



Report of: Assistant Chief Executive (Governance and HR)

Meeting of	Date	Agenda Item	Ward(s)
Audit Committee	29 January 2015		

Delete as appropriate	Exempt	Non-exempt

Internal report

SUBJECT: Revised Disciplinary Procedure

1. Synopsis

- 1.1 This report proposes that a new Disciplinary Procedure be adopted.

2. Recommendations

- 2.1 To adopt the Disciplinary Procedure in Appendix 1 with effect for all disciplinary processes commenced on or after 1 February 2015.
- 2.2 To authorise the Assistant Chief Executive, Governance HR, to make minor or consequential changes to the procedure from time to time following discussion with the Trades Unions.

3. Background

- 3.1 The council's existing disciplinary procedure has been in place since 2009. The procedure needs to be updated and the opportunity has been taken to move the procedure into a similar format to that of other newer procedures to ensure consistency and ease of understanding. The new format provides special sections focussed on the position of those in special circumstances.
- 3.2 The purpose of the procedure is to provide managers with a structured framework for dealing with instances where employees are alleged not to have met the required standards outlined in the Code of Conduct and other council policies and procedures, while ensuring equality and fairness of the process and complying with statutory requirements and recognised good practice. The new procedure will cover all staff, including staff groups that have transferred into the council over recent years, including

Public Health staff.

3.3 The draft revised procedure is not significantly different from the previous procedure in terms of its effect. It sets out more clearly:

- (a) that witnesses are entitled to be accompanied at investigatory meetings;
- (b) who is responsible for decision making concerning precautionary measures;
- (c) that improper use of email, internet and social media are disciplinary offences;
- (d) the available penalties.

3.4 There are some specific changes worth highlighting as follows:

- (a) It is provided that managers must either have undertaken training or receive a specific briefing from their HR Business Partner before they are able to investigate or present cases. The current procedure says it is strongly recommended that training be undertaken. This provision is more certain. A recent briefing may be more useful than a training session attended some time ago.
- (b) Section 2 specifically covers how this procedure fits in with other procedures. Some of its content was in the current procedure. It has been found with other policies that drawing information on the tricky question of the inter-relation between procedures into one section is helpful for those using the procedure.
- (c) Section 3 covers how the procedures apply to special cases such as to trade union members. Again, some of its content was in the current procedure but it has been found with other policies that drawing this information into one section is helpful to those using the procedure.
- (d) The sections covering DBS certificates has been expanded. There is new specific provision in Appendix 1 concerning the involvement of the LADO where there are concerns about safeguarding. There is an expanded appendix (Appendix 3) concerning steps that apply where an offence has or may have been committed by the employee.
- (e) The minimum warning available under the draft procedure is a 6 months written warning (currently the minimum is a 1 year warning).
- (f) Grounds of appeal are now specified in detail - that no reasonable manager could on balance of probabilities have found the allegations to have been proved and/or imposed the penalty given; or there was a procedural flaw or there is new evidence.

3.5 In terms of its broad effect the procedure continues to provide for:

- (a) Informal action as an alternative to formal action in appropriate cases;
- (b) Precautionary variation or suspension of duties, usually with pay (except where a matter involving fraud or financial irregularity is referred for hearing following an investigation);
- (c) Investigation;
- (d) Formal hearing
- (e) Imposition of penalties ranging from written warnings to dismissal;
- (f) Possible appeal against the decision or penalty. .

3.6 Consultation has taken place with the unions concerning the draft procedure and there are no outstanding issues.

4. Implications

4.1 Financial implications:

There are no financial implications arising directly from the report

4.2 Legal Implications:

Breach of discipline is a potentially fair reason for dismissal from employment.

The Acas Code of Practice on Disciplinary and Grievance Procedures is admissible in any employment tribunal proceedings and the tribunal has a duty to take into account any relevant provision of the Code in determining those proceedings. In addition, the tribunal can increase an award of compensation by up to 25% if it finds that the Council has unreasonably failed to follow the Code.

The procedure in Appendix 1 has been prepared taking into account the provisions of the Code.

4.3 Environmental Implications:

There are no environmental implications arising from this report.

4.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

An equality impact assessment has been undertaken in respect of the draft procedure. Section 3 of the procedure makes special provision for employees with particular protected characteristics. The procedure itself is not considered likely to have an adverse impact on any particular group but as the procedure gives discretion to managers the use of the procedure by managers will be monitored to ensure it is being fairly applied.

5. Conclusion and reasons for recommendations

- 5.1 The council's procedures for dealing with misconduct have been reviewed and the revised draft procedure in Appendix 1 has been developed for adoption by the committee.

Appendices

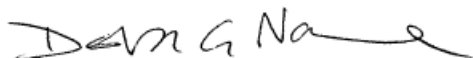
Draft Disciplinary Procedure

Background papers: (available online or on request)

None

Final report clearance:

Signed by:



Debra Norman
Assistant Chief Executive (Governance and
HR)

Date

Received by:

Head of Democratic Services

Date

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Appendix 1

DISCIPLINARY PROCEDURE

1. INTRODUCTION AND GENERAL PRINCIPLES

- 1.1 Islington Council is committed to providing excellent services to the local community and expects its staff to perform and behave in a way that supports this aim.
- 1.2 The disciplinary procedure provides a framework for dealing with instances where employees are alleged not to have met the required standards outlined in the Code of Conduct and other council policies and procedures.
- 1.3 It aims to ensure prompt, consistent and fair treatment for all employees and to assist the employee and the manager in understanding expectations of them.
- 1.4 The procedure has been drawn up with reference to relevant legislation and case law and the ACAS Code of Practice on Disciplinary and Grievances. It has been the subject of formal consultation with the Trade Unions and discussions with the council's equalities staff groups and managers have had the opportunity to comment. It replaces previous disciplinary procedures and applies from XXXX.
- 1.5 The procedure will be applied consistently and fairly to all employees based on the facts of their case. Employees will not be treated less favourably on the grounds of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- 1.6 It will apply to all employees for the purposes of dealing with matters of misconduct, cumulative or gross misconduct and cases of criminal conviction, cautions, reprimands or warnings, unless their terms and conditions of employment specify some other procedures for these purposes e.g.:
 - a) Employees during their probationary service (refer to the Probationary Policy and guidelines);
 - b) Staff employed on the Chief Executive and Chief Officer grades;
 - c) School-based staff;
 - d) Apprentices; (refer to the Apprentices guidelines);
 - e) Employees whose continued employment appears to be illegal.
- 1.7 Agency staff are not covered by this procedure and the matter should be referred to the agency.
- 1.8 No formal disciplinary action will be taken until the factual circumstances of a case have been fully investigated.
- 1.9 At all formal stages in the procedure, the employee will be advised in writing of the nature of the alleged offence(s), and will be given the opportunity to challenge the allegations and state their case before any formal action is taken.
- 1.10 All managers must undertake training, or receive a specific briefing from their HR Business Partner, in respect of the Disciplinary Procedure prior to carrying out any investigation or presenting cases to a Hearing Officer. Advice will be available from HR throughout the process and should be taken into account by managers.
- 1.11 Recording of disciplinary interviews, hearings and panel deliberations is not permitted.

Roles and Responsibilities

- 1.12 The following terms have the following meaning:

“Appeal Officer” means a person appointed by a Senior Manager to hear any appeal arising from the Hearing Officer’s decision.

