

Disciplinary Policy & Procedure

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Corporate Fit	Internal Management Plan	✓
	Risk Register	✓
	Business Plan	✓
	Equalities Strategy	✓
	Legislation	✓

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Our policies provide a framework to underpin our vision and values, to help us achieve our strategic objectives.

Our Vision

Local people, local control.

By providing quality homes and services, we will create stronger communities and a better quality of life for our customers.

Our Values

- Focused on the needs of our customers and communities.
- Supportive of our staff and Committee members.
- Responsible, efficient, and innovative.
- Open and accountable.
- Inclusive and respectful.
- Fair and trustworthy.

Strategic Direction

Consolidation and improvement: Applicable to our core business as a landlord & property manager.

Growth: Through the new build opportunities, we are taking forward.

Partnerships: Where this can help to address shared goals and increase capacity and value.

Resilience: A key priority across all parts of our business.

Strategic Objectives

Services: Deliver quality, value for money services that meet customers' needs

Homes & neighbourhoods: Provide quality homes and neighbourhoods.

Assets: Manage our assets well, by spending wisely.

Communities: Work with local partners to provide or enable services and activities that benefit local people and our communities as a whole

Our people: Offer a great workplace environment that produces a positive staff culture and highly engaged staff.

Leadership & Financial: Maintain good governance and a strong financial business plan, to ensure we have the capacity to achieve our goals.

Our Equalities and Human Rights Commitment

We understand that people perform better when they can be themselves and we are committed to making the Association an environment where employees, customers, and stakeholders can be open and supported. We promote equality, diversity, and inclusion in all our policies and procedures to ensure that everyone is treated equally and that they are treated fairly on in relation to the protected characteristics as outlined in the Equality Act 2010.

Privacy Statement

As data controller we will collect and process personal data relating to you. We will only collect personal information when we need this. The type of information we need from you will vary depending on our relationship with you. When we ask you for information, we will make it clear why we need it. We will also make it clear when you do not have to provide us with information and any consequences of not providing this. We are committed to being transparent about how we collect and use your data, and to meeting our data protection obligations with you. Further information about this commitment can be found within our full Privacy Statements.

Policy Scope & Review

For the purpose of this policy the term Association will include all members of the Tollcross Housing Association Limited. Therefore, all employees, governing body members, volunteers, customers and other relevant stakeholders will be expected to adhere to this policy and/or procedure. All policies and procedures are reviewed every 3 years in line with best practice and current legislation. The Association reserves the right to make additions or alterations to this policy and procedure from time to time. Any timescales set out in this policy may be extended where required.

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1. Introduction

- 1.1. To ensure that we achieves our strategic objectives, we require all employees to maintain the highest possible standards of attendance, conduct, and performance.
- 1.2. We will take reasonable steps to inform employees of the standards of conduct expected of them. In turn all employees should familiarise themselves with the rules governing their employment as contained in:
 - a) their letter of appointment (containing Statement of Particulars);
 - b) their job description;
 - c) the Dignity at Work Policy for employees;
 - d) the Code of Conduct Policy for employees;
 - e) the Managing Performance Policy;
 - f) the Managing Attendance Policy;
 - g) the SSSC Code of Practice, for relevant staff (see appendix 2 for more information);
 - h) their Terms and Conditions of Employment;
 - i) the Association's organisational objectives and values; and
 - j) any other relevant employment policies or procedures.

2. Purpose & scope

- 2.1. The purpose of this policy it to provide a framework for managing disciplinary matters. It is recognised that rules should be enforced in a fair and consistent manner. However, it is essential that each case is treated on its merits and that disciplinary decisions are taken which are reasonable in all the circumstances.
- 2.2. There are three classes of issues that can be dealt with in line with the policy:
 - Conduct / behaviours

Misconduct may cover a wide range of issues that can vary in their level of seriousness, including but not limited to; failure to follow a reasonable management instruction, abuse of the Association's ICT systems, creating a hostile work environment, theft, and fighting.
 - Capability / performance

Underperformance may arise when an employee is failing, in a significant or persistent way, to carry out their responsibilities or duties, in a satisfactory manner. Our Managing Performance policy details a framework to manage underperformance at work and should be used in conjunction with this policy.
 - Incapability / attendance

In situations where an employee is unable to do their job because of ill health they are managed under our Managing Attendance policy, which should be used in conjunction with this policy. Unacceptable levels of attendance, or incapability, may be subject to disciplinary actions.
- 2.3. Complaints made against an employee by another employee (for example under the Dignity at Work Policy) will be investigated and dealt with under this policy.
- 2.4. Where allegations fall within the category of whistleblowing (i.e. where the disclosure would fall within the category of public interest), this will be investigated in line with our Whistleblowing Policy.
- 2.5. A disciplinary process may be invoked where conduct outside an employee's normal working hours / employment seriously impairs their ability to carry out the duties, calls into question their integrity or suitability to carry out their duties, or brings the Association's reputation into disrepute.

3. Confidentiality

- 3.1. We understand that any disciplinary process can be difficult for all parties involved. To respect and acknowledge this we ask for all parties to remain confidential throughout the process.
- 3.2. Employees (including witnesses), managers and representatives must ensure this confidentiality throughout the process (both informal and formal stages) and thereafter when the resolution has been reached. Failure to do this could result in disciplinary action being taken against the person responsible for the information breach.
- 3.3. We do not as standard allow for any recording devices throughout the disciplinary process (both informal and formal process). We may consider this as a reasonable adjustment and should be discussed with the relevant manager.

