

Committee: Personnel and General Committee
Date: Wednesday 10 December 2008
Time: 6.30 pm
Venue: Bodicote House, Bodicote, Banbury, OX15 4AA

Membership

Councillor Lynda Thirzie Smart (Chairman)	Councillor Rose Stratford (Vice-Chairman)	
Councillor Ken Atack	Councillor Christopher Pack	Councillor Barry Wood
Councillor Norman Bolster	Councillor G A Reynolds	Councillor David Hughes
Councillor Timothy Hallchurch MBE	Councillor Chris Smithson	
Councillor Russell Hurle	Councillor Lawrie Stratford	

Substitutes

Any member from the relevant political group other than members of PRP and Appeals

AGENDA

1. **Apologies for Absence and Notification of Substitute Members**
2. **Declarations of Interest**

Members are asked to declare any interest and the nature of that interest which they may have in any of the items under consideration at this meeting.

3. **Petitions and Requests to Address the Meeting**

The Chairman to report on any requests to submit petitions or to address the meeting.

4. **Urgent Business**

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

5. **Minutes** (Pages 1 - 8)

To confirm as a correct record the Minutes of the meeting of the Committee held on 17 September 2008.

6. **Code of Conduct for Local Authority Members and Employees** (Pages 9 - 54)

Summary

This paper seeks the views of the committee on the proposed introduction of a mandatory model code of conduct for local authority employees. DCLG are seeking views from authorities as part of the formal consultation process which runs until 24th December 2008.

Recommendation

The Committee is **RECOMMENDED** to comment on the proposed response and make any further responses considered appropriate.

7. **Employment Statistics Qtr 2, 2008-9** (Pages 55 - 57)

Summary

This report gives details of employment statistics for information and monitoring purposes. As requested by Members this information has been amended to reflect turnover by directorate.

Recommendation

The Committee is **RECOMMENDED** to resolve to note the contents of this report.

8. **Pensions Policy Statements** (Pages 58 - 72)

Summary

The purpose of this report is to seek decisions in relation to new discretions under Local Government Pensions Scheme Regulations in order to update the current Pensions Policy Statements which will ensure Cherwell District Council has the necessary statements on the exercise of its discretions under amended regulations up to and including 1 April 2008.

Recommendations

The Committee is **RECOMMENDED** to determine to resolve;

- (1) To consider use of Regulation 13 – the discretion to award additional pension up to £5,000, and if agreed to consider using the same criteria as already agreed for awarding additional pensionable membership (up to 10 years) to ensure consistency of approach.
- (2) To note the updated Pension Policy Statements at Appendix 1.

9. **Revised Sickness Absence Policy** (Pages 73 - 99)

Summary

The purpose of this report is to seek approval for the attached revised Sickness Absence policy.

Recommendation

The Committee is **RECOMMENDED** to resolve to approve the attached revised sickness absence policy, including the ill health retirement process set out in Appendix G of the policy, for implementation from 1 April 2009.

10. Capability Policy (Pages 100 - 108)

Summary

The purpose of this report is to seek approval for the attached capability procedure.

Recommendation

The Committee is **RECOMMENDED** to resolve to approve the attached capability policy for implementation from 1 January 2009.

11. Exclusion of the Public and Press

The following report(s) contain exempt information as defined in the following paragraph(s) of Part 1, Schedule 12A of Local Government Act 1972.

1 – Information relating to any individual.

4 – Information relating to consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer holders, under the authority.

Members are reminded that whilst the following item(s) have been marked as exempt, it is for the meeting to decide whether or not to consider each of them in private or in public. In making the decision, Members should balance the interests of individuals or the Council itself in having access to the information. In considering their discretion Members should also be mindful of the advice of Council Officers.

Should Members decide not to make a decision in public, they are **RECOMMENDED** to pass the following recommendation:

“That in accordance with Section 100A (4) of Local government Act 1972, the press and public be excluded from the meeting for the following item(s) of business, on the grounds that they could involve the likely disclosure of exempt information as defined in paragraph(s) 1 and 4 of Schedule 12A of that Act”.

12. Review of Public Protection Team Structure (Pages 109 - 113)

13. Redundancy of Post (EX0070) Exchequer (Pages 114 - 115)

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to democracy@cherwell-dc.gov.uk or 01295 221587 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item. The definition of personal and prejudicial interests is set out in Part 5 Section A of the constitution. The Democratic Support Officer will have a copy available for inspection at all meetings.

Personal Interest: Members must declare the interest but may stay in the room, debate and vote on the issue.

Prejudicial Interest: Member must withdraw from the meeting room and should inform the Chairman accordingly.

With the exception of the some very specific circumstances, a Member with a personal interest also has a prejudicial interest if it is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Queries Regarding this Agenda

Please contact Theresa Goss, Legal and Democratic Services theresa.goss@cherwell-dc.gov.uk
(01295) 22155487

Mary Harpley
Chief Executive

Published on Tuesday 2 December 2008

PERSONNEL AND GENERAL COMMITTEE

Minutes of a meeting of the Personnel and General Committee held at Bodicote House, Bodicote, Banbury, on 17 September 2008 at 6.30 pm.

Present: Councillor Miss Lynda Thirzie Smart (Chairman)

Councillor Ken Atack
Councillor Norman Bolster
Councillor Timothy Hallchurch
Councillor Russell Hurle
Councillor George Reynolds
Councillor Chris Smithson
Councillor Lawrie Stratford
Councillor Mrs Rose Stratford

Mary Harpley (Chief Executive)
Anne-Marie Scott (Head of Human Resources)
Stephanie Rew (Human Resources Manager)
James Doble (Democratic, Scrutiny and Elections Manager)
David Best (Senior Democratic Services Officer)
Tony Brummell (Head of Building Control and Engineering Services) (for Minute No. PG.22)
Phillip Rolls (Recreation and Health Improvement Manager) (for Minute No. PG.23)
Gillian Greaves (Head of Housing Services) (for Minute No. PG.30).

Apologies for absence were received from Councillors Hughes and Pack.

RESOLUTIONS

PART I: MATTERS NOT OF AN EXEMPT OR CONFIDENTIAL NATURE

PG.20 MINUTES

The Minutes of the meetings of the Committee held on 14 May, 10 and 11 June and 21 July 2008 were approved as correct records and signed by the Chairman.

The minutes of the meeting held on 21 July 2008 were approved as submitted subject to the name of Councillor Lawrie Stratford being added to the list of Member apologies presented to that meeting.

PG.21 EMPLOYMENT STATISTICS QUARTER 1 – 2008/2009

The Committee received a report of the Head of Human Resources setting out details of staff employment numbers for information and monitoring purposes for the period April to June 2008. The information set out details of staff turnover according to Directorate.

The Head of Human Resources indicated that she would provide information as part of the next employment statistics report showing a comparison of staff numbers prior to and following the TUPE transfer of housing and sports centre staff.

RESOLVED that the report be accepted.

PG.22 **REQUEST FOR ADDITIONAL ESTABLISHMENT POST – CLERK OF WORKS**

The Committee considered a report of the Head of Building Control and Engineering Services seeking approval for the creation of a Clerk of Works post in the Engineering Services Section.

The Committee noted that since 1999, following the retirement of the previous post holder, the Council had operated without a directly employed civil engineering Clerk of Works. Since that time Consulting Engineers had been engaged on a term basis to provide top up and specialist resources to the former Building Control and current Engineering Services Sections. The Clerk of Works resource had been required continuously since that time and would be needed for the foreseeable future to oversee the Council's capital programme and quasi-capital construction programme and also to service the highway adoption agency operated on behalf of the Oxfordshire County Council. The proposal was to add the Clerk of Works post to the establishment at Local Grade 14; the job description was circulated with the report. The cost of the post could be accommodated within the 2008/2009 budget and would result in on-going full-year efficiency savings of £5,000 net.

RESOLVED that the establishment post for a Clerk of Works in Building Control and Engineering Services be approved.

PG.23 **GO ACTIVE IN CHERWELL PROJECT CO-ORDINATOR**

The Committee considered a report of the Head of Health and Recreation seeking approval for the recruitment of a Go Active Project Co-ordinator on a three year fixed term contract; the job description for the post was tabled at the meeting.

The Committee noted that the Go Active Project was a joint initiative between the Council, the Oxfordshire Sports Partnership, the Oxfordshire Primary Care Trust (PCT) and in the case of Cherwell, Parkwood Community Leisure. The aim of the project was to enable and support inactive people in becoming physically active through sports and recreation activities and this in turn contributed to achieving levels of participation by residents in physical activity (new National Indicator NI 8).

The Committee also noted that a successful application had been made to the National Lottery through the Sport England Community Investment Fund. That funding when combined with PCT funding would bring £38,750 per year to the Council for three years. This enabled a Go Active Project Co-ordinator to be appointed on a fixed term contract to work with GP Surgeries, sports and leisure clubs and leisure providers across the District. In this respect Parkwood Community Leisure had agreed to appoint three full-time Go Active Activators based in the Banbury, Bicester and Kidlington Sports Centres. The Co-ordinator post would manage the work of the three Activators. The post had been evaluated at Local Grade 13.

RESOLVED that the establishment of a Go Active in Cherwell Co-ordinator be approved on a three year fixed contract.

PG.24 **HUMAN RESOURCES STRATEGY**

Further to Minute No. PG.12 the Head of Human Resources submitted a report which (i) invited the Committee to comment on, and endorse, the Human Resources Strategy prepared following the recent consultation exercise; the Executive had considered the Strategy at its meeting on 15 September 2008 and agreed, subject to the comments of this Committee, to recommend its approval to full Council on 20 October 2008; and (ii) sought endorsement of The Learning and Development Strategy Statement 2007 – 2012 .

The Committee noted that the Human Resources Strategy underpinned the Council's Corporate Plan and had been developed in the context of delivering the identified Corporate Priorities. The Strategy had also been informed by the recent Investors in People Assessment (see Minute No. PG.25 below) and the Staff Satisfaction Survey carried out earlier in the year.

RESOLVED that the Human Resources Strategy and the Learning and Development Policy and Strategy circulated with the report be endorsed without comment.

PG.25 **STAFF SURVEY AND INVESTORS IN PEOPLE ACTION PLANS**

The Head of Human Resources invited the Committee to comment on and endorse two Action Plans prepared following the Staff Satisfaction Survey undertaken during January 2008 and the Investors in People inspection carried out in June this year.

The Committee was reminded that earlier in the year the Council had undertaken its first comprehensive staff survey and had also been assessed against the Investors in People Standard. The many actions identified by each process were consistent and were either already in progress and/or had been included in the Human Resources Strategy (Minute No.PG.24 above refers). The next step was to launch further action in relation to the Action Plans which included a Corporate Management Team "Back to the Floor Day" on 8 October 2008 and a Management Conference on 17 October.

The Committee asked that progress reports be submitted at least twice a year on the Staff Survey Action Plan and on relevant areas of the Human Resources Strategy.

RESOLVED that the two Action Plans be endorsed without comment.

PG.26 **COUNCIL OFFICES OPENING HOURS AND FLEXIBLE WORKING HOURS**

The Committee considered a joint report of the Strategic Director, Customer Service and Resources and the Head of Human Resources setting out proposals to standardise office opening times across the District linked to an updated flexible working hours policy; the revised Flexible Working Hours Policy Statement was circulated with the report.

The Committee noted that the proposal to standardise office hours involved the offices opening from 8 45 am to 5 15 pm Monday to Friday. The offices currently

closed at 4 20 pm on a Friday. In addition, there was the possibility of delaying public opening hours until 9 30 am on Thursday mornings to facilitate staff training and to enhance internal communication. The revised opening hours were to take effect from 1 October 2008. The new Flexible Working Hours Policy provided a flexible system of attendance which allowed employees to vary their time of arrival, departure and length and timing of lunch breaks and to take time off if additional hours were worked. This meant that there would be a move away from the current set core time as the daily working bandwidth covered the period 7 00 am to 10 00 pm. The line managers would have responsibility for the day to day operation of the scheme to ensure service delivery and office cover during the revised opening times.

The Committee noted that the later 9 30 am opening time would not be implemented straight away as further work on feasibility and customer impact was to be undertaken in conjunction with Service Heads. Members agreed that this part of the proposals should be re-considered at the next meeting when the aforementioned work had been completed and information on the assessment of the outcome would be available.

RESOLVED

- (1) that subject to (2) below the revised opening hours as set out above and the Flexible Working Hours Policy be approved;
- (2) that a further report be submitted to the next meeting on the proposal to open the offices at 9 30 am on Thursday mornings.

PG.27

STAFF COMPLAINTS POLICY AND PROCEDURE

The Committee considered a report of the Head of Human Resources submitting a new Staff Complaints Policy and Procedure for approval. The new Policy replaced the current grievance and harassment and bullying procedures.

The Committee noted that current policies dealing with staff grievances and allegations of bullying and harassment were developed some years ago and no longer reflected employment legislation, the structure of the Council or good practice. The policies had been combined into a new Staff Complaints Policy. The main focus of the Policy had been changed to encourage and facilitate the early and informal resolution of issues.

The revised Policy had been endorsed by the Employee Side and the Staff Consultation Group.

RESOLVED that the new Staff Complaints Policy and Procedure be approved as submitted.

PG.28

SERVICE HEAD RECRUITMENT - FINANCE

The Committee considered a report of the Strategic Director, Customer Service and Resources seeking approval for changes to the job description for the Head of Finance post and for the payment of a separate allowance for the Section 151 Officer role.

The Committee noted that the Corporate Finance function would be managed by the Head of Finance and would focus on statutory and technical accounting functions. This included the production of the Annual Accounts and incorporated the recently approved technical accountant function and operational areas such as debtors and creditors. The area of responsibility had a contemporary public sector focus and required expertise in statutory and technical financial practices. The interview process would be tailored to identify candidates possessing the relevant skills and would include a technical interview.

The Committee also noted that the procurement function had transferred on an interim basis to the Business Finance team from Business Services. The intention was to make this transfer permanent. The Payroll function was also to transfer to this Team. The addition of the two functions would help to ensure that the Head of Finance post attracted candidates of the calibre and technical background required.

RESOLVED that the revised job description, grade and proposed recruitment process for the Head of Finance post be approved.

PG.29

EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that, having determined that in all the circumstances of each case the public interest in maintaining exemption outweighs the public interest in disclosing the information, and pursuant to Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting whilst the items in Part II of the agenda are considered on the grounds that they involve the likely disclosure of exempt information as identified by the numbered paragraphs of Part I of Schedule 12A of the Act, set out under the under mentioned minutes.

PART II: MATTERS CONTAINING EXEMPT INFORMATION

EXEMPT

PG.30

AMALGAMATION OF BANBURY DISTRICT HOUSING COALITION RENT DEPOSIT GUARANTEE SCHEME WITH THE COUNCIL'S SPEND TO SAVE SCHEME

(Paragraphs 1 and 4)

The Committee considered a joint report (containing exempt information) of the Head of Housing Services and the Head of Human Resources which set out proposals to amalgamate the above two Schemes and to add one permanent post to the establishment to manage the combined scheme. The proposal met Objective 3.1 of the Cherwell Homelessness Strategy 2007 – 2011.

The Committee noted that the post would be offered under TUPE to the Landlord Support and Administration Manager, who currently managed the Banbury and District Housing Coalition Scheme. The costs associated with the new post would be offset against an existing vacancy of Housing Options Officer (Post No. HS0041) in the Local Needs Team.

RESOLVED that the addition of one permanent post to the establishment, which is to be offered under TUPE to the Landlord Support and Administration Manager who currently manages the Banbury District Housing Coalition Scheme, be approved.

PG.31

COMPULSORY REDUNDANCY RECOMMENDATION

(Paragraphs 1 and 4)

The Committee considered a report of the Head of Human Resources which recommended the compulsory redundancy of one member of staff who had been displaced as part of the organisational re-structure and had not been placed in an alternative post under the Council's Redeployment Policy. Further details are set out in the Schedule of Individual Matters (containing exempt information) filed in the Minute Book.

The Committee noted that the member of staff had appealed against the previous decision (Minute No. PG.16 refers) not to enhance their pension benefits. The appeal was to be heard by the Performance Related Pay and Appeals Panel on 23 September 2008.

RESOLVED that the compulsory redundancy, to be effected at the end of the statutory notice period if no permanent alternative is found before that date, be approved.

EXEMPT

(**Note:** James Doble (Democratic, Scrutiny and Elections Manager) declared a personal and a prejudicial interest in this matter as he was to advise the Performance Related Pay and Appeals Panel on the appeal referred to above and he left the meeting during the discussion and voting thereon).

PG.32

LEGAL AND DEMOCRATIC SERVICES – DEMOCRATIC, SCRUTINY AND ELECTIONS SECTION STAFFING

(Paragraphs 1 and 4)

Further to Minute No. PG.14 the Committee considered a report (containing exempt information) of the Head of Legal and Democratic Services seeking approval for various staffing changes in the elections, democratic and scrutiny sections of the Legal and Democratic Service.

