

PERTH & KINROSS COUNCIL

Strategic Policy & Resources Committee

11 February 2015

HARMONISATION OF TERMS AND CONDITIONS OF EMPLOYMENT

Report by Corporate Human Resources Manager

PURPOSE OF REPORT

Following a revision of the National Scheme for Chief Officials in 2014, this report seeks to harmonise other local arrangements for Chief Officials with those of Single Status employees. The report also updates certain policy provisions for the Chief Executive in line with the changes in the National Scheme.

1. BACKGROUND/MAIN ISSUES

- 1.1 The Scottish Joint Negotiating Committee (SJNC) Scheme for Chief Officials (previously known as the “Gold Book”) covers Chief Executives and Chief Officers. Within Perth & Kinross Council, the term ‘chief official’ applies to the Chief Executive, Executive Directors, Depute Directors and Heads of Service.
- 1.2 The original national scheme for Chief Officials was produced in 1986 and remained largely unchanged apart from some updates through circulars. It has now been modernised and updated to ensure it reflects the current legislative environment at UK and European levels and is essentially fit for purpose.
- 1.3 The revised SJNC Scheme is now harmonised with Scottish Joint Council (SJC) conditions which apply to Local Government and Craft employees. There are now no significant differences in relation to terms and conditions, other than pay and grading structures, between local government staff which come under the framework of SJNC and SJC.
- 1.4 The changes agreed at national level were incorporated into Chief Officials’ contracts of employment and were effective from 1 April 2014. There are some other **local** terms and conditions which are different between Chief Officials, Craft and Single Status employees, mainly as a result of the changes which were made on the introduction of single status in 2007. In order to harmonise terms and conditions as far as possible across the Council workforce, a small number of changes are proposed.

2. PROPOSALS**Annual Leave**

- 2.1 Prior to the change in the national agreement, annual leave entitlement for Chief Officials was 27 days. Their entitlement has been harmonised with the

SJC Schemes for Craft and Single Status Employees, giving an entitlement of 20 days increasing to 25 after 5 years' service.

- 2.2 As Perth & Kinross Council has converted 5 public holidays to annual leave, this means that newly appointed Chief Officials would commence on 25 days' annual leave entitlement, rising to 30 days per annum after 5 years' continuous local government service. The reduction of two days in annual leave entitlement for Chief Officials in Perth & Kinross Council is effective from the leave year commencing January 2015.
- 2.3 Currently the Long Service Award Scheme applies to Chief Officials and Craft Employees; this Scheme recognises the long service that employees have given by granting one additional day's leave on reaching 10 years' service, three days' leave (an extra two days) on reaching 20 years' service and five days' leave (an extra two days) on reaching 30 years' service. An employee must have 10, 20 or 30 years' continuous service during their leave year with Perth & Kinross Council or its predecessor authorities to be eligible for additional long service leave.
- 2.4 The Long Service Award Scheme was replaced for Single Status employees with a new Single Status Annual Leave Scheme with entitlement starting at 25 days, rising by one day per year for the first 5 years. Thereafter, 31 days after 10 years' continuous service, 33 days after 20 years' continuous service and 35 days after 30 years' continuous service apply. Continuous service is defined as service with all organisations listed under the Redundancy Payment (Local Government) Modifications Order 1983, **as well as** additional recognised organisations approved locally in 2007.
- 2.5 **It is proposed** that the Single Status Annual Leave Scheme be renamed as the Annual Leave Scheme and applies to Chief Officials with effect from 1 January 2015. The impact on this would be as follows:

Continuous Service	Current Annual Leave *	Revised Annual Leave *	Public Holidays
New Start	32	25	6 + 1
1	32	26	6 + 1
2	32	27	6 + 1
3	32	28	6 + 1
4	32	29	6 + 1
5	32	30	6 + 1
10	33	31	6 + 1
20	35	33	6 + 1
30	37	35	6 + 1

* Figures include the 5 days converted public holidays.

- 2.6 This change will mean Chief Officials who are new entrants to local government will start to accrue additional annual leave on an incremental basis over the first 5 years rather than having to wait 5 years for additional leave. Service with additional recognised organisations detailed in the

General Notes of Guidance, which is updated from time to time, will be recognised for the purpose of determining additional annual leave entitlement.