“Hearing Officer” mean a manager appointed by a Senior Manager to chair the disciplinary hearing.

“Investigating Officer” means a manager identified by a Senior Manager to undertake an investigation.

“Presenting Officer” means the same person as the Investigating Officer unless for some exceptional reason that is not possible.

“Representative” means a trade union official or an accredited trade union representative who has had training recognised by their trade union or an Islington Council colleague who will represent or accompany the employee

“Senior Manager” means a senior manager in the top four tiers of the council’s management structure.

- 1.13 The responsibilities of Human Resources, managers and employees and their representatives in relation to this procedure are set out in detail in **Appendix 1**.

Representation

- 1.14 An employee who is the subject of this procedure has the right to consult and be accompanied and/or represented by a Representative at all formal stages set out below. This procedure does not allow for an employee to be accompanied and/or represented by anyone else. This includes attendance at investigatory meetings by the employee who is the subject of disciplinary procedure. Witnesses are also entitled to be accompanied and/or represented by a Representative at investigatory meetings
- 1.15 Reference to "employee" in this procedure includes her/his Representative.
- 1.16 If there is any potential conflict of interest involving the chosen Representative or their presence may prejudice the hearing this will be discussed with the relevant parties; e.g. the Hearing Officer, the relevant Branch Secretary or Regional Official or the employee concerned.
- 1.17 Once a trade union representative has been identified they should be copied into all correspondence to do with the case unless the employee expressly requests that this should not be done. A work colleague will be copied in if the employee requests this. Any relevant communication sent direct to a Representative will also be copied to the employee.

Employee Assistance Programme (EAP)

- 1.18 It is acknowledged that any employee or manager who is involved in discipline issues can find this difficult. Therefore, the Employee Assistance Programme should be offered to provide support to any employee involved in this process, whether they are the subject of the action or the manager who is taking that action.

2 RELATIONSHIP WITH OTHER PROCEDURES

Code of Conduct

- 2.1 The Code of Conduct sets out the standards expected of all employees. Employees who breach the Code or do not meet the standards outlined in it may be subject to this disciplinary procedure.

Probation Procedure

- 2.2 The council's disciplinary procedure does not apply during a probationary period. The probation policy will apply where employees are dismissed on the basis of unsuitability for confirmation of employment at the end of their probationary period.

Procedure for Managing Poor Work Performance

- 2.3 Where employees are considered not to be performing their duties to a satisfactory standard due to lack of competence, the council's Procedure for Managing Poor Work Performance will apply. However if an employee fails to reach the required standards of performance as a result of carelessness, negligence or gross incompetence or where an employee deliberately refuses to undertake the duties that they are capable of, this procedure will apply.

Sickness

- 2.4 The council's Managing Attendance Procedure will apply when employees are considered medically unfit. Where absence occurs during the formal stages of the disciplinary procedure, these will be addressed under the Managing Attendance Procedure. If an employee is unable to attend a meeting due to ill health they may be represented in their absence if they so choose. If the meeting does not proceed the employee will be referred to occupational health if appropriate. If the meeting has already been postponed once because the employee has not attended due to sickness, the manager may decide to proceed in their absence.

Alcohol, drugs and substance misuse

- 2.5 If it becomes apparent while action is being taken under this procedure that the employee's conduct may be related to alcohol, drug or substance misuse regard should be had to the council's Alcohol, Drugs and Substance Misuse policy.

Grievance procedure

- 2.6. If the employee raises a grievance relating to the case during the course of the investigation or hearing, this should normally be dealt with as part of the Disciplinary Procedure and should form part of the employee's defence. However, consideration should be given as to whether it is appropriate to suspend the disciplinary procedure for a short period while the grievance is dealt with. Where the grievance and disciplinary cases are proceeding separately, but are related, it may be appropriate to deal with both issues within the same timescale and not one after the other. A grievance investigation may lead to disciplinary action.

Bullying and Harassment

- 2.7 Procedures for managing instances of harassment, bullying, victimisation and intimidation are outlined in the Bullying and Harassment FAQs, and may result in referral for action under the Disciplinary Procedure.

Incremental Pay Progression Policy and Pay Protection Policy

- 2.8 Progression through the pay grades is not automatic but depends upon a successful appraisal outcome and meeting objectives. Under this procedure an increment may be withheld as an appropriate penalty and/or if the employee is on protected pay, the protection may be revoked.

Organisational Change

- 2.9 Disciplinary outcomes may be taken into account in the selection process in cases of organisational change and the selection for redundancy.

3 SPECIAL CASES

Trade Union Officials

- 3.1 When a branch secretary of a recognised trade union is subject to any potential disciplinary action, the relevant regional officer must be notified. When a shop steward or convenor is subject to any potential disciplinary action, the relevant branch secretary must be notified.

Employees who are subject to a police investigation, or arrested, charged with a criminal offence or receive a conviction, caution, reprimand or warning

- 3.2 Employees who are the subject of a police investigation, arrested, charged with a criminal offence or receive a caution; reprimand or warning must immediately tell their line manager or a Senior Manager and keep them apprised of the situation. A self disclosure form must also be completed. (see [http://izzi/council/aboutcouncil/performance-policy/policy/Pages/hr-az.aspx?AdditionalPath=/Disclosure and Barring Service \(DBS\)](http://izzi/council/aboutcouncil/performance-policy/policy/Pages/hr-az.aspx?AdditionalPath=/Disclosure%20and%20Barring%20Service%20(DBS)))

This applies to all criminal matters whether or not they are related to work.

- 3.3 An employee who is the subject of civil proceedings need only tell their line manager/or a Senior Manager if the matter is likely to impact on their job role. For example an accounts manager who is declared bankrupt or a children's social worker whose child is the subject of a child care order should advise their line manager / Head of Service immediately.

- 3.4 Employees who receive a fixed penalty for driving offences such as speeding need not declare the offence unless the duties of the employee include any element of driving or road or pedestrian safety, in which case all driving related cautions and offences, including any fixed penalties, must be declared.

- 3.5 **See Appendix 3** for more details on criminal convictions.

Employees who fail to renew their professional registration or DBS certificate

- 3.6 Employees who cannot practice without an up to date registration from their professional body such as social workers and health care workers may be subject to this procedure.

- 3.7 Employees who are required to have or renew their DBS certificate and who fail to produce an up to date certificate in accordance with council policy may be subject to this procedure.

Apprentices

- 3.8 In view of the nature of the apprenticeship contract, a modified version of the procedure applies to them,

Disabled employees

- 3.9 Section 7.11 contain provisions specifically in relation to disabled staff.

4 INFORMAL ACTION

- 4.1 Cases of minor misconduct should be dealt with by the employee's line manager informally and without a delay as part of normal supervisory processes. The manager should speak to the employee in private and bring to their attention the standards required and explain how they appear to have failed to meet those standards.
- 4.2 The purpose of the discussion is to ensure that the employee is encouraged to conduct themselves in accordance with the required standards, understands the nature of the concerns, the expectations of improvements in conduct and where appropriate the timescales and the nature of any support available such as coaching, training or management guidance.
- 4.3 The discussion should be recorded in the supervision notes and manager's file and the individual should be given a copy of the record.
- 4.4 If informal action does not elicit the required standards of conduct, formal disciplinary action may follow (see section 5).
- 4.5 The record in 4.3 above may only be referred to at any future disciplinary hearing if it is used solely as evidence that the member of staff has been advised that such conduct could be seen as a breach of standards of conduct.
- 4.6 There is no right to be accompanied by a Representative at an informal meeting unless there are exceptional circumstances and it has been agreed by the line manager (following consultation with the Representative) that this is necessary.

