

REPORT TO: Cabinet

MEETING DATE: 21 October 2014

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Revised Scheme of Conditions of Service for Chief Officials

1 PURPOSE

- 1.1 The purpose of this report is seek approval from Cabinet for local agreements in relation to Chief Officials following the revised national terms and conditions of employment at 1 April 2014.

2 RECOMMENDATIONS

- 2.1 Following consideration of the revised national terms and conditions of employment for Chief Officials, it is recommended that:
- application of the Local Government Employee Discipline and Grievance Policies (as amended) be extended to Chief Officials.
 - that Chief Officials retain an entitlement to 27 days annual leave.
 - the scope of local policies relating to salary preservation be extended to include Chief Officials. (Relevant Policies are the Policy and Procedure for Dealing with Redundancies and the Protocol on the Conduct of Service Reviews).

3 BACKGROUND

- 3.1 A revised Scheme of Conditions of Service for Chief Officials was circulated by COSLA at the end of March, effective from 1 April 2014 (with revised leave provisions to be effective from the start of new leave year i.e. 1 October 2014 for Chief Officials in East Lothian Council). This is attached as Appendix A.
- 3.2 The main changes to the revised national conditions of service are:

- Entitlement to permanent salary preservation where the salary is down-graded has been removed. Any future salary preservation arrangements to be determined locally.
 - Previous annual leave entitlement of 27 days reduced to 20 days, increasing to 25 days after 5 years service in line with the national Local Government Employee entitlement.
 - Introduction of Disciplinary and Capability Frameworks for Chief Executives.
 - Chief Officials entering local government after 31 March 2014 requiring 26 weeks continuous service before being entitled to occupational sick pay, in line with entitlement for Local Government employees.
 - Previous Grievance provisions and right of appeal to national level have been removed. The grievance process for Chief Officials is to replicate that for Local Government Employees. Should a Chief Executive have a grievance they should raise this with the Leader and thereafter to the Appeal Sub Committee if not resolved.
 - There is a new national Disciplinary Framework for Chief Executives with any sanctions to be applied locally in line with those that would be applied to other Chief Officials. Disciplinary Procedure for Chief Officials to replicate that for Local Government Employees.
- 3.3 The Council's Policies relating to Discipline and Grievance have had amendments drafted so that they can be applied to all Chief Officials. This has required minor adjustments to the wording which are not substantive to the Policies. The Joint Trades Unions Side Secretary and UNISON Regional Officer have been consulted and have agreed the revisions. The Joint Trades Union Side Secretary indicated that whilst the Policy states that an external Investigating Officer will be appointed if there are any allegations of misconduct made against the Chief Executive, there might also be circumstances where this would be appropriate in relation to allegations made against another Chief Official.
- 3.4 Chief Officials have also been consulted on the revisions to the Policies.
- 3.5 The new Chief Official Conditions of Service removes the previous "Clause 60" protection which provided permanent conservation to a Chief Official whose salary was down-graded.
- 3.6 COSLA circular IR/01/14 indicates that "Councils may wish to consider extending the scope of any local policy on salary preservation for employees under the purview of the SJC Scheme for Local Government Employees, to include chief officers".
- 3.7 In East Lothian Council, where a Local Government Employee is either redeployed as an alternative to redundancy, or whose post is down-graded as part of service review process, under the terms of the Policy and Procedure for Dealing with Redundancies, and the Protocol on the

Conduct of Service Reviews, would be entitled to 3 years cash conservation of salary.

- 3.8 It is proposed that the same conservation arrangements are extended to Chief Officials.
- 3.9 With regard to the national changes to annual leave for Chief Officials i.e. the reduction of annual leave entitlement from 27 days to 20 days, rising to 25 days after 5 years continuous local government service with effect from the next leave year, it is proposed that chief officials retain an entitlement to 27 days. This would be retrospectively applied with effect from 1 October 2014.
- 3.10 Whilst the Flexible Working Hours Policy is available to mainly office based/professional employees covered by the Local Government Employees Conditions of Service in East Lothian, it is not proposed to extend this to Chief Officials.

4 POLICY IMPLICATIONS

- 4.1 If the recommendations are approved they will formally incorporate National Changes to Conditions of Service and harmonise Chief Officials Terms and Conditions with those of other SJC employees in relation to Discipline and Grievance Policies and conservation arrangements. If the recommendation in relation to annual leave is approved this will form a local agreement relating to Chief Officials in East Lothian. These Policies and proposals have been made available to the affected employee group, the Joint Trade Side Secretary and UNISON Regional Officer.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 An Equality Impact Assessment has been carried out and no negative impacts have been found. Accordingly, this assessment reflects responses to the consultation and extensive discussion with stakeholders that was undertaken as part of the equality assessment process.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – There will be no additional costs to the Council.
- 6.2 Human Resources – The agreed application of Policies will be communicated directly with all Chief Officials and Policies amended accordingly and made available on ELnet.
- 6.3 Other – none.

7 BACKGROUND PAPERS

- 7.1 Discipline Procedure with changes
- 7.2 Grievance Procedure with changes
- 7.3 Equality Impact Assessment
- 7.4 New Chief Officials Scheme can be made available on request
- 7.5 Updated Policy and Procedure for Dealing with Redundancies and Protocol on the Conduct of Service Reviews can be made available on request.

AUTHOR'S NAME	Zoe Thomson
DESIGNATION	HR Business Partner
CONTACT INFO	Ext 6772
DATE	16 th September 2014

PERSONNEL SERVICES CIRCULAR

APRIL 2014

INDUSTRIAL RELATIONS: 04/14

April 2014

Dear Chief Executive

REVISED SCHEME OF SALARIES AND CONDITIONS OF SERVICE FOR CHIEF OFFICIALS

IR/01/14

1. Councils will have now received by e-mail the new SJNC Scheme of Salaries and Conditions of Service for Chief Officials. It will be known as the Chief Officials Book and is available on the COSLA Employers website.
2. The new agreement supersedes the previous one and is fully effective from 1 April 2014.
The purpose of this circular is to outline the main changes in the new agreement and the impact of these changes on chief officials as of 1 April. It also highlights matters which will need to be considered by councils as a consequence of the new agreement including the need for councils to inform chief officials of the new agreement and its effects on their contracts.

MAIN CHANGES

Preservation

3. The previous national agreement on preservation, including salary preservation, no longer applies. The only reference to preservation in the new national agreement (paragraph 5.4) enables future salary preservation arrangements, if any, to be determined locally.
4. The new agreement in effect means that anyone on salary preservation or indeed any other form of preservation as a result of application of the old national agreement should no longer receive such preservation after 31 March 2014.
5. Councils may wish to consider extending the scope of any local policy on salary preservation for employees under the purview of the SJC Scheme

for Local Government Employees, to include chief officers. Whether chief officers coming off the national preservation arrangement on 31 March are offered a further period of preservation by the adoption of such a policy would be for each council to determine.

6. If a council has not applied the terms of the previous national agreement and a locally determined preservation arrangement is in place as a result of a local agreement, then this should continue in accordance with the terms of that agreement.

Annual Leave

7. Annual leave entitlement, which was 27 days, is now harmonised with that within the SJC Scheme for Local Government Employees giving an entitlement of 20 days increasing to 25 after 5 year's service.
8. In agreeing this change it was recognised that the 20/25 day entitlement is a minimum entitlement which has been improved at a local level by many councils. The essence of the new agreement is that the entitlement which applies to SJC employees within the council should also apply to chief officials.
9. Should this mean that chief officers will see an actual reduction in their current entitlement of 27 days, it is suggested that assimilation to the reduced entitlement take effect from the start of the next annual leave year within the council.
10. If a council has not applied the terms of the previous national agreement and a locally determined annual leave arrangement is in place as a result of a local agreement, then this should continue in accordance with the terms of that agreement.
11. Discussions on this particular aspect of the national agreement also focused on flexitime arrangements within councils which apply to SJC employees but not to chief officers. In light of the changes to chief officers annual leave entitlement and from an equalities perspective it is suggested that councils which currently exclude chief officers from their flexitime arrangements give consideration to their inclusion.

Disciplinary Framework

12. The national agreement introduces a new Disciplinary Framework for chief executives (Appendix A). That framework may only be modified at a local level in regard to timescales, disciplinary sanctions, length of time warnings remain 'live' and representation, to ensure that there is consistency with that which applies within the council's disciplinary procedure which applies to other chief officers.

