



Title: Personnel Policies & Guidelines – Disciplinary Procedure **Number:** E2 **Date:** 01 April 2004

PERSONNEL POLICIES AND GUIDELINES

REF:3.1.1

Scottish Borders Council

DISCIPLINARY PROCEDURE

1.0 SCOPE

1.1 This procedure applies to all employees of Scottish Borders Council except for:-

- The Chief Executive, who is covered by a separate procedure for Chief Executives as set out in the Scheme of Conditions of Service for Chief Officials
- Directors, who will be covered by a separate Scottish Borders Council procedure

2.0 EMPLOYER/EMPLOYEE RESPONSES

2.1 Scottish Borders Council recognises that the effective delivery of services is dependent on acceptable standards of conduct and performance of all employees. The Council acknowledges its responsibilities as an employer to determine appropriate standards of conduct and performance and to make employees aware of these standards. Employees also have a responsibility to familiarise themselves with the rules and procedures relating to their employment and to maintain acceptable standards of conduct and performance.

2.2 The main sources of reference regarding conduct and performance are listed below. The list is neither exhaustive nor exclusive and the final two entries will not be relevant to all employees because of the nature of their work.

- Terms and conditions of employment
- Induction process
- Departmental/service instructions and procedures
- Personnel Policies and Procedures
- Health & Safety Policies and Procedures
- Scottish Borders Council Code of Conduct for Employees
- Professional Codes of Conduct
(eg General Teaching Council for Scotland Code of Competence and Code of Practice for Social Service Workers)
- Financial Regulations
- Scheme of Delegation
- Policy on the Use of e-mail and the Internet

- Data Protection Act Code of Practice

3.0 PURPOSE

- 3.1 This procedure is not to be used for breaches of standards of conduct or performance of a minor and non-recurring nature. These will be dealt with by the appropriate manager with an emphasis on improving standards and learning from mistakes, rather than apportioning blame.
- 3.2 This procedure must be used where an employee's conduct or performance gives rise to more serious concern, to ensure that all managers adopt a uniform approach to discipline.
- 3.3 It provides a framework to ensure that any disciplinary action is taken in a fair and consistent manner whilst recognising that each case must be treated on its merits taking account of individual circumstances. In applying this procedure, due regard will be given to an employee's work record, length of service, personal and domestic circumstances etc.
- 3.4 Examples of the types of misconduct which are considered to be in breach of the Council's rules or standards and which would normally result in disciplinary action being taken are contained in Appendix 1.

4.0 APPLICATION OF PROCEDURE

- 4.1 The Chief Executive and each Director is responsible for discipline, within their department, and for determining the level of disciplinary action which is delegated to managers/supervisors in the department. There may, however, be occasions where it is appropriate for investigations and/or disciplinary hearings to be conducted by Officers from another Department. The authority to dismiss, or take 'action short of dismissal' as a form of disciplinary action will be delegated no further than a manager reporting directly to a Head of Service level post.

5.0 PRINCIPLES

- No disciplinary hearing or disciplinary action will be taken against an employee until there has been a thorough investigation.
- The procedure consists of 4 levels of possible disciplinary action (verbal, written, final written warning, and dismissal or action short of dismissal). However, action may commence at any level depending on the seriousness of the offence.
- Whenever the disciplinary procedure is applied, employees will be given details in writing of allegations and will be given the opportunity to respond at a hearing before any disciplinary action is imposed.
- At any formal investigatory interview the employee under investigation will have the opportunity to be accompanied by a Trade Union Representative or other person of his/her choice.

- At any disciplinary hearing the employee will have the right to be represented by a Trade Union representative or other person of his/her choice.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct.
- Before taking any form of disciplinary action, managers will take account of any mitigating circumstances.
- An employee will be advised of the outcome of the hearing, normally orally at the conclusion of the hearing, but in any event, in writing within five working days.
- An employee will have the right of appeal against any disciplinary action imposed.
- Any appeal against dismissal will be heard by the Staffing Appeals Committee.
- If the employee is a Trade Union Representative the case will be discussed with the relevant full-time Trade Union Official before any disciplinary hearing takes place.

