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Cherwell District Council

Personnel Committee

Minutes of a meeting of the Personnel Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 18 January 2012 at 6.30 pm

Present: Councillor Victoria Irvine (Chairman)
Councillor Lawrie Stratford (Vice-Chairman)

Councillor Ken Atack
Councillor Norman Bolster
Councillor Russell Hurle
Councillor Mike Kerford-Byrnes
Councillor George Parish
Councillor Rose Stratford
Councillor Lynda Thirzie Smart
Councillor Barry Wood

Apologies for absence: Councillor G A Reynolds
Councillor Alaric Rose

Officers: AnneMarie Scott, Head of Transformation
Stephanie Rew, HR Manager
James Doble, Democratic and Elections Manager

21 **Declarations of Interest**

There were no declarations of interests.

22 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

23 **Urgent Business**

There was no urgent business.

24 **Minutes**

The minutes of the meeting held on 14 December 2011 were agreed as a correct record and signed by the Chairman.

Members thanked Anne-Marie Scott for her service to the Council and wished her every success at the London Borough of Hounslow.

25 **Proposed Joint Local Discipline and Dismissal Policy, Procedures and Guidance for Statutory Officers of Chief Executive/Monitoring Officer/Section 151 Finance Officer and Proposed Joint Disciplinary Policy and Procedures**

The Head of Transformation submitted a report to request approval from the Committee for the new joint Councils policy on Discipline and Dismissal Policy, Procedures and Guidance for Statutory Officers of Chief Executive/Monitoring Officer/Section 151 Finance Officer and the Joint Disciplinary Policy and Procedures for all staff. The two policies would cover all staff employed by both South Northamptonshire Council and Cherwell District Council.

In the course of discussion members noted that whilst damage to council property and reputation was included this should be elevated in the policy and additionally references to Unison should be made generic to trade unions.

Resolved

- (1) That the two disciplinary and dismissal policies and procedures for statutory officers and all staff (set out in the annex to these minutes as set out in the minute book) be approved.

26 **Proposed Joint Home-Working Policy**

The Head of Transformation submitted a report to request approval for the new joint Home Working policy, which would cover all staff employed by both South Northamptonshire Council and Cherwell District Council.

It was noted that the next review of this policy should include information relating to video conferencing.

Resolved

- (1) That the Joint Home-Working Policy (set out in the annex to these minutes as set out in the minute book) be approved.

27 **Pay Policy for Posts within Shared Teams**

The Head of Transformation submitted a report to request approval for the Pay Policy for posts within shared teams. The policy was intended to cover all staff employed in shared posts across both South Northamptonshire Council and Cherwell District Council.

Resolved

- (1) That the Pay Policy for Posts within Shared Teams (set out in the annex to these minutes as set out in the minute book) be approved.

28 **Joint Staff Grievance Policy and Procedure**

The Head of Transformation submitted a report to request approval for the new joint Staff Grievance Policy and Procedure which was intended to cover all staff employed in both organisations.

Resolved

- (1) That the revised Joint Grievance Policy Report of Head of Transformation

29 **Exclusion of the Public and Press**

Resolved

That, in accordance with Section 100A(4) of Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, on the grounds that they could involve the likely disclosure of exempt information as defined in paragraphs 1, 3 and 4 of Schedule 12A of that Act.

30 **Business Case for Shared ICT Service**

The Head of Transformation submitted a report to seek agreement to the proposed new structure for a shared ICT service between Cherwell District Council and South Northamptonshire Council, which has been consulted on among staff during December 2011.

Resolved

- (1) That the proposed Shared ICT Service, HR Business Case (set out in the annex to these minutes as set out in the minute book) be approved.

The meeting ended at 7.05 pm

Chairman:

Date:

Minute Item 25

APPENDIX A

Local Discipline and Dismissal Policy, Procedures and Guidance for Statutory Officers of Chief Executive/ Monitoring Officer/ Section 151 Finance Officer

January 2012

1. Introduction

- 1.1 These local procedures for Chief Executives should be read in conjunction with the Joint Negotiating Committee (JNC) for Chief Executives Handbook (Revised edition April 2008).
- 1.2 The Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities is the national negotiating body for the pay and conditions of service of chief executives in England and Wales.
- 1.3 The Authorities' Side consists of elected members nominated by the Local Government Association. The Staff Side consists of chief executives nominated by the Association of Local Authority Chief Executives (ALACE). ALACE is registered as an independent trade union.
- 1.4 These local procedures for Statutory Chief Officers, Monitoring Officer and Section 151 Finance Officer should be read in conjunction with the Joint Negotiating Committee (JNC) for Chief Officers Handbook.
- 1.5 Where there is discretion to adopt locally agreed terms and conditions of service, these will be agreed by the Joint Personnel Committee

2. Purpose and scope

- 2.1 These procedures have been developed to provide a fair and consistent process for specifically dealing with disciplinary action and dismissals, appeals, compromise agreements, and the use of suspension and carrying out investigations for Chief Executives (Head of Paid Service), Monitoring Officer and Section 151 Finance Officer. The policy shall also apply to Deputy Monitoring, Deputy Section 151 Officers and officers deputising for the Head of Paid Service when carrying out functions covered by these posts as opposed to their substantive posts.

3. Key Principles - Procedures for, Discipline, Capability, Redundancy and Other Dismissals

- 3.1 It is for each Council to determine its procedures and practical arrangements for the handling of disciplinary action and the termination of contracts for the Chief Executive, Monitoring Officer and Section 151 Officer. However the Local Authorities Standing Orders (England) Regulations 2001, state a requirement where the matter cannot be resolved informally, that a Designated Independent Person is required to investigate and make a recommendation in the event of disciplinary action being taken against the Chief Executive, Monitoring Officer or Section 151 Finance Officer on the grounds of misconduct or if there is any other proposal to dismiss the Chief Executive, Monitoring Officer or Section 151 Officer for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract.

4. Contemplating Disciplinary Action

- 4.1 Consideration should be given to whether formal disciplinary action is necessary or whether an informal resolution would be a better option. This should be decided by the Joint Personnel Committee based on the advice given by the Head of Transformation, and the Monitoring Officer (or Deputy Monitoring Officer).

- 4.2 Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may wish to approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and as impartial conciliators.
- 4.3 Conciliation is preferable to the use of formal procedures if it can bring about a mutually agreed solution to any problems. While the process itself is informal any resolution should make it clear what specific changes in behaviour and/or performance are expected and within what timescales.

5. **Joint Personnel Committee Responsibilities**

- Dealing with minor instances of unsatisfactory conduct at an early stage.
- Ensuring that the Chief Executive, Monitoring Officer or Section 151 Officer, as applicable clearly understands the standards of conduct expected of him/her.
- Carrying out, or making arrangements for, an investigation when any breach of discipline is alleged.

(It is requested that the Monitoring Officer (or Deputy Monitoring Officer where the investigation is against the Monitoring Officer) and Head of Transformation are contacted for guidance prior to any investigation being commenced)

- Ensuring that the Chief Executive, Monitoring Officer or Section 151 Officer subject to investigation is kept up-to-date with progress.
- Deciding, in the most serious cases (alleged gross misconduct), or where the Chief Executive's, Monitoring Officer's or Section 151 Officer's continued presence at work may hinder an investigation, or put people at risk, whether it may be necessary to suspend the Chief Executive, Monitoring Officer or Section 151 Officer.
- The committee shall inform the Chief Executive, Monitoring Officer or Section 151 Officer of any decision in relation to any action to be taken or not if that is the case.

6. **Chief Executives', Monitoring Officers', Section 151 Finance Officers' Entitlements**

- To be accompanied at all stages by a trade union or other representative at their own cost. However, there may be circumstances where a trade union or other representative may not be available. In these situations a suspension will not be unduly delayed.
- To appeal against those outcomes of a disciplinary investigation.

Where informal resolution is not possible the formal disciplinary procedure should apply.

THE DISCIPLINARY PROCEDURE

7. Issues requiring investigation

- 7.1 Where an allegation is made relating to the conduct or capability of the Chief Executive, Monitoring Officer or Section 151 Finance Officer or there is some other substantial issue that requires investigation, the matter will be considered by the Joint Personnel Committee.
- 7.2 There are specific Regulations that confirm that no disciplinary action can be taken against the Chief Executive, Monitoring Officer or Section 151 Finance Officer other than in accordance with a recommendation in a report from a Designated Independent Person.
- 7.3 The Joint Personnel Committee with the advice of the Monitoring Officer (or Deputy Monitoring Officer where applicable) and Head of Transformation will decide if any allegation made against the Chief Executive, Monitoring Officer or Section 151 Finance Officer should be pursued as formal rather than informal action, and the matter would then be one that would be suitable for an investigation under the disciplinary procedure.
- 7.4 Records will be kept by the Monitoring Officer (or Deputy Monitoring Officer where applicable) of any allegations against the Chief Executive, Monitoring Officer or Section 151 Finance Officer and any decision reached. The records will reflect whether or not the decision was to invoke the Disciplinary Procedure and if not whether any other action was recommended. The records will also detail the advice given by the Monitoring Officer (or Deputy Monitoring Officer where applicable).
- 7.5 In those instances where the procedure has not been invoked but other action is recommended the matter shall be referred to the Head of Transformation such as for sickness absence or performance issues.
- 7.6 Allegations and complaints that are directed at the Chief Executive, Monitoring Officer or Section 151 Finance Officer, but are actually complaints about a particular service, will be dealt with through the Council's general complaints procedure. If the matter is a grievance from a member of staff directed against the Chief Executive, Monitoring Officer or Section 151 Finance Officer, it will be appropriate to first deal with it through the Council's grievance procedure.

8. Timescales

- 8.1 It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.
- 8.2 An important principle when taking disciplinary action is that the process should be conducted expeditiously but fairly. There is, therefore, a need to conduct investigations with appropriate thoroughness, to arrange hearings and allow for representation. It is not in the interests of the Council, or the Chief Executive, Monitoring Officer or Section 151 Finance Officer that proceedings are allowed to drag on without making progress towards a conclusion.

8.3 The role of the Joint Personnel Committee in investigating the allegation will normally be discharged in two meetings. Only in exceptional circumstances will a meeting be adjourned or a further meeting held. The first meeting of the JPC will be to consider whether there is, on the face of it, a case to be investigated. The balance of probabilities is the correct standard of proof. If the decision is that there is a case to answer the Chief Executive, Monitoring Officer or Section 151 Finance Officer will be invited to a second meeting to answer the allegations. At that second meeting the JPC should refer the matter to a Designated Independent Person (“DIP”) unless it is satisfied that no case exists.

8.4 The Chief Executive, Monitoring Officer or Section 151 Finance Officer will be given at least 5 working days notice at each stage of the process.

9. Suspension

9.1 Suspension will not always be appropriate as there may be alternative ways of managing the investigation.

9.2 However, the Joint Personnel Committee will need to consider whether it is appropriate to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Chief Executive, Monitoring Officer or Section 151 Finance Officer might compromise the investigation or impair the efficient exercise of the council's functions.

9.3 In any case, the Chief Executive, Monitoring Officer or Section 151 Finance Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.

9.4 The Head of Paid Service or Monitoring Officer (or Deputy Monitoring Officer where applicable) in consultation with the Chairman or in their absence Vice Chairman of the Joint Personnel Committee and Head of Transformation who hold the delegated power to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer immediately in an emergency if an exceptional situation arises whereby allegations of misconduct by the Chief Executive, Monitoring Officer or Section 151 Finance Officer are such that his/her remaining presence at work poses a serious risk to the health and safety of others or the resources, information or reputation of the authority.

9.5 Any suspension must not last longer than 2 months unless the Designated Independent Person has used his/her power to direct an extension to that period.

10. Power to extend suspension

10.1 The Regulations provide that suspension of the Chief Executive, Monitoring Officer or Section 151 Finance Officer for the purposes of investigating the issue should last for no longer than two months.

10.2 The DIP does not have the power to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer and neither is his/her permission required in order to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer. However, the Regulations provide that where the authority has suspended the Chief Executive, Monitoring Officer or

Section 151 Finance Officer, the Designated Independent Person has the power to direct:

- that the authority terminate the suspension;
- that the suspension should continue beyond the two month limit;
- that the terms on which the suspension has taken place must be varied.

11. Right to be accompanied

- 11.1 Other than in circumstances where there is an urgent requirement to suspend the Chief Executive, Monitoring Officer or Section 151 Finance Officer, he or she will be entitled to be accompanied at all stages.
- 11.2 At important stages (such as attending the Joint Personnel Committee) to answer the allegations, or when the committee receives the report of the DIP and any appeal against the decision of the Committee), if the Chief Executive's, Monitoring Officer's or Section 151 Finance Officer's trade union representative is unavailable for the date set then the Chief Executive, Monitoring Officer or Section 151 Finance Officer will have the right under the provisions of the Employment Relations Act 1999, to postpone the meeting for a period of up to one week.
- 11.3 If the representative is unable to attend within that period the authority will have the right to go ahead with the hearing without further delay, although reasonable consideration should be given to arranging an alternative date.

12 Considering the Allegations or Other Issues under Investigation

- 12.1 The Joint Personnel Committee will, as soon as is practicable inform the Chief Executive, Monitoring Officer or Section 151 Finance Officer in writing of the allegations or other issues under investigation and provide him/her with any evidence that the Committee is to consider including the right to hear oral evidence.
- 12.2 The Chief Executive, Monitoring Officer or Section 151 Finance Officer will be invited to put forward written representations and any evidence including evidence from witnesses he/she wishes the Committee to consider. The Committee will also provide the opportunity for the Chief Executive, Monitoring Officer or Section 151 Finance Officer to make oral representations.
- 12.3 The Joint Personnel Committee will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Chief Executive, Monitoring Officer or Section 151 Finance Officer before taking further action.
- 12.4 The Joint Personnel Committee shall decide whether the issue:
- requires no further formal action under this procedure; or
 - should be referred to a Designated Independent Person.
- 12.5 It is possible in some cases that with some minimal investigation the Joint Personnel Committee can dismiss the allegation without even the need to meet with the Chief Executive, Monitoring Officer or Section 151 Finance Officer. However, this procedure is aimed at dealing with situations where the matter is not so easily dismissed. It therefore provides a process whereby the Chief Executive, Monitoring Officer or Section 151 Finance Officer is

made aware of the allegations and provided with the opportunity to challenge the allegations or to make their response.

- 12.6 When an issue comes before the Joint Personnel Committee it needs to make a judgement as to whether the allegation can be dismissed or whether it requires more detailed investigation by a Designated Independent Person (DIP).
- 12.7 The appointment of a Designated Independent Person is a serious step but does not mean that the Chief Executive, Monitoring Officer or Section 151 Finance Officer is guilty of some misdemeanour. In some cases the eventual result of the investigation will be to absolve the Chief Executive, Monitoring Officer or Section 151 Finance Officer of any fault or wrongdoing. The appointment of a Designated Independent Person operates independently so that both the authority and the Chief Executive, Monitoring Officer or Section 151 Finance Officer can see that matters are dealt with fairly and openly. However, the matter still needs to be handled carefully in public relations terms due to the potential damage to the reputation of the Chief Executive, Monitoring Officer or Section 151 Finance Officer or the local authority. Any subsequent issues that come to light at any stage of the process must be dealt with in the same way as any allegation.

13. Appointment of a Designated Independent Person (DIP)

- 13.1 Cases will vary in complexity but in deciding whether to appoint a Designated Independent Person the Joint Personnel Committee is to consider the allegation or matter and assess whether:
- if it were to be proved, it would be such as to lead to the dismissal or other action which would be recorded on the Chief Executive 's, Monitoring Officer's or Section 151 Finance Officer's personal file; and
 - there is evidence in support of the allegation sufficient to require further investigation.

14. Conducting the initial investigation

- 14.1 It is intended that this stage is conducted quickly with due regard to the facts of the case. At this stage it is not necessarily a fully detailed investigation of every aspect of the case as that will be the responsibility of the Designated Independent Person (if appointed). However, it is important that before any decision is taken to appoint a Designated Independent Person the Chief Executive, Monitoring Officer or Section 151 Finance Officer is aware of the allegations that have been made against him/her (or the issue to be addressed) and given the opportunity to respond.
- 14.2 This will be achieved by:
- The Head of Transformation writing to the Chief Executive, Monitoring Officer or Section 151 Finance Officer setting out the allegations/issues and providing any evidence to be considered.
 - Providing the opportunity for the Chief Executive, Monitoring Officer or Section 151 Finance Officer to respond to the allegations in writing and to provide personal evidence or witness evidence.

