***Organisational Development, Human Resources and Performance***

***Grievance & Dignity and Respect at Work Policy***

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**INVERCLYDE COUNCIL IS AN EQUAL OPPORTUNITIES EMPLOYER**

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**CONTENTS**

|  |  |
| --- | --- |
|  | pAGE |
| DOCUMENT CONTROL | 3 |
| INTRODUCTION | 4 |
| strategic context | 4 |
| scope | 8 |
| competency | 9 |
| RIGHT TO BE REPRESENTED/ACCOMPANIED AT THE GRIEVANCE/ DIGNITY & RESPECT MEETING | 10 |
| STATUS QUO | 11 |
| withdrawing service | 11 |
| LEGAL ASSISTANCE | 11 |
| grievance procedure | 11 |
| DIGNITY & RESPECT PROCEDURE | 17 |
| appendix | 26 |

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1. INTRODUCTION

The Previous Grievance Policy was approved at the Policy & Resources Committee in 2008 for Local government Employees and its scope was extended and agreed for Teaching & Associated Staff at Formal LNCT on Monday 17 December 2018.

The Previous Dignity & respect at Work Policy was approved in March 2017.

The two Policies have been combined in this updated version but will continue to have separate operational procedures.

1. strategic context

The most effective way of maintaining a positive and supportive environment for promoting fairness at work and that employees treat one another with dignity & respect requires regular, effective and transparent communication between managers, employees and elected members. This will ensure that, as part of day to day operations and supervision, employees and managers are aware of the standards of behaviour expected. It works towards creating a working environment that is free from bullying, discrimination, harassment and victimisation.

It is in everyone’s interests for complaints/concerns to be addressed and progressed. Open, transparent and early communication will allow these matters to be concluded as swiftly as possible.

This policy and associated procedure supports Inverclyde Council’s Equality & Diversity Policy and reinforces the Council’s commitment as an equal opportunities employer and the Council’s Violence in the Workplace Policy.

The Equality Act 2010, places a specific responsibility on the Council to protect employees in circumstances where bullying, discrimination, harassment or victimisation occurs. The Council is committed to meeting the requirements of the Equality Act 2010 which simplifies, streamlines and strengthens existing equality legislation and protects employees from discrimination on the basis of the following 9 ‘protected characteristics’: Age; Disability; Gender reassignment; Marriage and civil partnership; Pregnancy and maternity; Race (including ethnic or national origins, colour and nationality);Religion and belief; Sex; Sexual orientation.

This policy complies with the provisions outlined in the ACAS Code of Practice on Disciplinary and Grievance Procedures.

1. AIMS OF POLICY

**Grievances**

This Grievance Policy and Procedure is intended to enable employees to seek redress for complaints relating to their employment where normal management/employee communication has failed to resolve matters. The procedure aims to resolve complaints at as early a stage as possible.

An individual can raise a grievance. A collective grievance occurs when a group of employees have a shared grievance related to their employment situation.

Examples of issues that may cause grievances include:

a) Interpretation of Terms and Conditions of employment.

b) Application of Council’s Policy and Procedures.

c) Matters of Health and Safety.

d) Organisational change.

e) New working processes

f) Working environment

These examples are for the purposes of illustration and are not intended to be exhaustive.

Grievances will be processed in accordance with the Grievance Procedure.

**Bullying, Discrimination, Harassment & Victimisation**

Where the complaint is about working relationships, the Policy and Procedure provides arrangements whereby all bullying, discrimination, harassment & victimisation referrals can be investigated in a manner which recognises the sensitivity of the issues raised and the rights of everyone involved. In exceptional circumstances the anonymity of claimant or witnesses may be preserved.

The terms bullying and harassment are used interchangeably by most people, and many definitions include bullying as a form of harassment.

Harassment

Harassment as defined in the Equality Act 2010 is: unwanted conduct related to a relevant protected characteristic, (age, disability, gender reassignment, race, religion or belief, marriage and civil partnership and pregnancy and maternity, sex and sexual orientation) which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

In addition, the claimant need not possess the relevant characteristic themselves and can complain because they are wrongly perceived to have one, are treated as if they do or because of their association with a person who has a protected characteristic. However in the context of a workplace policy, a complaint of harassment or unwanted conduct can be made even where there is no protected characteristic aspect to the complaint.

Bullying

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

Bullying or harassment may be by an individual against any other employee regardless of their position within the Council (see Scope at Section 2 above). It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the employee or group.

Bullying and harassment are not necessarily face to face e.g. they may also occur in written communications, email, phone, and automatic supervision methods such as computer recording of downtime from work or the number of calls handled, being administered unfairly.

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

Discrimination

Discrimination is the singling out of a particular person or group of people for special favour or disfavour, based on stereotypical assumptions about characteristics or interests within certain groups of people.

Victimisation

Victimisation occurs when an employee is treated less favourably because for example they have made or supported a referral or raised a grievance, or because they are suspected of doing so.

**Dignity and Respect**

The Policy aims to ensure that all employees are aware of what dignity and respect at work means and to recognise the types of behaviour which are not acceptable. Everyone has a duty to see that dignity and respect are promoted in their dealings with all their colleagues, irrespective of whether those colleagues are managers, peers or staff they manage. The value that is most clearly linked to the promotion of dignity is “respect”. This means staff should display the following behaviours when dealing with one another.