4. Informal process – ‘course correction’

- 4.1. We believe disciplinary measures should be viewed as a means of encouraging an improvement in an individual's conduct or performance and not as merely a method of applying sanctions. It is further accepted that line managers play an important role in the day-to-day management of employees and should seek to deal with minor lapses in conduct or performance of duties through informal action in the first instance.
- 4.2. Managers and employees should always try to resolve problems in the workplace at the earliest possible opportunity. Issues should be raised and dealt with promptly without unreasonable delay in meetings, decisions or confirmation of decisions made.
- 4.3. Informal action normally involves a one-to-one discussion between an employee and their line manager aimed at achieving an improvement in the employee's conduct or performance of duties to the required standards.
- 4.4. Mediation may be used for parties within a conflict / dispute situation (e.g. an employee who has made a complaint against another employee) to help them identify a solution prior to escalation through a formal process. See appendix 3 for further information.
- 4.5. Informal action does not form part of the formal disciplinary procedure and therefore no formal warnings can be given. However, the discussion will result in an improvement note (appendix 4) detailing areas discussed, actions or improvements required, and support/training to be provided.
- 4.6. Improvements notes will be taken into consideration for further disciplinary action, where no improvements are made, or an employee is in receipt of multiple improvement notes (not necessarily for the same issue).

5. Formal process – investigation

- 5.1. A suitable investigation officer will be selected to gather the facts of the issue identified; this can include the employee's line manager. A member of the corporate team will support the formal process and provide note taking support.
- 5.2. A disciplinary hearing shall not be convened until the circumstances of the case have been fully investigated. In some cases, this may require the holding of an investigatory meeting with the employee before proceeding to a disciplinary hearing, in others the investigatory stage will be the collation of evidence by the investigation officer.

- 5.3. The length and complexity of the investigation will be determined by the circumstances and the nature of the allegations. If you are unable, or choose not to participate in the investigation, we may proceed without your input.
- 5.4. The investigation officer shall report their findings, including recommendations about whether there is:
- a case to answer and the matter should proceed to a formal disciplinary hearing, or
 - no case to answer and the matter should be ended at the investigation stage, or
 - a case to answer but should be addressed at the informal stage.
- 5.5. A model procedure for conducting a disciplinary investigation and investigation report template is contained in appendix 5 and 6.

6. Witnesses & witness statements

- 6.1. During the investigation it may be necessary for statements to be taken from relevant witnesses to ensure a full investigation is carried out. These statements will be used to establish the facts by the investigation officer.
- 6.2. All employees are expected to actively participate within the disciplinary procedure and provide witness statements when required. Where a witness is unable to attend an investigation meeting, they may be asked to submit a written statement based on their factual knowledge of the matter.
- 6.3. To allow for these statements to be taken, the witness will be invited to attend an investigation meeting with the investigation officer and a member of the corporate team. A written statement will be taken and where possible it shall be signed and dated by the witness.
- 6.4. Witness statements, as standard, are not anonymous. If a witness has concerns regarding their personal safety or any other substantial issue relating to providing a statement, they should discuss this with the investigation officer or a member of the corporate team. Only in extreme circumstances will a witness statement be anonymised.
- 6.5. If the matter does not progress to a formal disciplinary hearing witness statements will not be shared with any party.
- 6.6. Where the matter does progress to a formal disciplinary hearing these statements will usually be shared with the employee in question (and they in turn will share them with their Union representative or colleague supporting them through the process).
- 6.7. Employees who provide witness statements should be aware that they may also be required to attend disciplinary hearings, because the employee that is the subject of the disciplinary hearing has the right to raise points about any information provided by witnesses.
- 6.8. Employees under investigation who wish particular witnesses to be interviewed as part of the process should notify the investigation officer within 3 working days of notification of the formal investigation process. The employee should inform the investigation officer of the names of particular employees and the reason they wish for them to be interviewed as part of the process.

7. Suspension

- 7.1. There may be instances where suspension with pay is necessary while investigations are carried out. Suspension is not a disciplinary action and does not imply guilt.
- 7.2. We have the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with or destroyed; witnesses may be pressurised before the disciplinary hearing; or if there is a potential risk to the Association or other employees or third parties in allowing the employee to remain at work.
- 7.3. We may consider alternatives to suspension where suitable. For example, a change in location / shift pattern / line management. These alternatives are only a temporary measure and would be reviewed throughout the process.
- 7.4. Examples of circumstances where suspension with pay may be used are:
- Where the allegation is of gross misconduct.
 - Where a cooling off period is required while an incident is investigated.
 - Where the investigation may be hindered by the presence of the employee under investigation.
 - Pending a police investigation into an alleged criminal offence or any other serious incident.
 - Where the continued presence in the workplace of the employee presents a concern for the safety of customers and / or a hazard for other employees, or the employee themselves in terms of health and safety.
- 7.5. Where suspension is deemed necessary an appropriate manager, in consultation with a member of the corporate team may suspend the employee on full pay:
- (a) pending further investigations into the circumstances of the case, and/or
- (b) when it is considered to be inappropriate for the employee to remain at work prior to the disciplinary hearing.
- 7.6. Written confirmation of the suspension, reasons and dates, shall be forwarded to the employee. Suspension periods should be kept to a minimum but allow for a full investigation to take place. We will review suspensions every 5-working days and provide updates when required.

8. Right to be accompanied

- 8.1. Employees have a statutory right to be accompanied by a fellow worker, trade union representative or an official employed by a trade union (i.e. Full-time Official), where a disciplinary meeting could result in:
- a formal warning being issued; or
 - the taking of some other disciplinary action; or
 - the confirmation of a warning or some other disciplinary action (appeal hearing).
- 8.2. Where a representative is in attendance at a disciplinary meeting, they are allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The representative does not have the right to answer questions on behalf of the employee, address the hearing if the employee does not wish it or prevent the Association from explaining their case.