- Providing the opportunity for the Chief Executive, Monitoring Officer or Section 151 Finance Officer to appear before the Joint Personnel Committee and to call witnesses.
- 14.3 The Chief Executive, Monitoring Officer or Section 151 Finance Officer will be given at least 5 working days notice at each stage of the process and the Chief Executive, Monitoring Officer or Section 151 Finance Officer is entitled to attend with representation.
- 14.4 Conducting an investigation into allegations or serious issues involving the Chief Executive, Monitoring Officer or Section 151 Finance Officer can be demanding on the individuals involved. The Joint Personnel Committee will have access to the local authority's officers, but given the closeness of relationships between the Chief Executive, Monitoring Officer or Section 151 Finance Officer and the other senior officers this can be a difficult time for those required to advise the Committee, to conduct investigations internally, or to source advice from outside the authority. The Joint Personnel Committee has powers to appoint external advisers as appropriate.
- 14.5 In cases of capability related to sickness or where during the course of any other investigation, the ill-health of the Chief Executive, Monitoring Officer or Section 151 Finance Officer results in their unavailability it will be important that the Joint Personnel Committee has access to appropriate medical advice from the council's Occupational Health Advisor.
- 14.6 Where the issue is one of capability in terms of performance or competence, other than ill-health, the council will need to be in a position to establish or demonstrate the nature of the concerns. Evidence will be necessary in order to justify a further investigation.
- 14.7 This might come from a variety of sources, e.g. performance appraisal records, *CPA* reports. Where the council follows an established appraisal/performance management process, this can also provide an appropriate route to establishing issues suitable for referral to the Committee.
- 14.7 Where the issue is breakdown of trust and confidence, the council will need to be able to establish that the fault for the breakdown could reasonably be regarded as resting solely or substantially with the Chief Executive, Monitoring Officer or Section 151 Finance Officer.

15. Treatment of Witness Evidence

- 15.1 In general, if the authority has witness evidence relating to an allegation this should be presented to the Chief Executive, Monitoring Officer or Section 151 Finance Officer with at least 5 working days notice of any committee attendance. In exceptional cases it might be appropriate to anonymise the evidence in order to protect the identity of a witness. However, it remains important that the detail of the allegation is put to the Chief Executive, Monitoring Officer or Section 151 Finance Officer in order that he/she understands the case against him/her.

16. Conflicts of Interest

- 16.1 There may be occasions when being a witness presents problems of conflict of interest, for example where a member of the committee is a witness to an alleged event or is the person who makes the original complaint or allegation. Councillors in this position should take no part in the role of the

Committee, although they will of course be able to give evidence, if required. Where a number of members find themselves in a prejudiced position, there may be no alternative but for the council to establish a new Committee to perform the function required.

- 16.2 Declarations of interest are matters for individual councillors who are required to follow the Councillor Code of Conduct and can seek advice from their Monitoring Officer (or Deputy Monitoring Officer where applicable). Considerable problems could follow for the speed at which the case is conducted if the Chief Executive, Monitoring Officer or Section 151 Finance Officer considers there are valid grounds for making a formal complaint about the involvement of a councillor in a case.

17. Maintaining the Fairness and Integrity of the Procedure

- 17.1 Where there is a matter that requires investigation it is important that a fair and correct procedure is followed. Allegations against the Chief Executive, Monitoring Officer or Section 151 Finance Officer that require resolution should follow this procedure. It is important that councillors do not undermine the fairness of the procedure by for example putting motions to full council about the case as there is a serious risk that it could prejudice the disciplinary procedure. Additionally, such actions will not only create adverse publicity for the authority and the Chief Executive, Monitoring Officer or Section 151 Finance Officer but may create conflicts of interest and could limit the role that those councillors can then take as the case progresses.
- 17.2 Confidentiality throughout the process is essential to maintain fairness and integrity and therefore the committee should ensure that all documents, paperwork and other evidence are kept strictly confidential.

18. Other Appropriate Actions

- 18.1 It could be that when faced with an issue, whether it be an allegation of misconduct, or connected with the capability of the Chief Executive, Monitoring Officer or Section 151 Finance Officer, or some other substantial issue, the committee might be in a position to consider alternatives to immediately moving to the appointment of a Designated Independent Person or alternatively to dismiss the allegation or issue.
- 18.2 Clearly this will depend on the facts of the matters being investigated. It could be that the authority has another more appropriate policy or procedure to follow. Alternatively, it could be that the issue is one, which might benefit from some mediation or attempts to resolve the particular issue in dispute prior to moving to appointing a Designated Independent Person.
- 18.3 It is possible at any stage to consider the mutual termination of the contract and sometimes this will be a suitable alternative for all concerned. This might particularly be the case where relationships are breaking down but there is no evidence of misconduct attached to the Chief Executive, Monitoring Officer or Section 151 Finance Officer. The Joint Secretaries could be available to assist - following the nationally agreed protocol.
- 18.4 The Head of Transformation has delegated authority to agree to compromise agreements or other financial settlements in conjunction with the Chairman or Vice Chairman of the Joint Personnel Committee.

19. Appointment of Designated Independent Person

- 19.1 The Designated Independent Person must be agreed between the Joint Personnel Committee and the Chief Executive, Monitoring Officer or Section 151 Finance Officer. If there is a failure to agree on a suitable Designated Independent Person the council will ask the Secretary of State to nominate a Designated Independent Person.
- 19.2 Once a Designated Independent Person has been agreed, the Joint Personnel Committee will be responsible for making the appointment, providing the necessary facilities, agreeing remuneration and providing all available information about the allegations. The Joint Personnel Committee should consider delegating the appointment of the Designated Independent Person to the Monitoring Officer (or Deputy Monitoring Officer where applicable).
- 19.3 Where a decision has been taken to appoint a Designated Independent Person it is important that the council moves quickly to achieve this. This is particularly important if the Chief Executive, Monitoring Officer or Section 151 Finance Officer has been suspended because of the two-month time limit on suspension.

20. Terms of Reference

- 20.1 When appointing the Designated Independent Person it is important that they are provided with terms of reference. The DIP will need to be:
- aware of the precise allegation(s) or issue(s) to be investigated,
 - provided with access to sources of information and people identified as relevant to the case,
 - aware of expectations regarding timescales and any known factors which could hinder their investigation, e.g. the availability of key people.
- 20.2 The Joint Personnel Committee will be responsible for providing this information. It will also be in a position to discuss timescales for the Designated Independent Person's investigation.
- 20.3 Although the Designated Independent Person has a degree of independence, it is advisable to agree some protocols for his/her investigation in order that disruption to the council's work is kept to a minimum at what can be a difficult time. The Monitoring Officer (or Deputy Monitoring Officer where applicable) shall be the agreed contact for the Designated Independent Person who will report arrangements with the parties.
- 20.4 During the investigation the Designated Independent Person will as a matter of principle, make every attempt to ensure the appropriate confidentiality of any information obtained and discussed.

21. Remuneration

- 21.1 There is no provision in the Regulations that stipulates the rate of remuneration to be paid to the Designated Independent Person for their work. However, the Regulations do provide (Regulation 7 (4)) that: *'A local authority must pay reasonable remuneration to a designated independent person appointed by the authority and any costs incurred by him in, or in connection with, the discharge of his functions under this regulation.'*

22. Indemnity

- 22.1 One issue that has caused delay and failure to appoint in some cases is the issue of providing the Designated Independent Person with an indemnity. Some DIPs may decline to accept the role unless the authority indemnifies them against any future legal costs arising from the role performed. There has been a difference of opinion as to whether the DIP should have insurance in their own right to cover such an eventuality, or whether the council should provide this or indeed whether it has the power to do so. In the opinion of the DCLG this issue is to all intents and purposes resolved by the wording of Regulation 7(4), i.e. that the Regulations require the council to bear all of the costs of the DIP incurred by him/her in, or in connection with, the discharge of his/her functions under this Regulation.

23. Designated Independent Person Investigation

- 23.1 The Local Authorities (Standing Orders) (England) Regulations 2001 require the Designated Independent Person to investigate and make a report to the Council (the Joint Personnel Committee). The Designated Independent Person should operate on the basis of a combination of independent investigation using his/her powers to access information, and a formal hearing, at which the allegations and supporting evidence including evidence provided by witnesses are stated by the authority's representative and the Chief Executive, Monitoring Officer or Section 151 Finance Officer or his/her representative is able to present his/her case.

- 23.2 Once appointed it will be the responsibility of the Designated Independent Person to investigate the issue/allegation and to prepare a report stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or incapability or supports the need for action under this procedure for some other substantial reason; recommending any disciplinary action (if any is appropriate) or range of actions which appear to him/her to be appropriate for the authority to take against the Chief Executive, Monitoring Officer or Section 151 Finance Officer.

24. Resources

- 24.1 The amount of time required to be spent on the investigation will depend on the case. Due to the demands on their time, the DIP could decide to delegate some of the investigation work to an assistant. This should be agreed with the Joint Personnel Committee and the Chief Executive, Monitoring Officer or Section 151 Finance Officer should be informed. If the work is delegated to someone else outside of the authority this might also require further discussion on any difference in the terms of remuneration for the assistant to the Designated Independent Person.

25. Working Arrangements

- 25.1 Once appointed it will be the responsibility of the Designated Independent Person to investigate the issue/allegation and to prepare a report:
- stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or other issue under investigation; and
 - to recommend any disciplinary action which appears to him/her to be appropriate for the council to take against the Head of Paid Service/Chief Executive, Monitoring Officer or Section 151 Finance Officer.

25.2 The Regulations only require the Designated Independent Person to investigate and report to the council. The methodology to be used should be confirmed with the Joint Personnel Committee. However, the JNC believes that the Designated Independent Person should operate on the basis of a combination of independent investigation using his/her powers to access information, and a formal hearing, at which details of the allegations and supporting evidence are stated by the authority's representative and where the Chief Executive, Monitoring Officer or Section 151 Finance Officer is given the opportunity to respond.

26. Receipt and Consideration of the Designated Independent Person's Report by the Joint Personnel Committee.

26.1 The Joint Personnel Committee will consider the report of the Designated Independent Person and also give the Chief Executive, Monitoring Officer or Section 151 Finance Officer the opportunity to state his/her case before making a decision. Having considered any other associated factors the Joint Personnel Committee may:

- Take no further action
- Recommend informal resolution or other appropriate procedures
- Refer back to the Designated Independent Person for further investigation and report
- Take disciplinary action against the Chief Executive, Monitoring Officer or Section 151 Finance Officer short of dismissal
- Recommend dismissal of the Chief Executive, Monitoring Officer or Section 151 Finance Officer to the Council

27. Report of the Designated Independent Person

27.1 The requirement is that the Designated Independent Person makes a report to the council and to the Chief Executive, Monitoring Officer or Section 151 Finance Officer simultaneously. Unless the Chief Executive, Monitoring Officer or Section 151 Finance Officer is exonerated by the report then at this stage the Chief Executive, Monitoring Officer or Section 151 Finance Officer should be given the opportunity to state his/her case before the committee makes its decision.

28. New material evidence

28.1 Where there is, at this stage, new evidence produced which is material to the allegation/issue and may alter the outcome, the Joint Personnel Committee may:

- take this into account in making their decision, or
- request that the Designated Independent Person undertake some further investigation and incorporate the impact of the new evidence into an amended report.

28.2 The way the evidence is taken into account will depend on its nature. The introduction of new evidence in itself cannot be used to justify a more serious sanction than recommended by the Designated Independent Person. If this is a possibility, the Designated Independent Person should review his/her decision taking into account the new evidence.

29. Recommendations by the DIP - Outcomes or Options

- 29.1 The Regulations require the Designated Independent Person to recommend any disciplinary action that appears to be appropriate. At this stage clarity is to be welcomed and a clear reasoned decision is preferable. However, it could be that there is not one obvious action and it may be that the Designated Independent Person recommends a range of alternative actions. In this case the Joint Personnel Committee would need to select the action to be taken.
- 29.2 Whilst the DIPs role is to make recommendations on disciplinary action, he/she may wish to comment on potential options for the way forward.

30. Decision by the Joint Personnel Committee

- 30.1 The Joint Personnel Committee is required to take a decision on the basis of the Designated Independent Person's report. It is always open to the Committee to impose a lesser sanction than that recommended but it cannot impose a greater sanction.

31. Action Short of Dismissal

- 31.1 Where the decision is to take action short of dismissal the Committee will impose the necessary penalty/action, up to the maximum recommended by the Designated Independent Person.
- 31.2 There is no requirement to seek confirmation by the council. The constitution of the Joint Personnel Committee will need to include the delegated power to take disciplinary action in these circumstances.

32. Dismissal

- 32.1 The Joint Personnel Committee will inform the Monitoring Officer (or Deputy Monitoring Officer where applicable) that it is proposing to the Council that the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer be dismissed and that the Cabinet/Executive objections procedure should commence.

33. Executive Objections Procedure

- 33.1 The Monitoring Officer (or Deputy Monitoring Officer where applicable) will notify all members of the executive of:
- The fact that the Joint Personnel Committee is proposing to the Council that it dismisses the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer.
 - Any other particulars relevant to the dismissal
 - The period by which any objection to the Council is to be made to the Monitoring Officer (or Deputy Monitoring Officer where applicable)

At the end of this period the Monitoring Officer (or Deputy Monitoring Officer where applicable) will either:

- Inform the Joint Personnel Committee that no objections to the dismissal have been received from members of the Cabinet and Executive.

- Inform the Joint Personnel Committee that an objection or objections have been received and provide details of the objections
- 33.2 The Joint Personnel Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are then the Joint Personnel Committee will act accordingly i.e. it will consider the impact of the Cabinet and Executive objections on the report of the Designated Independent Person and relevance to the sanction, commission further investigation by the Designated Independent Person and report if required etc.
- 33.3 Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the Joint Personnel Committee will inform the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer of the decision and put that proposal to the council along with any necessary material e.g the Designated Independent Person's Report.

34. The Role of The Council

- 34.1 The Regulations require that in all constitutions, where there is a proposal to dismiss the Chief Executive, Monitoring Officer or Section 151 Finance Officer, the council must approve the dismissal before notice of dismissal is issued.
- 34.2 Given the thoroughness and independence of the previous stages, in particular, the investigation of the Designated Independent Person it will not be appropriate to undergo a full re-hearing of the case. Instead, consideration by the council will take the form of a review of the case and the recommendation to dismiss.
- 34.3 The Head of Paid Service, Monitoring Officer or Section 151 Finance Officer will have the opportunity to be accompanied by their representative and to put forward his/her case before a decision is reached.
- 34.4 Where the Joint Personnel Committee has made a proposal to dismiss the hearing by the Council will also fulfil the statutory appeal function.

35. Appeals Against Action Short of Dismissal

- 35.1 If the Joint Personnel Committee takes action short of dismissal the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer may appeal to the Appeals Committee. The Joint Appeals Committee will consider the report of the Designated Independent Person and any other relevant information considered by the Joint Personnel Committee i.e new information, Cabinet and Executive objections (if relevant), outcome of any further investigations etc. The Head of Paid Service, Monitoring Officer or Section 151 Finance Officer will have the opportunity to state his/her case.
- 35.2 The Appeals Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision.
- 35.3 The appeal hearing will take the form of a review of the case and the decision that was taken by the Joint Personnel Committee.
- 35.4 This process should follow the Appeals Committee Procedure rules as set out in the Cherwell District Council constitution.
- 35.5 The decision of the Joint Appeals Committee will be final.

36. Appeals Against Dismissal

- 36.1 The ACAS Code of Practice was issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and came into effect by order of the Secretary of State on 6 April 2009 and replaces the Code issued in 2004. The Code requires that an employee who has been dismissed is provided the opportunity to appeal against the decision.
- 36.2 As the Standing Orders Regulations require that the council approves the dismissal before notice of dismissal is issued, there might be some concerns about the ability to offer a fair appeal if the whole council was already familiar with the issues and had already taken the decision to dismiss. Before the council takes a decision on the recommendation to dismiss the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer it will take representation from the Head of Paid Service, Monitoring Officer or Section 151 Finance Officer. Those representations will constitute the appeals process.