The Committee noted that in summary the proposals were (i) the introduction of a career grade for the Elections Assistant with the re-designation of that post to Assistant Elections Officer and the payment of an honorarium to the current post holder to recognise his work on the annual register of electors canvass; (ii) the deletion of the Elections Manager post and the Local Grade 11 post which reported to that post from the staff establishment following the recruitment of an experienced elections officer; (iii) the addition of a Trainee Administrative Assistant (Elections) post to the establishment at Local Grade 4 (4 days a week) with this post being offered to the member of the staff bank who currently carried out this role on a temporary basis; (iv) the re-designation of the Scrutiny Officer post (LD115) and the Democratic Services Officer post (LD114) as Senior Democratic and Scrutiny Officers to allow greater flexibility and to enable both Officers to cover respective work areas; and (v) to utilise the remaining budget to recruit a further Democratic and Scrutiny Trainee as a permanent addition to the establishment to meet the demands of the increasing democratic and scrutiny workloads.

The cost of the proposals could be met from the current budget from 2008/2009 and from efficiency savings in the 2009/2010 financial year.

RESOLVED that with immediate effect:-

- (1) the proposed career grade for the Elections Assistant (post LD118) (Local Grade 6 to 7) and the re-designation of that post as Assistant Elections Officer be approved and the honorarium be paid as set out in the report;
- (2) the Elections Manager post and the Local Grade 11 post that reported to it be formally deleted from the establishment;

EXEMPT

- (3) the post of Trainee Administrative Assistant (Elections) be added to the Establishment at Local Grade 4 (4 days per week) and the post be offered to the member of the staff bank carrying out this role;
- (4) the Scrutiny Officer (Post LD115) and the Democratic Services Officer (Post LD114) be re-designated as Senior Democratic and Scrutiny Officers to allow both to provide cover to each others work area;
- (5) the budget remaining within the Legal and Democratic service area be used to recruit a further Democratic and Scrutiny trainee and that new post be added to the establishment.

(Note: Councillor George Reynolds requested, pursuant to Council Procedure Rule 14.2, that it be recorded he had voted against the decision in resolution (4) above to re-designate the Scrutiny Officer post as Senior Democratic and Scrutiny Officer).

The meeting ended at 8 20 pm.

CHERWELL DISTRICT COUNCIL

PERSONNEL AND GENERAL COMMITTEE 10 December 2008

REPORT OF THE HEAD OF HUMAN RESOURCES

CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES

1 Introduction and Purpose of Report

- 1.1 This paper seeks the views of the committee on the proposed introduction of a mandatory model code of conduct for local authority employees. DCLG are seeking views from authorities as part of the formal consultation process which runs until 24th December 2008.

2 Wards Affected

- 2.1 None.

3 Effect on Policy

- 3.1 Introduction of a mandatory code of conduct for employees would affect Council policy on terms and conditions of employment.

4 Contact Officers

- 4.1 Anne-Marie Scott, Head of Human Resources
Liz Howlett, Head of Legal and Democratic Services

5 Background

- 5.1 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authorities centred on local authority standards committees.
- 5.2 As part of the changes to the conduct regime, a new model code of conduct for local authority members was introduced in May 2007. The latest consultation paper, *Communities in Control* (attached), seeks views on proposals to clarify the members' code and also seeks views on the proposed introduction of a model code of conduct for local government employees. The proposal is that this would become part of the employee's terms and conditions of employment.
- 5.3 The Standards Committee have reviewed the consultation document and proposed responses to the specific questions laid out in annex a (page 26). The Standards Committee recommended that the consultation document be further reviewed by the Personnel and General Committee in relation to questions 13-22 which relate specifically to the proposed employee code.
- 5.4 Consultation comments made by the Standards Committee are below.

6 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

6.1 The following details have been approved by Karen Curtin/Rosemary Watts.

6.2 Risk Assessment

There are no risks associated with this consultative report.

6.3 Financial Effects

There are no financial effects associated with this report.

6.4 Efficiency/Savings

There are no efficiency savings associated with this report.

7 Recommendations

7.1 The Committee is **RECOMMENDED** to comment on the proposed response and make any further responses considered appropriate.

**Consultations on the review of the Code of Conduct
for Local Authority Members and a Code for Employees**

**Questions and Suggested Answers: Questions 1 to 12 relate to the member Code of
Conduct and Questions 13 to 22 to the Code for Employees**

1.	Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
	<p><i>The Council is extremely concerned at the suggestion that committing a criminal offence automatically stops you being a good councillor. The law can change very quickly and offences attracting fixed penalties can change so any attempt to pin down types of offences by the sanction available will be ineffective.</i></p> <p><i>We accept that the code could apply when acting in a non official capacity provided it is clear that the test is whether such behaviour brings the authority into disrepute, not whether a criminal offence has been committed.</i></p> <p><i>If the decision is made to link with criminal offences then the guidelines about what is a criminal offence need to be very clearly written..</i></p>
2.	Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not , what other definition would you support, for instance should it include police cautions? Please give details.
	<p><i>We need to be very careful here. Is it the case that because someone has committed a crime they are unfit for public office? Should it just be 'serious' crimes which call into question how suitable someone is to represent their community? For example, only offences such as assault, harassment, grievous bodily harm (manslaughter/murder), fraud, theft, any offence relating to child pornography will be considered.</i></p> <p><i>Once you conclude that only "serious" crimes should be taken into account then arguably section 80 of the Local Government Act 1972 already covers the point?</i></p>
3.	Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not , what other definition would you support? Please give details.
	<i>Yes, and it is consistent with the current Model Code</i>
4.	Do you agree that the members' code should only apply where a criminal offence and conviction abroad would be a criminal offence if committed in the UK?
	<i>Yes, because it is in the UK that the member will be holding public office. However we do not agree with the principle of using criminal offences as the test. We consider the implications of this have not been properly thought through.</i>
5.	Do you agree that an ethical investigation should not proceed until the

	criminal process has been completed ?
	<p><i>Yes. It is important that the criminal process is not prejudiced or hampered by any other investigation. However, why is an ethical investigation needed? Who will make the written allegation or will the conviction in itself be the allegation? Are sanctions under the code only relevant if section 80 does not apply? Otherwise, if they are disqualified anyway, is this not superfluous?</i></p> <p><i>We believe this highlights why the code of conduct regime should not attempt to be mixed with the criminal justice system.</i></p>
6.	<p>Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, could you provide details of your suggested amendments.</p>
	<p><i>Yes .</i></p> <p><i>Not entirely clear why 12 (2) was optional for parishes.</i></p> <p><i>Welcome the fact that reregistration of interests is not needed following the introduction of a new model code.</i></p> <p><i>"Nominal value" as a measure is unhelpful since it does not relate to the economic value of the share and thus is not an indication of whether the ownership will prejudice opinion. The definition should be changed to £25 000 market value.</i></p> <p><i>Beneficial trust holdings are taken as if each beneficiary is entitled to the entire trust. This means every shareholding in the trust potentially has to be declared even if the claim on it by that beneficiary is extremely small.</i></p> <p><i>Non beneficial trust holdings should only be personal interests rather than prejudicial.</i></p> <p><i>Contracts and land ownership of companies which councillors have either directly or through a trust are registrable interests. However this has to be within their knowledge and that has to be interpreted reasonably. If shares are held in large companies such as BT or Microsoft, are individual shareholders supposed to know of all those contracts and landholdings and therefore able to determine whether any are registrable?</i></p> <p><i>Please could code be reviewed to make it as simple, realistic and accessible as possible.</i></p>
7.	<p>Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view.</p>
	<i>No</i>

8.	Are there any aspects of conduct in a members' official capacity not specified in the members' code that should be included? Please give details.
	No
9.	Is the proposed 2 months timescale during which a member must give an undertaking to abide by the code, starting from the date the authority adopts the code, sufficient time?
	<p><i>Yes, but the provisions are confusing, because the declaration of acceptance of office under section 83 of the Local Government Act 1972 provides for district councillors to make their declaration within two months but for parish councillors to do so before , or at, the first meeting following their election. It would be good to have consistency.</i></p> <p><i>There also needs to be provision for further delay where it is unavoidable, which could be with the proviso that until signed cannot sit as a member.</i></p> <p><i>Could we also mention the sheer cost of the administrative process involved in ensuring a new code is signed up to. The last one was only in May 2007. We think the work, and cost, is underestimated or not appreciated.</i></p>
10.	Do you agree with the addition of this new general principle, applied specifically to conduct in a members' non-official capacity?
	<i>This is back to the issue of whether committing a criminal offence, by its very nature, makes you automatically unfit for public office. We do not think this is necessarily the case.</i>
	<p>Section 80 of the Local Government Act 1972 provides that where a custodial sentence of more than 3 months without the option of paying a fine is imposed then a member is automatically disqualified for five years.</p> <p>Please confirm that the Code will refer to this and be consistent with this provision.</p>
11.	Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that "criminal offence" should be defined differently?
	<i>Why is it a different definition? This is confusing and unhelpful. It needs to be clear and unambiguously defined</i>
12.	Do you agree with this definition of "official capacity" for the purpose of the General principles Order?
	Yes

13.	Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?
	<p>No .</p> <p><i>We consider that conduct is adequately covered by terms and conditions and breaches are covered by disciplinary procedures and ultimately action under employment law.</i></p> <p><i>We think it entirely inappropriate for the Standards Committee to have any jurisdiction in personnel issues.</i></p>
14.	Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
	<i>All authorities have a code for staff which is part of their terms and conditions. Suggesting exclusions just makes it more complicated and inconsistent. It would also not help with public perception which is presumably the key concern.</i>
15.	Are there any other categories of employee in respect of whom it is not necessary to apply the code?
	<i>If some are excluded then probably a good case for excluding others, however as per the answer to 14 this just makes it confusing and inconsistent.</i>
16.	Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not , what has been included that should be omitted, or what has been omitted that should be included?
	Yes.
17.	Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
	<i>Suggest political restriction model i.e above a certain grade together with other staff being able to opt in (because of "political sensitivity" of post).</i>
18.	Should the code contain a requirement for qualifying employees to publicly register any interests.
	<i>If there is to be a code then yes for qualifying employees. However we need to consider what sanction will be imposed where people refuse. Is this automatically a disciplinary?</i>
19.	Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
	<p><i>Requirements should be consistent with the member's code.</i></p> <p><i>There needs to be clarity about how sensitive information will be handled. There are also security issues with home addresses being made public.</i></p>
20.	Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have

	any been omitted?
	<i>Think this should be more clear cut. If there is a prejudicial interest then there is a conflict of interest and there should be back-up for someone else to deal.</i>
21.	Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary.
	<i>There needs to be consistency with the members' code and it needs to be simple and accessible in the same way so the public and employees can understand it.</i>
22.	Should the employees' code extend to employees of parish councils?
	<i>No. .It is unnecessary and unworkable.</i>

Communities in control: Real people, real power
Codes of conduct for local authority members and
employees
A consultation



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employees
A consultation

October 2008

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Contents

Chapter 1: The consultation and how to respond	
Communities in control consultation papers	3
About this consultation	3
Who we are consulting?	4
How to respond	4
What will happen to the responses?	5
Publication of responses – confidentiality and data protection	5
The consultation criteria	6
Additional copies	6
In context – previous consultations and relevant legislation	6
Chapter 2: Code of conduct for local authority members	
What is the code of conduct for?	8
Application of the code to members’ conduct in their non-official capacity	9
Definition of ‘criminal offence’ and ‘official capacity’	10
Offending abroad	11
What does this mean?	11
Criminal conviction of a member	11
The conduct regime	11
Proposed revisions to the members’ code	12
Legislative context	14
Proposed amendments to the General Principles	
What are the General Principles?	15
Proposed revisions	16
Definition of a ‘criminal offence’ and ‘official capacity’	17
Legislative context	17
Chapter 3: Model code of conduct for local government employees	
Is an employees’ code needed?	18
The employees’ code in context	18
Application of the employees’ code	19
Proposed core values	20
Beyond the core values	22
The model employees’ code: values for qualifying employees	22
Contractors, partners and part time staff	24
Parish councils	24
Legislative context	25

Annex A: List of consultation questions	26
Annex B: Members' Code of Conduct 2007	28
Annex C: The Consultation Code of Practice	34

Chapter 1: The consultation and how to respond

Communities in control consultation papers

- 1.1 The White Paper, *Communities in control: Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 This paper is the next in a series consulting on a number of policy commitments. Future consultation papers include a consultation on proposals to revise the code of recommended practice on local authority publicity, which is due to be published at the end of October. This paper invites views on proposals for revising the model code of conduct for local authority members ("the members' code"), principally to clarify its application to members' conduct in their non-official capacity. This paper also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which sets out the general principles which govern the conduct of local authority members. Finally, it seeks comments on proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model code of conduct, in to the terms and conditions of employment of their employees' ("the employees' code").

About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England and police authorities in Wales.
- 1.4 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authority members centred on local authority standards committees. Under the new devolved regime, the Standards Board for England has become a light-touch strategic regulator, responsible for monitoring the operation of the conduct regime and giving support and guidance to standards committees and monitoring officers in discharging their new functions.
- 1.5 As part of the changes to the conduct regime, a new model code of conduct for local authority members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced with effect from May

2007, on the basis that the provisions of the members' code would be reviewed in light of early experience of its practical operation.

- 1.6 Chapter 2 of this paper seeks views on proposals to clarify the members' code in its application to members' conduct when acting in a non-official capacity. It also seeks views on the operation of, and proposed revisions to, the members' code, including reconfiguring the members' code into two distinct sections, the first dealing with members' conduct in their official capacity, the second dealing with members' conduct in their non-official capacity. Finally, it seeks views on associated amendments to the Relevant Authorities (General Principles) Order 2001 to clarify its application to members' conduct in their non-official capacity.
- 1.7 Chapter 3 of this paper seeks views on the proposed introduction of a model code of conduct for local government employees, which will become part of such employees' terms and conditions of employment.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in **Annex A**. In order to aid your consideration of the proposed amendments to the current members' code, the substance of the 2007 code is reproduced at **Annex B**.
- 1.9 We are minded, subject to responses to this consultation, to implement the proposals in this consultation paper, so that they come into effect in line with the local government elections 2009.

Who are we consulting?

- 1.10 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from local authority members, local authority monitoring officers, local government employees, national representative bodies, local government partners and trade unions. **The consultation period runs for 12 weeks to 24 December 2008.**

How to respond

- 1.11 Your response must be received by 24 December 2008 and may be sent by e-mail or post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

e-mail: conductcode@communities.gsi.gov.uk

If you are replying by e-mail please title your response 'Response to Model Code consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.12 The Department will take account of the responses received to this consultation before taking decisions on the legislation that will form the revised members' code, the general principles order and the new employees' code.
- 1.13 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's website at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.14 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 1.15 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.16 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.17 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.18 The UK Government has adopted a code of practice on consultations. Please see **Annex C** of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.19 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk.

In context – previous consultations and relevant legislation

- 1.20 The local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct for members which would include changes to the rules on personal and prejudicial interests. This announcement followed a consultation by the Standards Board for England, *A Code for the future*, in February 2005 and the Discussion Paper *Conduct in English Local Government*, issued by the then Office for the Deputy Prime Minister in December 2005.
- 1.21 The policy proposals took form in the January 2007 consultation document, *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, which proposed the combination of the four different model codes of conduct that existed at the time (for local authorities, parish councils, national parks and police authorities) into a single consolidated model code.
- 1.22 The Local Authorities (Model Code of Conduct) Order 2007 came into force on 3 May 2007. With the members' code now in place for over a year, we believe this is an appropriate time to examine how well it has functioned in practice and consider any revisions that may be required. The proposed amendments to the members' code set out in this paper reflect discussions with the Standards Board and, in particular, their experience of the practical operation of the 2007 members' code over the last year.
- 1.23 Following the 2006 local government White Paper and the introduction of the 2007 members' code, the Local Government and Public Involvement in Health Act 2007 made provision clarifying the law in

relation to the application of the conduct regime to the conduct of members in their non- official capacity. This paper therefore also invites comments on proposals to revise the members' code and the general principles order to address the issue of the application of the conduct regime to the conduct of members in their non-official capacity.

Code of conduct for local government employees

- 1.24 In August 2004, the then Office of the Deputy Prime Minister issued the consultation paper, *A Model Code of Conduct for Local Government Employees*. The paper consulted on a draft code defining the minimum standards of conduct that employees of relevant authorities would be expected to observe on carrying out their duties. The 2004 consultation was followed by further inquiries and consultations on matters relating to the conduct regime for local government.
- 1.25 The Department restated its commitment to introduce a model employees' code, under Section 82 of the Local Government Act 2000, in the local government White Paper 2006. However, in light of the above inquiries and consultations, and the introduction of the 2007 members' code, it was decided that the implementation of an employees' code should be delayed until the Department had an opportunity to consider the employees' code in the context of the wider review of the conduct regime for local government and the lessons learned from the implementation of the new members' code.
- 1.26 With the implementation of the new devolved conduct regime and our proposals to amend the members' code, drawing on the experience of its first year of operation, we consider that the time is right to also consult on proposals to introduce a model employees' code.