Hours of Work

- 2.7 The hours of work for full-time Single Status employees are 36 hours per week. Chief Officials are regularly required to work above 36 hours per week in accordance with their statements of employment particulars which refer to a requirement to work whatever hours may be necessary to fulfil their responsibilities with a minimum of 36.25 hours per week. However, there are exceptional circumstances which may require excessive hours of work from Chief Officials – there is no provision for time off in lieu or additional payment.
- 2.8 **It is proposed** that Chief Officials move to a minimum of 36 hours per week in line with other full time Single Status employees with effect from 1 January 2015. This would compensate Chief Officials for the loss of two days' annual leave. It is recognised that most Chief Officials regularly work in excess of 36.25 hours per week and, although they are not eligible to access the Overtime Scheme, they have access to the Flexi-time Scheme.
- 2.9 **It is proposed** that, in exceptional circumstances, and with the prior agreement of the Chief Executive and/or Executive Director, time off in lieu be granted to Chief Officials for specific projects or periods of time.

Other Leave Provisions

- 2.10 Chief Officials have previously had access to some of the policies introduced as part of the Single Status agreement in 2007 on an ad hoc basis, in light of individual circumstances.
- 2.11 **It is proposed** that the Council formally extends to Chief Officials the following provisions:
- Banked Leave Scheme
 - Career Break Scheme
 - Time Off In Lieu, subject to operational requirements

Business Mileage

- 2.12 In 2002, the Strategic Policy & Resources Committee (Report No 02/133) agreed to amend the calculation of Chief Officials' salaries from being percentage-based to a fixed point - this resulted in salary increases. Linked to this amendment was the agreement that Chief Officials would be paid the lower Inland Revenue rate (currently 25p per mile) for any mileage covered in the course of their council duties, with the exception of those who have lease car arrangements where the mileage rate would be unchanged (currently 14p per mile).

- 2.13 The Business Travel rate for Single Status and Craft employees is based on Inland Revenue Rates of 45p for mileage up to 10,000 and a lower rate of 25p for mileage over 10,001.
- 2.14 The number of miles claimed by Chief Officials for business travel has reduced year on year, beyond that which would otherwise have been expected through the reduction in Chief Officials' headcount.
- 2.15 **It is proposed** that harmonisation is achieved by extending to Chief Officials, the Business Travel rate, currently 45p per mile for the first 10,000 for mileage covered in the course of their council duties with effect from 1 January 2015. Based on the financial year 2013-14, the proposed change would represent an additional cost of £1,912.18.

Grievance, Capability and Disciplinary Frameworks

- 2.16 The general principles and procedures contained in the Fairness at Work Policy will be applied when dealing with any grievances raised by the Chief Executive, as set out in the new Grievance Framework for the post of Chief Executive.
- 2.17 The national agreement introduces new Disciplinary and Capability Frameworks for Chief Executives and removes provisions for local appeals and settlement of grievances. The changes require an updating of the Council's procedures which apply to the Chief Executive.
- 2.18 The new Capability Framework for Chief Executives has been amended to reflect the requirement to address any concerns at the lowest possible level and a move to the formal stages in circumstances where this has not been effective.
- 2.19 **It is proposed** that the Grievance, Capability and Discipline Frameworks for the post of Chief Executive as set out in Appendices 1 - 3, apply. Where appropriate and in the interests of consistency, the policies have been aligned with those which apply to other Chief Officials and employee groups.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 A review of the National Scheme for Chief Officials has modernised and updated its provisions, resulting in there being no significant differences in national terms and conditions, other than pay, between local government staff who come under the framework of SJNC and SJC.
- 3.2 This report recommends harmonising local provisions as detailed in the report, which will result in there being no significant differences in terms and conditions, other than pay, between Chief Officials, Single Status employees. This report recommends updated policies in respect of grievance, capability and discipline for the post of Chief Executive, in line with changes in the National Scheme.

- 3.3 It is also recommended that consultation continues with the Craft Trade Unions with a view to achieving harmonisation on annual and other leave provisions across all employee groups.

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Approved

Name	Designation	Date
Bernadette Malone	Chief Executive	30 January 2015

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	Yes
Workforce	Yes
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	Yes
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	Yes
Risk	None
Consultation	
Internal	Yes
External	Yes
Communication	
Communications Plan	Yes

1. Strategic Implications

This report supports the delivery of the Strategic Objectives within the Community Plan/Single Outcome Agreement and Corporate Plan.