APPENDIX B

Disciplinary Policy and Procedures

1. Introduction

- 1.1 Disciplinary rules and procedures are necessary for encouraging fairness and consistency in the treatment of people at work. It is recognised that effective performance monitoring and managerial support should reduce the need for formal disciplinary action.
- 1.2 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. The aim of both informal and formal disciplinary measures is to improve the performance of an employee with a view to helping them to fulfil their duties and responsibilities successfully.
- 1.3 The procedure is designed to establish the facts quickly and deal consistently with disciplinary issues.
 - Employees will be advised of the nature of any complaint against them and they will have the opportunity to explain.
 - Employees will be given the opportunity to state their case and be represented or accompanied by a colleague or Trade Union representative of their choice.
 - Employees will not normally be dismissed for a first breach of discipline except in the case of gross misconduct.
 - Employees will have a right of appeal against any disciplinary penalty or action taken.
 - The level of warning issued by a manager will depend on the severity of the misconduct. The sanction for gross misconduct will normally be dismissal without notice and without pay in lieu of notice.
 - Where an employee's record shows a pattern of abuse of the disciplinary policy, e.g. repeated misconduct occurring once a live warning has lapsed, the Council may consider extending the duration of any warning or escalating any new action against the employee, to the next stage of the policy (i.e. as if the prior live warning had not lapsed)
 - Timescales for meetings, appeals etc, may be varied by mutual agreement. The intention is to avoid unreasonable delay but to allow for reasonable flexibility.
 - An employee will be given a copy of this procedure before any disciplinary action commences about their conduct.
 - All matters relating to this procedure must be treated as confidential.

- 1.4 This policy takes account of the amendments made as a result of the Employment Act 2008, which repealed the Employment Act 2002 (Dispute Resolution) Regulations 2004, and the introduction of the ACAS Code of Practice on disciplinary and grievance procedures from 6 April 2009.
- 1.5 The Council will review this document from time to time and may make changes to the content. Changes may result from employee, management and UNISON feedback and/or from changes in employment legislation.

2. Scope

- 2.1 This policy and accompanying guidelines apply to ALL posts at both Cherwell District Council and South Northamptonshire Council with the exception of the statutory roles of Chief Executive (Head of Paid Service), Monitoring Officer and Finance Section 151 Officer. This policy and accompanying guidelines does not apply to employees who have not completed their probationary period unless there is no probationary policy (and where a probationary policy covers disciplinary matters during a probation period). These procedures do not apply in cases of redundancy, ill health retirement or a dismissal at the expiry of the term of a fixed contract.
- 2.2 The Council will consider disciplinary action against an employee for actions inside or outside of work which may have a bearing on an employee's continued employment or on the reputation of the Council. Employees must notify their managers immediately of any charge or conviction.
- 2.3 Issues arising as a result of misconduct/negligence will be dealt with under the Disciplinary Policy, whereas issues which relate to poor performance as a result of a lack of capability will generally be dealt with under the Council's Capability Policy.

3. Rules

- 3.1 Rules are needed to set standards of conduct for employees to follow. At both councils, corporate rules are contained in the contract of employment and in employment policies and procedures. They may be supplemented by other rules or requirements particular to a service area. Rules will be kept to a minimum but will include (not an exhaustive list):
- Attendance / timekeeping
 - Absence
 - Damage to Council property
 - Discrimination
 - Harassment or bullying
 - Health and Safety

- Smoking on Council property including vehicles
- Unreasonable failure to follow an instruction issued by a manager or supervisor
- Unsatisfactory work performance (where this isn't classified as capability)

4. Principles

4.1 The principles of this policy are to ensure that:

- disciplinary procedures are applied in a fair and consistent way
- disciplinary procedures only take place when employees are aware of the standards that are expected of them relating to their attitude/conduct and performance as defined in policies and procedures made available to the employee during employment
- disciplinary procedures are applied primarily to help and encourage employees to improve rather than just as a way of imposing a punishment
- whenever possible informal and low-key methods are used in resolving difficulties around minor misconduct or unsatisfactory performance
- whenever possible reasonable adjustments will be made for employees with a disability
- employees will receive written confirmation of the allegation made and are aware of any investigations or disciplinary hearings due to take place
- employees have the opportunity to state their case before any decision is reached by the chair of the hearing
- the chair will be an independent officer having no prior knowledge of the case and with no potential conflict of interest
- all allegations are investigated fully and a disciplinary hearing takes place before formal disciplinary action is agreed
- all formal disciplinary action is appropriate and proportionate to the nature of the disciplinary offence
- at all stages of the formal process employees are aware of their right to be accompanied by a fellow worker, or trade union representative
- in reaching decisions about appropriate sanctions, the chair will take account of any mitigating circumstances
- employees receive a written explanation for any disciplinary action taken, setting out what improvement is expected and within what timescale and inform them of their right of appeal.

- we will not dismiss any employee for a first breach of discipline except in the case of gross misconduct where the chair deems dismissal to be appropriate
- employees have the right of appeal in relation to any disciplinary action taken with the exception of dismissal which is heard by the Appeals Panel.

5. Employee's Responsibilities

5.1 All employees have a responsibility to:

- take full accountability for their actions and inactions
- maintain expected and reasonable levels of attendance and performance at work
- respect and work in line with the Council's Code of Conduct
- attend and participate in relevant meetings
- comply with the Council's policies
- conform with any Council or statutory rules or agreements applicable to their role
- maintain a reasonable standard of behaviour acceptable to management and other employees including behaviour as outlined in the Code of Conduct and in line with the Equal Opportunities policies

6. Support for Employees and Managers

6.1 Employees may contact HR for support and guidance. UNISON is also able to offer support and guidance to employees who are members of the union and who are facing potential disciplinary action.

7. The Policy

7.1 The disciplinary policy contains the following possible stages (these are not meant to be undertaken in sequence);

- Suspension
- Informal Stage
- Formal stage - Stage 1 Oral Recorded Warning
- Formal stage - Stage 2 Written Warning
- Formal stage - Stage 3 Final written warning
- Formal stage - Stage 4a) dismissal with pay or with pay in lieu of notice and 4b) summary dismissal
- Formal stage - Exceptional circumstances- alternatives to dismissal

8. Informal Stage

- 8.1 In the course of day to day activities there will be occasions when managers will need to advise employees informally of minor breaches of discipline. Mediation may be used as an alternative way of managing a situation informally. This does not preclude the use of formal disciplinary procedures. Managers should record any such action for their own reference as information will not be placed on the employee's personal file.

9. Formal Stage

- 9.1 Where a line manager feels that an allegation about an employee's attitude/conduct or performance is serious enough to warrant an investigation the line manager should follow the formal disciplinary procedure as outlined within this policy.
- 9.2 When following the formal disciplinary procedure line managers are required under the Disability Discrimination Act 1995 to make reasonable adjustments for employees with a disability. Where a line manager is already aware that an employee has a disability or believes this to be the case they should work closely with HR before taking any disciplinary action, seeking advice from the council's occupational health advisers if necessary.

10. Suspension

- 10.1 The Councils may decide to suspend an employee pending an investigation. A manager or supervisor may, in exceptional circumstances, send an employee home pending a decision about suspension rather than suspend immediately.
- 10.2 Suspension is not a disciplinary measure, and is not pre-judging the outcome of a disciplinary hearing. Any such suspension will be with full basic pay. It is a means by which the Council can protect its interests, and those of its employees, while an investigation takes place.
- 10.3 The decision to suspend an employee will normally be the responsibility of the Head of Transformation (or delegated other HR representative) and/or the Monitoring Officer (or Deputy Monitoring Officer if applicable), in conjunction with the employee's line manager.
- 10.4 The duration of the suspension will vary according to the situation but timescales will be as short as reasonably possible and the employee will be given weekly updates either their line manager or the Investigating Officer (this should be agreed at the outset of the investigation) as to progress. A log should be kept by the Line Manager of any communications made between the employee and the organisation.
- 10.5 Suspension should take place on a face to face basis at a meeting, and then written confirmation should be given to the employee concerned as soon as is reasonably possible either at the meeting or immediately afterwards confirming

the suspension is on full pay and a review date.

- 10.6 If suspension of an employee is contemplated, alternatives should always be considered, such as a temporary relocation or reallocation of duties, or a short 'cooling off period' (e.g. the remainder of the working day), or if repetition of the offence is possible, enhanced supervision or monitoring of the employee. Where suspension has taken place, it should be reviewed at regular intervals during the investigation, to see if it is appropriate to keep it in place. Any decision to end a suspension before an agreed end date will be made by those who agreed to the suspension in the first place, and should be done in consultation with HR.
- 10.7 Suspension should be considered on the following grounds:
- The allegations could constitute gross misconduct; and/or
 - the continued presence at work of one or more of the employees involved would impede a full and impartial investigation (e.g. they may have access to certain records, contact with other employees who may be associated with the investigation or may be likely to sabotage the investigation deliberately); or
 - there is considered to be a chance of a recurrence of the alleged offence.
- 10.8 During the period of suspension, the employee remains employed by the relevant council but they are not required to attend work. They must, however, be contactable and available to attend work if required and should not undertake any outside work of any nature during normal working hours including out of hours/standby rota duties or overtime.
- 10.9 Where the Investigating Officer has reason to believe that the employee concerned has committed a criminal offence they will immediately inform the Monitoring Officer (or Deputy Monitoring Officer) who will decide whether to report the matter to the police.
- 10.10 Suspension or redeployment may be deemed appropriate in cases of personal harassment or bullying. If suspension or redeployment is deemed appropriate in cases of personal harassment or bullying, generally, it will be the alleged harasser who is suspended or moved.

11. Investigatory Meetings

- 11.1 Prior to disciplinary action, an investigation will be conducted into the allegations of misconduct by an appointed Investigation Officer. The matter should be investigated in order to ascertain, so far as is reasonably practicable in the circumstances, all the relevant facts. Whether a particular employee was involved or not is for a disciplinary hearing to decide not an investigation.
- 11.2 The Investigating Officer will be appointed by the Head of Transformation or Monitoring Officer (if the investigation implicates members of the HR team), and will have been trained in undertaking investigations. The Investigating Officer should be either at a level equivalent to or higher to the employee being investigated, and depending on the nature of the investigation is also likely to be

- from an independent service area. The Investigating Officer will be an employee who will not have a conflict of interest that might prejudice a fair hearing.
- 11.3 The investigation should be undertaken by the Monitoring Officer or the Deputy Monitoring Officer in cases that affect Heads of Service and Directors. Investigating Officers will be supported by a member of the HR team during investigations to ensure the process is correctly followed and to provide any advice.
 - 11.4 Generally employees will be informed that an investigation is to take place. In some circumstances (e.g. potential fraud), it may be appropriate not to inform the employee at the commencement of the investigation. [If necessary, covert surveillance may be used in line with the RIPA requirements]. In exceptional circumstances, the use of surveillance will be sanctioned by the Monitoring Officer or Deputy Monitoring Officer (in consultation with HR) giving reasons why its use is necessary.
 - 11.5 Where, during the investigation, the alleged disciplinary matter appears to be one of gross misconduct, the employee's Head of Service and the Head of Transformation should immediately be informed by the Investigating Officer. In such cases, the employee in question may be immediately suspended from work on pay pending the results of an investigation into the matter. Such grounds are outlined later on in this policy.
 - 11.6 Where the alleged disciplinary matter is straightforward, the investigation may be brief and ideally will be no longer than 28 days in any case. In more complex situations, investigations may take longer and employees will be kept apprised their line manager or the Investigating Officer of progress on a weekly basis. The employee will be advised in writing should any additional allegations arise during an investigation.
 - 11.7 The Investigating Officer may wish to interview the employee(s) and any witnesses. The employee may be represented at such an interview by either a work colleague or a trade union official in accordance with the Employment Relations Act 1999, providing that this does not unreasonably delay the investigation. The decision as to whether or not any delay is unreasonable rests with the person investigating the matter. If the person conducting the investigation wishes to pursue this course of action they should consult the Head of Transformation.
 - 11.8 In conducting the investigation, the person investigating should ensure that they have spoken to all relevant witnesses and obtained signed statements. Any witnesses should be advised that they may be called to attend any subsequent disciplinary hearing.
 - 11.9 Once the investigation is complete, the results in the form of an investigation report should be passed on to the Head of Transformation or Monitoring Officer (Deputy Monitoring Officer if appropriate). This person may, upon seeing the results of the investigation, decide that there is no case to answer and therefore no reason to convene a disciplinary hearing.

- 11.10 The depth and range of an investigation, and the content of a report to the disciplinary hearing will depend on the seriousness and/or complexity of the allegations in question.
- 11.11 The following issues may be considered relevant to be considered for inclusion. This list is not exhaustive, and depending on the circumstances, there may be other items considered relevant.
- Information about the employee concerned, e.g. length of service, experience, training undertaken, previous 'live' warnings.
 - Relevant documents, such as Council procedures (or appropriate extracts)
 - Witness statements (including where relevant/available an explanation of the alleged conduct on the part of the employee).
 - Informal actions (or why informal guidance/counselling is not appropriate in view of the seriousness of the allegation).
- 11.12 It is not the role of the Investigating Officer to recommend any level of disciplinary action, but they should state whether any further action or not should follow as a result of the investigation. This might include:
- No further action to be taken
 - Counselling, keep under review, management action, training
 - A disciplinary hearing is required
- 11.13 The line manager may deliver the outcome to the employee at a meeting if it is deemed appropriate, but any outcome will also be confirmed in writing to the employee and their line manager. A copy of the investigation report will also be attached.

12. Invitation To A Disciplinary Hearing Following Investigation

- 12.1 Once the Head of Transformation or Monitoring Officer (Deputy Monitoring Officer if appropriate) has considered the recommendation of the Investigating Officer and the employee has been advised that disciplinary action will be taken as an outcome of the investigation, the employee will be written to:
- including details of the allegations made
 - inviting them to a disciplinary hearing stating the time and place of the hearing and giving at least five working days' notice
 - informing them who will chair the hearing
 - informing them that they have the right to be accompanied by a work colleague or trained trade union representative at the hearing

- informing the employee that a member of the HR team will supply them with copies of all documents to be referred to in the hearing at least 2 working days in advance of the hearing for panels and at the time of agenda publication for Committees. (in exceptional circumstances witness statements may need to be anonymous)
- asking them to submit any documents supporting their response to the allegations to the relevant member of the HR team at least 2 working days in advance of the hearing to a panel or prior to agenda publication for a Committee so that these documents can be referred to in the hearing
- reminding the employee about the disciplinary policy by providing a hard copy.
- Informing the employee of the right to witnesses.

The purpose of a disciplinary hearing is to establish the facts of the case, and to decide what action (if any) should be taken.

13. The Disciplinary Panel or Committee

- 13.1 The disciplinary panel will consist of two members, a Chair and a HR Advisor for all employees and all possible outcomes with the exception of Directors and Heads of Service. For Directors and Heads of Service, a member will be nominated by the Joint Personnel Committee as Chair of the disciplinary panel. The JPC has responsibility for investigating the disciplinary allegations and/or nominating an independent person to do so.
- 13.2 Roles of all parties involved in a disciplinary hearing are as follows:
- **Chair** – a manager authorised to hear the case, possibly from a different service team and more senior in position than the employee. Whoever is intending to chair the hearing must have been appropriately trained in discipline handling and must be authorised to issue the level of warning if action is taken. If the person who is to chair the hearing considers that the alleged offence may warrant a more severe type of warning, then they should consult with the Human Resources or (Monitoring Officer in their absence). Under no circumstances can a person chairing a hearing take disciplinary action that is reserved for a more senior manager. The person who chairs the hearing will not be a person who will have been involved in any previous investigation or disciplinary hearing concerning the employee.
 - **Employee** – opportunity to state their case, answer the allegations, call any relevant witnesses and ask questions of any witnesses.
 - **Investigating Officer** – appointed by the Human Resources and appropriately trained, they will present their investigation findings to the Chair as part of the management case.

- **Witness** – a person invited by the employee or the investigating officer to give their statement of events relating to the allegations of the case.
- **HR advisor** – Accompanies the Chair on the panel and ensures that the employee and Chair have copies of all documents relating to the hearing and advises all parties on disciplinary procedures where necessary. For any potential dismissal this role will be filled by the Head of Transformation.
- **Colleague / Trained Trade union rep** - may present the case on behalf of the employee, which could include making opening and closing statements, presenting the case, answering questions on behalf of the employee and asking questions of any witnesses.
- **Note taker** – take notes of the hearing and circulate final version to employee, chair and HR advisor. Audio and video recording of the hearing will not normally be permitted and then only with the agreement of all parties.