Chapter 2: Code of conduct for local authority members

What is the code of conduct for?

- 2.1 The public has a right to expect high standards of conduct from their elected and co-opted members. The standards of conduct expected of local authority members are set out in the members' code, which is underpinned by the ten general principles. By signing up to the members' code, a member is actively taking on a formal obligation to abide by its requirements.
- 2.2 The members' code forms the bedrock of the conduct regime and aims to promote the public's trust and confidence in their members and faith in local democracy. It does this by providing a robust set of standards of behaviour for members to abide by and work within. In doing this, the code also protects members from unreasonable expectations of behaviour being put upon them. Since May 2008, allegations that a member has failed to comply with the provisions of the members' code are considered by local authority standards committees.
- 2.3 The current members' code is set out in the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of relevant authorities in England and of police authorities in Wales. On its introduction, the Government gave an undertaking that the effectiveness of the code would be reviewed after it had been in operation for some time. We believe, drawing on the Standards Board's practical experience that the members' code is, broadly, operating very well. However, as it has been in force for over a year, we consider that it is now appropriate to review the code.
- 2.4 Most importantly, we propose that the members' code be restructured by revoking the existing Order and making a new one. We propose that the new members' code will be differently formatted to the existing code, making it easier to interpret and clearer in its application, for instance by dividing it into two sections: the first dealing with members' conduct when acting in an official capacity and reflecting what is in the current code, the second dealing with members' conduct in their non-official capacity.

Application of the code to members' conduct in their non-official capacity

- 2.5 Trust in our local authority members is one of the cornerstones of local democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.
- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the conduct of members in a non-official capacity. We wish now to clarify which provisions of the members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.
- 2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole.
- 2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

Consultation Question 1:

Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

Definition of 'criminal offence' and 'official capacity'

- 2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members' code, what constitutes a 'criminal offence'. We propose for the purpose of the members' code, that 'criminal offence' be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
- 2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members' code. However, serious criminal offences which we consider should come under the remit of the members' code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.
- 2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

Consultation Question 2:

Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

- 2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members' code, what constitutes 'official capacity'.
- 2.14 We propose that for the purposes of the members' code, 'official capacity' be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.

Consultation Question 3:

Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.

Offending abroad

- 2.15 We also propose that the members' code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.

Consultation Question 4:

Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

What does this mean?

- 2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.
- 2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

Criminal conviction of a member

- 2.18 It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local Government Act 1972, with the member automatically disqualified from office for five years. We are not proposing any changes to this legislation.

The conduct regime

- 2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.
- 2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the

Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

- 2.21 For the purpose of the conduct regime, the criminal process will be considered to have been completed at the conclusion of any appeals process.

Consultation Question 5:

Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Proposed revisions to the members' code

- 2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.
- 2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at www.standardsboard.gov.uk

Parish councils

- 2.24 It has been suggested that article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a parish council wishes this provision to apply, it must make a conscious decision to adopt paragraph 12(2) into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

Membership of other bodies

- 2.25 It has been suggested that paragraphs 8(1)(a)(i) and (ii) of the current members' code be amended to clarify that the sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.

Personal interests

2.26 It has been suggested that current wording of paragraph 8(1)(a) of the members' code could be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of members' interests.

Prejudicial interests

2.27 It has been suggested that paragraph 10(2) of the code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of your authority affects your financial position or the financial position of a person listed in paragraph 8 of the code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the code.

2.28 It has been suggested that the meaning of 'determining' in paragraph 10(2)(b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.

2.29 It has also been suggested that paragraph 10(2)(c) could be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the code.

Registration of members' interests

2.30 We propose that any new members' code would take into account any existing registration of members' interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised members' code is introduced.

Consultation Question 6:

Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

Consultation Question 7:

Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

Consultation Question 8:

Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

Legislative context

- 2.31 The current members' code is set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 made under powers conferred on the Secretary of State by section 50 of the Local Government Act 2000.
- 2.32 Section 183 of the Local Government and Public Involvement in Health Act 2007 inserted, into section 50 of the Local Government Act 2000, a requirement for the Secretary of State to specify which provisions of the members' code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. The power in section 50 of the Local Government Act 2000 permits the Secretary of State to define for the purposes of the members' code what is meant by "criminal offence" and what is meant by "official capacity".
- 2.33 We propose that the existing Local Authorities (Model Code of Conduct) Order 2007 be revoked and a new, revised Order would be made to reflect our proposed amendments and that part of the code applies to a member's conduct in their official capacity and part of it would apply to a member's conduct in their non-official capacity.
- 2.34 Provision is also made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new code within a period prescribed by the Secretary of State. We propose that members will have two months from the date their authority adopts the new code to give a written undertaking that they will observe their authority's code. Failure to do so will mean that they cease to be members of the authority.

Consultation Question 9:

Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Proposed amendments to the General Principles

What are the General Principles?

- 2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.
- 2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

The General Principles

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in a situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to uphold the law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Proposed revisions

2.37 We propose that the Relevant Authorities (General Principles) Order 2001 be amended to make clear which principles govern the conduct of members when acting in an official capacity and which principles will apply to the conduct of members when acting in a non-official capacity, where the member's conduct would constitute a criminal offence.

2.38 We propose that the General Principles Order be amended by providing that the 10 existing principles apply to a member when acting in an official capacity and by adding a new principle which would be specified as applying to a member acting in a non-official capacity, where the member's conduct would constitute a criminal offence. We propose that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:

Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.

Consultation Question 10:

Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Definition of 'criminal offence' and 'official capacity'

2.39 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

Consultation Question 11:

Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

2.40 We propose that for the purposes of the revised General Principles Order, 'official capacity' be defined as "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority".

Consultation Question 12:

Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Legislative Context

2.41 The Relevant Authorities (General Principles) Order 2001 was made under powers conferred on the Secretary of State in section 49 and 105 of the Local Government Act 2000. Section 183 of the Local Government and Public Involvement in Health Act 2007 modified section 49 of the 2000 Act and it is this modification that requires the Secretary of State to specify which general principles apply to a person when acting in an official capacity and when acting in an non-official capacity.

Chapter 3: Model code of conduct for local government employees

Is an employees' code needed?

- 3.1 A code of conduct for local government employees ("employees' code") should provide the staff of an authority with an effective ethical framework within which to work and it should give that authority's citizens confidence that an authority's staff are working on their behalf in an appropriate manner.

Consultation Question 13:

Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

The employees' code in context

- 3.2 In August 2004, the (then) Office of the Deputy Prime Minister consulted on a model code of conduct for local government employees. Responses indicated that the model code of conduct consulted on was not adequate, but also that the universal application of a code to all staff would be needlessly bureaucratic as all employees would be subject to the same code regardless of their position. There was support for following the model of the Welsh code of conduct, which only applies to a certain category of defined senior officer. Alternatively, the code could be restricted to those who exercise executive, regulatory or overview and scrutiny powers under the authority's scheme of delegation to officers.
- 3.3 Another view in response to the consultation paper was that certain aspects of the code (eg registration of interests), could be limited to senior officers while other more universal aspects should be applicable to all - for instance, it is beyond question that all employees should behave with honesty and integrity.
- 3.4 Many local authorities already have a code of conduct for employees in addition to, or part of, their standard terms and conditions of employment. These codes range from simple statements agreeing to act with propriety to comprehensive documents covering everything

from political neutrality to intellectual property matters. These codes of conduct are also integrated into the authority's discipline procedures.

- 3.5 It is not intended that the employees' code be a burden on authorities or employees. The code should not constrain an authority's ability to develop its own code reflecting local needs and conditions. We consider that authorities should be free to adopt supplementary provisions beyond the employees' code in order to provide their staff with an effective ethical framework within which to work.

Application of the employees' code

- 3.6 We propose that the employees' code would apply to all relevant authorities and police authorities in Wales, as defined in Section 49 of the Local Government Act 2000. We are proposing that a model employees' code - a model code that authorities may augment if they wish - be introduced, which will be incorporated into local government employees' terms and conditions of employment.
- 3.7 However, we do not propose to apply the employees' code where it is not needed, for instance to employees in professions that are covered by their own code of conduct; firefighters, teachers, community support officers, solicitors etc.

Consultation Question 14:

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

Consultation Question 15:

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

- 3.8 We propose a two-tier model. The first tier, drawing on the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, will apply equally to all authority employees and will enshrine the core values that it is reasonably expected every authority employee would abide by. The second tier, drawing on the members' code, will apply to 'qualifying employees', that is; either senior officials or those officials carrying out delegated functions.
- 3.9 With the members' code in place, and members having to abide by that code, there is a reasonable expectation that officials undertaking functions delegated to them by members would have to abide by the same conduct regime as members when performing those functions.

Proposed core values

The model employees' code: core values for all employees

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to

do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.

Consultation Question 16:

Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

Beyond the core values

Who are the 'qualifying employees'?

- 3.10 There are two alternatives for selecting those 'qualifying employees' to which, in addition to the core values of the employees' code, some of the restrictions and expectations of the members' code should apply.
- 3.11 The first is based on the approach taken to determining which posts in an authority are 'politically restricted' under section 3 of the Local Government and Housing Act 1989, and assumes that certain posts are senior or influential enough to warrant controls placed on the activities of postholders. Certain posts would be designated as qualifying employees.
- 3.12 The second is the delegation model, which would see qualifying employees selected on the basis that they perform functions delegated to them by elected members under section 101 of the Local Government Act 1972.

Consultation Question 17:

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

The model employees' code: values for qualifying employees

Compromising the impartiality of officers of the authority

A qualifying employee must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the authority, either directly or as a response to pressure from others. A qualifying employee should not attempt to force employees to take action or change advice if doing so would prejudice their professional integrity.

Using your position improperly

A qualifying employee must not use, or attempt to use, their position improperly either for their or anybody else's advantage or disadvantage.

Considering advice provided to you and giving reasons

If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the employees' code applies, the qualifying employee must have regard to this advice.

Personal interest

Qualifying employees must register, within 28 days of taking up their appointment, any interests set out in the categories below. This record of interest must be in writing, to the authority's monitoring officer or, in the case of a parish council, through the parish clerk.

The registration of interests protects the qualifying employee by giving early warning of any possible areas of conflict of interest and provides assurance to the public that the qualifying employee is acting transparently. Only registration of personal interests in areas where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision making and working practice of the authority are required.

These are:

- Your membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
- Any business you might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company.
- Any contracts between the authority and any company you have an interest in, as above.
- Any land or property in the authority's area in which you have a beneficial interest.

A qualifying employee may seek to exempt their personal interests from the register of interests if they consider, for instance that having this information on record might put themselves or others at risk. In such cases, the qualifying employee should discuss the matter with their monitoring officer.

Consultation Question 18:

Should the code contain a requirement for qualifying employees to publicly register any interests?

Consultation Question 19:

Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally.

Qualifying employees with a prejudicial interest should declare such an interest. Where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear.

Consultation Question 20:

Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?

Consultation Question 21:

Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Contractors, partners and part time staff

3.13 Local authorities have an increasingly complex relationship with the private sector in its work with contractors, partners and part time staff. We consider that rather than attempt to determine centrally when and when not to apply the employees' code not just to local government employees, but those working on behalf of local government, it will be for local authorities themselves to decide, in agreeing contracts, partnership agreements or terms and conditions of employment, if and how the employees' code, in whole or in part, should apply.

Parish councils

3.14 The members' code applies to parish councillors as well as members of larger authorities, and it seems reasonable therefore for the ethical framework of the employees' code to apply to parish council employees. We recognise that the environment that parish councillors operate within is different to that of larger authorities and are conscious that what is consider to be a reasonable expectation in the employees' code for larger councils, may prove to be difficult for parish councils.

3.15 That being the case, we would welcome responses from parish councils on any particular aspect of the employees' code that might present difficulties and how those difficulties could be overcome.

Consultation Question 22:

Should the employees' code extend to employees of parish councils?

Legislative context

3.16 Section 82(7) of the Local Government Act 2000, provides that the provisions of a code made under section 82(1) of that Act will be deemed to be incorporated in employees' terms and conditions of employment.

Annex A: List of consultation questions

Chapter 2: Code of conduct for local authority members

- Question 1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
- Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.
- Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.
- Question 4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?
- Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?
- Question 6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?
- Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?
- Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.
- Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?
- Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

- Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?
- Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Chapter 3 Model Code of Conduct for local authority employees

- Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?
- Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
- Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?
- Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?
- Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
- Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?
- Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?
- Question 22 Should the employees' code extend to employees of parish councils?

Annex B

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a)

the authority;

(b)

the executive of the authority;

(c)

any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a

firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests,

you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
- (c) relates to the functions of your authority in respect of—
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority’s standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members’ Interests

Registration of members’ interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority’s register of members’ interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority’s monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority’s monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority’s monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority’s monitoring officer asking that the information be included in your authority’s register of members’ interests.

(3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Annex C: Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of
 - 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at: www.bre.berr.gov.uk/regulation/consultation/code/index.asp.

A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk



CHERWELL DISTRICT COUNCIL

PERSONNEL AND GENERAL COMMITTEE

10 DECEMBER 2008

REPORT OF THE HEAD OF HUMAN RESOURCES

EMPLOYMENT STATISTICS QTR 2, 2008-9

1 Introduction and Purpose of Report

- 1.1 This report gives details of employment statistics for information and monitoring purposes. As requested by Members this information has been amended to reflect turnover by directorate.

2 Wards Affected

- 2.1 Not applicable

3 Effect on Policy

- 3.1 None

4 Contact Officer

- 4.1 Anne-Marie Scott – Head of Human Resources (extension 1731)

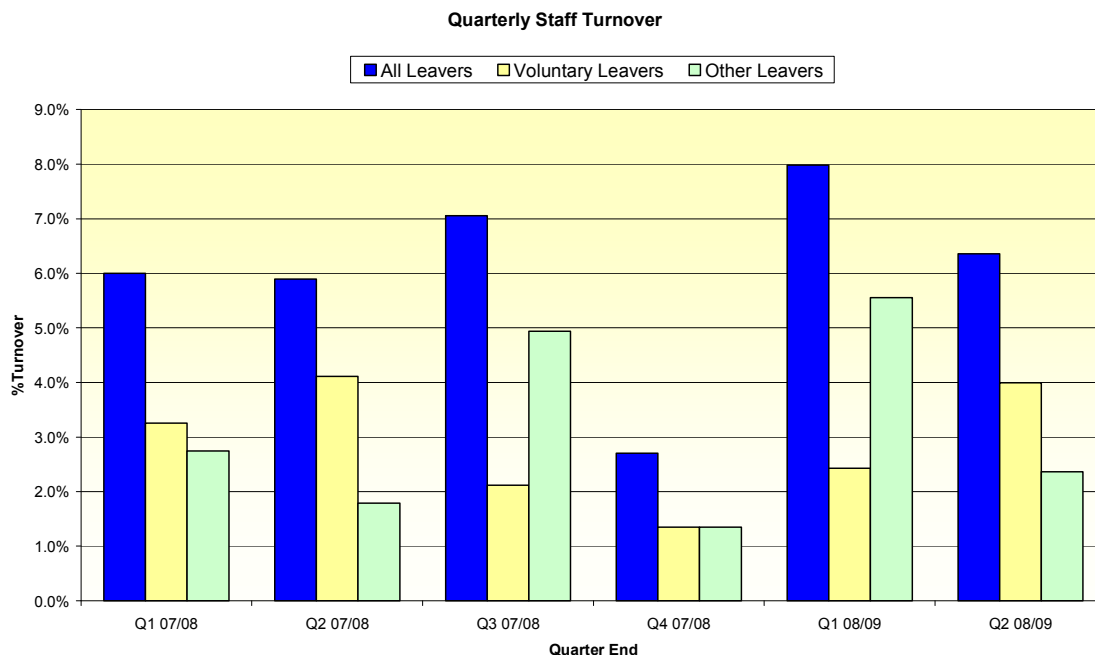
5 Employment Statistics: July to September 2008

- 5.1 During the above period, the following quarterly changes took place in respect of individual employments. Staff transferred to other employers under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) are excluded from the statistics shown in this report.

	July to Sept 2008
Permanent – Starters (incl. Internal Transfers)	41
Permanent – All Leavers	35
Permanent – Voluntary Leavers (Leaving CDC)*	22
Temporary and Casual – Starters	18
Temporary and Casual – Leavers	7

* excludes internal transfers, age retirements, early retirements and redundancies, ill-health dismissals and retirements, other dismissals and TUPE transfers.