The list is not exhaustive:

1. use ordinary everyday courtesy and politeness, including using the names that people prefer;
2. treat people as they would like to be treated;
3. act with sincerity, integrity, honesty, fairness, impartiality and diligence;
4. work positively on a collaborative and co-operative basis with others;
5. give honest feedback based on evidence;
6. be open to constructive criticism;
7. do your job to the best of your ability;
8. do what is reasonably asked of you even if you disagree;
9. give people encouragement, help and support when they need and want it;
10. trust and be open with your colleagues;
11. respect the diversity of cultures, backgrounds, lifestyles and beliefs that people bring to the workplace;
12. listen to, respect and value the diverse ideas, contributions and opinions of colleagues;
13. be sensitive to the needs of others;
14. respect the privacy, confidentiality and personal space of others
15. be aware of the effect your behaviour has on others and only make reasonable and manageable demands;
16. appreciate and praise good work;
17. actively seek to build productive working relationships and partnerships with people across and outside the Council;
18. challenge inappropriate or unacceptable behaviour in an appropriate manner;
19. aim to deliver a first class service to customers both internal and external.

Bullying, harassment, discrimination and victimisation behaviours can be verbal, non-verbal and/or physical assault. Although not exhaustive, the following are examples of inappropriate behaviours relating to the ‘protected characteristics’ and which will not be tolerated by the Council towards other employees, or towards or from third parties (clients/customers):

1. being offensive or insulting, or spreading malicious rumours;
2. making unwelcome remarks, jokes, innuendoes, lewd comments or using abusive language;
3. ridiculing, humiliating, demeaning or picking on someone;
4. copying correspondence, including emails or the use of other forms of communication such as instant messenger or discussion forums/blogs/social media/apps, such as Facebook, to forward information about an individual to others who do not need to know (note – such information may also infringe other Council policies and/or professional codes and/or breach of criminal legislation);
5. displaying materials which are held to be offensive e.g. posters, pictures, banners
6. isolation and non-cooperation at work, exclusion from work related or social activities;
7. unfair treatment and/or victimisation, for example, not being given the same opportunities for promotion and/or development as other colleagues;
8. the use of gendered swear words;
9. failing to use an employees post transition name
10. insults/abusive jokes related to employee undergoing gender re-assignment
11. sexual harassment
12. making derisory comments against individual beliefs for example, towards someone’s religion and culture;
13. demeaning an individual as having lesser intellect or ability because of their advancing years or ‘putting down’ employees because of their youth;
14. encouraging incitement and conflict;
15. name calling and stereotyping;
16. threatened disclosure of private and personal information.

Examples of sexual harassment include:

• sexual comments or jokes

• displaying sexually graphic pictures, posters or photos

• suggestive looks, staring or leering

• propositions and sexual advances

• making promises in return for sexual favours

• sexual gestures

• intrusive questions about a person’s private or sex life, and discussing your own sex life

• sexual posts or contact on social media

• spreading sexual rumours about a person

• sending sexually explicit emails or text messages

• unwanted and inappropriate physical contact, such as sexual advances;unwelcome touching, hugging, massaging or kissing

• criminal behaviour, including sexual assault, stalking, indecent exposure and offensive communications.

An individual can experience unwanted conduct from someone of the same or different sex.

Bullying, Discrimination & Harassment Concerns will be processed in accordance with the Dignity & Respect at Work Procedure.

1. scope

This policy and associated procedures apply to Local Government Employees, Chief Officers and Teachers. A separate grievance policy and procedure exists for the Chief Executive.

The policy apply to ‘employees’ (as defined by the Employment Rights Act 1996) within the Council. Other workers (including casual, bank/sessional /supply teachers and agency workers) who raise issues which would otherwise be appropriate to be considered under this Policy will be entitled to a formal meeting to discuss their grievance and appeal against the recorded outcome.

Elected Members, external agencies, partners and contractors who work in partnership with the Council also have a responsibility to comply with this policy.

Complaints about Council employees from external agencies, customers or contractors should be made in accordance with the Corporate Complaints Procedure.

The Council will ensure that good equal opportunities practice underpins the operation of this policy and will apply to all employees irrespective of age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The policy applies in the workplace and applies to conduct outside the workplace in accordance with the Employee Code of Conduct.

**Exclusions**

The following examples fall outwith the grievance procedure:

a) This policy will not be used in place of another Inverclyde Council policy with separate complaint and appeal procedures, e.g.: Disciplinary Policy and Procedure; Job Evaluation Policy; Flexible Working Policy

b) Matters connected with Issues which are the subject of collective negotiation or consultation with the employer and the trade union such as decisions reached following a Trade Union Ballot to their members.

c) Matters covered by national and local agreements, payment of salary (relating to the administration of same), complaints concerning the operation and application of the Strathclyde Pension Fund and where the resolution sought is out with delegated authority

d) Complaints concerning the application of income tax or national insurance. These should be raised directly with the Payroll Team or HM Revenue & Customs.

e) complaints about allegations of misconduct by another employee unless the complaint is not being investigated under the disciplinary procedure.

f) Where the complaint is related to a specific issue where disciplinary action is being or has been taken against an employee; these should be dealt with as an appeal under the disciplinary procedure, unless there is reasonable suspicion of discrimination or victimisation in which case an alternative manager may be assigned or a separate grievance arranged

g) Former Employees -This procedure will not apply to former employees unless the grievance was raised prior to the employee leaving the Council.

Grievances not concluded at the time of employment will be concluded with a paper review of the position and a written response given to the former employee within 28 calendar days of the employee’s termination date.