14. The Disciplinary Panel Hearing

14.1 A disciplinary hearing can be a very traumatic experience for any employee and arguments and unpleasantness should be avoided. If the hearing is getting out of control, it is advisable to call an adjournment for a few minutes to allow the situation to calm down.

- The management case will normally be presented by the person who undertook the investigation, calling witnesses as necessary.
- The employee (and their representative, if present) will then have the opportunity to state their case, again with the provision to call witnesses as necessary.
- Each side will have the opportunity to ask relevant questions of the other side, including their witnesses, and to sum up at the end of the hearing. The management representative will sum up first, followed by the employee.
- If witnesses are called, they will attend the hearing solely to make their statement and to answer questions. They will then withdraw.
- If, during the hearing, substantial documentary evidence which has not previously been disclosed is produced by either side, the other party shall have the right to request an adjournment in order to allow sufficient time to examine the evidence. The Chair has the discretion to decide whether evidence can be submitted as time has previously been allowed for both parties to submit evidence, and therefore new evidence should be in exceptional circumstances only.
- Other than when parties are summing up, the panel or Committee can ask questions of either side.
- At the end of the hearing, both sides will withdraw, whilst the panel or Committee

and any advisers, considers their decision.

- At the end of the adjournment, the employee (and their representative, if present) and the person presenting the management case will be re-called and given the decision, which will be confirmed in writing, normally within 5 working days. If the decision is to take disciplinary action, then the employee must also be informed of their right of appeal.
- In exceptional circumstances, where it is considered necessary to delay making a decision, the employee will be notified of the decision in writing after the disciplinary hearing. This will be done as soon as possible and normally no later than 5 working days after the date of the hearing.
- If at any stage during the course of the hearing the person chairing the hearing believes it necessary to obtain additional advice, the proceedings will need to be adjourned whilst this advice is sought.

15. Formal Disciplinary Sanctions

15.1 Following a disciplinary hearing the following sanctions may apply:

Stage 1 - Oral Recorded Warning

If following a disciplinary meeting it is decided that an employee's conduct or performance is unsatisfactory, the employee will be issued with an oral recorded warning. This will be a 'live warning' for a duration of 3 months, after which it will be disregarded for disciplinary purposes, subject to no further misconduct during this period. A copy of the note of warning will remain on the employee's personal file. Managers will hold regular review meetings with employees who have a 'live' warning.

Stage 2 - Written Warning

This may be issued if the first offence is serious enough to warrant action at this level. Alternatively it may be issued after an oral recorded warning, if there is no improvement in standards, or if a further offence occurs. A copy of this written warning will be kept on file but will be disregarded for disciplinary purposes after 6 months, subject to satisfactory conduct and / or performance. Managers will hold regular review meetings with employees who have a 'live' warning.

Stage 3 - Final Written Warning

This may be issued if the first offence is serious enough to warrant action at this level. Alternatively it may be issued after an oral recorded warning, or a written warning, depending on the severity of any subsequent misconduct or the failure to achieve required standards of performance/ conduct. A copy of the warning will be filed but will be disregarded for disciplinary purposes after 12 months but may remain on the employee's file, subject to satisfactory conduct. In exceptional cases the period of the warning may be extended to 24 months when the sanction is given. Managers will hold regular review meetings with employees who have a 'live' warning.

Stage 4a - Dismissal with Pay

If there is no satisfactory improvement or if further serious misconduct occurs following previous warnings, after a consideration of the facts and circumstances of the case, an employee may be dismissed with notice or with pay in lieu of notice.

Stage 4b - Gross Misconduct

If, after investigation, an employee is found to have committed an act of gross misconduct, the normal consequence will be summary dismissal without any notice or pay in lieu of notice. While the alleged gross misconduct is being investigated, employees may be suspended with pay.

15.2 Examples of Misconduct

This list is neither exclusive nor exhaustive

The following list indicates the type of conduct which would normally constitute misconduct:-

- i) Disregard of safety practices, procedures and rules;
- ii) Unsatisfactory job performance (for reasons other than incapability);
- iii) Poor time-keeping: late starting, early finishing, excessive break periods;
- iv) Excessive and/or unauthorised absence;
- v) Leaving the workplace without permission during working hours;
- vi) Undertaking activities detrimental to recovery whilst on sick leave;
- vii) Failure to follow Council procedures;
- viii) Misuse of Council facilities or equipment, for example telephones, Information and Communication Technology equipment;
- ix) Insubordination or refusal to obey a reasonable instruction;
- x) Smoking in prohibited areas.

15.3 Examples of Gross Misconduct

This list is neither exclusive nor exhaustive

Gross misconduct includes, but is not limited to, the following:

- Serious abuse
- Corrupt practices

- Where an employee is charged with a criminal offence inconsistent with their position
- theft, fraud and deliberate falsification of records (e.g. expenses claims, time sheets, etc)
- physical violence, threats, fighting, assault on another person
- serious bullying, harassment or discrimination
- deliberate damage to Council property or employee's property
- removal or disposal of any Council property without Management's permission
- serious insubordination
- interference with safety devices or equipment putting other employees or visitors at risk at work
- serious misuse of the Council's property or name
- bringing the Council into serious disrepute
- serious incapability whilst on duty brought on by alcohol or illegal drugs, the misuse of drugs or the possession of illegal drugs whilst at work
- the supply and trafficking of drugs, money laundering activities, or the use, sale or distribution of illegal substances
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious breach of duty of confidence (subject to the Public Interest (Disclosure) act 1998 and Confidential Reporting Policy)
- deliberate or reckless damage, mis-use or interference with or unauthorised use of the Council computers and/or software or unauthorised entry to computer records.
- serious misuse of electronic systems
- conviction of a criminal offence that is relevant to the employee's employment
- deliberate falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee
- undertaking private work on the premises and/or in working hours without express prior permission.
- serious breach of trust or confidence

15.3 Warnings

If issued with a warning, an employee will receive written confirmation within a 5 working days of the disciplinary hearing. This letter will include:

- the reason and duration of the warning
- the consequences of a failure to improve and sustain any improvement for at least the duration of the warning, including the possibility of further disciplinary action up to and including dismissal
- relevant details and timescales relating to the employee's right of appeal
- Employees will have access to notes of the meeting (or a recording of the meeting in some circumstances).

Note: Employees should also be written to in the event of no further action being taken.

16. Factors To Consider When Deciding What Kind Of Disciplinary Action To Take

16.1 Having heard all the evidence at a disciplinary hearing, the person chairing the hearing will need to decide whether or not disciplinary action is warranted and, if so, at what level.

16.2 A disciplinary hearing is not the same as a court of law, where the defendant has to be proved guilty. The judgement to be made after hearing all the evidence is whether or not, on the balance of probabilities, the misconduct occurred.

- In arriving at the decision, the following questions should be considered;
- Have all the relevant facts been ascertained?
- Was the individual given a chance to put his/her case?
- On the balance of probabilities is it reasonable to believe that the misconduct has occurred?

16.3 Unless the answer to all the above is yes, disciplinary action should not be taken against the employee.

16.4 Having decided that the offence was committed, the person chairing the hearing should then decide upon the kind of disciplinary action to take.

16.5 The following questions will need to be considered:

- What penalties have been imposed in similar cases in the past?
- Does the disciplinary procedure give any guidance as to whether or not this type of offence normally constitutes misconduct or gross misconduct?

- What is the employee's disciplinary record: is he/she already in receipt of some kind of disciplinary warning?
- Are there any extenuating circumstances, for example provocation, justifiable ignorance of the rules, lack of experience, etc.?

16.6 The person chairing a disciplinary panel hearing will also need to take into account the level of sanction he/she is authorised to take under the terms of the Disciplinary Procedure. (See below)

16.7 Once all the above have been considered and a tentative decision reached, the following three questions should be considered:

- Is the offence sufficiently serious to warrant the proposed level of sanction?
- Is it consistent with good practice?
- Is the proposed action reasonable given all the circumstances?

Unless the answer to all three of the above is yes, the proposed action should be reconsidered.

17. Who Can Take Authorised Management Action under the Disciplinary Policy?

17.1 It is possible to take disciplinary action at any level for a first disciplinary offence dependent on the circumstances.

STAGE	ACTION	RESPONSIBILITY (HR to be consulted about process and consistency of proposed action)	APPEALS	DURATION OF WARNINGS
ONE	Oral Warning	Line Manager or above	HOS/Director	3 months
TWO	Written warning	Line Manager or above (or nominated other from another service area)	HOS/Director	6 months
THREE	Final written warning	Line Manager or above (or nominated other from another service area)	HOS/Director	12 months (or may be longer in exceptional circumstances)
FOUR	Dismissal	Head of Transformation	SNC Appeals Committee or CDC Appeals	N/A

GROSS MISCONDUCT	Summary Dismissal	Head of Transformation	Panel* SNC Appeals Committee or CDC Appeals Panel*	N/A
Heads of Service and Strategic Directors	Any formal action	Chief Executive	SNC Appeals Committee or CDC Appeals Panel*	As above

18. Disciplinary Action of Trade Union Representatives

18.1 Although normal disciplinary standards will apply to the conduct and performance of trade union representatives, no disciplinary action will be taken until the circumstances of the case have been discussed with a senior trade union representative or full time official and in consultation with HR. This arrangement is in place to avoid the action being misconstrued as an attack on the union itself or on its representation and negotiating role, and is in accordance with the ACAS Code of Practice.

19. Raising a Grievance During Disciplinary Action

19.1 The decision to suspend or continue with disciplinary action pending the investigation of a grievance will depend upon the circumstances of each individual case. This decision will be made by the Human Resources (or Monitoring Officer if applicable).

20. Suspicion of Criminal Behaviour

20.1 If criminal behaviour is suspected or alleged the Investigating Officer in conjunction with HR (and the Chief Executive if the action is against Heads of Service or Directors) will discuss the situation and a decision will be taken over notifying the police in line with the Council's Standing Orders/Financial Regulations.

21. Criminal Proceedings During Disciplinary Action

21.1 Where criminal proceedings are pending against an employee, the Council will determine whether disciplinary action is appropriate. Where it is deemed appropriate, the disciplinary procedure will be carried out objectively and will not normally be delayed or deferred because of any such proceedings, unless it would be prejudicial (in the view of the Council) to those investigations to proceed. Line Managers/Investigating Officers should liaise with HR for further guidance.

22. Criminal Charges or Convictions / Inappropriate Actions Out of Work

22.1 In addition, criminal charges or convictions may result in disciplinary proceedings being taken against the employee up to and including summary dismissal. This will occur where, in the opinion of the Council the charge or conviction is such as to affect, or be likely to affect, the suitability of the employee for the position in

which they are employed, or the business or reputation of the Council, or where the existence of the charge or conviction could, in the opinion of the Council, otherwise seriously undermine the trust and confidence that the Council has in the employee.

23. Fraud and Investigations

23.1 Where there is any suspicion of theft or fraud then the employee's manager must contact the Head of Transformation (or the Section 151 Officer in the case of Heads of Service and Directors) who will refer the matter immediately to Audit and or Fraud Investigation.

24. Right of Appeal

24.1 Employees have the right to appeal against any disciplinary action.

Reasons for appeal may include:

- that the penalty is unfair / inconsistent under the circumstances (i.e. judgment)
- new evidence has arisen which was not considered at the original disciplinary hearing and which may have a bearing on the outcome (i.e. facts)
- that the policy and procedure have not been applied correctly (i.e. process)

24.2 When lodging an appeal, the employee should state the grounds of an appeal, and provide any supporting evidence.

24.3 The employee must provide notice of their request to appeal in writing within 5 working days of being informed in writing of the disciplinary sanction being imposed against them. All appeal requests should be sent to the Head of Transformation. There is a form for appeal requests at Appendix 12.

24.4 Appeal hearings will take place as soon as reasonably possible upon receipt of the employee's written notice of appeal. Appeals Committees are likely to take longer to set up but will be done so as expediently as possible.

24.5 Appeal hearings will be made up as follows:

Employee Appealing/Reason	Who will hear the appeal
Strategic Directors/Heads of Service	SNC Appeals Committee or CDC Appeals Panel*
Other employee who is dismissed	Employing Council 's Appeals Committee
Other employee who is not dismissed	Head of Service or Strategic Director (independent and trained) plus HR Representative

All members of the appeals panels will not have been previously involved in the investigation or disciplinary hearing.

- 24.6 For Appeals Committees there will be a Democratic and Elections Officer, Legal Advisor and HR Advisor in attendance (who will all previously have not been involved with the appeal at a previous stage – this may be external advisors if appropriate). These advisors will brief the Committee prior to the hearing taking place. The advisors may at any point during the appeal seek clarification on any issue with regard to the appeal and will provide procedural guidance to the Committee.
- 24.7 The employee shall be given notice in writing at least 10 working days in advance of the time and place of the hearing and they will be allowed to be represented or accompanied and shall be enabled to call witnesses (who are not entitled to representation). This notice may be extended to allow an employee to be adequately represented.
- 24.8 The failure of a party to attend an appeal shall not prevent the appeal from being considered.
- 24.9 The management side will be presented by the Chair of the disciplinary hearing and will be able to call witnesses who are not entitled to representation.
- 24.10 In advance of the hearing, the Appeals Panel or Committee will have available all of the documents presented to the original disciplinary hearing. They will also have a copy of the record of the hearing, the letter confirming the outcome of the original disciplinary hearing, the letter of appeal and all other relevant information. The employee and the management side will also be allowed to submit additional evidence that relates to the reasons for the appeal. The Appeals Panel or Committee should make their findings based on the documentation and the submissions at the appeal hearing.
- 24.11 The employee (appellant) and management side (respondent) will provide any documentation they wish the panel or committee to consider prior to the deadline for agenda publication as notified by Law and Governance (for Committees) or no later than five working days before an appeals panel. Supplementary documentation produced after this time will only be admitted at the discretion of the panel or the committee and with agreement of all parties to the appeal subject to the provisions of Access to Information legislation.
- 24.12 During the appeal hearing both parties to the appeal will be admitted to the room, the Chairman will introduce those present, the procedure will be outlined by either the Democratic and Elections Officer or the Chair of the panel (if not a Committee) and questions on the procedure will be invited.
- 24.13 The employee (appellant) and their representative (if applicable) will make their case. The appellant may be questioned by the management side (respondent) and then the panel or Committee.
- 24.14 The respondent will then make their case and may be questioned by the appellant and then the panel or Committee. In making their case witnesses may be called by the appellant or the respondent. Witnesses must be notified to the Committee Clerk (for Committees) or to the HR Advisor (for panels). This must be done by the deadline notified by the Committee Clerk (for Committees) or to the HR Advisor (for panels) at least five days before the appeal hearing. The respondent or appellant will be responsible for ensuring their witnesses are

aware of the time, date and place of the hearing. Witnesses may be questioned by all parties and then the panel or Committee. Witnesses will only be admitted to the appeal hearing for the duration of their evidence.

24.15 Where the panel or Committee considers that further information or discussion is required the meeting will be adjourned for a period. The length of the adjournment being decided by the Chair.

24.16 At the end of the appeal hearing the respondent will have opportunity to sum up and then the appellant will have opportunity to sum up. Both parties will then be asked to leave. The panel or Committee will then decide whether to ask the parties to wait whilst a decision is reached or confirm that a letter will be sent confirming the outcome. The Appeals Committee or panel will then make their decision. A formal letter will be sent to the appellant confirming the decision of the Appeals Committee or panel within five working days of the appeal hearing. A copy of appeals information will be retained on the employee's personal file.

25. Appeal Outcomes

25.1 The outcome of the appeal will be either:

- The appeal is successful in whole or in part (e.g. could be a lesser sanction imposed or the sanction could be removed altogether)
- The appeal is unsuccessful - the original decision stands

25.2 The appeal panel or committee's decision is final. No further right of appeal exists.

25.3 Where an appeal against dismissal fails, the effective date of termination of employment will be the date on which the employee was originally dismissed not the date of appeal.