- 8.3. There is no statutory right for an employee to be accompanied at the informal stage by colleague or a Trade Union representative. Any requests to allow for the employee to be supported at the informal stage should be considered by the line manager, taking into account all relevant circumstances. However, it should not hold up the informal process as swift action can ensure a 'course correction' is put in place.
- 8.4. The choice of representative is a matter for the employee, it is their responsibility to contact their chosen representative, provide them with relevant information and ensure that they are willing to act in that capacity. However, we reserves the right to refuse to accept a representative at meetings if they believe the representative would purposely undermine the disciplinary process.

9. Formal process - invite to disciplinary hearing

- 9.1. If, following the investigation, a disciplinary hearing is deemed necessary, the employee concerned shall, where possible, be given at least 3 working days' notice in writing of the hearing and shall also be informed in the same letter of:
- a) the fact that it will be a formal disciplinary hearing;
 - b) the nature of the allegation(s) with sufficient details, including the provision of the investigation report, a copy of any evidence gathered and statements by witnesses (where evidence includes physical items or CCTV footage, the letter will include details of how these can be viewed);
 - c) the possible consequences of the allegations;
 - d) the names of any witnesses who will present evidence at the hearing in support of the allegations;
 - e) the right to ask witnesses to attend on the employee's behalf or submit statements or other documentation in response to the allegations subject to the names of any such witnesses and/or any written submissions being provided at least 2 working days in advance to the officer conducting the hearing to ensure their availability; and
 - f) the right to be accompanied/represented at the hearing by a trade union representative trade union official or a fellow employee of their choice and that they are advised to exercise this right.
- 9.2. Where an employee's companion is not available at the time of the prosed hearing, we will endeavour to re-arrange the hearing to another suitable date and time. However, this will be, as standard, within 5 working days of the original hearing date. Employees should provide a note of availability of the companion when requesting that the hearing is re-arranged to facilitate the process.
- 9.3. Where an employee fails to attend at a disciplinary hearing due to health reasons, we will seek further medical advice from our occupational health provider and make arrangements suitable to the advice given.
- 9.4. If an employee repeatedly fails to attend at a disciplinary hearing, in circumstances where the Association has endeavoured to make all reasonable arrangements to enable the employee to attend, the Association will arrange a final hearing date. If an employee then fails to attend, the hearing will be held in their absence with the already evidence supplied.
- 9.5. Where an employee has gathered evidence they feel should also be considered they must submit this in advance of the disciplinary hearing, detailing the reasons why the evidence was not available at the time of the investigation process.

10. Formal process - disciplinary hearing

- 10.1. Other than in exceptional circumstances or matter that are being dealt with in line with the Managing Attendance Policy, the officer who conducted the investigation shall not also conduct the disciplinary hearing. A suitable nominated officer will be selected to hold the disciplinary hearing.
- 10.2. The nominated officer conducting the disciplinary hearing shall ensure that the allegations / complaint is fully explained to the employee, the facts gathered during the investigation are presented to the employee and the employee is given an opportunity to set out their case and answer any allegations.
- 10.3. The employee, supported by their representative, should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. Where we or employee intends to call relevant witnesses, they should give advance notice that they intend to do this.
- 10.4. Where possible, the facts gathered at the investigation stage and investigation report should be presented by the officer who conducted the investigation and, if so, this officer shall remain in attendance at the hearing until the presentation of evidence is completed. Where it is not possible for the investigation officer to attend, a suitable substitute will be in attendance to present the relevant evidence.
- 10.5. The nominated officer conducting the hearing, assisted by any advisory staff (normally a member of the corporate team), shall consider all the evidence presented with a view to arriving at a decision as to whether any disciplinary action should be imposed and, if so, what level of action. The advisory staff assisting the officer shall not be involved in the final decision-making process.
- 10.6. Where an employee fails to attend a re-arranged disciplinary hearing, where all reasonable efforts have been made to accommodate the employee, the nominated officer will be required to hold the disciplinary hearing in the employee's absence and make their decision based on the evidence supplied.
- 10.7. A model procedure for conducting a disciplinary hearing is contained in appendix 7.
- 10.8. In terms of managing attendance matters, the disciplinary hearing will take the form of an attendance review meeting. Where a disciplinary sanction is a possible outcome of the meeting, the employee will notified of this prior to the meeting and it will follow the process detailed above.

11. Actions following a disciplinary hearing

- 11.1. At the end of the disciplinary hearing, where misconduct is confirmed or the employee is found to be performing at an unsatisfactory level, a disciplinary action decision will be issued to the employee from the nominated officer. Further details of the levels of disciplinary actions / warnings can be found under section 12.
- 11.2. Any disciplinary action / outcome of a disciplinary hearing shall be notified or confirmed in writing, where possible, within 5 working days of the hearing. Where this is not possible (i.e. during a complicated case) written confirmation will be sent to the employee explaining the current status of the process and the next steps.

- 11.3. Where the disciplinary action results in a written warning, the letter will confirm the following:
- level warning being given & the duration which the warning will held 'live';
 - the nature of the unsatisfactory matter(s) dealt with at the hearing;
 - the action(s) required by the employee to remedy the matter (for matters of poor performance further details about what expected should be detailed, further information regarding this is available in the Managing Performance Policy);
 - that subsequent failure(s) in conduct or performance of duties will normally result in more serious disciplinary action;
 - that a copy of the warning letter will be placed on the employee's personnel file;
 - and the employee's right of appeal.
- 11.4. If an employee's misconduct or unsatisfactory performance is sufficiently serious (including matters of gross misconduct) it may be appropriate to move directly to dismissal. The letter should outline the written reasons for dismissal, the date on which employment will be terminated and the right of appeal.
- 11.5. If, following a disciplinary hearing, the nominated officer considers that no formal disciplinary action is justified; they shall inform the employee accordingly. In these circumstances, it may be suitable for an informal action to be confirmed as an alternative. However, the matter will not be taken into consideration for automatic escalation in the future if there is subsequent misconduct.