5 FORMAL ACTION

- 5.1 Section 5 of the procedure should be used where the informal action has failed to elicit the standards of conduct required or the employee has failed to sustain these standards or the line manager, due to the serious nature of the conduct issue, considers that the matter cannot be dealt with under the informal part of this procedure.
- 5.2 Formal action may also be instigated following a management investigation that indicates that there may have been an act of misconduct or gross misconduct.
- 5.3 In such cases the matter will be investigated and the employee concerned may be required to attend a formal disciplinary hearing arranged in accordance with section 6.
- 5.4 There are four possible stages in the formal procedure. These are taking precautionary measures, investigation, disciplinary hearing and appeal. The timescales for the formal procedure are detailed in Appendix 5. However, should more time be required, then these timescales may be extended by the Senior Manager who will inform the employee and/or their representative.

Precautionary measures

5.5 Cooling-off period

Where the manager considers it appropriate, an employee may be sent off duty for a cooling-off period for the rest of the shift or day on which the incident occurs and no more than one complete shift or day in addition. An employee will receive her/his contractual pay during a cooling-off period.

5.6 Removal from normal duties

An employee may be removed from all or some of her/his normal duties as a precautionary measure pending completion of an investigation into alleged misconduct or gross misconduct (or where the employee has been criminally convicted, or has received a criminal sanction such as caution, warning or reprimand) which is serious enough that if the conduct is established the employee's dismissal may result. The employee may be:

- Placed on limited duties;
- Temporarily transferred to other duties and/or another workplace;
- Provided with work to do at home.

If appropriate advice from the Senior HR Business Partner should be sought.

Suspension

- 5.7 Where it is untenable for the employee to carry out any duties at all, it may be necessary to suspend the employee from duty pending commencement or completion of the investigation. Suspensions must be agreed by a Senior Manager and reported to the relevant Corporate Director or Assistant Chief Executive. Senior Managers may specify other managers who can make this decision in their absence where it is urgent but the decision must be reviewed by a Senior Manager as soon as practicable.
- 5.8 For details about the conditions that apply when an employee is suspended from work see **Appendix 6**.

Measures following an investigation

- 5.9 On completion of an investigation, and if it is decided that the case should be referred for consideration to a formal hearing, measures described in paragraphs 5.1 to 5.7 above may be imposed, continued or amended, pending the formal hearing.

Measures in cases of criminal charges

- 5.10 Where an employee has been charged with a criminal offence and if the presence of the employee at work would adversely affect the council's interests, other employee and/or the service(s), similar measures to those described in paragraphs 5.1 to 5.7 above may be implemented.
- 5.11 In such cases suspensions on no pay or reduced pay may be implemented where this is considered appropriate by the Investigating Officer or Senior Manager.

General case management for all measures taken

- 5.12 All precautionary measures (other than a cooling off period) are subject to the detailed procedures set out in **Appendix 2**. The use of an alternative to suspension from duty does not imply a lessening of the seriousness of the issues under investigation or awaiting consideration at a formal hearing.
- 5.13 The use of any of the above measures pending completion of an investigation and/or pending a formal hearing is not a disciplinary penalty and does not imply any decision about the merits of the case itself.

Pay during precautionary measures

- 5.14 An employee who is subject to precautionary measures will normally continue to receive full pay. This must be reviewed regularly and if it is found that the employee is not participating fully in the investigatory process (or, where applicable, complying with the terms of their suspension) then consideration may be given to a review of their pay in line with the duties undertaken or, if they are suspended, suspending or reducing their pay.
- 5.15 A suspension following an investigation involving fraud or financial irregularity or a criminal charge, or in other exceptional circumstances, may be on no or reduced pay.

Misconduct and Gross Misconduct

- 5.16 Misconduct is conduct which falls short of the standards required by the council but which on its own is not sufficiently serious to result in summary dismissal (i.e. dismissal without notice).
- 5.17 Gross misconduct is misconduct which is serious enough to destroy the contract between Islington Council and the employee and to make any further relationship of trust impossible in relation to their continued presence at work and which justifies dismissal without notice.
- 5.18 In determining the seriousness of an offence, factors to be considered include the type and extent of the offence(s), the recurrence of the offence(s), the consequences of the offence(s) the employee's job and the level of responsibility.
- 5.19 Examples of misconduct and gross misconduct are in Appendix 4.

Investigations

- 5.20 Before a formal hearing is arranged the matter should be fully investigated within the agreed timescales in accordance with Appendix 5 to establish the facts of the case. Other than in exceptional circumstances the employee and any witnesses will be interviewed as part of this investigation. If the employee or any witness wishes to have a Representative with them for support during any interview, this will exceptionally be allowed, subject to 1.16.
- 5.21 If at any time during the initial investigative interview, it becomes clear that formal disciplinary action is likely be initiated in respect of the employee, then following or during that interview, the Investigating Officer or employee may request to reconvene at a later date so that the employee may be allowed the right to a Representative if they do not already have representation.
- 5.22 Once the investigation has been completed, the employee will be informed of the proposed action:
- That it is considered there is a case to answer and the allegations will be referred for hearing by an appropriate manager as defined in section 1.12; or
 - That the matter will be dealt with informally; or
 - That the matter will be dealt with under the Procedure for Managing Poor Work Performance;
 - That some other action will be taken; or
 - That no further action will be taken.

6 ARRANGEMENTS FOR A FORMAL HEARING

Preliminary arrangements for hearing the case

- 6.1 If as a result of their investigation the Investigating Officer considers that the employee has committed a disciplinary offence, the employee will be invited to a formal disciplinary hearing and given a minimum of eight clear working days written notice of:

- a. The date, time and place of the hearing.
- b. Details of the allegations(s) against them (including if relevant, the relevance of a criminal conviction to their employment).
- c. Their right to a Representative (see section 1.14 above).
- d. That the hearing may proceed in their absence if they fail to attend (without a satisfactory reason) using all available information known at that point
- e. The name and designation of the manager who will hear the case, and the range of penalties that they may impose.
- f. Details of any witnesses to be called by the Presenting Officer.
- g. Where appropriate, that the charge(s) under consideration could result in dismissal if established, because: it (they) could be considered as gross misconduct or of the existence of a previous disciplinary record.
- h. If appropriate, a warning that consideration may be given to recovery (usually made by deductions from pay) of any financial loss to the council as a direct result of any misconduct or criminal conviction.
- i. That the investigation report and management documents are enclosed/attached or when they will be made available.
- j. That a copy of this procedure is enclosed/attached.

6.2 It is anticipated that the Presenting Officer will produce a complete investigatory pack. However, any additional evidence gathered by the employee (and Presenting Officer in exceptional circumstances) as part of the investigations must be provided to the HR Business Partner at least three working days before the hearing, and may be used in evidence at the hearing.

