be discussed between the Service Director HR and / or the Monitoring Officer and the Council Leader or any other appropriate senior officer/Elected Member if any of these individuals are unavailable, or if a conflict of interest exists.
- 6.4 The Council Leader will appoint an Assessment Committee. This group will be made up of a cross party group of elected members representing, as far as is practicable, the political balance of the Council from time to time. Members of the group will not participate in the remaining stages of the disciplinary procedure, unless the size of the council is such that there are insufficient numbers of elected members to resource each of the stages independently. The Assessment Committee will be constituted in accordance with the City of Edinburgh Council Committee Terms of Reference and Delegated Functions.
- 6.5 The Service Director, HR will be available to assist the Assessment Committee. An external adviser may be appointed should the Service Director, HR be unavailable or if a conflict of interest exists.
- 6.6 The Service Director, HR will verbally make the Chief Executive aware of the allegation(s) against them and that an Assessment Committee is being called to consider the matter. The Chief Executive may wish to make initial observations to the Service Director HR. If agreed with the Chief Executive the Service Director HR will share these observations with the Assessment Committee.
- 6.7 The Assessment Committee will be advised of the allegation(s) against the Chief Executive, and if previously agreed, initial observations from the Chief Executive. The purpose of the Assessment Committee at this stage is solely to decide whether a formal investigation is required. If the decision is taken to proceed to formal investigation the Assessment Committee will also, depending on the nature of the allegation(s), consider whether suspension, on full pay, is appropriate.
- 6.8 A note of the meeting and decision will be taken.
- 6.9 The decision of the Assessment Committee will be communicated in writing to the Chief Executive.

Formal Investigation

- 6.10 Should the matter proceed to formal investigation, an Investigating Officer will be appointed to conduct a formal investigation into the allegation(s).
- 6.11 The Investigating Officer will be agreed between, and be independent of both, the Council and the Chief Executive. In the event of a failure to agree it will be for the Joint Secretaries to the SJNC to recommend an Investigating Officer.
- 6.12 The investigation should be conducted within a reasonable period. If the investigation is likely to extend beyond 4 weeks following appointment of the Investigating Officer, the Chief Executive will be kept informed of progress.
- 6.13 It is for the Investigating Officer to determine how best to investigate the allegation(s). However, the Investigating Officer will be expected to:
- Meet the Chief Executive to question the Chief Executive on, the allegation(s). The Chief Executive should be given a minimum of 5 working days' notice of such a meeting and be advised of the right to be accompanied at that meeting.
 - Meet with and interview any witnesses to or parties associated with the allegation(s), a statement being prepared to record each interview.
 - Review any documentation associated with the allegation(s).
- 6.14 At the conclusion of the investigation, the Investigating Officer will prepare a report for the Assessment Committee outlining the findings of the investigation. The report will include a recommendation as to whether the Investigating Officer considers there are sufficient grounds to the allegation(s) to warrant proceeding to a disciplinary hearing.

- 6.15 The Assessment Committee will be reconvened to consider the report from the Investigating Officer.
- 6.16 The group, following consideration of the report from the Investigating Officer, will decide if a disciplinary hearing should be convened. The group will also indicate whether, having considered the report, they consider the allegation(s), if substantiated, constitute misconduct or gross misconduct. If gross misconduct and the Chief Executive has not already been suspended, then they will reconsider suspension at this stage, such suspension being on full pay.
- 6.17 The Chief Executive will be advised in writing of the decision of the Assessment Committee no later than 5 working days following the meeting of the group. A copy of the report from the Investigating Officer will accompany that letter.
- 6.18 Where the Assessment Committee decision is that no further action is necessary, an appropriate record will be retained by the Service Director HR.

Disciplinary Hearing

- 6.19 Should the Assessment Committee consider that the matter should proceed to a disciplinary hearing, a Chief Official Personnel Hearing Committee (the Hearing Committee) will be set up and formal notification of the hearing issued to the Chief Executive.
- 6.20 The Hearing Committee will exclude members of the Assessment Committee and, as far as is practicable, will be made up of a cross party group of elected members representing the political balance of the Council from time to time. The Hearing Committee will be constituted in accordance with the City of Edinburgh Council Committee Terms of Reference and Delegated Functions.
- 6.21 The Service Director HR will advise the Hearing Committee. An external adviser may be appointed should the Service Director HR be unavailable or if a conflict of interest exists. A record of the meeting and decision reached will be taken.
- 6.22 The Chief Executive will be given a minimum of 5 working days prior notice in writing of the Hearing. The letter will provide full details of the allegation(s), an indication of whether the allegation(s) if substantiated, may constitute misconduct or gross misconduct and the implications of this, i.e. gross misconduct may result in dismissal, advise that the Hearing Committee will refer to the report from the Investigating Officer and advise of any witnesses that may be called.
- 6.23 The letter will also advise the Chief Executive of their right to be represented at the hearing by a trade union official/representative or a work colleague [and ask the Chief Executive (or their representative) to provide in advance of the hearing any relevant papers that they may present as part of their case and the names of any witnesses they may wish to call.
- 6.24 The Chief Executive may seek a postponement of the hearing to enable representation; such postponement should be for no more than 10 working days.