26. Disciplinary records

26.1 The list of documents below may be kept on a personnel file after a disciplinary process has taken place and will be kept on file in accordance with the Employment Practices Data Protection Code and Data Protection Act 1998:

- documents relating to a disciplinary investigation, disciplinary hearing or appeal hearing including letters, notes from meetings and witness statements
- a written record of any warning given including any verbal warning
- written record of any further action sanctioned such as employee , transfer, demotion, or written record of dismissal / summary dismissal

When a warning expires it will remain on the employee's personnel file but will be disregarded for any future disciplinary investigations unless there are exceptional circumstances for not doing this.

Appendices

Appendix 1 – Letter to a member of staff under investigation

Appendix 2 – Letter to a witness as part of an investigation

Appendix 3 – Letter to an employee/witness following an investigation – no further action

Appendix 4 – Letter to an employee required to undertake different duties or another post

Appendix 5 – Letter to an employee notifying of suspension

Appendix 6 – Letter to an employee setting up a disciplinary hearing

Appendix 7 – Letter to an employee – disciplinary outcome for warnings

Appendix 8 – Letter to an employee – disciplinary action – no outcome

Appendix 9 – Letter to an employee – Invitation to an appeal hearing

Appendix 10 – Guidance to Conducting a Disciplinary Investigation

Appendix 11 – Disciplinary Investigation Report Template

Appendix 12 – Appeal Application Form

Appendix 1 - Letter to a member of staff under investigation

DATE

Dear (NAME of person under investigation)

I have been asked by the Head of Transformation to investigate allegations that have been made against you concerning **(Insert details of the incident or matter to be investigated here)**.

As part of the investigation, I would like to interview you so that I can get the facts in relation to the incident from you. I will be in touch shortly to arrange a date to meet or the date I would like to meet is (DATE) at (TIME AND PLACE). You may be accompanied by a trade union representative or work colleague, however, you'll need to let me know at least one day before if anyone is coming with you and who it is.

I am required to complete my investigation within a 28 day timescale, the 28 days ending on the DATE. If for any reason this deadline cannot be met I will write to you informing you of the reasons for this and will provide you with a revised completion date.

When I have finished my investigation, I will write a report that will be sent to the Head of Transformation (or delegated other), with my conclusions and recommendations that will include either:

- Taking no further action.
- Taking informal action for example by providing coaching, training or other support.
- Using another formal route such as capability or probation.
- Holding a formal disciplinary hearing.

Any information which comes to light during the course of the investigation may be used at a disciplinary hearing if that is the outcome of the investigation. You will be provided with a copy of my report in the event of a formal disciplinary hearing taking place, and a letter outlining the details of the hearing and the allegations made.

A copy of the Disciplinary Policy is attached for information purposes. It explains how the investigation and disciplinary process works; what things mean and how things are done.

I should remind you that all matters relating to this investigation should be treated in confidence.

Yours sincerely

PRINT NAME
Investigating Officer

Appendix 2 - Letter to a witness as part of an investigation

DATE

Dear (NAME of witness)

I have been asked by the Head of Transformation to investigate allegations that have been made concerning (NAME OF EMPLOYEE UNDER INVESTIGATION) **(Insert details of the incident or matter to be investigated here)**.

As part of the investigation, I would like to interview you so that I can get the facts in relation to the incident. I will be in touch shortly to arrange a date to meet or the date I would like to meet is (DATE) at (TIME AND PLACE). You may be accompanied by a trade union representative or work colleague, however, you'll need to let me know at least one day before if anyone is coming with you and who it is.

You should be aware that a record of our meeting will form part of my overall investigation report to the Head of Transformation (or delegated other). If they believe that there is sufficient evidence to move to a formal disciplinary hearing, then the full investigation report will be made available to all involved in the disciplinary. If you have any concerns about this we can discuss this when we meet.

A copy of the Disciplinary Policy is attached for information purposes. It explains how the investigation and disciplinary process works; what things mean and how things are done.

I should remind you that all matters relating to this investigation should be treated in confidence.

Yours sincerely

PRINT NAME
Investigating Officer

Appendix 3 - Letter to an employee/witness following investigation – no further action

DATE

Dear (NAME of employee/witness)

The investigation into (INSERT BRIEF DETAILS OF ALLEGATIONS) is now complete and I have decided not to take any disciplinary action.

(IF EMPLOYEE IS SUSPENDED OR UNDERTAKING ANOTHER JOB OR DUTIES)
Your suspension/change in duties/change in workplace, etc, will now come to an end on (DATE). Your line manager (NAME) would like to meet you on (DATE) (TIME) at (LOCATION) to talk about your return to work and what happens next.

Please contact (NAME OF LINE MANAGER) on (CONTACT DETAILS) if you have any questions about this letter.

Yours sincerely

Head of Transformation

c.c. Line manager of employee (not witnesses)

Appendix 4 - Letter to an employee undertaking different duties or another post

DATE

Dear (NAME of employee)

I am writing to inform you that you are being transferred to another post of (POST)/or will be undertaking duties of (LIST DUTIES) until further notice with effect from (DATE). This arrangement is not a form of disciplinary action but as a means to be able to investigate (INSERT DETAILS OF THE ALLEGATION).

While you are transferred to this other post/duties/workplace you cannot get involved with your post of (CURRENT POST) at (WORKPLACE – if this has changed). You must also not make contact with your colleague's or other employees who could be involved as a witness in any investigation.

As part of the investigation into the above allegations, the Investigating Officer will need to interview you, in order to gain your view of things. They will be in touch with you shortly to arrange a date when this meeting will take place.

A copy of the Disciplinary Policy is attached for information purposes. It explains how the investigation and disciplinary process works; what things mean and how things are done.

I should remind you that all matters relating to this investigation should be treated in confidence.

Yours sincerely

Head of Transformation

c.c. Line manager of employee

Appendix 5 - Letter to an employee notifying of suspension

DATE

Dear (NAME of employee)

I am writing to inform you that you are being suspended on full pay and without prejudice until further notice with effect from (DATE). This arrangement is not a form of disciplinary action but as a means to be able to investigate (INSERT DETAILS OF THE ALLEGATION). The suspension does not affect any rights either you or the Council might have.

You are being suspended from work rather than being (redeployed to another post/place of work/to undertake different duties) because (INSERT BRIEF EXPLANATION OF WHY SUSPENSION IS APPROPRIATE).

Whilst you are suspended you must be available to meet with the Investigating Officer (INSERT NAME OF INVESTIGATING OFFICER), so that they can interview you. (INSERT NAME OF INVESTIGATING OFFICER) will be in contact shortly to arrange a date for your meeting.

I will keep your suspension under review and it may be possible for you to return to work before the investigation is complete. As such, while you are suspended you must:

- Report to (LINE MANAGER'S NAME) by telephone (INSERT TELEPHONE NUMBER) on (NOMINATED DAY AND TIME) each week.
- Apply to the above person if you wish to take annual leave.
- Notify the above person if you would be unfit to attend work due to sickness absence.

If there is a reason why we would not be able to contact you at your normal home address and telephone number, please let (LINE MANAGER'S NAME) know immediately and give them details of how they can contact you.

Whilst suspended from work you must not enter Council premises without the permission of (EMPLOYEE'S LINE MANAGER). You must also not make contact with colleagues or other employees that could be involved as witnesses in any investigations. I should remind you that all matters relating to this investigation should be treated in confidence.

If you have any queries about the investigation and disciplinary process please contact a member of HR. You may make representations against my decision to suspend you to (DIRECTOR/CHIEF EXECUTIVE)

Yours sincerely

Head of Transformation

c.c. Line manager of employee

Appendix 6 - Letter to an employee setting up a disciplinary hearing

DATE

Dear (NAME)

I am writing to inform you that you are required to attend a disciplinary hearing on (DATE) at (TIME), which will take place at (ROOM, PLACE OF WORK).

Disciplinary action is being taken in relation to (SUMMARISE THE ALLEGATIONS), in accordance with the Council's Disciplinary Policy, a copy of which is attached for your information.

The Chairperson of the disciplinary panel will be (NAME), and the HR representative will be (NAME). Witnesses being called include (NAME OF MANAGEMENT WITNESSES IF KNOWN).

A copy of the Investigation Report and other relevant information disciplinary documents including witness statements will be circulated by (DATE) which is five working days before the hearing and will be circulated by (NAME) HR.

You are required to submit your documents in support of your response to these allegations by (DATE – 5 working days before the disciplinary hearing) to (NAME) HR – see above.

You have the right to be accompanied by a trade union representative or work colleague of your choice, and should let (NAME) HR Representative know who your representative will be if you choose to have one no later than 24 hours before the disciplinary hearing.

You are also required to let (NAME – HR as above) know no later than (DATE – five working days before the hearing) whether you intend to call any witnesses and if so whom. If you intend to call witnesses it is your responsibility to inform your witnesses of the date, time and venue of the hearing, along with any representative you may chose to use.

Yours Sincerely

NAME
CHAIRPERSON OF THE DISCIPLINARY HEARING

Appendix 7 - Letter to an employee – disciplinary outcome (warnings)

DATE

Dear (NAME)

I am writing to inform you of the outcome of the disciplinary hearing you attended on (DATE).

At the disciplinary hearing it was found/not found that the allegations (SUMMARISE THE ALLEGATIONS) were proven/not found to be proven. As a result you were given/are given (INSERT DETAILS OF ACTION TAKEN/WARNING/DISCIPLINARY PENALTY). The reasons I decided to take these actions were as follows: LIST REASONS.

ALSO STATE ANY CONDUCT OR PERFORMANCE IMPROVEMENT EXPECTED ANDY ANY RELATED TIME FRAMES.

This warning will stay on your personal file for ONE YEAR/TWO YEARS.

Any further misconduct will lead to further disciplinary action and may result in dismissal (if final written warning).

If you think the decision is unfair you have the right of appeal. If you wish to appeal you should do so in writing within 10 working days of the date of this letter, to the Head of People & Improvement. You need to state the reason for the appeal which should be at least one of the following, and the reasons why you think the reason is applicable:

- The procedure was not followed and this affected the decision.
- The evidence did not support the finding of misconduct.
- The penalty was unduly severe taking into account the type of unsatisfactory conduct, mitigating circumstances and the employee's service record.
- New evidence is available and information has come to light which may affect the original decision made.

I have enclosed a copy of the minutes from the hearing. If you feel there are any inaccuracies within the minutes please send your comments to me in writing.

Yours Sincerely

NAME
CHAIRPERSON OF THE DISCIPLINARY HEARING

Appendix 8 - Letter to an employee – disciplinary outcome – no action

DATE

Dear (NAME)

I am writing to inform you of the outcome of the disciplinary hearing you attended on (DATE).

After reviewing all of the evidence provided at the hearing I have decided not to take any further disciplinary action. The reasons I decided not to take any action are (LIST REASONS).

Yours Sincerely

NAME
CHAIRPERSON OF THE DISCIPLINARY HEARING

Appendix 9 - Letter to an employee – invitation to appeal hearing

DATE

Dear (NAME)

I am writing to inform you that you are required to attend an appeal hearing on (DATE) at (TIME), which will take place at (ROOM, PLACE OF WORK).

The appeal will be heard in accordance to the Council's Disciplinary Policy. Your appeal being against (SUMMARISE REASONS FOR APPEAL).

The Chairperson of the disciplinary panel will be (NAME), and the HR representative will be (NAME). Witnesses being called include (NAME OF MANAGEMENT WITNESSES IF KNOWN).

A copy of the Investigation Report and other relevant information disciplinary documents including witness statements will be circulated by (DATE) which is five working days before the hearing and will be circulated by (NAME) HR.

You are required to submit your documents in support of your response to these allegations by (DATE – 5 working days before the disciplinary hearing) to (NAME) HR – see above.

You have the right to be accompanied by a trade union representative or work colleague of your choice, and should let (NAME) HR Representative know who your representative will be if you choose to have one no later than 24 hours before the disciplinary hearing.

You are also required to let (NAME – HR as above) know no later than (DATE – five working days before the hearing) whether you intend to call any witnesses and if so whom. If you intend to call witnesses it is your responsibility to inform your witnesses of the date, time and venue of the hearing, along with any representative you may chose to use.

Yours Sincerely

NAME
CHAIRPERSON OF THE DISCIPLINARY HEARING

Appendix 10 - Guidance to Conducting a Disciplinary Investigation

It should be made clear the difference between an investigatory hearing (the purpose of which is to establish the facts and not to make any decisions based on these facts), and a disciplinary hearing (the purpose of which is to determine whether there are any grounds to impose a disciplinary sanction on the employee). Those involved in undertaking investigations should take care:

- Not to jump to conclusions prematurely
- To restrict their activities to investigating the facts, rather than making decisions based on the facts
- Not to say or do anything that implies judgement of the employee's actions or behaviour.

Investigatory Interviews

When interviews are deemed appropriate by the Investigating Officer as part of an investigation the following guidance should be used.

Interview Preparation

Before an interview takes place the Investigating Officer should decide who, if anyone, will need to be interviewed and in what order, and this may involve asking the employee under investigation or other witnesses whether anyone important to establishing the facts should be interviewed. The Investigating Officer should give 48 hours advance warning to the employee and witnesses in writing of the interviews being required.

All of the relevant details should be considered carefully, including any relevant personal details such as previous performance and experience, length of service, and any current warnings and history.

Careful thought should be given to further relevant documentation that may be required, and of any facts that will need to be confirmed in writing such as the evidence of witnesses.

The Investigating Officer should prepare an outline of issues and questions that need to be explored in order to establish the facts – what, when, where and how.

Other considerations might include:

- How the situation has already been dealt with
- Have there been any recent changes to the job or working environment?
- Have there been any previous incidents which relate to this one?
- Has the employee received appropriate induction, counselling or training
- Are there any mitigating circumstances, e.g. health / disability, domestic problems, or provocation?

The Interview

The Investigating Officer should ensure they have all of the relevant facts and documentation available to them at the interview meeting.

The Investigating Officer should ensure a formal but polite and open approach is used that will encourage individuals to talk freely in order to establish the facts. It is important that nothing is prejudged, and that individuals do not feel that blame is being apportioned. Interviews should focus on establishing what was directly observed, heard of done by the employee concerned. The Investigating Officer should try and distinguish

between hearsay and speculation from facts.

Hearsay Evidence which is defined as “evidence offered by a witness, based upon what someone else has told him / her”, and not upon personal knowledge or observation should not generally be admitted. However if admitted it should be dealt with very cautiously and little weight should be given to it.

Anonymous evidence should not normally be used either exceptions to this may be:

- where the allegations are serious and can be verified through independent investigation
 - or
- if a potential witness had a real fear, reasonably held, that they would suffer substantial detriment if they were to sign their statement.

Interview Introductions

- Welcome the interviewee
- Outline the purpose of the interview and the investigation
- Confirm the need for confidentiality
- Introduce those present and explain their roles to the interviewee

Interview Style

- Focus on the evidence and facts relevant to the investigation. i.e. what, where, when and how.
- Pace the interview so that it can be easily followed by the interviewee and the note taker
- The interviewer should be impartial and non-judgemental
- Do not speculate and predict outcomes
- Interviews should not go on longer than an hour and a half without a break
- The interview can be stopped at any time to allow a comfort break or request for a break
- It may be helpful to follow a date order approach to the interview – this will allow the Investigating Officer to see the order of events.

Recording The Interview

The record of the interview should include:

- Date, place and timing of the interview
- Who attended in what capacity
- An accurate account of what was said and by whom

Recording The Interview

The Investigating Officer should decide how to record the interview. Interviews that are likely to be lengthy and complex and particularly when interviewing the employee under investigation, tape recording is often the easiest and most efficient method. However, some employees may feel uncomfortable being interviewed on tape and should not be pressurised into doing so against their will. The employee may request the interview to be recoded in this manner and this should be considered by the Investigating Officer.

There may be instances where tape recording is not deemed appropriate, for example, where a simple statement of fact is required or a prewritten statement is used ad verbatim and can be submitted. Or the minute taker or Investigating Officer is able to work on a lap top and type notes during an interview.

The key is to choose the most efficient and effective way to record information in the circumstances having regard to the interviewee and the nature of the interview.