5.2 The turnover rates for permanent and fixed term staff for this quarter and the previous year, and are illustrated below.



*Voluntary Leavers excludes internal transfers, age retirements, early retirements and redundancies, ill-health dismissals and retirements, other dismissals and TUPE transfers.

5.3 The tables attached at Annex 1 contain details of numbers of permanent and fixed term employees at Cherwell District Council in post on 30 September 2008 by Directorate and Service area detailing staff movement and corporate capacity for the quarter. It is not yet possible to provide comparison data although this will accumulate during the year.

6 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

6.1 The following details have been approved by Denise Westlake (extension 1559).

6.2 There are no risks associated with the contents of this report.

6.3 All financial effects of changes can be contained within existing approved budgets.

6.4 There are no efficiency savings arising from this report.

7 Recommendation

7.1 The Committee is **RECOMMENDED** to resolve to note the contents of this report.

Background Papers: None

Directorate	Service	Established		Filled		Vacant		All Including Internal Transfers			Leaving CDC		Voluntary Leavers		Staff in post at End of Q1			
		Posts	FTE	Posts	FTE	Posts	FTE	Starters	Leavers	Turnover	Corp Cap	Leavers	Turnover	Leavers	Turnover	Posts	FTE	
Directorate	Chief Executives	4	4.00	4	4.00	0	0.00	2	0	0.00	100.00	0	0.00	0	0.00	2	2.00	
	Chief Executive's Office	5	5.00	5	5.00	0	0.00	2	0	0.00	100.00	0	0.00	0	0.00	3	3.00	
	Communications	3	3.00	3	3.00	0	0.00	1	0	0.00	100.00	0	0.00	0	0.00	2	2.00	
	Community Planning	18	17.14	17	15.90	1	1.24	1	0	0.00	94.44	0	0.00	0	0.00	16	14.90	
	Human Resources	30	29.14	29	26.9	1	2.24	6	0	0.00	96.67	0	0.00	0	0.00	23	21.9	
Totals																		
Directorate	Service	5	5.00	4	4.00	1	1.00	0	0	0.00	80.00	1	20.00	1	20.00	5	5.00	
	Improvement	5	5.00	4	4.00	1	1.00	0	0	0.00	80.00	1	20.00	1	20.00	5	5.00	
	Totals																	
Directorate	Service	14	14.00	11	11.00	3	3.00	0	0	0.00	78.57	0	0.00	0	0.00	11	11.00	
	Building Control & Tech Svs	24	24.00	21	19.40	3	4.60	1	1	4.76	87.50	1	4.76	1	4.76	21	19.40	
	Development Control & MD	8	7.54	6	5.54	2	2.00	0	1	14.29	75.00	1	14.29	1	14.29	7	6.54	
	Economic Development	14	14.00	13	12.34	1	1.66	1	1	7.69	92.86	1	7.69	1	7.69	13	12.34	
	Planning & Affordable Housing	35	34.57	31	30.30	4	4.27	0	1	3.13	88.57	1	3.13	1	3.13	32	31.30	
	Housing Services	27	23.42	25	21.66	2	1.76	4	6	23.08	92.59	3	11.54	3	11.54	26	22.20	
	PHE Admin Inc Mgmt	122	117.53	107	100.24	15	17.29	6	10	9.09	87.70	7	6.36	7	6.36	110	102.78	
	Totals																	
	Directorate	Service	32	30.20	29	28.00	3	2.20	1	2	6.67	90.63	2	6.67	2	6.67	30	28.60
		Safer Communities & CD	12	11.00	11	9.94	1	1.06	1	0	0.00	91.67	0	0.00	0	0.00	10	8.95
ENC Admin Inc Mgmt		117	115.05	108	107.40	9	7.65	3	5	4.55	92.31	4	3.64	2	1.82	110	109.00	
Environmental Services		47	31.96	40	26.96	7	5.01	1	2	4.88	85.11	2	4.88	2	4.88	41	27.01	
Recreation & Health		31	29.00	29	27.06	2	1.94	3	0	0.00	93.55	0	0.00	0	0.00	26	24.56	
Urban and Rural		239	217.21	217	199.36	22	17.86	9	9	4.15	90.79	8	3.69	6	2.76	217	198.12	
Totals																		
Directorate		Service	49	34.54	45	32.30	4	2.24	5	1	2.27	91.84	1	2.27	0	0.00	44	31.66
		Business Services	63	56.13	55	49.39	8	6.74	9	7	12.50	87.30	4	7.14	3	5.36	56	49.76
		Customer Services	10	9.47	10	9.47	0	0.00	1	0	0.00	100.00	0	0.00	0	0.00	9	8.68
	CSR Admin Inc Mgmt	22	22.00	18	16.95	4	5.05	1	1	5.56	81.82	1	5.56	1	5.56	18	16.95	
	Finance	53	44.28	45	37.54	8	6.74	0	3	6.67	84.91	3	6.67	3	6.67	45	37.08	
	Exchequer Services	24	22.13	21	19.20	3	2.93	4	3	14.29	87.50	2	9.52	1	4.76	21	19.20	
	Legal & Democratic	221	188.55	194	164.85	27	23.70	20	15	7.77	87.78	11	5.70	8	4.15	193	163.33	
	Totals																	
	TOTAL	Directorate	617	557.43	551	495.35	66	62.09	41	35	6.39	89.30	27	4.93	22	4.01	548	491.13
		Chief Executive	30	29.14	29	26.9	1	2.24	6	0	0.00	96.67	0	0.00	0	0.00	23	21.9
Improvement		5	5.00	4	4.00	1	1.00	0	1	20.00	80.00	1	0.00	1	0.00	5	5	
Planning Housing & Economy		122	117.53	107	100.24	15	17.29	6	10	9.09	87.70	7	6.36	7	6.36	110	102.78	
Environment & Community		239	217.21	217	199.36	22	17.86	9	9	4.15	90.79	8	3.69	6	2.76	217	198.12	
Customer Service & Resources		221	188.55	194	164.85	27	23.7	20	15	7.77	87.78	11	5.70	8	4.15	193	163.33	
Totals																		

NB: Turnover is calculated on numbers of leavers as a percentage of staff in post as at end of previous quarter

Agenda Item 8

CHERWELL DISTRICT COUNCIL

PERSONNEL AND GENERAL COMMITTEE 10 DECEMBER 2008

REPORT OF THE HEAD OF HUMAN RESOURCES

PENSIONS POLICY STATEMENTS

1 Introduction and Purpose of Report

- 1.1 The purpose of this report is to seek decisions in relation to new discretions under Local Government Pensions Scheme Regulations in order to update the current Pensions Policy Statements which will ensure Cherwell District Council has the necessary statements on the exercise of its discretions under amended regulations up to and including 1 April 2008.

2 Wards Affected

- 2.1 None.

3 Effect on Policy

- 3.1 None.

4 Contact Officers

- 4.1 Anne-Marie Scott, Head of Human Resources, extn 1731

5 Background

- 5.1 The Council currently has three policies on the use of discretions under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 and 2006 and the Local Government Pensions Scheme Regulations 1997. These policies were updated in March 2007 as a result of amended regulations at that time. Since March 2007 new and further changed regulations have been introduced and discretionary pension regulations also now include the Local Government Pension Scheme (Administration) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008.

In order to ensure the Council now has an appropriate policy to include all discretions up to and including any changes to the pension regulations as at the 1 April 2008, as required by the legislation, the three current discretionary policies have been reviewed and amalgamated into one policy, and where required the new regulations have also been inserted. Many of these new and amended regulations have only recently been finalised even though they backdate to 2007, hence the reason for the delay in reviewing these regulations.

The updated policy is attached at Appendix 1 and also includes the pension banding policy introduced at the 1 April 2008 as a result of new discretionary regulations issued at that time.

As a result of the updated policy a new discretion requires consideration as to whether

the council wishes to exercise use of this discretion in the future. This discretion is detailed below.

5.2 **Regulation 13 – Power of employing authority to award additional pension**

The Council may chose to award an employee, whilst they are a member of the LGPS with them, additional pension of not more than £5,000 a year payable from the same date the pension is payable from. The Council has already resolved to consider use of Regulation 12 (discretion to increase total membership – up to a maximum of 10 years), in cases of redundancy, efficiency of the service and permanent ill health retirements. The Council could chose to use either or both discretions if approval is given to use the additional pension award as detailed in Regulation 13.

Should it be approved that this discretion will be considered it is recommended that the same criteria be used for regulations 12 and 13 as detailed above as well as the same criteria when an individual case is considered. This would include:

- The financial position of the Council at the relevant time
- The personal circumstances of the member of staff in question, including their working history with the Council. This may include, for example, length of service and disciplinary record.
- The risk that the making of the payment at any particular level to the individual in question may lead to a loss of public confidence in the Council.

6 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

6.1 The following details have been approved by Rosemary Watts, Risk Management & Insurance Officer, Ext 1566 and Karen Curtin, Chief Accountant, Ext 1551.

6.2 **Risk Assessment**

The risk associated with not approving the recommendations contained in this report is that the Council will not have an agreed policy to implement the changes in pensions regulations from 1st April 2008.

6.3 **Financial Effects**

There are no financial effects arising directly from this report. The financial implications relating to any individual circumstances will be subject to individual reports as and when required

6.4 **Efficiency/Savings**

There are no savings arising from this report.

7 Recommendations

7.1 The Committee is **RECOMMENDED** to determine to resolve;

- (1) To consider use of Regulation 13 – the discretion to award additional pension up to £5,000, and if agreed to consider using the same criteria as already agreed for awarding additional pensionable membership (up to 10 years) to ensure consistency of approach.
- (2) To note the updated Pension Policy Statements at Appendix 1.

Background Papers: None

APPENDIX 1



EMPLOYER DISCRETIONS – STATEMENT OF POLICY

LOCAL GOVERNMENT PENSION SCHEME 2008

INTRODUCTION

This statement of policy has been prepared and approved by Cherwell District Council to satisfy the requirements of the Local Government Pension Scheme Regulations as detailed below and has been updated to take into consideration changes as a result of updated legislation as well as to bring all discretions together under the LGPS. Some discretions remain unaffected, although may now be considered under a different regulation and where a new discretion exists, and the council has had to decide whether to consider use of this discretion this is indicated next to the appropriate regulation.

This policy therefore meets the requirements of the appropriate discretionary LGPS regulations which states that each employing authority must formulate and keep under review its policy concerning the exercise of certain discretionary functions within these Regulations.

In preparing and approving this policy, the Council has also been mindful of the requirement that it :

- i) *Will have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service;*
- ii) *Will not be used for any ulterior motive;*
- iii) *Will be exercised reasonably;*
- iv) *Will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise;*
- v) *Will be duly recorded when applied.*

It is understood that these discretions are applicable to all eligible members of the Scheme. The Scheme rules allow for a revised statement to be issued at least one month in advance of the date that the new policy takes effect, and therefore this policy will be effective from 10 January 2009 (where decisions have been updated for existing discretions or for new discretions) only. The revised statement will be sent to the administering authority and a published statement as revised made available on the intranet.

Local Government Pension Scheme (Administration) Regulations 2007 (as amended) and Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended)

Regulation 12 - Power of an employing authority to increase total membership of active members.

An employer may resolve to increase the total membership of an employee at any time whilst they are an active member of the Scheme with them. The maximum additional membership period that can be awarded is 10 years.

The employer must pay to the Pension Fund, within one month from the date that any additional membership is awarded (or such longer period as agreed between the employer and the administering authority), a sum as calculated in accordance with guidance issued by the Government Actuary.

Employer's policy

The Council will consider whether to exercise its discretion to increase total membership of active scheme members in cases where the Council has agreed that the scheme member is to be made redundant or dismissed on the grounds of efficiency of the service.

It will also give consideration to increasing total membership of an active scheme member if it has been agreed that they should retire on the grounds of permanent incapacity due to ill health and they would not otherwise qualify for additional service because their period of membership is too short.

Each case arising in connection with the use of this discretion will be the subject of a report to the appropriate committee of the Council.

When considering each case, the Council will include, but not be limited to;

- The financial position of the council at the relevant time.
- The personal circumstances of the member of staff in question, including their working history with the council. This may include, for example, length of service and disciplinary record.
- The risk that the making of a payment at any particular level to the individual in question may lead to a loss of public confidence in the council.

NEW DISCRETION Regulation13 – Power of employing authority to award additional pension.

An employer may resolve to award an employee, at any time whilst they are an active member of the Scheme with them, additional pension of not more than £5,000 a year payable from the same date as the pension is payable under any provisions. Additional pension may be paid in addition to any increase of membership under regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended).

The employer must pay to the Pension Fund, within one month from the date that any additional membership is awarded (or such longer period as agreed between the employer and the administering authority), a sum as calculated in accordance with guidance issued by the Government Actuary.

Employer's policy – DECISION REQUIRED

Cherwell District Council has resolved not to adopt/to adopt this discretion.

The Council will consider whether to exercise its discretion to increase total pension of active scheme members in cases where the Council has agreed that the scheme member is to be made redundant or dismissed on the grounds of efficiency of the service.

It will also give consideration to increasing total pension of an active scheme member if it has been agreed that they should retire on the grounds of permanent incapacity due to ill health.

Each case arising in connection with the use of this discretion will be the subject of a report to the appropriate committee of the Council.

When considering each case, the Council will include, but not be limited to;

- The financial position of the council at the relevant time.
- The personal circumstances of the member of staff in question, including their working history with the council. This may include, for example, length of service and disciplinary record.
- The risk that the making of a payment at any particular level to the individual in question may lead to a loss of public confidence in the council.

Regulation 18 – Flexible retirement

A member who has attained the age of 55 and who, with their employer's consent, reduces the hours they work, or the grade in which they are employed, may make a request in writing to the appropriate administering authority to receive all or part of their benefits under the Regulations, and such benefits may, with the employer's consent, be paid to the employee notwithstanding that they have not retired from that employment. If the payment of benefits takes effect before the member's 65th birthday they will be reduced in accordance with guidance issued by the Government Actuary unless the employer agrees to waive, in full or in part, any such reduction at their cost. In the case of a person who was an active member on 31st March 2008, and who makes a request before 31st March 2010, substitute the age of 55 above with the age of 50.

Employer's policy

The Council will not consider requests from employees aged 55 or over, to reduce their hours or the grade in which they are employed and have their pension paid whilst continuing to be employed.

Regulation 30 – Choice of early payment of pension

If a member leaves a local government employment before they are entitled to the immediate payment of retirement benefits, once they have attained the age of 55 they may choose to receive payment of them immediately. However a member aged less than 60 needs employer consent (or former employer) to have the benefits released early, and if the decision is to allow early release of retirement benefits then the employer must pay to the Pension Fund a sum representing the capital cost of releasing those benefits early.

The pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary although the employer may determine on compassionate grounds to waive the actuarial reduction. In the case of a person who was an active member on 31st March 2008, and who makes a request before 31st March 2010, substitute the age of 55 above with the age of 50.

Employer's policy

The Council will give consent to the retirement of members who apply between the ages of 55 and 59, with immediate payment of benefits, where it can be clearly shown to be in the Council's interests to do so. In assessing this an important consideration, but not the only consideration, will be the net financial effect on the Council of the early retirement and all associated changes. Each case arising in connection with this policy will be the subject of a report to the appropriate committee of the Council, detailing the financial and other effects, subject to the limitation that the Council will not normally consider such an application from any individual member within one year of considering a previous application from the same member.

The Council will not waive the reduction of benefits on compassionate grounds under this regulation.

Requests for early payment of deferred retirement benefits from former employees will be considered on the same criteria as above.

Local Government Pension Scheme (Administration) Regulations 2008

Regulation 16 - Re-employed and re-joining deferred members

Where a deferred member becomes an active member again before becoming entitled to the payment of those deferred retirement benefits, they may elect to have his former deferred membership aggregated with current active membership on or after the date that the employee again becomes an active member. An election must be made within 12 months from the date that the member re-joins the Local Government Pension Scheme or such longer period as his employer may allow.

It is worth noting that if the member has more than one former period of deferred membership, it is only the most recent deferred membership period that can be aggregated with current active membership unless earlier periods of deferred membership have already been aggregated with the most recent period of deferred membership.

Employer's policy

Cherwell District Council adopts regulation 16 on the basis that the impact will be limited to a small number of employees.

Regulation 22 – Applications to make absence contributions

This provides for a scheme member to pay optional contributions, for a period of unpaid absence from work, within 30 days of returning to, or of ceasing, employment. The employer can agree to extend this time limit.

Employer's policy

Cherwell District Council chooses to use its discretion in exceptional circumstances to extend the time limit, and will be based on a case by case request. Where no request is made the extension will not apply.

Regulation 25 – Additional Voluntary Contributions (AVCs) and Shared Cost Additional Voluntary Contributions (SCAVCs).