6.3 The Hearing/Presenting Officer will normally issue the investigatory pack by email unless specifically requested otherwise by the employee or their Representative. If the pack exceeds 5 separate attachments the hearing/presenting officer will prepare a paginated hard copy of all papers which are received 8 clear days in advance of the hearing, for collection by the employee or their representative, unless otherwise agreed with the employee or their representative. These papers should be retained for any possible appeal as further hard copies will not be provided

6.4 If the employee is calling witnesses, then the list of names also must be submitted to the HR Business Partner at least three working days before the hearing.

6.5 Any documentation/statements should be supported by attendance at the hearing of any witnesses, so as to allow the employee/management the opportunity to question each witness.

6.6 In exceptional circumstances the Hearing Officer may allow additional documents to be presented at the hearing, if they could not have reasonably been presented within the stipulated time, and subject to the other party being allowed to seek an adjournment or agreed temporary postponement.

6.7 Employees are expected to prepare their case in their own time. In exceptional circumstances, and with the express written approval of their line manager, this may be done during working hours.

6.8 It is expected that hearing meetings will be arranged within an employee's working hours except where this is impractical. Employees attending their own disciplinary hearing/appeal will not be paid for any additional hours outside of their normal hours of work, nor will they receive any subsistence allowances or travelling expenses.

6.9 A copy of the charge(s)/details of the conviction, where relevant, and the documentation sent to and received from the employee, should be received by the manager hearing the case at least three working days before the hearing.

Procedure at the hearing

6.10 Each party will be responsible for bringing their own documentation to the hearing.

6.11 A note of the proceedings at the hearing will be taken. It is not necessary that this is a verbatim record but it should give an adequate account of proceedings.

6.12 The Hearing Officer (and her/his adviser) will introduce all present and explain the purpose of the hearing. They may ask questions of, or seek clarification from, either party or witnesses at any stage.

- 6.13 Both the employee and the Presenting Officer will be asked if they intend to call witnesses.
- 6.14 The employee will be asked to indicate whether:
- a) **in the case of alleged misconduct** s/he admits the charges as set out in the letter convening the hearing; **OR**
 - b) **in considering a criminal conviction** the details of the criminal conviction are correct.
- 6.15 Where the charge(s) is **admitted** or a criminal conviction(s) is being considered, **proceed as Appendix 7.**
- 6.16 Where the charge(s) is **not admitted** **proceed as Appendix 8.**
- Penalties following a formal hearing**
- 6.17 The full range of penalties open to managers is listed in **Appendix 9.** The minimum penalty available is a written warning.. Written/final written warnings may be awarded on their own or combined with other penalties as detailed in the Appendix. The lengths of time that the written/final written warning remains in effect (currency), when awarded on its own or in conjunction with another penalty, are also listed in that Appendix.
- 6.18 In deciding on the appropriate penalty the seriousness of the offence, the individual's disciplinary record and general service and any mitigating circumstances should be taken into account.
- 6.19 No employee will be dismissed for a finding of misconduct except in the case of gross misconduct (including cumulative or persistent acts of misconduct).
- 6.20 A copy of a written warning will be kept on the employee's personal file but will be disregarded for formal disciplinary purposes after it ceases to be current.
- 6.21 In the event that the Hearing Officer decides not to impose a penalty, the Hearing Officer may nonetheless consider it would be beneficial for the employee to be notified in writing of the standards of behaviour expected in relation to the matters that have been the subject of the proceedings. The Hearing Officer may undertake this personally or may propose that the line manager meet with the employee to discuss the area(s) that have been of concern and then notify the employee in writing of:
- the standards expected of them including the reason(s) for the standards being set,
 - improvement(s) required,
 - period of review, (not exceeding one year)
 - confirmation that this notification will not form part of any formal action(s) other than as set out as 6.22
- 6.22 A copy of the letter/email and/or file note and /or any associated documentation must be kept on file and may only be referred to at any future disciplinary hearing if it is used solely as evidence that the member of staff has been advised that such conduct could be seen as a breach of standards of conduct.

7. APPEAL PROCEDURE

7.1 The employee must be informed that they have a right of appeal on the grounds stated in 7.3 below and that the appeal will be considered by a more senior manager within that service area or a service manager in a different service area.

7.2 The employee must also be informed that:

- Any appeal must be registered in writing with their Service Manager or Head of Service within ten working days of receipt of the letter confirming the outcome of the hearing and notes of the hearing.
- They can be represented at the appeal by a Representative.
- Paperwork used for the hearing should be retained for any appeal and further hard copies will not be provided.

Grounds of appeal

7.3 In the case of misconduct and gross misconduct an employee may appeal against the following:

- (i) The decision to uphold the allegations(s) and the penalty (ies) imposed; or
- (ii) The penalty(ies) only;

on the grounds that:

- No reasonable manager could have found the allegations to have been proved on balance of probabilities and/or imposed the penalties that were imposed
- There was a procedural flaw which had a material effect on the decision; and/or
- There is new evidence which the employee wishes to introduce which could not reasonably have been raised at the time of the original hearing and the absence of which had a material effect on the decision to dismiss.

7.4 In the case of a criminal conviction an employee may only appeal against the penalty that has been imposed.

7.5 After registering an appeal and the grounds of the appeal the employee must provide full details as soon as is practicable but no later than three working days before the appeal date.

7.6 Where the grounds of appeal allege that the procedure at the original hearing seriously breached this procedure, the advice of a Senior Human Resources Business Partner will be sought and the Senior Human Resources Business Partner may, after consulting the Head of Policy and HR Business Partners/Head of HR and taking the advice of the council's legal advisers as necessary, decide to immediately refer the case for a re-hearing by an appropriate manager rather than referring the matter to the Appeal Officer. This decision is final with no further right of appeal.

7.7 If the result of an appeal hearing is a re-hearing, or if HR refers the matter to be reheard under 7.6, then all penalties will be lifted until the decision is known.

Process

7.8 An appeal will be considered by a more senior manager than the Hearing Officer, except where the decision at the original hearing was taken by a Senior Manager, in which event the appeal may be considered by another Senior Manager or the Chief Executive.

7.9 A manager will not hear an appeal if they were personally involved in giving evidence at the original hearing or if they are the manager who heard the case originally.

Notice of the Appeal Hearing

7.10 The employee will be given at least five working days' notice of the date, time and place of the hearing.

7.11 The letter notifying the employee of the hearing shall also advise them of the following:

1. Right to Representation

The right to a Representative, or where it would be a reasonable adjustment under the Equality Act, the right to appropriate external support – to be agreed beforehand by the Appeal manager

2. Non-attendance at the hearing

That the hearing may proceed in the absence of the employee if s/he fails to attend the hearing without any reasonable justification.

3. Forum for hearing the appeal

- The name of the Appeal Officer who will hear the appeal;
- That the Hearing Officer will present the management case;
- That the Appeal Officer may decide to:
 - Uphold the decision already made;
 - Change the decision which could result in a more or less severe penalty;
 - Refer the matter for a rehearing if there has been a significant procedural breach.

Documentation

- 7.12 A copy of the papers from the original hearing together with a copy of the notes of the original hearing will be emailed by the Hearing Officer to the Appeal Officer and the employees within five working days of the appeal being lodged. The parties are responsible for bringing their own papers to the appeal hearing.
- 7.13 If any further written documentation is to be presented by the employee in support of their appeal this should be provided to the Appeal Officer at least three working days prior to the appeal hearing. New evidence may only be introduced if it has become available since the date of the original hearing and its existence could not have been reasonably known of or foreseen before that hearing.
- 7.14 The employee shall also be provided with a copy of this procedure.
- 7.15 The procedure at an appeal is set out in **Appendix 10**.