2. Resource Implications

Financial

The Head of Finance has been consulted and has confirmed that the proposals within this report can be contained within existing budgets.

Workforce

There are no workforce implications associated with the proposals contained within this report.

3. Assessments

Equality Impact Assessment

The proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) and have been assessed as **relevant** and the following positive outcomes expected following implementation: the

harmonisation of local terms and conditions between local government staff who come under the framework of SJNC and SJC. The changes will ensure there are no significant differences in terms and conditions, other than pay and grading structures, between these staff groups. Teachers' pay and terms and conditions are negotiated under separate bargaining arrangements under the SNCT and are bespoke to the nature of the work undertaken.

Legal and Governance

The Head of Legal Services has been consulted and agrees with the proposals contained within this report.

4. Consultation

Internal

The Executive Officer Team and Councillor Ian Miller, the Leader of the Council, have been consulted in the development of the proposals and the preparation of this report.

External

A formal consultation process took place with the recognised Trade Unions over December and January 2015. Consultation will continue with the Craft Trade Unions with a view to reaching agreement on the harmonisation of annual leave and other leave provisions across all employee groups.

5. Communication

Letters will be issued to all Chief Officials, revised information will be uploaded onto eric and a briefing note will be produced for Employee Support.

6. BACKGROUND PAPERS

The Scottish Joint Negotiating Committee (SJNC) Scheme for Chief Officials

7. APPENDICES

Appendix 1	Grievance – Fairness at Work
Appendix 2	Capability
Appendix 3	Disciplinary

PERTH & KINROSS COUNCIL
CHIEF EXECUTIVE
GRIEVANCE – FAIRNESS AT WORK
FRAMEWORK

Should the Chief Executive have a grievance, they should initially raise the grievance with the Leader of the Council. Should, after consideration by the Leader, the Chief Executive remain dissatisfied, then the matter should be considered by the Appeals -Committee (or other relevant Committee within the Council).

When dealing with a grievance raised by the Chief Executive the Leader, an Appeals -Committee or any other Committee shall be guided by the general principles and procedure contained within the Council's [Fairness at Work Policy](#).

PERTH & KINROSS COUNCIL

CHIEF EXECUTIVE

CAPABILITY

FRAMEWORK

Capability Framework - Performance

The most effective way of promoting a supportive environment for achieving and maintaining standards at work requires regular, effective and transparent communication between managers and employees. This enables matters to be concluded as swiftly as possible at the lowest practicable level.

Regular and effective communication between the Leader of the Council and the Chief Executive will enable performance issues to be raised promptly using the informal approach. Although not to be used for formal performance concerns the Annual Performance Appraisal undertaken with the Leader of the Council will enable full dialogue to be undertaken on the performance of the Chief Executive and expectations and objectives for the forthcoming year to be discussed and agreed.

Where the Leader has concerns regarding the Chief Executive's performance, there will be sensitive and clear communication to ensure the Chief Executive understands the issues and consideration is given to any relevant support/training. This stage of the procedure gives the Chief Executive a clear opportunity to respond to support offered and resolve under-performance informally. If performance issues are resolved at this stage, the formal procedure will not need to be applied.

Initial action provides a clear message to the Chief Executive that performance is becoming an issue which must be addressed. This must include identifying practical and supportive ways in which to improve along with an agreed reasonable timescale in which to make such improvements.

Discussions will be undertaken confidentially, confirmed in writing to the Chief Executive and recorded in their personal file.

Where this initial action does not lead to a satisfactory and sustained improvement, formal action may be taken.

Any ongoing performance concerns will initially be discussed between appropriate senior officers e.g. the Corporate HR Manager and/or the Monitoring Officer and the Leader of the Council. The Monitoring Officer's role is to ensure that fair and equitable treatment is provided and that the Council operates within the law and principles of natural justice. The Monitoring Officer will provide independent support and legal advice to the Leader of the Council to ensure that a fair and robust initial

action has been undertaken regarding the performance concerns being alleged and that the Chief Executive has been given a reasonable timescale to make improvements. The Monitoring Officer will review the initial action with the Leader of the Council in order to assess what, if any, further action is necessary. The Monitoring Officer may provide continued advice throughout the process as required by the Leader, Assessment Group or Sub-Committee.