Should a former employee raise a grievance within 28 calendar days of the employment ending, the matter will be investigated and a response will be given in writing.. There is no requirement to have a hearing and the individual has no right of appeal.

1. competency

The undernoted issues will be considered and decided upon by Chief Executive/Corporate Director/Head of Service/Service Manager/Head Teacher (level will depend on the level of alleged perpetrator and the Head of Organisational Development, HR & Communications (or nominee) and will involve consultation with the appropriate trade union(s)):

* An employee cannot take out a Bullying, Discrimination, Harassment & Victimisation referral under this policy against a Manager or Council Official who is applying council policy unless there is reasonable belief and/or evidence of incorrect application, or some form of discrimination. Similarly, where a claimant fails to follow the procedure or refuses to detail allegations when required to do so, this may result in the claim being declared invalid.
* Time scales - other than incidents the nature of which are continuous, grievances raised in relation to an incident which happened more than 3 months previously. or within a maximum of 3 months from the time that employees are or should have been reasonably aware of the change, action, omission or incident, which is the subject of the grievance, having taken place, will not be considered competent.. In relation to bullying, harassment and victimisation claims, referrals should be raised within 3 months of an incident or if a series of linked incidents within 3 months of the last incident. Complaints submitted outwith this timescale will be inadmissible unless there are extenuating circumstances..
* Malicious/Vexatious Complaints is where the complaint is considered to be trivial, frivolous, vexatious or repetitive. Where there is an attempt to use the grievance/D&R procedure for potentially false or malicious accusation, this may be treated as misconduct and may lead to Instigation of Council’s Disciplinary Procedures disciplinary action.

A malicious or vexatious complaint is where the claimant has willfully misused the policy, for example:

1. where the claimant raises concern about an issue or another’s alleged behaviour knowing that there is no substance to the complaint;
2. where they know the issue/ behaviour did not happen in the way they described;
3. the complaint is made to cause trouble, anxiety or stress for the person being complained about; or to be obstructive
4. the referral is made in retaliation for a referral that may be been brought previously against the claimant, whether under this policy or any other of the Council’s policies/procedures and whether that referral was upheld or not upheld.

Where an allegation is not upheld, it does not mean that the referral was malicious. The individual making the referral may still feel that they have been subjected to bullying, harassment, discrimination or victimisation, but the Investigating Officer has not been able to find the necessary evidence to substantiate the allegations.

**6 Right to be represented/accompanied at the grievance/ dignity & respect meeting**

Employees have a statutory right to be accompanied at the grievance hearing or any stage of the Dignity & Respect process by a companion, who may be:

* + a fellow worker
	+ a trade union representative who has been certified by their trade union as being competent to accompany a worker
	+ an official employed by a trade union

Due to the informal nature and format of the mediation process no representation, unless there are exceptional circumstances, by a Trade Union representative/work colleague is involved in mediation meetings or the less formal facilitated meetings. If the employee’s chosen representative is not available at the time proposed for the hearing by the employer, the employer should postpone the hearing to an alternative time proposed by the employee provided that the alternative time is within a reasonable period after the date originally proposed. ACAS Guidelines suggest no more than 5 working days.

The manager can object to the chosen representative if a conflict of interest arises e.g if it is a family member. In such circumstances, both parties will be encouraged to resolve the issue with the potential for an alternative representative to be identified. Only if this does not provide a resolution will the Chair of the hearing be able to determine whether the chosen representative can participate.

The representative will be allowed to address the meeting, to put forward and sum up the employee’s case, and to confer with the employee during the meeting. The representative, however, cannot answer questions on behalf of the employee, although they may add to or clarify responses.

1. status quo

The use of status quo provides standstill arrangements to allow work to continue while attempts are made to resolve the grievance. Where practicable, the status quo should remain in place until the grievance process has concluded. Any decision to set aside the status quo should be made at Senior Management Level e.g. Head of Service and should be for a significant reason for example:

The status quo may be set aside where:

• a continuation of the status quo will result in a breach of statutory or other mandatory regulations, or have serious impact on operational effectiveness

 • an agreement is reached by all parties to do so

• the grievance is about a change or action already agreed by management and trade unions

1. withdrawing services

In cases of serious harassment, where for example, there has been a threat of violence or assault or a campaign of unacceptable behaviour from service user(s), a group, a parent or a member of the public, the Manager/Head Teacher must consider taking immediate action to prevent the employee from experiencing any further abuse.

This may involve the withdrawal of services or refusing access to the premises where this is possible or other actions short of the withdrawal of services e.g. reallocation of work or relocation with the individual’s agreement. This may also involve contacting the Police.

‘Violence at Work’ posters are located throughout the Council, including within Education establishments, HSCP offices and the Customer Contact Centre. These posters communicate that Inverclyde Council will not tolerate abuse of their employees. Any person abusing an employee of the Council, either verbally or physically, may be subject to legal action and as above, a withdrawal of services.

1. legal assistance

The Council can assist employees to take positive action to afford protection from abusive behaviour. Examples of the options available to staff include:

1. a “cease and desist” letter from Inverclyde Council Legal Services to those involved in
2. imposing a ban on contact between the perpetrator and the affected employee(s);
3. the Council providing advice and assistance to those seeking to raise interdict proceedings, and in certain limited circumstances may meet the legal costs involved;
4. providing advice about court processes.
5. grievance procedure

**Informal**

Any employee who is aggrieved on any matter should discuss the issue initially with his/her line manager. Where the matter concerns the line manager, the problem should be referred to the next level of management.