8 REVIEW OF PROCEDURE

- 8.1 This procedure will be reviewed twelve months from its implementation date and a resident impact assessment undertaken.

List of Appendixes

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APPENDIX 1

Disciplinary Procedure Roles and Responsibilities

1 Human Resources (HR) Responsibilities

- 1.1 HR will provide the training, support and briefings on the disciplinary and grievance procedures for managers as appropriate.
- 1.2 HR will support and advise managers during the investigation and appeals process where required. Their role will not include taking minutes.
- 1.3 HR will treat information relating to the disciplinary issue confidentially, except to the extent that disclosure is appropriate in the course of the investigation or hearing or appeal or, in court or tribunal proceedings or at the employee requests that their own information be disclosed.
- 1.4 In conjunction with the Investigating Officer, HR will ensure that the various stages of the procedure, including agreements and notes of meetings, are recorded in the employee's personal file and copies made available to the employee.
- 1.5 In conjunction with the Investigating Officer, where HR is directly involved, they will ensure that deadlines in this procedure are adhered to, and where this is not practical, that the employee is advised of the delay and reasons for it. A timescale for the investigation should be agreed with the Senior Manager and Investigating Officer and they should identify any factors which could result in delay and steps which could minimise their impact.
- 1.6 HR will advise on alternatives to suspension such as restricted duties or work from other locations.
- 1.7 HR will monitor all suspensions which last for more than one month and these will be referred to Senior Managers with recommendations for resolving them promptly.
- 1.8 HR will maintain model letters for use by the Investigating Officer at all stages.
- 1.9 HR will monitor all disciplinary issues including outcomes for equalities and other implications.
- 1.10 Where necessary, HR will liaise with the relevant Senior Manager to agree the appointment of an appropriate Investigating Officer, for example when a cross-departmental disciplinary matter has been raised.
- 1.11 Where possible HR will always be present at cases involving gross misconduct and at any hearing and appeal.
- 1.12 HR will ensure that all formal disciplinary action is recorded on Human Resources database.

2 Hearing Officer's Responsibilities

- 2.1 To ensure that procedures have been adhered to.
- 2.2 To hear the case and base their decision on the balance of probabilities using information provided to them for the hearing.
- 2.3 To make a decision regarding allowing independent observers (i.e. either Islington Council staff or recognised trade union representatives) subject to all parties agreeing to such request.
- 2.4 To arrange hearings within an employee's core working hours except where they do shift work.

3 Investigating/Presenting Officer's responsibilities

- 3.1 Islington Council strongly recommends that managers undertake disciplinary training prior to carrying out any investigation or presenting cases to a Hearing Officer and take advice from HR throughout the process.
- 3.2 In cases where there are concerns around safeguarding the Investigating Officer or the senior manager as appropriate will seek advice from the Local Authority Designated Officer (LADO).
- 3.3 In cases where the LADO or Police or other professional body are involved it is the responsibility of the Investigating Officer to keep all parties concerned updated on any developments (e.g. if Police are not pursuing matters).
- 3.4 The Investigating Officer should arrange meetings as necessary and interview all parties - i.e. alleged offender, complainant, any witnesses and take statements where possible.

- 3.5 The Investigating Officer should arrange at a local level for a note taker where one is required to take all notes of the investigatory interviews and meetings.
- 3.6 The notes of any investigatory interviews should be provided to the interviewee for any comments and be signed and dated.
- 3.7 The Investigating Officer should ensure that all information is gathered with integrity and witnesses are not subject to undue pressure.
- 3.8 The Investigating Officer should normally complete the investigation within 20 working days. Any delay should be communicated to all concerned parties. A timescale for the investigation should be agreed with the Senior Manager and HR and it should identify any factors which could result in delay and steps which could minimise their impact.
- 3.9 The Investigating Officer and HR will refer any recommendations for suspension to a Senior Manager and will consider all suspensions which last for more than one month and these will be referred to the Senior Managers with recommendations for resolving them promptly.
- 3.10 Following any investigations, the Investigating Officer should notify the alleged offender either via a meeting or in writing. He/she should produce a report containing the findings and recommendations. Where it's not practical to produce the report within the normal timescale, the Investigating Officer should keep the employee informed of progress on the investigation and an agreement should be reached on amended timings. If no agreement can be reached then the manager must inform the employee of the amended timings.
- 3.11 If following the investigation, there is no substantial evidence, then the alleged offender will be notified in writing and all records removed from the personal file.
- 3.12 If, following the investigation, there is evidence to proceed to a hearing, the Investigating Officer will present the case as the Presenting Officer.
- 3.13 If the Presenting Officer intends to call witnesses at the disciplinary hearing, they will be responsible for arranging their attendance.

4 Employee's Responsibilities

- 4.1 The employee concerned should give the manager the name of the individual they have chosen to accompany or represent them and, if they are a recognised trade union official, which union they represent.
- 4.2 The employee concerned is required to attend investigatory interviews. Where they fail to attend without a reasonable explanation, then information may be gathered in their absence by those who acknowledged or witnessed the situation taking into consideration the reasons for non – attendance otherwise a temporary adjournment may be considered.
- 4.3 If non – attendance is due to a medical reason, then a medical certificate/fit note must be submitted outlining the reasons for the non-attendance. Where the employee is unable to attend any formal investigatory interviews, then they must arrange representation on their behalf or submit written statements.
- 4.4 If the employee concerned intends to call witnesses at the disciplinary hearing, they will be responsible for arranging their attendance.

5 Responsibilities of Representatives

- 5.1 The Representative has the legal right to put the employee's case, consult with the employee, sum up the case and respond on the employee's behalf, to any views expressed at the hearing.
- 5.2 If the Representative is not available on the fixed date for a hearing, then in accordance with section 10 of the Employment Relations Act 1999 (ERA 99), they can request a postponement provided that the alternative date is reasonable and is not more than five working days after the date of the original hearing or is a date arranged by mutual agreement between the parties.
- 5.3 Employees who act as Representatives at hearings including appeals are entitled to reasonable time off with pay during working hours to perform in these functions and to also receive appropriate training. Acting as a Representative in any investigatory interviews/meetings is voluntary and should be carried out in the employee's own time. No detrimental action will be taken against the Representative because they choose to act, or refuse to act, on behalf of another Islington Council colleague. Any time off has to be agreed in advance with their line manager and supporting evidence supplied if requested.

- 5.4 If the employee concerned intends to call witnesses at the disciplinary hearing, they will be responsible for arranging their attendance.

6 Note Taker's Responsibilities

- 6.1 To take notes and ensure that they are given to all parties for approval. These should be given to the Investigating Officer or Hearing Officer first then the other members of the meeting.

7 Senior Manager's Responsibilities

- 7.1 To authorise any changes to employees' working arrangements/duties or suspensions or delegate to specified managers in service areas. Suspensions must be agreed by a Senior Manager and reported to the Corporate Director.
- 7.2 To identify an Investigating Officer.
- 7.3 To consider all suspensions referred to them which last for more than one month and actions which could be put in place to resolve them promptly and to review this on a monthly basis.