Capability Framework

13. The national agreement also introduces a new framework for councils to deal with any question or complaint as to the capability of the chief executive to fulfil the duties and responsibilities of the post (Appendix B).

Again that framework may only be modified at a local level, as per the Disciplinary Framework outlined above.

Sick Pay

14. Employees who start employment after 31 March 2014 will only be entitled to receive occupational sick pay if they have 26 weeks or more continuous service as defined as per paragraph 10.1 of the national agreement at the start of the period of sickness absence.

Appeals and Grievances

15. The previous provisions for local appeals and settlement of grievances no longer apply and there is no longer any right of appeal at a national level. The agreement indicates the route by which a chief executive should pursue a grievance within a council. The procedure to be followed by a council should as far as possible replicate the arrangements for other chief officers.

Other Conditions

16. The above outlines the main changes arising from the new agreement. It is suggested that councils undertake an audit of the old national agreement to determine whether there are any other conditions which they have applied to their chief executive and other chief officers and which are now withdrawn from the national agreement.

Incorporation

17. It is understood that all councils have a policy to automatically adopt national agreements i.e., this is reflected in the contracts/written statement of particulars of employees. Accordingly no decision of the council is required to adopt the new national agreement and the national agreement will have effect from 1 April 2014. Councils may however wish to give consideration to the issues raised in relation to salary preservation and annual leave which in turn may require council decision.

Notification

18. Councils should advise chief officers of the new agreement and its effects on their contracts. It would not be feasible to outline all the changes resulting from the new agreement but councils may wish to make reference to the main issues – preservation and annual leave and in addition for the chief executive, the Disciplinary and Capability Frameworks. Councils should also make a copy of the Chief Officials Book available to the chief executive and other chief officers.
19. The new agreement will automatically apply to any employee appointed on or after 1 April 2014.
20. Any question on the terms of this circular should be directed to the Employers Team, COSLA.

Yours sincerely

Tom Young
Employers Side Secretary

To: Chief Executives
Heads of Personnel
Directors of Finance

DISCIPLINARY PROCEDURE

(COLLECTIVE AGREEMENT COVERING ALL EMPLOYEES EXCEPT TEACHING STAFF AND THOSE COVERED BY THE SNCT CONDITIONS OF SERVICE)

SECTION

- | | |
|-----------|--|
| 1 | INTRODUCTION |
| 2 | COUNSELLING |
| 3 | DISCIPLINARY PROCEDURE – GENERAL |
| 4 | VERBAL WARNINGS |
| 5 | WRITTEN WARNINGS |
| 6 | FINAL WRITTEN WARNINGS |
| 7 | PUNITIVE DISCIPLINARY ACTION |
| 8 | GROSS MISCONDUCT |
| 9 | FINANCIAL IRREGULARITIES |
| 10 | CRIMINAL OFFENCES |
| 11 | APPEALS AGAINST DISCIPLINARY ACTION |
| 12 | EXPIRY OF WARNINGS |
| 13 | MEDIATION |
| 14 | TRADES UNION OFFICIALS |
| 15 | TIME LIMITS |
| 16 | REFERRAL TO PROFESSIONAL BODIES |
| 17 | REFERRAL TO DISQUALIFIED FROM WORKING WITH
CHILDREN/AND OR VULNERABLE ADULTS L1ST |
| | APPENDIX A : CHIEF EXECUTIVE’S DISCIPLINARY FRAMEWORK |
| | APPENDIX B :APPEALS PROCEDURE |

This Procedure replaces the previous version dated Sept 2013. Changes to take account of revisions to National Conditions of Service for Chief Officials. To be agreed at Cabinet 21st October 2014.

Revised
October
2014

Disciplinary Procedure

EAST LOTHIAN COUNCIL DISCIPLINARY PROCEDURE

COLLECTIVE AGREEMENT COVERING ALL EMPLOYEES EXCEPT TEACHING STAFF AND THOSE COVERED BY THE SNCT CONDITIONS OF SERVICE

1. INTRODUCTION

- 1.1 The Council and the Trades Unions agree that discipline is essential for the conduct of the Council's affairs and for the safety and well-being of all employees. It is further agreed that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of employee relations.
- 1.2 This procedure takes full account of the provisions contained within the various Schemes of Pay and Conditions of Service as applied to employees of the Council. The procedure also reflects the guidance contained within the ACAS Code of Practice on Disciplinary Practice and Procedures in Employment.
- 1.3 Within the limitation of powers delegated by the Council, the Chief Officials shall be responsible for the management and discipline of employees.. The Chief Officials may delegate authority within the terms of this procedure to Nominated Officers who may issue verbal or written warnings or take punitive disciplinary action as defined in paragraphs 7.1 to 7.5 of this procedure. A list of Officers so authorised is attached at Appendix B.
- 1.4 Where an allegation of misconduct is made against the Chief Executive the Disciplinary Framework detailed at Appendix A will be followed. Where the Disciplinary Framework is silent, the relevant procedures as outlined below, will also be applicable to the disciplinary proceedings relating to the Chief Executive.

2. COUNSELLING

- 2.1 It is accepted by the Council and the Trades Unions that this procedure should be viewed as a means of encouraging an improvement in an individual's conduct or performance and not as merely a method of applying sanctions. It is further accepted that supervisors play an important role in the day-to-day management of employees and should seek to deal with minor lapses in conduct or performance through informal counselling in the first instance
- 2.2 Counselling should normally be a one-to-one discussion between an employee and his /her supervisor. During counselling the supervisor should discuss with the employee the required standards, the manner in which the employee has failed to meet those standards and the possible reasons for that failure. The supervisor should indicate clearly to the employee the improvement required and should consider taking other action which might assist the employee to achieve this improvement e.g. closer supervision, additional training etc. Counselling does not form part of the formal disciplinary procedure and therefore no formal warnings can be given.
- 2.3 No record of counselling interviews will be kept on the employee's personal file. The supervisor shall however make a personal record showing the date of and

reason(s) for the counselling interview and shall inform the employee accordingly.

- 2.4 Where counselling 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.

3. DISCIPLINARY PROCEDURE – GENERAL

Whenever formal disciplinary action is being contemplated the points of procedure set down in paragraphs 3.1 to 3.5 shall be adhered to.

Investigation

- 3.1 A disciplinary hearing shall not be convened until the circumstances of the case have been fully investigated. All investigations will be completed as soon as is reasonably practicable, with due regard to the matters being investigated and service requirements. When the investigation has been completed the employee shall be advised accordingly.
- 3.2 Where an allegation of misconduct has been made against a Chief Official, an external investigating officer may be appointed.
- 3.3 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.
- 3.4 If following investigations, a disciplinary hearing is deemed to be unjustified, any written statements obtained and any other documents relating to the investigation shall, subject to below, be destroyed.
- 3.5 Where the investigations concern matters relating to the safety and well-being of young and /or vulnerable people in receipt of Council Services, or where the nature of the alleged misconduct, in combination with the employee's current post [and foreseeable future employment] causes such concern it is decided that the contents should be available for future consideration the documents shall be retained.. The documents shall be available for inspection by the employee who may add a personal note to the record.
- 3.6 If there is a further disciplinary investigation relating to the employee, the documents referred to in paragraph 3.4 above shall be examined and may be taken into account to the extent required by the circumstances of the case. Where an unsubstantiated allegation is taken into account in any disciplinary decision, the written notification shall indicate this fact and the reasons for doing so.

Arranging a Disciplinary Hearing

- 3.7 If, following investigations, a disciplinary hearing is deemed necessary, the employee concerned shall be given at least five working days notice in writing of the hearing and shall also be informed in the same letter of:-
- a) the fact that it will be a formal disciplinary hearing;

- b) the nature of the complaint(s) with copies of all of the documentation to be presented at the hearing;
 - c) the name(s) of any witness(es) who will present evidence at the hearing;
 - d) 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 Officer conducting the hearing; and
 - e) the right to be accompanied /represented at the hearing by a trade union official or some other person of his /her choice.
- 3.8 Documentation not submitted in accordance with above may only be presented at the hearing with the agreement of the employee and the Officer conducting the hearing otherwise the hearing shall be adjourned and reconvened for a later date.
- 3.9 Copies of any written statements made by individuals who are not available to give evidence in person at the disciplinary hearing shall normally be enclosed with the letter referred to in paragraph above. Where this is not possible, the written statements shall normally be made available with the letter of notification of the hearing.