The Leader, after conducting an initial assessment and following discussion with the Council's Monitoring Officer, will determine if it is appropriate to appoint an Assessment Group to address the continued under-performance. If this is determined appropriate then this will be confirmed in writing to the Chief Executive within 5 working days. The Assessment 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 Capability Framework is based on the Chief Executive's Disciplinary Framework, adapted as detailed below, and should therefore be read in conjunction with that framework.

- 1 In the first instance any question or complaint with regard to a Chief Executive's ongoing performance or capability will be referred to an Assessment Group which will be appointed as per section 1 of the Chief Executive's Disciplinary Framework.
- 2 The Assessment Group will meet with the Chief Executive to discuss the nature of the ongoing complaint or question.
- 3 If the Assessment Group concludes that there is a question of substance as to the Chief Executive's capability they will advise the Chief Executive of the ways in which performance should improve and a period of time after which the matter will be reviewed. This period should be sufficient to allow the Chief Executive a reasonable opportunity to show the required level of improved performance.
- 4 If the Assessment Group consider that there is evidence from the initial action taken by the Leader of the Council of serious incapability, which is not likely to be remedied within the reasonable period of time outlined at stage 3, or if a previous warning has been issued to the Chief Executive in regard to performance then the Assessment Group will refer the matter to an Investigating Officer.
- 5 Similarly, if subsequent to 3 above there remains a question as to the capability of the Chief Executive, the matter will be referred to an Investigating Officer.
- 6 The Investigating Officer will be appointed and the investigation conducted as per section 2 of the Chief Executive's Disciplinary Framework
- 7 Upon receipt of the report from the Investigating Officer the Assessment Group will decide whether or not the matter should proceed to a Hearing Committee.
- 8 The Hearing Committee will be appointed as per section 3 of the Chief Executive's Disciplinary Framework. The conduct of the hearing will be as per section 3 of the Chief Executive's Disciplinary Framework.
- 9 If the Hearing Committee conclude that the Chief Executive is not carrying out his/her duties and responsibilities to the level of capability that the Council believes is required, the Hearing Committee will consider issuing a written warning with the provision of a further reasonable amount of time for the Chief

Executive to meet the requirements of the post, or (if a previous warning has been issued or, the Hearing Committee judge the incapability to be fundamentally irremediable) confirm dismissal with notice. A satisfactory outcome may alternatively be achieved by the Chief Executive resigning, retiring or actively seeking other employment.

- 10 The Chief Executive has the right to be accompanied at formal meetings by a trade union/professional association representative.
- 11 The Chief Executive will have the right to appeal the decision of the Hearing Committee to an Appeal Sub-Committee (or other relevant body within the council). The appointment of that committee and conduct of the appeal will be as per section 4 of the Chief Executive's Disciplinary Framework.

PERTH & KINROSS COUNCIL

CHIEF EXECUTIVE

DISCIPLINARY

FRAMEWORK

The most effective way of promoting a supportive environment for achieving and maintaining standards at work requires regular, effective and transparent communication between managers and employees. This enables matters to be concluded as swiftly as possible at the lowest practicable level.

Regular and effective communication between the Leader of the Council and the Chief Executive will enable any conduct issues to be raised promptly using the informal approach, if appropriate. The desired outcome of this policy and procedure is to ensure that the Chief Executive achieves and maintains satisfactory standards of conduct and performance in a consistent, fair and supportive working environment.

1 Initial Assessment

In the event of an allegation of misconduct against the Chief Executive, initial consideration will be given to the allegation to determine whether the matter should be formally investigated and whether suspension is appropriate.

The allegation will initially be considered by appropriate senior officers e.g. the Corporate HR Manager and/or the Monitoring Officer and the Leader of the Council. The Monitoring Officer's role is to ensure that fair and equitable treatment is provided and that the Council operates within the law and principles of natural justice. The Monitoring Officer will provide independent support and legal advice to the Leader of the Council to ensure that a fair and robust initial assessment is undertaken to assess what, if any, action is necessary. The Monitoring Officer may provide continued advice throughout the process as required by the Leader, Assessment Group or Committee.

The Leader, after conducting this initial assessment, will determine if it is appropriate to appoint an Assessment Group. If determined as appropriate in the circumstances, 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. 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.

The Corporate HR Manager will be available to assist the group.