8 All Employees

- 8.1 All employees are expected to contribute to the successful implementation of this procedure, to help ensure the council's standards and Code of Conduct are met.
- 8.2 Professionally registered staff may also have obligations to do so under the terms of their professional registration.

Appendix 2

Procedures governing precautionary measures

- 1 Senior Managers are responsible for authorising any changes to an employee's pay, working arrangements/duties or suspensions. Senior Managers may authorise other managers to take this decision if it is urgent but the decision must be reviewed by a Senior Manager as soon as practicable, particularly in the case of a suspension. The HR Business Partner or their nominated representative should also be notified.
- 2 If the appropriate Senior Manager (and authorised manager) are unavailable to sanction a suspension from duty (or some other appropriate measure), and circumstances are such that an employee should no longer remain at work, the line manager/supervisor or other responsible manager may make the decision to suspend. However, such action by a manager/supervisor should be agreed by a Senior Manager as soon as practicable.
- 3 The Senior Manager should identify an Investigating Officer as soon as possible after the day the suspension or other precautionary measure is authorised.
- 4 The employee must be advised, in writing of the following matters:
 - of the conditions attached to any changes in their working arrangements/duties or suspension from duty.
 - that failure to comply with the investigatory/formal disciplinary process is a further disciplinary offence and this includes:
 - failure to comply without permission to any of the conditions set under the procedure by their Line Manager or Senior Manager
 - failure to co-operate with an investigation/impeding an investigation, and the destruction and alteration of evidence.
- 5 An employee suspended from duty with pay must be advised that their pay may be stopped immediately if they fail to comply to the conditions set or co-operate in the investigatory/formal disciplinary process. The letter should state the provisions of paragraph 5.10-5.11(criminal charges) and, as appropriate, paragraphs 5.14.- 5.15 of the main procedure.
- 6 Changes to an employee's working duties as a precautionary measure pending completion of an investigation or pending a formal hearing must be reviewed by the appropriate Senior Manager (or authorised manager) on a regular basis.
- 7 An employee on no or reduced pay suspension will be entitled to reimbursement of any loss of pay if formal disciplinary action does not proceed or the complaint(s) at a formal hearing is not substantiated.

APPENDIX 3

DISCIPLINARY PROCEDURE

Employees who are subject to a police investigation, or arrested, charged with a criminal offence or receive a conviction, caution, reprimand or warning

1. In this procedure the term "convicted" or "conviction" includes being bound over or cautioned or receiving a reprimand or warning from the police or a court.
2. If an employee is charged with, or convicted of, a criminal offence not related to work, this is not necessarily a reason for disciplinary action. The manager should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work.
3. An employee will not be dismissed only because they are absent from work as a result of being remanded in custody. In all such cases an investigation should be carried out in the first instance to determine whether disciplinary action is necessary.
4. An employee will normally be dismissed automatically if through criminal conviction or other professional misconduct they lose their professional registration or are placed on a DBS Barred List.
5. A DBS check will be undertaken following a criminal conviction or police investigation in cases where an employee is in a post designated as one requiring a DBS check.
6. Where a criminal offence occurs on the council's premises or with council property the normal disciplinary procedure will be followed and the Investigating Officer will contact the police with a view to a criminal charge being made.
7. Where a disciplinary offence is also subject to a criminal investigation, the council may suspend the disciplinary process until the criminal investigation and legal proceedings have concluded. However, the fact that the police are unable, unwilling or not yet able to proceed does not automatically preclude the council from progressing its own disciplinary action before the commencement or conclusion of police proceedings.

APPENDIX 4

DISCIPLINARY PROCEDURE

Examples of Misconduct and Gross Misconduct

1 MISCONDUCT

- 1.1 It is impossible to list every type of act which would result in disciplinary action for misconduct. The examples of misconduct below are given so that employees have a general understanding of the type of act that would result in such action:
- a) Failure or refusal to follow/comply with reasonable management instruction(s) including failure to wear personal protective clothing / equipment (PPE).
 - b) Continued unauthorised absence, failure to follow attendance and time keeping requirements.
 - c) Continued failure to follow organisation procedures.
 - d) Wilful or negligent failure to sustain satisfactory standards of work.
 - e) Breach of the Employee Code of Conduct.
 - f) Breach of Health and Safety.
 - g) At work using a mobile phone whilst driving or failure to wear a seat belt as required by legislation.

2 GROSS MISCONDUCT

- 2.1 Gross misconduct is misconduct which is serious enough to destroy the contract between Islington Council and the employee, and to make any further relationship of trust and confidence impossible in relation to their continued presence at work. It is impossible to list every type of act which would result in disciplinary action for gross misconduct. The examples of gross misconduct below are given so that employees have a general understanding of the type of act that would result in such action:
- a) intentional direct and indirect discrimination (including harassment) and intentional victimisation against any Islington Council member of staff, stakeholders/clients or members of the public on the grounds of race, sex, sexual orientation, disability, age, gender reassignment, marriage and civil partnership, pregnancy and maternity or religious belief;
 - b) theft, unauthorised possession or removal of property belonging to Islington Council, any member of staff, stakeholders/clients or members of the public;
 - c) serious failure to comply with the Code of Conduct;
 - d) dishonest conduct;
 - e) inappropriate sexual conduct;
 - f) physical assault, fighting and threats of violence;
 - g) falsification of information, timesheets, subsistence and expenses claims etc. or inappropriate use of council's season ticket loan or other loan schemes;
 - h) malicious or reckless damage to Islington Council property;
 - i) corruption;
 - j) serious incapability for work due to being under the influence of alcohol or drugs;
 - k) evasion of payments due to Islington Council or its service partners (including non-disclosure or those who fail to make payment within an agreed reasonable timeframe);
 - l) fraudulent claims for benefits, including housing benefit, Council Tax and income support;
 - m) cumulative or persistent acts of misconduct;
 - n) gross negligence;
 - o) gross incompetence;

- p) unauthorised access to/disclosure of confidential information;
- q) being an accessory to an act of gross misconduct;
- r) knowingly providing false evidence in relation to a disciplinary matter;
- s) unauthorised employment during working hours, sick leave and special leave;
- t) bringing Islington Council into disrepute (lack or decline of good reputation);
- u) undermining trust and confidence;
- v) conduct which jeopardises health and safety;
- w) serious failure to comply with Islington council's Dignity for All policy;
- x) abuse or unauthorised use of Islington council property or facilities i.e. office equipment (internet, email, mobile phone, credit/purchase card), tools,;
- y) serious criminal convictions;
- z) breach of the council's Data Protection policies;
- aa) improper use of an employee's position for his/her or another's private advantage, or an attempt to do so;
- bb) improper use of e-mails, internet and social media.
- cc) driving at work whilst under the influence of drink/ drugs.
- dd) fraudulently / deliberately overstaying your visa restrictions.
- ee) failure to comply with the drug and alcohol testing policy.
- ff) victimisation of whistleblowers.

2.2 This list is neither exclusive nor exhaustive and there may be other offences of similar gravity, which would also constitute gross misconduct. Therefore, the list can only be regarded as illustrative.

2.3 In determining the seriousness of an offence, factors need to be determined in relation to the seriousness of an offence, the type and extent of the offence(s), the recurrence of the offence(s), the consequences of the offence(s) and the level of the employee's job and their position of responsibility.

