

# AGENDA

## EMPLOYMENT AND DEVELOPMENT PANEL MEETING



Date: Thursday 30 July 2009

Time: 6.30 pm

Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Daley, Garland, Hotson, Lusty (Chairman),  
Mrs Marshall, Moss, Robertson and  
Mrs Wilson

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1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Disclosures by Members and Officers
5. Disclosures of Lobbying
6. To consider whether any items should be taken in private because of the possible disclosure of exempt information.

**Continued Over/:**

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**Issued on 23 July 2009**

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**David Petford, Chief Executive, Maidstone Borough Council,  
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

7. Minutes of the Meeting held on 8 June 2009 1 - 4
8. Report of the Head of Human Resources - HR Policy - Discipline, Capability and Grievance Procedures 5 - 60

## MAIDSTONE BOROUGH COUNCIL

### EMPLOYMENT AND DEVELOPMENT PANEL

#### MINUTES OF THE MEETING HELD ON MONDAY 8 JUNE 2009

**Present:** Councillor Lusty (Chairman), and  
Councillors Daley, Garland, Horne, Mrs Marshall, Moss  
and Robertson

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Hotson.

2. NOTIFICATION OF SUBSTITUTE MEMBERS

The following substitutions were noted:-

Councillor Horne for Councillor Hotson

3. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

4. ELECTION OF CHAIRMAN

**RESOLVED:** That Councillor Lusty be appointed Chairman for the municipal year 2009/10.

5. ELECTION OF VICE CHAIRMAN

**RESOLVED:** That Councillor Moss be appointed Vice Chairman for the municipal year 2009/10.

6. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures.

7. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

8. EXEMPT ITEMS

**RESOLVED:** That the items on Part II of the Agenda be taken in private as proposed.

9. APPOINTMENT OF POLITICAL GROUP SPOKESPERSONS

RESOLVED: That the following political group spokespersons be appointed for the municipal year 2009/10:-

Conservative – Councillor Garland  
Liberal Democrat – Councillor Mrs Wilson  
Independent – Councillor Mrs Marshall

10. HR POLICY REVISION - DISCIPLINE, CAPABILITY AND GRIEVANCE PROCEDURES

The Panel considered the Report of the HR Manager regarding revisions to the Discipline, Capability and Grievance Policies.

Members raised some concern with regard to the newly proposed Appeals process. The Panel felt appellants should still have a choice as to whether the Chief Executive or Members heard their appeal. Members did feel that the current Appeals Committee was too large and should, perhaps, be reduced to a 3 Member Panel as a sub-Committee of the Appeals Committee.

The Panel raised a number of questions with regard to the current process and requested that officers investigate ways in which the current process could be streamlined to work more effectively.

RESOLVED:

1. That Officers bring a further report to the Employment and Development Panel regarding further options for the Appeal process.
2. That the revised Capability Procedure be agreed, subject to the outcome of 1 above.
3. That the revised Grievance Procedure be agreed, subject to the outcome of 1 above.

11. ORAL BRIEFING OF THE HEAD OF HUMAN RESOURCES ON THE ROLE OF THE EMPLOYMENT AND DEVELOPMENT PANEL

The HR Manager raised the issue of training for members of the Employment and Development Panel. The HR Manager recommended that training should be given with regard to the functions of the Employment and Development Panel.

Members felt that training was necessary and that only members who have undergone the full training should sit on the Panel.

RESOLVED:

1. That full training be given to Members of the Employment and Development Panel with regard to the recruitment and selection process and the annual appraisal process.
2. That the Member Development Policy be amended to reflect that Members of the Employment and Development Panel must undertake this training in order to be eligible to sit on the Panel.

12. EXCLUSION OF THE PUBLIC FROM THE MEETING

RESOLVED: That the public be excluded from the meeting for the following item of business because of the likely disclosure of exempt information for the reason specified.

**Head of Schedule  
12A and Brief  
Description**

Minutes (Part II) of the Full Year Appraisal 2008/09 and Targets and Objectives 2009/10 – Chief Executive, Director of Prosperity & Regeneration and Director of Change & environmental Services.

1 – Individual

13. Minutes (Part II) of the Full Year Appraisal 2008/09 and Targets and Objectives 2009/10 - Chief Executive, Director of Prosperity & Regeneration and Director of Change & Environmental Services

RESOLVED: That the Minutes (Part II) of the Full Year Appraisal 2008/09 and Targets and Objectives 2009/10 – Chief Executive, Director of Prosperity & Regeneration and Director of Change & Environmental Services be approved as a correct record and signed.

14. DURATION OF MEETING

6.30 pm to 7.42 pm

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## **MAIDSTONE BOROUGH COUNCIL**

### **EMPLOYMENT AND DEVELOPMENT PANEL**

**July 2009**

### **REPORT OF HEAD OF HUMAN RESOURCES**

**Report prepared by Dena Smart, Head of Human Resources**

- 1. HR Policy Revision – Discipline, Capability and Grievance Procedures**
  - 1.1 Issue for Decision
    - 1.1.1 To consider the revision of the council’s Grievance, Capability and Disciplinary Procedures.
  - 1.2 Recommendation of Head of Human Resources
    - 1.2.1 That the revised Disciplinary Procedure (Appendix One) is agreed.
    - 1.2.2 That the revised Capability Procedure (Appendix Two) is agreed.
    - 1.2.3 That the revised Grievance Procedure (Appendix Three) is agreed.
    - 1.2.4 That full Council be recommended to amend the Constitution to reflect the agreed change in role for the Appeals Committee/ Employment and Development Panel and that the Standards Committee be asked to evaluate the proposal before submission to full Council.
    - 1.2.5 That option 1.4.7 (a) be agreed to ensure the council complies with best practice in minimizing timescales and protects the employment rights of staff and their recourse to an employment tribunal.
    - 1.2.6 That in the event that option 1.4.7 (C) is approved, responsibility for amending the Appeal Process is delegated to the Head of HR in conjunction with the Democratic Services Manager.
  - 1.3 Reasons for Recommendation
    - 1.3.1 The existing policies (Disciplinary and Capability at Appendix Four; Grievance at Appendix Five) refer to Committees that no longer exist. The revisions will ensure that the council is not vulnerable to challenge at employment tribunals for having policies that are out of date.

1.3.2 There has been a recent change in employment law with the implementation of the Employment Act 2008. The council needs to ensure that its policies reflect these changes and that the council is compliant with them.

#### 1.4 Background

1.4.1 The Employment Act 2008 was implemented in April 2009. Prior to the implementation of the Act, although employees needed to raise a claim with an Employment Tribunal within three months of dismissal, the time period was almost automatically extended. However, the Act will restrict the ability of employees to have the time extended for appeal to an Employment Tribunal. Councils are therefore now reviewing their existing processes to ensure that their policies and procedures do not impact on the employment rights of staff.

1.4.2 The council's dismissal appeal process was established several years ago and requires an Appeals Committee to be set up to hear the appeal. Although there have only been 4 dismissals in the last four years, for each one, the time taken between the decision to dismiss and the date of the appeal has ranged from 8 weeks to 14 weeks as follows:

Case 1	Dismissed	12/06/07	Appeal	6/08/07	Time 8 weeks
Case 2	Dismissed	30/04/08	Appeal	10/07/08	Time 14 weeks
Case 3	Dismissed	30/04/08	Appeal	10/07/08	Time 14 weeks
Case 4	Dismissed	19/01/09	Appeal	24/04/08	Time 12 weeks

The main difficulty in setting up the Appeal committee is the fact that this is a formal process under the constitution and with so many people involved and a busy committee timetable, ensuring the availability of all those involved within a reasonable timeframe has not been achievable. To further complicate the timescales most of the dismissal appellants wish to involve regional trade union officers who have extremely full diaries which further adds to the delay.

1.4.3 In order to achieve much shorter timeframes and to be consistent with best practice, it is proposed that the Chief Executive as the Head of the Paid Service should hear appeals. This approach is already used within larger councils such as KCC and many London boroughs and effectively addresses the issue of timeliness and protection of employment rights for recourse to an employment tribunal.

1.4.4 It should be noted that the Appeals process relating to the dismissal of the Directors would remain with Members and there are separate processes for the Chief Executive, the section 151 officer and the monitoring officer.

1.4.5 Consultation has taken place with managers, the HR team and trade unions to ensure that the procedures would be workable by all parties. UNISON also took part in the Equality Impact Assessments undertaken on the policies (Appendix Six). The trade unions were in agreement with all the revisions to the procedures except that related to the appeal against dismissal. Whilst



they agreed with the move away from a formal Member Appeal Committee due to the time delays and the daunting nature of such a large committee for staff, they did not agree appeals should rest solely with the Chief Executive. The trade unions' view is that the council should delegate the appeal to the Chief Executive plus one or two Members and suggested this may be either just the Leader or the Leader and the Leader of the Opposition.

1.4.6 The Employment and Development Panel originally considered these policies in May 2009 and agreed the policies in all regards except with regard to the appeal rights against dismissal. The Panel asked that further research be undertaken by officers into alternative options that would not remove members entirely from the process but would achieve the aim of streamlining the process.

1.4.7 The options considered are set out below:

- a) Appeal against dismissal delegated to the Chief Executive (as proposed and recommended;
- b) Appeal against dismissal delegated to the Chief Executive who must consult with the Leader and Leader of the Opposition or their nominated representatives who will attend the appeal hearing;
- c) Appeal against dismissal delegated to a 3 person sub-committee of the Employment and Development Panel (EDP) in consultation with the Chief Executive who will attend the appeal hearing. The view of the Democratic Services Manager is that if there is to continue to be a committee process, it would be more appropriate to delegate this responsibility to a sub-committee of the EDP rather than an Appeal Committee as this would then be consistent with the appeal process for Chief Officers and as the Panel has agreed to meet at the beginning of each municipal year for briefing on responsibilities they could, at that point, agree to delegate decision making to a sub-committee. However, the constitution would need amending to this effect.