6.0 INFORMAL GUIDANCE

- 6.1 Minor and non-recurring issues will be dealt with informally, normally by the line manager, through face to face discussion as soon as possible. Support, advice, guidance, counselling and/or training will be given as appropriate. The emphasis will be on improving standards and learning from mistakes, rather than apportioning blame.
- 6.2 As this is an informal process, there is no right to representation or appeal. There is no requirement for details to be kept on the employee file in Personnel Services, but the manager should keep a note of the main points in order to monitor the situation. There is no requirement to copy this to the employee.
- 6.3 Where this process does not lead to required improvement the disciplinary procedure will be used.

7.0 INVESTIGATION

- 7.1 Before a disciplinary hearing is convened it is essential that any allegations regarding an employee's conduct or performance are investigated fully to establish the facts.

There are times when the investigation need not be

complicated. If, for example in a case of lateness it may merely be a case of verifying the records and seeking an explanation.

- 7.2 The employee must be advised that an investigation is being conducted, the nature of the allegations, the process to be followed and the right to be accompanied at any formal investigatory interview.
- 7.3 The investigation will be conducted by the employee's manager, or other appropriate manager. Advice and guidance will be available from Personnel Services, who will involve Legal Services where necessary. The investigation should be carried out as speedily as possible, without compromising its integrity. It will include interviews with the employee and any relevant witnesses, as well as collection of any relevant documents.
- 7.4 The investigation must be separated from the hearing process to ensure the same officer is not presenting the management case as well as deciding if the allegations are valid.
- 7.5 The findings of the investigation will be reported to an appropriate manager who will decide whether to convene a disciplinary hearing, to have the matter dealt with through informal guidance or that there is no case to answer. The employee must be informed of this decision.
- 7.6 Where the decision is that there is no case to answer, no record of the investigation will be kept on the employee's file.
- 7.7 Where the decision is to convene a disciplinary hearing the appropriate parts of this procedure must be followed.

Note: Where an employee is the subject of a police investigation or pending the outcome of a court case the Council is not precluded from carrying out an internal investigation and disciplinary hearing on the same issue.

8.0 PRECAUTIONARY SUSPENSION

- 8.1 It may be necessary for a Manager to suspend an employee from work on full pay as a precaution in the following circumstances:
 - a) Where the allegations against the employee, if substantiated, are considered to be potentially gross misconduct.
 - b) Where the employee's presence in the workplace could potentially hamper or prejudice the investigation eg where an employee may have opportunity to alter records, or could intimidate or influence employees who are potential witnesses
 - c) Where it is in the interests of the Council, the employee or others to remove the employee from the workplace e.g. where an employee refuses to obey a reasonable instruction in relation to health and safety and thereby prejudices his/her own safety or that of others, or

- d) where an employee is behaving aggressively or abusively and a 'cooling down' period is required.
- 8.2 Precautionary Suspension is not a disciplinary act and will therefore be on full pay. It does not imply any assumption of guilt and will not influence the outcome of any disciplinary hearing.
- 8.3 As an alternative to suspension, consideration may be given to re-deployment to a different role/location if appropriate and feasible.
- 8.4 The employee's Manager, or other appropriate Manager, will take the decision to suspend and meet with the employee to advise them of the suspension and the reasons for it.
- 8.5 The manager will confirm the suspension and the reasons for it to the employee in writing. If the suspension is due to potential gross misconduct, the letter confirming the suspension must indicate that if substantiated at a disciplinary hearing dismissal is a potential outcome. The letter will also advise the employee of a named contact, normally from his/her Department or from Personnel Services who is not involved in the disciplinary process and can provide support during the period of suspension.
- 8.6 Precautionary suspensions will be kept under review by the manager, normally at intervals of 10 working days.