12. Warnings & time limits

- 12.1. When deciding the appropriate level of disciplinary action / warning, the nominated officer will consider the following:
- What policies, procedures, and codes of conduct impact on the likely warning as a result of the particular misconduct (i.e. the codes of practice for the registered projects).
 - What warnings have been imposed in similar cases (further guidance can be sought from the corporate team regarding previous warnings).
 - Whether standards of other employees subject to the same policies, procedures and codes of conduct are acceptable, to ensure that the employee is not being unfairly singled out.
 - The employee's disciplinary record (including current warnings and improvement notes), general work performance, conduct, work record and position.
 - Any special circumstances which might make it appropriate to adjust the warning level.
 - Whether the proposed penalty is reasonable in view of all the circumstances.
 - Whether any training, additional support or adjustment to the work are necessary.
- 12.2. A decision may be taken to consider expired (i.e. non-live) disciplinary warnings where an employee's persistent misconduct warrants such action.
- 12.3. The following disciplinary actions / warnings are available as options for the nominated officer to choose from:

First written warning - If there is no improvement in the standard of conduct/performance following the informal action, or the first act of misconduct/underperformance is of a more serious nature, the employee will be issued a first written warning.

Final written warning - A final written warning may be issued, where an employee who has been issued with a first written warning fails to achieve and maintain the required improvement in conduct/performance or the first/second act of misconduct/underperformance is of a more serious nature, the employee will be issued a final written warning.

Action short of dismissal – Action short of dismissal may be issued if there is still no sustained improvement in the standard of conduct/performance whilst a final written warning remains live, or if there is an allegation of gross misconduct which the nominated officer upheld.

Dismissal - A dismissal may be issued if there is still no sustained improvement in the standard of conduct/performance/attendance whilst a final written warning remains live, or if there is an allegation of gross misconduct which the nominated officer upheld, and if there are no mitigating circumstances or, in the view of the nominated officer, there are insufficient mitigating circumstances which would allow a lesser charge of action short of dismissal. In cases of gross misconduct dismissal will normally be without notice or payment in lieu of notice.

- 12.4. Action short of dismissal may be selected as an alternative to dismissal if the nominated officer considers there to be mitigating circumstances. The nominated officer will need to consider all the circumstances when making the decision between dismissal and action short of dismissal, including:
- the employee's explanation of the conduct;
 - any mitigating circumstances advanced by the employee;
 - length of service;
 - previous disciplinary record;
 - the employee's usual conduct/behaviour (for example, is the gross misconduct completely out of character); and
 - consistency of treatment between employees.
- 12.5. Action short of dismissal may include a permanent change to an employee's contract of employment (such as demotion, redeployment, or loss of seniority). Where an employee is demoted or redeployed into a role with a lower salary as a result of action short of dismissal, the employee will not receive any salary protection and will be paid at the rate for the new role.
- 12.6. There is a distinction between termination on the grounds of incapability and using the Association's disciplinary procedures for absences viewed as poor attendance. Further details regarding this can be found in the Association's Managing Attendance Policy.
- 12.7. Warnings and other formal disciplinary action short of dismissal, for matters of misconduct, shall normally be disregarded for disciplinary purposes (i.e. automatic escalation to the next stage of the disciplinary process) after a period of satisfactory employment. The relevant periods shall normally be as follows, unless the nominated officer set out specific circumstances that justify a variation of the period (for example, a pattern of minor misconduct re-occurring shortly after the expiry of previous first written warnings):
- First written warning – 6 months
 - Final written warning – 12 months
 - Action short of dismissal – 12 months (this does not include any permanent changes to contracts of employment made)
- 12.8. For disciplinary actions / warnings relating to absence and poor performance, the time limit will automatically be 12 months to allow for adequate improvement to be made and reviewed.

13. Gross Misconduct

- 13.1. We define gross misconduct as behaviour of such a nature that we are unable to tolerate the continued employment of the individual concerned. It is recognised that an employee may be dismissed without previous warning where gross misconduct is deemed to have occurred.
- 13.2. The following is neither exhaustive nor exclusive but is indicative of the types of gross conduct which will normally result in dismissal:
- Theft of Association, colleague, customer, or stakeholder property.
 - Wilful damage or misuse of property belonging to Association, colleague, customer or stakeholder.
 - Violent, dangerous, obscene, or threatening behaviour towards colleagues, customers or stakeholders
 - Any form of discrimination, harassment or bullying – towards colleagues, customers or stakeholders. Including malicious or untrue allegations against others.
 - Fraud or any fraudulent acts (i.e. deliberate falsification of timesheets / providing false or misleading information during recruitment process / falsely claim sick pay / etc.).
 - Wilful breach, deliberate resistance, or serious infringement of Association policies, procedures, and safety rules.
 - Non-disclosure of an interest, whether direct or indirect, in a contractual arrangement between an agency and the Association (non-disclosure of a relationship within the Association / disclosure of employment or business interests which conflict with the interests of the Association).
 - Serious insubordination, gross professional incompetence, gross carelessness or negligence in carrying out the reasonable instructions, duties and responsibilities.
 - Intoxication, consumption of or being under the influence of alcohol or non-prescribed drugs while at work.
 - Criminal conviction or other unacceptable conduct which renders the employee unsuitable to carry out the duties and responsibilities of the post, whether or not the conduct occurred whilst on duty. See appendix 8 for further information about criminal offences.
 - Any form of covert recording of any colleague, customer or stakeholder (including but not limited to: videos, audio recording, and photographs).
 - Being disloyal to or damaging the reputation of the Association.
- 13.3. In cases of gross misconduct, employees may be dismissed without notice or payment in lieu of notice. We will also reduce any contractual benefits due to the statutory minimum (e.g. annual leave entitlement).