An active member may elect to pay AVCs into a scheme established under contract between his appropriate administering authority and a body approved for the purposes of the Finance Act 2004.

Under paragraph 3 of this regulation an employer can, at its discretion contribute to the AVC scheme and where they do the AVC scheme is known as a shared cost additional voluntary contributions arrangement and contributions to it as SCAVCs

Employer's policy

The Council will not establish or maintain a shared cost additional voluntary contributions scheme.

Regulation 83 – Inward transfers of pension rights

This provides that an active scheme member may elect to transfer into the Local Government Pension Scheme relevant pension rights held elsewhere. The member must request the transfer of such rights in writing within 12 months of becoming a member of the Local Government Pension Scheme or such longer period as the employer may allow.

Employer's policy

Cherwell District Council has resolved that it continues to allow transfer of relevant pension rights held elsewhere within the 12 month period, with no time extension allowed.

Regulation 57(5)(c) – Notification of decisions under regulation 58.

Responsibility for determinations under the first stage of the Internal Disputes Resolution Procedure rests with a “specified person” appointed by the (former) employer of a scheme member.

Employer’s policy

The specified post to be used for this employer is:

Name: To Be Confirmed
Job Title: Head of Finance
**Address: Cherwell District Council, Bodicote House,
White Post Road, Bodicote, Nr Banbury, Oxon, OX15 4AA**

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 as amended

Regulation 5 – Whether to base redundancy payments on actual weeks pay rather than statutory weeks pay limit

Regulation 6 – Whether to award a lump sum compensation of up to 104 weeks pay in cases of redundancy, termination of employment on grounds of efficiency, or cessation of a joint appointment.

Regulation 11 (2) – to award compensatory added years to a person aged 50 or over with 5 or more years membership (or notional membership) of the LGPS in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment which occurred after 30 September 2006 and before 1 April 2007 (but only if employment commenced pre 1 October 2006).

Employers Policy

Redundancy

In cases where employment is terminated on the grounds of redundancy the Council will use the government’s statutory redundancy payment calculator to calculate the number of weeks pay an employee is entitled to receive.

In addition the Council may exercise its discretion to make a payment as follows:-

- 1 To calculate the payment on a weekly pay figure up to the employee’s actual week’s pay (i.e. the statutory maximum weekly pay figure is waived).
- 2 To take into account all continuous service (up to a maximum of 20 years) with bodies listed in the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 (as amended).
- 3 Assessing each case on its merits, consider whether to apply a multiplier up to a maximum of 3.46 to the statutory redundancy payment calculator to calculate the number of weeks pay an employee may receive.

- 4 Assessing each case on its merits, consider whether to make use of Regulation 12 of the Local Government Pension Scheme Regulations (Augmentation) to award additional years of pension service (1997 Regulations).
- 5 When considering points 3 and 4 above the criteria for considering each case will include but not be limited to;
 - I. The financial position of the council at the relevant time.
 - II. The personal circumstances of the member of staff in question, including their working history with the council. This may include, for example, length of service and disciplinary record.
 - III. The risk that the making of a payment at any particular level to the individual in question may lead to a loss of public confidence in the council.

The Council will not allow employees in membership of the Local Government Pension Scheme to convert the amount of lump sum compensation payment (in addition to the statutory redundancy payment) into added years of pension service.

Only one discretionary element (options 3 or 4 above) may be awarded.

Efficiency of the Service

In cases where employment is terminated on the grounds of 'efficiency of the service' the Council may exercise its discretion to make a payment as follows:-

- 1 Consider making a one-off payment, based on the merits of each case.
- 2 The payment will not exceed a maximum of 104 weeks.
- 3 Assessing each case on its merits, consider whether to make use of Regulation 12 of the Local Government Pension Scheme Regulations to award additional years of pension service.
- 4 When considering the 'merits of the case' and whether it is in the Council's interests to terminate an individual's employment on the grounds of efficiency of the service, the Council will include:
 - overall benefits to the Council taxpayer of the employee leaving the Council's service
 - direct financial savings and costs to be incurred by the employee leaving the Council's service
 - employee relations issues
 - as a general rule, the Council will seek to make a financial saving over the longer term through an efficiency termination.

The Council will not allow employees in membership of the Local Government Pension Scheme to convert the amount of lump sum compensation payment (in addition to the statutory redundancy payment) into added years of pension service.

Local Government (Early Termination of Employment) (discretionary Compensation) (England and Wales) Regulations 2000

Some discretions under the above Regulations continue to be relevant as they apply to pension scheme members who have added years pensions in payment under the Regulations. The relevant discretions are as follows:-

Regulation 17 - The Effect of New Employment on Part IV Compensation

If a member who is receiving a compensatory added years pension in accordance with Part IV of these Regulations is re-employed by a LGPS employer then the annual pension resulting from the award of a credited period will be reduced, or suspended, if the combined total of earnings from the new employment and pensions in payment exceed the value of the current rate of pay of the member's former employment.

It should be noted that this adjustment is in addition to any adjustment that may be made to the basic LGPS pension as a result of re-employment with a LGPS employer. Oxfordshire County Council has a policy, which it is required to make under other Regulations as the administering Authority for the Oxfordshire LGPS fund, which is as follows: -

- (a) no abatement to be applied to pensions of less than £1500 a year or when awarded to someone retiring on their own benefits (ie without added years)
- (b) in other cases abatement will apply if new earnings and pension in payment exceed 125% of leaving pay, increased by the appropriate pension increases.

Regulation 19 - The effect of Cessation of New Employment on Part IV Compensation

After ceasing the re-employment the credited period will be adjusted or stopped altogether if the resulting pension from the re-employment and the basic LGPS pension from the first employment exceed the value of the pension which could have been paid if the member had remained in the first employment until age 65.

Regulation 21 - Awards to Surviving Spouses and Children

Where more than one current, legal spouse has survived a deceased person, the annual compensatory added years pension will be divided equally.

A spouse's pension will continue to be paid even if the spouse remarries or co-habits, unless at 1.4.98 a pension was already suspended due to remarriage.

In the very rare event of a children's compensatory added years pension being payable in circumstances not covered by the main Pension Regulations full details will be supplied to the appropriate officer for a determination.

Local Government Pension Scheme Regulations (Benefits, Membership and Contributions) Regulations 2007 (as amended)

Regulation 5 - Contributions payable by active members

An active member shall make contributions to the Scheme at the contribution rate from their pensionable pay in each employment in which they are an active member. The contribution rate to be applied to pensionable pay in any financial year (starting with 1st April 2008) is the rate determined by the employer to represent the assumed pensionable pay for the forthcoming year.

Employer's policy

Cherwell District Council has resolved not to re-determine the contribution rate in the course of the financial year. The exception to this will be where a member requests a review of his/her contribution rate as a result of a change in jobs. See full policy details below.

PENSIONS BANDING POLICY STATEMENT

Local Government Pension Scheme
(incorporating changes resulting from the New Look Local
Government Pension Scheme 2008)

Introduction

This policy statement incorporates changes to the Local Government Pension Scheme Regulations effective from 1 April 2008, together with locally agreed rules which have been negotiated and agreed with Unison.

It applies to all members of the Local Government Pension Scheme at 31 March 2008, and all those eligible to join the scheme under the scheme's regulations. All members of the scheme at 31 March 2008 will be automatically transferred into the new scheme. This excludes casual employees (see paragraph below).

Eligibility

To be eligible to join the scheme, individuals will have a contract with Cherwell District Council for at least 3 months, and be aged between 16 and 75. Casual employees do not have the option to join the scheme. All casual employees who are current members of the Local Government Pension Scheme will be informed that they can no longer be a member for their casual work, due to the change in regulations.

Contribution Rates

From 1st April 2008 the contribution rates will be changed from 6% to contribution bands based on whole time equivalent salary and pensionable allowances in accordance with the following table:

Band	Range (based on pensionable earnings) *	Contribution Rate
1	£0 - £12,000 pa	5.5%
2	£12,000.01 - £14,000.00	5.8%
3	£14,000.01 - £18,000.00	5.9%
4	£18,000.01 - £30,000.00	6.5%
5	£30,000.01 - £40,000.00	6.8%
6	£40,000.01 - £75,000.00	7.2%
7	£75,000.01 and above	7.5%
*The salary ranges above will be increased each year at 1st April in line with the Retail Price Index (RPI)		

The 5% protected contribution rate for former manual workers will be phased out between 2008 and 2010 as follows:

Effective Date	New Contribution Rate
1 April 2008	5.25%
1 April 2009	5.5%
1 April 2010	6.5% (or appropriate band as indicated above if it is lower)
NB Where an employee moves to a job which is no longer classified as a former manual occupation, they will transfer to a contribution rate based on the appropriate banding above.	

Assessment

An assessment of pensionable earnings will be made at 1st April each year based on the rules below. Once an assessment has been made there will be no other assessment during the year unless there is a change of job.

Employees in post at 31st March

The assessment will be made using the whole time equivalent salary applicable at 1st April together with any pensionable allowances based on:

Whole time equivalent basic salary for full and part-timers employed all year round, plus the actual pensionable allowances received for the previous financial year i.e. 1st April-31st March; **OR**

Whole time equivalent basic salary factored down to term time for term-time only employees, plus the value of the actual pensionable allowances received for the previous financial year ie 1st April-31st March.

Where there is a change of job, the contribution rate will be reassessed on the new salary, as determined below, and effective from the date of change.

A salary increase in the same post, or payment of a pensionable allowance in the same post, will not result in a revised assessment for that year.

Newly appointed employees

The assessment will be made as above, but where new appointments have contractual pensionable allowances paid as part of their regular salary, the expected amount and duration of these will be taken into account for the assessment.

Where new appointments have variable additional pensionable allowances paid by claim and not part of a regular salary, the pension contribution band will be assessed solely on their whole time equivalent salary as above. The pensionable allowances paid during the first financial year will only be taken into account in the following year's assessment.

Multiple Employments

Employees with more than one job with the Council will be assessed separately for each individual contract.

Pensionable Earnings

Any elements of pay which are pensionable will be made clear on the contract of employment.

Appeals

If an employee feels that their contribution rate has not been assessed correctly and in accordance with this policy statement, they must contact the Payroll Team Leader to ask for a breakdown of the assessment no later than 31 March in the year in which their assessed contribution relates, or 3 months following any change, whichever is the later.

Where it is confirmed that the assessment has been made in accordance with this policy statement and appropriate LGPS Regulations but the employee is challenging the assessment, then the complaint will be referred to the Payroll and Performance Manager.

If a complaint cannot be resolved satisfactorily then employees can use the Independent Resolving Disagreements Procedure (IRDP).

Head of Human Resources
March 2008

Alternative formats of these policies can be made available on request.
These include other languages, large print, Braille, audio cassette, computer disk or e-mail.
Please contact Human Resources.

CHERWELL DISTRICT COUNCIL

PERSONNEL AND GENERAL COMMITTEE 10 DECEMBER 2008

REPORT OF THE HEAD OF HUMAN RESOURCES

REVISED SICKNESS ABSENCE POLICY

1 Introduction and Purpose of Report

- 1.1 The purpose of this report is to seek approval for the attached revised Sickness Absence policy.

2 Wards Affected

None.

3 Effect on Policy

- 3.1 None.

4 Contact Officers

- 4.1 Anne-Marie Scott, Head of Human Resources (extension 1731)

5 Background

- 5.1 The level of sickness absence taken by members of staff impacts directly on the efficiency and effectiveness with which the Council is able to deliver its services to the public. The revised Sickness Absence Policy seeks to minimise sickness absence levels whilst maintaining a supportive, fair and consistent approach to members of staff.
- 5.2 During 2007-8 9.05 days sickness absence were taken on average per employee against a corporate target of 8.3 days per employee. The corporate target for 2008-9 is an average of 8 days per employee and from 2009-10 onwards is 7 days per employee per year.
- 5.3 To support the achievement of these targets the attached revised sickness absence policy provides a more robust process for use by line managers in managing sickness absence.
- 5.4 According to research undertaken by the Chartered Institute of Personnel and Development (CIPD) "Return to work" meetings, i.e. one-to-one meetings between the line manager and the member of staff as soon as they come back to work are an essential tool in minimising sickness absence levels by providing proactive and early intervention. The revised policy requires that a Return to Work meeting is held and recorded after any period of sickness absence.
- 5.6 The policy sets out a three stage formal process for managing high levels of sickness absence ending ultimately in the dismissal of the employee if their level of sickness absence continues at an unacceptably high level over a significant period of time, or if they repeatedly fail to comply with the Councils sickness absence reporting procedure.
- 5.7 The policy also sets out the process for long term sickness absence and ill health dismissal in circumstances where due to a genuine medical condition a member of staff is permanently incapable of carrying out their job. From 1 April 2008 the new Local

Government Pension Scheme (LGPS) was introduced including a revised three tier ill-health retirement approach. Appendix G of the policy summarises how Cherwell District Council complies with the new LGPS ill-health pension requirements.

5.8 The competence of line managers in the implementation of this policy will be essential to its effectiveness. It is proposed that the policy is introduced from 1 April 2009 and that during January to March 2009 comprehensive training will be provided for staff with line management responsibility.

5.9 The Staff consultation group including Unison representatives have been consulted and have endorsed the policy.

6 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

6.1 The following details have been approved by Rosemary Watts, Risk Management & Insurance Officer, 01295 221566 and Karen Curtin, Chief Accountant, 01295 221551.

6.2 Risk Assessment

The risk associated with not approving the recommendations contained in this report is that corporate sickness absence targets will not be met.

6.3 Financial Effects

None.

6.4 Efficiency/Savings

None.

7 Recommendations

7.1 The Committee is **RECOMMENDED** to resolve to approve

- (1) The attached revised sickness absence policy, including the ill health retirement process set out in Appendix G of the policy, for implementation from 1 April 2009.

Background Papers: None

1 Introduction

- 1.1 Cherwell District Council values the contribution of its employees in delivering quality services to its customers. Whilst recognising that employees may be prevented from attending work due to ill health the Council also has a duty to maintain service delivery and minimise disruption. The overriding objective of the Sickness Absence Policy and Procedures is to manage sickness absence levels whilst maintaining a positive, fair and consistent approach to staff.

2 Policy Statement

- 2.1 It is the policy of Cherwell District Council :-

- to objectively assess any periods of absence and decide on appropriate action;
- to review reasons for sickness absence in order to help prevent the absence recurring, address any welfare problems, and ensure appropriate medical assistance is being provided;
- to identify work-related ill health and address the cause;
- to promote occupational health and welfare to ensure the workforce is effective and efficient ;
- to achieve an average corporate absence rate in line with the national upper quartile BVPI position.

- 2.2 The policy and procedures will be implemented in a non-discriminatory manner taking into account individual circumstances and respecting confidentiality.

- 2.3 This Policy aligns with the Equal Opportunities Policy and Procedures; Occupational Health Policy; Alcohol and Drug Abuse Policy; Health and Safety legislation; and other relevant employment legislation, in particular the Disability Discrimination Act. (for further information on the Disability Discrimination Act refer to appendix A).

3 Definitions

- **Absence** - not attending for work when contractually required to do so.
- **Authorised Absence**- absence authorised by line management prior to or after its occurrence and can be paid or unpaid.

- **Unauthorised Absence** - absence not authorised by line management prior to or after its occurrence and is **always unpaid**.
- **Self-certificated Sickness** – employees are required to complete a Self – Certification Form for the first seven days’ of any sickness absence. This form is sent to HR via the employee’s line manager. (Saturdays and Sundays are included if both the Friday and Monday are recorded as sickness absence)
- **Medically Certificated Sickness** - sickness absence of more than 7 consecutive days and must be supported by a doctor’s medical certificate.
- **Frequent Short-Term Absence** - absences that are normally sporadic and attributable to minor ailments. Often the employee will only be absent for a maximum of a week, but more often for single days.
- **Long Term Absence** - where an employee has been, or is expected to be, continuously absent for four weeks or more

4 Confidentiality

- 4.1 Medical information is confidential. This does not mean that employees have the right to withhold information about their medical condition. However it does mean that the Council recognises that some employees may be reluctant to divulge sensitive or personal information and therefore the absence procedures allow employees some discretion over who, within management, they may speak to about ill health problems. Whoever receives such information must respect confidentiality.
- 4.2 Any breach of confidentiality will be regarded as serious and may lead to disciplinary action.

5 Absence Reporting Procedures

Day one

- 5.1 Employees must contact their line manager on the first day of absence ideally by the time they would normally start work, and in any case within one hour of their normal start time, giving the nature of their illness or symptoms, its likely duration and what arrangements are being made, if any, to seek medical advice. This is to ensure that the work can be covered and there is a minimum of disruption to service delivery.
- 5.2 Personal contact should be made by the employee by telephone. If an employee is unable to reasonably access a telephone they should make arrangements for an appropriate person to notify their Manager personally on their behalf. Sending a text message via a mobile phone or an e-mail is not an acceptable method of notifying a period of absence. An exception to this rule is in circumstances when an employee is due to start an early shift and it would be unreasonable to contact the manager other than by text. However in this circumstance the employee must follow up any message with personal contact no later than 9.00am.