1.4.8 The analysis of the advantages and disadvantages of each of these is set out below;

<b>Option</b>	<b>Advantages</b>	<b>Disadvantages</b>
A. Chief Exec	<ul style="list-style-type: none"> <li>• Speed of organization and outcome for staff</li> <li>• Consistent with appointment processes</li> <li>• Consistent with responsibility as Head of Paid Service</li> <li>• No requirements for processes of agreed agendas etc</li> <li>• Maximizes confidentiality for staff as no circulation beyond dismissing managers and HR</li> <li>• Training for the role can be easily</li> </ul>	<ul style="list-style-type: none"> <li>• Trades Unions not supportive of this option</li> </ul>

	<ul style="list-style-type: none"> <li>offered as just one person</li> <li>Improved consistency of decision making as involved in all appeals</li> </ul>	
B. Chief Exec + Two Members	<ul style="list-style-type: none"> <li>Speed of organization and outcome greater than currently</li> <li>Involvement of Chief Executive enables discharge of responsibilities as Head of Paid Service</li> <li>No requirements for processes of agreed agendas etc</li> <li>Greater confidentiality for staff than current processes as fewer people involved</li> <li>Training for the role can be offered</li> <li>Trade unions support this option</li> </ul>	<ul style="list-style-type: none"> <li>Additional logistical problems as 3 diaries to co-ordinate</li> <li>Speed of organization and outcome for staff not as great as option A</li> <li>Confidentiality for staff not as great when compared with option A</li> <li>Reduced consistency as different Members may be involved</li> </ul>
C. Member Sub – Committee + Chief Exec	<ul style="list-style-type: none"> <li>Involvement of Chief Executive enables discharge of responsibilities as Head of Paid Service</li> </ul>	<ul style="list-style-type: none"> <li>Need to convene EDP to appoint sub-committee</li> <li>Wider group of people to train who may change from year to year</li> <li>Reduced consistency as different Members involved</li> <li>Need to formally agree agenda, convene committee to approve minutes, etc as the Committee has to follow statutory requirements</li> <li>May be less confidentiality as any Member can ask for the papers of the Committee</li> <li>Democratic Services will need to train the HR team to ensure that the legal requirements for Committees are met</li> <li>The Appeal Process will need to be re-written as the current one is too lengthy</li> </ul>

## 1.5 Alternative Action and why not Recommended

- 1.5.1 The Employment and Development Panel could take the decision to retain the existing procedures but as the policies are out of date, this would leave the council open to challenge and would jeopardize the employment rights of staff in relation to raising a claim at an employment tribunal.
- 1.5.2 The Employment and Development Panel could decide to wait to review the procedures until consensus is reached through MKIP on new procedures but the new legislation took effect in April 2009 and the council needs to comply now. The body of the disciplinary procedure does reflect an up-date recently circulated by Ashford Borough Council with adaptation for the council's own local structures.
- 1.5.3 The Employment and Development Panel could adopt the suggestion from the Trade Unions and have an appeal panel comprising the Chief Executive and senior Members. Whilst this is possible it would need to fit within the scheme of delegation of the Council. To remain within s101 of The Local

Government Act 1972 the Council may arrange for discharge of any of the functions by a Committee, sub-Committee or an officer of the authority. To facilitate this approach and remain within the regulations there would need to be a delegation to hear dismissal appeals to the Chief Executive but that in reaching his decision he would need to consult the appropriate members who would also be on the Appeal panel. The Chief Executive would not be able to hear the appeal of anyone who he had dismissed and the Member Appeal Committee would need to be convened for this duty. This process could reduce the current timescales, however it is not clear that they would be sufficiently reduced to achieve best practice.

1.5.4 The Employment and Development Panel could appoint a sub-committee to consider appeals without the attendance of the Chief Executive but this is not considered to be consistent with his responsibility as Head of Paid Service under the Local Government and Housing Act 1989 i.e. that he is responsible for 'the appointment and proper management of the authority's staff'. The decision regarding an employee's continuation in employment is fundamental to the 'proper management of the authority's staff'. The existing procedures also fail in this regard.

1.6 Impact on Corporate Objectives

1.6.1 Performance management is key to the delivery of corporate objectives and these policies are one part of the council's approach to performance management.

1.7 Risk Management

1.7.1 The main risk with the policies relates to the difficulty in demonstrating compliance with procedures at an Employment Tribunal as the existing policies are so out of date. The length of time taken to hear an appeal is also a major risk for the council in demonstrating compliance with best practice in protecting employees rights .

1.8 Other Implications

1.8.1

1.	Financial	
2.	Staffing	X
3.	Legal	X
4.	Social Inclusion	X
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	

- 8. Procurement
- 9. Asset Management


- 1.8.2 The implications for employees are set out in the main report.
- 1.8.3 The council needs to ensure that its policies follow the guidelines set out in the ACAS code of practice.
- 1.8.4 The disciplinary and grievance procedures have been equality impact assessed.

<b><u>NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED</u></b>			
Is this a Key Decision?	Yes	<input type="checkbox"/>	No <input checked="" type="checkbox"/>
If yes, when did it appear in the Forward Plan? _____			
Is this an Urgent Key Decision?	Yes	<input type="checkbox"/>	No <input checked="" type="checkbox"/>
<u>Reason for Urgency</u>			

**MAIDSTONE BOROUGH COUNCIL**

**DISCIPLINARY PROCEDURE**

**1. Introduction**

- 1.1 This procedure has been agreed between the Maidstone Borough Council and the trade unions recognised by the Council for negotiation purposes, UNISON and UNITE.
- 1.2 The purpose of the procedure is to encourage improvement in individual conduct and should not be viewed primarily as a means of imposing sanctions.
- 1.3 Matters of performance will be dealt with under the Council's Capability Procedure. A separate policy and procedure also exists for managing individual's sickness absence.
- 1.4 This procedure gives regard to the requirements of natural justice and ensuring that disciplinary action is considered and applied fairly and equitably to all employees. It follows the general principles outlined in the ACAS code of practice on Disciplinary and Grievance procedures.

**2. Principles**

- 2.1 The aim of this procedure is to help and encourage all employees to achieve and maintain acceptable standards of conduct. The disciplinary procedure will normally only be implemented on a stage-by-stage basis although in appropriate circumstances the procedure may be implemented at any stage.
- 2.2 This procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues.
- 2.3 At all stages of the formal procedure the employee will have the right to be represented by a recognised trade union representative or workplace colleague.
- 2.4 An employee will be given written notice of the complaint or allegation against him/her as soon as is reasonably practicable, and be given the opportunity to state his or her case in the course of the investigation and at any subsequent disciplinary hearing.
- 2.5 With the exception of level 1 the chair should not have any detailed knowledge of the case so that they can judge the hearing impartially.
- 2.6 Employees will not be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will normally be dismissal without notice and without pay in lieu of notice.
- 2.7 The procedure may be implemented at any stage if an employee's alleged misconduct warrants such action.
- 2.8 An employee will have the right to appeal against a disciplinary decision or penalty.
- 2.9 No disciplinary action for misconduct, including the issuing of a formal warning, may be undertaken outside of this policy and procedure.
- 2.10 Although normal disciplinary standards should apply to the conduct of trade union officials as employees, disciplinary action can be misconstrued as an attack on the union.

In order to avoid such problems, formal disciplinary action should not be taken against a trade union representative until the circumstances of the case have been discussed with the Head of Human Resources and the union's full time regional officer.

- 2.11 The Head of Human Resources should ensure that advice is appropriate and given by an appropriately experience Human Resources officer.

### **3. Procedure relating to Chief Executives and other senior officers**

- 3.1 Where a question of discipline is raised in connection with the Chief Executive, the Section 151 Officer or the Monitoring Officer the procedure will follow The Local Authorities (Standing Orders)(England) Regulations 2001 relating to disciplinary action against the Head of Paid Services.

### **4. Representation**

- 4.1 Employees have the right to be accompanied by a workplace colleague or trade union official where they are required to attend formal disciplinary hearings and when the employee makes a reasonable request to be so accompanied. This right to be accompanied applies to all staff including part-time, casual workers or those on short term contracts.
- 4.2 In the most serious cases employees may request a full-time officer of the trade union to attend; in such cases reasonable time will be allowed for the employee to contact them and arrange attendance. Disciplinary hearings will not be unduly delayed due to the non availability of the representative.
- 4.3 Employees have the right to be accompanied at any stage of the formal procedure. This right does not extend to the informal or investigation stages and it is at the discretion of the manager whether the employee may be accompanied at meeting at any stages of the informal procedure. At this informal stage issues may be best resolved directly by the employees and their manager. Equally, managers must not allow an investigation into the facts surrounding a disciplinary case to extend into a disciplinary hearing.
- 4.4 The statutory right to be accompanied applies specifically to hearings which could result in the administration of a formal warning, dismissal, and other action short of dismissal (e.g. suspension without pay, demotion etc) or confirmation of a warning issued.
- 4.5 The role of the representative is to support the employee in the preparation of his/her case. This may be in gathering information, providing moral support and asking questions on the employee's behalf. At a formal hearing the representative may either present the case on behalf of the employee or support the employee whilst s/he presents the case. In either case the representative may not answer questions directed at the employee.
- 4.6 If it becomes clear during the course of the informal interview that formal disciplinary action may be needed then the interview should be terminated and a formal hearing convened at which the employee will be afforded the right to be accompanied.

### **5. The procedure**

#### **5.1 Investigation**

- 5.1.2 When a disciplinary matter arises, the line manager should first establish the facts promptly before recollections fade, and where appropriate obtain written statements

from any available witnesses and to collect any evidence. It is important to keep a record for later reference. Having investigated all the facts the line manager or senior manager should decide: that there is no case to answer; to arrange informal coaching or counselling; or to arrange for the matter to be dealt with at a formal hearing.

5.1.3 Where there are allegations of fraud the Heads of Audit and Human Resources must be informed before the employee or other witnesses are approached concerning the allegation.

## 5.2 Informal stage

5.2.1 Minor cases of misconduct may be dealt with by informal advice, coaching and counselling rather than through the disciplinary procedure. Sometimes managers may need to advise the individual of the seriousness of their situation and should clarify that ultimately failure to improve could result in formal procedures being implemented.

5.2.2 Managers must ensure that problems are discussed with the objective of encouraging and helping the employee to improve. It is important that employees understand what needs to be done, how conduct will be reviewed and over what period and the consequences of not improving.

5.2.3 For specific issues of poor performance, the council's Capability Procedure must be followed.

## 5.3 Suspension

5.3.1 In certain circumstances, for example, in cases involving gross misconduct, where relationships have broken down; or where it is considered there are risks to the council's property or responsibilities to other parties; consideration should be given to a brief period of suspension with pay whilst an unhindered investigation is conducted. Such a suspension should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered as disciplinary action.

5.3.2 The authority to suspend an employee is with the Head of Service in consultation with Human Resources.

## 5.4 Formal stages

5.4.1 If the infringement is regarded as more serious, consideration should be given to dealing with the matter in the formal stages which may result in a warning or dismissal.

Sanctions may be awarded as follows:

Stage	Description	Duration	Heard by	Appeal
Level 1	First Warning	6 months	Immediate manager	Senior manager
Level 2	Second Warning	12 Months	Senior manager	Head of Service
Level 3	Final Warning	18 Months	Head of Service	Independent Head of Service or Director
Level 4	Dismissal		Head of Service or Director Chief Executive	Chief Executive Member Appeal

- Head of Service refers to a manager reporting to either the Chief Executive or a Director.
- 5.4.2 The manager listed in the fourth column indicates the minimum level of authority to issue the warning shown in the second column. Managers more senior to those identified, including directors, may issue the sanctions specified. Where the dismissal is undertaken by the Chief Executive, for example in the case of a Director, the appeal would be referred to a the member Appeal Committee.
- 5.4.3 Throughout the duration of the warning the employee must demonstrate no further offences and an improvement in performance/ conduct. In order to demonstrate the necessary improvement the employee must be attending work consistently throughout the period. Any absences that are longer than a one month period will result in an extension of the warning to match the period of absence. There will be no right of appeal against this extension.