14. Right of appeal

- 14.1. Any employee who receives a disciplinary warning or is dismissed is entitled to appeal that decision, where they feel that the disciplinary action taken is wrong or unjust. The letter to the employee confirming the disciplinary warning or dismissal will advise the employee of the person to whom their appeal should be addressed.
- 14.2. Appeals against warnings or dismissal must be submitted in writing, indicating the grounds of the appeal, within 5 working days of the employee receiving confirmation of the hearing decision. This appeal will be dealt with under the Disciplinary Policy not the Grievance Procedure.

- 14.3. Where the employee wishes to present new evidence, including witness statements, not considered at the disciplinary hearing, they are asked to do so in advance (no later than 2 working days of the appeal hearing).
- 14.4. Appeal hearings are convened to review the decision and the outcome of the original disciplinary hearing. Should new evidence be put forward the appeal officer will need to consider whether it will be helpful in reaching a decision and why it was not made available at the original disciplinary hearing.
- 14.5. Appeals against first and final written warnings shall be heard as soon as possible and normally within 10 working days of receiving the written notice of appeal, depending on the level of complexity of the case.
- 14.6. Appeals against dismissal will be held, where possible, within 20 working days.

15. Appeal hearing

- 15.1. The employee shall be given, where possible, at least 3 working days notice in writing of the appeal hearing and shall be informed of their right to be accompanied at the hearing by a trade union official or some fellow employee of their choice.
- 15.2. Where an employee's companion is not available at the time of the proposed hearing, we will endeavour to re-arrange the hearing to another suitable date and time. However, this will be, as standard, within 5 working days of the original hearing date.
- 15.3. The appeal officer / panel will consider the grounds that the employee has put forward and assess whether or not the conclusion reached in the previous disciplinary hearing was appropriate. The appeal is not normally a re-hearing of the original disciplinary hearing but a consideration of specific areas with which the employee is dissatisfied in relation to the original disciplinary hearing. It should consider if the procedure and outcome was fair.
- 15.4. An appeals officer / panel will have no previous involvement in the disciplinary matter will hear the appeal. Where the disciplinary hearing (and warning imposed) was dealt with by a Director, the appeal may be heard by another Director. The case does not automatically escalate to the Chief Executive.
- 15.5. The appeals officer / panel conducting the hearing, assisted by any advisory staff (normally a member of the corporate team), shall consider all the evidence presented with a view to arriving at a decision as to whether the disciplinary action should be upheld or dismissed. The advisory staff assisting the officer shall not be involved in the final decision-making process. A model procedure for conducting an appeal hearing is contained in Appendix 9.

16. Outcome of appeal hearing

- 16.1. Outcome of the appeal / decision shall, where possible, be confirmed in writing within 5 working days. Where this is not possible (i.e. during a complicated case) a letter explaining the current status of the process and the next steps will be issued.
- 16.2. The form of the decision of the appeals officer / panel shall generally be announced and confirmed as one of the following, as appropriate:
 1. that the grounds of the appeal have been substantiated and the appeal is upheld.

2. that the grounds of the appeal have been substantiated in part and the appeal is upheld to the extent that <details of what has and hasn't been upheld>.
 3. that the grounds of the appeal have not been substantiated and the appeal is not upheld.
- 16.3. If the appeal is upheld, the disciplinary action shall be withdrawn and any monies due to the appellant shall be payable in full. Where the appeal was against a decision to dismiss, the appellant shall be reinstated to their former post or, exceptionally, if this is not practicable, to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant.
- 16.4. If the appeal is not upheld, the disciplinary action shall stand and be regarded as confirmed.
- 16.5. If the appeal is substantiated in part, the disciplinary action shall be withdrawn and an alternative, more appropriate form of disciplinary action substituted. Where the appeal was against a decision to dismiss, the appellant shall be either:
- (a) Reinstated to their former post or a similar post on no less favourable terms except that a lesser disciplinary penalty shall apply; or
 - (b) Re-engaged in some other post on terms and conditions which may be determined by the Staff Sub-Committee (with guidance from the Leadership Team).
- 16.6. For purposes of paragraphs above, the terms “re-instatement” and “re-engagement” shall be defined as follows:
- “re-instatement” is the restoration of the contract of employment between the appellant and the Association as if the dismissal had never taken place. Thus, outstanding salary/wages for the period the contract ceased to operate shall be payable in full unless the Association impose an alternative disciplinary penalty of a financial nature, i.e. a period of suspension without pay or withholding of an annual increment. In addition, all rights arising out of continuous employment shall be restored as necessary to ensure reinstatement is without detriment; and
 - “re-engagement” is the engagement of the appellant to another post and/or in another location with effect from the date of dismissal on terms and conditions which may be less favourable than those of the appellant’s former post, eg demotion to a lower grade post. Thus, salary/wages for the period since dismissal took effect may be payable in accordance with the terms and conditions of re-engagement determined by the Appeals Officer. In addition, all rights arising out of continuous employment shall be restored.
- 16.7. If as a result of an appeal, any disciplinary action is withdrawn or modified, any written reference thereto on the employee’s personal file shall appropriately amended and the employee and their representative, if any, notified accordingly.
- 17. JNC Appeal Process**
- 17.1. As part of the EVH Terms & Conditions of Employment, employees have the right to appeal to the JNC for certain disciplinary outcomes (further information detailed in section 18). The JNC is the Joint Negotiating Committee, with EVH and Unite the Union (recognised union for negotiation and bargaining purposes).

17.2. An Appeal Chair, an independent individual appointed by the JNC, will hear all appeals submitted at dismissal stage. They may also hear appeals submitted at final written warning (including action short of dismissal), after the internal process has been exhausted by the employee.