APPENDIX 5

DISCIPLINARY PROCEDURE

FORMAL ACTION – MAIN TIMESCALES

In cases of alleged misconduct/gross misconduct: the following steps apply:

- 1 Decision to be taken on whether cooling-off or precautionary measures are to be used. If this decision is taken by a manager below Senior Manager, it must be agreed by them and reported to the Corporate Director as soon as it is practicable.
- 2 The Investigating Officer to write to the employee as soon as possible to advise them of the alleged misconduct or gross misconduct and to confirm any cooling-off or precautionary measures. Ideally, the date for the investigation meeting should be included in this letter. (Letter 1, 2 or 3 to be used.)
- 3 Investigation to commence: The Investigating Officer to meet with employee and any witnesses and gather any relevant information. Aim to conclude the investigation within **20 working days** (see paragraph 3.8 of Appendix 1) of the start of the investigation for misconduct or gross misconduct. Employee to be advised about any delay to this timescale. (Letter 4 to be used for witnesses.)
- 4 At the end of investigation, decision to be taken on outcome and report to be written (Model Management Report DL13 can be used):
 - No action to be taken – let employee know and confirm in writing (Letter 5 to be used.)
 - Deal with the matter informally – meet with employee to look at issues, including reminding the employee of required standards as set out at 6.21 if appropriate and confirm in writing (Letter 6 to be used.)
 - Competence issue – refer to Poor Work Performance Procedure and confirm in writing (Letter 7 to be used.)
 - Proceed to disciplinary hearing – write to the employee to confirm and follow up in writing with the papers to be used at the hearing. Allow at least **eight working days** (see paragraph 6.1) between receipt of letter and hearing date. (Letter 8 or 9 to be used.)
 - That some other action will be taken
- 4 Hearing to take place, with at least **eight working days'** notice (see paragraph 6.1) (not including the day the letter is sent out and the day of the hearing), and decision to be sent to employee within **five working days** of the hearing (see Appendix 7 and 8).
- 5 If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged or if their Representative is unable to attend, the employee can suggest another date as long as it is reasonable and not more than five working days after the date originally proposed. This five-day time limit may be extended by mutual agreement.
- 7 Employee has the right to appeal within **ten working days** (see paragraph 7.2) of the date of the letter confirming the outcome of the hearing. (Letter 10 to be used.)
- 8 Appeal to take place as soon as possible, with at least **five working days'** notice, (see paragraph 7.10) and decision to be sent to employee within **five working days** of the appeal. (Letter 11 and 12 to be used).
- 9 At each stage the relevant officer should make sure that the employee is kept informed of any delays to the above timescales.

APPENDIX 6

DISCIPLINARY PROCEDURE

Conditions that apply during suspension from work

- 1 Where an employee is suspended from work, the following conditions apply:
 - All council property, e.g. mobile phones, laptops, electrical equipment, files, name badge, keys, must be handed in to a named manager.
 - The employee should not enter any council premises without prior arrangement with the manager.
 - The employee should not contact any council employee or contractor or supplier without prior agreement from the manager.
 - The employee should not contact service users or staff of any named workplace without prior agreement from the manager.
 - The employee should be available at all times during their normal working hours to assist with the investigation and attend meetings as required .
 - If an employee is sick, the normal notification and certification requirements of the council sick pay scheme will apply.
 - If an employee wishes to apply for annual leave during a suspension this should be done through their line manager. Employees can continue to take annual leave during a suspension.
- 2 Employees can contact their trade union representative and meet with them by arrangement on council premises, if necessary. Employees should also be allowed access to information to prepare their defence.
- 3 Employees who are residents of the borough may still conduct business with the council as a resident – e.g. going to a council office to pay their council tax or take their child to school.
- 4 Failure to comply with the above conditions without permission, failure to co-operate with an investigation, impeding an investigation and the destruction and/or alteration of evidence are disciplinary offences in themselves and may render an employee liable for further disciplinary action and/or withholding of pay.

APPENDIX 7

DISCIPLINARY PROCEDURE

Procedure where the charge is admitted or criminal conviction is being considered

This procedure should be followed in cases where the allegation(s) charge is admitted or criminal conviction is being considered. See paragraph 6 in the main disciplinary procedure – Arrangements for a Formal Hearing.

1. The Presenting Officer gives a brief outline of the case.
2. The Presenting Officer gives the employee's general employment record with Islington council including, but not necessarily limited to post, length of service and any informal/formal disciplinary action on file. The Presenting Officer will be asked if there are any expired warnings relevant to the allegation(s) or any current warnings on file before a penalty is decided. The employee may challenge any of the details given.
3. The employee may make a brief statement and present mitigation (e.g. as to their personal circumstances) with reasons why a lenient penalty would be appropriate and s/he may call character witnesses (or present written statements). The Presenting Officer may question or challenge any information given.
4. The Hearing Officer and her/his adviser, if present, may question either party and/or witnesses at any time in the hearing.
5. Both parties leave the hearing.

The Hearing Officer decides the appropriate penalty (ies). **See Appendix 9** taking into account:

- The seriousness of the offence
 - The individual's disciplinary record and general service
 - Any mitigating circumstances
 - Whether the proposed penalty is reasonable in the circumstances
 - The need to ensure consistency of treatment of employees
6. Both parties are recalled or, if the employee agrees, written to and informed of the disciplinary action to be taken. All decisions are implemented with immediate effect.
 7. The employee is informed that s/he may appeal in writing to the Senior Manager within five working days of the date of receipt of the letter notifying the outcome of the hearing on the grounds set out in paragraph 7.3 of the disciplinary procedure.
 8. Following the hearing:

Written notification of the decision will be given to the employee within five working days of the hearing including the reasons for the outcome, any recommendations, action, penalty, implications and consequences of any potential future misconduct or gross misconduct, effective date of the penalty, right of appeal, any further action required and potentially the lifting of suspension (where appropriate) and return to work.

APPENDIX 8

DISCIPLINARY PROCEDURE

Procedure where the allegation(s)/charge is NOT admitted

This procedure should be followed in cases where the allegation(s)/charge (s) is NOT admitted. (See paragraph 6 in the main disciplinary procedure – Arrangements for a Formal Hearing). Witnesses may be released by the Hearing Officer in consultation with all parties after giving their evidence