Every effort should be made to resolve the matter through informal discussion or through informal representation by a trade union official or work colleague. Points of action and agreement made may be noted.

If, after attempting to resolve the grievance informally, the employee is dissatisfied with the response, either verbal or written, or if no response has been forthcoming within 10 working days, the employee can initiate the formal stage of the Grievance Procedure.

It is recognised that the grievance may not be resolved at that informal level in which case the employee who wishes to pursue the grievance must follow the Formal procedure.

**Formal**

Where clarification is required as to the substance of the grievance or whether the resolution sought is within the delegated authority of the Service or Appeals Committee advice should be obtained from HR or the Council’s Monitoring Officer before proceeding.

A grievance can be rejected if an employee who raised the grievance fails to attend scheduled meetings without a reasonable explanation.

**Collective grievances**

The process to be followed for collective grievances is as detailed for individual grievances, with the exception that all correspondence will be sent to the nominated employee representing the group and their representative. If there is no nominated employee(s) then all correspondence will be sent to the representative only. At each stage of the process, the group will be represented by a maximum of three people, including the trade union representative or fellow worker..

**Facilitation/Mediation**

In some cases, independent assistance such as a facilitator or mediator, from within or outwith the Council, can help resolve issues, especially those involving working relationships.

**Stage 1: Formal Hearing**

**Formal Procedure**

The Procedure builds in time limits to ensure matters are dealt with as speedily as possible and it is a management responsibility to adhere to these time limits. However, the time limits may be extended by mutual agreement to ensure full and proper investigation of the circumstances of an issue, or where such an extension may produce a resolution.

Following discussions with the immediate line manager, if the outcome remains unresolved, the employee may proceed to the Formal Procedure as set out below.

The Formal Procedure requires a grievance to be put in writing using Formal Written Statement of Grievance Proforma.

It is intended that each stage in the formal procedure will be followed in turn, but there may be cases where use of a later stage will be appropriate. For example, where there is a grievance against the immediate supervisor, or where after initial consideration, both parties recognise that the authority to resolve the grievance is at a higher level and agree to refer the grievance accordingly.

**Written Complaint**

The employee should raise the matter in writing to a more senior manager within the Service. The Formal Written Statement of Grievance proforma should be used. The grievance should set out in writing, as a minimum, the exact nature of the grievance and the resolution sought by the aggrieved party.

The person to whom the Formal Written Statement of Grievance has been addressed will convene a formal grievance hearing within 10 working days from receipt of the letter. The Stage 1 meeting does not necessarily require all involved parties to be met with in joint meeting – Chair could meet separately or request written information from third party dependant upon circumstances.

Acknowledgment of Formal Written Statement and Stage 1 Invite should be sent to the aggrieved employee and their representative.

**Content of Grievance**

Employees should clearly set out the nature of the grievance. When stating their grievance, employees should stick to the facts and avoid language which may be considered insulting or abusive. They should be aware that the content of the grievance will be shared with all parties to the grievance to allow them to respond. Where appropriate, the aggrieved employee should set out the names of any witnesses.

**Resolution**

When lodging a grievance the employee should state clearly what steps they wish to be taken to resolve their grievance. Resolutions sought must be reasonable and in line with Inverclyde Terms and Conditions of Service and Policies and Procedures. Management involved in making a decision following a grievance including setting out resolutions/ recommendations may only do so in accordance with these Terms and Conditions, Policies and Procedures and the Equality Act 2010, or within the scheme of delegation

**HR Operations**

HR will not normally attend a Stage 1 Grievance unless the matter is particularly complex or has corporate implications.

**Witnesses**

Both parties have the right to call relevant witnesses to the hearing and it is the responsibility of each party to arrange for the witnesses to be invited. The chair should be notified of the names of the requested witnesses as soon as possible.

**Conduct of Hearing/Duration/Format**

The Chair is responsible for the conduct of the hearing and must regulate the process in such a way as to be fair to all parties. The Chair will also be responsible for deciding on the relevance of witnesses and the length of time to be allocated for the grievance. The amount of time for each side to present their case and in respect of appeals, call witnesses etc. will be dependent upon the complexity of the issue. Parties must be given a reasonable time to present their view of events; however the timing will be at the discretion of the Chair, if it is felt that proceedings are excessive.

**Minutes**

It is the responsibility of the employee or their representative to take minutes of the meetings if they so choose.

In Grievances the Outcome letter will be a thorough reflection of the content of the meeting. No further minutes, notes or reports will be produced unless deemed necessary by Chair.

**Recording of Meetings**

No recordings of meeting or appeal hearing will be allowed– covert recordings will not be accepted as evidence from either party. CCTV footage can be used in accordance with ACAS and GDPR guidance

**Adjournments**

If the Chair requires further information to make a decision he/she should consider adjourning the hearing and consider further investigation within reasonable timescales. Either party can request reasonable adjournment.

**Miscellaneous**

Employee illness, etc will not normally prevent the progression or completion of action under this or other policies

Where a complaint is being progressed and employee illness or further complaints arise, this will not normally prevent progression of this action. It may be appropriate for these matters to run concurrently or together under one process.

This policy will allow flexibility by way of reasonable adjustments for employees with a disability. Examples include allowing more time at grievance hearings or any adjustments to the arrangements for the hearing which may be reasonably required.Offering this and other reasonable adjustments will ensure that access to the procedure is fair and equitable. The HR Case Management Team should be contacted for further advice.