The Corporate HR Manager and/or monitoring officer will verbally make the Chief Executive aware of the allegation(s) and that an Assessment Group is being called to consider the matter. This will be confirmed in writing within 5 working days of the meeting. Any changes to the remit of the investigation will also be advised verbally to the Chief Executive and confirmed in writing within 5 working days. The Chief Executive may wish to make initial observations to the Corporate HR Manager. These observations can be made in writing by the Chief Executive; in any event the record of the discussions will be confirmed in writing to the Chief Executive. If agreed with the Chief Executive the Corporate HR Manager will share these observations 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 Formal Investigation

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, normally within 4 weeks of the appointment of the Investigating Officer. If the investigation is likely to extend beyond 4 weeks the Chief Executive will be kept informed of progress, in writing.

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 by a trade union/professional association representative or work colleague.
- Meet with and interview any witnesses to or parties associated with the allegation(s), a statement being prepared to record each interview. Each witness will have the right to be accompanied at that meeting by a trade

- union/professional association representative or work colleague as long as their presence does not prejudice the process or who might have a conflict of interest.
- 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 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 (examples of what may constitute gross misconduct are contained in Appendix B). 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 Disciplinary Hearing

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

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 Corporate HR Manager 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; right to be accompanied at that meeting by a trade union/professional association representative or work colleague and ask the Chief Executive (or their representative) to provide, in advance of the hearing, any relevant papers that they may present as part of their case and the names of any witnesses they may wish to call.

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 of the misconduct and any mitigation presented. The sanctions that may be applied are contained in Appendix A.

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 Achieving & Maintaining Standards - Disciplinary Procedure applicable for all other Chief Officers, Appendix A. Similarly, examples of what constitutes gross misconduct will be as per the Council's Achieving & Maintaining Standards - Disciplinary Procedure applicable for other chief officers, Appendix B.

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 Appeal

Should the Chief Executive appeal the decision of the Hearing Committee, a meeting of the Appeal Committee (or other relevant body within the council), will be arranged to consider the appeal.

The Appeal 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 Corporate HR Manager or Head of Legal Services will advise the committee. A record of the meeting and decision reached will be taken.

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

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

Misconduct – (Based upon Council’s Achieving & Maintaining Standards Procedure applicable to Chief Officers).

Action

Formal action may be implemented at any level, if warranted by the alleged misconduct and circumstances of the case. The levels of action are:

Written Warning:

This action will normally be taken for a first breach of discipline/misconduct, or a repeated breach of discipline.

Will normally remain on file for a period of 9 months from the date issued.

Final Written Warning:

This action will normally be taken for a first serious breach of discipline/misconduct, a repeated breach of discipline or where the employee has not improved within the currency of a written warning.

Will normally remain on file for a period of 15 months from the date issued.

Action Short of Dismissal:

This action may be taken, as an alternative to dismissal, and may consist of a final written warning in conjunction with:

- Disciplinary Transfer - A Disciplinary Transfer will only occur once
- Demotion or loss of seniority
- Extending the normal time limit for a final written warning
- Suspension without pay for a specified period
- Such other action as deemed appropriate by the relevant Committee in the circumstances.

GROSS MISCONDUCT

Gross misconduct (i.e. dismissal without notice or without pay in lieu of notice) is described as misconduct serious enough to destroy the employment contract between the employer and employee, and makes any further working relationship and trust impossible.

Where the misconduct is potentially of a sufficiently serious nature as to constitute gross misconduct, consideration should be given to the employee being immediately suspended from work with pay to enable a full and thorough investigation of the incident.

In all cases, the Chief Executive's Disciplinary Framework must be followed.

Examples of Gross Misconduct

Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and may warrant summary dismissal. Examples of gross misconduct might include:

- Theft
- Fraud, e.g. fraudulent claims of sick pay, flexitime, business mileage.
- Deliberate falsification of records
- Fighting
- Physical assault/violence or bullying
- Deliberate and serious damage to Council property
- Serious misuse of Council's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious acts of insubordination
- Unlawful discrimination or harassment
- Committing criminal offences
- Bringing the Council into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of the Council Code of Conduct
- A serious breach of the Child Protection Regulations
- A serious breach of the Code of Practice for social service workers
- A serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998)
- Failure to disclose a personal financial interest in a contract or proposed contract with the Council
- Unauthorised acceptance of any fee or reward in connection with the employee's work

This is not an exhaustive list