## 5.5 **Hearings**

- 5.5.1 Before a decision is reached or any disciplinary action taken there should be a disciplinary hearing at which the employee has the opportunity to state their case and to answer the allegations that have been made. Wherever possible the hearing should be arranged at a mutually convenient time. The employee must be advised of any rights under the disciplinary procedure including the right to be accompanied.
- 5.5.2 Prior to the hearing the line manager will prepare a written report which will be management's statement of case. The report will give details of the areas of concern and the action which has been taken to rectify the shortcomings. The report will also include any supporting documentation.
- 5.5.3 The manager, with advice from Human Resources, will write to the employee requiring him/her to attend a formal hearing. The letter will state precisely the purpose of the hearing, names of any witnesses and remind the employee of their right to be accompanied by a trade union representative or workplace colleague. The letter must give the employee at least 5 days notice of the hearing. The employee will also be sent the management's statement of case.
- 5.5.4 The employee has the right to present evidence and bring witnesses to support their case. It is the responsibility of the employee to arrange for his/her own witnesses to attend the hearing. The process to be followed at the hearing is set out at Appendix 1.
- 5.5.6 The manager, with advice from Human Resources, will determine what action needs to be taken and inform the employee of his/her decision. S/he will also inform the employee of the duration of any warning and their right to appeal.
- 5.5.7 Warnings should inform the employees that if there is no sustained satisfactory improvement or change the employee will be subject to further disciplinary action or dismissal where a final warning has been awarded.

## 5.6 **First Warning:**

- 5.6.1 Where it is likely that the outcome will be no more than a first warning the line manager with support from Human Resources may both chair the hearing and state the management's case. The employee will then have the opportunity to reply, call any witnesses and give any mitigating circumstances where appropriate.



- 5.6.2 The line manager may award a first warning. However if the line manager believes that a second or final warning is appropriate the hearing must be adjourned and rearranged as below.
- 5.6.3 The employee may appeal against the warning to the line manager's manager by lodging the appeal in writing, to the Head of Human Resources, within 10 working days of the date of the letter informing of the decision.

## **5.7 Further Hearings**

- 5.7.1 Where there is a failure to improve or change behaviour during the currency of a prior warning, or where the infringement is sufficiently serious, the employee will be required to attend a hearing to discuss the matter.
- 5.7.2 A senior manager will chair the hearing with support from Human Resources. The line manager will present the management case and the employee or their representative will present the employee's case. Both sides may call witnesses.
- 5.7.3 The chair may award warnings according to the authority shown in 5.4.1
- 5.7.4 The employee may appeal against the warning by lodging the appeal in writing to the Head of Human Resources within 10 working days of the date of the letter informing of the decision.

## **5.8 Dismissal or other sanctions short of dismissal**

- 5.8.1 If the employee's conduct still fails to improve the final step might be disciplinary transfer, disciplinary suspension without pay, demotion, loss of seniority, loss of increment or dismissal. The employee should be informed as soon as reasonably practicable of the reasons for dismissal, the date on which their contract terminates, the appropriate period of notice (or pay in lieu of notice) and information on the right of appeal.
- 5.8.2 Appeals against dismissal or sanctions short of dismissal will be heard by the Chief Executive.

## **6. Gross Misconduct**

- 6.1 For examples of gross misconduct, see Appendix 2.
- 6.2 Gross misconduct is misconduct of such nature that the council cannot reasonably allow the continued presence of the employee at the place of work. In such circumstances dismissal may take place without prior use of the warnings procedure.
- 6.3 Dismissal should take place only after a proper hearing held by a senior manager. The employee may be suspended on full pay pending the holding of such a hearing.

## **7. Criminal Offences outside work**

- 7.1 Charges brought against an individual by other parties, including the Police and investigations by the Police are procedurally separate from the council's disciplinary procedure.
- 7.2 Action may be taken by management, irrespective of court proceedings. It does not automatically follow that an employee found guilty of an offence by the courts or taken

into custody will be the subject of disciplinary action. Neither does it follow that an employee found not guilty of an offence by the courts will be immune from action by the council.

- 7.3 It is for the Director to consider such cases on their merits and decide whether the offence has a material bearing on the individual's suitability as an employee. The decision will depend on the nature of the offence and the position of the employee.

## **8. Appeals**

- 8.1 The opportunity to appeal against a disciplinary decision is essential to natural justice. Individuals may choose to raise appeals on a number of grounds which could include the perceived unfairness of the judgement, the severity of the penalty, new evidence coming to light or procedural irregularities. These grounds need to be considered when deciding the extent of any new investigation or re-hearing in order to remedy previous defects in the disciplinary process.
- 8.2 Individuals may appeal against any form of formal disciplinary action, but must do so in writing, within 10 working days of the date of the letter confirming disciplinary action, including dismissal. Letters of appeal should be sent to the Head of Human Resources, who will arrange a hearing in accordance with the council's normal procedure as soon as is practicable. Appellants are advised to consult with their trade union or workplace colleague.
- 8.3 Appeals will be heard by the manager of the manager who made the original decision to take disciplinary action except where the decision is dismissal when the appeal will be heard by the Chief Executive. Where the Chief Executive has taken the decision to dismiss, the appeal would be to a Member Appeal Committee.

## **9. Disciplinary Records**

- 9.1 Records must be kept detailing the nature of any breach of disciplinary rules or unsatisfactory performance, the employee's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be kept confidential within the HR record and retained in accordance with the disciplinary procedure and the Data Protection Act 1998, which requires the release of certain data to individuals at their request. Copies of any meeting records should be given to the individual concerned although in certain circumstances some information may be withheld, for example to protect a witness.
- 9.2 At the end of the period set out in 5.4.1, if there have been no further substantiated complaints against the employee, written records of previous warnings will be deemed to have lapsed.

## **10. Accessibility**

- 10.1 If any aspect of the disciplinary procedure creates difficulty on account of any disability, or if assistance is required because English is not the first language, this should be raised with the HR Officer, who will make appropriate arrangements.

**This Procedure does not form part of the employment contract.**

**MAIDSTONE BOROUGH COUNCIL**

**PROCEDURE FOR DISCIPLINARY HEARINGS**

1. The Chairperson shall commence the proceedings by stating that the meeting is a formal disciplinary hearing, the purpose of which is to examine various facts/allegations, and to consider whether disciplinary action should be taken.
2. The Chairperson should introduce those present and explain the procedure by which the hearing will be conducted.
3. The Chairperson should satisfy him/herself that the employee has received the letter in advance of the hearing, and is aware of their rights to be accompanied by a trade union representative, or a workplace colleague of their choice who has no involvement or connection with the issue(s) under investigation, and to call witnesses if desired.
4. Management shall put before the hearing the circumstances of the alleged offence(s) and shall call upon any witnesses to give evidence and/or produce any documentary evidence to support the allegations.
5. The employee shall be given the opportunity to ask questions of witnesses and management.
6. The Chairperson and the HR advisor may also ask questions of witnesses and management.
7. Witnesses shall leave the hearing after giving evidence and answering any questions put to them.
8. The employee shall be invited to present their case, and to call any witnesses and/or produce any documentary evidence to support their application or defence. This may or may not include statements in respect of mitigating factors.
9. Management shall be given the opportunity to ask questions of the employee and their witnesses.
10. The Chairperson and the HR advisor may also ask questions of the employee and their witnesses.
11. Employee witnesses shall leave the hearing after giving evidence and answering any questions put to them.
12. Once all witnesses have been seen, management and then the employee should be afforded the opportunity to summarise the main points of their case. No new evidence should be introduced at this stage.
13. Management, the employee and his/her representative shall withdraw, whilst the Chairperson and his/her assistant deliberate the case. If it is necessary for any witnesses to be recalled to clarify points of uncertainty, all parties are to be recalled to the Hearing.
14. The Chairperson makes a decision on the appropriate disciplinary penalty.
15. Where practical, both parties shall be recalled and notified of the decision and any right of appeal.

16. The employee should be notified of the decision in writing as soon as possible after the conclusion of the hearing and in any case within four working days.

## **MAIDSTONE BOROUGH COUNCIL**

### **DISCIPLINARY RULES: STANDARDS OF BEHAVIOUR AND CONDUCT**

#### **1. GROSS MISCONDUCT**

The following list gives examples of misconduct which may be treated as gross misconduct and result in summary dismissal:-

- Stealing from the council, members of staff or the public;
- Other offences of dishonesty;
- Falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- Falsification of records, reports, accounts, expense claims or self-certification forms whether or not for personal gain;
- Failure to declare a financial interest or other personal interest in accordance with the council's Code of Conduct
- Sexual misconduct at work;
- Fighting with or physical assault on members of staff or the public;
- Serious or deliberate damage to or misuse of the council's property;
- Drunkenness or being under the influence of illegal drugs whilst at work;
- Possession, custody or control of illegal drugs on the council's premises;
- Serious breach of the council's rules, including, but not restricted to, health and safety rules, equality rules and rules on computer use;
- Gross negligence;
- Conviction of a criminal offence that is relevant to the employee's employment;
- Conduct that brings the council's name into disrepute;
- Intimidation, discrimination or harassment of a fellow worker on the grounds of sex, sexual orientation, race, disability, age, religion or belief or for any other reason;
- Breaching statutory provisions which would render the council or its employees liable to prosecution;
- Serious act of insubordination or failure to follow reasonable management instructions.
- Frivolous and vexatious complaints raised under the Whistle blowing Charter.
- Serious breach of confidence/confidential information

#### **2. OTHER MISCONDUCT**

The following gives examples of misconduct, which may be dealt with under the various stages of the disciplinary procedure, including counselling, where appropriate.

- Poor timekeeping or attendance
- Friction between colleagues at work which affects work performance
- Behaviour, e.g. swearing, which upsets other staff or members of the public
- Unauthorised absence
- Failure to follow the rules related to sickness absence reporting
- Rudeness or inattention to the public
- Non-compliance with council rules, e.g. smoking at work and car parking policies (excluding that covered by the car parking order at the main council office)
- Minor damage to council property/premises

**MAIDSTONE BOROUGH COUNCIL****CAPABILITY PROCEDURE****1. Introduction**

- 1.1 This procedure covers circumstances where an employee's performance at work may be impaired or prevented due to:
- (1) incapability because of sub-standard work;
  - (2) incapability because of ill-health. Incapability due to persistent or long term sickness absence is handled separately in accordance with the attendance management policy;
  - (3) both of the above.
- 1.2 A problem managers may face is that of a member of staff who has given satisfactory service in the past, but now no longer does so. There may be a number of reasons giving rise to this including:-
- ill health;
  - loss of interest or ambition;
  - inability or unwillingness to adapt to a change in job role;
  - inability to cope with workload and achieve required output and/or quality.
- 1.3 There will be instances where unsatisfactory performance relates to conduct rather than capability. It is important to distinguish between an employee who is able but unwilling to improve and one who is willing but unable to do so as the appropriate procedures and remedies for dealing with incapability and misconduct are different. Unwillingness to improve is misconduct but an inability to improve is incapability.