Conducting a Disciplinary Hearing

- 3.10 As far as possible, the Officer who conducted the investigation shall not also conduct the disciplinary hearing.
- 3.11 The Officer conducting the hearing shall ensure that the facts gathered during the investigation are presented to the employee. These facts may be presented by the Officer who conducted the investigation and, if so, this Officer shall remain in attendance at the hearing until the presentation of evidence is completed. The Officer conducting the hearing may be advised by another Council employee(s) or by an Officer of the Human Resources Division.
- 3.12 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.
- 3.13 The employee, assisted by his /her representative, if any, shall be given adequate opportunity to put forward an explanation and /or defence.
- 3.14 The Officer conducting the hearing, assisted by any advisory staff, 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

- 3.15 Except in the case of verbal warnings, any disciplinary action shall be notified or confirmed in writing within five working days of the hearing and the letter notifying or confirming such action shall be handed to the employee personally or sent by recorded delivery.
- 3.16 A copy of this letter shall be sent to the employee's representative, if any.

- 3.17 If, following a disciplinary hearing, the Nominated Officer considers that no formal disciplinary action is justified, he /she shall inform the employee accordingly and in these circumstances no documents relating to the hearing shall be placed on the employee's personal file.

4. VERBAL WARNINGS

- 4.1 In the case of a minor offence relating to an employee's conduct or performance the appropriate Nominated Officer shall give a verbal warning to the employee and inform him /her that this warning constitutes the first stage in the formal procedure. The employee shall be informed of the reason(s) for the warning and of the likely consequences of further offence(s). The employee shall be informed of the date from which the warning will normally be disregarded for disciplinary purposes, if no future disciplinary action is taken and the right of appeal against the verbal warning.
- 4.2 The Nominated Officer shall make a written record of the verbal warning. A copy of this record shall be placed on the employee's personal file and a further copy given to the employee with the date that this warning shall be disregarded for disciplinary purposes.

5. WRITTEN WARNINGS

- 5.1 A written warning may be issued: -
- a) where an employee who has been issued with a verbal warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs, or
 - b) where the misconduct or failure in performance is considered to be sufficiently serious to warrant this form of disciplinary action.
- 5.2 A letter of formal warning shall be issued in the name of the Officer who conducted the disciplinary hearing and shall state: -
- a) that a formal written warning is being given;
 - b) the nature of the unsatisfactory matter(s) dealt with at the hearing;
 - c) the date of any previous verbal warning where appropriate;
 - d) the action required by the employee to remedy the matter;
 - e) that subsequent failure(s) in conduct or performance will normally result in more serious disciplinary action;
 - f) that a copy of the warning letter will be placed on the employee personal file;
 - g) the date from which the warning will normally be disregarded for disciplinary purposes ;

- h) the employee's right of appeal.

6. FINAL WRITTEN WARNINGS

6.1 A final written warning may be issued: -

- a) where an employee who has been issued with a written warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs; or
- b) where the misconduct or failure in performance is of a serious nature warranting this form of disciplinary action.

6.2 A letter of final warning shall be issued in the name of the Officer who conducted the disciplinary hearing. The letter shall contain all the information described in paragraph 5.2 and in particular shall state that any subsequent failure in conduct or performance will normally result in dismissal.

7. PUNITIVE DISCIPLINARY ACTION

7.1 Punitive disciplinary action may be taken where: -

- a) following a final warning, the employee fails to achieve and maintain the required improvement in conduct or performance or a further act or omission warranting disciplinary action occurs; or
- b) a failure in conduct or performance occurs of a sufficiently serious nature to justify such disciplinary action without prior warning(s).

7.2 Punitive disciplinary action refers to any of the following sanctions: -

- a) the withholding of an annual increment in conjunction with a final written warning;
- b) suspension without pay for a period normally not exceeding three working days, in conjunction with a final written warning;
- c) demotion and /or transfer to another job, place of work or department, in conjunction with a final written warning;
- d) dismissal with due notice; or
- e) summary dismissal i.e. dismissal without notice, only in cases of gross misconduct.

7.3 Where the possibility of punitive disciplinary action arises, the relevant Chief Officer or another Senior Nominated Officer shall hold a disciplinary hearing with the employee concerned. The hearing shall be convened and conducted in accordance with the procedure set down in paragraphs 3.6 to 3.13 following consultation with the Service Manager – HR and Payroll. The Service Manager - HR and Payroll shall attend or be represented at the hearing in an advisory capacity.

- 7.4 Where punitive disciplinary action is taken the decision of the Officer who conducted the disciplinary hearing shall be notified or confirmed in writing by the Head of Council Resources and the letter shall: -
- a) refer to previous warnings, if appropriate;
 - b) state clearly the punitive disciplinary action taken and the effective date;
 - c) specify the reason(s) for this action;
 - d) refer to the employee's right to appeal to the Appeals Sub-Committee of the Cabinet Committee and indicate the date by which notice of appeal should be received.
- 7.5 In the case of dismissals, the Elected Member Spokesperson for the appropriate Service Area shall be informed of the action taken.

8. GROSS MISCONDUCT

- 8.1 Under this disciplinary procedure an employee shall normally be given a final written warning regarding his /her conduct or performance before dismissal is contemplated. It is recognised however that an employee may be dismissed without previous warning where gross misconduct is deemed to have occurred.
- 8.2 For the purpose of this procedure, gross misconduct is behaviour of such a nature that the Council is unable to tolerate the continued employment of the individual concerned.
- 8.3 Where gross misconduct is alleged, the Chief Officer or another Senior Nominated Officer, in consultation with the Service Manager - Human Resources and Payroll (or nominee), may suspend the employee on full pay: -
- a) pending further investigations into the circumstances of the case, and /or
 - b) when it is considered to be undesirable for the employee to remain at work prior to the disciplinary hearing.
 - c) Written confirmation of the suspension shall be forwarded to the employee by recorded delivery within five working days and shall state the reason(s) for the suspension. Suspension in these circumstances shall not be regarded as a form of disciplinary action.
- 8.4 An employee suspended in the circumstances described in paragraph shall receive full pay during the period of suspension. For this purpose full pay shall consist of an employee's normal salary or wage, including elements such as shift allowances, unsocial hour's premia and contractual overtime where appropriate.
- 8.5 In certain circumstances [e.g. where an incident occurs on a nightshift or in an isolated location] it may be necessary for a supervisor who has not been delegated formal powers of suspension to effectively suspend an employee on full pay by sending the employee home or removing him /her from duty without consulting an authorised Senior Nominated Officer. In such circumstances the

Chief Officer or another Senior Nominated Officer shall be informed as soon as possible and shall consult the Service Manager – Human Resources and Payroll(or nominee) before deciding whether or not to formally suspend the employee concerned on full pay.

9. FINANCIAL IRREGULARITIES

9.1 Senior Officers are responsible for dealing promptly with any financial irregularities, through normal disciplinary processes when employees are involved. In cases of exceptional complexity, Internal Audit may be able to assist in the investigation. A financial irregularity is something a council employee has done in their work which either leads to a financial loss for the Council which should have been avoided and/ or a gain for the employee which they should not have taken. Following an investigation the Chief Executive/Depute Chief Executive (or their designated representative) may consider the available evidence sufficient to justify consideration under the Disciplinary Procedure.

The relevant Chief Officer or another Senior Nominated Officer may suspend the employee on full pay in accordance with paragraph 8.3.

10. CRIMINAL OFFENCES

10.1 An employee shall not be disciplined solely because he /she has been charged with or convicted of a criminal offence. In all such cases consideration shall be given to whether the alleged or proven offence is of a serious nature and the relevance of the offence to the employment relationship between the Council and the employee.

10.2 In all cases where disciplinary action is being contemplated due to an alleged or proven criminal offence, the matter shall be investigated by Officers of the Council as thoroughly as the circumstances and advice from the police.

10.3 Following investigations, the Chief Officer or another Senior Nominated Officer may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.