9.0 ARRANGING A DISCIPLINARY HEARING

- 9.1 The person who will Chair the disciplinary hearing must ensure that all appropriate arrangements are made for the hearing. The person(s) who conducted the investigation must not chair the hearing or be involved in deciding the outcome of the hearing. They will, however, normally be involved in presenting the findings of the investigation at the hearing.
- 9.2 Where it is considered that there is cause to proceed to a disciplinary hearing the employee must normally be given 10 working days notice in writing of the hearing by the manager who is to Chair the hearing to allow time for the employee to consult his/her representative.
- 9.3 The written notification must detail:
- what is being alleged
 - the date, time and venue of the hearing
 - names of any witnesses being called by the person(s) presenting the findings of the investigation
 - the employee's right to be represented by a trade union representative or other person of his/her choice
 - that depending upon findings, disciplinary action may result from the hearing

- 9.4 At the same time, a copy of the investigation report together with any other relevant documents, including witness statements, must be sent to the employee.
- 9.5 The employee must submit any written evidence he/she intends to refer to at the hearing and advise the Chair of the hearing of the names of any witnesses he/she intends to call, normally at least 3 working days prior to the hearing.
- 9.6 In exceptional circumstances an employee may be unable to attend the hearing. If this is the case, the employee must contact the Chair of the hearing at the earliest opportunity and explain the reason. If the Chair, in consultation with Personnel Services as appropriate, considers the reason to be valid, the hearing will be postponed. The hearing should be rearranged as soon as possible depending on the circumstances for the delay. The individual should be given a second opportunity to attend a hearing before consideration is given to convening a hearing in their absence, however there may be exceptional circumstances where this is not feasible, for example if the employee is in prison. Where a hearing is being arranged at which a decision may be taken in the employee's absence, the employee must be notified of this and given the opportunity to attend or to send a representative to attend on their behalf.
- 9.7 Where a disciplinary hearing is to be convened for a Trade Union representative the case should be discussed with a senior Trade Union representative or Full-time official prior to the hearing.

10.0 CONDUCT OF HEARING

- 10.1 The procedure for the conduct of a Disciplinary Hearing, including the written confirmation of the outcome, is set out in Appendix 2.
- 10.2 The employee has a right to be represented or accompanied by a Trade Union representative or another person of their choice.
- 10.3 It is recommended that a member of staff accompanies the Chairperson to assist them in conducting the hearing, for example by taking brief notes. In more complex cases, or where dismissal is a possible outcome, the Chairperson must be accompanied by a member of Personnel Services, who will provide professional advice. Where appropriate a Legal adviser may also be required.

11.0 GROSS MISCONDUCT/MISCONDUCT

- 11.1 Gross Misconduct is conduct by an employee of such a nature that it fundamentally breaches the contract of employment. In such circumstances a warning is not appropriate because it is untenable to allow the employee to continue to work. The normal outcome will be dismissal without notice unless Action Short of Dismissal together with a Final Written Warning is feasible.

- 11.2 Other types of misconduct will vary in seriousness, but dismissal for a first offence will not be reasonable or appropriate.

Appendix 1 lists examples of gross misconduct and misconduct.

12.0 POOR PERFORMANCE

- 12.1 Poor performance is where an employee's standard of work does not meet the minimum standard which may be reasonably expected. Prior to any disciplinary hearing to consider poor performance managers must ensure that appropriate training and support has been given.

13.0 DISCIPLINARY ACTION

13.1 Levels of Disciplinary Action

The following levels of disciplinary action are available. The level of action taken will depend on the following and may therefore commence at any level.

- nature and seriousness of any misconduct or poor performance
- the employee's overall employment record including any current disciplinary warnings, however, misconduct and poor performance should be considered separately
- any mitigating circumstances.

13.2 VERBAL WARNING

For minor breaches of discipline, misconduct or continued poor performance, the employee may be given a verbal warning.

13.3 WRITTEN WARNING

For more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal verbal warning, the employee may be given a written warning.

13.4 FINAL WRITTEN WARNING

If there is still a failure to improve and conduct or performance is still unsatisfactory, or, if the misconduct is sufficiently serious to warrant only one warning but is insufficient to justify dismissal, the employee may be given a Final Written Warning.

13.5 DISMISSAL

For serious repeated misconduct or poor performance during the currency of a final written warning the employee may be dismissed, with notice. For gross misconduct the employee may be dismissed without notice.

13.6 Alternatives to Dismissal (Action Short of Dismissal)

In exceptional circumstances, as an alternative to dismissal, and in conjunction with a final written warning, one or more of the following punitive sanctions may be imposed:

- a) suspension without pay and/or benefits for a period not normally exceeding 5 working days;
- b) loss of increment;
- c) demotion;
- d) transfer to another post.