**2. General**

- 2.1 Sub-standard work includes any performance of duties which falls below the standard required.
- 2.2 Incidences of sub-standard work should be minimised as far as possible by induction and training processes and there should be regular appraisal of work performance.
- 2.3 The possibility of health reasons having a bearing on performance shall be considered.
- 2.4 Each individual's circumstances will be considered in relation to the post and factors such as length of service, previous performance and changes in the work place will be taken into account.

- 2.5 Standards against which performance is judged should be fully explained as objectively as possible and training or other similar means made available to rectify poor performance.
- 2.6 No employee should be dismissed without prior warning that their performance is sub-standard and being given the opportunity to improve.
- 2.7 Other options should be considered before dismissal if it becomes clear that continuance in the current post is unlikely e.g. alternative employment or premature retirement in the interests of the service.
- 2.8 The employee should always be given the opportunity to be represented in formal meetings concerning his/her position.
- 2.9 A decision to dismiss with/without notice or downgrade can only be taken by the relevant Director or another senior manager acting under delegation, once the disciplinary procedure has been enacted.

### 3. **Poor Performance**

- 3.1 In all cases where work or performance appears to be sub-standard, the manager should undertake the following steps, where appropriate:
  - a. investigate fully the reasons for poor performance;
  - b. discuss with the employee his/her shortcomings and the standard required;
  - c. provide a reasonable time to improve - the "review period";
  - d. advise on how improvement can be made, provide training, counselling and supervision where appropriate;
  - e. warn the employee of the consequences of not improving;
  - f. monitor the employee's performance during and at the end of the review period while providing the employee with feedback;
  - g. consider other options before dismissal e.g. transfer or demotion to alternative work, premature retirement either in the interests of the efficiency of the service or on the grounds of ill-health.
- 3.2 In many cases improvement will not be instant and, depending on the nature of the job and on the effect of sub-standard performance on the service, the counselling process should continue for a reasonable period.

### 4. **Continuing Poor Performance**

- 4.1 If the counselling process does not succeed in raising work performance to an adequate standard, the manager should arrange to see the employee formally at a hearing where he/she has the opportunity to be represented by an accredited and recognised trade union representative or work colleague of their choice who has no involvement or connection with the issue(s). The manager should normally be accompanied by a Human Resources representative. Each party may call witnesses to attend the hearing if they have information which may help an understanding of the position.

4.2 The purpose of the hearing is to establish as comprehensively as possible:-

- a. the nature of the sub-standard performance and its effect;
- b. the steps being taken to rectify the situation, their likely duration and further options including alternative duties;
- c. any other circumstances, e.g. personal or health considerations;
- d. agreed written targets and objectives, including realistic dates for achievement, against which the employee's performance can be evaluated.

## 5. **Time for Improvement**

5.1 Except in exceptional circumstances (e.g. when clients are at risk or poor performance amounts to gross incompetence) no employee should be dismissed for sub-standard performance at the first formal hearing and a reasonable period should be allowed for raising performance to a satisfactory standard, before moving to a formal disciplinary hearing. The length of time allowed for the employee to improve and the number of such formal hearings will depend on each individual circumstance and will include consideration of the length of service of the employee, type of work, status of employee and past performance.

5.2 Should performance continue to be sub-standard, consideration prior to dismissal must be given to:

1. alternative employment;
2. demotion;
3. retraining;
4. career counselling.

## 6. **Termination of Employment**

6.1 This can only take place following a formal disciplinary hearing. Ultimately, termination of employment may be the only effective way of dealing with poor performers.

6.2 If dismissal is required, it shall be on the grounds of incapability and following a formal hearing, it will be given with notice required under statutory legislation. The procedure to be followed is that set out earlier in this document.

## 7. **Right of Appeal**

7.1 The employee has the right to appeal against the dismissal and this must be included in the dismissal letter.

7.2 The appeal is to the Chief Executive.

7.3 The appeal should be lodged in writing with the Head of Human Resources within 10 working days of the date of the letter stating the grounds on which the employee is appealing.

7.4 The appeal will be heard in accordance with the Appeals Procedure.

## **8. Poor Performance - Ill Health or Disability**

- 8.1 Incapability due to sickness absence is dealt with under the attendance management policy. This section concerns employees whose performance, not attendance, at work is considered to be below standard. Management should consider whether there are any work-related circumstances affecting the level of performance.
- 8.2 Wherever possible an employee should be retained in employment and given the opportunity to recover and return to work.
- 8.3 Each individual's circumstances should be considered in relation to the requirements of the post, as well as the Directorate's capacity to hold the post open.
- 8.4 Medical opinion shall be sought in discussion with the employee via the Occupational Health Department, and if specialist medical advice is required by management any costs will be met by the council. Should an employee refuse access to relevant medical information, management will make judgements on the information that is available, and the employee's attention will be drawn to the provisions of the Sickness Pay Scheme whereby sickness allowance may be withdrawn.
- 8.5 In the light of the medical opinion received, consideration will be given, at all stages, to the likelihood of an improvement in health and subsequent attendance, the availability of suitable alternative work, the effect of past and likely future absences on the organisation, how similar situations have been handled in the past and whether the illness is a result of a disability as defined in the Disability Discrimination Act 1995.
- 8.6 If it is medically established that the current employment is unsuitable, every effort shall be made to consider reasonable adjustments and alternative employment before termination of employment.
- 8.7 Other options such as ill-health retirement should be considered if appropriate.
- 8.8 The employee should always be given the opportunity to be represented in formal meetings concerning his/her position.
- 8.9 Each case will be judged on its merits, having regard to the effect of the poor performance on service level provision.

## **9. Accessibility**

- 9.1 If any aspect of the capability procedure creates difficulty on account of any disability, or if assistance is required because English is not the first language,



this should be raised with the HR Officer, who will make appropriate arrangements.

**COUNSELLING SHEET**

**Timetable and Report**

Period:

Review Meeting Dates:

Name:

Counselling carried out by:

**Work Covered:**

**Positive Feedback**

**Specific Problems**

**General Comments - Manager**

**General Comments - Employee**

Signed:

Date:

Signed:

Date:

**MAIDSTONE BOROUGH COUNCIL****GRIEVANCE PROCEDURE****1. Introduction**

- 1.1 It is the council's policy to ensure that employees with a grievance relating to their employment can use a procedure, which can help to resolve grievances as quickly and as fairly as possible.
- 1.2 Grievances are concerns, problems or complaints that employees raise with their employers. Anybody working within the council may, at some time, have problems or concerns about their work, working conditions or relationships with colleagues that they wish to talk about with management with a view to resolving their problems or concerns. Issues that may cause grievances include:
- Terms and conditions of employment;
  - Health and safety;
  - Work relations;
  - New working practices;
  - Working environment;
  - Organisational change;
  - Equal opportunities.
- 1.3 This grievance procedure applies to individual and collective grievances relating to employment. A collective grievance is a grievance which is raised on behalf of two or more named employees by a union representative or staff representative.
- 1.4 This procedure does not cover appeals against the following:
- Dismissal or disciplinary matters (for which there are separate appeal procedures);
  - Grievances that are raised whilst subject to disciplinary proceedings will usually only be heard when the disciplinary process has been completed. Insofar as a grievance has any bearing on the disciplinary proceedings, it can be raised as a relevant issue in the course of those proceedings;
  - Bullying and harassment (for which there is a separate procedure);
  - Issues relating to Income Tax, National Insurance, and pension rights;
  - Matters covered by national agreements or statute where the council has no discretion or authority in the matter;
  - Grading appeals (for which there is a separate appeal procedure).
- 1.4.1 No withdrawal of labour or other industrial action should take place if all stages of this procedure have not been exhausted in accordance with the stated time limits.

## **2. Mediation**

- 2.1 It may be appropriate for the matter to be dealt with by way of mediation, depending on the nature of the grievance. This involves the appointment of a third-party mediator, who will discuss the issues raised in the grievance with all of those involved and seek to facilitate a resolution. Mediation will be used only where all parties involved in the grievance agree.

## **3. The right to be accompanied**

- 3.1 Employees have the right to be accompanied by a work place colleague or trade union official at any formal grievance meeting or subsequent appeal. The choice of companion is a matter for the individual, but the Council reserves the right to refuse to accept a companion whose presence would undermine the grievance process. Please note that individual workers are not obliged to agree to accompany another employee to a grievance meeting. Companions will be given appropriate paid time off to allow them to accompany colleagues at a grievance hearing or appeal hearing.
- 3.2 At any hearing or appeal hearing, the companion will be allowed to address the meeting, respond on to any view expressed in the hearing, and sum up the case. However, both the hearing and appeal hearing are essentially meetings between the employer and employee, so any questions put directly should be dealt with by the employee and not the companion. Where the matter is a collective grievance the trade union representative may answer on behalf of the parties involved.
- 3.3 Where the chosen companion is unavailable on the day scheduled for the meeting or appeal, the meeting will be rescheduled, provided that this does not unreasonably delay the hearing

## **4. Accessibility**

- 4.1 If any aspect of the grievance procedure causes difficulty on account of any disability, or because English is not the employees first language, this should be raised with the HR Officer, who will make appropriate arrangements.

## **5. Informal Discussions**

- 5.1 Most routine complaints and grievances are best resolved informally in discussion with the immediate line manager. Dealing with grievances in this way should lead to speedy and satisfactory resolution of problems, as the immediate line manager is often able to resolve the matter directly. Both the employee and the line manager may find it helpful to keep a note of such an informal meeting.
- 5.2 Where the grievance cannot be resolved informally it should be dealt with under the formal grievance procedure set out below.

## **6. The Formal Grievance Procedure**

6.1 The council recognises that a formal grievance procedure can be a stressful and upsetting experience for all those involved. Everyone involved in the process is entitled to be treated fairly and with respect. The council will not tolerate abusive or insulting behaviour from anyone taking part in or conducting grievance procedures and will treat any such behaviour as misconduct under the disciplinary procedure.

### **6.2 Making the complaint**

The first stage of the grievance procedure is for the employee to put their complaint in writing. This written statement will form the basis of the subsequent hearing and any investigations, so it is important that it sets out clearly the nature of the grievance and indicates the desired outcome. If the grievance is unclear, the employee may be asked to clarify the complaint before any meeting takes place.

The complaint should be headed "Formal grievance" and sent to the immediate line manager. If the complaint relates to the way in which the line manager is treating the employee, the complaint may be sent to the line manager's manager.

Further attempts may be made to resolve the matter informally, depending on the nature of the complaint. However, if the employee is not satisfied with the outcome, they may insist on the matter proceeding to a full grievance hearing.