10.4 Where investigations reveal insufficient information to justify holding a disciplinary hearing, consideration of the case shall be deferred until further information is available. In these circumstances the employee may be suspended on full pay until further notice.

10.5 If it is discovered that an employee has failed to disclose a criminal conviction where such disclosure is required, the matter may be dealt with under the terms of this disciplinary procedure.

10.6 Where there is clear evidence of criminal activity the Police should be notified. Agreement should then be reached with the Police as to whether the Council can undertake a disciplinary investigation including interviewing the employee who the allegation has been made against, or whether the internal investigation needs to put on hold to avoid the potential for tainting the evidence trail for the police.

11. APPEALS AGAINST DISCIPLINARY ACTION

Appeals Against Warnings

- 11.1 Appeals against warnings, verbal or written, may be made to the relevant Chief Officer and shall be submitted in writing, indicating the grounds of the appeal, within ten working days of the employee receiving confirmation of the warning. An employee shall have the separate right of appeal against a decision that a warning will never be disregarded for disciplinary purposes.
- 11.2 Appeals against warnings shall be heard as soon as possible and normally within ten working days of receiving the written notice of appeal.
- 11.3 Appeals against warnings shall be heard by the Chief Officer or a nominated officer who is more senior than the Manager who issued the original warning. In the case of appeals against final warnings, the appeal shall be heard personally by the relevant Chief Officer. The employee shall be given at least five working days notice in writing of the appeal hearing and shall be informed of his /her right to be accompanied at the hearing by a trades union official or some other person of his /her choice. (The appeal hearing shall be conducted in accordance with the procedural rules governing the operation of the Appeals Sub-Committee, appropriately adapted for the purpose, contained in paragraphs 5.1 to 6.15 of Appendix B to the procedure.)
- 11.4 The Officer hearing the appeal may confirm, amend or withdraw the disciplinary action but may not substitute it for disciplinary action of a more severe nature.
- 11.5 The decision shall, if possible, be made known to the employee at the end of the appeal hearing and shall in any case be confirmed in writing within five working days. There shall be no further right of appeal.
- 11.6 Where, in exceptional circumstances, a warning is issued by a Depute Chief Executive in person, any appeal shall be heard by the Chief Executive or representative. If a warning is issued by the Chief Executive, any appeal will be heard by the Appeals Sub Committee.

Appeals Against Dismissal and Punitive Disciplinary Action

- 11.7 Appeals against dismissal and punitive disciplinary action will be heard by The Appeals Sub-Committee of the Council. Appeals should be made, in writing to the Head of Council Resources, East Lothian Council, John Muir House, Haddington within 10 working days of the receipt of the Dismissal or warning letter. In all cases the date by which the Head of Council Resources should receive notice of an appeal shall be included in the written notification.
- 11.8 The Head of Council Resources shall arrange for the appeal to be considered by the Appeals Sub-Committee of the Cabinet within twenty working days of receipt of the letter of appeal or as soon as possible thereafter. The appeal shall be heard in accordance with the procedure set out in Appendix B to this procedure.

11.9 The Appeals Sub-Committee of the Cabinet may confirm, amend or withdraw the disciplinary action but may not substitute it for disciplinary action of a more severe nature.

Effect of Appeals on Disciplinary Record

11.10 If as a result of an appeal, any disciplinary action is withdrawn or modified, any written reference thereto on the employee's personal file shall be expunged or appropriately amended and the employee and his /her representative, if any, notified accordingly.

11.11 Employees will have a right of access to their personal file to ensure the written reference has been removed or appropriately amended.

12. EXPIRY OF WARNINGS

12.1 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 shall be as follows: -

Verbal warnings	-	to be disregarded after six months
Written warnings	-	to be disregarded after nine months
Final written warnings	-	to be disregarded after twelve months

Punitive disciplinary Action short of Dismissal in conjunction

With a final warning	-	to be disregarded after eighteen months
----------------------	---	---

12.2 A decision not to disregard a warning for disciplinary purposes may be taken where an employee's persistent misconduct warrants such action. The employee shall have the separate right of appeal against such a decision not to disregard a warning.

12.3 A warning will not be disregarded when the misconduct for which the warning was issued related to the safety and well being of young and /or vulnerable people in receipt of Council Services from the Council unless a specific decision was made at the time disciplinary action was taken that the warning would be disregarded for disciplinary purposes.

13. MEDIATION

Mediation can be applied in the following situations: –

13.1 Informal Resolution process - where a Manager considers that formal disciplinary action is not appropriate and a mediator may help resolve any remaining issues.

13.2 Formal Resolution process- where formal Disciplinary warnings/ sanctions have been in taken, and relationships have broken down as a consequence, a mediator may be able to assist helping the parties involved to rebuild working relationships.

- 13.3 Any request for mediation should be made initially to the appropriate Operational Human Resource Adviser for that area.

14. TRADES UNION OFFICIALS

- 14.1 A disciplinary hearing involving an employee who is an accredited Trades Union representative shall not be convened until the circumstances have been discussed with a full-time official of the Trades Union concerned. Where the possibility of disciplinary action against a Trades Union representative arises, the Service Manager - Human Resources and Payroll shall be consulted at the earliest opportunity.
- 14.2 Where gross misconduct is alleged of an accredited Trades Union representative, the employee may be suspended on full pay after consultation with the Service Manager – Human Resources and Payroll. A full-time official of the Trades Union concerned shall be informed of this action as soon as possible and written confirmation of the suspension shall be sent to the Trades Union within five working days. A copy of this letter shall be forwarded to the Service Manager - Human Resources and Payroll.

15. TIME LIMITS

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

16. REFERRAL TO PROFESSIONAL BODIES

The Regulation of Care (Scotland) Act 2001 requires the Scottish Social Services Council to be notified, immediately, in writing of any misconduct cases involving employees who are required to register with this body. In the following circumstances:

Where an employee is dismissed.

Where an employee resigns during a disciplinary investigation/ hearing.

Where a worker is suspended pending the outcome of a disciplinary investigation/ hearing

Where East Lothian Council becomes aware of a conviction against an employee

Any other circumstances which East Lothian Council feels may have a bearing on the employee's registration with the Scottish Social Services Council.

17. REFERRAL TO DISQUALIFIED FROM WORKING WITH CHILDREN AND/OR VULNERABLE ADULTS LISTS.

The Protection of Children (Scotland) Act 2003 places a legal obligation on the Council to refer to Scottish Ministers any individual working in child care or with vulnerable adults, either paid or unpaid who: harms a child or puts a child/vulnerable adult at risk of harm and is dismissed or moved away from access to children as a consequence, or harms a child or puts a child at risk of harm, if they would have been dismissed had they not resigned, retired, been made redundant or left at the end of a temporary contract.

Chief Executive's Disciplinary Framework

1. When faced with an allegation(s) of misconduct against the Chief Executive, initial consideration will be given to the allegation(s) to determine whether the matter should be formally investigated and whether suspension is appropriate.

The allegation(s) will initially be discussed between an appropriate senior officer(s) e.g. the Service Manager – HR & Payroll and/or the monitoring officer and the Leader of the council.

The Leader will appoint an Assessment Group. 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. Members of the group will not participate in the remaining stages of the 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 Service Manager – HR & Payroll will be available to assist the group.

The Service Manager – HR & Payroll will verbally make the Chief Executive aware of the allegation(s) and that an Assessment Group is being called to consider the matter. The Chief Executive may wish to make initial observations to the Service Manager – HR & Payroll. If agreed with the Chief Executive the Service Manager – HR & Payroll will share these with the Assessment Group.

The Assessment Group will be advised of the allegation(s) against the Chief Executive, and if previously agreed, initial observations from the Chief Executive. It is unlikely that much detail will be known, but in any event, the purpose of the group 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 Group will also, depending on the nature of the allegation(s), consider whether suspension, which must be on full pay, is appropriate.

A note of the meeting and decision will be taken.

The decision of the Assessment Group will be communicated in writing to the Chief Executive.

2. Should the matter proceed to formal investigation, an Investigating Officer will be appointed to conduct a formal investigation into the allegation(s).

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.

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.

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 discuss, and 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).

At the conclusion of the investigation, the Investigating Officer will prepare a report for the Assessment Group 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.

The Assessment Group will be reconvened to consider the report from the Investigating Officer.