13.7 Where an employee agrees to the alternative disciplinary action, they will nevertheless have a right of appeal. Where an employee does not agree to the alternative disciplinary action there will be no alternative but to dismiss.

14.0 **OUTCOME OF DISCIPLINARY HEARING**

14.1 The action to be taken by the Chairperson following the conclusion of the disciplinary hearing, including the requirement for written confirmation to be issued to the employee, is set out in Appendix 2. This letter must include details of the employee's right of appeal and to whom any such appeal should be sent.

15.0 **DURATION OF DISCIPLINARY ACTION**

15.1 The period of time after which warnings will be disregarded for disciplinary purposes will be as follows:-

Disciplinary Action	Duration
Verbal Warning	6 months
Written Warning	12 months
Final Written Warning	18 months

16.0 **RIGHT OF APPEAL**

16.1 Employees have the right of appeal against any disciplinary action. Any appeal must be submitted in writing, giving details of why the employee does not agree with the decision, within ten working days of the date of receipt of the letter confirming the disciplinary action. The name of the person to whom the appeal should be submitted will be included in this letter. The appeal may be submitted by the employee or by their representative.

- 16.2 If this procedure is not complied with the employee will lose the right to appeal, unless there are exceptional circumstances.
- 16.3 Appeals will be conducted by the manager to whom the person who chaired the disciplinary hearing reports or where this is not possible, another senior manager not previously involved in the process. In the event of an appeal against dismissal or where the Director has taken the disciplinary decision, the appeal shall be heard by the appropriate Appeals Committee.
- 16.4 Where a member of Personnel Services has advised at a disciplinary hearing, a different member of staff will advise at the appeal.
- 16.5 The appropriate manager shall arrange to hear the appeal as soon as practicable, giving the employee normally at least 10 working days notice, advising the employee of the procedure (as at Appendix 3) and the right to be represented. The management side and the employee or their representative should each submit a written statement of their case to the Manager holding the appeal hearing to be received at least 5 working days before the date of the appeal hearing. The Manager will arrange for each submission to be copied to the other party.
- 16.6 Where a Director was involved in the disciplinary hearing, or where the disciplinary action taken was dismissal, the appeal shall be submitted to the Head of Personnel who shall arrange for it to be heard by the appropriate Appeals Committee.
- 16.7 The Head of Corporate Administration, Corporate Resources, is responsible for convening the Staffing Appeals Committee and Teachers Appeals Committee and will arrange for the employee to be given a minimum of 15 working days notice of the date of the hearing. The employee will be notified of the procedure (as at Appendix 4), and the right to be represented. The management side and the employee or their representative shall each submit a written statement of their case to the Head of Corporate Administration to be received at least 8 working days before the date of the Appeal Hearing. The Head of Corporate Administration will arrange for the agenda papers, including the statements of case to be sent to the management side and the employee or their representative, as well as to the Committee Members and any advisers.

16.8 Parties normally authorised to take disciplinary action and to hear appeals

Non-teaching staff

Stages	Normally Issued by	Appeal Normally Heard by
Informal action	Line Manager, Supervisor or Foreperson	Not applicable
Verbal Warning/ Written Warning/ Final Written Warning	Manager to whom Line Manager, Supervisor or Foreperson reports	Senior Manager to whom Manager reports
Action short of dismissal	Senior Manager, Head of Service or Director	Head of Service or Director (or where Director has been involved, Staffing Appeals Committee)
Dismissal	Senior Manager, Head of Service or Director	Staffing Appeals Committee

Teaching staff

Stages	Normally Issued by	Appeal Normally Heard by
Informal action	Principal Teacher, Depute Headteacher or Headteacher	Not applicable
Verbal Warning/ Written Warning/ Final Written Warning	Depute Headteacher, Headteacher, Primary or Secondary Schools Manager, Head of Schools Services	Headteacher, Primary or Secondary Schools Manager, Head of Schools or Director
Action short of dismissal	Head of Schools Services or Director	Director (or where Director has been involved, Teachers Appeals Committee)
Dismissal	Head of Schools Services or Director	Teachers Appeals Committee

17.0 REVISION OF DISCIPLINARY PROCEDURE

This Disciplinary Procedure and associated Guidelines will be kept under review and may be amended from time to time through appropriate consultation/negotiation with the recognised Trade Unions. Following this, appropriate measures will be taken to bring any amendments to the attention of employees.