**Failure to Attend**

If an employee is unable to attend a scheduled Hearing/Appeal, the chairperson must be informed in advance. If the employee fails to attend without reasonable explanation or, if they fail to attend a rescheduled Hearing/Appeal, this will result in the Hearing/Appeal proceeding in their absence. Where a representative or work colleague is not available for an arranged Hearing/Appeal, the employee must make alternative arrangements for another trade union representative or work colleague and take all reasonable steps to ensure the Hearing/Appeal can proceed without unreasonable delay. Where appropriate, an alternative manager may be nominated to chair a Hearing to enable it to progress at the earliest opportunity. If an alternative date is offered it will be within 5 days of the original hearing date unless the chair agrees there are exceptional circumstances to extend this time period.

**Outcome**

The outcome of the grievance hearing including any action points will be conveyed to both parties in writing within 5 working days of the date of the hearing taking place.

**Appeal Hearings**

Appeal Hearings will be conducted under standard appeal process – see the related Appendix.

**Stage 2: Appeal to Director/Head of Service (or nominee)**

Where the employee is dissatisfied with the decision at Stage 1 there shall be a right for the matter to be heard by his/her Director. Head of Service (or his/her nominee) as appropriate.

Where the Head of Service heard the grievance in Stage 1, the employee shall have the right for the matter to be heard by his/her Director of Service (or his/her nominee).

If they wish to appeal, the employee or his/her trade union representative must submit a statement of appeal, in writing,(using Formal Written Statement of Appeal Proforma) to the employee’s Director/Head of Service (or his/her nominee). The statement of appeal must explain the reasons for continuing dissatisfaction and must be submitted within 10 working days of receipt of the decision at Stage 1.

The Director/ Head of Service (or his/her nominee), on receipt of the statement of appeal, will convene a formal grievance hearing within 10 working days.

The grievance appeal should refer to the reasons why they remain dissatisfied with the outcome of Stage 1. No new grievance can be raised at this stage. The appeal hearing should not be seen as a re-run of the original hearing and must address why the employee is still dissatisfied with the Stage 1 response.

If the Chair requires further information to make a decision he/she should investigate further within reasonable timescales.

The Director / Head of Service (or his/her nominee) shall advise the aggrieved employee of his/her decision in writing within 5 working days of the date of the hearing. The outcome letter should also be sent to the person the complaint was made against (if applicable), or manager who chaired Stage 1.

If agreed by all parties involved in the grievance that it is not possible to meet the prescribed time scales, the reason for the delay should be notified in writing to the employee and his/ her representative within the original time scale. An alternative date will be scheduled by the Chair who will keep both parties informed.

**Stage 2 B (where applicable)**

Grievances with wider organisational consequences - Where the grievance relates to an issue where the outcome might affect more than one individual and the issue has not been resolved at Stage 2, and when an appeal has been submitted for consideration by the Human Resources Appeals Board, it may be referred to the Head of OD, Policy & Communications who having considered the submission may convene a meeting of all or either of the parties with a view to resolving the matter. They will be responsible for determining whether the grievance raised has wider organisational consequences beyond the aggrieved party. Examples of issues with wider organisational consequences include:

a) the application of terms and conditions of service

b) the implementation of a Council-wide policy

c) matters which could become litigious, or the focus of an industrial dispute

**Stage 3**

If the employee remains dissatisfied with the response, the matter may be referred to the Human Resources Appeals Board. This request shall be submitted using Formal Written Statement of Grievance Proforma and should be submitted to the Head of Organisational Development and Human Resources within ten working days of the employee receiving written notification of the outcome of the Stage 2 hearing.

The Head of Organisational Development and Human Resources, will arrange for the Human Resources Appeals Board to consider the grievance within 8 working weeks of receipt of the request, or as soon as possible thereafter. The appeal will be heard in accordance with arrangements contained in Appendix 1.

The decision of the Human Resources Appeals Board will be notified to the employee within five working days of the Board meeting.

There is no further internal right of appeal against a decision of the Human Resources Appeals Board and at this stage the grievance procedure is concluded.

An employee has the right, where eligible, to submit a matter to an Employment Tribunal in respect of a matter over which the Employment Tribunal has jurisdiction.

The following table provides and describes the basic stages and time limits within the Formal process.

|  |  |  |
| --- | --- | --- |
| **Stage** | **Heard By** | **Suggested Time Limit** |
|  1 |  Nominated Senior Officer |  Employee has to submit formal grievance within 10 days of verbal/ written response to informal grievance, or if no response has been received within 10 days 10 working days for formal hearing to take place5 working days to issue written reponse |
|  2 |  Director /Head of Service or Nominee (HR Adviser in attendance) | Employee has 10 working days to submit appealAppeal hearing to be heard within 10 working days of receipt of appeal5 working days to issue written response |
|  2B (where  applicable) |  Head of OD, Policy & Communications |  Prior to provisional HR Appeal Board Date |
|  3 |  HR Appeals Board  |  Appeal hearing normally heard within 8 weeks of Stage 2 appeal receipt (subject to committee timetable)5 working days to issue written response |

###### 10 DIGNITY & RESPECT PROCEDURE

Bullying, Discrimination & Harassment have no place in Inverclyde Council. Staff must feel valued, supported and empowered to carry out their work. Therefore, we must address levels of bullying and create compassionate and inclusive cultures which have implications for staff health and wellbeing and staff engagement.

The formal disciplinary level intervention is usually required when an employee does not improve their conduct or behaviour following previous informal coaching and guided interventions, or if a single serious incident amounts to misconduct and therefore requires escalation to the formal disciplinary level.