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.

The Chief Executive will be advised in writing of the decision of the Assessment Group 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.

Where the Assessment Group decision is that no further action is necessary, no record of the allegation(s) will be entered on the Chief Executive's personal file.

3. Should the Assessment Group consider that the matter should proceed to a disciplinary hearing, a Hearing Committee will be set up and formal notification issued to the chief executive of the hearing.

The Hearing Committee will exclude members of the Assessment Group and, as far as is practicable, be made up of a cross party group of Elected Members representing the political balance of the Council.

The Service Manager – HR & Payroll will advise the Committee. A record of the meeting and decision reached will be taken.

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 Committee will refer to the report from the Investigating Officer and advise of any witnesses that may be called. The letter will also advise the Chief Executive of their right to be represented at the hearing

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.

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: 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 Group will present their case.
- Members of the Hearing Committee and the Chief Executive (or their representative) will have the opportunity to question the Assessment Group representative and any witnesses called.
- The Chief Executive (or their representative) will present their case.
- Members of the Hearing Committee and the Assessment Group representative will have the opportunity to question the Chief Executive (or representative) and any witnesses called.
- The representative of the Assessment Group 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 to whom the Chief Executive can appeal the decision of the Hearing Committee, should they wish to do so, together with the associated timescale.

Sanctions: 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.

In the case of a first offence, other than for gross misconduct, the sanction should normally be a written or final written warning. 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. 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.

Notwithstanding the above, the disciplinary action taken will be in line with the sanctions contained within the Council's disciplinary procedure for all other Chief Officers.

Similarly, examples of what constitutes gross misconduct will be as per the disciplinary procedure for other Chief Officers.

Should the allegation(s) be found to be not substantiated and no disciplinary action taken no record of the allegation(s) will be entered on the Chief Executive's personal file.

4. Should the Chief Executive appeal the decision of the Hearing Committee, a meeting of the Appeal Sub Committee will be arranged to consider the appeal.

The Appeal Sub 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.

The Service Manager – HR & Payroll will advise the Committee. A record of the meeting and decision reached will be taken.

The Appeal Sub Committee will ideally be held within 20 working days of receipt of the appeal.

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.

The conduct of the Appeal Hearing will follow that of the Disciplinary Hearing, however it will be for the Chief Executive (or representative) as appellant to present their case first and be allowed to summarise their case last.

It is the responsibility of Appeal Sub Committee to determine whether the appeal from the Chief Executive should be upheld, upheld in part or dismissed. If upheld in part the Appeal Sub Committee must also determine the impact of this decision on any sanction implemented by the Hearing Committee.

The convener of the Appeal Sub Committee will advise the Chief Executive of the decision of the Appeal Sub 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.

Please Note: Elected members and professional advisers 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.

EAST LoTHIAN COUNCIL

APPEALS SUB-COMMITTEE

PROCEDURE FOR CONSIDERATION OF APPEALS AGAINST DISCIPLINARY ACTION

1 TERMS OF REFERENCE

- 1.1 The Appeals Sub-Committee shall be convened to hear an appeal against a decision to dismiss or take other forms of punitive disciplinary action as defined in paragraph 7.2 of the disciplinary procedure.
- 1.2 The Appeals Sub-Committee shall have delegated power from the Cabinet to decide appeals and shall be the Council's final arbiter on such matters.

2 CONDITIONS RELATING TO AN APPEAL

- 2.1 For the Appeals Sub-Committee to be convened notice of appeal against disciplinary action must be lodged with the Head of Council Resources within ten working days of the appellant receiving written notification of the decision arising out of the disciplinary hearing.
- 2.2 The notice of appeal, which must be in writing, may be lodged by the appellant or his /her trade union or by some other person of the appellant's choice acting as a representative.
- 2.3 The appellant and his /her representative, if any, will be given a minimum of ten working days notice in writing of the date, time and place of the appeal hearing.

3 MEMBERSHIP OF THE APPEALS SUB-COMMITTEE

- 3.1 The Appeals Sub-Committee shall be a Standing Sub-Committee of the Cabinet and shall comprise:
 - The Council Leader
 - The Provost
 - The Depute Provost
 - Leader of the Opposition
 - Cabinet member of relevant area
- 3.2 Where, for any other reason, a vacancy or vacancies exist in the membership of the Sub-Committee at any meeting that vacancy or those vacancies may be filled for that meeting by the substitution of another member or other members of the Council from within the same political group.
- 3.3 Where a meeting of the Appeals Sub-Committee is adjourned for any reason, the provision in paragraph 3.2 above concerning substitutes shall not apply and

only those members in attendance at the original hearing shall be eligible to attend the reconvened hearing.

- 3.4 Three members shall form a quorum at meetings of the Appeals Sub-Committee.

4 REPRESENTATION AND ATTENDANCE OF OFFICERS

- 4.1 The relevant Chief Officer or other appropriate Senior Officer (s) shall act as the Council's representative(s) at the appeal hearing.
- 4.2 The appellant shall have the right to be represented at the appeal hearing by a Trade Union official or officials or by some other person(s) of his /her choice.
- 4.3 The Service Manager Legal and Procurement or representative shall act as advisor to the Appeals Sub-Committee.
- 4.4 The Committees Officer or representative shall act as clerk to the Appeals Sub-Committee.
- 4.5 The Service Manager - Human Resources and Payroll or representative shall act as advisor to the Appeals Sub-Committee.
- 4.6 If an appeal hearing is adjourned, all parties involved shall ensure that, other than in exceptional circumstances, the original representatives attend the reconvened hearing for continuity purposes.

5 PROCEDURE PRIOR TO APPEAL HEARING

- 5.1 Following submission of a written notice of appeal, the appellant or his /her representative shall submit to the Head of Council Resources: -
- (a) a written statement indicating the grounds of the appeal;
 - (b) copies of any written statements made by witnesses for the appellant which were considered at the original disciplinary hearing;
 - (c) a copy of any other document(s) to be placed before the Appeals Sub-Committee; and
 - (d) the name(s) of any witness(es) to be called to give evidence on behalf of the appellant.
- 5.2 The relevant Chief Officer or nominated Senior Officer shall submit to the Head of Council Resources: -
- (a) a written statement of case against the appellant;
 - (b) copies of any written statements made by witnesses for the Council which were considered at the original disciplinary hearing;
 - (c) a copy of any other document(s) to be placed before the Appeals Sub-Committee; and

(d) the name(s) of any witness(es) to be called to give evidence on behalf of the Council.

5.3 The Head of Council Resources shall issue the agenda for the meeting of the Appeals Sub-Committee, which shall contain all the documents submitted under paragraphs 5.1, 5.2, not less than five working days in advance of the appeal hearing.

5.4 The Appeals Sub-Committee may order such other information and /or documents to be submitted, as it may consider appropriate.

6 PROCEDURE TO BE FOLLOWED AT APPEAL HEARING

6.1 Witnesses shall be excluded until called unless it is agreed that they should be present from the start of the hearing.

6.2 The Council's representative(s) shall put the case, in the presence of the appellant and his /her representative(s), and may call witnesses.

6.3 The appellant or his /her representative(s) shall have the opportunity to ask questions of the Council's representative(s) and witnesses.

6.4 The members of the Appeals Sub-Committee shall have the opportunity to ask questions of the Council's representative(s) and witnesses.

6.5 The Council's representative(s) shall have the opportunity to re-examine witnesses on any matter referred to in their questioning by members of the Appeals Sub-Committee, the appellant or his /her representative(s).

6.6 The appellant or his /her representative(s) shall put the case in the presence of the Council's representative(s) and may call witnesses.

6.7 The Council's representative(s) shall have the opportunity to ask questions of the appellant, his /her representative(s) and witnesses.

6.8 The members of the Appeals Sub-Committee shall have the opportunity to ask questions of the appellant, his /her representative(s) and witnesses.

6.9 The appellant or his /her representative(s) shall have the opportunity to re-examine witnesses on any matters referred to in their questioning by the members of the Appeals Sub-Committee or the Council's representative(s).

6.10 Firstly, the Council's representative(s) and then the appellant or his /her representative(s) shall have the opportunity to sum up their cases if they so wish. The summing up shall not introduce any new matter.