18. Authority levels for nominated officer & appeals

18.1. The authority to take disciplinary action will differ depending on the nature of the allegations and potential outcome. This is reflected in the appeals process, where authority to review disciplinary action and process, will differ depending on the disciplinary sanction given.

18.2. The table below provides the levels of authority to take disciplinary action:

Outcome / Potential Outcome	Nominated officer authority level
First Written Warning	Management & above
Final Written Warning	Management & above
Action short of dismissal	Management & above
Dismissal	Staffing Sub-committee

18.3. The table below provides the levels where an appeal will be heard:

Confirmed Outcome	Appeal Officer / Panel	Appeal Officer / Panel
First Written Warning	Director & above	No further right of appeal
Final Written Warning	Director & above	JNC Appeal Chair
Action short of dismissal	Director & above	JNC Appeal Chair
Dismissal	JNC Appeal Chair	No further right of appeal

Appendix 1 – Equality & Human Rights Impact Assessment

Policy	Disciplinary Policy		
EIA Completed by	Corporate Services Manager	EIA Date	June 2024
1. Aims, objectives, and purpose of the policy / proposal			
To provide a clear and robust framework for our disciplinary process. Including what steps and timescales an employee can expect during the process.			
2. Who is intended to benefit from the policy / proposal?			
Employees			
3. What outcomes are wanted from this policy / proposal?			
Employees to understand the process.			
4. Which protected characteristics could be affected by proposal?	<input type="checkbox"/> Age	<input type="checkbox"/> Gender reassignment	<input type="checkbox"/> Religion or belief
	<input type="checkbox"/> Disability	<input type="checkbox"/> Marriage & civil partnership	<input type="checkbox"/> Sex
	<input type="checkbox"/> Race	<input type="checkbox"/> Pregnancy and maternity	<input type="checkbox"/> Sexual orientation
5. If the policy / proposal is not relevant to any of the protected characteristics listed in part 4, state why and end the process here.			
The policy provides a framework for how to conduct a disciplinary process. The process does not negatively impact on the protected characteristics. However, we understand that when an employee is faced with a disciplinary process this may negatively impact on their mental health (and worsen those already with a mental health condition). We will take advice from our occupational health provider, where a situation like this may arise and ensure that any reasonable adjustments are made to ensure the process can continue.			
6. Describe the likely impact(s) the policy / proposal could have on the groups identified in part 4			
7. What actions are required to address the impacts arising from this assessment? (This might include; collecting data, putting monitoring in place, specific actions to mitigate negative impacts).			

Appendix 2 – Registered services

We have responsibilities as an employer of employee working within a registered service, which are set out in the Code of Practice for Employers of Social Service Workers (the Code for Employers) and the Regulation of Care (Scotland) Act 2001 (the Act).

We are legally obliged to notify relevant regulatory agencies, such as the Care Inspectorate and the Scottish Social Services Council of certain disciplinary procedures.

We must make a referral when a ‘registered’ employee:

- is suspended, dismissed or demoted
- resigns during a disciplinary investigation, and if we would have considered dismissal
- is charged or convicted of a criminal offence
- any other circumstances where we are concerned that the behaviour or actions of a worker raises a serious concern about their fitness to practice

We are also required to notify Disclosure Scotland where we are concerned that the behaviour, or actions, of an employee raises a serious concern about their fitness to practice.

Behaviours that are likely to call into question an employee’s fitness to practice (as detailed in Code for Employers) and requires us to notify regulatory agencies, regardless of the outcome of any disciplinary process, include (this is not an exhaustive list):

- dishonesty, fraud, abuse of trust
- exploitation of a vulnerable person
- failure to respect the rights and choices of people who use services
- health which is not being managed and affects the safety of people who use services
- hiding mistakes/blocking investigation
- improper relationship with a person who uses services
- reckless or deliberately harmful acts
- serious or persistent failure to meet standards
- sexual misconduct or indecency
- substance abuse or misuse
- violence or displayed threatening behaviour
- other serious activities which affect public confidence.

Further investigations may be made by regulatory bodies to any investigation or disciplinary process linked to a ‘registered’ employee.

Where the investigations concern matters relating to the safety and well-being of young and/or vulnerable people in receipt of registered services, the documents shall be retained within the employee’s personnel file. The documents shall be available for inspection by the employee and the employee may add a personal note to the record. If there is a further disciplinary investigation relating to the employee, the documents referred to above shall be examined and, where considered relevant, may be taken into account to the extent required by the circumstances of the case. Where an unsubstantiated allegation is taken into account in any disciplinary decision, the written notification shall indicate this fact and the reasons for doing so.

Appendix 3 – Mediation

Mediation may be used for parties within a conflict / dispute situation to help them identify a solution prior to escalation through a formal process.

Mediation is a voluntary process, where a mediator helps 2 or more people attempt to reach an agreement. The agreement comes from those within the dispute and the mediator plays a purely facilitator role.

Mediation may be used throughout the conflict situation and be particularly appropriate when a conflict involves colleagues, or line manager and their staff, and where a working relationship is required to be sustained or rebuilt. Mediation may be used at the end of a process to help re-build relationships.

Mediation may be used at any stage of a conflict situation. However, any formal process would be required to be suspended where mediation is used as tool to help resolve the conflict. Where agreement is reached it may not be necessary to continue with a formal process.

Mediation is a confidential process and the matters discussed will not be taken into consideration in any formal process (where the mediation fails to find an agreed outcome).

Mediation is not always suitable in conflict situations. However, the option can be discussed with a member of the corporate team.

Appendix 4 – Improvement Note

Name		Date issued	
Line Manager		Review date	

Review of Performance / Behaviour / Conduct

Briefly detail what was not acceptable and required improvement, (i.e. breaching Managing Attendance policy). Include internal and external issues which could be influencing performance.

Action Required

Briefly detail what action is required and the support we will offer to ensure standards are met. Identify standards of conduct and performance required. Identify regularity of support meetings, training required etc.