Appendix 11 - Disciplinary Investigation Report Template

**PRIVATE &
CONFIDENTIAL**

DISCIPLINARY INVESTIGATION REPORT

NAME, JOB TITLE, SERVICE AREA

Date	
Investigating Officer	

INTRODUCTION

- 1.1 Provide brief details of the employee who is the 'subject' of the investigation, their employment history, current role and how long held etc.
- 1.2 Provide brief outline of how the concerns arose.
- 1.3 Note if suspended and when, whether redeployed for duration of investigation or if there are any specific changes in place to allow the investigation to take place ie. line management responsibility removed, budget responsibility suspended, taken off usual duties but still within department etc...
- 1.4 If there are specific allegations record them at this point.
- 1.5 Timescales used for the investigation should be reported here along with any amendments to timescales and the reasons for these changes.

2 SCOPE AND COVERAGE

Investigation objectives should be recorded here.

Members of the investigation team should be listed here. Please print name (with initials shown after in brackets), with job title and service area.

All interviewees should be recorded (including telephone interviews) - the initials should be inserted after each name as these will be the initials used throughout the report. - If the list of interviewees is long consider including it as an appendix

If the Investigating Officer has not interviewed all individuals, either those suggested by the employee under investigation or witnesses then the decision should be recorded in this section (including reasons e.g. character reference only, or off sick)

List of files and documents inspected - If the list is long consider including it as an appendix

List of letters sent to all involved in the investigation. – Please provide dates of copies and to whom and for what reason the letter was sent. Copies should be attached as Appendices.

2.1 Investigation objectives:

To establish whether:

-
-

2.2 Interviews were held as follows:

Name	Position	Date

Please attach all statements, and additional written evidence as appendices.

2.3 The following records were examined:

- Letter of complaint
- Personal file

2.4 Copies of letter sent to all employees involved in the investigation:

Name of employee	Position	Reason For Letter	Date of Letter

2.5 Appendices:

Appendix 1	
Appendix 2	
Appendix 3	

3 BACKGROUND

Include brief details of the service area / location / work environment/team e.g. organisational structure and numbers within the team.

Key responsibilities of the 'subject' of the investigation and it may also be appropriate to add the JD and person specification.

Include anything else to 'set the scene' for the reader - there is every chance that the reader will not have any knowledge of the service if this document is used to support any disciplinary action.

Details of policies and procedures that may be relevant should also be mentioned (attach copies if deemed appropriate) and the process used to ensure the employee's knowledge of the policy i.e. induction, training, etc.

If the service area uses many acronyms, consider the use of a small glossary at this point or including it as an appendix

Aim to keep this section approximately half a page in length or a full page for more complex cases

3.1

3.2

3.3

3.4

4 FINDINGS

Organise the findings under each main allegation

- *Avoid pages and pages of continuous text - break up with headings e.g. 'Working Relationships', 'Service Complaints', 'Performance Management', 'Shouting Incident - 31 May', 'Previous Management Action', etc... This makes the report easier to read.*
- *Avoid using vast extracts from statements - only quote directly from the statements where it is necessary, for example, to illustrate the use of language or if the response to a question shows a particular disregard for policy or respect for others. It is the Investigating Officer's responsibility to analyse all the statements and draw out all corroborative evidence. Interviewees are not always articulate during interviews and the Investigating Officer should therefore use their own words to concisely convey the findings.*
- *Investigating Officers are not just fact finders - it is the Investigating Officer's responsibility to explain what the evidence means. Avoid 'he said, she said' reports - the reader should not be left trying to establish what all the facts mean.*
- *If the evidence is inconclusive or there is no evidence to substantiate an allegation - say so. The Head of Transformation or delegated other wants to know whether there is any evidence to support the allegations - it is also the Investigating Officer's responsibility to explain how significant the evidence is - this should come across throughout the report.*
- *It is important to note any mitigating factors e.g. lack of procedural guidance, management action or expected documentation and any other actions / behaviours which may have compounded or aggravated the situation.*
- *Using full names throughout the report can be very repetitive - Council policy is to use initials e.g. Joe Bloggs (JB) - always quote full name and job title the first time they are mentioned within the report - initials thereafter.*
- *In addition to the specific allegations the report should include any patterns of behaviour that may have some relevance.*
- *If specific actions demonstrate a breach of Council policy or service procedures - these should be noted throughout the report, where appropriate.*

ALLEGATION 1:

SUB HEADING

4.1

4.2

4.3

4.4

SUB HEADING

4.5

4.6

ALLEGATION 2:

SUB HEADING

4.7

4.8

4.9

5 SUPPLEMENTARY ISSUES

5.1 There are no supplementary issues to this report OR

5.2 cover issues which you have identified but are not directly related to the allegations or objectives of the investigation (could be system issues, management or policy weaknesses or matters which relate to the individual but were not part of the original brief – e.g. patterns of behaviour)

6 CONCLUSIONS

This is where the Investigating Officer provides an overall fact based opinion on a) whether there is any evidence to support the allegations and b) the strength of the evidence.

i.e. Looking at each allegation, does the majority of evidence support the allegations being made. If so please detail why.

Or

Looking at each allegation, does the majority of evidence NOT support the allegations being made. If so please detail why.

Support the conclusions with the strongest evidence without repeating the text in the main body of the report (where possible) - the conclusions should be clear and concise.

Identify to the reader the strengths and weaknesses in the evidence - emphasising the importance of any issues and where evidence can be open to different interpretation / scenarios.

Draw out key facts which demonstrate particular breaches of policy such as Financial Regulations, service policies & procedures etc. What evidence supports the employee being aware of what was expected or required of them? What is this evidence?

If there are any mitigating factors ensure that they are clear within the conclusions and it is important to explain their significance.

6.1

6.2

6.3

6.4

6.5

7 RECOMMENDATIONS

7.1 The report is sent to the Head of Transformation or delegated other. A meeting with the Line Manager, Head of Transformation (or delegated other) and Investigating Officer should be held to help clarify any points of fact or evidence. The Head of Transformation, in consultation with line manager and Investigating Officer, what decide what the next steps will be. The possible outcomes are:

- No further action.
- Counselling / Performance Management Action or action through an alternative policy such as capability or probation.
- A formal disciplinary hearing is required.

7.2 *If the Investigating Officer believes there is sufficient evidence to warrant consideration by a disciplinary hearing, this should be indicated here.*

7.3 *Any recommendations relating to system, policy, procedural or management weaknesses should also be reported here even if outside the scope of any disciplinary hearing. The Head of Transformation (or another member of HR) will discuss these recommendations with an appropriate manager within the organisation.*

NB. *The discussions following these recommendations should not make any reference to the individuals involved in the investigation.*

END OF REPORT – This report and Appendices should be sent to the Head of Transformation in hard copy, although an electronic copy should be sent where available.

Appendix 12 – Disciplinary Appeal Application Form

Your Name	
Your Job Title	
Your Service Area and Line Manager	

Details of your appeal (Please continue on separate sheet if required).

Please explain the reasons for the appeal (refer to the policy), and attach any supporting evidence.

Individuals involved in the appeal:

Please provide the names and contact details of any people involved in your appeal, including witnesses you wish to call during the appeal.

Outcome requested from the appeal:

Please set out what outcome you would like to see from your appeal.

Name of trade union/other representative (if appropriate)	
---	--

Signature	
Date	

Please send this form to the Head of Transformation within five working days of receiving your disciplinary hearing outcome letter.

DRAFT JOINT HOMEWORKING POLICY

CONTENTS

- 1 What is homeworking?
- 2 Benefits
- 3 Limitations
- 4 What jobs are suitable?
- 5 Health and safety
- 6 Managing working time
- 7 Equipment provision
- 8 IT support
- 9 IT security
- 10 Confidentiality, data protection and freedom of information
- 11 Insurance
- 12 Performance Monitoring
- 13 Requesting homeworking
- 14 Ceasing homeworking

APPENDICES

- 1 Manager and Employee Checklist
- 2 Working from Home – Workstation Assessment for DSE Workers
- 3 Homeworking Application Form

1 Purpose

To provide guidance for managers and employees when considering working from home or remote working i.e. not from an office base.

2 Introduction

The business requirements of the Service are a crucial factor in determining whether or staff or teams can participate in homeworking on an occasional or more regular basis. As equal opportunities employers both Councils provide flexible working arrangements and managers are encouraged to respond positively whenever possible to requests for varied working arrangements. However, there is no automatic entitlement to homeworking arrangements and the efficiency and effectiveness of the service as assessed by the line manager will be paramount in reaching a decision as to whether homeworking for any period is approved.

Homeworking is a flexible working option, which can bring benefits to all.

Benefits

Benefits associated with homeworking:

- Improves productivity (volume and quality).
- Provides greater flexibility in an employee's working day.
- Supports the Green Travel Policy.
- Savings on business mileage and car parking expenses / spaces.
- Uses office accommodation more efficiently.
- Provides greater freedom to manage workloads.
- Provides greater motivation, job satisfaction, and personal wellbeing.
- Contributes to recruitment and retention.
- Supports and compliments e-government.
- Supports and contributes to Best Value.
- Allows employees who have a disability or temporary health issue to continue working.
- Allows employees with a temporary transport issue to continue working.

3 Limitations

The disadvantages to homeworking that need to be considered are:

- The management and training of staff using their home as a work base can be more difficult.
- Social and organisational isolation.
- Lack of division between work and home.
- Non compliance with Working Time Regulations.

Homeworking is based on trust and a line manager will be required to trust their employee to work the hours agreed as part of any homeworking agreement. If this trust is broken, an employee will be required to return to the office with immediate effect. This may also result in disciplinary action.

Staff may request to work from home for the whole of their working time although it is envisaged that it is more likely that homeworkers will work partly from home and partly from the office, or on an occasional basis (less than 10 hours per week).

4 What jobs are suitable?

Before agreeing any homeworking arrangements the line manager should give full consideration to the suitability of the job role to be undertaken on a homeworking basis. Consideration needs to be given to which aspects of a job are appropriate for carrying out at home and how this might impact on service delivery. The following points will assist with this evaluation:

- There should be no adverse impact on the quality of service provision.
- There should be clear objectives and measurable outputs (e.g. production of reports, policies, etc).
- The work must be able to be done without face-to-face contact or direct supervision and carried out at times when the employee does not need to be accessible in person or available for meetings at short notice.
- If in a supervisory or line management role would it still be possible to manage or supervise these staff if and when they work from home?
- There should be no increase in workload for colleagues as a result of working from home.
- Can IT systems required to undertake the homeworking request be accessed and supported? Is there any additional cost to this?

In all cases the agreement will be that employee will be required to revert to their original working base should the needs of the service change.

Homeworking should only be used if the needs of the job and the service allow it after the above has been considered, however homeworking should not be used as a substitute for care arrangements such as for childcare or for other personal reasons.

5 Health and safety

Under the Health and Safety at Work Act 1974 all employees have a general duty to:

- Take reasonable care of themselves and others who may be affected by their acts or omissions whilst they work and to follow safe working practices;
- To co-operate with other employees in carrying out duties of care imposed on the employer;
- Not to interfere with or misuse anything provided in the interest of health, safety and welfare;
- To report accidents or unsafe working conditions to their employer

This general duty, along with all other Council policies applies equally to employees working at home.

All staff who request to work from home and/or are provided with Council IT equipment (not tags or tokens in isolation) should undertake a health and safety self assessment. This has to be signed off by the Corporate Health and Safety Manager prior to homeworking commencing and the release of Council IT equipment. A copy of the Health and Safety self assessment will be sent to the IT department.

The Council reserves the right to inspect an employee's homeworking environment. This would only be done however with prior agreement of both the employee and the Corporate Health and Safety Manager. If the remote worker is unwilling to agree to a home assessment or if, after the home assessment, the Corporate Health and Safety Adviser concludes that the home workstation is not appropriate, the line manager will need to advise the remote worker that they may no longer be eligible to work from home with immediate effect.

Employees should be reminded that whilst working at home they must take responsibility for:

- Reporting any accident or injury to their line manager without delay.
- Ensuring smoke detectors are present and working.
- Dealing with any first aid / medical emergency that may occur.

Homeworkers and those working remotely must supply a contact number where they can be reached at all times. This is to fulfil lone working requirements. The employee should agree with their line manager whether or not it is necessary for the employee to check in with them or a designated colleague at an agreed time on a homeworking day.

6 Managing working time

The Councils guidelines on the Working Time Regulations requires all employees to have a minimum 30 minute break every six hours, that a consecutive 11 hour break is taken within

every 24 hour period and that a maximum 48 hour working week applies. This ruling applies equally to employees working at home.

When working from home a CDC employee should access Wintime (CDC) via the on-line system and clock in and out of work as they would when entering / leaving the office. An SNC employee should record time spent working from home as such on the employee's flexitime sheet.

Employees must remain in contact with the office during the working day and will be expected to attend all meetings and appointments as required. Meetings and appointments should not be arranged at the employee's home.

7 Equipment provision

The employee's department is responsible for the cost of any equipment required to undertake homeworking successfully. Most employees can undertake homeworking after being supplied with a tag or token (contact Information Services to determine exactly what is required), although line managers should note that not all Council programmes are available via this system. (Please note a tag or token will not be issued to an employee until the Manager and Employee Checklist (**Appendix 1**) and Workstation Assessment for DSE Workers (**Appendix 2**) has been completed – a copy of these forms will be sent to Information Services. Should an employee not comply with this policy all homeworking rights will be removed including tags or tokens..

Where employees are provided with equipment to work from home they are required to take reasonable care of it, use it for Council business only and in accordance with any appropriate operating instructions and within the requirements of the Data Protection Act. All equipment remains the property of the Council and must be returned upon request.

Any equipment that is supplied by the Council must be tested in line with current procedures and must be made available upon request. Employees should ensure that any obvious signs of damage to equipment are reported immediately to their line manager.

Employees supplied with Council equipment are also required to complete a Working from Home Workstation Assessment (Appendix 2). This must be completed and signed by the line manager (with a copy sent to the Corporate Health and Safety Manager) before homeworking can commence. Any issues should be raised with the Corporate Health and Safety Manager immediately. Homeworking equipment will be removed and homeworking ceased if this is not done.

Where employees are using their own equipment they must ensure that it is operating correctly, is safe to use and that any information stored will not contravene the Data Protection Act or enable others access to unauthorised Council information.

Whilst working from their home the employee is responsible for all costs associated with broadband costs, heating, lighting and ventilation etc. to ensure a safe and healthy working environment.

Telephones – where necessary employees will be provided with a work phone or blackberry. Where this is not deemed appropriate reimbursement will not be made for business calls made using a personal telephone. This arrangement needs to be agreed with before the commencement of home-working.

8 IT support

The helpdesk will endeavour to provide support to employees accessing Council IT systems using approved software where possible. Employees should be reminded however that it is their responsibility to ensure their own equipment is in full working order, and fit for purpose. IT will not provide support to an individual's own equipment.

Home visits will not normally take place. If technical assistance is necessary, it will be the responsibility of the participant to transport the piece of equipment back to work for diagnosis and/or repair.

In the unlikely event that access is required in the home for maintenance or compliance purposes, this must be granted, subject to reasonable notice being provided.

Information services will not support personal computer equipment

Should IT arrangements for homeworking fail the employee will in most circumstances be required to return to the office.

9 IT security

Employees must ensure they comply with all current IT policies, these can be found on either Council's intranet or in the SNC staff handbook..

10 Confidentiality, Data Protection and Freedom of Information

The Council's standard policies in relation to the secure storage and confidentiality of information apply equally to all employees working from home. This includes compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000. Confidential information must be destroyed in line with departmental guidelines.

11 Insurance, Mortgages and Tenancy Agreements

An approved homeworker is covered by the Council's insurance arrangements for employer's liability.

If a contractual homeworking arrangement is agreed the employee should notify their insurance company and landlord or mortgage provider that they will be working at home. The Council will not meet any additional costs incurred as a result.

Formal notification to mortgage lenders, or landlords, to obtain agreement to the partial use of premises for work may be required. Please check with relevant parties to find out if this affects you.

The insurance liability cover for staff who want to work at home is as follows:

Employer's Liability – The Council's policy covers staff members for normal business working but not if the member of staff was injured due to a fault within their home environment. Risk assessments must be carried out before homeworking commences .

Personal Accident – The Council's policy covers staff members for normal business activities so would not cover the complete home environment.

Computer Equipment – All computer equipment owned by the Council is covered by the Council's insurance providing that it is maintained and kept safe. ALL equipment must be kept in a safe environment and laptops must not be left in an unattended vehicle.