**Dealing with Bullying, Harassment, Discrimination or Victimisation Concerns-**

**Escalating Approach**

To address negative workplace behaviours that range from incivility through to bullying, organisations need to look at different approaches for different levels of behaviour. There is a requirement to focus on those low-level behaviours of incivility and disrespect and address these at an early and informal level to identify what is causing the behaviour and to put in place measures to help adjust behaviour e.g self-reflection, counselling, training.

It’s important to give timely and supportive feedback to individuals whose behaviour/conduct has had or is having a negative impact. Shifting the focus onto these behaviours enables clearer conversations about unreasonable and negative workplace behaviour with the aim of establishing expected behaviour standards; addressing this source of workplace conflict and creating a culture of civility and respect.

There may, of course, be cases of bullying where a formal process is required, these may be long standing cases or one off serious incidents. Early resolution is important at the formal stage just as it is for the informal.

Our Procedure will deal informally with behaviour as it first arises, with escalation routes if the behaviour persists or the informal approach is ineffective. When an incident arises, discretion will be used when deciding the most appropriate level of action. This differentiates between those incidents and one-off incidents serious enough to go straight to instigation of disciplinary process.



Employees can use the self help part of the informal process detailed below but may also want to contact HR and/ or their trade union or Manager for advice on the D&R process.

Should the employee consider the matter serious, part of a pattern of behaviour, or have previously attempted to resolve a concern informally they should complete a D&R referral form and send it to HR .

Any decision to move to the Formal Stages of the Process will form part of the competency process and will be considered by the Competency Panel – A designated Senior Manager/HR Rep in consultation with an independent Trade Union Representative.

**Informal Stage**

To address unprofessional/disruptive behaviours at an early, informal level. The aim of the informal ‘cup of coffee’ conversation is an early discussion about a single concern or observation that lets the employee concerned know that a negative/undesirable/unprofessional behaviour was observed. It promotes accountability for a single observation of what seems to be unexpected/unprofessional conduct or behaviour.

For creating compassionate cultures in the workplace, the informal early conversation provides a respectful and supportive environment for the individual to reflect on their behaviour and try to identify its cause, e.g. work pressure, hierarchical incivility, previous personal experiences etc.

The aim is to help the individual to reflect on their behaviour and impact, and to think about an alternative approach and coping strategy for the primary causes behind their behaviour.

**Self help**

a) If the claimant feels comfortable enough, they can seek to resolve the matter through speaking to the alleged perpetrator. The aim here is to stop the behaviour that is causing the problem and agree more acceptable ways of behaving. An approach at this early stage can be very successful in resolving the problem quickly, particularly if the behaviour is unintentional or the individual is unaware that their behaviour is causing offence and distress.

 If the claimant feels able to, they should:

• invite the individual whose behaviour is inappropriate to an appropriate and private place to talk;

• make it clear that the discussion is to be treated in strict confidence by both sides;

• describe the behaviour and explain, calmly and politely, why the behaviour offends them, how it makes them feel and that they would like it to stop;

• seek an agreement from the individual that the behaviour will stop.

If the claimant feels unable to make this approach on their own they may ask someone to accompany them or to make the approach on their behalf. This could be a trusted colleague, a trade union representative, a member of the Human Resources team, their line manager or another manager. Any third party involved may wish to take an informal note of the meeting.

**Mediation**

Mediation is a useful part of the informal procedure and can normally be used before resorting to the formal stage unless the Council believes that it would not be helpful in resolving the situation. Both parties must be agreeable to the offer before Mediation would commence. The process works by a trained, impartial mediator facilitating discussions between the parties and encouraging them to reach a mutually acceptable agreement that will resolve their issues.

Both parties have an obligation to make every effort to try to resolve the issues at this informal stage. This means that they must approach mediation with a positive attitude and participate fully and constructively in the process.

Requests for Mediation should be made to Human Resources.

If mediation is successful in dealing with the issues, the situation will be monitored by the manager (or the line manager’s manager if the referral is against the line manager) to ensure there is no recurrence of the problem and that the claimant does not suffer victimisation for having raised concerns.

**Facilitated Meetings**

Amore informal approach to mediating can also be arranged via HR – and again need to be agreeable to both parties.

Representation is not allowed at Mediated or Facilitated Meetings, other than in exceptional circumstances.

**Formal Stage**

Where the employee considers the informal route has not been successful in addressing their concerns or the matter is complex and not appropriate to be addressed informally, they may request to have their concerns considered under the Formal Stage.

The employee is required to detail their referral in writing to HR , setting out the grounds of the referral.

**Referral Assessment**

The referral form will be acknowledged within 5 days. Depending on the level of the alleged perpetrator an appropriate HR Representative and Manager, i.e. team leader level or above (“agreed manager”) will be appointed to commence an assessment of the competency of the complain, the level of the complaint and where applicable commence the investigation stage.

**Competency/Assessment**

The agreed manager shall arrange a meeting with the employee (now referred to as “the claimant”) within 10 working days to discuss the process, clarify their concerns, explore the level of the complaint and where required, assess competency.

The HR Manager or nominee will be in attendance and an appropriate independent Trade Union will be consulted. This will take place in all cases. The Trade Union representative will be given the referral documentation in advance of this meeting and given the opportunity to add to the list of questions to be asked by the manager/HR at the meeting.