6.11 If at any stage new facts are alleged or new evidence produced, the Appeals Sub-Committee, either at the request of one or both parties or of its own volition, may adjourn the hearing for such period as it may deem reasonable.

6.12 At the conclusion of the evidence the Council's representative(s), the appellant and his /her representative(s) and any witnesses shall withdraw.

- 6.13 The Appeals Sub-Committee, together with the Officers appointed to assist the Sub-Committee, shall deliberate in private, only recalling the Council's representative(s) and the appellant and his /her representative(s) to clarify points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
- 6.14 The Appeals Sub-Committee shall, if practicable, announce its decision to the parties at the conclusion of the hearing. In any event, the decision shall be notified, in writing, to the appellant and his /her representative(s) by the Chief Executive within five working days of the date of the hearing.
- 6.15 The Appeals Sub Committee shall record reasons for their decision. These reasons shall be notified to the Appellant and his representative(s) at the same time as written notification is given of the decision of the Appeals Sub Committee. The reasons and the written notification shall be copied to the appropriate Chief Officer.

7 POWERS OF THE APPEALS SUB-COMMITTEE IN DISCIPLINARY CASES

- 7.1 The form of the decision of the Appeals Sub-Committee shall be announced and confirmed in one of the following, as appropriate: -
- "that the grounds of the appeal have been substantiated and the appeal be upheld"
 - "that the grounds of the appeal have been substantiated in part and the appeal be upheld to the extent that"
 - "that the grounds of the appeal have not been substantiated and the appeal be not upheld".
- 7.2 If the appeal is upheld, the disciplinary action shall be withdrawn and any monies due to the appellant shall be payable in full. Where the appeal was against a decision to dismiss, the appellant shall be reinstated to his /her former post or, exceptionally, if this is not practicable, to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant.
- 7.3 If the appeal is substantiated in part, the disciplinary action shall be withdrawn and an alternative, less serious form of disciplinary action substituted. Where the appeal was against a decision to dismiss, the appellant shall be either: -
- (a) reinstated to his /her former post or a similar post on no less favourable terms except that a lesser disciplinary penalty shall apply; or
 - (b) re-engaged in some other post on terms and conditions which may be determined by the Appeals Sub-Committee.
- 7.4 If the appeal is not upheld, the disciplinary action shall stand and be regarded as confirmed or some other form of disciplinary action taken as decided by the

Appeals Sub-Committee, but may not substitute it for disciplinary action of a more serious nature.

7.5 Where the appeal is against a dismissal and that appeal is not upheld, the Appeals Sub-Committee may decide that the appellant shall be offered re-employment with the Council on such terms and conditions as the Appeals Sub-Committee may determine.

7.6 For the purpose of paragraphs above the terms "reinstatement", "re-engagement" and "offer of re-employment" shall be defined as follows: -

- (a) "reinstatement" is the restoration of the contract of employment between the appellant and the Council as if the dismissal had never taken place. Thus, the outstanding salary /wages for the period the contract ceased to operate shall be payable in full unless the Council impose an alternative disciplinary penalty of a financial nature i.e. a period of suspension without pay or the withholding of an annual increment. In addition, all rights arising out of continuous employment shall be restored as necessary to ensure reinstatement is without detriment;
- (b) "re-engagement" is the engagement of the appellant to another post and /or in another location with effect from the date of dismissal on terms and conditions which may be less favourable than those of the appellant's former post e.g. demotion to a lower graded post. Thus, salary /wages for the period since the dismissal took effect may be payable in accordance with the terms and conditions of re-engagement determined by the Appeals Sub-Committee. In addition, all rights arising out of continuous employment shall be restored; and
- (c) "an offer of re-employment" is an offer to employ the appellant under a new contract of employment from a future date which may be determined by the Appeals Sub-Committee. The post, its grade, location and other terms and conditions of employment may also be determined by the Appeals Sub-Committee. If an offer of re-employment on the specified terms is accepted, the appellant's continuity of service shall be regarded as broken and continuous employment shall be calculated for future purposes from the date re-employment takes effect.

8 REPORTING TO CABINET

The decision of the Appeals Sub-Committee shall be reported to the Cabinet at the earliest opportunity.

9 TIME LIMITS

The time limits in this procedure may be varied by mutual agreement.

**Disciplinary Procedure
(covering all employees other than those covered by the SNCT provisions for
Teaching Staff)**

Designation of Officers and Levels of Disciplinary Action

Level of Action	Officer Responsible
Counselling	Supervisor Team Leader Team Manager Service Manager Chief Officer
Verbal Warning	Supervisor Team Leader Team Manager Service Manager Chief Officer
Written Warning	Supervisor Team Leader Team Manager Service Manager Chief Officer
Final Written Warning	Chief Officer or Nominated Senior Officer
Punitive Action Including Dismissal	Chief Officer or Nominated Senior Officer

Any disciplinary action being taken against the Chief Executive will be carried out in accordance with the Chief Executive's Disciplinary Framework set out at Appendix A

PROCEDURE FOR HEARING EMPLOYEE GRIEVANCES

**COLLECTIVE AGREEMENT COVERING ALL EMPLOYEES EXCEPT TEACHING
STAFF AND THOSE COVERED BY THE SNCT CONDITIONS OF SERVICE**

CONTENTS

- 1 INTRODUCTION**
 - 2 SCOPE OF PROCEDURE**
 - 3 INFORMAL GRIEVANCE RESOLUTION**
 - 4 GRIEVANCE PROCEDURE – GENERAL**
 - 5 STAGE 1 HEARING**
 - 6 STAGE 2 HEARING**
 - 7 FURTHER INVESTIGATION REQUIRED**
 - 8 MEDIATION**
 - 9 STAGE 3 HEARING- APPEALS SUB- COMMITTEE**
 - 10 APPEALS TO THE NATIONAL JOINT NEGOTIATING COMMITTEE**
 - 11 TIME LIMITS**
- APPENDIX A APPEALS SUB-COMMITTEE – PROCEDURE FOR
CONSIDERATION OF EMPLOYEE GRIEVANCES**

Grievance Procedure updated from September 2013 version to incorporate changes to Chief Officials National Terms and Conditions. To be agreed at Cabinet on 21 October 2014.

Revised

**October
2014**

EAST LOTHIAN COUNCIL

COLLECTIVE AGREEMENT FOR HEARING EMPLOYEE GRIEVANCES

1. INTRODUCTION

- 1.1 The Council and Trades Unions recognise that on occasions employees will wish to raise concerns about their employment on an individual or collective basis. The Council and Trades Unions agree that there is a need to provide a mechanism for raising such concerns with a view to resolving them, whenever possible, through discussion and agreement and as speedily as possible. The aim of this procedure therefore is to provide such a mechanism.
- 1.2 Whilst recognising the need for a formal procedure the Council and Trades Unions accept as a general principle that grievances are best resolved informally and as close the point of origin as possible. In accordance with this principle it is agreed that the formal procedure should not normally be used until attempts at informal grievance resolution, as described in paragraphs 3.1 – 3.3 below, have been tried and have failed.
- 1.3 With regard to Stage 2 of the formal procedure detailed below, Chief Officers may delegate authority to nominated senior officers who shall hear the grievance and reach a decision.

2 SCOPE OF PROCEDURE

- 2.1 Matters which fall to be dealt with in accordance with this procedure are as follows: -
 - (a) any question as to an employee's rights generally under the relevant Scheme of Conditions of Service;
 - (b) any question as to whether there has been discrimination against an employee contrary to the terms of the relevant Scheme of Conditions of Service or the Council's Policies or the relevant statutory provisions;
 - (c) any question as to the rights in respect of which an employee has a right to complain to an Employment Tribunal, excluding termination of employment on disciplinary grounds; and
 - (d) all other employee grievances, excluding any matter related to disciplinary action for which a right of appeal is provided under the Council's Disciplinary Procedure.
- 2.2 Any matter relating to an employee's salary or wage grading shall be dealt with under the procedure to be established for this purpose and shall not come under the scope of this grievance procedure.
- 2.3 Where the grievance relates to allegations of harassment, the procedure set up to deal with these matters should be adhered to.