Scottish Borders Council

APPENDIX 1 EXAMPLES OF GROSS MISCONDUCT/MISCONDUCT**Gross misconduct**

The following list, which is neither exhaustive nor exclusive, provides examples of offences regarded as gross misconduct, which will normally result in summary dismissal without notice or pay in lieu of notice.

- Theft of Council property, or of property not belonging to the Council whilst engaged, or purporting to be engaged, on Council business.
- Wilful damage to, or misuse of, Council property or resources or of property or resources not belonging to the Council, whilst engaged or purporting to be engaged on Council business.
- Physical or indecent assault on any person whilst engaged or purporting to be engaged on Council business.
- Grossly indecent, abusive or threatening behaviour towards any person whilst engaged or purporting to be engaged on Council business.
- Dishonest or fraudulent acts e.g. deliberate falsification of time sheets or other attendance records, work records, expenses claims or other records, whether computerised or manual, relating to the financial transactions of the Council.
- Wilful provision of false or misleading information, or wilful non-disclosure of information, either during the recruitment process or in subsequent employment, which materially affects the contract of employment.
- Wilful breach of confidentiality or abuse of authority.
- Wilful non-disclosure of an interest, whether direct or indirect, in a contractual arrangement between an agency and the Council.
- Criminal conviction / civil liability 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 on duty.
- Serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Gross carelessness or negligence in carrying out the duties and responsibilities of the post.

- Serious breach of Health and Safety rules.
- Serious discriminatory acts or omissions contrary to, or inconsistent with, the Council's Equal Opportunities policy involving:
 - The selection or non-selection of any person for a post within the Council.
 - The provision or non-provision of any rights or benefits to any person employed by or having contact with the Council.
 - Other forms of less favourable treatment, including any form of harassment, victimisation or intimidation.
- Incapacity to carry out the duties of the post due to the influence of alcohol or misuse of drugs, or drinking alcohol or taking illegal drugs during working hours or whilst on standby.

Misconduct

The following list is neither exhaustive nor exclusive but gives an indication of the types of misconduct which will normally result in disciplinary action other than dismissal:

- Careless damage to Council property or to property not belonging to the Council while engaged on or purporting to be engaged on Council business.
- Unauthorised use of Council property or of property not belonging to the Council while engaged on or purporting to be engaged on Council business.
- Persistent poor timekeeping or unauthorised absence from work.
- Carelessness or negligence in carrying out the duties and responsibilities of the post.
- Refusal to obey reasonable instructions or procedures or otherwise fulfil contractual obligations.
- Abusive or threatening behaviour toward any person while engaged on or purporting to be engaged on Council business.
- Less serious breach of relevant Codes of Practice, Regulations, Policies and Procedures, eg Code of Conduct for Scottish Borders Council Employees, Financial Regulations and Policy and Guidelines on the use of e-mail and the Internet.
- Less serious discriminatory acts or omissions contrary to, or inconsistent with, the Council's Equal Opportunities Policy.
- Less serious breaches of Health and Safety rules.

- Unauthorised disclosure of personal information or disclosure of a password to electronically held data.
- Attempts, whether successful or not, to make unauthorised access to information, whether held electronically or in manual form.

Scottish Borders Council

APPENDIX 2 CONDUCT OF DISCIPLINARY HEARING

Introduction

1. The manager chairing the Hearing (Chairperson) should make the necessary introductions and clarify the role of each person present. The approach should be formal and polite, with a view to establishing all the facts.
2. The Chairperson should explain that the purpose of the Hearing is to consider whether disciplinary action should be taken in accordance with the Council's disciplinary procedure. The hearing procedure should also be outlined with the employee asked to confirm their understanding.

Statement of Case by Investigating Officer(s)

3. The investigating officer(s) should state precisely what the complaint or allegation is and outline the case briefly by going through the evidence which has been gathered. This may include calling witnesses if appropriate and disclosing any witness statements and the contents of any other records and documents.

Questions on Case by Investigating Officer(s)

4. The employee (or representative) is given the opportunity to ask questions to clarify the statement of case, including questioning any witness.
5. The investigating officer(s) shall be given a further opportunity to question any witnesses on issues raised during the employee's (or representative's) questioning.
6. The Chairperson and any officers advising them shall be allowed to ask questions at any stage to clarify the case.