### **6.3 Grievance Investigation**

Before proceeding to a full grievance hearing, it may be necessary to carry out investigations of any allegations. Although the confidentiality of the grievance process will be respected if allegations have been made in respect of another employee it will be necessary for the other person to have the opportunity to have their point of view heard by the investigating manager. If any evidence is gathered in the course of these investigations, the employee will be given a copy sufficiently in advance of the hearing to consider their response. In exceptional circumstances, the evidence given by individuals may have to remain confidential. Where confidentiality is necessary, this will be explained to the employee and an appropriate summary of the evidence gathered will be given. The employee will be given a timeframe within which the investigation should be completed and this should not be unnecessarily protracted.

### **6.4 The Grievance Hearing**

The hearing will be held as soon as is reasonably practicable and, subject to any need to carry out prior investigations, within ten working days of the receipt of the written complaint. It will be conducted by the line manager and attended by an HR representative. At the meeting, the employee will be asked to explain the nature of the complaint and what action could be taken to resolve the matter.

Where appropriate, the meeting may be adjourned to allow further investigations to take place.

The employee should ensure that they attend the meeting at the specified time. If the employee is unable to attend because of circumstances beyond their control, they should inform the line manager as soon as possible. If the employee fails to attend without explanation, or if it appears that they have not made sufficient attempts to attend, the hearing may take place in their absence.

The format of the grievance hearing is set out at Appendix One. While the employee will be given every opportunity to explain the case fully, it should be confined to matters that are directly relevant to the complaint. The employee may wish to present witnesses or documentary evidence to support their case. Focusing on irrelevant issues or incidents that took place long before the matters in hand is not helpful and can hinder the effective handling of the complaint. The manager conducting the hearing will intervene if he/she thinks that the discussion is straying too far from the key issue. The manager may also intervene to ensure that the meeting can be completed within a reasonable timeframe, depending on the nature and complexity of the complaint.

Following the meeting, the employee will be informed in writing of the outcome within ten working days and told of any action that the council proposes to take as a result of the complaint. The employee may discuss this outcome informally with either the manager or the HR Officer.

If the employee remains dissatisfied with the outcome, they may make a formal appeal.

## 6.5 **Appeal**

The appeal should be made in writing to the Head of Human Resources. It should clearly state the grounds of the appeal, ie the basis on which the result of the grievance was wrong or that the action taken as a result was inappropriate. This should be done within ten working days of the written notification of the outcome of the grievance. An appeal meeting will be arranged to take place within ten working days of the submission of the formal appeal.

The employee should ensure that they attend the meeting at the specified time. If the employee is unable to attend because of circumstances beyond their control, they should inform the line manager as soon as possible. If the employee fails to attend without explanation, or if it appears that they have not made sufficient attempts to attend, the hearing may take place in their absence.

The appeal hearing will be conducted by the Head of Service or Director (the appropriate level will be determined in relation to the manager who heard the initial grievance so that the appeal is heard by a manager at a more senior level). The appeal will consider the grounds that have been put forward and

assess whether or not the conclusion reached in the original grievance hearing was appropriate. The appeal is not a rehearing of the original grievance, but rather a consideration of the specific areas with which the employee remains dissatisfied in relation to the original grievance. The manager conducting the appeal may therefore confine discussion to those specific areas rather than reconsider the whole matter afresh.

Following the appeal meeting, the employee will be informed of the outcome within ten working days. If the employee remains dissatisfied they may refer the matter to the final appeal stage.

#### **6.6 Final appeal stage**

As with the first appeal, the employee should put the grounds of the appeal in writing and send this to the Head of Human Resources. An appeal hearing will be arranged with the Chief Executive and it will take the same form as the first appeal hearing.

The result will be notified to the employee in writing within ten working days. The outcome will be final.

### **7. Records**

- 7.1 Records should be kept of the nature of the grievance raised, meetings held, the manager's response, any action taken and the reasons for it. These records should be kept confidential within the individual's HR file and retained in accordance with the Data Protection Act 1998, which requires the release of certain data to individuals on their request. Copies of any meeting records should be given to the individual concerned although in certain circumstances some information may be withheld, for example to protect a witness.

**MAIDSTONE BOROUGH COUNCIL**  
**PROCEDURE FOR GRIEVANCE HEARINGS**

The format of any formal grievance hearing conducted by the council will be as follows:

- The purpose of a formal grievance hearing will normally be to establish the facts about the employee's grievance and determine what (if any) action can reasonably be taken to resolve it.
- The person leading the hearing (the chair) will introduce the hearing, and explain its purpose and how it will be conducted.
- The employee will be entitled to be accompanied at the hearing, if he/she wishes, by a work place colleague or trade union official of his/her choice.
- The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing.
- The chair will state that the hearing is being conducted as part of the organisation's formal grievance procedure and confirm that a written record of the hearing is being made.
- The chair will invite the employee to state his/her case, ie the circumstances that have led to the grievance, the nature of the grievance and why he/she feels aggrieved. The employee may do this personally, or the employee's representative may do this on his/her behalf.
- The employee will refer to any documentation on which he/she is seeking to rely. The chair will refer to any written evidence that has been gathered in the course of any investigation that has taken place, including the consideration of witness statements where appropriate.
- The chair may ask the employee (and any witnesses) questions about the circumstances of the grievance in order to establish all the relevant facts, background and surrounding circumstances.
- The chair has the right to ask the employee to personally answer such questions, although the employee may on request confer with his/her representative at any time during the grievance hearing.
- Once all the evidence has been heard, the chair will sum up the key points of the hearing.
- The chair will inform the employee of when a decision will be made about what, if any, action will be taken to resolve or otherwise deal with the grievance.
- The chair will inform the employee that he/she will have the right to appeal against the outcome of the grievance hearing if he/she is not satisfied with it.
- The chair will thank the parties for attending and close the meeting.
- At any point during the hearing, the chair may adjourn the proceedings if it appears necessary or desirable to do so, including for the purpose of gathering further information or investigating any allegations made.



## **DISCIPLINARY PROCEDURE FOR OFFICERS RELATING TO CONDUCT AND CAPABILITY WITH EFFECT FROM 1ST JUNE 1996**

### **1. INTRODUCTION**

- 1.1 The Council, whilst acknowledging that generally its staff are both responsible and cooperative, recognises that there is a need for rules of conduct in any place of work and that proper procedures are an aid to good management and to ensuring that all staff are treated fairly, equitably and with consistency.
- 1.2 The procedure is designed to help and encourage all staff to achieve and maintain standards of conduct. It should therefore not just be viewed as a means of imposing sanctions or as necessarily leading to dismissal. It does not cover capability issues except as a final stage once the incapability procedures attached to this procedure have been followed.
- 1.3 The procedure takes full account of the ACAS Code of Practice on "Disciplinary Practice and Procedures in Employment" and the ACAS advisory handbook "Discipline at Work".
- 1.4 Appropriate training shall be provided and no manager or supervisor shall be permitted to operate the procedure until they have been trained in its use.
- 1.5 The disciplinary procedure and rules will be reviewed periodically. Any amendments and additional rules imposing new obligations shall be introduced after agreement with the recognised trade unions.

### **1.6 Confidentiality**

- 1.6.1 All matters relating to the application of the procedure to individual staff shall be dealt with in the strictest confidence.

### **2. SCOPE OF THE PROCEDURE**

- 2.1 The procedure shall apply to all Council staff within the NJC for APT&C Services and JNC for Chief Officers, as complemented by the respective National Agreements.
- 2.2 This procedure does not apply to probationary staff who are dealt with separately.

### **2.3 Counselling**

- 2.3.1 The day-to-day supervision of employees is outside the scope of this procedure. It is the responsibility of all supervisors, section heads and managers to monitor the performance of their staff and to ensure that employees understand what is expected of them with regard to both work standards and conduct. Counselling can be a more appropriate method of resolving problems than the disciplinary procedure and in cases of poor performance the capability procedures must be followed before moving into the disciplinary procedure.

### **3. PROCEDURE**

- 3.1 It is important that the procedures in this document are closely adhered to as failure to do so may be prejudicial to the outcome of any subsequent stage, for example, at an appeal hearing or in an Industrial Tribunal.
- 3.2 No disciplinary warnings as defined in this procedure will be given to a member of staff until the Head of Human Resources has been consulted.
- 3.3 Each Director is responsible for discipline within their own Directorate and may delegate the operation of the procedure as appropriate according to the structure and resources available.
- 3.4 In the interests of natural justice, a supervisor or manager involved in taking disciplinary action may not sit as part of any subsequent appeal panel in that case.

### **4. PROCEDURE FOR DEALING WITH MISCONDUCT OR GROSS MISCONDUCT**

#### **4.1 Investigation and Suspension**

- 4.1.1 There will be occasions when preliminary investigations by management will be necessary to ascertain if an employee has a case to answer.

If it is deemed necessary to interview a member of staff, he/she must be informed that the interview is investigatory and that they may be accompanied by an accredited and recognised trade union representative or by a work colleague of their choice who has no involvement or connection with the issue(s) under investigation.

- 4.1.2 It is essential that each instance of alleged misconduct be investigated. Investigations need not necessarily be time-consuming, but speed should not take precedence over thoroughness.
- 4.1.3 An employee shall only be suspended by a Director or by another Senior Manager delegated by the Director (the suspending officer). Suspension is not a form of disciplinary action and will be on full pay. It should normally be for a brief period and will take place pending investigation, where there are reasonable grounds to believe that:
  - a. an employee may have committed gross misconduct or;
  - b. in other cases falling short of gross misconduct where the continuation of the employee on duty would significantly affect the ability to investigate the offence or;
  - c. there is a possibility of intimidation of staff or witnesses to alleged misconduct or
  - d. there is a risk of the employee committing an act of serious misconduct.
- 4.1.4 Within two working days, the employee shall be sent by recorded delivery, a formal letter of suspension from the suspending officer, which shall include the following:-

the reason for suspension;  
the date and time from which it took effect;  
the expected duration of the suspension;  
the rules of suspension.

4.1.5 The use of suspension must be carefully evaluated on the facts and circumstances of each case and exercised responsibly. The Head of Human Resources must be notified of all suspensions.

4.1.6 The trade union must be advised of the suspension if the suspended officer wishes it, verbally and by copying the letter.

## 4.2 **Disciplinary Action**

4.2.1 Minor misconduct will be dealt with informally but where the matter is more serious the following procedure will be used. The employee will be advised (in writing) of the reason(s) why his/her conduct is thought to warrant disciplinary action, supported by any documentary evidence and witnesses.

4.2.2 Where it is considered that there may be a case to answer, a disciplinary hearing shall be convened, giving the employee a minimum of five working days notice.

4.2.3 The hearing will be conducted by the Director or their representative who shall always be accompanied by either the employee's immediate superior, or another officer of an appropriate grade.

4.2.4 At all stages of the procedure the employee will have the right to be represented and/or accompanied by an accredited and recognised trade union representative or by a workplace colleague of their choice, who has no involvement or connection with the issue(s) under investigation.