- 2.4 This procedure shall not be activated in circumstances where the grievance issue is the subject of a report to be considered, or under consideration, by the Council or its appropriate Committee. In such circumstances, the Council must adopt its policy prior to the procedure being activated. It is accepted, however, that this would not preclude the procedure being used where the grievance concerns other aspects of the issue [e.g. lack of timeous progress].
- 2.5 The right of appeal contained in paragraphs 2.1(c) and 2.1(d) above shall not preclude an employee from registering a complaint on the same or similar grounds with an Employment Tribunal.

3 INFORMAL GRIEVANCE RESOLUTION

- 3.1 Employees should normally raise any concerns informally in the first instance with their line manager. Should the Chief Executive have a grievance, he/she should initially raise the grievance with the Leader of the Council.
- 3.2 Both the employee and his/her line manager should aim to resolve any problems at this stage.
- 3.3 An employee may raise their concern informally in one of the following ways:
- Discuss the issue with their line manager, however if the subject of the grievance is the employee's line manager, the complaint should be addressed to their line manager's manager.
 - If the concern relates to another employee, and it is relevant and appropriate to do so, speak directly to the employee who is potentially the subject of the grievance.
- 3.4 During these informal discussions, the employee should discuss their grievance in detail. Often issues can be resolved at this point through discussion and clarification. The employee may be accompanied by a work colleague or Trades Union official who may act in the capacity of an adviser.
- 3.5 Equally, the line manager should attempt to identify the nature and cause of the employee's concerns, the possible courses of action or responses and the implications of adopting any particular course of action.
- 3.6 If the issue is more complex, the line manager may need to investigate the complaint further, in order to fully understand the nature and circumstances of the grievance.
- 3.7 At the conclusion of these discussions, or within three working days thereafter, the manager should inform the employee of the action, if any, he/she intends to take in response to the issue raised.

4 GRIEVANCE PROCEDURE – GENERAL

- 4.1 At Stages 1 and 2 of the formal procedure, the following procedural requirements shall be adhered to: -
- (a) the employee or his/her representative shall submit a written statement, and supporting documentation if appropriate, setting out the nature of the grievance to be considered on the forms provided for this purpose;
 - (b) following receipt of this written statement and any supporting documentation, the appropriate officer shall decide whether any investigation or further information is required prior to arranging a hearing to consider the grievance;
 - (c) the officer conducting the hearing shall ensure that all relevant information is presented and considered. Where appropriate officers involved at an earlier stage shall attend the hearing to facilitate discussions on the issue in question;
 - (d) the officer conducting the hearing may be advised by departmental staff or by an officer of the Human Resources Division;
 - (e) the employee shall have the right to call witnesses on his/her behalf subject to the names of any such witnesses being provided in advance to the officer conducting the hearing;
 - (f) the employee shall have the right to be accompanied/represented by a trade union official or some other person of his/her choice; and
 - (g) where the issue relates to a group of employees, up to three spokespersons, together with their representative, if any, may attend the hearing.

5 STAGE 1 HEARING

- 5.1 Following receipt of the written notification of a formal grievance, the immediate supervisor shall arrange a grievance hearing. This hearing shall normally be held within ten working days of the necessary written submission being received.
- 5.2 Following the above hearing, a written response shall be given to the employee, with a copy to his/her representative, if any, within five working days of the hearing.
- 5.3 In some instances depending on the nature of the grievance, it will be inappropriate for the matter to be considered by a first-line supervisor and in these circumstances the matter shall be referred directly to the relevant Chief Officer to be considered under Stage 2 of the formal procedure. A grievance shall not be referred to a Chief Officer solely on the grounds that the employee's supervisor has already considered the matter informally under the terms of paragraphs 3.1 – 3.7 above.

6 STAGE 2 HEARING

- 6.1 If the employee remains dissatisfied, the matter may be referred by the employee or a representative to the relevant Chief Officer or another nominated senior officer, with a request for a further hearing. This request must be submitted within ten working days of the employee being notified of the outcome of the Stage 1 hearing.
- 6.2 Following receipt of the necessary written submission, the Chief Officer or a senior nominated officer shall arrange a further grievance hearing, following consultations with the Human Resources Division, with a view to resolving the matter within the Service Area. This meeting shall be held within ten working days of the employee's written submission being received.
- 6.3 If appropriate, a full-time official of the relevant Trades Union shall, if not already involved, be contacted regarding the above hearing. The full-time official may be invited to attend the hearing where this is considered to be appropriate in seeking an agreed resolution to the grievance.
- 6.4 Following the above hearing, a written response shall be given to the employee, with a copy to his/her representative, if any, within five working days of the hearing.

7 FURTHER INVESTIGATION REQUIRED

- 7.1 Having met with the employee, at either Stage 2 or Stage 3, the manager/Appeals Sub-Committee may have decided that the issues raised require further investigation. If this is the case, the manager/Appeals Sub-Committee should inform the employee of this, adjourn the meeting, and start the investigation process. The decision to adjourn should be confirmed in writing.
- 7.2 If another employee is the subject of the grievance, they must be provided with a copy of the written grievance and any other relevant documentation to be considered, prior to the investigation meeting. They should also be informed of their right to be accompanied.
- 7.3 On completion of the investigation, the manager will make a decision as to whether or not the grievance raised by the employee has been substantiated, and reconvene the meeting in order to inform the employee of their decision, confirming their decision as in 6.4 above.

8 MEDIATION

- 8.1 Mediation is a process by which an impartial third party works with people who have a disagreement or dispute to help them repair the relationship, restore communication and trust and find some common ground to work out an agreement.

8.2 A mediator acts as a facilitator to discussion making positive suggestions on the way forward but they will not impose their own views. The emphasis is on facilitating the people in disagreement to find their own solution, rather than imposing one. The disputants, not the mediator, decide the terms of any agreement. Mediation usually involves individual face- to face discussions and joint discussions with all those directly involved in the dispute.

8.3 Mediation is most effective when:

- Both parties are willing to work together to resolve their differences.
- Room exists for an improvement in working relationships
- Allegations and counter allegations have been made
- There is a dispute over a workplace situation
- No serious breaches of workplace policy re procedure have occurred.

9 STAGE 3 HEARING - APPEALS SUB-COMMITTEE

9.1 If the employee remains dissatisfied the matter may be referred to the Appeals Sub-Committee by the employee or a representative by writing to the Head of Council Resources with a copy to the officer who heard the Stage 2 Grievance. Any such appeal must be submitted within ten working days of the employee being notified of the outcome of the stage 2 hearing.

9.2 In the case of a grievance having been raised by the Chief Executive, and after consideration by the Leader, the Chief Executive remains dissatisfied, then the matter should be considered by the Appeals Sub-Committee. In such circumstances the Leader would not also be a member of the Appeals Sub-Committee.

9.2 The Head of Council Resources shall arrange for the matter to be considered by the Appeals Sub-Committee of the Cabinet within twenty working days of receipt of the letter of appeal or as soon as possible thereafter. The appeal shall be heard in accordance with the procedure set out in Appendix A to this procedure.

10 APPEALS TO THE NATIONAL JOINT NEGOTIATING COMMITTEE

10.1 In the event of an employee, covered by the Scottish Joint Negotiating Committee for Local Authority Services (Craft Operatives) remaining dissatisfied following the decision of the Appeals Sub-Committee, and the appeal is in respect of a matter covered by paragraphs 2.1(a) to 2.1(d) above, the employee shall be entitled to appeal to SJNC(Craft Operatives) in accordance with the time limits contained in the National Scheme of Pay and Conditions of Service (Craft Operatives).

10.2 In the event of any other employee remaining dissatisfied following the decision of the Appeals Sub-Committee, the grievance shall end at the level of the Council.

11 TIME LIMITS

11.1 The time limits relating to Stages 1, 2 and 3 of this procedure may be varied by mutual agreement.

EAST LOTHIAN COUNCIL

APPEALS SUB-COMMITTEE

PROCEDURE FOR CONSIDERATION OF EMPLOYEE GRIEVANCES

1 TERMS OF REFERENCE

- 1.1 The Appeals Sub-Committee shall be convened to hear an appeal against a decision taken by any Chief Officer, or his/her nominee, under Stage 2 of the Procedure for Hearing Employee Grievances.
- 1.2 The Appeal Sub Committee shall also be convened to hear an appeal from the Chief Executive where the Leader of the Council has already considered the grievance but the Chief Executive remains dissatisfied.
- 1.3 The Appeals Sub-Committee shall have delegated power from the Cabinet to decide grievances and shall be the Council's final arbiter on such matters.