Review

Confirm review period and formal meeting. This should not be a support meeting but a clear distinct review meeting. Confirm what action will be taken if failure to improve occurs.

Employee Comments

Where improvement is not made or if you fail to follow the above instruction, the matter will be escalated through the formal disciplinary process.

Appendix 5 – Model procedure for disciplinary investigations

1. Introduction

Conducting an investigation into alleged employee misconduct requires skill and tact. Those carrying it out must balance thoroughness with fair treatment towards those under investigation. Before holding a disciplinary hearing, it is crucial that investigation officers have sound evidence on which to base their decisions. Failing to conduct a full investigation, in all but routine or the most exceptional of circumstances, may render a dismissal unfair and result in costly consequences in terms of tribunal awards, staff morale and stakeholder confidence.

2. Determine how serious it is

An investigation must establish the seriousness of the alleged misconduct and be proportionate to it. The response may range from a brief discussion with the employee to establish the facts, to a full-scale investigation involving other agencies such as the police. The objective should be to provide sound evidence for any subsequent disciplinary action. Investigators should ask themselves what they can realistically expect to achieve given the time and resources available. Any internal investigation should follow the LIFT principle - it should be logical, impartial, fair and time-bound.

3. Keep an open mind

The Investigation officer should not assume guilt or innocence but must conduct an independent and impartial investigation. They must take an objective and balanced view of any information that comes to light and avoid allowing personal views, opinions, and likes or dislikes to influence the assessment of the employee's conduct.

4. Establish the evidence

The investigation officer needs to identify the types of evidence that are pertinent to the case and will gather all relevant facts as quickly as possible, while events can clearly be recalled. In investigating an employee's alleged misconduct, the investigation officer may:

- Examine any relevant written records, for example previous disciplinary warnings, appraisal reports, and managers' notes.
- Check whether there are any earlier warnings that have not expired.
- Consult with any other managers with whom the employee has come into contact in order to help establish relevant facts.
- Conduct interviews with relevant employees who may have evidence relating to the employee's alleged misconduct or who may have been witness to the relevant incident and produce an accurate written summary of any such evidence.
- Conduct an investigatory interview with the employee, making sure that the employee knows that the purpose of the interview is to establish the facts.

5. Conducting interviews

The investigation officer should identify what is needed to be established from each interviewee and prepare accordingly. It is advisable to have a pre-prepared list of questions. However, some responses may need to be explored in more detail during the interview.

The investigation officer should not put words into witnesses' mouths or suggest answers. Questions should encourage them to recall their version of events in their own words.

A summary note will be taken from each interview held (by a member of the corporate services team). Witnesses will be asked to check any statements / notes for accuracy and confirm they agree with the content (e.g. sign off of contents).

Where a witness is unable to attend an investigation meeting, they may be asked to submit a written statement based on their factual knowledge of the matter.

6. Consider actions if the allegation is of a criminal nature

Some of the more serious allegations of misconduct may potentially be criminal offences. If the investigation officer suspects this is the case, they need to inform other agencies such as the Police or for example, the Health and Safety Executive. If an employee admits to a criminal offence during the course of an internal investigation, it is advisable to adjourn the investigation and inform the police.

7. On completion of the investigation

Once the investigation officer decides that they have sufficient evidence on which to make a decision and have interviewed all the necessary witnesses, they should finish the investigation.

The standard of proof for internal investigations and any subsequent disciplinary hearing will need only to be the civil standard of proof (“on the balance of probabilities”). The Association does not have to prove the case “beyond reasonable doubt” for it to stand up in an employment tribunal.

A conclusion should be contained in the investigation report but no recommendations as to a disciplinary outcome, as that is the jurisdiction of the nominated officer. In all cases the nominated officer needs to reach a reasonable decision based on a reasonable belief following a reasonable investigation.

On completion of the investigation, the investigation officer will provide their findings to the nominated officer who will make a decision based on the recommendations made. In all circumstances the member of staff should be informed promptly and in writing of the outcome of the investigation and any further steps to be taken.

Appendix 6 – Investigation Report (template of what to include for each section)

Investigation officer:	
Nominated officer:	
Report date:	

1. Introduction

- a brief overview of the circumstances that led to the investigation
- background to the investigation (overview of the matter)
- the terms of reference of the investigation and if they changed from the start of the investigation

2. Investigation process

- how the investigation was conducted & what evidence was collected
- whether any pieces of evidence could not be collected and why
- names and job titles of all witnesses and why each witness was relevant to the matter
- whether any witnesses could not be interviewed and why
- where a witness statement has been anonymised explain why and provide any details of enquiry into their character and background

3. The investigation findings

- summarise the findings from all relevant documents
- summarise the key evidence from each witness statement
- whether there are any mitigating factors to consider
- whether there is any other relevant information to consider

Note: An investigator should arrange their evidence into:

- Uncontested facts: Where the facts are not in dispute, they can simply be reported as factual
- Contested facts: Where the facts are contested or contradictory they should determine what, on the balance of probabilities*, took place.
- Unsubstantiated claims: Where an investigator is unable to substantiate an allegation they should consider if further investigation is reasonable or report that they are unable to draw a conclusion

4. Recommendation

Confirm if the evidence collected means that there is:

- a case to answer and the matter should proceed to a formal disciplinary hearing, or
- no case to answer and the matter should be ended at the investigation stage, or
- a case to answer but should be addressed at the informal stage.

Any other recommendations related to the matter (such as the type of action suggested for example, formal disciplinary meeting, and if there are any other recommendations related to the matter. In disciplinary matters, the investigator should not recommend a possible sanction. This should only be considered at a disciplinary hearing)

5. Supporting documents

Include all evidence as part of the investigation and any witness statements taken.