Statement of Case by Employee (or representative)

7. The employee (or representative) is given the opportunity to state his or her case and present evidence. This may include calling witnesses if appropriate disclosing any witness statements and the contents of any other records and documents.

Questions on Case by Employee (or representative)

8. The investigating officer(s) is given an opportunity to ask questions to clarify the statement of case, including questioning any witnesses.
9. The employee (or representative) shall be given a further opportunity to question any witnesses on issues raised during the investigating officer's questioning.

10. The Chairperson and any officers advising them shall be allowed to ask questions at any stage to clarify the case.

Further Questioning and Clarification

11. The Chairperson and any officers advising them may use this stage to clarify any issues and to check that what has been said is understood. Where either party is asked to clarify any point, the other party must also be given the opportunity to comment.
12. If not already indicated, the employee (or representative) should be asked if he or she has any explanation for the alleged misconduct or poor performance or if there are any special circumstances which have not been covered but which may need to be taken into account.

Adjournment

13. Any party may request an adjournment at any time during the hearing. It is essential, however, that the Chairperson calls an adjournment to allow full consideration of all the matters raised before a decision is taken as to whether or not disciplinary action is warranted and if so to what level. Where the facts are in dispute, the Chairperson must decide which version is the most probable.
14. Where the facts are unclear the Chairperson may require further investigation and in these circumstances the disciplinary hearing may need to be reconvened at a later date to enable further information to be provided and allow a decision to be made. The hearing must be reconvened as soon as possible.

Outcome/decision

15. The Chairperson will normally advise the employee orally of the outcome of the hearing following the adjournment, indicating any disciplinary action being taken, consequences of repetition of misconduct or continued poor performance and any conditions which may apply. This must be followed up in writing, normally within 5 working days.
16. The written confirmation of any disciplinary action (including written confirmation of a verbal warning), must be copied to Personnel Services for retention on the personal file and shall include the following:
 - the nature of the misconduct/poor performance
 - the level of warning that has been given
 - the standard or improvement required in future
 - where appropriate any review period
 - that a further breach may result in further disciplinary action (including dismissal where appropriate)
 - the employees right of appeal and named Manager to whom appeal should be submitted

17. Depending upon the complexity of the case a decision may not be given orally immediately after the adjournment. In this event the decision must be given in writing, normally within 5 working days, providing the details set out in paragraph 16.
18. Where no disciplinary action is being taken, but it was identified that the employee's conduct or performance are not satisfactory, a record of the concerns will normally be kept by the line manager and the situation monitored.

Scottish Borders Council**APPENDIX 3 CONDUCT OF APPEAL BY MANAGEMENT****Introduction**

1. The Chairperson should introduce those present, and explain that the purpose of the Hearing is to consider an appeal against disciplinary action and outline how the hearing will be conducted.

Statement of Case by Management

2. The manager(s) shall state what the complaint or allegation is and outline the case briefly by going through the evidence which has been gathered. This may include calling witnesses if appropriate and disclosing any witness statements and the contents of any other records and documents.

Questions on Management Case

3. The employee (or representative) is given the opportunity to ask questions to clarify the statement of case, including questioning any witnesses.
4. The manager shall be given a further opportunity to question any witnesses on issues raised during the employee's (or representative's) questioning.
5. The Chairperson and their advisers are given the opportunity to ask questions at any stage to clarify the case.

Statement of Case by Employee (or Representative)

6. The employee (or representative) is given the opportunity to state his or her case and present evidence. This may include calling witnesses if appropriate and ensuring that those present are aware of any witness statements and the contents of any other records and documents.

Questions on Employee Case

7. The manager(s) is given an opportunity to ask questions to ask questions to clarify the statement of case, including questioning any witnesses.
8. The employee (or representative) shall be given a further opportunity to question any witnesses on issues raised during the employer's (or representative's) questioning.
9. The Chairperson and their advisers are given the opportunity to ask questions at any stage to clarify the case.

Further Questioning and Clarification

10. The Chairperson and any officers advising them may use this stage to clarify any issues and to check that what has been said is understood. Where either party is asked to clarify any point, the other party must also be given the opportunity to comment.