At this stage the alleged perpetrator, other than in exceptional circumstances, will be advised that a referral has been received about them and details of the referral outlined to them. Information may be redacted as necessary, i.e. to satisfy current data protection regulations.

If the agreed manager and HR Manager or nominee and independent TU rep believe that the referral warrants being dealt with under the formal procedure the claimant shall be advised accordingly and advised whether this shall be at level 1 of the formal process or whether an investigation should be commenced to establish whether Level 2 performance management process or Level 3 disciplinary hearing should be instigated.

If the agreed manager and HR Manager or nominee considers that no investigation is necessary because it is not competent, or it should be dealt with informally, the claimant shall be advised accordingly, and given the justification for this decision. In such situation, the claimant, if not satisfied with this decision can appeal as set out below.

The agreed manager and the HR Manager or nominee may agree a resolution with the claimant and take the necessary appropriate action. It should be noted, however, that no formal disciplinary action against an alleged perpetrator shall be taken without an investigation.

**Investigation Stage**

Where the decision is to have an investigation, the agreed manager and HR Manager or nominee should carry this out. It should be agreed at the outset to whom the report should be submitted i.e. appropriate Corporate Director/Head of Service/Service Manager/Head Teacher etc.

The investigation which is to ascertain whether or not there is any foundation to the referral must be carried out timeously having due regard for proper and thorough investigation. Normally, a period of not more than 20 working days should be taken. Where the investigation takes longer, the employee who has raised the referral and the alleged perpetrator should be kept informed of the likely end date of the investigation. Where appropriate an independent internal trade union colleague (one which is not representing either the complainant or the alleged aggressor) can be appointed to be consulted in respect of investigations into the claims.

A copy of the finalised report along with witness statements will be issued to both parties at the conclusion of any investigation. There may be exceptional circumstances where statements will require to be edited or anonymised. This would be done in accordance with ACAS guidance on best practice in this area.

The findings of the investigation shall be submitted by the Investigating Officer to the appropriate Corporate Director/Head of Service/Service Manager/Head Teacher and the HR Manager or nominee to consider the appropriate action e.g upheld and instigate performance management or disciplinary hearing, or not upheld or upheld in part.

Where deemed appropriate, Corporate Director/Head of Service/Service Manager/Head Teacher and the HR Manager or nominee will also arrange a further meeting with the claimant and advise him/her of the action to be taken and confirm in writing that the referral has either been upheld or not been upheld or upheld in part.

Where the claimant is dissatisfied with the outcome of the investigation or is dissatisfied with the decision of the agreed manager and HR Manager not to have an investigation, he/she may refer the matter to the Appeal Stage

The alleged perpetrator must also be advised that they can appeal against the decision however where the management’s action involves the instigation of disciplinary procedures against the alleged perpetrator, he/she shall be dealt with under the Council’s Disciplinary Procedure which has an Appeals Stage (See Council’s Disciplinary Policies and Procedures on ICON).

**Is There Need to Separate Parties?**

In cases which appear to involve serious alleged misconduct there may be a requirement to separate the parties involved. This could be through an interim transfer to another suitable location or a paid suspension as a last resort. The individual circumstances of the case and the practicalities of the situation would be taken into account in determining who is moved/suspended. Where practicable the claimant should not be moved unless they request this (management would be required to show significant operational justification) .

If there has been physical contact, significant/serious abuse or threats of violence the manager should meet with the claimant within 24 hours to determine the level of risk and any immediate action required to prevent any further exposure to the alleged perpetrator.

N.B Where the alleged perpetrator has line management responsibility for the claimant, the agreed manager and HR Manager or nominee must consider whether it is appropriate for the alleged perpetrator to continue with formal management meetings involving the claimant (e.g. Maximising Attendance) whilst the investigation and any subsequent activity is still in progress. This will depend on the seriousness of the allegations. This is to ensure that actions taken against the claimant are conducted in an unbiased and transparent manner.

**Bullying, Harassment, Discrimination or Victimisation outside the workplace or out with normal working hours**

It is important to note than an employee’s conduct outside of the workplace, (or out with normal working hours) may also lead to them being considered under the Council’s Disciplinary Policy and Procedures e.g. conduct at an awards ceremony or presentation, or making inappropriate comments on social networking sites about other council employees or protected characteristics etc.

The Council’s Code of Conduct is key in this respect and all employees and managers should familiarise themselves with their obligations.

All employees are expected to maintain appropriate standards of behaviour which are consistent with this policy at all such events where they may be representing the Council, or where their behaviour may bring the Council into disrepute.

In some instances, the alleged perpetrator may not be an employee of the Council. In such cases, appropriate action will be taken to protect the Council’s employee consistent with the Council’s duty to provide a safe working environment and a service to the community. Employees who consider that they have suffered unwanted and/or offensive behaviour during the course of their Council duties by a member of the public should report the matter to their manager immediately.

**Procedure for dealing with referrals that the Dignity and Respect at Work Policy has been breached by an Elected Member**

Section 3 of the Code of Conduct for Councilors states that Councilors must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

In some instances the alleged perpetrator may be an Elected Member. In such cases the employee may raise a referral and this would be managed through the Code of Conduct for Elected Members. Complaints can also be made to the Ethical Standards Commissioner

**Appeals - Claimant**

Where the claimant is dissatisfied with the outcome of the investigation or is dissatisfied with the decision of the agreed manager and HR Manager not to have an investigation, he/she may refer the matter to the Appeal Stage when the appeal shall be heard by an Appeals Panel. This Panel will comprise of the Head of Organisational Development, Policy & Communications (or senior nominee) and a Corporate Director (or nominee not below Service Manager level) not previously involved in the case. Where the claimant is employed within Human Resources, the Solicitor to the Council will replace the Head of Organisational Development, Policy & Communications.