**NOTE: The balance of probabilities*

An investigator should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. In these circumstances an investigator will need to decide whether, on the balance of probabilities, they could justifiably prefer one version of the matter over another and explain why. Unlike criminal law, an investigator conducting an employment investigation does not have to find proof beyond all reasonable doubt that the matter took place. An investigator only needs to decide that on the balance of probabilities, based on the evidence before them, an incident is more likely to have occurred than not.

Appendix 7 – Model procedure for disciplinary hearings

Introduction	The nominated officer conducting the hearing should introduce those present (normally the other people in attendance will be the investigation officer who conducted the investigation, a representative of the corporate team, the employee concerned and their companion or representative).
Purpose	The nominated officer should explain the purpose of the disciplinary hearing and refer to the complaint(s) against the employee. The nominated officer should also explain the procedure to be followed during the hearing.
Findings	The investigation officer should present their findings to the hearing, indicating the evidence gathered and referring to any documents previously circulated. The investigation officer should give a full explanation of the case against the employee and of the content of any statements provide by witnesses.
Witnesses	The investigation officer should call any witnesses named in the documents previously circulated, where appropriate.
Questions	The employee and their representative should, where possible, be allowed to ask the disciplinary panel to put questions to the investigation officer and any witnesses on the evidence presented. The nominated officer may question the investigation officer and any witnesses on the evidence presented.
Response	The employee and/or their representative should present their case to the hearing, indicating the basis of their defence and referring to any documents previously circulated.
Witnesses	The employee or their representative should call any witnesses named by them in the documents previously circulated.
Questions	The investigation officer should be allowed to question the employee, their representative and any witnesses on the evidence presented. The nominated officer may question the employee, their representative and any witnesses on the evidence presented.
Sum-up	The investigation officer and then the employee, their representative should be given the opportunity to sum up if they so wish.
Deliberation	On completion of the presentation of the evidence, the investigation officer, the employee and their representative should withdraw, leaving the nominated officer to deliberate. If the nominated officer considers that more than a short break for deliberation is necessary, they should formally adjourn the hearing. If the nominated officer considers that any points raised by either party require further clarification, both parties should be recalled even if only one of the parties is concerned with point(s) giving rise to doubt.
Outcome	Where the nominated officer has made a decision without further need for deliberation they may verbally inform the employee of the outcome. Following the hearing, the nominated officer shall provide a written decision to the employee, and a copy to their representative, where possible, within three working days.

Appendix 8 – Criminal offences

Criminal investigations, charges or convictions for some offences, such as dishonesty or violence committed outside working hours may result in disciplinary proceedings taken against the employee up to and including dismissal. The Association will consider whether or not the employee's conduct or convictions merit action because of employment implications.

An external investigation, charge or conviction for any other type of offence may result in disciplinary proceedings being taken against the employee where, in the opinion of the Association, it is such as to affect, or be likely to affect: the suitability of the employee for the position in which they are employed; or the business or reputation of the Association; or where the existence of the charge or conviction could otherwise seriously undermine the trust and confidence the Association has in the employee.

It is not necessary for the police to have completed their process, nor to have charged the employee, before an internal process can be conducted. The manager is entitled to present a case at any time that they feel that a matter needs to be addressed.

In all cases where disciplinary action is being contemplated due to an alleged or proven criminal offence, the matter shall be investigated by officers of the Association as thoroughly as the circumstances permit. Following investigations, the appropriate officer may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.

In cases of suspected irregularities relating to the finances of the Association or to any other funds managed by the Association, the Chief Executive shall be informed and, if appropriate, an investigation shall be carried out.

Where investigations reveal insufficient information to justify holding a disciplinary hearing, or where other circumstances would prevent a fair hearing, consideration of the case shall be deferred until further information is available or other difficulties are resolved. In these circumstances the employee may be suspended on full pay until further notice.

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

Appendix 9 – Model procedure for disciplinary appeal hearings

Introduction	The appeals officer conducting the hearing should introduce those present (normally the other people in attendance will be the nominated officer who conducted the disciplinary hearing, a representative of the corporate team, the employee concerned and their representative).
Purpose	The appeals officer should explain the purpose of the appeal hearing and refer to the appeal submitted by the employee. The appeals officer should also explain the procedure to be followed during the hearing.
Appeal	The appeal case for the employee will be presented by the employee or their representative. The appellant or their representative shall put the case in the presence of the nominated officer and may call witnesses.
Witnesses	Witnesses shall be excluded until called unless it is agreed that they should be present from the start of the hearing. Witnesses may be recalled, and additional witnesses may be called by the appeals officer if it is believed they will be able to provide additional information or substantiate either the employee or the nominated officer.
Questions	The appeals officer and the nominated officer will have the opportunity to ask questions of the employee.
Response	The case for management will be presented by the nominated officer. Providing details of why and how the decision was made from the disciplinary hearing.
Witnesses	Witnesses shall be excluded until called unless it is agreed that they should be present from the start of the hearing. Witnesses may be recalled, and additional witnesses may be called by the appeals officer if it is believed they will be able to provide additional information or substantiate either the employee or the nominated officer.
Questions	The appeals officer and employee will then have the opportunity to ask questions of the nominated officer.
Sum-up	The employee, their representative and the nominated officer should be given the opportunity to sum up if they so wish. Neither party may introduce new matter at this stage.
Deliberation	On completion of the presentation of the evidence, the nominated officer, the employee and their representative should withdraw, leaving the appeals officer to deliberate. If the appeals officer considers that any points raised by either party require further clarification, both parties should be recalled even if only one of the parties is concerned with point(s) giving rise to doubt. If the appeals officer considers that more than a short break for deliberation is necessary, they should formally adjourn the hearing.
Outcome	Following the hearing, the appeals officer shall provide a written decision to the employee, where possible, within three working days.