4.2.5 In exceptional circumstances the procedure may be initiated at any level if the employee's alleged misconduct warrants such action.

4.2.6 The employee and any witnesses may be questioned. The employee or his/her representative may question any witnesses.

4.2.7 The employee or representative will be entitled to ask questions and to put his/her case and to call witnesses.

4.2.8 Where the authorised officer considers that further information or discussion is required, the meeting should be adjourned for a specified period.

4.2.9 At the conclusion of the hearing, the employee will be informed of the decision verbally, in the presence of his/her representative. The decision will be confirmed in writing within four working days.

4.2.10 A decision to dismiss with/without notice or downgrade can only be taken by a Director or their representative.

## 5. **AFTER THE HEARING**

- 5.1 Where as a result of an investigation, disciplinary hearing or at appeal it is found that there is no case to answer, all documentation relating to the case held on the personal file will be removed and destroyed. This does not preclude management from retaining appropriate documentation relating to any investigation undertaken.
- 5.2 An employee will be sent written confirmation of the warning/outcome e.g. dismissal/downgrading/management action required within four working days.
- a. A copy of the letter will be sent to his/her trade union or other representative if required by the employee.
  - b. The letter will specify the right of appeal and to whom it shall be addressed. Appeals shall be arranged with the minimum delay possible. Notice of appeal shall be in writing and specify the grounds for appeal.
- 5.3 **A warning letter shall include:**
- a. The reason for the warning, i.e. brief details of the circumstances which resulted in the warning being given.
  - b. Brief details of any relevant previous warnings issued, which are not time expired.
  - c. A formal warning relating to the present offence(s) and management action required.
  - d. A statement of any further disciplinary action which may be taken if a further offence occurs.
  - e. The right of appeal, and to whom it must be addressed.
- 5.4 **A letter of dismissal shall include:**
- a. The decision reached and the date and time from which the dismissal is effective.
  - b. The reason(s) for dismissal as specified in Section 57(2) of the Employment Protection (Consolidation) Act 1978. There may, of course, be more than one ground in support of that reason.
  - c. The employee's right of appeal, to whom it must be addressed and by when.
  - d. Details of any notice to be given and holiday entitlement.
- 5.5 As an alternative to dismissal, demotion or transfer may be used where this can be accommodated.

## **5.6 Summary Dismissal - Gross Misconduct**

5.6.1 Summary dismissal means dismissal without notice and without payment of wages in lieu of notice and will be confined to cases of gross misconduct or serious breaches of discipline. Examples are given in the Council's Disciplinary Rules, attached as Appendix A.

## **5.7 Right of Appeal**

5.7.1 An employee will have the right to appeal against any disciplinary penalty imposed and may appear personally at an appeal hearing either alone or represented or accompanied by a trade union representative or workplace colleague of their choice who has no connection with the case.

## **5.8 Levels of Disciplinary Action and Procedure**

### **5.8.1 First Level Warning**

- a. Can be issued by the employee's immediate supervisor/immediate manager.
- b. The right of appeal is to a Director who may delegate the hearing of the appeal to another uninvolved senior manager, other than the manager issuing the warning.
- c. A copy of the warning will remain on the employee's personal file for up to 6 months and be removed at the end of this period.

### **5.8.2 Second Level Warning**

- a. Can be issued by a manager immediately senior to the employee's immediate manager.
- b. The right of appeal is to a Director who may delegate the hearing of the appeal to another senior manager, other than the manager issuing the warning.
- c. A copy of the warning will remain on the employee's personal file for up to 12 months and be removed at the end of this period.

### **5.8.3 Final Warning**

- a. Can be issued by a Director or other senior manager authorised by him/her.
- b. The right to appeal is to a Director (where the Director has issued the Final Warning, the employee shall address his/her appeal to the Chief Executive who may appoint another Director to hear the appeal).

c. A copy of the warning will remain on the employee's personal file for 18 months and be removed at the end of this period.

5.9 At the expiry of the warning period, unless the disciplinary procedure has been re-invoked, the disciplinary warning and any documentation relating to it should be removed from the employee's personal file. This action should be confirmed with the employee.

5.10 In the event of further misconduct the disciplinary procedure may be re-invoked prior to the expiry of the warning period. However, the employee must be given adequate time within the warning period in which to improve their conduct before any further disciplinary action is considered.

5.11 Further stages of the disciplinary procedure can only be invoked where the misconduct is of a similar nature to that which has been the subject of the previous warning. If the misconduct is of an unrelated nature, it will be necessary to recommence the procedure, subject to Section 4.2.5.

#### **5.12 Dismissal/Summary Dismissal/Transfer and/or Downgrading**

a. A decision to dismiss with/without notice, transfer and/or downgrade can only be taken by the Director or another senior manager delegated by him/her. In cases of demotion the employee will be required to undertake the substantive duties of that post and salary protection will not be afforded.

b. The right of appeal will be to either the Chief Executive or Elected Members at the discretion of the appellant, with correspondence being addressed to the Head of Human Resources.

#### **5.13 Criminal Offences In and Outside Employment**

5.13.1 Charges brought against an individual by other parties, including the Police and investigations by the Police are procedurally separate from the Authority's disciplinary procedure.

5.13.2 Action may be taken by management, irrespective of court proceedings. It does not automatically follow that an employee found guilty of an offence by the courts or taken into custody, will be the subject of disciplinary action. Neither does it follow that an employee found not guilty of an offence by the courts will be immune from action by the Authority.

5.13.3 It is for the Director to consider such cases on their merits and decide whether the offence has a material bearing on the individual's suitability as an employee. The decision will depend on the nature of the offence and the position of the employee.

**DISCIPLINARY RULES: STANDARDS OF BEHAVIOUR AND CONDUCT**

**1. GENERAL**

- 1.1 The National Agreement for APT&C and JNC officers specifies a general standard of conduct expected of local government officers.
- 1.2 These are embodied in your contract of employment with the Council and employees should ensure that you are familiar with them.

**2. GROSS MISCONDUCT**

- 2.1 The following list gives examples of misconduct which may be treated as gross misconduct and result in summary dismissal:-

- \* Intimidation, whether verbal or physical.
- \* Fighting, assault on another person (other than a reasonable level of self-defence).
- \* Sexual assault, or sexual harassment.
- \* Racial abuse or harassment.
- \* Deliberate damage of Council property.
- \* Wilful disregard of safety procedures.
- \* Theft from work, colleagues or the public.
- \* Certain types of criminal offence(s) committed outside work.
- \* Corruption, fraud, deliberate falsification of records, e.g. abuse of the Computer Misuse Act 1990.
- \* Using one's position to influence others, for private gain.
- \* Serious negligence which may cause unacceptable loss, damage or injury.
- \* Serious act of insubordination or failure to follow reasonable management instructions.
- \* Intentionally divulging or causing to divulge confidential information.
- \* Frivolous and vexatious complaints raised under the Whistleblowing Charter.

- \* Failure to declare a financial interest or other personal interest in accordance with the Council's Code of Conduct (Section 7.3 of Staff Handbook).
- \* Use of Council Internet access facilities to commit acts such as misuse of Council assets or resources, sexual harassment, unauthorised public speaking and misappropriation or theft of intellectual property.

2.2 These examples are given for illustrative purposes. The list is not exhaustive and other behaviour of a similar kind may also constitute gross misconduct.

### 3. **OTHER MISCONDUCT**

3.1 The following gives examples of misconduct, which may be dealt with under the various stages of the disciplinary procedure, including counselling, where appropriate.

- \* poor timekeeping
- \* friction between colleagues at work which affects work performance
- \* behaviour, e.g. swearing, which upsets other staff or members of the public
- \* unauthorised absence
- \* rudeness or inattention to the public
- \* non-compliance with Council rules, e.g. smoking at work and car parking policies (excluding that covered by the Car Parking Order at the main Council office)
- \* attendance at work whilst under the influence of alcohol or non-prescribed drugs.

3.2 These examples are given for illustrative purposes. The list is not exhaustive and other behaviour of a similar kind may also constitute misconduct.

### 4. **CONDUCT -V - CAPABILITY**

4.1 Officers responsible for discipline must differentiate between cases of incapability and those of misconduct and ensure they use the appropriate procedures within this agreement.



Example letter

**NOTICE OF DISCIPLINARY INTERVIEW**

**NB A minimum of FIVE working days notice is required**

Dear.....

Further to our meeting on ....., I am writing to inform you that you are required to attend a disciplinary hearing.

The hearing will take place at (time)..... on (date)..... in (place)..... office. The purpose of this hearing is to consider the allegation(s) relating to:

The hearing will be conducted by .(Manager)..... and ..... (eg the Head of Human Resources) will also be present.

I enclose copies of statements relating to this matter ) if required  
and I intend calling the following witnesses: )

**Please find enclosed a copy of the Council's Disciplinary Procedure.**

You have the right to be represented or accompanied at this hearing by a trade union representative or workplace colleague and you will have the opportunity to state your case. I enclose a copy of this letter and related correspondence for you to pass to your representative.

Would you please confirm that you will be attending the hearing and whether or not you intend calling any witnesses.

Yours sincerely,

Manager

Example letter

**CONFIRMATION OF WARNING LETTER**

**NB. This must be sent within FOUR working days of the disciplinary hearing.**

Dear .....

I am writing to confirm the outcome of the disciplinary hearing on (date)..... (at which you were represented by Mr/Mrs/Ms.....) (The Head of Human Resources was also present.)

As a result of that hearing, I issued you with a (level) ..... warning under the Council's Disciplinary Procedure. In reaching my decision I took into account all the evidence before me and found that:

(The nature of your misconduct was:)

(The conduct improvement expected is:)

(The support/training that will be made available to you is:)

(The timescale within which the improvement is required is:)

The warning will be placed on your personal file but will be disregarded for disciplinary purposes after a period of (6/12/18) months provided your conduct improves and no further action is taken under the disciplinary procedure. If your conduct does not improve, further disciplinary action may be taken against you.\*

You have the right to appeal against this decision. Should you wish to do so, you should notify (next manager up.....) in writing, within 10 days of the date of this letter, stating the grounds on which you are appealing.

(A copy of this letter has been forwarded to your trade union representative / workplace colleague.)

Yours sincerely,

Manager

\* **Please note - for a final warning this must read "..further disciplinary action may be taken against you which may result in your dismissal".**

Example letter

**DISMISSAL LETTER -**

Dear .....

On (date)..... you were informed in writing that you were being given a final warning in accordance with the Council's Disciplinary Procedure. In that letter you were warned that, if your conduct did not improve, you were likely to be dismissed.

At the disciplinary hearing held on (date).....(when you were represented/accompanied. by.....) and (eg. Head of Human Resources was also present) it was decided that your conduct (remained/was found to be).....unsatisfactory and that you be dismissed.