5.3 In the event of not being able to contact their line manager, employees must leave a message, including the information in 5.1, with another colleague

in their team. The member of staff receiving this information will ensure that the line manager, or another appropriate manager, is informed of the absence verbally as soon as possible

- 5.4 The line manager and member of staff may agree arrangements to contact each other during the period of absence in addition to those required in this policy, in the interests of both the welfare of the member of staff and the maintenance of service delivery levels.

5.5 *Fourth working day of absence*

On the fourth working day of absence the employee must notify their line manager of their continuing absence as per 5.2 above, and provide an expected return date.

More than seven days' absence

- 5.6 After seven calendar days' continuous absence the employee must inform their line manager of progress and obtain a doctor's medical certificate. This form must be sent by the employee to HR via the line manager as soon as possible.

Continuing absence

- 5.7 A doctor's medical certificate is required for all subsequent absence both to authorise that absence and to ensure payment of appropriate sickness pay.

- 5.8 An employee can provide a medical certificate that has been issued by a hospital instead of a doctor's certificate if there has been a period of hospitalisation.

- 5.9 For absences of fourteen days or more the employee may be required to see the Council's Occupational Health Advisor to confirm that they are fit to return to work.

Non-Compliance with this procedure

- 5.10 Sick pay may be withheld for any periods of sickness absence not covered by a self certificate or a medical certificate.

- 5.11 Where periods of absence are not correctly reported in line with this procedure, this may be treated as unauthorised absence and the appropriate pay deducted. Formal procedures will be invoked where repeated non-compliance with this procedure occurs. (Refer to Section 8)

6 Return to work meeting

- 6.1 Once the employee has a confirmed return to work date they should inform their line manager as soon as possible

- 6.2 All employees returning to work after any period of absence are required to attend a return to work meeting with their line manager and to complete a Self

Certification and Return to work Form (appendix B) to be forwarded to Human Resources.

6.3 The return to work meeting will normally take place on the first day back at work. Its purpose is to:-

- Welcome the employee back to work
- Confirm and establish the cause of absence
- Confirm that they are fit to return to work
- Determine whether there are any underlying causes of absence, including any work-related issues

6.4 Where the employee, for whatever reason, does not want to share personal information relating to his/her health with the line manager, they can ask to be seen by the Council's Occupational Health Advisor or a member of the HR team.

6.5 The Line Manager must seek advice from the HR Manager if he/she considers that an employee returning to work is not fit to undertake their normal duties. The HR Manager may arrange a medical examination by the Council's Occupational Health Advisor.

6.6 The employee will have to provide his/her signed consent in the event that the Occupational Health Advisor considers it necessary to obtain further medical information from their GP or medical specialist (See appendix C).

6.7 A return to work discussion is not a capability or disciplinary discussion. If it is felt that the absence is misconduct, the line manager will call a halt to the discussion and start the formal procedures detailed below.

7 Referral to the Council's Occupational Health Adviser

7.1 Referrals are made via the HR Manager. Managers should discuss the referral with the employee giving the reason(s) and encouraging open exchange of information. If a member of staff believes that his/her condition may be related to an activity at work they should inform their line manager.

7.2 Managers should consider referral to the Council's Occupational Health Advisor for advice regarding:

- Any concerns about the affects of work on an employee's health
- The possible affects of a health problem on attendance or performance
- An accident which is likely to cause significant absence.(If it is a work related accident the Corporate Health and Safety Manager must be notified)
- An employee who has been absent due to sickness for a continuous period of 4 calendar weeks.
- An employee who has frequent periods of sickness absence.
- Concern about an employee's health in relation to their ability to carry out an aspect of their job.
- An employee who is at work and is suspected of having an infectious or contagious disease

- The impact of a health problem on an employee's ability to work
- Timescales for expected improvement in health
- Temporary or permanent adjustments to the work place or tasks that would assist in maintaining health and reducing the effects of the health problem on attendance and performance
- An opinion on the implications of the Disability Discrimination Act

7.3 Confidential medical information will not be given to the line manager. However s/he will be advised of the effects of a health problem on an employee's work attendance or performance, or the effects of work on an employee's health.

8 Monitoring Sickness Absence and Procedure Compliance

8.1 Discussion of absence levels will be undertaken during the return to work interview. If there is no improvement and absence levels are unsustainable, the formal stages of this policy will be invoked.

Stage One - First Formal Discussion

8.2 This discussion will be conducted where:

- There have been three periods of absence in 5 or less consecutive calendar months or
- Average sickness absence levels are running at 11 working days or more in a rolling year (pro-rata for part time staff).
- There is an unacceptable pattern of absence, such as, regular Fridays or Mondays
- Absence regularly occurs on a particular day of the week
- Absence regularly occurs at peak workload periods
- Any period of absence gives concern
- There is continued failure to follow the notification process without good reason
- No satisfactory reason for being absent from work has been provided
- There is a continuing pattern of unauthorised absences
- There has been a failure to provide medical certificates when required
- There is reason to believe that the employee has taken part in activities that are inconsistent with the cause of absence or prejudicial to recovery

8.3 The line manager should inform the employee of the date, time and place of the meeting, giving a minimum of 5 working days notice, as well as a

brief explanation of why the meeting is to be held, by using the Formal Discussion letter (appendix D). The employee is entitled to be represented by a trade union representative or colleague of their choice, which they are responsible for arranging.

- 8.4 If the employee's representative is unavailable to attend at the appointed time, the employee may request postponement and suggest an alternative time and date. If this is reasonable and within 5 working days of the original date, the meeting will be postponed.
- 8.5 The First Formal Discussion gives the line manager and the employee the opportunity to discuss the employee's absence record and the reasons for the absence, and any non compliance with the Sickness Policy. A course of action will be set out over a specified period of time to provide the employee with an opportunity to improve. During the discussion the line manager will :-
- Review the employee's attendance record during the relevant period
 - Review any non-compliance issues
 - Give the employee the opportunity to discuss any problems or raise any concerns
 - Decide whether any further action is required such as a referral to the Council's Occupational Health Advisor (see Section 7)
 - Agree a target for improvement in sickness levels over an agreed monitoring period, usually 3 months
 - Inform the employee that if attendance and/or compliance does not improve within the time period being monitored, a Second Formal Discussion will be held
- 8.6 During the discussion a Formal Discussion Form (appendix E) must be completed by the employee and line manager stating the improvement required. Following the meeting a copy will be sent to the employee and to Human Resources.
- 8.7 The employee must be advised of his/her right of appeal.
- 8.8 In setting targets for improvement, the manager will take into account the individual circumstances of the case; any advice received from the Occupational Health Advisor; the impact of any underlying medical condition or disability; and any reasonable work place adjustments that need to be put in place to enable the employee to improve their attendance.
- 8.9 Following the First Formal Discussion, attendance and/or compliance will be monitored monthly
- 8.10 A target of reduced absence during the formal monitoring period (normally 3 months) will be set, following which a formal review will be held.
- 8.11 If the target set for improvement has not been met and the agreed action from Stage 1 is not having results, the line manager may move to Stage 2 at which an HR representative will also be present.
- 8.12 If the target set for improvement has been met there will be no need for further formal review meetings, however, attendance will continue to be monitored for a further three months. Provided that attendance and/or

compliance do not deteriorate during this period there will be no further need for formal monitoring and the employee will be removed from the formal stages of this policy. If attendance and/or compliance deteriorate during this period, however, the line manager may move to Stage 2.

Stage Two - Second Formal Discussion

- 8.13 Failure to meet the targets set out in Stage 1 may result in progression to Stage 2.
- 8.14 The employee will be notified of the date, time and place of the meeting at least 5 working days in advance using the Formal Discussion letter, and advised of the right to be represented. If the employee's representative is unavailable to attend at the appointed time, the employee may request postponement and suggest an alternative time and date. If this is reasonable and within 5 working days of the original date, the meeting will be postponed.
- 8.15 The purpose of this discussion is to ensure that the employee is given a further opportunity to discuss their absence formally and explain why their absence level is not improving. During the Second Formal Discussion the line manager will:-
- Review the employee's attendance record during the monitoring period
 - Review any areas of non compliance with the policy and procedures
 - Review the steps that have been taken to support him/her in achieving the required level of attendance
 - Give the employee the opportunity to discuss any problems or raise any concerns
 - Discuss any Occupational Health advice that has been received
 - Review the impact of any support or work adjustments recommended by the Occupational Health Advisor, for example counselling
 - Decide whether any new information requires further referral to the Council's Occupational Health Advisor
 - Agree a target for improvement in sickness levels over a further monitoring period, usually three months
 - Agree any further help and support that can be provided to enable the employee to improve their attendance
 - Consider any changes in working arrangements which would allow the employee to continue working in their current job e.g. change of hours, period of unpaid leave, job design – whilst maintaining appropriate levels of service
 - Inform the employee that in the event of a medical report advising that they are permanently unfit to undertake their duties, their continued employment will be in question.
 - Consider the possibility of redeployment on medical grounds
 - Issue a **Formal Warning** to the member of staff that his/her employment may be terminated if their attendance levels do not improve within the specified time period (appendix F)
- 8.16 A Formal Absence Discussion Form must be completed. (appendix E) This will provide a record of the meeting and the outcome. A copy will be given to the employee and to Human Resources.
- 8.17 The employee must be advised of his/her right of appeal

- 8.18 A target of reduced absence during a formal monitoring period (normally 3 months) will be set, and attendance and compliance will be monitored monthly during that period, following which a Formal Review will be held.
- 8.19 If the target set for improvement has not been met and the agreed action from Stage 2 is not having results, the line manager may move to Stage 3.
- 8.20 If the target set for improvement has been met there will be no need for further formal review meetings, however, attendance will continue to be monitored for a further three months. Provided that attendance and/or compliance do not deteriorate during this period there will be no further need for formal monitoring, the employee will be removed from the formal stages of this policy and the Formal Warning will be removed from their record. If attendance and/or compliance deteriorate during this period, however, the line manager may move to Stage 3.

Stage Three - Final Formal Discussion: Dismissal

- 8.21 A Final Formal Discussion may be held if the improvement target(s) have not been met or sustained. This meeting will be with the line manager, Head of Service (or his/her nominated deputy) and a representative from the HR team.
- 8.22 The employee should be notified of the meeting at least 5 working days in advance and advised of the right to be represented. If the employee's representative is unavailable to attend at the appointed time, the employee may request postponement and suggest an alternative time and date. If this is reasonable and within 5 working days of the original date, the meeting will be postponed.
- 8.23 The purpose of the meeting is to consider whether the employee should be dismissed on the grounds of capability. Dismissal on grounds of capability means that the employee's health is such that they cannot satisfactorily do the work they are employed to do. Ultimately, the Council does not have to retain the services of any employee who cannot for whatever reason attend work on a regular basis and by definition fulfil their contractual obligations to their employer. Each case will be dealt with on its own individual merits and particular circumstances in the light of the following information:-
- The employee's attendance record
 - The steps that have been taken to support them in achieving the required level of attendance
 - Any mitigating circumstances the employee may wish to be taken into account
 - Any occupational health advice that has been received
 - Other information that may have been collected during previous Formal Absence Discussions
- 8.24 Following the meeting a decision will be taken by the Head of Service in consultation with the Head of Human Resources whether to dismiss the employee on the grounds of capability. No decision to dismiss can be taken without the agreement of the Head of Human Resources.
- 8.25 The **Formal Warning** may be extended to allow time for improvement in sickness absence levels. The option of allowing further time for improvement

will only be considered if there is evidence that this is likely to lead to the required improvement in attendance.

- 8.26 The Head of Service will confirm the decision in writing as soon as reasonably practicable and give details of the appeal process. In the case of dismissal the employee will be provided with the reasons for it and the date on which employment will terminate.
- 8.27 In the event that a **Formal Warning** is extended, the individual's sickness absence pattern will be monitored over an appropriate, specified period and regular reviews will be undertaken by the Manager during the monitoring period.

9. Appeals

- 9.1 An employee has rights of appeal against decisions taken. Appeals against action short of dismissal are heard by a member of CMT who has not previously been involved in the case. Appeals against dismissal are heard by the PRP and Appeals Panel.
- 9.2 If an employee wishes to appeal s/he must do so in writing within ten working days of the receipt of written notification of the decision.
- 9.3 The outcome of the appeal will be notified either immediately after the hearing and confirmed in writing, or in any event by written notification within ten working days of the appeal hearing.

10 Long Term Sickness Absence and Ill Health Dismissal

- 10.1 Consecutive medical certificates are needed to cover the full period of long term absence and the employee must contact their line manager each time a new medical certificate is obtained.
- 10.2 The underlying principle in the management of long term absence is to balance the service needs against the circumstances of the employee concerned. Each case will be assessed individually. The HR Manager will work in close partnership with the employee's line manager.
- 10.3 The HR Manager may, as appropriate, arrange a mutually convenient time to visit the employee at home to discuss their well-being and the circumstances relating to their sickness absence. The visit may include gaining written consent to obtain medical information. (appendix C).
- 10.4 The line manager or nominee will also maintain regular contact with the employee, ideally at least every two weeks to prevent the employee feeling isolated, ensure their welfare needs are being met and to keep them updated with any developments at work which may affect them. Contact may be by telephone, letter or home visits.
- 10.5 A meeting either at home or at work, must be arranged with the employee at a time to suit them. They can have friends, family, colleagues or their Trade

Union representative present. And will be advised of this when making any arrangements.

- 10.6 Medical referral (see also 7 above) is needed in the majority of cases of long-term absence. This should occur at the earliest practical opportunity in order to gain a speedy and useful response.
- 10.7 The Occupational Health Advisor may seek further medical advice on the nature of the employee's illness, whether and when the employee is likely to be able to return, whether they are likely to be able to return full-time or part-time for a while, or whether they will need alternative work.
- 10.8 When the employee returns to work a Return to Work Meeting must be held and a Self-Certification and Return to Work form completed.
- 10.9 An employee recovering from long-term sick leave must be properly monitored and managed by the line manager. Where a temporary reduction in working hours is arranged the difference in hours between the actual hours to be worked and the contractual hours will be recorded as sick leave. Other arrangements may include temporary revision of workloads and/or refresher training.
- 10.10 If, following review, permanent adjustments need to be made, all reasonable steps will be taken to accommodate the changes. The aim is, as far as is practical, to facilitate continued employment.
- 10.11 When medical advice indicates that the employee may have become incapable of undertaking their duties, the Council's Ill health Dismissal Procedure will be discussed with the employee. If the employee is a member of the local government pension scheme, the Ill health retirement process will be discussed. (summarised at appendix G).

11 Terminal Illness

- 11.1 When the Council becomes aware that an employee has a terminal illness the following needs to be taken into account:
 - The employee may not be aware that the illness is terminal if the medical practitioner has decided that it is not in the person's best interest to be informed of their condition.
 - The financial entitlement available to relatives on the death of the employee may be substantially more if the employee remains employed by the Council until the time of death.
 - People are affected differently by the knowledge that they are terminally ill. Some may wish to continue working for as long as they are able while others may find it impossible to remain at work.
 - The Council is sympathetic to the employee's situation and will manage the employee's situation on an individual basis, giving careful consideration to the employee's interests.
 - The Council will be mindful of the pension benefits that can accrue and the length of service qualifications that apply to those benefits. Where

possible, decisions about retirement will aim to provide the employee with the most financially beneficial result.

12 Sickness during annual leave

12.1 If sickness absence occurs during a period of annual leave the employee may submit a doctors note. The absence will then be redefined as sick leave for the period stated on the certificate.

13 Sickness Pay

13.1 An employee absent from work due to illness is entitled to receive sick pay, depending on their continuous service in Local Government, as follows :-

Service	Full Pay	Half Pay
Less than 4 months	1 month	None
After 4 months but less than 1 year	1 month	+ 2 months
After 1 year but less than 2 years	2 months	+ 2 months
After 2 years but less than 3 years	4 months	+ 4 months
After 3 years but less than 5 years	5 months	+ 5 months
After 5 years	6 months	+ 6 months

13.2 The Council has the discretion to extend the application of the above scale in exceptional circumstances.

13.3 The Payroll Team will notify the employee at the earliest opportunity of any reduction in sick pay entitlement.

13.4 Sickness absence during the twelve months immediately preceding the first day of current absence will be included in the calculation for sick pay entitlement.