- The Presenting Officer presents the case. The Presenting Officer gives evidence of the complaint and calls any witnesses.
- The employee may question the Presenting Officer and any witnesses.
- The Hearing Officer and her/his adviser, if present, may question either party and/or witnesses at any time in the hearing.
- The Presenting Officer may re-examine the witnesses on matters raised for clarity. The employee presents their defence. The employee gives evidence and calls any witnesses.
- The Presenting Officer may question the employee directly and any witnesses.
- The employee may re-examine the witnesses on matters raised for clarity. The Presenting Officer makes a closing statement, followed by the employee. No new evidence can be introduced in or after the closing statements.
- Both parties leave the hearing room.
- The Hearing Officer decides whether, on the balance of probabilities, the charges are substantiated or not.
- The Hearing Officer may recall any of the people involved in the case if any clarity is required on the basis of only the information submitted and presented but not new evidence.
- Both parties return to the hearing room and are informed of the decision. If the decision is not to uphold the complaint the hearing ends and the employee will be notified in writing within five working days of the hearing. If the decision is to uphold the complaint the hearing will proceed as follows.
- The Presenting Officer gives the employee's general employment record with Islington Council including, but not limited to post, length of service and any informal/formal disciplinary action on file. The Presenting Officer will be asked if there are any relevant expired or any current warnings on file before a penalty is decided. The employee may challenge any of the details given.
- The employee may make a brief statement and present mitigation (e.g. as to her/his personal circumstances) with reasons why a lenient penalty would be appropriate and s/he may call character witnesses (or present written statements). The Presenting Officer may question or challenge any information given.
- Both parties leave the hearing.
- The Hearing Officer decides the appropriate disciplinary penalty(ies). See **Appendix 9** taking into account:
 - The seriousness of the offence
 - The individual's disciplinary record and general service
 - Any mitigating circumstances
 - Whether the proposed penalty is reasonable in the circumstances
 - The need to ensure consistency of treatment of employees
- Both parties are recalled or, if the employee agrees, written to and informed of the disciplinary action to be taken. All decisions are implemented with immediate effect.
- Where the evidence is not conclusive then the decision will be based on the balance of probabilities taking all verbal and submitted evidence into consideration.

- The employee is informed that s/he may appeal in writing to the relevant Senior Manager within ten working days of the date of the letter notifying the outcome of the hearing, on the grounds set out in paragraph 7.3 of the disciplinary procedure.

Following the hearing:

- Written notification of the decision will be given to the employee including the reasons for the outcome, any recommendations, action, penalty, implications and consequences of any potential future misconduct or gross misconduct, effective date of the penalty, right of appeal, any further action required and potentially the lifting of suspension (where appropriate) and return to work, within five working days of the hearing.

DISCIPLINARY PROCEDURE - APPENDIX 9

List of Penalties

Below is the list of penalties that may be imposed as referred to in paragraph 6.17 of the disciplinary procedure, when they might be appropriate and the category of officers with delegated authority to impose that penalty.

Penalty	When to consider	Management Level	Duration of warning
Summary dismissal for gross misconduct.	Gross misconduct has been committed.	Senior Manager	
Dismissal with notice or payment in lieu of notice.	A final written warning is not appropriate due to the seriousness of the offence or there is a current final written warning already in place and a further minor offence is committed or there is a current ordinary warning already in place and a serious offence or series of minor offences has been committed.	Senior Manager	
<p>Final written warning combined one or more of the following:</p> <p>(i) Loss of increments within the employee's current salary scale. This would usually be one increment but the maximum would be the bottom of the scale.</p> <p>(ii) Transfer to another post on the same or equivalent grade.</p> <p>(iii) Recovery of financial loss to Islington Council.</p> <p>(iv) Withdrawal and/or removal of eligibility for of a threshold payment for employees on grades or salary level PO9 or above during the currency of a disciplinary penalty.</p> <p>(v) Revision of pay protection</p>	<p>An ordinary written warning is not appropriate due to the seriousness of the offence or there is a current ordinary warning already in place and a further minor offence has been committed.</p> <p>(ii) this is only available where there is a reason to do so arising from the matters heard at the disciplinary hearing, e.g. moving to a post not requiring cash handling and the hearing or appeal officer has checked that such a vacancy exists. If the employee refuses the transfer the hearing or appeal officer may consider that dismissal is the appropriate sanction.</p>	Hearing or Appeal Officer	1 to 3 years

(vi) Termination of an honorarium payment or market supplement.	(vi) this is only available where the additional duties are also terminated.		
Final written warning (that further proven misconduct may result in dismissal).	An ordinary written warning is not appropriate due to the seriousness of the offence or there is a current ordinary warning already in place and a further minor offence has been committed.	Hearing or Appeal Officer	1 to 3 years
Written warning (about future conduct) combined with one or more of the following: <ul style="list-style-type: none"> • Withdrawal and/or removal of eligibility for of a threshold payment for employees on grades or salary level PO9 or above during the currency of a disciplinary penalty. • Termination of an honorarium payment. 	Informal corrective action is not appropriate or has been undertaken but has not secured the required improvement in conduct.	Hearing or Appeal Officer	6 months to 3 years
Written warning (about future conduct)	Informal corrective action is not appropriate due to the seriousness of the offence or has been undertaken but has not secured the required improvement in conduct.	Hearing or Appeal Officer	6 months to 3 years

* The loss of an increment can be effected immediately i.e. the employee's salary is reduced with immediate effect. Annual incremental progression thereafter is based on the date of the hearing at which the penalty was imposed..

APPENDIX 10

DISCIPLINARY PROCEDURE

Procedure at an Appeal Hearing

Outlined below is the procedure for an appeal hearing. (See paragraph 7 of the disciplinary procedure.)

- The appeal is not a rehearing but is intended to review the decisions at the original hearing and decide whether they were reasonable in the circumstances.
- Witnesses may be called only to present new evidence with the agreement of the Appeal Officer, and may be questioned and re-examined. After giving their evidence, witnesses will be released in consultation with all parties.
- The Appeal Officer, and her/his adviser, if present, may question either party and/or witnesses at any time in the hearing.
- Where the evidence is not conclusive then the decision will be based on the balance of probabilities taking all oral and written evidence into consideration.
- The decision on the appeal is final.

- 1 The employee confirms the grounds on which s/he is appealing.
- 2 Any unresolved procedural issues are raised and considered.
- 3 The employee or her/his Representative present the reasons for her/his appeal (in exceptional cases in accordance with 7.11.1 of the procedure, with appropriate external support).
- 5 The Presenting Officer may question the employee and any witnesses.
- 6 The employee may re-examine any witnesses.
- 7 The Presenting Officer replies to the appeal and may call any witnesses (7.3.1 of the procedure).
- 8 The employee or her/his Representative and the Presenting Officer may question the management representative and any witnesses.
- 9 The Presenting Officer may re-examine any witnesses or ask any question of the management representative arising from responses to the questions asked by the employee or their Representative.
- 10 The Presenting Officer may make a final statement.
- 11 The employee or her/his Representative may make a final statement.
- 12 Both parties withdraw.
- 13 The Appeal Officer decides, depending on the grounds of appeal, whether:
 - a) the decision to find the allegations proven should be upheld; **AND, if so, whether**
 - b) the original penalty (ies) should be confirmed or a more (only on presentation of new evidence) or less severe penalty awarded; **AND in either case**
 - c) whether to make any appropriate recommendations;
- 14 The parties are recalled (or if the employee agrees, written to) and informed of the final decision including the reasons for that decision.

APPENDIX 11

DISCIPLINARY PROCEDURE

Template Letters

- DL1 Set up investigation meeting
- DL2 Suspension and set up investigation meeting
- DL3 Precautionary measures and set up investigation meeting
- DL4 Letter for witness
- DL5 Outcome of disciplinary investigation – no further action
- DL6 Outcome of disciplinary investigation –
- DL7 Outcome of disciplinary investigation –Procedure for Managing Poor Work Performance
- DL8 Outcome of disciplinary investigation – refer to disciplinary hearing
- DL9 Set up disciplinary hearing
- DL10 Outcome of disciplinary hearing
- DL11 Set up appeal hearing
- DL12 Outcome of appeal hearing
- DL13 Model Management Report.