I am therefore writing to you to confirm the decision that you be dismissed in accordance with the Council's Disciplinary Procedure. Your last day of service with the Council will be ..... (insert details regarding any outstanding holiday entitlement and arrangements to be made in respect of this).

The reason(s) for your dismissal are:

You have the right to appeal against this decision. Should you wish to do so you should notify the Head of Human Resources in writing within 10 days of the date of this letter, stating the grounds on which you are appealing.

(A copy of this letter has been forwarded to your trade union representative / workplace colleague.)

Yours sincerely,

Director

Example letter

**SUMMARY DISMISSAL LETTER**

Dear .....

I am writing to confirm the decision taken at the disciplinary hearing held on ..... that you be summarily dismissed without notice/payment in lieu of notice, in accordance with the Council's Disciplinary Procedure. Your last day of service was ..... (taking into account any outstanding holiday entitlement).

The reason(s) for your dismissal are:

You have the right to appeal against this decision. Should you wish to do so, you should notify the Head of Human Resources in writing within 10 days of the date of this letter, stating the grounds on which you are appealing.

(A copy of this letter has been forwarded to your trade union representative / workplace colleague.)

Yours sincerely,

Director

## **PROCEDURE FOR DEALING WITH CASES OF LACK OF CAPABILITY OR POOR PERFORMANCE**

### **1. Introduction**

- 1.1 This procedure covers the area where an employee's performance at work may be impaired or prevented through:
- (1) incapability because of sub-standard work,
  - (2) incapability because of ill-health. Incapability due to persistent or long term sickness absence is handled separately in accordance with the attendance management policy,
  - (3) both of the above.
- 1.2 A problem managers may face is that of a member of staff who has given satisfactory service in the past, but now no longer does so. There may be a number of reasons giving rise to this including:-
- \* ill health
  - \* loss of interest or ambition
  - \* job change and the incumbent is unable or unwilling to adapt
  - \* inability to cope with workload and achieve required output and/or quality
- 1.3 There will be instances where unsatisfactory performance relates to conduct rather than capability. It is important to distinguish between an employee who is able but unwilling to improve and one who is willing but unable to do so as the appropriate procedures and remedies for dealing with incapability and misconduct are different. The former is misconduct and the latter is incapability.

### **2. General**

- 2.1 Sub-standard work includes any performance of duties which falls below the standard required.
- 2.2 Incidences of sub-standard work shall be minimised as far as possible by induction and training processes and there should be regular appraisal of work performance.
- 2.3 The possibility of health reasons having a bearing on performance shall be considered.
- 2.4 Each individual's circumstances will be considered in relation to the post and such factors as length of service, previous performance and changes in the work place will be taken into account.
- 2.5 Standards against which performance is judged should be fully explained as objectively as possible and training or other similar means made available to rectify poor performance.
- 2.6 No employee shall be dismissed without prior warning that their performance is sub-standard and being given the opportunity to improve.

- 2.7 Other options should be considered before termination if it becomes clear that continuance in the current post is unlikely e.g. alternative employment or premature retirement in the interests of the service.
- 2.8 The employee shall always be afforded the opportunity to be represented in formal meetings concerning his/her position.
- 2.9 A decision to dismiss with/without notice or downgrade can only be taken by the Director or another Senior Manager acting under delegation, once the disciplinary procedure has been enacted.

### 3. **Poor Performance - Procedure in Operation**

- 3.1 In all cases where work or performance appears to be sub-standard, the manager should undertake the following steps, where appropriate:
  - a. investigate fully the reasons for poor performance;
  - b. discuss with the employee his/her shortcomings and the standard required;
  - c. provide a reasonable time to improve - the "review period";
  - d. advise on how improvement can be made and provision of training and supervision where appropriate;
  - e. warn the employee of the consequences of not improving;
  - f. monitor the employee's performance during and at the end of the review period while providing the employee with feedback.
  - g. consider other options before dismissal e.g. transfer or demotion to alternative work, premature retirement either in the interests of the efficiency of the service or on the grounds of ill-health.
- 3.2 In many cases improvement will not be instant and, depending on the nature of the job and on the effect of sub-standard performance on the Directorate, the counselling process should continue for a reasonable period.

### 4. **Continuing Poor Performance**

- 4.2 If the counselling process does not succeed in raising work performance to an adequate standard, the manager should arrange to see the employee formally at a hearing where he/she has the opportunity to be represented by an accredited and recognised trade union representative or work colleague of their choice who has no involvement or connection with the issue(s). The manager should normally be accompanied by a Human Resources representative. Each party may call witnesses to attend the hearing if they have information which may help an understanding of the position.

4.2 The purpose of the hearing is to establish as comprehensively as possible:-

- a. the nature of the sub-standard performance and its effect;
- b. the steps being taken to rectify the situation, their likely duration and further options including alternative duties;
- c. any other circumstances, e.g. personal or health considerations;
- d. agreed written targets and objectives, including realistic dates for achievement, against which the employee's performance can be evaluated.

## 5. **Time for Improvement**

5.1 Except in exceptional circumstances (e.g. when clients are at risk or poor performance amounts to gross incompetence) no employee should be dismissed for sub-standard performance at the first formal hearing and a reasonable period shall be allowed for raising performance to a satisfactory standard, before moving to a formal disciplinary hearing. The length of time allowed for the employee to improve and the number of such formal hearings will depend on each individual circumstance and will include consideration of the length of service of the employee, type of work, status of employee and past performance.

5.2 Should performance continue to be sub-standard, consideration prior to dismissal must be given to:-

1. alternative employment
2. demotion
3. retraining
4. career counselling

## 6. **Termination of Employment**

6.1 This can only take place following a formal disciplinary hearing. Ultimately, termination of employment may be the only effective way of dealing with poor performers.

6.2 If dismissal is required, it shall be on the grounds of incapability and following a formal hearing, be given with notice required under statutory legislation. The procedure to be followed is that set out earlier in this document.

## 7. **Right of Appeal**

7.1 The employee has the right to appeal against the dismissal and this must be included in the dismissal letter.

7.3 The appeal is to the Chief Executive or Elected Members at the discretion of the appellant.

7.3 It should be lodged in writing with the Head of Human Resources within 10 working days of the date of the letter stating the grounds on which the employee is appealing.

7.4 The appeal will be heard in accordance with the Appeals Procedure.

## **8. Poor Performance - Ill Health or Disability**

8.1 Incapability due to sickness absence is dealt with under the attendance management policy. This section concerns employees whose performance, not attendance, at work is considered to be below standard. Management should consider whether there are any work-related circumstances affecting the level of performance.

8.2 Wherever possible an employee should be retained in employment and given the opportunity to recover and return to work.

8.3 Each individual's circumstances should be considered in relation to the needs of the post, as well as the Directorate's capacity to hold the post open.

8.4 Medical opinion shall be sought in discussion with the employee through the Occupational Health Department, and if specialist medical advice is required by management any costs will be met by the Authority. Should an employee refuse accessibility to relevant medical information, management will make judgements on such information as is available to it, and the employee's attention is drawn to the provisions of the Sickness Pay Scheme whereby sickness allowance may be withdrawn.

8.6 In the light of medical opinion received consideration will be given, at all stages, to the likelihood of an improvement in health and subsequent attendance; the availability of suitable alternative work; the effect of past and likely future absences on the organisation; how similar situations have been handled in the past and whether the illness is a result of a disability as defined in the Disability Discrimination Act 1995.

8.6 If it is medically established that the current employment is unsuitable, every effort shall be made to consider reasonable adjustments and alternative employment before termination of employment.

8.7 Other options such as ill-health retirement or premature retirement in the interests of the service should be considered if available.

8.8 The employee shall always be afforded the opportunity to be represented in formal meetings concerning his/her position.

8.10 Each case shall be judged on its merits, having regard to the effect of the poor performance on service level provision.



**COUNSELLING SHEET**

**Timetable and Report**

Period:

Review Meeting Dates:

Name:

Counselling carried out by:

**Work Covered:**

**Positive Feedback**

**Specific Problems**

**General Comments - Manager**

**General Comments - Employee**

Signed:

Date:

Signed:

Date:

**GRIEVANCE PROCEDURE**

1. If you have a grievance relating to your employment you have a right to express it and the following procedure has been agreed as being the most effective way for you to do so.
2. You should first see your supervisor as in most cases they are the person who can best respond to your complaint.
3. You are entitled at any time to take a matter up yourself or to consult your shop steward or staff representative who may handle it for you or with you.
4. If you wish to pursue a matter further, after you have seen your supervisor you should consult your representative with a view to taking advice and, if agreed, to re-opening the discussion with them. If you are still dissatisfied you or your representative should put your complaint in writing and it will then be passed on for consideration by the head of your department.
5. The head of department will discuss your complaint with you and your representative if you wish, and the decision will be confirmed in writing.
6. Should you continue to be dissatisfied after receiving the decision of the head of your department your complaint will be further dealt with by the Head of Human Resources.
7. The Council has delegated authority to the Policy and Resources Committee to exercise its powers and duties with respect to appeals from all employees. The following procedure complements the existing disciplinary and grievance procedures.
8. If you have exhausted the Council's grievance procedure and you continue to be dissatisfied then further action may depend upon the nature of the complaint. At this stage you should discuss your grievance with the Head of Human Resources who will advise you of the further steps available to you.
9. Should you then wish your complaint to be heard by the Council's Appeals Committee you or your representative should notify the Head of Human Resources in writing. The Head of Human Resources will then convene a meeting of the Appeals Committee and inform you and/or your representative of the date, time and place of the hearing. A copy of the appeal case papers and the procedure to be followed at appeals meetings will be sent to you beforehand.
10. At the appeal you will have the right to be accompanied by a trade union or other representative or to present your case yourself. The decision with respect to the appeal will be announced to you personally or may be given in writing as the Committee decides. Any further action in pursuit of an appeal will be in accordance with national agreements.
11. Every effort will be made to deal with your complaint as speedily as possible. Please remember that some cases need time to investigate fully. On your part

you are asked not to raise questions which are not related to your employment. If within a period of two weeks the matter has not been dealt with at any stage of the procedure you will be entitled to proceed to the next stage. This time limit may be altered by mutual agreement.

12. The Authority has an agreed disciplinary procedure covering warnings in respect of indiscipline, dismissals, and rights of appeal and a copy of this agreement is available for reference in your administration office or from the Head of Human Resources

(Questions arising from pension scheme rules, income tax and national insurance matters and the accuracy of the arithmetical calculation of pay are excluded from the above procedures. These are generally resolved by reference to your manager or to the Treasurer's Department. If after such a reference you are still dissatisfied you may then take the matter up with your trade union representative).