2 CONDITIONS RELATING TO AN APPEAL

- 2.1 For the Appeals Sub-Committee to be convened notice of appeal must be lodged with the Head of Council Resources within ten working days of the appellant receiving written notification of the decision arising out of the Stage 2 grievance hearing.
- 2.2 The notice of appeal, which must be in writing, may be lodged by the appellant or his/her trade union or by some other person of the appellant's choice.
- 2.3 The appellant and his/her representative, if any, will be given a minimum of ten working days notice in writing of the date, time and place of the appeal hearing.

3 MEMBERSHIP OF THE APPEALS SUB-COMMITTEE

- 3.1 The Appeals Sub-Committee shall be a Standing Sub-Committee of the Cabinet and shall comprise the Council Leader, the Provost, the Depute Provost, the Leader of the Opposition, and the Cabinet member of the relevant service area.
- 3.2 Where, for any reason, a vacancy or vacancies exist in the membership of the Sub-Committee at any meeting that vacancy or those vacancies may be filled for that meeting by the substitution of another member or other members of the Council from within the same political group.
- 3.3 Where the Appeal Sub-Committee has been convened to hear a grievance from the Chief Executive that has already been considered by the Leader of the Council, the Leader should stand down from the Appeal Sub-Committee.

3.4 Where a meeting of the Appeals Sub-Committee is adjourned for any reason, the provision in paragraph 3.2 above concerning substitutes shall not apply and only those members in attendance at the original hearing shall be eligible to attend the reconvened hearing.

3.5 Three members shall form a quorum at meetings of the Appeals Sub-Committee.

4 REPRESENTATION AND ATTENDANCE OF OFFICERS

4.1 The relevant Chief Officer or other appropriate senior officer(s) shall act as the Council's representative(s) at the appeal hearing. The Leader of the Council shall act as the Council's representative where the appeal has been submitted by the Chief Executive. In cases of appeals against grading the Council's representatives may include an officer from the Human Resources Division.

4.2 The appellant shall have the right to be represented at the appeal hearing by a Trades Union official or officials or by some other person(s) of his/her choice. Where the grievance or appeal is of a collective nature the appellants shall nominate a representative and a maximum of three spokespersons from within their number.

4.3 The Service Manager – Legal and Procurement or representative shall act as an adviser to the Appeals Sub-Committee.

4.4 The Committees Officer or representative shall act as Clerk to the Appeals Sub-Committee.

4.5 The Service Manager - Human Resources and Payroll or representative shall act as adviser to the Appeals Sub-Committee.

4.6 If an appeal hearing is adjourned, all parties involved shall ensure that, other than in exceptional circumstances, the original representatives attend the re-convened hearing for continuity purposes.

5 PROCEDURE PRIOR TO APPEAL HEARING

5.1 Following submission of a written notice of appeal, the appellant or his/her representative shall submit to the Head of Council Resources.:-

- (a) a written statement indicating the nature of the grievance;
- (b) copies of any written statements made by witnesses for the appellant which were considered at the Stage 2 hearing;
- (c) a copy of any other document(s) to be placed before the Appeals Sub-Committee; and

(d) the name(s) of any witness(es) to be called to give evidence on behalf of the appellant.

5.2 The relevant Chief Officer (or Leader where the grievance has been submitted by the Chief Executive) shall submit to the Head of Council Resources:-

(a) a written statement indicating the response to the appellant's grievance;

(b) copies of any written statements made by witnesses for the Council which were considered at the Stage 2 hearing;

(c) a copy of any other document(s) to be placed before the Appeals Sub- Committee; and

(d) the name(s) of any witness(es) to be called to give evidence on behalf of the Council.

5.3 The Head of Council Resources shall issue the agenda for the meeting of the Appeal Sub-Committee, which shall contain all the documents submitted under paragraphs 5.1 and 5.2 above, not less than 5 working days in advance of the appeal hearing.

5.4 The Appeals Sub-Committee may order such other information and/or documents to be submitted, as it may consider appropriate.

6 PROCEDURE TO BE FOLLOWED AT APPEAL HEARING

6.1 Witnesses shall be excluded until called unless it is agreed that they should be present from the start of the hearing.

6.2 The appellant or his/her representative(s) shall put the case in the presence of the Council's representative(s) and may call witnesses.

6.3 The Council's representative(s) shall have the opportunity to ask questions of the appellant his/her representative(s) and witnesses.

6.4 The members of the Appeals Sub-Committee shall have the opportunity to ask questions of the appellant, his/her representative(s) and witnesses.

6.5 The appellant or his/her representative(s) shall have the opportunity to re-examine witnesses on any matters referred to in their questioning by the members of the Appeals Sub-Committee or the Council's representative(s).

6.6 The Council's representative(s) shall put the case, in the presence of the appellant and his/her representative(s), and may call witnesses.

6.7 The appellant or his/her representative(s) shall have the opportunity to ask questions of the Council's representative(s) and witnesses.

- 6.8 The members of the Appeals Sub-Committee shall have the opportunity to ask questions of the Council's representative(s) and witnesses.
- 6.9 The Council's representative(s) shall have the opportunity to re-examine witnesses on any matter referred to in their questioning by members of the Appeals Sub-Committee, the appellant or his/her representative(s).
- 6.10 Firstly, the appellant or his/her representative(s) and then the Council's representative(s) shall have the opportunity to sum up their cases if they so wish. The summing up shall not introduce any new matter.
- 6.11 If at any stage new facts are alleged or new evidence produced, the Appeals Sub-Committee, either at the request of one or both parties or of its own volition, may adjourn the hearing for such period, as it may deem reasonable.
- 6.12 At the conclusion of the evidence the Council's representative(s), the appellant and his/her representative(s) and any witnesses shall withdraw.
- 6.13 The Appeals Sub-Committee, together with the officers appointed to assist the Sub-Committee, shall deliberate in private, only recalling the Council's representative(s) and the appellant and his/her representative(s) to clarify points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
- 6.14 The Appeals Sub-Committee shall, if practicable, announce its decision to the parties at the conclusion of the hearing. In any event the decision shall be notified, in writing, to the appellant and his/her representative(s) by the Committees Officer within five working days of the date of the hearing.
- 6.15 The Appeals Sub Committee shall record reasons for their decision. These reasons shall be notified to the Appellant and his representative(s) at the same time as written notification is given of the decision of the Appeals Sub Committee. The reasons and the written notification shall be copied to the appropriate Chief Officer or other nominated officer.

7 POWERS OF THE APPEAL SUB-COMMITTEE IN GRIEVANCE /APPEAL CASES

The form of the decision of the Appeals Sub-Committee: -

"that the grounds of the grievance have been substantiated and the appeal be upheld"

"that the grounds of the grievance have been substantiated in part and the appeal be upheld to the extent that"

"that the grounds of the grievance have not been substantiated and the appeal be not upheld".

8 REPORTING TO THE EXECUTIVE COMMITTEE

The decision of the Appeals Sub-Committee shall be reported to the Cabinet at the earliest opportunity.

9 TIME LIMITS

The time limits in this procedure may be varied by mutual agreement.

EAST LOTHIAN COUNCIL
PROCEDURE FOR HEARING EMPLOYEE GRIEVANCES
WRITTEN STATEMENT OF EMPLOYEE'S GRIEVANCE

SERVICE AREA

NAME

POST DESIGNATION

STAGE OF GRIEVANCE *(Please tick appropriate box)*

Stage 1 Grievance

Stage 2 Grievance

NATURE OF GRIEVANCE

(Please describe in precise terms what it is you are dissatisfied with)

.....
.....
.....
.....
.....

(continue on additional sheets if necessary)

ACTION REQUESTED

(Please state what action you are seeking in response to your grievance)

.....
.....
.....

SUPPORTING DOCUMENTATION

Are you submitting any other documents in support of your grievance? YES /NO

If yes, please list these documents in order that receipt of these documents can be confirmed: -

.....
.....
.....

WITNESSES

Will any witnesses be attending the grievance hearing to speak in support of your grievance? YES /NO

If so, please give the name and post designation(s) of any witness(es): -

.....
.....
.....

SIGNATURE.....

DATE:.....