Public Liability – Meetings with members of the public should take place in a place of work (an office) not at home. Public liability insurance does not cover members of the public. Any member of staff visiting another member of staff in the home will be covered in the normal way.

12 Performance Monitoring

Managers are expected to monitor performance for the individual as well as the service to establish the effectiveness of remote working. If, at any time, the manager is concerned that the remote worker is not working adequately or appropriately, then the manager can require a return to normal office-based working with immediate effect.

Regular one to one meetings should be used as an opportunity to discuss and resolve any problems or difficulties that may have been encountered. If problems cannot be resolved (for example, a remote worker's access to the network is

blocked for a considerable period of time due to network connection problems), then the manager may require the remote worker to withdraw from the home working arrangement.

13 Requesting homeworking

All employees should complete a homeworking application form for any form of homeworking, and before homeworking commences. This will need to be supported both by the employee's line manager and Head of Service for the first application. Thereafter an application will be agreed by the line manager for ad hoc homeworking (that not agreed as contractual homeworking).

All employees should also complete a homeworking checklist. (Appendix 1) before any homeworking commences.

All staff applying for homeworking or is in the possession of Council IT equipment such as laptops/tags or tokens will need to complete a Health and Safety Assessment. This will be reviewed and signed off by the Corporate Health and Safety Manager before homeworking commences. Where an employee is requesting to work from home on a regular weekly basis then the line manager will also need to complete a Contract Amendment Form that will detail the regularity of the homeworking and the reasons for it to be agreed along with any reasons it may be terminated. This will form a permanent change to the employee's contract of employment.

Where homeworking is not contractual the employee must seek approval from their line manager to work from home either by telephone or e-mail on each occasion homeworking is requested. Just because authority has been given using the homeworking application, the health and safety assessment and the manager checklist, will not mean every request for homeworking will be granted and the employee must not assume this will be granted.

Homeworking should not be requested for personal reasons such as to care for children or in any other circumstance where a normal working hours for the day cannot be achieved. Homeworking should be considered only where the needs of the service can be fulfilled.

14 Ceasing homeworking

Homeworking is a voluntary arrangement and either party may chose to request a change to this arrangement. Homeworking arrangements can also be withdrawn if circumstances change and the employee can no longer comply with policy or if there is an adverse effect on service provision.

SOUTH NORTHAMPTONSHIRE COUNCIL & CHERWELL DISTRICT COUNCIL

Working from Home Policy

Manager & Employee Checklist

The manager and the employee (the "home worker") complete this checklist **before** working from home or remotely can begin. Once completed, the original checklist needs to be:

- signed by manager and employee,
- approved by Head of Service, and
- sent to Human Resources with other relevant forms.

Please note that this checklist needs to be read in conjunction with the Working from Home policy (the relevant paragraph or section numbers are shown in brackets, as appropriate, in the Issues column).

Issue	Yes	No	Comments/action
1. IT Equipment & Materials			
<ul style="list-style-type: none"> • Has the employee received training regarding IT systems and/or had an opportunity to test access to relevant work systems from a remote location? (4.2) 			
<ul style="list-style-type: none"> • Is all the relevant equipment in place (including access to Broadband)? (4.2.3) 			
<ul style="list-style-type: none"> • Have you discussed IT security and confidentiality issues? (4.3) 			
<ul style="list-style-type: none"> • Has the employee completed the Workstation Assessment for DSE Users for his/her home work station? (If yes, attach a copy. If no, insert date when this will be completed.) <p>NOTE: An assessment only has to be completed if the homemaker is likely to work more than 10 hours or use Council IT equipment.</p>			
2. Performance Management			
<ul style="list-style-type: none"> • What arrangements are in place for monitoring work output, work quality etc? (4.7.1-4, 4.8.1-2) 			
<ul style="list-style-type: none"> • What is the contact telephone number in the event of an emergency? (4.4.5-6) 			
<ul style="list-style-type: none"> • Have you reminded the employee about Council policies still applying, in particular those relating to data protection, health and safety and confidentiality? (4.3 & 4.4) 			
<ul style="list-style-type: none"> • Is the employee confident that he/she understands the implications of these policies? 			

<ul style="list-style-type: none"> • What arrangements are in place for the employee to receive/make telephone calls while working remotely? (4.4.5) 			
<ul style="list-style-type: none"> • What will happen if the work output or any other aspect of performance management is not considered satisfactory? (4.7.6 & 4.8) 			
<ul style="list-style-type: none"> • Which day(s) will the remote worker be working remotely? (4.7.1) 			
<ul style="list-style-type: none"> • What are the arrangements for daily contact? (4.7.4) 			
<ul style="list-style-type: none"> • Have you explained to the employee what will happen if IT connectivity/ access becomes a problem? (4.8.2) 			
3. Insurance			
<ul style="list-style-type: none"> • Has the employee confirmed he/she understands the insurance requirements set out in the policy document? (4.5) 			
4. Any other issues			
<ul style="list-style-type: none"> • Do you or the remote worker have any other concerns or queries? If so, please list in the comments column. 			

Manager's declaration:

I have explained the policy on home working to the employee and I am satisfied that he/she understands everything that is required of him/her.

Signed:

Job Title:

Date:

Division:

Employee's declaration:

I confirm that my manager has explained the policy on home working and that I understand my obligations under the policy as set out in both the policy and this checklist.

Signed:

Job Title:

Date:

Division:

Head of Service Approval:

Signed:

Job Title:

Date:

Please forward to Information Services as approval to release homeworking equipment.

Equipment Required	
Date released	
Comments	
Actioned by (NAME)	

SOUTH NORTHAMPTONSHIRE COUNCIL & CHERWELL DISTRICT COUNCIL

**Working from Home
Workstation Assessment for DSE Workers**

Name of Employee:
Location of workstation in the home:
Section:
Equipment ID No:

Section A

This section should be completed by the employee in the first instance when the employee is provided with Council Equipment or is going to work for more than 10 hours per week at home on a contractual basis. If necessary an assessor may need to arrange to come to your home to carry out a further assessment.

The Screen	Yes	No
1. Is the screen easily readable?		
2. Is the screen image stable and without excessive flicker?		
3. Is the screen glare free?		
4. Is the screen free from reflections?		
5. Does the monitor swivel?		
6. Does the monitor tilt easily?		
7. Does the screen height allow a comfortable head position?		
8. Do you know how to adjust the screen controls?		
The Keyboard		
9. Is the keyboard tiltable?		
10. Is the keyboard separate from the screen?		
11. Is there space in front of the keyboard sufficient to provide support for your hands when not operating the keyboard?		

12.	Do the keys have a matt surface to avoid reflective glare?		
13.	Are the symbols on the keys legible?		
Desk			
14.	Does the desk have a large surface to allow a flexible arrangement of screen, keyboard, documents and related equipment?		
15.	Is the height of the desk correct?		
16.	Does the height allow operation of the keyboard with the hands in a neutral position without bending the hands at the wrist?		
Document holder and foot rest			
17.	Is a document holder available if required?		
18.	Is the document holder if required, able to be adjusted and positioned to minimise the need for uncomfortable head and eye movements?		
19.	Is a foot rest available if required?		
Chair			
20.	Is the chair comfortable?		
21.	Is the seat height adjustable?		
22.	Is the seat back adjustable for height?		
23.	Is the seat back adjustable for tilt?		
Telephone			
24.	Do you have a telephone line by your workstation?		
25.	If yes, is the cabling secured and free from trip hazards?		
Environment			
26.	Is there sufficient space for the user to change position and vary movements?		
27.	Is the lighting level satisfactory		
28.	Are you distracted by noise?		
29.	Is the area you have designated your workstation free from loose cables that might cause a slip or trip?		
30.	Are there sufficient power points to operate the workstation equipment?		
31.	Are all portable electrical appliances tested and in date?		
32.	Are you able to ensure all electrical and moving machinery at your workstation is secured away from children who may endanger themselves?		
Reflections and Glare			

33.	Is the screen free from glare or reflections from windows?		
34.	Are the windows fitted with a system to attenuate the daylight that falls on the workstations?		
Heat and Humidity			
35.	Is the workstation free from excessive heat?		
36.	Is the atmosphere sufficiently humid?		
Health			
37.	Are you free from eyestrain associated with using the equipment?		
38.	Are you free from stress associated with using the equipment?		
39.	Are you free from pain in the hands, arms, shoulders or neck associated with using the equipment?		
40.	Is the software suitable and easy to use?		
41.	If you have substances stored at home that come under the COSHH Regulations, this could include such items as toner or cleaning products, are they securely stored and has a suitable assessment been undertaken?		
42.	Do you have access to a first aid box?		

Section B

To be completed by the Corporate Health and Safety Manager:

I have read the above workstation assessment and my recommendations are that the following changes need to be made to comply with the Regulations:

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Signed off by the Corporate Health and Safety Manager:.....

Date:.....

Signed by employee:

Signed off by manager/supervisor:
.....

Date:
.....

HOME WORKING APPLICATION FORM

(to be completed by all employees working at home on a contractual basis – one application only required or for each occasion of ad hoc homeworking) This form will be retained by the persons line manager

Employee Name:	
Department:	
Post Title:	
Home Address: (where home working will be based)	
Home Telephone Number:	
Mobile Number:	
Reason for application: (please include why you are making the application, what benefits there are to both you as an employee and the Council, what effects this might have on your colleagues and how any problems might be overcome)	
Signature:	
Date:	

Authorisation		
Line Manager I support the homeworking application.	Print:	
	Signature:	
	Date:	

(NOTE: An application for homeworking will not be approved if not supported by the Line Manager).

Minute Item 27

APPENDIX A

Pay Policy for Posts within Shared Teams

Shared working is required at every level of the organisation to varying degrees. Pay for members of the Joint Management Team has been set by the Joint Personnel Committee and incorporated in JNC contract of employment and therefore this policy deals with posts below the Joint Management Team.

Pay is set within South Northamptonshire Council through the use of the Hay job evaluation scheme. At Cherwell District Council jobs are evaluated using the Greater London Provincial Councils Scheme (GLPC). Both current job evaluation systems take account of the increased complexity, relationships and decision making required by people who work in teams serving both organisations and therefore grading via those systems will result in appropriate pay levels for the majority of staff. What is not specifically accounted for is the requirement to lead or manage a service across two organisations. This is likely to apply in very few circumstances and only at the level immediately below service head.

The following policy will therefore apply at the respective levels of staff working in shared teams. All other terms and conditions remain unchanged.

Staff Group	Pay policy and related terms and conditions
<p>Directors and Service Heads <i>(included here for completeness only)</i></p>	<p>Grades externally assessed by Hay.</p> <p>Pay awards at the sole discretion of the Joint Personnel Committee. Pay progression is delegated to the Chief Executive in consultation with the two leaders.</p> <p>Joint working base so mileage only payable if travel is required during the working day.</p> <p>Employer remains as previous, new appointments to SNC during 2011/12 this will be reviewed regularly (at least annually) to ensure cost effectiveness and balance of employment is maintained</p> <p>JNC terms and conditions, changes via JPC.</p>
<p>Middle Management (generally only direct reports to Service Heads)</p>	<p>Grades externally assessed by Hay (this is consistent with the approach used for the JMT and 3 other managers included in the business case).</p> <p>Any previous allowance for joint working will cease with effect from the implementation of either a new structure or an evaluation as described above.</p> <p>Joint working base so mileage only payable if travel is required during the working day. Amount of time on each site may be different in each case according to split of responsibility.</p> <p>Employer remains as previous, future appointments to be managed to retain balance of employment across the organisations and to take account of the respective employer's superannuation costs and any other relevant</p>

	<p>factors. This will be SNC for the 2011/12.</p> <p>Pay progression and pay awards in line with employer local policy/national agreement.</p> <p>All other terms NJC standard (as amended locally), changes via local collective bargaining process.</p>
<p>Shared posts within teams</p> <p><i>(applies to posts which are new or where review is required due to substantial changes in relation to shared working)</i></p>	<p>Grades assessed on both JE systems (Hay and GLPC) according to respective policies. Lowest common point used as the starting point for pay. Where there is no crossover in pay scales the closest salaries for either Council will be used, although this approach must be approved by the Head of Transformation.</p> <p>Single working base so mileage paid according to employer policy.</p> <p>Employer remains as previous, future appointments to be managed to retain balance of employment across the organisations and to take account of the respective employer's superannuation costs.</p> <p>Standard NJC terms and conditions (as amended locally), changes via local collective bargaining process.</p>
All other posts	Remain on current arrangements.

Staff Grievance Policy and Procedure

1. Policy Statement

It is the policy of Cherwell District Council and South Northamptonshire Council that everyone should be treated fairly and without discrimination regardless of gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (e.g. age, disability or sexuality).

We will not tolerate processes, attitudes or behaviour that amount to any form of discrimination, including harassment, victimisation and bullying through prejudice, ignorance, thoughtlessness, stereotyping or any other reason. This commitment will be demonstrated from the most senior to the most junior positions within the Councils.

The purpose of the Staff Grievance Policy and Procedure is to promote a working environment where all staff are treated with dignity and respect and where complaints, whatever their nature, are taken seriously and dealt with promptly, effectively and sensitively.

In practice this means:

- there will be clear and effective ways of raising any grievance, in confidence and without fear of recrimination;
- wherever appropriate, necessary steps will be taken to ensure the individual safety of the complainant and any witnesses or representatives/work colleagues;
- grievances can be informally/formally investigated and/or mediation used to resolve problems wherever appropriate;
- staff making a grievance can choose to be represented/accompanied at any part of the process;
- staff will be informed of any grievances made against them. They can be represented/accompanied and respond at any time during the investigation;
- all grievances will be monitored by HR;
- there is a right to appeal.

2. Introduction

2.1 Scope

This policy will apply to the South Northamptonshire and Cherwell District Council Senior Joint Management Team including the Chief Executive and all employees at South Northamptonshire Council and Cherwell District Council, and will apply whenever grievances are raised. This policy will not apply to third party or partner organisations where employees are not employed directly by either Council.

All staff grievances will be managed in accordance with the new procedure set out here.

3. The Manager's Role and Responsibilities

3.1 Managers will:

- implement this grievance procedure;
- ensure the Council's equalities policies are actively supported;
- attend appropriate training in the handling of staff grievances;
- be aware of the law and understand what constitutes discrimination (including harassment, Victimisation and bullying);
- set and monitor standards of behaviour in the workplace;
- provide advice and support to any member of staff pursuing a grievance;
- aim to deal with grievances at an early stage and, wherever possible, informally;
- ensure they are fair and equitable in their dealings with staff.

3.2 Working arrangements will include:

- all informal grievances will go to the line manager unless the grievance is against the line manager. In this case, it will go to the Head of Service or Director;
- all formal grievances will go to Human Resources who will allocate a trained independent investigating officer to handle the complaint;
- all informal/formal complaints will be dealt with as quickly as possible and ideally within one month. Timescales will depend on the complexity of the case but it is important that the expectations of those individuals involved in this process are managed. This can be achieved by drawing up an outline time frame, which can be the subject of change if circumstances dictate, but that does in the first instance enable members of staff to participate in the process whilst understanding how long it may take. Where the original timescales are likely to be exceeded the appointed independent investigating officer must ensure Human Resources and the employee are kept informed with a rationale for the extension and some indication of what the timescales are changing to;
- the line manager or independent investigating officer may refer the grievance to mediation before, during or after investigation;
- on behalf of the employee, the line manager can seek external counselling or other support from Occupational Health via Human Resources;
- steps will be taken to ensure the immediate safety of the employee making the grievance and their future safety, where this is necessary;
- appropriate action is taken against the offender(s) if the grievance is upheld;

- disciplinary action will be taken against the employee making the grievance if the grievance is found to be malicious;
- action taken for formal grievances will be tracked and monitored at both service and corporate level by line managers and HR.

4. The Employee's Role and Responsibilities

Employees will:

- Work with the line manager or human resources to genuinely seek resolution.
- Co-operate with any investigation.
- Wherever try to raise the grievance informally.
- Comply with all reasonable management instructions whilst their grievance is being progressed.

5. The Role of Human Resources

- 5.1 Human Resources has responsibility for advising managers on all aspects of the operation of this policy and for helping to maintain consistency in its application. Therefore, HR should be consulted when dealing with any grievance.

Human Resources will provide links to mediation and other Occupational Health services where appropriate.