Conduct of the Hearing

- 6.25 The purpose of the Hearing Committee is to ensure that a fair hearing is conducted into the allegation(s) so that a reasonable decision can be made, based on the information presented. The conduct of the hearing will be as follows:
- A representative on behalf of the Assessment Committee will present their case.
 - Members of the Hearing Committee and the Chief Executive (or their representative) will have the opportunity to question the Assessment Committee representative and any witnesses called.
 - The Chief Executive (or their representative) will present their case.

- Members of the Hearing Committee and the Assessment Committee representative will have the opportunity to question the Chief Executive (or their representative) and any witnesses called.
- The representative of the Assessment Committee will summarise their case, introducing no new evidence.
- The Chief Executive (or their representative) will summarise their case, introducing no new evidence.
- Both parties will withdraw to enable the Hearing Committee to make a decision in private.
- Following the recess, the parties will reconvene and the convener of the Hearing Committee will advise the Chief Executive of the Committee's decision. If the Hearing Committee is unable to provide a decision on the day of the hearing, they will reach a decision as soon as possible but, in any event, the decision will be confirmed in writing to the Chief Executive within 5 working days. The letter will also include details of how to appeal the decision of the Hearing Committee, should they wish to do so, together with the associated timescale.

Sanctions

- 6.26 If the allegation(s) against the Chief Executive are considered to have been substantiated, any disciplinary action taken should be reasonable in the circumstances taking into account the seriousness and any mitigation presented.
- 6.27 In the case of a first offence, other than for gross misconduct, the sanction should normally be a written or final written warning.
- 6.28 Where a written warning had previously been issued and the Chief Executive has committed a similar offence or a subsequent different but equally serious offence, the Hearing Committee may issue a final written warning or more serious sanction.
- 6.29 A Chief Executive should normally be given a final written warning regarding their conduct before dismissal is contemplated. However, it should be noted that there may be cases of gross misconduct so serious that summary dismissal without notice is appropriate.
- 6.30 Notwithstanding the above, the disciplinary action taken will be in line with the sanctions contained within the relevant sections within this policy for all other Chief Officers.
- 6.31 Similarly, examples of what constitutes gross misconduct will be as per the Employee Code of Conduct, the Disciplinary Code and the relevant sections within this policy for other Chief Officers.

Appeal

- 6.32 Should the Chief Executive appeal the decision of the Hearing Committee, the Council's Personnel Appeals Committee will consider the appeal. The Personnel Appeals Committee will exclude members of the Hearing Committee and, as far as is practicable, be made up of a cross party group of elected members representing the political balance of the Council.
- 6.33 The Service Director HR will advise the Personnel Appeals Committee. An external adviser may be appointed should the Service Director HR be unavailable or if a conflict of interest exists. A record of the meeting and decision reached will be taken.
- 6.34 The Personnel Appeals Committee will ideally be held within 20 working days of receipt of the appeal.

- 6.35 The Chief Executive will be given a minimum of 5 working days prior notice in writing of the date of the Appeal Hearing and be provided with a copy of any associated paperwork that will be presented on behalf of the Hearing Committee. The letter will advise the Chief Executive of their right to be represented at the Appeal, advise of any witnesses that may be called and ask the Chief Executive (or their representative) to provide in advance of the appeal any documentation that they intend to refer to and the names of any witnesses they may call.
- 6.36 The appellant will have the right to be represented at the appeal hearing by:
- an accredited workplace trade union representative;
 - another Council employee; or
 - an official employed by a trade union.
- 6.37 The conduct of the Appeal Hearing will follow the Council's Procedure for Hearing Disciplinary Appeals at the Personnel Appeals Committee.
- 6.38 It is the responsibility of the Personnel Appeals Committee to determine whether the appeal from the Chief Executive should be upheld, upheld in part or dismissed. If upheld in part the Personnel Appeals Committee must also determine the impact of this decision on any sanction implemented by the Hearing Committee.
- 6.39 The convener of the Personnel Appeals Committee will advise the Chief Executive of the decision of the Personnel Appeals Committee. If the committee is unable to reach a decision at the conclusion of the Hearing, they will do so as soon as possible but in any event the decision will be confirmed in writing to the Chief Executive within 5 working days of the date of the hearing.
- 6.40 The decision of the Personnel Appeals Committee is final and there is no further right of appeal.