Summing – up

11. The manager(s) shall have the opportunity to sum-up if they so wish, introducing no new material.
12. The employee (or representative) shall have the opportunity to sum-up if they so wish, introducing no new material.

Adjournment

13. Any party may request an adjournment at any time during the hearing. It is essential however, that the Chairperson calls an adjournment to allow full consideration of all the matters raised before a decision is taken regarding whether or not the disciplinary action taken was fair and reasonable.
14. The Chairperson, together with any advisers shall deliberate in private, only recalling the manager(s) or the employee (or representative) to clarify points of uncertainty on the evidence already given. If recall is necessary both parties are to return.
15. Where the facts are unclear the Chairperson may require further information to be provided and in these circumstances the Hearing may need to be reconvened at a later date to hear and consider the additional information. The hearing must be reconvened as soon as possible.
16. If practicable, the Chairperson shall recall the parties and announce the decision at the conclusion of the meeting. The decision will be one of the following:
 - that the appeal is upheld (disciplinary action is expunged)
 - that the appeal is not upheld (disciplinary action is unchanged)
 - that the appeal is upheld in part (Chairperson to substitute any appropriate disciplinary action)
17. In any event the Chairperson shall confirm the decision in writing to the employee (or representative) within ten working days of the Hearing.

Scottish Borders Council**APPENDIX 4 CONDUCT OF APPEAL BY STAFFING OR TEACHERS APPEALS COMMITTEE****Introduction**

1. The Chairperson should introduce those present, and explain that the purpose of the Hearing is to consider an appeal against disciplinary action and outline how the hearing will be conducted.

Statement of Case by Management

2. The manager(s) shall state what the complaint or allegation is and outline the case briefly by going through the evidence which has been gathered. This may include calling witnesses if appropriate and disclosing any witness statements and the contents of any other records and documents.

Questions on Management Case

3. The employee (or representative) is given the opportunity to ask questions to clarify the statement of case, including questioning any witnesses.
4. The manager shall be given a further opportunity to question any witnesses on issues raised during the employee's (or representative's) questioning.
5. The Appeals Committee and their advisers are given the opportunity to ask questions at any stage to clarify the case.

Statement of Case by Employee (or Representative)

6. The employee (or representative) is given the opportunity to state his or her case and present evidence. This may include calling witnesses if appropriate and ensuring that those present are aware of any witness statements and the contents of any other records and documents.

Questions on Employee Case

7. The manager(s) is given an opportunity to ask questions to clarify the statement of case, including questioning any witnesses.
8. The employee (or representative) shall be given a further opportunity to question any witnesses on issues raised during the employer's (or representative's) questioning.
9. The Appeals Committee and their advisers are given the opportunity to ask questions at any stage to clarify the case.

Further Questioning and Clarification

10. The Appeals Committee and their advisers may use this stage to clarify any issues and to check that what has been said is understood. Where either party is asked to clarify any point, the other party must also be given the opportunity to comment.

Summing – up

11. The manager(s) shall have the opportunity to sum-up if they so wish, introducing no new material.
12. The employee (or representative) shall have the opportunity to sum-up if they so wish, introducing no new material.

Adjournment

13. Any party may request an adjournment at any time during the hearing. It is essential however, that the Chairperson calls an adjournment as Appendix 3.
14. The Appeals Committee, together with any advisers shall deliberate in private, only recalling the manager(s) or the employee (or representative) to clarify points of uncertainty on the evidence already given. If recall is necessary both parties are to return.
15. Where the facts are unclear the Appeals Committee may require further information to be provided and in these circumstances the Hearing may need to be reconvened at a later date to hear and consider the additional information. The hearing must be reconvened as soon as possible.
16. If practicable, the Chairperson shall recall the parties and announce the decision at the conclusion of the meeting. The decision will be one of the following:
 - that the appeal is upheld (disciplinary action is expunged)
 - that the appeal is not upheld (disciplinary action is unchanged)
 - that the appeal is upheld in part (Chairperson to substitute any appropriate disciplinary action)
17. In any event the Clerk to the Committee shall confirm the decision in writing to the employee (or representative) within ten working days of the Hearing.