13.5 Further details of entitlement to sick pay is available from the Payroll Team.

14 When the Disciplinary Policy Applies

14.1 Most issues relating to absence and non compliance are managed within the formal stages of this policy.

14.2 The Disciplinary Policy will be used for offences that may be regarded as gross misconduct such as:-

- Making a false claim of incapacity for work due to ill health
- Deliberate falsification of self or medical certificates

- Abuse of the sickness scheme, for example, by undertaking paid or unpaid work elsewhere whilst on sick leave without permission

15 Further detailed advice and guidance on the use of the Sickness Absence Policy and Procedures is available from Human Resources.

Appendix A - Disability Discrimination Act and Sickness Absence Management

1. Introduction

The Disability Discrimination Act (DDA) provides protection for disabled people against discrimination. As a major piece of employment legislation, the DDA has significant and wide-ranging implications for the Council's HR practices. The following guidelines advise managers on particular issues which may arise in relation to sickness absence management under the DDA. The Council acknowledges that disability is by no means generally synonymous with sickness and therefore not with sickness absence. However, the guidelines recognise that some disabled people will have conditions which are from time to time relevant in terms of sickness absence management. In addition the Council wishes to maintain absence and sickness management procedures which are consistent with the general requirements of the DDA.

2. The Issues

The DDA impacts on current sickness absence management in three key ways:

- The Act provided a new legal definition of a 'disabled person' and repealed the previous system of 'registration' under the 'green-card' scheme. Employers can no longer rely solely on information that someone has previously been or not been 'registered' disabled in order to assess them as having a relevant disability.
- Under the DDA, an employer unlawfully discriminates against a disabled person where, for a reason "related" to their having a disability, they receive (unjustified) less favourable treatment than they would otherwise receive.
- HR procedures (including sickness absence management procedures) which have a potentially detrimental effect on a disabled person (for a reason 'related' to their having a disability) may now be tested for justification under the terms of the DDA.
- An employer also unlawfully discriminates if they fail (unjustifiably) to meet any duty to make a "reasonable adjustment" in relation to a disabled person under section 6 of the Act.

3. Disability under the DDA

Under the DDA a disabled person is now defined as a person with:

"A physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities".

Within the range of disabilities covered by the Act some may raise particular issues in terms of sickness absence management. For instance, there may be special considerations when managing people with mental impairments or progressive conditions e.g. people with multiple sclerosis, cancer or HIV infection. There is however no general requirement for managers to become experts on disability - as the overriding issue under the DDA is that they do not unlawfully discriminate.

This approach is consistent with advice on good sickness absence management practices. Managers are not encouraged to delve into the medical cause or source of an employee's sickness - this may lead them to make unfounded judgements or an unsubstantiated prognosis. This should be left to advice from relevant medical personnel. Under sickness absence management the management concern is with the implications of the employee's absence. Under the DDA, the concern will be to

avoid discriminatory treatment while also managing the disabled person in terms of sickness absence management objectives. In both cases, managers need to consider the effect of the person's sickness / disability in terms of their employment (or potential employment). They then need to respond appropriately within the context of the individual and particular circumstances of, or surrounding, the post involved.

4. Disability and Sickness (Related) Absence

As underlined in the introduction above disability should not be automatically associated with sickness. Unfortunately, the term 'disability' can sometimes be confused wrongly with the concept of illness / poor health and consequently 'sickness'. Certainly, there is a key difference between many forms of disability and illness. For instance, a person who is blind or deaf should not be regarded as being 'sick' but as disabled due to their having an 'impairment'. It is important for managers to realise this, as confusion could cause an affront to many disabled persons who quite rightly do not consider being disabled a 'sickness'.

This is not to say that someone may not have a disability which is in practice associated with some level of sickness absence due to incapacity. For example, an employee with severe asthma or epilepsy - covered under the Act - who is unable to attend work, due to an attack or seizure, will be absent due to disability related sickness. (In practice it is important to stress that many such disabilities will in fact be 'controlled' by medication or treatment negating the need for sickness absence). The same disabled person could nevertheless also be absent due to a common cold, flu, sprained or broken limb.

The key issue in relation to sickness absence management is that, where the effects of a person's disability results in a need to be absent from work due to illness or where a disabled person requires leave which is directly associated with their disability this will need to be accommodated within the terms of the DDA. A failure on the part of an employer to acknowledge these needs could amount to a failure to make a 'reasonable adjustment'.

General sickness absence - which will apply to disabled and non-disabled people - is unaffected by the DDA and local sickness absence management procedures will apply.

5. Reasonable Adjustments under Sickness Absence Management

Under the DDA employers have a positive duty to make "reasonable adjustments" where any aspects of working arrangements (including premises) place a disabled person at a substantial disadvantage.

This key obligation under the Act is likely to arise in two respects within the sickness absence management context:

- firstly the job itself may need to be adjusted in order that the employee may return to work following a period of sickness absence;
- secondly, it may be deemed a "reasonable adjustment" to accept that the disabled person will need some level of absence from their work;

The DDA sets out a range of specific types of 'reasonable adjustment' that an employer may need to make. These include:

- making adjustment to premises;
- allocating some of the disabled person's duties to another person;
- transferring the person to fill an existing vacancy;
- altering the person's working hours;
- assigning the person to a different place of work;
- allowing the person to be absent during working hours for rehabilitation, assessment or treatment;

- giving the person, or arranging for them to be given, training;
- acquiring or modifying equipment;
- modifying instructions or reference manuals;
- modifying procedures for testing or assessment;
- providing a reader or interpreter; and
- providing supervision.

The basis of the requirement to make a reasonable adjustment is to prevent the disabled person from facing a “substantial disadvantage” compared to people who do not have their disability. This is to give a disabled person a fairer opportunity to be assessed on their true merits and not purely from the perspective of their disability. However, where even after an adjustment is considered or made the person still cannot fulfil the requirements of the job - or where the adjustment is not reasonable for the employer to make, then (in these circumstances) it need not be carried out by the employer.

The assessment of ‘reasonableness’ will be based on all the relevant circumstances including effectiveness, practicability and financial consequences. The Code of Practice advises that an adverse reaction from other employees will not be a justifiable reason for not making an otherwise ‘reasonable adjustment’. Larger employers such as local authorities are likely to face a higher burden of proof in this regard.

6. Suitable Redeployment and Reasonable Adjustment

It is well established under general employment law, that an employer should first seek ‘wherever possible’ to redeploy, prior to dismissal of an employee (on capability grounds) due to their sickness absence record. This does not mean that the employer has to create a special post but that suitable ‘redeployment’ should be offered, if available.

Under the DDA the requirement of reasonable adjustment may lead to potentially greater obligations on the employer - this could mean either making significant alterations to a disabled person’s original post to prevent ‘substantial disadvantage’ or redeployment to a more suitable position. This new post may also require reasonable adjustments to be made.

In practice the requirement to make reasonable adjustment and redeployment will warrant similar consideration, since the outcome will, in all likelihood, be either to allow for greater flexibility in the original job requirements or to redeployment to a different more ‘suitable’ post. In most cases, the main impact of the DDA will be the detailed obligation to consider the steps outlined earlier (see Reasonable Adjustments under Sickness Absence Management).

7. Unrelated Sickness Absence

Where absence or leave requirements are unrelated to the employee’s disability they will not fall under the scope and protection of the DDA. As indicated above, general cases of sickness absence affecting disabled or non-disabled people should be dealt with according to general sickness absence management and employment law guidelines.

PRIVATE & CONFIDENTIAL SELF CERTIFICATION & RETURN TO WORK

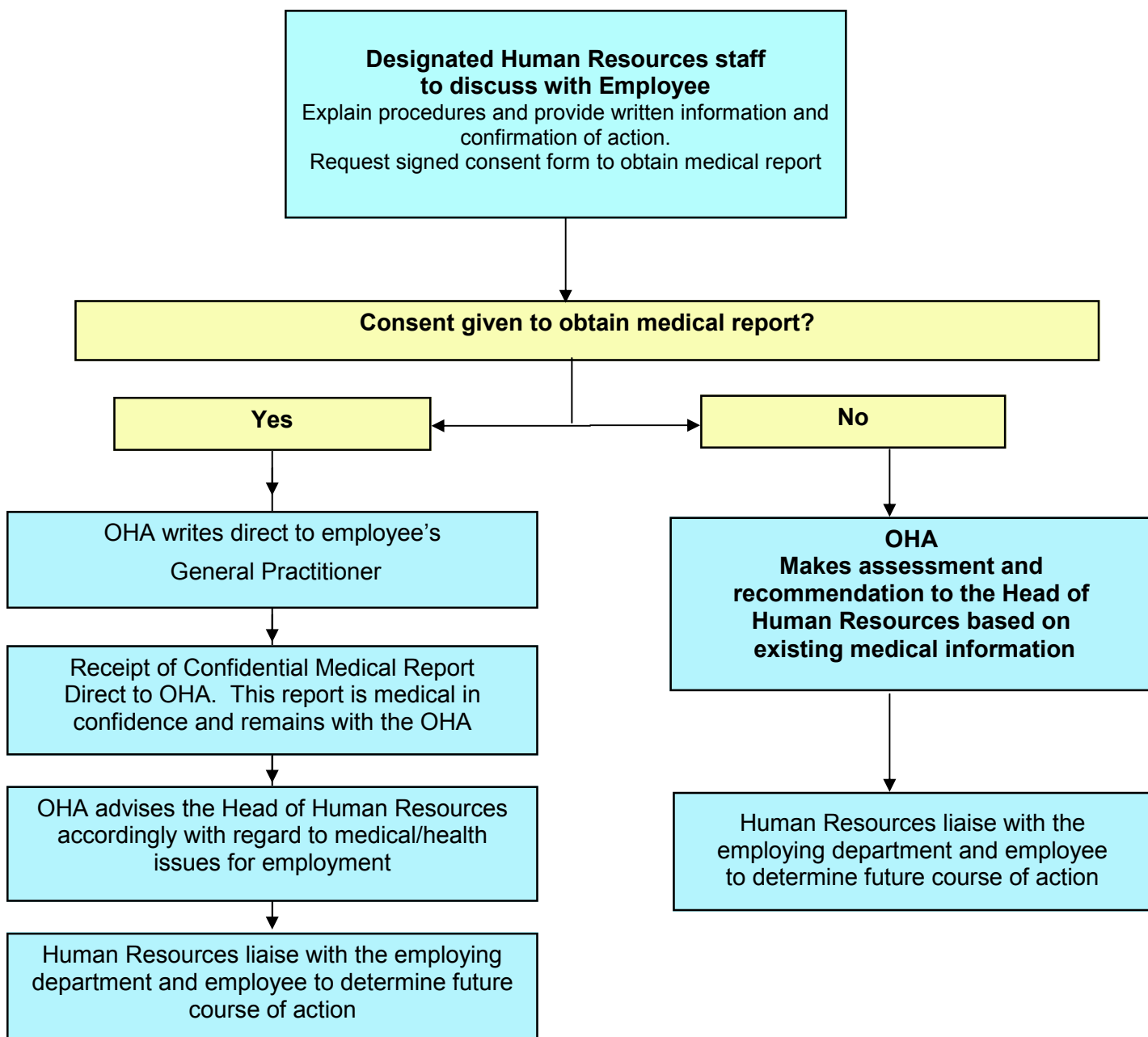
SECTION ONE: SELF CERTIFICATION (to be completed by the employee on return to work)			
Name (Print)			
Department			
Sickness Absence	First day of absence		Last day of absence
	Time absence started		
Reason for absence / symptoms			
Medical Certificate from GP (required after 7 calendar days)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If Yes	Certificate Start Date		Certificate End Date
Number of days that would have been worked if not on sick leave			

SECTION TWO: RETURN TO WORK MEETING (to be completed by the manager and the employee)	
Total number of working days absence in the preceding 12 months (commencing from the first days' absence for this period and excluding Bank Holidays)	
Number of instances of short term absence in last 5 months	
<p>Comments: • Confirmed fit to return to work? • Is the problem likely to be ongoing? • Confirmed reason for absence? • Were the causes of the absence work-related? • Further guidance needed from Occ Health / HR?</p>	

SECTION THREE: AGREED ACTION			
ACTION AGREED	Is Further Action Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Is this a potential industrial injury?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Refer to HR / Occupational Health?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Formal Discussion First / Second / Final	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		Date set:	
Comments:			

Following the Return to Work meeting I am satisfied that the above information is accurate and that the employee has complied with the Council's sickness absence reporting procedures.			
Employee Signature		Date	
Line Manager Signature		Line Manager Print	

APPLICATION FOR EMPLOYEE MEDICAL REPORT
 All applications are processed in accordance with the Access to Medical Reports Act 1988



PURPOSE OF A MEDICAL REPORT is to determine:-

- If the employee is on long term sick leave, whether they are likely to return to work and if so, when;
- If the employee returns to work whether they can return to full duties

or

- If the employee is returning to work whilst undertaking continued medical treatment or medication that may require a Health and Safety Risk Assessment
- If the employee is returning to work with a disability which may require an adjustment to duties
- If the employee needs a temporary period of rehabilitation

Please ask for
Direct Dial

Fax

Our ref

Email @cherwell-dc.gov.uk

Your ref

Date

Dear

Sickness Absence: First/Second/Final Formal Discussion

In accordance with the Council's Sickness Absence Procedure and following your recent period of sickness absence, I am writing to advise you that you are required to attend a **(First/Second/Final)** Formal Discussion. This meeting will take place on **(date/time)** in **(location/room)** with **(name/s)** to discuss your sickness absence record.

The purpose of the meeting is to **(Amend according to formal stage – for example, discuss your sickness absence record and the reasons for the absence and to agree a course of action that will help you to improve your attendance record)** Attached is a copy of the Council's Formal Sickness Absence Discussion Form for your information.

You are entitled to be accompanied to this meeting by a Trade Union representative or colleague of your choice (not acting in a legal capacity) for which you will need to make suitable arrangements.

If you have any queries regarding this please do not hesitate to contact me.

Yours sincerely

(Line Manager/ Head of Service)

Encs

cc: Human Resources

PRIVATE & CONFIDENTIAL FORMAL ABSENCE DISCUSSION

This form is to be completed by the **Line Manager and Employee** during a Formal Discussion.

Department					
Employee Name					
Line Manager's Name					
Other(s) Present					
Meeting Date		First Formal Discussion	<input type="checkbox"/>	Second Formal Discussion	<input type="checkbox"/>
Sickness Absence Dates During Monitoring Period					
Reason for Formal Discussion					

Comments	
Manager	
Employee	
Actions agreed (inc. targets and timescales)	
Signed (Line Manager)	
Signed (Employee)	
	Date:

Note: Please attach additional information if required

Human Resources

Anne-Marie Scott FCIPD Head of Human Resources



DISTRICT COUNCIL
North Oxfordshire

Bodicote House
Bodicote • Banbury
Oxfordshire • OX15 4AA
Telephone 01295 252535
Textphone 01295 221572
DX 24224 (Banbury)
<http://www.cherwell-dc.gov.uk>

PRIVATE & CONFIDENTIAL

NAME
ADDRESS

Please ask for **Anne-Marie Scott** Our ref Your ref
Direct Dial **01295 221731** Fax **01295 227993** Email **anne-marie.scott@cherwell-dc.gov.uk**

Date

SAMPLE FORMAL WARNING: SICKNESS ABSENCE

Dear

Formal Warning: Sickness Absence Discussion

I refer to my meeting with you on (date) at which (names) were also present and you were represented by (name / chose not to be represented). The meeting was held to discuss your (absence levels/compliance with the Sickness Absence policy) which are being formally monitored under the Council's Sickness Absence procedures. A summary of (absences/non compliance) during the last 12 months is attached and a copy of the completed Formal Absence Discussion form.

During the meeting a target of XX days absence during the next 3 month period was set. You will be monitored during monthly meetings for the next 3 months. This warning will remain on your file for 6 months and failure to improve, or further deterioration in attendance levels, may lead to the Council invoking the next formal stage of the procedure which could ultimately lead to your dismissal.

You have a right of appeal against this decision. If you wish to exercise this right written notice of your appeal must be made initially to the Head of Human Resources within 14 days of receipt of this letter.

Yours sincerely



Local Government Pension Scheme Ill-health retirement process

1. Introduction

The new Local Government Pension Scheme (LGPS) was introduced on 1st April 2008. A three tier ill-health retirement approach was implemented as part of the new LGPS. This process outlines how Cherwell District Council complies with the LGPS ill-health pension requirements.

2. Entitlement

Employees must have at least three months continuous LGPS membership in order to qualify for ill-health benefits. Deferred members can request ill-health benefits at any time and payment of deferred benefits will be in accordance with the regulations in place at the date of leaving.

3. Tiers

Providing a member satisfies the qualifying criteria outlined in Section 2 and the Council determines:

- To terminate a member's employment because a member's ill-health condition renders him permanently incapable of discharging efficiently the duties of his current employment; and
- The member has a reduced likelihood of obtaining gainful employment¹ before his normal retirement age;

the member will be entitled to an ill-health pension.