1	<b>Identify the aims of the policy/service/function and how it is implemented.</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
1.1	Is this an existing or a new policy function?	New Disciplinary Procedure	
1.2	What is the aim, objective or purpose of the policy/service/function?	The aim of the policy is to help and encourage all employees to achieve and maintain acceptable standards of conduct. To encourage improvement in individual conduct and not be viewed as a means of imposing sanctions.	
1.3	What outcomes do you want to achieve with this policy and for whom?	Line managers to be confident and knowledgeable to intervene when staff fail to adhere to minimum standards of conduct. Staff to be confident that the policy is applied clearly and transparently. Process and outcome to be fair and consistently applied.	<b>Ensuring staff have the skills to carry out the disciplinary process – staff briefing/training may be required.</b>
1.4	Who is the policy/function being aimed at?	All staff at the Council. Complaints from public will also be applied through this policy. Trade Unions to understand their role within the procedures.	
1.5	Who defines or defined the policy/function?	Consultation will be with the Trade Unions, Management Team and the Employee Development Panel with Members.	
1.6	Who implements the policy/function?	Line managers with support from HR. Senior Managers at disciplinary panels and the CEO at appeal process.	
		<i>1.7 How do these outcomes meet or hinder other policies, values or objectives of the public</i>	

		<i>authority – this question will not always apply</i>	
1.8	What factors or forces are at play that could contribute <b>or</b> detract from the outcomes identified earlier?	<p><b>Detract</b></p> <ul style="list-style-type: none"> <li>• Lack of training and awareness of policy</li> <li>• Inconsistent approach across the Council</li> <li>• Not applied fairly</li> <li>• Not having an independent panel member that has had no involvement with the individual or the case</li> <li>• Outside pressures that can influence the outcome of the case</li> <li>• Disabled employees (learning difficulties) or people whose first language is not English – may not be able to recognise acceptable standards of conduct. Need to ensure the Council put in place reasonable adjustments to ensure staff all understand the policy</li> </ul> <p><b>Contribute</b></p> <ul style="list-style-type: none"> <li>• providing training to managers and clear guidance to the process</li> <li>• training to be applied to different groups of staff e.g. staff with disabilities may need training in a different format</li> <li>• support of HR throughout the process</li> <li>• communication to staff on the policy to improve their awareness</li> <li>• providing the policy in different formats e.g. brail or different languages</li> <li>• compliance with recent employment</li> </ul>	<p><b>Need to ensure staff and managers have been provided training/briefing on the new policy in order to apply it effectively and fairly.</b></p> <p><b>To look at providing the policy in different formats if it seen to be necessary.</b></p>

		legislation and best practice <ul style="list-style-type: none"> <li>• monitoring of figures to ensure it is applied consistently</li> </ul>	
1.9	Taking the six strands of equalities is there anything in the policy that could discriminate or disadvantage any of these groups?	The monitoring of disciplinary cases indicates there is no discrimination as it follows the profile of the organisation. The procedure takes into account the needs of the individual and is sensitively applied.	
1.10	From your perspective, how is the policy actually working in practice for each equalities group?	As this is a new policy, the same principles need to be applied as the old policy to ensure best practice is applied.	
		<i>1.11 How does the local authority interface with other bodies in relation to the implementation of this policy function? This question will not always apply</i>	
<b>2</b>	<b>Consideration of available data, research and information</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
2.1	What do you already know about who uses and delivers this service?	Line managers use the service with HR support within the process. Line managers need training and understanding of the policy and process to ensure it is applied effectively.	
2.2	What additional information is needed to ensure that all equality groups' needs are taken into account?	The needs of staff for example literacy skills, communication needs	
2.3	How are you going to go about getting the extra information that is required	Through line managers and HR system	
<b>3</b>	<b>Formal consultation</b>		

	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
3.1	Who do we need to consult with?	Trade Unions, line managers, management team and the employee development panel	
3.2	What method/form of consultation can be used?	Will be sent by e-mail to line managers for comments and presented to the other panels.	
<b>4</b>	<b>Assessment of impact</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
4.1	Have you identified any differential impact and does this adversely affect any groups in the community?	None	
4.2	If there is an adverse impact can it be avoided, can we make changes, can we lessen it etc?	N/A	
4.3	If there is nothing you can do, can the reasons be fairly justified?	N/A	
<b>5</b>	<b>Consideration of measures that might mitigate any adverse impact as well as alternative policies that might better achieve the promotion of equality of opportunity.</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
5.1	Does any of the changes in relation to the adverse impact have a further adverse affect on any other group?	None	
<b>INTERNAL PROCESSES FOR THE ORGANISATION – TO BE FURTHER EXPLORED AT THE END OF THE MENTORING PROCESS.</b>			
<b>6</b>	<b>Making a decision in the light of data, alternatives and consultations</b>		

	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
6.1	The organisations decision making process	To be approved by trade unions. Approval will then be required by the management team and the employee development panel	
<b>7</b>	<b>Monitor for adverse impact in the future and publication of results of such monitoring</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
7.1	What have we found out in completing this EqIA? What can we learn for the future?	Found that the policy needs to apply to the needs of all staff at the Council. Ensuring that the policy is available in different formats for staff	
7.2	Who will carry out monitoring?	HR team	
7.3	What needs to be monitored?	The consistency and fairness of the outcomes. To address any concerns highlighted by the monitoring of figures	
7.4	What method(s) of monitoring?	Feedback from trade unions and monitoring from the HR system	
7.5	How will the monitoring information be published?	The information will be sent to the Community Development and Social Inclusion Manager.	
<b>8</b>	<b>Publication of results of the impact assessment</b>		



<b>1 Identify the aims of the policy/service/function and how it is implemented.</b>			
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
1.1	Is this an existing or a new policy function?	New Grievance procedure	
1.2	What is the aim, objective or purpose of the policy/service/function?	To ensure that employees with a grievance relating to their employment are resolved as quickly and as fairly as possible.	
1.3	What outcomes do you want to achieve with this policy and for whom?	Line managers to be confident and knowledgeable to apply the policy where a staff has made a complaint. Staff to be confident that the policy is applied clearly and transparently. Process and outcome to be fair and consistently applied.	<b>Need to ensure staff and managers have been provided training/briefing on the new policy in order to apply it effectively and fairly.</b>
1.4	Who is the policy/function being aimed at?	All staff at the Council. Trade Unions to understand their role within the procedures.	
1.5	Who defines or defined the policy/function?	Consultation will be with the Trade Unions, Management Team and the Employee Development Panel with Members.	
1.6	Who implements the policy/function?	Staff to be aware and understand the process that they need to go through if they have a grievance. Line managers to be able to respond to the grievance with support from HR. Senior Managers at hearing panels Trade unions and third party mediators to assist in resolving the grievance	

		<p><i>1.7 How do these outcomes meet or hinder other policies, values or objectives of the public authority – this question will not always apply</i></p>	
<p>1.8</p>	<p>What factors or forces are at play that could contribute or detract from the outcomes identified earlier?</p>	<p><b>Detract</b></p> <ul style="list-style-type: none"> <li>• May not have enough trained mediators in the work place</li> <li>• Lack of training and awareness of policy</li> <li>• Inconsistent approach across the Council</li> <li>• Not applied fairly</li> <li>• Lack of resources to deal with grievance in a timely manner</li> <li>• Disabled employees (learning difficulties) or people whose first language is not English – may not have an understanding of the policy. Need to ensure the Council has reasonable adjustments in place to ensure staff all understand the policy</li> </ul> <p><b>Contribute</b></p> <ul style="list-style-type: none"> <li>• providing training to managers and clear guidance to the process</li> <li>• training to be applied to different groups of staff e.g. staff with disability may need training in a different format</li> <li>• support of HR throughout the process for staff and managers</li> <li>• communication to staff on the policy to improve their awareness</li> <li>• providing in different formats e.g. brail or</li> </ul>	<p><b>To ensure trained mediators are available to assist in grievances and to assess whether more that 1 mediator is required at the Council.</b></p> <p><b>To look at providing the policy</b></p>

		<ul style="list-style-type: none"> <li>different languages</li> <li>• compliance with recent employment legislation and best practice</li> <li>• monitoring of figures to ensure it is applied consistently</li> </ul>	<b>in different formats if it seen to be necessary.</b>
1.9	Taking the six strands of equalities is there anything in the policy that could discriminate or disadvantage any of these groups?	The monitoring of grievance cases indicates there is no discrimination as each grievance case is treated consistently regardless of the any equality issues. The procedure takes into account the needs of the individual and is sensitively applied.	
1.10	From your perspective, how is the policy actually working in practice for each equalities group?	As this is a new policy, the same principles need to be applied as the old policy and need to ensure best practice is applied	
		<i>1.11 How does the local authority interface with other bodies in relation to the implementation of this policy function? This question will not always apply</i>	
<b>2</b>	<b>Consideration of available data, research and information</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
2.1	What do you already know about who uses and delivers this service?	Staff will initiate the process by informing us about their grievance. The member of staff and the manager will be supported by HR throughout the process. Line managers need training and understanding of the policy and process to ensure it is applied effectively. Staff will need awareness and understanding of the policy.	

2.2	What additional information is needed to ensure that all equality groups' needs are taken into account?	The needs of staff for example literacy skills, communication needs	
2.3	How are you going to go about getting the extra information that is required	Through line managers and HR system	
<b>3</b>	<b>Formal consultation</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
3.1	Who do we need to consult with?	Trade Unions, line managers, management team and the employee development panel	
3.2	What method/form of consultation can be used?	Will be sent by e-mail to line managers for comments and presented to all the other panels.	
<b>4</b>	<b>Assessment of impact</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
4.1	Have you identified any differential impact and does this adversely affect any groups in the community?	None	
4.2	If there is an adverse impact can it be avoided, can we make changes, can we lessen it etc?	N/A	
4.3	If there is nothing you can do, can the reasons be fairly justified?	N/A	
<b>5</b>	<b>Consideration of measures that might mitigate any adverse impact as well as alternative policies that might better achieve the promotion of equality of opportunity.</b>		

	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
5.1	Does any of the changes in relation to the adverse impact have a further adverse affect on any other group?	None	
<b>INTERNAL PROCESSES FOR THE ORGANISATION – TO BE FURTHER EXPLORED AT THE END OF THE MENTORING PROCESS.</b>			
<b>6</b>	<b>Making a decision in the light of data, alternatives and consultations</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
6.1	The organisations decision making process	To be approved by trade unions. Approval will then be required by the management team and the employee development panel	
<b>7</b>	<b>Monitor for adverse impact in the future and publication of results of such monitoring</b>		
	<b>Key questions</b>	<b>Answers / Notes</b>	<b>Actions required</b>
7.1	What have we found out in completing this EqIA? What can we learn for the future?	Found that the policy needs to apply to the needs of all the staff at the Council. Ensuring that the policy is available in different formats for staff	
7.2	Who will carry out monitoring?	HR team	
7.3	What needs to be monitored?	The consistency and fairness of the outcomes. To address any concerns highlighted by the monitoring of figures	
7.4	What method(s) of monitoring?	Feedback from trade unions and monitoring from the HR system	

7.5	How will the monitoring information be published?	The information will be sent to the Community Development and Social Inclusion Manager.	
8	<b>Publication of results of the impact assessment</b>		