The claimant shall submit the appeal in writing, where possible using the Council’s Dignity & Respect at Work Appeals form (http://icon/hr/useful-forms/) setting out their grounds of appeal. The claimant shall then send the appeal to the Head of Organisational Development, Policy & Communications within ten working days. Where appropriate, the claimant may also send a copy of the form/letter to his/her representative. Where appropriate an independent internal trade union colleague (one which is not representing either the complainant or the alleged aggressor) can be appointed and fully consulted in assessing the competency of an appeal.

The Head of Organisational Development, Policy & Communications shall arrange for the claimant to be advised of the arrangements for the Appeal Hearing and to his or her entitlement to be accompanied at that Hearing by a representative. The claimant must take all reasonable steps to attend the Hearing. The Appeal shall take place at the earliest possible date but not later than twenty working days following receipt of the appeal.

The claimant and his or her representative, if appropriate, together with the employee's Corporate Director/Head of Service/Service Manager/Head Teacher and any other appropriate manager who has been involved shall attend the Appeal to present their case for consideration.

The Appeals Panel shall consider the appeal as presented by the claimant, representative and the management. Where appropriate the Panel may use internal or independent mediation or conciliation. External mediators or Conciliation must be approved by Head of Organisational Development, Policy & Communications. The Panel shall rule upon the grievance or where required, determine on a course of action. The decision of the Appeals Panel shall be binding on all parties.

The Head of Organisational Development, Policy & Communications shall advise the claimant of the Appeal Panel’s decision within 10 working days. A copy of the letter shall also be sent to the employee’s representative and Corporate Director/Head of Service/HR Manager. This concludes the internal procedures.

**Appeal - Alleged bully/harasser**

If following an outcome of an investigation, the alleged bully/harasser has reason to believe that the matter has not been handled fairly or properly, they can request an appeal (as above) with the exception of where disciplinary action is recommended. In such circumstances any appeal would be through the disciplinary appeal process.

Duration/Format of Formal Meetings

The referral meeting does not have to involve all parties – the agreed manager - can obtain responses from alleged perpetrator or third party separately and then respond to the claimant.

**Appeal Hearings**

Appeal hearings will be conducted under standard appeal process – see Appendix

The amount of time for each side to present their case and in respect of appeals, call witnesses etc. will be dependent upon the complexity of the issue. Parties must be given a reasonable time to present their view of events; however the timing will be at the discretion of the Chair, if it is felt that proceedings are excessive.

It is the responsibility of the employee or their representative to take minutes of the meetings if they so choose. The investigatory facts report and/or the Referral Outcome letter represent the only formal detailed documentation. No further minutes, notes or reports will be provided.

**Recording of Meetings**

No recordings of meeting or appeal hearings will be allowed– covert recordings will not be accepted as evidence from either party.

CCTV Footage can be used in accordance with ACAS guidance and GDPR

**Witnesses**

It is the responsibility of each party to ask for witnesses to be interviewed as part of an investigation, although investigating officers will have the final decision on whether it is appropriate to interview a witness depending on their relevance to the investigation. It is also up to each party to request that witnesses attend the appeal hearing.

The investigation team will explain to the witness the reason for the interview. The witness will be asked to sign notes of any discussions confirming their accuracy.

The witness will also be advised that any information provided by them may subsequently be used in any disciplinary proceedings and may be disclosed to the claimant and to the alleged harasser. The witness will also be advised that they may be required to appear at any subsequent disciplinary hearings or other formal processes. The unavailability of witnesses to attend hearings will not allow proceedings to be delayed for more than 5 working days and where necessary they will be asked to provide written statements to minimise delays.

**Minutes**

In D&R cases the investigatory facts report and/or the Referral Outcome letter represent the only formal detailed documentation. No further minutes, notes or reports will be provided.

**Adjournments**

If the Chair requires further information to make a decision he/she should consider adjourning the hearing and consider further investigation within reasonable timescales.

**Miscellaneous**

Employee illness, etc will not normally prevent the progression or completion of action under this or other policies.

Where a complaint is being progressed and employee illness or further complaints arise, this will not normally prevent progression of this action. It may be appropriate for these matters to run concurrently or together under one process.

This policy will allow flexibility by way of reasonable adjustments for employees with a disability. Examples include allowing more time at grievance hearings or any adjustments to the arrangements for the hearing which may be reasonably required.Offering this and other reasonable adjustments will ensure that access to the procedure is fair and equitable. The HR Case Management Team should be contacted for further advice.

**Failure to Attend**

If an employee is unable to attend a scheduled Hearing/Appeal, the chairperson must be informed in advance. If the employee fails to attend without reasonable explanation or, if they fail to attend a rescheduled Hearing/Appeal, this will result in the Hearing/Appeal proceeding in their absence.

Where a representative or work colleague is not available for an arranged Hearing/Appeal, the employee must make alternative arrangements for another trade union representative or work colleague and take all reasonable steps to ensure the Hearing/Appeal can proceed without unreasonable delay. Where appropriate, an alternative manager may be nominated to chair a Hearing to enable it to progress at the earliest opportunity.

If an alternative date is offered it will be within 5 days of the original hearing date unless the chair agrees there are exceptional circumstances to extend this time period.