First tier

If it is determined that there is no reasonable prospect of the member obtaining gainful employment before they reach normal retirement age, the member's pension will be based on:

- Accrued membership; and
- 100% prospective service.

Second tier

If it is determined that although the member cannot obtain gainful employment within a reasonable period² of leaving employment, it is likely that the member will be able to obtain gainful employment before normal retirement age, the members pension will be based on:

- Accrued membership; and
- 25% of prospective service.

Third tier

Providing a member satisfies the qualifying criteria outlined in Section 2 and the Council:

- Terminates the member's employment because it is determined that the member is

¹ Gainful employment is defined as "paid employment for not less than 30 hours per week for a period of not less than 12 months".

² Reasonable period is defined as a period of 3 years.

permanently incapable of discharging efficiently the duties of their current employment; and

- Determines that the member is likely to obtain gainful employment within a reasonable period of leaving employment;

such a member (who would not be entitled to a first or second tier pension) will be entitled to their annual accrued benefits payable as a pension until the member finds gainful employment or payments are stopped following a formal review (See Section 7). Once payments have ceased they should not be reinstated.

4. Process

Before the Council makes any decision in relation to the possible award of an ill-health benefit it must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine (IOHP). Before instructing any IOHP, the Council must confirm with the relevant administering authority that it approves of the proposed IOHP and provide a specimen signature.

The HR Manager will arrange completion of the LGPS ill health retirement form and ensure the relevant administering authority procedure is followed and an appropriate and complete certificate is obtained from an IOHP. Once all relevant information has been collated a decision will be made by the Head of Human Resources and another member of the Council's Corporate Management Team in accordance with Section 5 of this process.

5. Decisions

The decisions regarding whether a member is eligible to receive an ill-health benefit and if so which tier of benefit will apply will be made by the Head of Human Resources a member of the Council's Corporate Management Team. In reaching any decisions the following factors will be considered, as appropriate:-

- eligibility criteria;
- the reasons for terminating the member's employment
- medical evidence provided by the IOHP;
- member's role;
- member's working arrangements;
- any relevant guidance given by the Secretary of State;
- current legal framework including case law
- all other relevant factors.

While it is not a relevant factor in determining if a member is entitled to an ill-health benefit or in determining which level of ill-health benefit a member is entitled to, the cost to the Council of awarding an ill-health benefit will need to be established.

The member will be notified of the decision by the Head of Human Resources.

6. Appeal

The member has the right to appeal the decision, initially in writing to the Head of Human Resources.

7. Review of 3rd tier ill-health benefit awards

Members who are awarded a 3rd tier ill-health benefit are required to notify the Council when they subsequently obtain gainful employment. The member should provide the Council with details of the employment, including pay, working hours and length of contract of that employment.

When payments have been made for 18 months the Council must ask the member in receipt of the 3rd tier ill-health benefit if their circumstances have changed. If evidence is obtained that demonstrates gainful employment has been obtained then payments to the member must be stopped. In such circumstances, the Council will be required to inform the relevant administering authority as soon as reasonably practicable that the payments should be stopped.

If gainful employment has not been obtained after 18 months the Council will review the member's circumstances, the Council has the option to seek a further opinion from an IOHP as to whether the member in receipt of the 3rd tier ill-health benefit is, or could become, capable of gainful employment within a reasonable period and by what date. The Council can then terminate payments from the date specified by the IOHP.

If during the review process the IOHP provides an opinion that that the member in receipt of the 3rd tier ill-health benefit will not be able to obtain gainful employment within a reasonable period, the member may become entitled to a 2nd tier ill-health benefit.

Agenda Item 10

CHERWELL DISTRICT COUNCIL

PERSONNEL AND GENERAL COMMITTEE 10 DECEMBER 2008

REPORT OF THE HEAD OF HUMAN RESOURCES

CAPABILITY POLICY

1 Introduction and Purpose of Report

- 1.1 The purpose of this report is to seek approval for the attached capability procedure.

2 Wards Affected

None

3 Effect on Policy

- 3.1 None

4 Contact Officers

- 4.1 Anne-Marie Scott, Head of Human Resources (extension 1731).

5 Background

- 5.1 The aim of the capability procedure is address situations where employees are not meeting the required standards of performance in their job due to a lack of, for example, knowledge, skills or appropriate experience.

- 5.2 The Council does not currently have a capability procedure in place. Failure to deal with situations where a member of staff is not performing adequately can have an adverse effect on:-

- Departmental performance
- Workload and morale of colleagues
- Customer service levels and the reputation of the Council

It is essential therefore that there is a robust mechanism in place.

- 5.3 Line managers have a clear responsibility to recruit, induct, train and monitor the performance of staff. The capability procedure complements the existing human resources policies and procedures that are in place to support them in carrying out this responsibility by giving a further tool to enable them to manage staff effectively.

- 5.4 The procedure sets out the formal process for managing poor performance ending ultimately in the dismissal of the employee if, following appropriate measures to support and assist them, the required improvement in performance is not achieved.

- 5.5 The objective will be to achieve satisfactory service delivery while, where reasonably practical, retaining the employee in the Council's employment. Alternatives such as redeployment to a job in a different work area or demotion will be considered, where appropriate, as alternatives to dismissal.

- 5.6 The procedure is not designed to deal with matters of misconduct, which will be addressed

under the Disciplinary policy.

- 5.7 Similarly for new employees to the Council issues of poor performance will be dealt with under the probation policy and not the capability procedure.
- 5.8 The competence of line managers in the implementation of this policy will be essential to its effectiveness. Training will be provided in its use for staff with line management responsibility.
- 5.9 The staff consultation group including Unison representatives have been consulted and have endorsed this policy.

6 Risk Assessment, Financial Effects and Contribution to Efficiency Savings

6.1 The following details have been approved by Rosemary Watts, Risk Management and Insurance Officer, 01295 221566 Karen Curtin, Chief Accountant, 01295 221551.

6.2 Risk Assessment

The risk associated with not approving the recommendations contained in this report are that there will be no effective mechanism for addressing issues of staff capability, resulting in the Council achieving reduced value for money.

6.3 Financial Effects

None

6.4 Efficiency/Savings

None

7 Recommendations

7.1 The Committee is **RECOMMENDED** to resolve to approve

- (1) The attached capability policy for implementation from 1 January 2009.

Background Papers:

Background

1. This procedure is designed to assist in addressing issues of employee capability as opposed to misconduct, which is covered by Cherwell District Council's Disciplinary Procedure.
2. Procedures are necessary for encouraging fairness and consistency in the treatment of people at work. It is recognised that the onus is on managers to assist employees in reaching appropriate standards of performance by ensuring that effective systems for recruitment, induction, training, performance monitoring and managerial support are in place. These should reduce the need for the Capability Procedure to be used.
3. The day to day supervision of employees is part of the normal managerial process and is outside the scope of this procedure. Any shortcomings should be brought to the employee's attention as soon as possible in an effort to achieve an improvement in an informal way.
4. Once informal measures have been used, and there is still no improvement in performance, managers should consider taking action under either the Capability or Disciplinary procedure.
5. The Capability Procedure applies in cases where an employee is not meeting the required standards of performance due to a lack of ability, where there is no evidence of deliberate misconduct by the employee. The issue is rather one of a lack of capability due to lack of skill, experience, knowledge or aptitude.
6. In some cases there may be an element of culpability and therefore the Disciplinary Procedure is more appropriate. For example, a situation where a measure of personal blame is involved, arising from lack of motivation or inattention. A member of the Human Resources team will be involved in determining which procedure is more appropriate in each individual case.

Who does the procedure apply to?

7. The procedure applies to all employees, including those who are on a temporary or fixed term contract except:
 - the Chief Executive, Monitoring Officer and Section 151 Officer who are covered by separate arrangements.

- Employees who are under probationary periods who are covered by a separate policy.

Use of the Procedure

8. Before using the Capability Procedure, a manager should consider whether an employee's poor performance might be health and/or disability related and whether reasonable adjustments should be made in accordance with the Disability Discrimination Act 1995. The advice of the HR team should be sought at the earliest opportunity.
9. It may still be necessary to follow this procedure but this will be, as far as is reasonably practical, in the context of having clarified the extent to which the employee's health is affected by his/her work (or vice versa). The policy on Sickness Absence should also be referred to.
10. While it is necessary to have formal procedures to address performance issues that have not been resolved, it should be recognised that an employee may find his/her situation uncomfortable or distressing. Personal support for employees is available from the Trade Union or may be made available from other sources.
11. Tact, honesty and clarity are essential. Depending on the individual circumstances it is important to keep an open mind in terms of alternative solutions. This could include considering whether it might be mutually beneficial for an employee to work in a different work area or in a less senior role, either through demotion (where there would be no salary protection) or redeployment (where the Pay protection policy will apply). The overarching aim is to achieve satisfactory service delivery while, where reasonably practical, retaining the employee in the Council's employment.
12. During the formal stages of the Capability Procedure the employee has a right to be accompanied by a trade union representative or work colleague. In addition, the employee has a right to call witnesses.
13. An employee has the right of appeal against any formal decision taken under this procedure or related action.
14. An employee will be given a copy of this procedure before any meetings about his/her capability under this procedure take place.
15. All matters relating to this procedure must be treated as confidential by all parties.
16. Before meeting with an employee under this procedure, the manager should discuss the situation with HR and gather evidence to demonstrate:
 - What are the issues causing the concern, e.g. detail examples of poor service delivery, lack of accuracy, significant mistakes etc?
 - How and when has this been raised with the employee?

- Has consideration been given to any health/disability or personal/domestic issues affecting performance and action taken?
 - How have the issues causing concern been addressed, e.g. further training, mentoring, shadowing, issue of written procedures, extra supervision etc?
 - Other factors which might have a bearing on the situation such as personal circumstances/responsibilities, changes at work etc.
 - What personal support has been offered to the employee?
 - How has the employee responded?
 - How long the staff members performance has been at an unsatisfactory level and the effect any remedial action has had.
17. Where the HR Manager is satisfied that suitable performance management techniques have been followed and there has been no significant improvement in the employee's performance, a capability hearing should be arranged to include the employee, his/her immediate line manager (or more senior manager as appropriate) and an HR Manager (as appropriate), under the Capability Procedure.

Before the hearing

18. The employee must be given at least five clear working days' written notice of a hearing, the intention being to agree a mutually convenient date. The notice must inform the employee of the allegations and their basis and the fact that they will have the right of appeal and to be accompanied. Where appropriate and practical, the appropriate trade union will be informed of the date of the hearing. In any event, it is important to hold the hearing as soon as reasonably possible. A copy of the evidence will be issued with the notification letter and to the employee's representative where appropriate.
19. In the written notice of the hearing the following will be made clear:
- that s/he is required to attend a capability hearing under the procedure
 - the reasons for the hearing, including the specific issues to be addressed and all supporting evidence
 - the time and place of the hearing
 - the right to be represented or accompanied by a trade union representative or work colleague
 - that reasonable adjustments will be made to the arrangements for the hearing on request for employees with a disability or who require additional support.
 - Similarly, the needs of the employee's representative or any witnesses should be accommodated where reasonably practical.
 - That s/he will have the right to appeal.
20. If either party intends to present written evidence at the hearing, this must be received in time for management to circulate a copy to all interested

parties so that they can consider it fully before the hearing. The employee can request the hearing be delayed if additional time is needed to consider documentation. Where witnesses are to be called, by either side, these should be named to both sides before the day of the hearing. If any substantial new evidence appears at the hearing, an adjournment must be offered. All relevant papers must be given to all parties present.

The Panel

21. The panel hearing the evidence will be made up of 2 members of the Extended Management Team with a member of the HR team to provide policy advice. All panel members must be completely independent and have had no previous involvement with the case.

The Capability Hearing

22. At the hearing the employee must be reminded that it is part of the Council's Capability Procedure. In addition, the employee must be reminded of his/her rights under the procedure and the details of the reason for the hearing. The following should be discussed:
 - the reasons why action under the capability procedure has been initiated, including evidence of poor performance
 - background to the performance problem
 - what is agreed in terms of an improvement plan, how satisfactory performance is to be measured and the timescales for improvement and review
23. The employee or his/her representative must be asked to give his/her views and suggestions and to explain any factors which affected performance.
24. Having listened to this input, the chairman of the panel will decide on the appropriate action or sanctions to be taken.
25. The hearing will normally proceed in the following order: The Chairman will:
 - introduce those present at the meeting
 - invite the officer presenting the case to state it (including hearing any witness statements)
 - invite the employee or his/her representative to question the presenting officer on the statement
 - invite the employee or his/her representative to state his/her case (including hearing any witness statements)
 - invite the officer presenting the case to question the employee on his/her statement
 - invite other members of the Panel to put questions to either party and then ask his/her own questions
 - invite the officer presenting the complaint to summarise (no new evidence should be presented at this stage)

- invite the employee or his/her representative to summarise his/her statement (no new evidence should be presented at this stage)
 - ask both parties to withdraw
 - ask the Panel to consider the case and then the Chairman will come to a decision
 - call back both parties to announce the decision or to advise that a decision will be communicated in writing at a later date
 - advise of the right of appeal
26. The hearing is, of necessity, a formal meeting and therefore it is important to follow a sequence which allows all parties to participate fully and to gain a clear understanding of both the current position and what needs to happen in the future. However, the meeting should be conducted in a manner which supports and encourages the employee and reiterates the goal of achieving an effective improvement in performance.

Actions resulting from the hearing

27. After the deliberation at the conclusion of the hearing, the employee will be informed of the outcome and of any action to be taken. The outcome should be given as soon as possible and in any case within no more than five working days. It will be confirmed in writing.
28. The employee will be reminded of the right of appeal which must be made within 10 working days of the written outcome. The management notes taken at the hearing will be circulated to all parties with the written outcome. Any disagreement by the employee or his/her representative as to the accuracy of the record should be noted.
29. In concluding the capability hearing, the chair will consider carefully whether any further action is necessary apart from any relating to the individual, such as whether there is a need to review or change any working practices as a result of what has been presented.
30. Where a First Written Warning is issued, the following should be made clear in writing:
- the expectations in terms of 'satisfactory performance' – this should be clearly described
 - the measures which will be put in place to support and assist the employee in achieving a satisfactory improvement
 - when review meetings will be held
 - timescales
 - what will happen if the required improvement is not forthcoming.
31. A note of the outcome of the meeting should be agreed and signed by the manager and the individual and copied to the HR team to be placed on the individual's personnel file.

32. If an employee's performance does not improve in the stated period following a first written warning, a further hearing should be arranged after which, where appropriate, a Final Written Warning will normally be issued. A final written warning may also be appropriate after the first meeting under this procedure where an employee's shortcomings are exceptionally serious.
33. A final written warning will make it clear that any further failure to reach the required standards could result in dismissal. It is of course essential that any training or other support agreed as a means to assist the employee in achieving the desired outcome is delivered effectively and on time.
34. In addition to warnings under the procedure, action might include:
 - no further action where there is no case to answer
 - withholding increments or career grade progression until a satisfactory level of performance has been achieved
 - redeployment to an alternative post
 - demotion
 - dismissal

Dismissal

35. In cases where the employee's performance remains unsatisfactory despite warnings and the agreed support given, a further hearing will take place and dismissal will normally result. In some cases of gross incapability with no real prospect of improvement, and where there is no practical alternative, dismissal may be appropriate without prior warnings. In all cases the decision to dismiss requires the agreement of the Head of Human Resources.

Appeals

36. An employee has the right of appeal against capability. For first written warnings, this appeal will be heard by 2 independent Heads of Service.
37. In the case of a final written warning, dismissal or demotion the appeal will be heard by the Appeals Panel.
38. If an employee wishes to appeal against a capability decision, she/he should do so in writing to the Head of Human Resources within ten working days of the receipt of the written notification of the capability decision.
39. The outcome of the appeal will be notified either immediately after the hearing and confirmed in writing, or in any event by written notification within five working days of the appeal hearing.

Capability Records

40. Employees subject to action under the capability procedure will have access to their personal records in accordance with data protection legislation. After the satisfactory completion of any actions resulting from a capability hearing all records will be removed from the employee's personal file. The specified period of retention on this file will not normally be less than one month or longer than 12 months, other than in exceptional circumstances.

Financial Irregularities

41. Any investigation into financial irregularities when investigating an employee's performance must involve Internal Audit.

Trade Union Officials

42. Trade union officials are subject to the normal capability procedure. However, no formal action will be taken against a trade union official until the circumstances of the case have been discussed with a full-time officer of the union.

Probationary Period

43. There are separate procedures covering employees who are in their probationary period.

Review of the Procedure

44. The procedure will be monitored continuously and will be subject to formal review after three years by the Head of Human Resources in conjunction with the relevant trade unions.

By virtue of paragraph(s) 1, 4 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

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