Human Resources will provide training to all investigating officers and will allocate an investigating officer to any formal grievance as appropriate.

Human Resources will monitor the outcome of all grievances made under this procedure. Remedial action will be taken wherever necessary as part of the Council's commitment to tackle and eradicate inequitable treatment in the workplace.

6. Grievances Made Against the Chief Executive

- 6.1 For grievances made against the Chief Executive, these should be submitted to the Councils Monitoring Officer initially who will determine whether a formal grievance process is appropriate or whether an alternative course of action is more suitable. For example the Monitoring Officer might decide that the grievance is actually about a council service, rather than a grievance that is actually about the Chief Executive personally. In this case the Monitoring Officer would refer the matter back to the aggrieved employee, or their line manager, and indicate that the matter is one that they could raise under the appropriate complaints process for the council.
- 6.2 Under the ACAS code a two stage process is required so for grievances made against the Chief Executive the first stage (informal) would be dealt with by the Councils Monitoring Officer (who may nominate an independent Investigating Officer) (or the Councils Section 151 Officer if the Monitoring Officer is already implicated). If the matter remains unresolved then a panel of elected members (Joint Appeals Committee) will need to hear the grievance on behalf of the employer (stage two). The panel having the power to either uphold or dismiss the grievance, and can be advised by both a HR representative and a legal representative from within the Council. Only in exceptional cases will someone independent be bought in to do the investigation or advise the panel.
- 6.3 Any issues regarding any sanctions or outcomes of the grievance will be dealt with by the Joint Personnel Committee.

7. Training Need to look at Council/s

- 7.1 The Council recognises that it employs a diverse workforce with many staff likely to have very different expectations of the kinds of behaviours that are acceptable at work. The Council accepts that it has a responsibility to provide training for those staff in a supervisory position in how to recognise, prevent and deal with grievances. This training is to be mandatory for all employees who have supervisory or line management responsibility. Service Heads will identify this need through Personal Development Plans and it will be available through the regular corporate programme. All new staff will be made aware of the Grievance Policy and Procedure through induction.

8. Confidentiality

- 8.1 Strict confidentiality must be maintained when dealing with grievances. **All those involved in the grievance** including managers, the employee, colleagues, witnesses and representatives must maintain strict confidentiality **at all times** in order to ensure the integrity of the investigation process.

Records should be kept detailing the nature of the grievance raised, the response, any action taken, and the reasons for it. These records should be kept confidential and retained in accordance with the Data Protection Act, which requires the release of certain information to individuals on their request. Copies of any meeting records should be given to the individual concerned, although in certain circumstances, some information may be withheld (for example to protect a witness).

9. Types Of Grievance

- 9.1 There are many forms of grievance that staff may have. They can range from work related issues, to concerns about and employees fellow workers' or a clients' actions that affect them. They can also cover terms and conditions of employment; health and safety; relationships at work; new working practices; organisational change and equal opportunities. Whilst not exhaustive, the following list identifies the main grievances that can be brought under this procedure.

Types of grievance may include:

- Direct discrimination
 - Indirect discrimination
 - Direct disability discrimination
 - Victimisation: race, sex, disability, age, religion, belief and sexual orientation
 - Terms and conditions of employment
 - Unfair application of Council policy
 - Health & Safety complaints
 - Violence complaints
 - Complaints about racial abuse
- 9.2 To provide an exhaustive list is not possible. Staff should use their judgement when applying Council standards and policies, but should also be guided by the principle that the determining issue is how the member of staff is affected, not the intention.
- 9.3 This procedure covers all types of grievances **except** those relating to grading, pensions or disciplinary issues for which separate procedures exist. (see separte Council policies as appropriate

- 9.4 Re Investigation. Will managers from both Councils be able to investigate grievances in both councils
- 9.5 If the officer investigating the case reaches the conclusion that formal disciplinary procedures should be implemented, a formal disciplinary hearing will be scheduled. The investigation will form the basis of the management case and the disciplinary procedure will be invoked at the stage of convening a hearing. The panel hearing the disciplinary cannot include the manager who investigated the original complaint but they can present the management case where appropriate.

10. Using the Grievance Policy

- 10.1 All genuine grievances raised will be treated seriously. However, employees should be aware that they must not use the policy to raise concerns without just cause and with the intent of causing distress to others. In appropriate use of the policy may result in the employee, who has raised the grievance being subject to disciplinary action.
- 10.2 An expectation of this policy is that before individuals invoke the formal stages of the procedure, that they first attempt to resolve their complaint informally by discussing their complaint with their line manager, or another suitable person.
- 10.3 With regards to performance management, an employee may wish to raise a grievance about the way performance management is handled by their manager, which may include any grievance regarding bullying or harassment. However it is not expected that this policy will be used solely because the manager is seeking to performance manage an employee and then disagrees with the decision.

11. Collective Grievances

If a collective grievance arises, involving a group of employees within the same or different departments, but relating to the same issue, this may be dealt with through this policy and the group of staff may nominate a spokesperson to represent their case.

12. Staff Grievance Procedure

12.1 Stage One - Informal route

All employees may choose and are encouraged to discuss the grievance with their line manager (or their line manager's manager where the grievance concerns the line manager) to see if the matter can be resolved informally and without invoking the formal grievance procedure.

Employees should try to take the informal route initially as this approach benefits both parties, often resulting in a quicker and more satisfactory resolution.

Informal procedures concentrate on conciliation, not sanctions. For example, asking someone to stop doing something or to apologise. Managers must take any issue raised with them seriously. Managers should be aware of, and be prepared to explore, alternative methods of resolving any grievances that arise by discussing the issue and examining a range of possible solutions with the employee.

It should take no more than approximately a month to deal with an informal grievance. If the employee is not satisfied with the handling of the grievance or timeliness, then they should consider making a formal grievance.

In most instances, there is an expectation that staff will attempt to resolve their grievances informally, before following any formal route. When staff make a formal grievance and complete the grievance form (Appendix 1), they are asked whether any informal route has been pursued and if so when.

13. Mediation as an Informal Option

13.1 Mediation is an option that can be available to the employee, in appropriate circumstances, as an alternative way of resolving a grievance. Mediation is when an impartial, professionally trained, third party helps to facilitate discussion and seeks to support resolution between parties in order that working relationships can be maintained.

- if both parties are willing and the matter is appropriate for mediation, the mediation process will be considered.
- mediation can be used at most stages (if it is felt appropriate), apart from during a formal investigation. If it is deemed appropriate the manager or Human Resources can approach the parties concerned to determine if they are agreeable to mediation and explain what it involves. If the parties are agreeable Human Resources will arrange mediation.
- the aim of mediation will be for both parties to reach a mutually acceptable outcome, and to feel able to maintain their working relationship. If this is not possible, then the grievance can still be dealt with under the formal grievance procedure as described below.
- if the manager is referring staff to mediation it may sometimes be necessary to undertake a preliminary informal investigation to determine whether mediation is appropriate. For example, if the grievance were of a serious nature and would most likely lead to formal disciplinary action for serious misconduct, mediation would not be appropriate. The manager can ask the employee what outcome they are seeking from their grievance.
- if mediation is not deemed to be appropriate or is not acceptable to all parties, the manager can still informally/formally investigate the grievance. Similarly, if having commenced mediation it becomes apparent to the mediator that it is not appropriate, the issue will be referred back to the manager (via Human Resources) to investigate.
- mediation can be used not only to resolve complaints, but also as a key tool to building better working relationships and assisting in improving a difficult situation.
- mediation can help resolve issues which:
 - the parties have the power to settle;
 - the parties are prepared to work out;
 - the parties have equal power to negotiate and resolve;
 - do not require any expert knowledge.
- some examples of mediatable disputes are those about:
 - behaviour, management/work styles;
 - working arrangements;
 - environmental conditions.

14. Stage Two

14.1 Grievance in Writing

- this grievance process commences formally when the matter is raised in writing which must be done within three months of the event or issue occurring. The employee should complete a staff grievance form (which can be found at Appendix 1). The staff member making the grievance should send the grievance form to the Head of Transformation.
- A trained independent person will investigate the grievance, This need clarification a manager from another service area. An independent person from outside the Council can be used where it is agreed that this is appropriate and necessary. This might be appropriate where, for example, particular expertise is required such as technical skills or the ruling out of criminal possibilities.
- The trained independent officer will be selected by a member of the HR team so that an appropriate person is selected.
- HR will ensure the line manager/Head of Service is informed of the grievance when appropriate (i.e. it must be ensured that any investigation is not jeopardised). The HR team will also ensure the line manager is kept up to date at appropriate intervals.

15. Representation

- if the employee is invited to a hearing/meeting to discuss the grievance, they will be advised of their right to be accompanied by a trained trade union representative or a work colleague. The employee making the grievance can be represented at any part of the process.
- if the grievance is against another member of staff and if the grievance were substantiated (i.e. could result in formal disciplinary action being taken), then that member of staff (perpetrator) should also be advised of their right to be represented at any hearing to discuss the complaint.
- the representative must be permitted to address the hearing, and to confer with the person they are representing during the hearing in order to clarify issues, however, the representative is not entitled to answer questions on behalf of that person.
- the hearing must be postponed if the representative is unavailable, but they must propose a reasonable alternative date and time within five working days from the postponed hearing date. However, a postponed hearing may proceed if the representative is not available within 2 working weeks of the original postponed hearing date. This need some clarification
- it is inappropriate for someone to insist on a representative whose presence would prejudice the hearing or who might have a conflict of interest.

16. Timing

- a key and essential feature of the Staff Grievance Procedure is dealing with grievances promptly.
- the actual timescale may often depend on the nature of the grievance and the circumstances. However, there are some key stages of the process where a deadline can normally be adopted.
- dependent upon the nature of the grievance, it may be appropriate to deal with it immediately. It may be necessary, for example, to take immediate steps to ensure

the safety of the employee making the grievance. Such action could include reorganising or relocating work to avoid close or regular contact. In serious cases, pending a short urgent investigation, the member of staff complained about may have to undergo a precautionary suspension.

- any suspension will be on full pay for a period of not normally more than ten working days. If the investigation is not completed within this timeframe, the suspension period may be extended, subject to a review after each ten day period, with the aim of keeping the period of suspension as short as is reasonably practical. Who suspends, where recorded circumstances
- following receipt of the grievance form (Appendix 1), the HR team should contact the employee making the grievance normally within 5 working days. This will be to discuss the grievance and the arrangements for investigation or mediation where appropriate.
- where it is not possible to respond within specified time periods the employee making the grievance should be given an explanation for the delay and told when a response can be expected.

17. Investigation

17.1 Natural Justice

In conducting the investigation and reaching a decision the investigating officer must follow the rules of natural justice i.e. the employee whom the grievance is against must:

- know the complaints against him/her;
- have the opportunity to state his/her side of the case before any decision is made;
- have the opportunity to be represented; and
- must be dealt with fairly, reasonably and impartially at all times.

The purpose of the investigation is to obtain, collect and analyse all the evidence and information about a situation. This may be something that has happened, an individual incident, a series of incidents etc. Decisions are made on the basis of the accumulated information and evidence, and these decisions determine how the issues are handled. The investigation must gather all the facts which are relevant to the matters under consideration. Decisions are taken on the balance of probabilities.

Those conducting the investigation will be guided by the principles for investigations contained in the The Disciplinary Procedure and Policy.

If an investigation is required, this must begin as soon as possible. Investigating officers may need to justify the time taken in dealing with a grievance, therefore, a record should be kept of the reasons for any delays.

Less complex grievances should be dealt with normally within days or weeks - certainly a maximum time of 20 working days.

If any less complex grievance is not finalised within four working weeks, the manager needs to notify their Service Head/Director and Human Resources:

- the complaint has extended beyond four weeks; the reasons why;
- the expected time-frame for completion; and
- what the employee making the grievance has been advised.

Complex cases will depend on the circumstances, but must begin without delay.

Two months should normally be the maximum time taken to conclude a complex matter.

- for any form of grievance, the employee should be kept advised of progress within each 10 day period and given an explanation for any delay, they should also be told when a response can be expected.
- where an employee raises a grievance about the behaviour of a manager (in the course of a disciplinary case), consideration should be given to suspending the disciplinary procedure for a short period, until the grievance can be considered separately. And/or bringing in another manager to deal with the disciplinary case.
- where the grievance involves equality issues or any other serious allegations, the grievance procedure will be followed to completion, even if the employee bringing the grievance resigns or leaves the service.

18. After the Investigation is Complete

- 18.1 At the end of the investigation, the investigating manager will draft a report normally within 10 working days, outlining the process followed, the decision reached and the reasons for the conclusions.
- 18.2 The report will be made available to the employee making the grievance. Any alleged offender will be party to the report only if appropriate to move forward and with the agreement of the employee making the grievance.
- 18.3 This investigative report will be the basis of the case file. It may also be used as a management statement of case for any formal disciplinary hearing or used at any appeal hearing under this grievance procedure, and will form the basis of the grievance meeting. Needs clarity about redacting etc.
- 18.4 Once the investigation is complete a grievance meeting will be set up within five days of the completion of the investigation report being sent to the Head of Transformation. The meeting will include the Head of Transformation (or delegated other HR Rep) and the employee's line manager to go through the report and inform the employee of the findings. Any other party(s) involved should be seen by their line manager (wherever practicable) and informed of the outcome of the investigation and the appeals procedure, once the employee undertaking the grievance has been informed by HR. This should be confirmed in writing.
- 18.5 If there is no case to answer, all records of the matter will be disregarded entirely. If the Council's disciplinary procedure is invoked and the allegation is upheld, then action will be taken up to and including summary dismissal.
- 18.6 If an allegation cannot be substantiated following a formal investigation, and there is a reasonable belief that the employee making the grievance acted maliciously, disciplinary action may be taken against him or her. The employee bringing the grievance should be reminded before the investigation begins that making a malicious allegation constitutes a disciplinary offence. However, this would be only if there were firm grounds to believe that the claim was vexatious, not only on the basis that a grievance or appeal was not upheld.
- 18.7 In cases where the parties are to remain in the service of the Council, and are from the same work area, it may be necessary for them to be separated. Wherever possible, it will be the offender who is moved if a grievance has been upheld against him/her. Even if the grievance is not upheld, the employee making the grievance and the alleged offender may still be separated, where practical, in the interests of good relations.
- 18.8 Resistance to the grievance, either by confrontation by the alleged offender or by complaint to management, can sometimes result in further victimisation of the employee making the grievance. This may include hostility, criticism of work performance, transfer, loss of promotion or job. The Council views such victimisation as wholly unacceptable and, if founded, such allegations could lead to summary dismissal of the victimising party through the disciplinary policy.

19. Stage Three

19.1 Appeal

- the complainant can appeal against the decision/outcome following the investigation. This appeal must be made to Head of Transformation in writing **on the form found at appendix 2** within 5 working days of receiving the decision in writing (this time may be extended if there are extenuating circumstances which prevent the appeal being logged in time).
- the Head of Transformation will then be asked to make a statement in response within 5 working days.
- this appeal will be heard by the Appeals Panel (or the Joint Appeals Committee for staff in JMT) who will convene a hearing to examine the findings of the investigation **once all statements have been received**. Each party will be expected to attend the appeal to answer any questions.
- a panel date may be postponed if representation is not available but must be reconvened within 1 working week of the original date. If either party fails to attend without prior notice the appeal will be decided in their absence.
- the Appeals Panel should give a decision within 5 working days. This decision is final.

Staff Grievance Form

Appendix 1

Your Name	
Your Job Title	
Your Service Area and Line Manager	

Details of your grievance (Please continue on separate sheet if required)

When did you speak informally to your line manager about your grievance?	
Why are you dissatisfied with the response?	
What do you think should be done to put things right?	

Name of trade union/other representative (if appropriate)	
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Signature	
Date	

Please send or give this form to Human Resources.

Appeal Statement

This statement should be completed only if you have reached the end of Stage 2 of the Grievance Procedure and wish to appeal against the decision. You should attach copies of all supporting documentation to this form.

Your Name	
Your Job Title	
Your Service Area and Line Manager	

Details of your appeal (Please continue on separate sheet if required)

Why are you dissatisfied with the response?

What do you think should be done to put things right?

Name of trade union/other representative (if appropriate)	
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Signature	
Date	

Please send this form to the Head of Transformation **within 5 working days** of receiving your grievance decision in writing.

Minute Item 30

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted