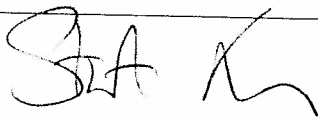


**Haringey Council**

Report for:	Corporate Committee on 27 September 2012	Item Number:	
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Title:	Approval of Amended Employment Procedures agreed with the Trade Unions
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Report Authorised by:	 Stuart Young, Assistant Chief Executive
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Lead Officer:	Steve Davies, Head of Human Resources
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Ward(s) affected: ALL	Report for Key/ Non Key Decisions: Non Key Decision
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**1. Describe the issue under consideration**

To provide the committee with revised employment procedures as follows:

- Grievance procedure
- Capability procedure
- Disciplinary procedure
- Sickness absence procedure

**2. Cabinet Member introduction**

Not applicable

**3. Recommendations**

That the committee approve the revised employment procedures – Grievance, Capability, Disciplinary and Sickness Absence – attached as appendices with this report.

#### 4. Other options considered

Not applicable.

#### 5. Background information

During the spring/ summer 2011 a package of potential changes to employment terms was developed. This was the subject of discussion with staff and unions.

Following a period of consultation it was agreed to refocus the discussions on a number of key employment procedures - Grievance, Capability, Disciplinary and Sickness Absence.

Following a number of negotiating meetings with the unions revised procedures have been agreed with branch union officers.

The unions are currently out to consultation with their members, with a recommendation that the changes be agreed.

The key changes to the procedures are outlined below.

Item	Main changes
Grievance procedure	Clarification of what can be progressed to final stages of procedure. Aggrieved party needs to be clearer in what grievance is about and more specifically what forms of remedy they are seeking.  3 <sup>rd</sup> stage appeals no longer to Members. 3 <sup>rd</sup> stage reviews considered by independent panel of Head of HR and unconnected Asst Director/ Director.
Capability procedure	Dismissal appeals will be considered by panel of 2 Members.
Sickness absence policy	Procedure has been updated and reviewed to take account of Equalities Act 2010.  Dismissal appeals will be considered by panel of 2 Members.

Item	Main changes
Disciplinary procedure	<p data-bbox="587 159 1193 203">Dismissal appeals to panel of 2 Members.</p> <p data-bbox="587 232 1401 304">Demotion/Relegation appeals will now be considered by officers.</p> <p data-bbox="587 342 1485 495">The simplified procedure may now be used in cases where the likely sanction would be dismissal for gross misconduct but where management have decided not to seek dismissal due to mitigating circumstances.</p> <p data-bbox="587 533 1414 719">All disciplinary appeals will now be conducted on basis of review of dismissal decision instead of a re-hearing. The appellant will provide clear reasons as to why they are appealing and on what grounds they want the decision changed.</p> <p data-bbox="587 757 1469 1066">Both sides will exchange documentation relevant to the appeal in advance and this will be shared with the appeal panel/ manager. The appeal will be in the form of a meeting but the focus of the meeting will primarily be on the reason for the managers original decision, the issues in dispute and the grounds of mitigation, unless new evidence is introduced in which case witnesses may need to be called. This will enable a shorter meeting than the original disciplinary hearing.</p>

## 6. Comments of the Chief Finance Officer and financial implications

There are no expected savings or costs that arise from changes to the employment procedures.

## 7. Head of Legal Services and legal implications

The Head of Legal Services has been consulted on the contents of this report. Any change to the current procedural arrangements for dealing with grievance, disciplinary and capability matters, which are contractual in effect, will require a lawful variation of contract, which allows for variation to such incorporated contractual terms by means of a collective agreement.

It is noted that the proposed changes outlined in this report are to be agreed with the trade unions as part of the Council's collective bargaining arrangements.

## **8. Equalities and Community Cohesion Comments**

Equalities considerations have been taken account of in conducting the reviews. There are no equality impacts arising out of the changes proposed.

## **9. Head of Procurement Comments**

Not applicable

## **10. Policy Implications**

Not applicable.

## **11. Use of Appendices**

Appendix A – Revised Grievance Procedure  
Appendix B – Revised Capability Procedure  
Appendix C – Revised Sickness Absence Policy  
Appendix D – Revised Disciplinary Procedure

## **12. Local Government (Access to Information) Act 1985**

No documents that require to be listed were used in the preparation of this report.

## GRIEVANCE PROCEDURE

<i>Contents</i>	<i>Section</i>
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Grievance Procedure <ul style="list-style-type: none"><li>• Procedure flowchart</li></ul>	5
Use of Mediation	6
Appeals Process	7
Appendices <ul style="list-style-type: none"><li>• Appendix 1: Grievance Form</li><li>• Appendix 2: Grievance Submission Form (Stages 3 or 3)</li></ul>	

# GRIEVANCE PROCEDURE

## 1. INTRODUCTION

1.1 The Council's Grievance Procedure was approved by the General Purposes Committee in March 2009. The Grievance Procedure provides the formal mechanism for the Council to deal with complaints from employees about their conditions of service, work or working conditions. All new employees are provided with a copy of the procedure. This version was agreed by the Corporate Committee on XxX.

1.2 When an employee raises a grievance it is management's responsibility to ensure that the grievance is investigated and responded to in a timely and effective manner. The manager is also responsible for notifying Human Resources of all formal grievances. Human Resources are responsible for giving management appropriate advice and for recording and monitoring formal grievances.

1.3 Investigating Managers must read the 'Management Guidance – Grievance Procedure' before investigating a grievance. This document can be found on Harinet along with appropriate training courses.

1.4 A grievance may cover any issue relating to an employee's conditions of service, work or working conditions, about which that individual feels dissatisfied.

1.5 A grievance should not be brought in the first instance and will not be considered where it is raised in direct response to the application of another procedure or where it can be raised under another procedure e.g. grading as a result of a job evaluation, an appeal against a disciplinary sanction etc.

1.6 Where an employee feels they are being harassed or bullied they should also refer to the Harassment and Bullying Policy, but note that if an issue of harassment and bullying needs to be raised formally the grievance procedure should be used.

## 2. SCOPE OF THE PROCEDURE

2.1 This procedure applies to all Council employees, except those teachers directly employed by the Council and all staff appointed by schools operating under the Local Management of Schools, which have their own procedure.

## 3. GENERAL PRINCIPLES

1. The efficient and fair handling of employee complaints and grievances at work can contribute significantly to the creation and maintenance of good employee relations. Sensitive handling by management can in some cases avoid minor problems turning into major disputes.
2. Where employees have a grievance relating to their employment, they have the right to express it. In the first instance they should raise their complaint informally with their line manager. Only where the matter cannot be resolved or in certain circumstances where this approach may not be appropriate should the employee move to the Council's Grievance Procedure.
3. Employees are entitled at any time to take up a grievance themselves or to ask a trade union official or work colleague to handle it for them. They also have the right to be accompanied or represented at any meeting they attend as part of the formal grievance procedure. Again this will be by a trade union official or work colleague. Grievances should be submitted no later than 3 months following the incident complained of.
4. All genuine grievances raised will be treated seriously. However, the procedure must not be used maliciously or in bad faith. Any such use of the procedure may lead to disciplinary action against the employee who has raised the grievance.
5. Where a grievance is raised by a group of employees then that group must nominate one or two employees to represent the group alongside the trade union representative(s) (if applicable). The outcome of a group grievance will apply to all individuals aggrieved where their grievances are similar and they have agreed to have their grievance considered as a group grievance. Where an employee declines to be included in the group grievance the same manager will investigate the individual and group grievance.
6. There may be circumstances where a disciplinary/sickness/capability case and a grievance are related. In these circumstances it is normal for both processes to run in parallel with each other. However, there may be exceptions, depending on the circumstances of the case where one process is put on hold until the other process has been completed. In the event that a grievance and harassment & bullying case are related then these two processes would be merged.
7. Any additional complaints linked to the original grievance that arise en-route during progress through the stages will be wrapped up in the ongoing process.
8. The manager at each stage may agree remedies subject to appropriate authorisation.
9. The option of mediation to resolve the grievance can be considered at any stage of the grievance and if not considered a reason is provided as to why it is inappropriate.

10. The investigating manager will decide how to conduct the investigation and how to construct the written response to the employee.
11. It is important that both the aggrieved person and the person against whom the grievance has been lodged are kept informed of progress and when things are going to happen.
12. In the event that an employee lodges a counter grievance on the same subject matter the same manager would normally investigate/consider both grievances.
13. If the employee who has raised the grievance or their representative cannot attend the meeting and if there is a prolonged delay because of this then the timescales for a response will automatically be extended.
14. The grievance procedure is a confidential process and those participating in it must not disclose the nature of the grievance or the outcome to any person who is not a party to the process except when seeking appropriate legal advice and/or if required to do so by law. This may include appropriate parties making enquiries of a number of employees to establish the facts of the case. If a disclosure is made that is in any way malicious or inappropriate to the circumstances of the grievance, this may lead to disciplinary action under the Councils Disciplinary Procedure.
15. If following the investigation it is concluded that there was a breach of the Council's Code of Conduct and Disciplinary rules then this will be dealt with under the Disciplinary Procedure.
16. If an employee feels they are unable to produce a written grievance, for example because of language or disability related issues s/he may seek support from appropriate parties such as her/his trade union representative, workplace colleague, Human Resources, Equalities or manager if appropriate.

#### 4. EQUALITIES AND DIVERSITY

4.1 Grievances will be monitored by gender, disability, ethnicity, religion, age and sexual orientation (religion and sexual orientation will be monitored separately).

#### 5. GRIEVANCE PROCEDURE

##### Stage 1

5.1 Employees, or her/his representative should advise her/his line manager or, if this is not appropriate, a more senior manager within the service or Human Resources that s/he wishes to take out a grievance. The grievance should be set out in writing. All grievances should be copied to Human Resources.



5.2 Should the grievance relate to the conduct of another employee, then that person will be notified of the terms of the complaint and have an opportunity of being heard.

5.3 Management will on receipt of the grievance arrange to meet the employee and her/his representative ideally within 10 working days of receipt of the written grievance, to discuss the grievance and the possible remedy.

The option of mediation to resolve the grievance can be considered at this stage if appropriate.

5.4 Management will conduct a full investigation and shall consider the grievance and decide whether or not to uphold it, giving their response in writing normally within 28 calendar days of the written grievance unless agreed otherwise at the outset. If a written response cannot be given within the agreed deadline the investigating manager must agree a revised deadline with the employee.

5.5 If the case is of a complex nature involving a number of parties to investigate/hold discussions with then it is likely the timescale will be longer and as a guide the written response time can be up to 2-3 months.

5.6 If the employee considers the grievance is not being dealt with in a reasonable timescale and this can be justified s/he is entitled to request a response within the next 10 working days. A failure to respond will then allow the employee to proceed to stage 2.

## Stage 2

5.2.1 If the employee is not satisfied with management's response from Stage 1 or has not received a response within the timescales described above and wishes to take the matter further, s/he (or her/his representative) should set this complaint out in writing, using the Grievance Submission Form (Appendix 1) to her/his Senior Manager. The complaint must be received within 10 working days of the date of the written response at Stage 1 and must identify which part or parts of the Stage 1 decision the employee is dissatisfied with and the reasons for her/his dissatisfaction. A complaint raised outside this timescale will not normally be considered unless there are good reasons for the delay.

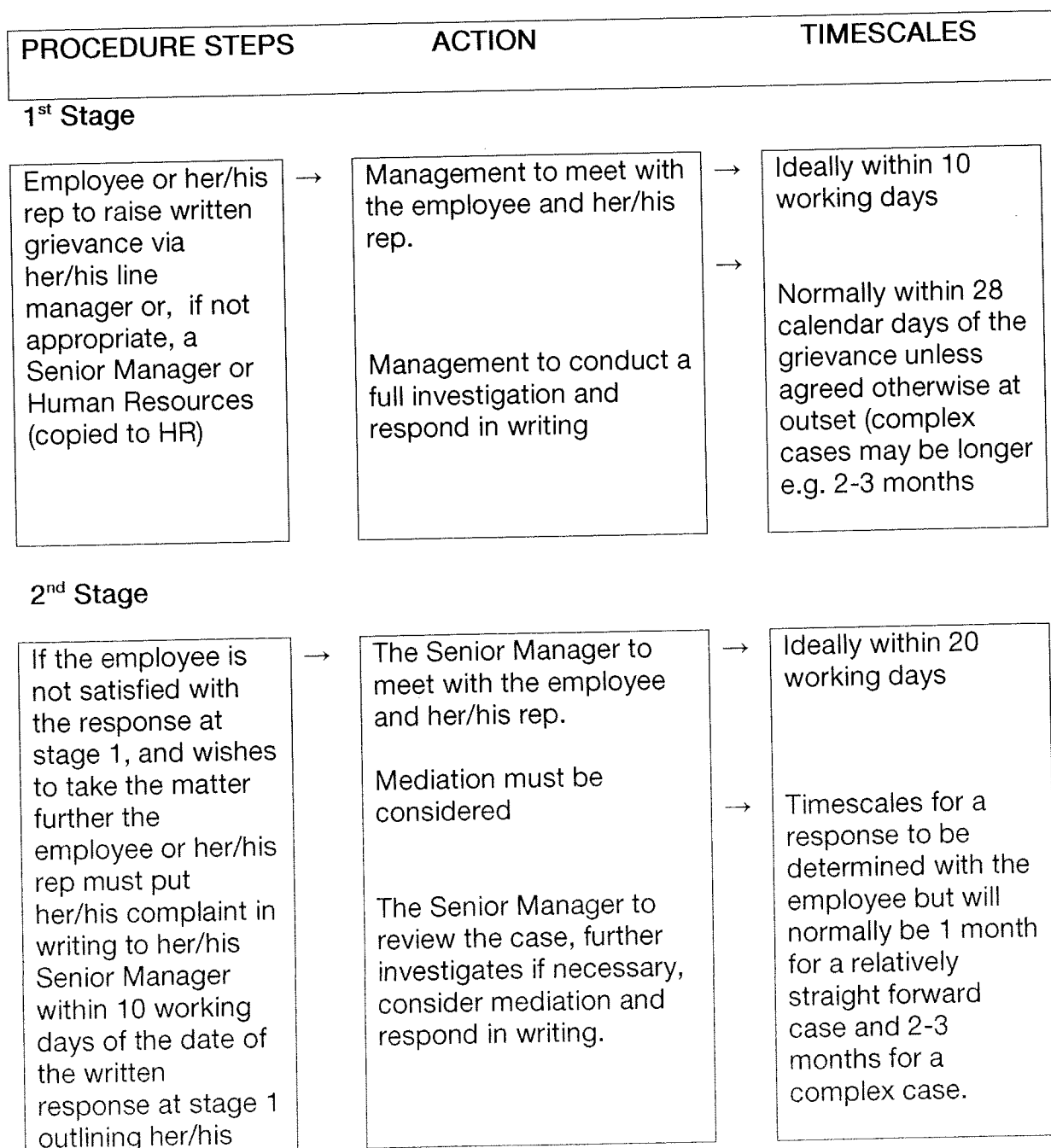
5.2.2 A Senior Manager will on receipt of the complaint arrange to meet the employee and her/his representative ideally within 20 working days of receipt, to clarify why they are dissatisfied, whether there are any new issues to be considered and to discuss any possible remedies.

5.2.3 Mediation must be considered at this stage or a reason provided as to why it is inappropriate (unless it has already been tried and been unsuccessful at stage 1)

5.2.4 The Senior Manager will review the documentation from the previous investigation and will have the right to further investigate if necessary, giving their response in writing.

5.2.5 Timescales will be determined in discussion with the aggrieved party and will be dependent on the complexity of the case. As a guide timescales will usually be 1 month for a relatively straight forward case and 2-3 months for a complex case involving a number of issues and a number of parties to investigate/hold discussions with. If a written response cannot be given within the agreed deadline the investigating manager must agree a revised deadline with the employee.

### 5.3 GRIEVANCE PROCEDURE: FLOWCHART



reasons for her/his dissatisfaction (copied to HR).

## 6. THE USE OF MEDIATION IN THE GRIEVANCE PROCEDURE

6.1 The option of mediation to resolve the grievance can be considered at any stage of the grievance and if not considered earlier must be considered during stage 2 of the procedure or a reason provided as to why it is inappropriate.

### 6.2 What is Mediation?

6.2.1 Mediation involves the parties meeting and discussing the issues with an independent person who has not been involved previously. Mediation is a voluntary activity and must be entered into with the agreement of all involved parties. Mediation may be provided by the Council using either its own staff or specialist agencies.

#### 6.2.2 Key principles of mediation

- A way of sorting out disagreements or disputes without having to go through formal procedures. A neutral third person works with those in disagreement or dispute to help them reach an agreement that will sort out their problems.
- Voluntary – you only take part if you want to.
- Confidential - nothing you tell the mediator will be passed on to anyone else unless you agree and nothing said in mediation can be used in any later Council procedures or court action.

The aim is to maintain the working relationships if at all possible and so mediation is about the future, and not about who was right or wrong.

### 6.3 The mediation process

6.3.1 The employee who has raised the grievance/the manager considering the grievance/any employee whose conduct is referred to in the grievance can request that they enter into the mediation process.

6.3.4 If all parties agree then the manager considering the grievance should, as soon as is reasonably practicable, arrange for all relevant parties to attend a mediation meeting.

6.3.5 The mediation meeting shall be chaired by a mediator (to be selected on rotation from a panel of internal staff maintained by HR or from an outside specialist Agency) and shall take place on a confidential, without prejudice basis. For the avoidance of doubt this means that the matters discussed at that meeting cannot be referred to in any resumption of the grievance process (should mediation fail to achieve a resolution), or in any subsequent legal proceedings.

6.3.6 The purpose of the mediation meeting is to endeavour to reach a negotiated outcome to the employee's grievance. The role of the mediator is to facilitate the discussion not to suggest or impose a solution or express any opinion on the validity or not of the grievance.

6.3.7 If a resolution is reached, it shall be recorded in writing and this is the only document from the mediation process that may be referred to in any further proceedings. The resolution is confidential. If mediation fails, the grievance procedure will resume from the point it was suspended.

## 7. APPEALS PROCEDURE

7.1 Escalation to Stage 3 of the full grievance procedure may only be undertaken

- If the employee is not satisfied with the response received following Stage 2 or
- If a response to Stage 2 has not been received within the timescales outlined

7.2 To escalate the process to Stage 3, which will be a review of the case, the employee (or his/her representative) must complete the Grievance Stage 2/3 Submission Form (attached at Appendix 1) and return this to the Head of HR within 10 working days of the date of the written response at Stage 2.

7.3 The form must clearly identify:

- which part or parts of the Stage 2 response the employee is dissatisfied with
- the reasons for this dissatisfaction

7.4 An appeal may be lodged outside of this timeframe only if there are exceptional reasons for the delay. The final decision about whether or not to accept the appeal in such circumstances will rest with the Head of HR.

7.5 Failure to supply full reasons for the making the appeal will render the appeal suspended until they are supplied. The Head of HR will make the final decision as to whether the reasons are sufficient.

### 7.6 Reviewing Officers

On receipt of the Grievance Submission Form, the Head of HR will convene a meeting with another senior manager (from outside the employee's own directorate) to review the case. The officer nominated to sit with the Head of HR will be at least a 3<sup>rd</sup> tier officer.

### 7.7 Stage 3 Process

The panel of 2 officers will review all the documentation relating to the first two stages and will make an initial assessment of the case. The panel should then first meet with the employee and/or his/her representative to clarify any points or to seek a further explanation of the solution being sought. The reviewing panel will also

consult with the Stage 2 decision maker to clarify how and why s/he came to their conclusion.

7.8 Following consultation with both parties, the panel will then make a decision based on all the information available to them and will notify the employee of the outcome, in writing, ideally within 20 working days of date of the receipt of the Submission Form. If the grievance is related to another member of staff, s/he will also be informed of the final decision.

7.9 The decision of the panel will be final.

## APPENDIX 1

### EMPLOYEE'S FORMAL GRIEVANCE SUBMISSION FORM – Stage 1

This form must be used to raise a formal grievance at stage 1 of the procedures. You will be required to evidence attempts to resolve your complaint informally in the first instance. All sections must be completed and supporting documents must be attached. Your grievance will not be logged until all this information is received. On completion of this form you should send this and the supporting documents to your manager or where this is not appropriate to a more senior manager within your service or Human Resources (all forms and documents should be copied to Human Resources). **Prior to raising a formal grievance please refer to the Council's Grievance Procedure and Management and Employee Guidance which can be found on the Personnel pages of Harinet.**

Name		Service	
Job Title		Contact Telephone	
Line Manager		Trade Union Rep	

<b>Name of person(s) you are making your complaint(s) against</b>
<b>Have you raised your complaints informally with your manager or another suitable person?</b>
<b>Yes / No - If no please explain why. If yes please specify the date and give a summary outcome of the informal stage.</b>

Would you consider mediation to resolve your grievance? The Mediation Guidelines can be found on the Personnel Pages of Harinet.

Yes / No – if no, please explain why not.

What is the outcome/solution that you are seeking which will resolve your grievance?

Please outline your grievance being as specific as you can about the complaints you are making giving relevant background information, dates, times, events, witnesses and what evidence you have to substantiate your complaints. As you will appreciate the investigation will need to be based on relevant evidence. When cases are based on 'one persons word against another' it is very difficult for any grievances to be upheld.

*please continue on a separate sheet, if necessary, and attach it to this form*

Does documentary evidence exist to support your allegations / complaints?

Yes / No – If yes, please list them here and enclose them with this form. If no, then please explain why.

Did anybody witness the allegations/complaints you are making?

Yes / No – if yes, please list them here

Signature

Date

## APPENDIX 2

### EMPLOYEE'S FORMAL GRIEVANCE SUBMISSION FORM – Progression to either Stage 2 or Stage 3

This form must be used when you have already submitted a formal grievance and you wish to proceed to the next stage of the grievance procedures. All sections must be completed and supporting documents must be attached. Your grievance will not be logged until all this information is received. On completion of this form you should send this and the supporting documents to your Senior Manager for Stage 2 grievance (copied to Human Resources) or to the Head of HR for Stage 3 grievance. **Please refer to the Council's Grievance Procedure and Management & Employee Guidance which can be found on the HR pages of Harinet.**

<b>Name</b>		<b>Service</b>	
<b>Job Title</b>		<b>Contact Telephone</b>	
<b>Line Manager</b>		<b>Trade Union Rep</b>	

Please tick the appropriate box to identify which stage of the grievance procedure you are submitting this form for (please refer to the grievance procedure).

	<b>Simplified Grievance Procedure</b>	<b>Full Grievance Procedure</b>
<b>Stage 2</b>		
<b>Stage 3</b>	Not applicable	

<b>Name of person(s) you are making your complaint(s) against</b>
<p>Please attach a copy of your grievance(s) raised at the earlier stage(s), the supporting documents you submitted and a copy of the response(s) you received. If you have any new evidence or additional grievances to submit or new witnesses please list them here and attach any relevant documents. Also explain why these were not available at the earlier stage(s).</p>



**Would you consider mediation to resolve your grievance? The Mediation Guidelines can be found on the Personnel Pages of Harinet.**

**Yes / No – if no, please explain why not.**

**What is the outcome/solution that you are seeking which will resolve your grievance?**

**Please outline why you believe that the decision at the earlier stage(s) of your grievance was inappropriate and why you still remain dissatisfied. This should either be on the basis of an error or omission of key evidenced facts and/or on the basis that sufficient weighting was not applied to the evidenced facts. Please specify.**

**(When cases are based on one persons word against another it is unlikely that any grievance will be upheld in the absence of corroborating evidence)**

*Please continue on a separate sheet, if necessary, and attach it to this form*

**Signature**

**Date**

## CAPABILITY AT WORK PROCEDURE

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Equalities & Diversity	4
Management Guidance	5
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1 <sup>ST</sup> Formal Meeting	7
Intermediate Meeting(s)	8
Final Meeting	9
Appeal Process	10
Appeal Submission Form	Appendix 1

## CAPABILITY AT WORK PROCEDURE

### 1. INTRODUCTION

1.1 The Council's Capability at Work Procedure was approved by General Purposes Committee in March 2009 and was updated by Corporate Committee in XXXXXX

1.2 The aim of the procedure is to enable managers to address sub-standard working with employees by putting in place clear standards and improvement measures so that performance can be raised to the required standards. All employees are provided with a copy of the procedure as part of their induction pack.

1.3 Integral to the Council's emphasis on service standards and quality services is the ability of employees to work to an acceptable standard.

1.4 Sub-standard working weakens service delivery and detrimentally affects morale within the workplace. It is therefore essential to address sub-standard working for the benefit of all parties and to do so at the earliest opportunity.

### 2. SCOPE AND DEFINITIONS

2.1 This procedure applies to all permanent Council employees, except those teachers directly employed by the Council and all staff appointed by schools operating under the Local Management of Schools, which have their own procedure and Directors/Assistant Directors or equivalent levels.

2.2 Employees who are unable to carry out their duties because of unacceptable levels of sickness absence or for health reasons which affects their ability to do their job are dealt with under the Council's Sickness Absence Monitoring & Control Procedure.

2.3 Employees serving their Probationary period will be subject to the Probationary Procedure.

### 3. GENERAL PRINCIPLES

1. Managers are responsible for setting and monitoring standards of work. It is their role to deal with sub-standard work immediately it becomes apparent.
2. As soon as concerns about the work standards are identified the manager should use the standard setting framework as outlined on page 5 to discuss

these with the employee, either as part of a regular review meeting (1:1 or appraisal) or, separate meeting.

3. Employees must understand that if their standard of working falls below an acceptable standard, managers will seek to address this and the employee cannot raise a grievance as a result.
4. Managers have a responsibility to appropriately support employees whose work falls below standard. Employees have a responsibility to work at the standard expected and should do their best to meet that standard, responding to any corrective measures that are identified.
5. The manager must give a copy of this procedure to an employee when he/she decides to formally address sub-standard working under stage 1 of this procedure.
6. If at the First Formal Meeting it is determined that the employee is working well below the expected standard and this has as a serious consequence to the Council or to an individual client, then the Intermediate Stage can be omitted and a Final Meeting is instigated. Very serious error or omission where the Council could not risk a recurrence may be treated as gross misconduct.
7. There may be circumstances where a disciplinary/ grievance/ harassment & bullying case and a capability matter are related. In these circumstances it is normal for the processes to run in parallel with each other. However, there may be exceptions, depending on the circumstances of the case where one process is put on hold until the other process has been completed.
8. Where an employee is subject to the capability procedure and subsequently has a period of absence from work, then on the return to work of that employee the procedure will continue at the stage it was at before the employee commenced their absence.
9. Employees have the right to be accompanied by a trade union representative or work colleague at the First Formal and Intermediate Meeting(s) and have the right to be represented at the Final Meeting.
10. Timescales for improvement will be determined by the manager. These shall be reasonable and take into account the job role, working environment and the appropriate support to be given. As a guide a review period will normally be between 1-3 months depending on the nature and complexity of the job (note this timescale can be longer if deemed necessary e.g. to allow for agreed actions/training to be completed).
11. Where an employee's performance has not improved within the review period the manager will move to the next stage of the procedures.
12. Where the employee's performance has improved to an acceptable standard the manager will acknowledge the progress made, encourage the employee to sustain this and will continue to monitor their performance. Notes of this meeting must be kept and copied to the employee. If further concerns are

identified at a later date (within a 12 month period of the last meeting) then the procedures will not revert back to the beginning.

13. If at any stage the desired level of achievement is reached then the manager will send the employee a letter to acknowledge this.
14. The manager can use his/her discretion and decide to conduct more than one Intermediate Meeting where they believe it to be appropriate.
15. The review of an employee's capability at all stages of the procedure would usually be carried out by the employee's line manager. However, it is not unusual for different levels of management to be involved. Where dismissal could be the outcome, the meeting must be conducted by a 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> Tier manager or, by a manager empowered by a Director and must be graded higher than the employee under review.
16. Where it is evident that the employee will not be able to improve their work standards to an acceptable level then relegation <sup>(1)</sup> or demotion <sup>(2)</sup> can be considered instead of holding a final meeting. This can only be considered if it is practical to do so (e.g. the manager has a suitable vacancy at a lower grade) and all parties are in agreement.

Note: <sup>(1)</sup> **Relegation** means being transferred to a different post with different duties on a lower grade, or same grade.

<sup>(2)</sup> **Demotion** means removal of duties in the same job that will result in no more than one grade lower.

#### 4. EQUALITIES AND DIVERSITY

4.1 Capability cases will be monitored by gender, disability, ethnicity, religion, age and sexual orientation (religion & sexual orientation will be monitored separately).

#### 5. MANAGEMENT GUIDANCE

5.1 Managers must read the 'Management Guidance – Capability Procedure' before taking action under this procedure. This document can be found on Harinet along with appropriate training courses.

#### 6. STANDARD SETTING FRAMEWORK

6.1 The manager should explain why he/she is concerned about the employee's work standards and detail where he/she falls short of the expected standard. The impact on the service/organisation needs to be explained.

6.2 Once the Manager has explained why he/she is concerned, the employee should be given the opportunity to respond. If there is a need for the manager to

clarify certain points, this should take place, especially if the employee does not immediately accept that his or her work is below standard.

6.3 The manager will have regard for the employee's work history and record, length of service, disciplinary record etc, and will take this into account when deciding on what action to take.

6.4 If, in the past, the standard of work has been totally satisfactory, it may be that the fall in standards is due to specific short term problems. Managers need to tactfully explore whether there have been any personal issues or other circumstances that have resulted in the fall in standards. If this is the case appropriate advice/support should be offered, with agreement to review the situation within a set timescale.

6.5 If the employee fails to offer an acceptable explanation for not reaching the expected standard of working, the manager needs to:

- a) Explain the employee's expected duties, including any timescales in which to carry them out. Confirm with the employee that he/she fully accepts these duties and the timescales,
- b) Explain the reasons why his/her work is considered to be below standard and agree the steps that need to be taken to bring the work back up to standard.
- c) Identify additional supervisory requirements that may be placed on the employee.
- d) Identify any training, development or other support that may help in raising the employee's standard of work and arrange for this to be provided at the earliest possible opportunity.
- e) Encourage the employee to improve his/her work standard.
- f) Advise the employee of the consequences of failing to respond positively.
- g) Advise the employee of the impact that their work performance is having on service delivery and their colleagues.

6.7 Notes of the meeting must be kept and copied to the employee along with a letter from the manager confirming the outcome of the meeting. The documents to be sent within 3 working days

6.8 For guidance on review and monitoring timescales please refer to points 10, 11 & 12 in the general principles section.

## 7. FIRST FORMAL MEETING

7.1 If the manager considers that there has not been improvement following the implementation of the measures set at the standard setting meeting the manager will arrange a meeting with the employee and their representative giving them at least 5 working days written notice. The letter should detail why he/she is concerned about the employee's work standards and, where available, enclose relevant documentary evidence to support both the original concerns and of subsequent failure to achieve the required improvement. Details of the support the manager has given the employee to date and in particular, the support that has

been provided as identified at the standard setting meeting will also be provided. These might also include for example training records/1:1 notes/appraisal notes.

7.2 The employee or his/her representative should provide the manager with any of their supporting documentation they wish to be considered at the meeting at least 2 working days before the meeting.

7.3 Where possible, the employer should allow a companion (work colleague or trade union representative) to have a say in the date and time of a hearing. If the companion can't attend on a proposed date, the employee can suggest an alternative time and date so long as it is reasonable and is ideally not more than five working days after the original date.

7.4 At this meeting the manager will explain the concerns regarding the employee's performance, the impact this has on service delivery and their colleagues, the support offered to improve it and provide evidence of the subsequent failure to achieve the required improvement. Notes of the previous meetings and supporting documentation will be referred to.

7.5 The employee will be given an opportunity to respond during the meeting.

7.6 The employee will be advised of the improvement required and the timescale to achieve it. The employee will be invited to identify any additional support they believe might assist. The manager must encourage the employee to improve and offer any reasonable support or training that will assist this improvement (as per paragraph 5 of the standard setting framework). The manager will advise the employee that his/her performance will continue to be monitored and that this could result in further action in accordance with the capability procedure and ultimately dismissal if the required standard is not achieved on a sustained basis.

7.7 For guidance on review and monitoring timescales please refer to points 10, 11 & 12 in the general principles section.

7.8 Notes of the meeting must be kept by the manager and copied to the employee along with a letter confirming the outcome of the meeting. The document(s) are to be sent within 3 working days with a copy sent to the person who accompanied the employee at the meeting.

## **8. INTERMEDIATE MEETING(S)**

8.1 The manager may repeat the format of the First Formal Meeting and advise the employee that if there is not an appropriate improvement in their work performance within the agreed timescale then they will be referred for a Final Meeting which could result in their dismissal.

8.2 For guidance on review and monitoring timescales please refer to points 10, 11 & 12 in the general principles section.

8.3 It is possible to repeat this intermediate stage if further reviews are deemed necessary.

8.4 Notes of the meeting must be kept by the manager and copied to the employee along with a letter confirming the outcome of the meeting. The document(s) are to be sent within 3 working days with a copy sent to the person who accompanied the employee at the meeting.

## 9. FINAL MEETING

9.1 If any employee reaches this stage it will be because they have consistently fallen below the expected standards of work despite considerable effort by management to try to improve his/her standard.

9.2 The manager will arrange a final meeting with the employee and their representative giving them at least 10 working days written notice informing them of which Senior Manager will be chairing the meeting and that this meeting could lead to their dismissal.

9.3 The letter should detail why the manager is concerned about the employee's work standards and enclosing all the relevant documentary evidence to support the concerns (including the documentation from the previous stages), plus any documents detailing the support the manager has given the employee to date e.g. training records/1:1 notes/appraisal notes etc.

9.4 The employee or his/her representative should provide the manager with their supporting documentation at least 2 working days before the meeting.

9.5 At this meeting the manager should explain the actions taken to date and the employee/representative will have an opportunity to respond.

9.6 The Senior Manager chairing the meeting will then decide on the appropriate course of action:

- i) To dismiss the employee with notice on the grounds of capability. The appropriate Notice will normally be paid in lieu rather than worked.
- ii) To consider relegation as an alternative where it is a practical proposition.
- iii) To consider demotion for a specified period or permanently where it is a practical proposition.
- iv) To keep the situation under review for a defined period (no more than 12 months) at the end of which a decision will be taken on the appropriate course of action which could include dismissal.

9.7 Notes of the meeting must be kept and copied to the employee. A letter confirming the outcome of the meeting must be sent to the employee within 3 working days with a copy sent to the person who represented the employee at the meeting. If the decision was to dismiss, relegate or to demote then the letter needs to outline the employee's right of appeal and a template Appeal Submission Form enclosed.



## 10. APPEAL

10.1 An employee who is dismissed, demoted temporarily or permanently, or relegated shall have a right of appeal against the decision.

- Officer Level Appeals: Appeals against a decision other than dismissal will be a review of the case carried out by an appropriate manager who will be from outside the appellant's own Directorate.
- Member Level Appeals: Appeals against dismissal will be heard by a panel of 2 Members, who will review the case based on the information provided at the appeal review hearing.

10.2 An HR Adviser (and an adviser from the Legal team) will provide advice to both the member panel and to the officer reviewing the case. The individual is entitled to be represented (or accompanied) to an appeal hearing by either their trade union representative or a work colleague of their choice.

10.3 To lodge an appeal, the Appeal Submission Form (attached at Appendix 1) must be completed in full and sent to the Head of HR within 10 working days of the date of the letter confirming the decision of the capability hearing. An appeal may be lodged outside of this timeframe only if there are exceptional reasons for the delay. The final decision about whether or not to accept the appeal in such circumstances will rest with the Head of HR.

10.4 Failure to supply full reasons for the making the appeal will render the appeal suspended until they are supplied. The Head of HR will make the final decision as to whether the reasons are sufficient.

10.5 Where an appeal is lodged, HR will provide the transcript or notes of the original hearing when confirming receipt of the appeal. Where this is in the form of a transcript the appellant shall be entitled to hear the audio recording in the event of a dispute about accuracy in transcription.

10.6 Appeal hearings will be electronically recorded to ensure an accurate record is captured. The appellant may raise an objection in advance of the hearing date as to why they don't want the hearing recorded. However, the appellant must be aware that a written note of the hearing may not be as accurate as an electronic record.

10.7 Only new evidence which has come to light since the original hearing took place and which may have a material effect on the final outcome may be introduced at the appeal stage. Any such evidence must be provided at the same time as other evidence (ie ten working days in advance of the hearing). Such evidence should only relate to the original capability issues and no additional ones.

10.8 Both parties will be expected to exchange any documents relating to the case at least ten working days in advance of the appeal. If management are using the same documents as those used at the service hearing they must confirm this to the appellant no later than ten days in advance of the appeal. Where management

introduce new evidence at this point the appellant shall be entitled to submit additional evidence no later than five working days in advance of the appeal, such evidence shall be limited to having a direct relationship to the new management evidence.

10.9 Appeal hearings must be arranged within a reasonable period of time and ideally concluded before the employee's last day of service. However, where this is not possible, the hearing should be concluded within a maximum of 3 months from the date of the service hearing. The date of the appeal should be arranged in consultation with all parties. Flexibility will be expected from an appellant if a proposed date does not at first appear convenient and he/she must be prepared to change their arrangements to try to meet the proposed date. The appellant should be aware that the appeal may go ahead in their absence should they fail to attend without good reason.

#### **10.10 Officer Level Appeals Process**

The review will be conducted by a more senior manager than the person who imposed the original sanction. If a 2nd or 1st tier manager made the decision another manager at the same level from outside the appellant's directorate may conduct the appeal. The Head of HR will nominate the reviewing officer.

10.11 The review may confirm the original sanction imposed or decrease it, but not increase it as it is not a rehearing of the case.

10.12 The reviewing manager will consider all documentation presented at the final hearing together with hearing notes, outcome letter and the appellant's grounds of appeal. Copies of these documents will be available to the appellant; to his/her representative and to the manager who made the original decision.

10.13 The manager reviewing the case will meet with the appellant and her/his representative and will then meet with the original hearing manager before making a decision.

10.14 The decision of the review manager will be confirmed to the appellant in writing, and the letter should usually be dispatched within 3 working days of the decision.

The decision of the reviewing manager is final.

#### **10.15 Member Level Appeals Process**

An appeal against a decision to dismiss will be a review of the case, heard by 2 Members.

10.16 The manager presenting the case (normally the service manager who heard the final hearing) will present first. If this manager is no longer employed, the HR Adviser who advised the final hearing panel will present the management case.

10.17 The employee (or his/her representative) will present their case after the management case.

10.18 Witnesses may only be called if there has been new evidence introduced which may have a material effect on the outcome and which has come to light since the final hearing or where the individual concerned was unavailable to attend the original hearing. Any witnesses present may be questioned by the presenting manager, appellant or representative, the panel and advisor(s) to the panel. The order of questioning shall be in line with the normal procedure.

10.19 Questioning of either the presenting manager or the appellant may only be carried out by Members or by the HR adviser to the Member panel.

10.20 Once the management and appellant have presented their case, both sides will present a summary of the key points. The case against the appellant will be summarised first. No new evidence can be introduced in closing statements.

10.21 The presenting parties will then leave the hearing to allow the Member panel, with any adviser or advisers, to deliberate in private. The parties can be recalled to clarify any points of uncertainty.

10.22 Having deliberated, the Appeal panel will generally recall both parties to the room in order to give a decision on the case. It may sometimes be necessary to give a decision on the case at a later date if the deliberations are likely to last a long time.

10.23 The decision will be confirmed in writing, and the letter should usually be dispatched within 3 working days.

# APPENDIX 1

## CAPABILITY PROCEDURE: APPEAL SUBMISSION FORM

Employees who receive a formal sanction of a written warning or above have a right of appeal against this decision. The appeal must be made in writing using this form. The completed form must be returned within 10 working days of the date of the decision letter and must be completed in full, outlining the reasons for the appeal.

<b>Name</b>		<b>Service</b>	
<b>Job Title</b>		<b>Contact Telephone</b>	
<b>Line Manager</b>		<b>Trade Union Rep</b>	

### Summary of Finding at Final Hearing:

1. Dismissal
2. Other sanction – (please specify)

### Indicate your reason for making the appeal

1. Against the basis on which the decision was made	2. Against the level of sanction imposed
3. That the process followed at the original hearing was incorrect.	4. To take into account evidence which came to light after the hearing and which you believe to have a material affect on the outcome of the case

Please outline your appeal, giving as much detail as you can (including any evidence you have to substantiate your appeal) (please include your name on any supplementary sheet submitted)

Please note that your appeal will not be lodged until the form is completed in full.

<b>Signature</b>	<b>Date</b>
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The completed form must be returned to:  
 Head of HR, Level 4 Alexandra House, 10 Station Rd, Wood Green, London N22 7TR.

## SICKNESS ABSENCE AND MONITORING POLICY

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## 1 INTRODUCTION

1.1 The Council's current Sickness Absence Monitoring and Control Procedure was originally agreed by Personnel Sub-Committee on 7th January 1997 and was amended by Corporate Committee on XXXX.

1.2 The Council's Sickness Policy is to enable managers to deal effectively with absences which cause difficulties not where the validity of the absence is in doubt. Manager's approach to an individual's sickness should be based on sympathy, understanding and compassion having regard to both service delivery needs and the individual circumstances. The aim of the policy is to provide managers with a process that requires and enables them to do the following

- monitor all employee absence against the trigger point
- talk to an employee as soon as they reach the trigger point so that they can form an understanding of the case and plan review meetings and occupational health advice according to the circumstances
- be aware of the individual's circumstances in order to provide support and understanding
- implement the case plan

1.3 If the absence does not reduce to the required level the plan will lead to a final meeting being convened where the employee could be dismissed.

## 2 SCOPE OF THE PROCEDURE

2.1 This procedure applies to all permanent Council employees, except those teachers directly employed by the Council and all staff appointed by schools operating under the Local Management of Schools, which have their own procedure and Directors/Assistant Directors or equivalent levels.

2.2 If an employee has had a formal probation review meeting where sickness absences were raised as a concern, this formal probation review meeting should also be treated as a first formal sickness review meeting and the process for holding a sickness review should be followed.

2.3 If employees on temporary contracts of less than 51 weeks service have any absence, this should be discussed with employees as soon as absence arises. If absences continue consideration should be given to the termination of the contract (which ideally should have been discussed with the employee earlier)

## 3 GENERAL PRINCIPLES

1. The manager has a responsibility to treat employees with sympathy and understanding and to provide them with support during their sickness. This will include ensuring that regular contact is maintained with the individual, that adjustments or risk assessments are conducted where necessary and that occupational health advice is sought when appropriate.

2. Managers should be aware when sickness levels increase and when this happens to take steps to utilise resources such as counselling, health MOTs or stop smoking clinics which may help individuals to manage short term sickness before it becomes longer term.
3. The purpose of an Attendance Review meeting is to assess the individual's reasons for sickness, to identify opportunities to make reasonable adjustments to their job if required, to aid their return and to seek improvement in their absence record.
4. Early case planning by managers is key to managing the absence. Details of case planning are given in the Management Guidance. Managers must ensure that account is taken of individual circumstances and where necessary allow reasonable recovery time-i.e. following an operation. Management support must be given to the individual to ensure that they are helped to return to work as soon as they are able.
5. It is recommended that Review Meetings following a similar content to an Attendance Review meeting are also conducted where the gap between formal stages is longer than 6 weeks.
6. Where an employee has already been subject to an Attendance Review and subsequently has a further period of absence from work within 12 months which means they are still at or over the 6 day trigger level, the manager would normally move to the First Formal meeting. However, depending on the individual circumstances the manager may decide that this is inappropriate in which case another Attendance Review Meeting must be held.
7. There must be at least one Intermediate Meeting, however, the manager can use his/her discretion and decide to conduct more than one Intermediate meeting where they believe it to be appropriate depending on the circumstances of the case.
8. In cases which managers judge to be particularly serious, it is possible to miss out a stage in the procedure. In these circumstances advice should be sought from Human Resources.
9. The final meeting should take into account any relevant information concerning the employee's absence record; this may include occupational health reports and other relevant medical information available at the time.
10. If the employee is considered by either their GP or Occupational Health as fit to return to work, but is only fit to carry out some of their duties, the manager must be clear about the type of work which the employee can do and then, with HR advice, determine what this means in practice.
11. Employees have the right to be accompanied by a trade union representative or work colleague at the 1<sup>st</sup> Formal and Intermediate Meeting(s) and have the right to be represented at the Final Meeting.

12. Failure to comply with the procedure may result in sick pay being withheld and/or disciplinary action being taken which can result in dismissal following significant / continual failures to comply. Sick pay entitlements do not need to be exhausted before the employee can be dismissed.

#### 4 RESPONSIBILITIES OF MANAGERS AND EMPLOYEES

Managers	Employees
<p>Provide a healthy workplace by using well being initiatives; workplace risk assessments or Occupational Health advice where necessary</p> <p>Apply the procedure fairly &amp; consistently and treat employees with sympathy and understanding</p> <p>Respect the employee's right to medical confidentiality. Issues around mental health are sensitive and due to the nature of certain types of illness, eg mental illness, managers should be wary of the effects of their action on the employee. It is particularly important that in addition to adopting a sympathetic approach, managers seek advice from HR or from the Occupational Health Team.</p> <p>Ensure staff are aware of the sickness reporting procedures (see management guidance)</p> <p>Ensure the relevant Accident Reporting procedures are followed if an accident at work occurs.</p> <p>Speak to staff on first day of sickness and advise the employee to maintain regular contact.</p> <p>Ensure the SAP sickness recording and sickness certification procedures are adhered to</p>	<p>Attend work regularly when fit to do so and return to work as soon as possible following any sickness absence</p> <p>Comply with the sickness absence reporting procedure ensuring contact is made with line manager on the first day of sickness and regularly thereafter as requested by the manager.</p> <p>Submit fit notes or other medical certificate at the relevant time in line with the sickness absence procedure</p> <p>Attend any meeting or interview which is arranged by managers as part of the sickness procedure. This includes medical appointments arranged by Occupational Health.</p> <p>Be aware that a delay in refusing to allow his/her GP to be contacted or to release relevant medical information will result in decisions being taken which will be based on the best available information at the time.</p> <p>Failure to comply with the procedure may result in sick pay being withheld and/or disciplinary action being taken which may result in dismissal.</p> <p>If sickness absence occurs during planned annual leave, proof of the original travel details must be given to the manager.</p> <p>Arrange routine visits to the doctor or dentist outside work time. Time off in work time will only be agreed if an appointment card is produced. Time off to accompany a</p>



<p>Implement any reasonable adjustments to the work, the workplace or to hours of work which may enable an employee to attend work regularly</p> <p>If the employee cannot carry out the full duties of the job, to scope the work which can be done and to utilise any opportunities which may exist in the workplace.</p> <p>Ensure the relevant Accident Reporting procedures are followed if an accident at work occurs.</p>	<p>child./parent/relative or friend to a medical appointment must be booked in advance as annual leave.</p>
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**5 ABSENCE RELATED TO PREGNANCY OR DISABILITY**

5.1 The Equality Act 2011 sets out nine “protected characteristics” including disability, pregnancy & maternity and gender reassignment, and when initiating either informal or formal management action relating to sickness absence, care must be taken how sickness relating to these characteristics are treated. It may sometimes be necessary to treat them differently to other forms of sickness absence to avoid indirect or direct discrimination. Managers must take into account the particular nature of the employee’s illness and ensure that support is given with due regard to the individual’s circumstances.

**Absence related to pregnancy**

5.2 Pregnancy related absences are not included as part of sickness monitoring and absence related directly to pregnancy (including miscarriage) must be recorded on SAP as PRS (pregnancy related sickness) and not as general sickness absence. It is good management practice to hold an informal Return to Work meeting with a pregnant woman on her return from pregnancy related sickness absence. The meeting should not be recorded as a formal meeting but instead, used to check whether any additional support can be given or whether adjustments are required. Sickness during pregnancy which is not directly related to pregnancy must be recorded as general sickness absence in the usual way and the formal stages of the Policy may be used if necessary.

5.2.2 Pregnant women are entitled to paid time off to attend ante-natal appointments and this should be recorded on SAP as A/N.

5.2.3 There is no statutory entitlement to paid time off for IVF or other fertility treatment, but staff will be granted annual leave to cover these appointments. Any side effects which are experienced as a result of the treatment should be treated as ordinary sickness absence and recorded as such.

5.2.4 Managers must carry out a work place risk assessment as soon as possible after being informed that an employee is pregnant. Please contact the Corporate Health & Safety Team for further information.

### **5.3 Absence related to disability**

5.3.1 The Equality Act 2010 defines disability as “a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities.” Anyone with HIV, cancer or multiple sclerosis is automatically treated as disabled under the Act from the point of diagnosis, and in some circumstances people with sight impairment are also covered automatically.

5.3.2 Employers have a legal duty to make reasonable adjustments for disabled employees (Equality Act 2010) and to take positive steps to ensure that disabled people are not discriminated against in accessing employment (please refer to section 3.4 of the management guidance for more information).

5.3.3 Absence related to a person’s disability should be recorded on SAP as DRS (disability related sickness) and not as general sickness absence. Disability is one of the “protected characteristics” introduced by the Equality Act 2010, and as such, employees with a disability are protected against discrimination which may arise as result of their disability.

5.3.4 Disability related absences should be taken in account when looking at an individual’s absence record as part of absence monitoring. Some or all of disability related absences should be disregarded if doing so would be a reasonable adjustment for the employee, i.e. allowing someone regularly attending a clinic or hospital paid time to do so would be considered as a reasonable adjustment. Managers should take note of the section relating to Reasonable Adjustments detailed in the Sickness Absence & Monitoring Policy Management Guidelines and seek advice from HR when considering a reasonable adjustment. However, where the levels of absence become unacceptable managers will still initiate formal action in accordance with this procedure and advice is available from HR regarding what may be considered as unacceptable levels.

## **6. INITIAL MEASURES FOR MONITORING**

6.1 On the return to work from any period of sickness absence a Return to Work form must be completed by the employee and the employee’s manager.

6.2 This then provides the basis for an initial review with the employee concerned. It is important that a manager raise any concerns about the employee’s absence levels at an early stage so that appropriate measures can be taken.

## **7. ATTENDANCE REVIEW**

7.1 The Manager must review an employee's attendance where:

- 6 working days (or the equivalent in hours, i.e. 43.2 hrs) absence have accrued in a rolling 12 month period. This is pro rata for part time employees
- If there is concern about the attendance record e.g. absences on

Mondays/Fridays, or immediately before/ after holidays etc.

7.2 This will take the form of an attendance review meeting on the individual's return to work or in the case of an employee being continuously absent then a meeting needs to be arranged for the employee to come into the workplace or alternatively, for the manager to conduct the meeting by telephone or to make arrangements to visit the employee at home. The key aspect of this stage is that a dialogue must happen as soon as a trigger is reached.

7.3 A copy of the Review Form to be used can be found in the Management Guidelines or on the HR Forms page of Harinet.

7.4 This meeting is part of the management process to effectively manage sickness absence and as such should only be held between the line manager and the individual concerned. An employee's refusal to attend would be failure to obey a reasonable management instruction and therefore could be liable to disciplinary action.

7.5 The purpose of the attendance review is to:

- Determine whether the employee is fit or is likely to be fit to return to work.
- Identify the likelihood of further absence.
- Assess the need for a referral to Occupational Health Unit.
- Enable problems affecting the individual's health and performance to be identified and where possible resolved.
- Assess the effects of the absence on the service.
- Ensure the employee understands the sickness absence procedure.
- Decide what additional steps are necessary dependent on the circumstances.

7.6 The employee must be told that his/her attendance record will continue to be monitored and if there is no substantial improvement, formal action will be initiated. If the manager considers that absences are likely to continue, h/she must complete a case plan at that point. Further details of Case Planning can be found in the Management Guidelines.

## **8 1<sup>ST</sup> FORMAL MEETING**

8.1 Where the individual's attendance record has not sufficiently improved following on from the Attendance Review, then the manager, in consultation with HR, must set up a formal meeting, giving the employee 5 working days' notice.

8.2 The Chair must write to the employee outlining the purpose of the meeting and give a minimum of five working days' notice. The letter should also give information on date, time and place of meeting, and their right to be accompanied. The letter must explain that the matter may be dealt with in their absence if they fail to attend without a satisfactory explanation. If they are unable to attend through illness, they can arrange representation at the meeting and can provide written submissions or the employee can suggest an alternative time and date, which will be agreed, so long as it is reasonable and is ideally not more than ten working days after the original date. (Note – it is acknowledged that on occasions because of diary

commitments ten working days is not practicable but as a general principle this target should be achievable on most occasions).

8.3 Reasons for the absence should be explored and the following factors discussed:

1. The current situation of the employee, (i.e. finding out how they are feeling at the time of the meeting, what has happened since the last meeting?) bearing in mind the following:
  - (i) In the light of medical advice, will the employee be able to resume or maintain normal activities in the foreseeable future?  
If not:-
    - (ii) Identify which aspects of the job cannot be performed.
    - (iii) Is the medical condition temporary in nature or long term?
2. Any work related issues
3. Advice received from Occupational Health or the need for a referral to Occupational Health
4. The timescale for an expected return to work
5. The impact on service delivery and the effect on other members of staff
6. The risk to the individual's employment should absence levels continue to cause problems for organizational effectiveness.

**(a) If the medical condition is temporary -**

- Is some reorganisation or redesign of the job required/possible?
- Would a phased return or reduction in hours / workload be of benefit?
- Is there suitable temporary alternative employment available within the team /service?

**(b) If the medical condition is long term -**

- Is some reorganisation or redesign of the job required/possible?
- Should any other reasonable adjustment be considered? – see Management Guidance
- If advice is received from Occupational Health that redeployment should be explored and if the current job cannot be modified and if there is no suitable vacancy within the area of work in which the skills of the employee may be matched then the individual should be referred to HR for inclusion on the redeployment list. The Management Guidelines gives details of the process.
- Advice should be sought from the Occupational Health Unit as to whether the redeployee is medically fit to undertake the alternative employment.

**(c) If the medical condition is permanent –**

- should ill health retirement be considered?

If the absence continues, it is recommended that a Review Meeting, following a similar content to an Attendance Review meeting, is also conducted where the gap between formal stages is longer than 6 weeks.

8.4 Notes of the meeting should be taken and the employee must be sent a letter from the manager confirming the outcome of the meeting (template letters are in the

management guidance notes). The manager must ensure that a copy of the letter is also sent to the person who accompanied the individual to the meeting.

## 9. INTERMEDIATE MEETING(S)

9.1 If within a reasonable period there is little or no improvement in the employee's absence then an intermediate meeting will be convened. S/he will be referred to Occupational Health (if this has not previously been done) so that a medical report can be considered at the meeting.

9.2 The Chair must write to the employee outlining the purpose of the meeting and give a minimum of five working days' notice. The letter should also give information on date, time and place of meeting, and their right to be accompanied. The letter must explain that the matter may be dealt with in their absence if they fail to attend without a satisfactory explanation. If they are unable to attend through illness, they can arrange representation at the meeting and can provide written submissions or the employee can suggest an alternative time and date, which will be agreed, so long as it is reasonable and is ideally not more than ten working days after the original date. (Note – it is acknowledged that on occasions because of diary commitments ten working days is not practicable but as a general principle this target should be achievable on most occasions).

9.3 The same steps as outlined in Section 8 will be taken.

9.4 If a referral to Occupational Health is required, managers must remind employees that they are expected to attend the appointment, if they do not wish to attend they should notify OHU in good time so as to avoid costs being incurred. Management may decide to proceed with the Intermediate Meeting without the benefit of medical advice if the employee is unable or unwilling to attend their occupational health appointment without good reason.

9.5 The manager should explain that the stage has been reached where it will be necessary to refer the employee to the Director (or delegated officer) for a decision about the employee's continued employment should there be little or no improvement in the employee's absence levels unless:

- a further period for review is considered appropriate (There will normally be one Intermediate Meeting, however, the manager can use his/her discretion and decide to conduct more than one Intermediate meeting where they believe it to be appropriate depending on the circumstances of the case) OR
- redeployment is an option OR
- Ill Health retirement is being pursued

9.6 Notes of the meeting should be taken and the employee must be sent a letter from the manager confirming the outcome of the meeting (template letters are in the management guidance notes). The manager must ensure that a copy of the letter is also sent to the person who accompanied the individual to the meeting.

## 10. FINAL MEETING

10.1 A Final meeting should only be held where dismissal is a serious consideration. A report must be prepared by the line manager which includes:

- The level and effect of the sickness absence(s).
- Action taken, including meeting dates, referrals, any alterations to working conditions etc.
- Factual medical information, and in the case of employees with an underlying medical condition, current OHU advice.

If the absences have been short term and certified by a GP with no apparent underlying medical reason linking them, a referral to Occupational Health would not be required. Similarly, if Occupational Health has previously stated that there is no underlying medical reason it would not be necessary to re-refer prior to holding a final meeting unless there is reason to believe that a underlying condition may have developed since the original referral. HR advice should be sought on whether or not to make a new referral in the case of any doubt.

10.2 The meeting must be chaired by a 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> tier officer or by a manager nominated by the Director and must be at least a grade higher than the employee. The Chair must write to the employee outlining the purpose of the meeting and give a minimum of 10 working days' notice. The letter should also give information on date, time and place of meeting, the name and designation of the manager who will be hearing the case and their right to be represented. The letter must explain that the matter may be dealt with in their absence if they fail to attend without a satisfactory explanation. If they are unable to attend through illness, they can arrange representation at the meeting and can provide written submissions to the hearing or the employee can suggest an alternative time and date, which will be agree, so long as it is reasonable and is ideally not more than ten working days after the original date. (Note – it is acknowledged that on occasions because of diary commitments ten working days is not practicable but as a general principle this target should be achievable on most occasions).

10.3 The manager hearing the case shall decide on the appropriate course of action having regard to the considerations set out below:

- The nature of the illness. The likelihood of it continuing/recurring or some other illness occurring.
- The length of various absences (if appropriate) and the period of good health in between
- The impact on service delivery and resources of the team
- The extent to which managers have informed the employee that their continued absence may put their job at risk.
- Any special circumstances referred to by the employee.
- Whether the proposed action is reasonable in all the circumstances.
- The consideration given by managers as an alternative to dismissal e.g. reasonable adjustments; reduced hours; referral to the redeployment register for a maximum period of 3 months.

10.4 The manager will usually decide on one of the following courses of action:

- To dismiss the employee with notice or
- To keep the situation under review for a defined period (of up to 12 months) at the end of which a decision will be taken on the appropriate course of action. Should further absences arise within this timeframe a further meeting (which may be a final meeting, depending upon the number and type of absences) can be convened and the case will be assessed as outlined in Stage 3. Current Occupational Health advice should be sought as appropriate.

10.5 Notes of the meeting should be taken and the employee must be sent a letter from the manager confirming the outcome of the meeting (template letters are in the management guidance notes). Where a decision is taken to dismiss, the employee will be informed of her/his right to appeal. The manager must ensure that a copy of the letter is also sent to the person who represented the individual to the meeting.

## 11 APPEAL

11.1 Appeals against sickness dismissals will be heard by a panel of 2 Members, who will review the case based on the information provided at the appeal review hearing.

11.2 An HR Adviser (and an adviser from the Legal team) will provide advice to the member panel

11.3 The individual is entitled to be represented (or accompanied) to an appeal hearing by either their trade union representative or a work colleague of their choice.

11.4 To lodge an appeal, the Appeal Form (attached at Appendix 1), must be completed in full and sent to the Head of HR within 10 working days of the date of the letter confirming the decision of the Final sickness hearing. An appeal may be lodged outside of this timeframe only if there are exceptional reasons for the delay. The final decision about whether or not to accept the appeal in such circumstances will rest with the Head of HR.

11.5 Failure to supply full reasons for the making the appeal will render the appeal suspended until they are supplied. The Head of HR will make the final decision as to whether the reasons are sufficient.

11.6 Where an appeal is lodged, HR will provide the transcript or notes of the original hearing when confirming receipt of the appeal. Where this is in the form of a transcript the appellant shall be entitled to hear the audio recording in the event of a dispute about accuracy in transcription.

11.7 Appeal hearings will be electronically recorded to ensure an accurate record is captured. The appellant may raise an objection in advance of the hearing date as to why they don't want the hearing recorded. However, the appellant must be aware that a written note of the hearing may not be as accurate as an electronic record.

11.8 Only new evidence which has come to light since the original hearing took place and which may have a material effect on the final outcome may be introduced at the appeal stage. Any such evidence must be provided at the same time as other evidence (ie ten working days in advance of the hearing).

11.9 Both parties will be expected to exchange any documents relating to the case at least ten working days in advance of the appeal. If management are using the same documents as those used at the Final Sickness monitoring they must confirm this to the appellant no later than ten days in advance of the appeal. Where management introduce new evidence at this point the appellant shall be entitled to submit additional evidence no later than five working days in advance of the appeal, such evidence shall be limited to having a direct relationship to the new management evidence.

11.10 Appeal hearings must be arranged within a reasonable period of time and ideally concluded before the employee's last day of service. However, where this is not possible, the hearing should be concluded within a maximum of 3 months from the date of the Final sickness hearing. The date of the appeal should be arranged in consultation with all parties. Flexibility will be expected from an appellant if a proposed date does not at first appear convenient and he/she must be prepared to change their arrangements to try to meet the proposed date. The appellant should be aware that the appeal may go ahead in their absence should they fail to attend without good reason.

#### **Member Level Appeals Process**

11.11 An appeal against a decision to dismiss on sickness/capability grounds will be a review of the case, heard by 2 Members.

11.12 The manager presenting the case (normally the service manager who heard the final hearing) will present first. If this manager is no longer employed, the HR Adviser who advised the final hearing panel will present the management case.

11.13 The employee (or his/her representative) will present their case after the management case.

11.14 Witnesses may only be called if there has been new evidence introduced which may have a material effect on the outcome and which has come to light since the final hearing or where the individual concerned was unavailable to attend the original hearing. Any witnesses present may be questioned by the presenting manager, appellant or representative, the panel and advisor(s) to the panel. The order of questioning shall be in line with the normal procedure.

11.15 Questioning of either the presenting manager or the appellant may only be carried out by Members or by the HR adviser to the Member panel.

11.16 Once the management and appellant have presented their case, both sides will present a summary of the key points. The case against the appellant will be summarised first. No new evidence can be introduced in closing statements.



11.17 The presenting parties will then leave the hearing to allow the Member panel, with any adviser or advisers, to deliberate in private. The parties can be recalled to clarify any points of uncertainty.

11.18 Having deliberated, the Appeal panel will generally recall both parties to the room in order to give a decision on the case. It may sometimes be necessary to give a decision on the case at a later date if the deliberations are likely to last a long time.

11.19. The decision will be confirmed in writing, and the letter should usually be dispatched within 3 working days.

**APPENDIX 1**

**SICKNESS ABSENCE APPEAL SUBMISSION FORM**

Employees who receive a formal sanction of a written warning or above have a right of appeal against this decision. The appeal must be made in writing using this form. The completed form must be returned within 10 working days of the date of the decision letter and must be completed in full, outlining the reasons for the appeal.

<b>Name</b>		<b>Service</b>	
<b>Job Title</b>		<b>Contact Telephone</b>	
<b>Line Manager</b>		<b>Trade Union Rep</b>	

<b>Indicate your reason for making the appeal</b>	
1. That the process followed at the original hearing was incorrect	2. To take into account evidence which came to light after the hearing and which you believe to have a material affect on the outcome of the case
3. That the original hearing failed to take due account of the evidence in reaching a decision to dismiss on sickness/capability grounds	

**Please outline your appeal, giving as much detail as you can (including any evidence you have to substantiate your appeal) (please include your name on any supplementary sheet submitted)**

Please note that your appeal will not be lodged until the form is completed in full.

<b>Signature</b>	<b>Date</b>
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The completed form must be returned to:  
 Head of HR, Level 4 Alexandra House, 10 Station Rd, Wood Green, London N22 7TR.

**DISCIPLINARY PROCEDURE**

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# DISCIPLINARY PROCEDURE

## 1. INTRODUCTION

The disciplinary procedure should be seen as an aid to good management and not viewed primarily as a means of imposing sanctions or as necessarily setting out procedures leading to dismissal. Its aim is to:

- Allow managers to address issues of unsatisfactory conduct and seek improvements in behaviour.
- Ensure that employees covered by the procedure are treated fairly and consistently
- Ensure that proper and adequate procedures are observed before any disciplinary decisions are taken
- Help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance.
- Maintain discipline essential to the delivery of high quality services.
- Protect the health, safety and well-being of staff, service users and members of the public.
- Safeguard the integrity and good reputation of the Council

*Note 1: The Council may from time to time adopt specific procedures that calls into question the conduct or capability of employees. An example could be the Bullying & Harassment Policy. If disciplinary action is required as a result of using the Bullying & Harassment policy then this action will be carried out using this disciplinary procedure.*

*Note 2: Dealing with capability/performance at work is covered by "The Capability at Work Procedure". It deals with an employee's capability to carry out his/her work and has sanctions leading ultimately to dismissal.*

*Note 3: The control of sickness absence is covered by "The Sickness Absence Monitoring and Control Procedure" and this procedure is specifically for application in cases of sickness absence. It deals with an employee's capability to attend work and has sanctions leading ultimately to dismissal.*

## 2. SCOPE OF THE PROCEDURE

2.1 This procedure applies to all permanent Council employees, except those teachers directly employed by the Council and all staff appointed by schools operating under the Local Management of Schools, which have their own procedure.

2.2 The procedure will be varied for temporary employees, and certain senior staff to ensure compliance with local government law and JNC conditions of service for Chief Executives and Chief Officers. See below. Employees serving their Probationary period will be subject to the Probationary Procedure.

## Temporary Employees with less than 9 month's service will use the following procedure

1. The general principles for dealing with discipline will apply to temporary employees with less than 9 month's service. Where the performance, conduct and/or attendance record remains of sufficient concern despite discussions with the temporary employee, appropriate action will be taken as set out below.
2. Where the temporary employee's performance, conduct or attendance is such that disciplinary action or dismissal is contemplated, then the manager, in consultation with HR, must set up a formal meeting. Where misconduct is contemplated the employee will be given at least 2 working days' notice. If gross misconduct is contemplated then 5 working day's notice will be given. The written notification will give the date, time and place of meeting, and the name and designation of the manager who will be hearing the case. The notification should also explain the purpose of the meeting and the right to be represented. The employee must take all reasonable steps to attend.
3. At the meeting, the manager will confirm the reasons for considering disciplinary action/ dismissal. The employee has the right to be accompanied at the hearing. After the hearing, the manager must inform the employee about any decision, and offer the employee the right of appeal, unless a verbal warning is given as the sanction.

### 2.3 Appeal

If the temporary employee wishes to appeal, s/he must inform the manager and HR with reasons/grounds for the appeal within 3 working days of the original decision. The temporary employee will be invited to attend a further hearing to appeal against the decision. The temporary employee has the right to be accompanied at the hearing. A more senior manager should hear the appeal. The final decision will then be communicated in writing, to the temporary employee.

### 2.4 JNC Chief Officers

Disciplinary action against a Director/Assistant Director (or equivalent rated officer) will be carried out in accordance with procedures laid out in the Chief Officers conditions of service (including any requirements under Standing Orders). Personnel must be consulted prior to initiating an action at this level.

Standing Orders and the Local Authorities (Standing Orders) Regulations will govern disciplinary action against the Chief Executive.

## 3. GENERAL PRINCIPLES

- 3.1 The principles of natural justice underpin this Disciplinary Procedure. All those involved in disciplinary action must act in good faith and with common sense.
- 3.2 Management will ensure that all employees are fully aware of the Council's Code of Conduct and this Disciplinary Procedure.
- 3.3 Where an employee is accused of any disciplinary offence they will be called to a disciplinary hearing. The procedure for this is set out later in paragraph 8.

3.4 Disciplinary hearings should only be arranged once sufficient information has been obtained to establish the facts of the case. No disciplinary hearing will be arranged until the case has been fully investigated either through interviews or otherwise to fully establish the facts.

3.5 In most cases this will involve some initial fact finding, which may include preliminary interviews to establish whether there is a case to answer and whether the issue is misconduct or gross misconduct. During this initial fact finding it is not necessary for the employee to be accompanied by a trade union official or workplace colleague.

3.7 An employee who is the subject of an investigation will be told promptly that the investigation is taking place and why.

3.8 Investigations will be concluded as quickly as possible and employees will be advised if the investigation is likely to continue for some time.

3.9 Following initial fact finding, when an employee is requested to attend an investigatory interview he/she will be given notice of that interview. A trade union official or workplace colleague can also accompany him/her. (In exceptional circumstances an employee may have legal representation – see para 3.15).

3.10 If an employee is suspended, he or she will be clearly told why he/she is suspended and that the suspension will be on normal pay. Although in exceptional circumstances suspension may be without pay. The suspension will be confirmed in writing. Any decision to suspend without pay must be discussed and agreed by the Head of Human Resources and must be reviewed on a regular basis to ensure that the period of no pay is kept to a minimum before the hearing takes place.

3.11 If there is no case to answer this will be made clear to an employee who has been subject to investigation. A letter confirming that there is no case to answer will be sent to the employee and a copy of this letter will remain on the employee's file.

3.12 No disciplinary action will be taken against a trade union official unless the case has been discussed with the Branch Secretary or full-time employed official. Although suspension prior to an investigation is not a disciplinary sanction the Branch Secretary or full-time employed union official should be contacted if this is intended.

3.13 An employee who is called to a disciplinary hearing will be given full written notification of the allegations to enable him or her to prepare a response.

3.14 During the investigation or at any disciplinary hearing an employee will be given the opportunity to state his or her case before any decision is made.

3.15 At all stages of the procedure, except the initial fact finding interview and suspension stage, an employee will have the right to be accompanied, by a trade union official or work colleague. Where there is potentially a serious ongoing consequence of a disciplinary decision in respect of future employment or career of the employee then the employee may choose to have legal representation. This

consequence would need to be much greater than, for example a finding of gross misconduct. The consequence must be one where a further restriction in employment would flow from the disciplinary decision such as de-registration from a professional body. All requests for legal representation will be considered by the Head of Human Resources. Legal representation for the employee may mean that both the person hearing the case and the person presenting it should consider whether they require a legal advisor or some form of legal support. One outcome of such an arrangement is that of a greater formality in the proceedings.

3.16 An employee called to a disciplinary hearing will be given a minimum of five working days notice of that hearing except in the case of alleged gross misconduct when the notice will be ten working days. In more complicated cases where a lot of information may be presented a longer notification would be appropriate.

3.17 Where possible, the employer should allow a companion (worker colleague or trade union representative) to have a say in the date and time of a hearing. If the companion can't attend on a proposed date, the employee can suggest an alternative time and date so long as it is reasonable and is ideally not more than ten working days after the original date. (Note – it is acknowledged that on occasions because of diary commitments ten working days is not practicable but as a general principle this target should be achievable on most occasions.)

3.18 Where a meeting or hearing needs to be postponed or reconvened the notice periods will not apply, but reasonable notice will be given.

3.19 Prior to any disciplinary hearing an employee will be provided with the written procedure to be followed during the hearing.

3.20 The documents and details of witnesses to be used in the case by management at the disciplinary hearing will be provided to the employee side in the timescales outlined. The employee side need to provide their documentation and list of witnesses no later than 2 working days in advance of the hearing (excluding the hearing day).

3.21 Additional information requested by the employee/ representative will be provided where it is relevant and reasonable to do so.

3.22 In cases where the facts are in dispute, decisions on whether or not the case is proven will be reached on the balance of probability. The facts should have been established following as much investigation as is reasonable and practicable. The burden of proof does not extend to the criminal requirement of being beyond all reasonable doubt. If there is a genuine belief that the offence(s) had occurred and there are reasonable grounds for having reached this, then the decision will be considered to be fair.

3.23 An employee will have the right to appeal against all formal disciplinary sanctions except verbal warnings.

#### 4. LEVEL OF MANAGERS WHO CAN TAKE DISCIPLINARY ACTION?

4.1

Level of manager	Sanction that can be given
An appropriate level of manager graded at least on Senior Officer SO1 scales or equivalent	<ul style="list-style-type: none"> <li>▪ Verbal or Written Warnings</li> </ul>
An appropriate level of manager graded at least on Principal Officer PO1 scales or equivalent	<ul style="list-style-type: none"> <li>▪ Verbal or written warnings.</li> <li>▪ Final written warnings.</li> <li>▪ Written or final written warnings with additional sanctions that do not affect pay e.g. removal from flexitime</li> </ul>
1st, 2nd and 3rd tier managers, or managers empowered by a Director to conduct a disciplinary hearing.	<p>As well as the sanctions outlined above,</p> <ul style="list-style-type: none"> <li>▪ Written or final written warnings with additional sanctions that affect pay.</li> <li>▪ Demotion or loss of increments</li> <li>▪ Relegation</li> <li>▪ Dismissal, or</li> <li>▪ the imposition of additional sanctions that may lead to dismissal e.g. where a final written warning is already live and a further sanction will lead to dismissal.</li> </ul>

4.2 For the purpose of this procedure 1<sup>st</sup> tier means Directors, Executive Directors/ Assistant Chief Executives, and Direct reports to the Chief Executive. 2<sup>nd</sup> tier officers are direct reports to 1<sup>st</sup> tier as defined above and 3<sup>rd</sup> tier officers are direct reports to 2<sup>nd</sup> tier officers as defined above.

4.3 If there are concerns about the level of manager empowered by the Director to conduct a hearing, these can be raised with the Head of Human Resources.

4.4 No disciplinary sanction can be applied unless it is by the person who conducted the hearing.

#### 5. DISCIPLINARY SANCTIONS WHICH MAY BE IMPOSED

- Verbal Warning
- Written Warning
- Final Written Warning
- Written or Final Written Warning with additional sanctions.
- Demotion <sup>(1)</sup> (or loss of increments) <sup>(2)</sup> for a specified period or permanently
- Relegation <sup>(3)</sup>
- Dismissal

Note: <sup>(1)</sup>**Demotion** means removal of duties in the same job that will result in no more than one grade lower.



- (2) **Loss of Increments** means losing increments within the individual's existing grade, or within the individual's linked grade.
- (3) **Relegation** means being transferred to a different post with different duties on a lower grade, or same grade.
- Sanctions** examples could be removal from flexitime, or withholding an increment.

## **DEALING WITH MISCONDUCT AND GROSS MISCONDUCT**

6.1 An employee's conduct at work is governed by the Code of Conduct. If an employee breaks the Council's Code of Conduct then he or she will be liable to disciplinary action that will be dealt with either as misconduct or gross misconduct. The main difference between the two is that an employee cannot be dismissed for a first act which is deemed to be misconduct, but can be dismissed for an act of gross misconduct.

### **Misconduct**

6.2 The nature of the misconduct and the effect of such misconduct will determine at what level a warning will be issued. If formal action is deemed appropriate, it is not always necessary to start with a verbal warning. A written warning or final written warning could be issued depending on the nature and effect of the misconduct. Therefore, although there could be four stages in dealing with misconduct, it may be appropriate to omit one or more stages, either at the beginning or at later stages. However, a final written warning must not be omitted.

### **Informal Warning and Standard Setting**

6.3 In many cases, particularly with regard to minor breaches of discipline, the best way for managers to tackle such problems is to talk the matter over with the employee. In this way, the employee is made aware of the problem and given the opportunity to correct it, so there is no need to invoke formal disciplinary action. This should be a two way process aimed at pointing out any shortcomings and to ascertain any difficulties or problems the employee may be facing. The emphasis should be on guiding the employee in order to try to remedy the problem, for the manager to assist and help the employee to improve where possible and to advise the employee of the Councils expected standards.

Such meetings are an informal one to one interview between the manager and the employee. There is no right to representation and no right of appeal.

## **FORMAL PROCEDURE**

### **Verbal warning**

6.4 If an employee's conduct falls below expected standards the formal process will be instigated. The employee will be called to a disciplinary hearing. The employee will normally be given a verbal warning, but a written warning may be given if the nature of the breach of conduct warrants this (see 6.5 below). A note of the verbal warning will be kept but it will normally be spent after six months, subject to satisfactory conduct. The employee will be advised that any further misconduct will result in further disciplinary action.

### **Written Warning**

6.5 If following a verbal warning there is a further breach of conduct then the employee will be called to a further disciplinary hearing. A written warning will normally be given at this stage. Note that a written warning may also be deemed an appropriate starting point in the procedure if the breach of conduct warrants this. The written warning will spell out why it is given and warn that any further act of misconduct will liable the employee to further disciplinary action. A copy of this written warning will be kept but it will be spent after a specified period, subject to satisfactory conduct. Note: The specified period will normally be 6-12 months depending on the circumstances of the case.

### **Written Warning with additional sanctions**

6.6 In addition to issuing a written warning other sanctions could be applied. Examples could be removal from flexitime, or withholding an increment.

### **Final Written Warning**

6.7 If, having received a written warning, there is any further breach of conduct, which is deemed to be misconduct, within the specified warning period, the employee will be called to a further disciplinary hearing. This stage could also be deemed the appropriate starting point within the procedure if the nature of the serious breach of conduct warrants this. The employee will normally be given a final written warning. This will spell out why the warning was given and warn that any further breach of conduct will liable the employee to dismissal. A copy of this final written warning will be kept but it will be spent after a specified period (for example 12 months or 24 months) subject to satisfactory conduct. In exceptional cases the period may be longer.

### **Final Written Warning with additional sanctions**

6.8 In addition to issuing a final written warning other sanctions could be applied. Examples could be removal from flexitime, or withholding an increment.

6.9 Where one of the above formal sanctions, except verbal warnings, has been issued the employee will have a right to lodge an appeal by writing to the Head of Human Resources. This must include the grounds and full reasons for the appeal within 10 working days of the written notification of the decision.

### **Dismissal stage**

6.10 If there is a final written warning that is 'live' and if there is any further breach of conduct, deemed to be misconduct, then the employee will be called to a disciplinary hearing. The outcome of this hearing will normally be dismissal with the appropriate notice, normally paid in lieu. This hearing should be conducted by a 1st, 2nd or 3rd tier managers, or by a manager empowered by a Director to conduct a dismissal disciplinary hearing. The employee will be provided with written reasons for dismissal, the date on which employment will terminate and the right of appeal. This should normally be dispatched within 3 working days.

### **Gross Misconduct**

6.11 Gross misconduct is misconduct of such a nature that the authority is justified in no longer tolerating the continued presence at work of the employee concerned. If the Council is satisfied that gross misconduct has taken place the

result will normally be summary dismissal. Whilst any serious breach of conduct will be considered to be gross misconduct, the following are given as examples:

- Unauthorised removal or misuse of Council property
- Inappropriate use of the internet, email, the council's electronic software, information communications systems or computer misuse
- Acts of dishonesty
- Falsification of time sheets, expenses claims etc.,
- Misuse of the Councils property or name
- Theft
- Fraud
- Deliberate or negligent damage to Council property
- Sexual misconduct at work, including sexual harassment
- Racist actions, including racial harassment
- Physical violence
- Bullying, offensive behaviour or harassment
- Soliciting or accepting bribes
- Improperly using one's position with the Council for personal gain
- Drunkenness at work, including serious incapability through abuse of alcohol.
- Drug offences, including being under the influence of drugs at work
- Serious breach of health and safety rules.
- Gross negligence
- Breach of confidentiality
- Wilful failure to carry out the duties of the post
- Carelessness, causing loss, damage or injury
- Culpable lack of care towards clients
- Any action that could bring the Council into disrepute

If there is good reason to believe that an employee has breached the Code of Conduct and that such action is deemed to be gross misconduct, then he or she will be suspended from work on full pay. Although in exceptional circumstances suspension may be without pay. This suspension will allow investigation of the allegation(s). If, on completion of the investigation, it is deemed that there is a case of gross misconduct to be answered, then the employee will be called to a disciplinary hearing. If, at the end of this hearing, the Council is satisfied that gross misconduct has occurred, the result will be summary dismissal, without notice or pay in lieu of notice, unless it is decided to apply a different disciplinary sanction. The employee will be provided with written reasons for dismissal and the right of appeal. This letter should normally be dispatched in 10 working days.

### **Sanctions for Gross Misconduct Short of Dismissal**

6.12 Sanctions short of dismissal for Gross Misconduct could be appropriate:

- Where the employee is considered to be blameworthy of a serious offence but there are mitigating circumstances to justify disciplinary action, short of dismissal.
- Where the employee previously had an excellent work record, the offence was out of character and was committed at a time when the employee was experiencing severe emotional/domestic problems.

- Where an employee admits the offence at the outset of the investigation process and the nature of the offence is taken into account and where either the above examples also apply.

Possible sanctions include

- Final Written Warnings
- Final Written Warnings with additional sanctions
- Demotion for a specified period or permanently
- Relegation

If relegated, the employee must be transferred to different duties on a lower grade. In reality securing alternative employment at a lower grade may not always be practical, in such circumstances withholding incremental increases may be more appropriate. If they are demoted they may remain in the same job but with duties removed which will result in a lower grade but not more than one grade lower.

In any case, at the time the decision is taken to impose these sanctions, the employee should be advised whether or not it is for a specified period. If it is, the employee should be advised that he or she will be put back on his or her grade/spinal point after that period. If the relegation or demotion is without any specified period then any future re-grading can only occur as a result of job evaluation. (An employee could also obtain a higher grade as a result of promotion, through the normal process of application and appointment).

In the case of relegation or demotion a final written warning for a defined period will also be applied.

## **7. LAPSED DISCIPLINARY WARNINGS**

7.1 Warnings that are issued as part of this code will remain on file after they are spent. They will normally be disregarded for disciplinary purposes but can be taken into account in other circumstances, for example, appointment to another post. There may, however, be occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any current warning should last. It would be artificial to act as though an incident had never occurred and was erased from the memories of both parties. If an employee was to maintain that he or she was unaware of a particular rule, for example, and it happened that he or she had been warned about this breach of rule in the past, this could be checked on the employee's file.

## **8. PROCEDURES FOR CONDUCTING A FORMAL DISCIPLINARY HEARING**

### **Simplified Procedure**

1. This simplified procedure will be used where an investigation or fact finding interview has taken place and there is a case to answer and the likely sanction will be a verbal or written warning, or final written warning and both sides agree a short hearing is appropriate. If the likely sanction will be

dismissal for gross misconduct, but due to mitigating circumstances management have decided not to seek dismissal, both sides can agree that a short hearing would be more appropriate. Paragraph 6.12 gives details of some circumstances when a sanction for gross misconduct short of dismissal may be appropriate. This could mean that an appropriate level of manager details the case to the employee and, having heard his or her response decides on the sanction. This approach would usually suit the initial stages of dealing with wilful poor performance at work or relatively minor breaches of conduct.

2. Where a simplified approach is not deemed appropriate a more formal approach will be taken to the hearing as set out below.

### **Full Procedure**

1. An appropriate level of manager will chair the disciplinary hearing and they may choose to have an adviser or advisers, depending on the exact nature of the disciplinary hearing. The hearing will include the officer presenting the case, their adviser where appropriate, the employee and his or her representative. The presenting officer will normally present the case to a more senior officer.
2. Witnesses will only be present while they are being questioned.
3. The documentation to be used in the case should have been exchanged in good time before the hearing. Witnesses will be notified in advance to allow time off to be arranged.
4. Introductions will be given and the Chair will explain the process and outline the documentation to be used.
5. The case against the employee will be presented first, including calling any witnesses.
6. The employee, or their representative, will have the opportunity to ask questions of the manager and any witnesses that may have been called.
7. The Chair, and advisers, may ask questions of the manager and any witnesses that may have been called.
8. Following questions the manager has the opportunity to re-examine the witness.
9. Then the employee and/or their representative will present their defence, including calling any witnesses.
10. The manager, and their adviser, will have the opportunity to ask questions of the employee, or their rep, and any witnesses that may have been called.
11. The Chair, and advisers, may ask questions of the employee, and/or their rep, and any witnesses that may have been called.

12. Following questions the employee or rep has the opportunity to re-examine their witness.
13. Once the case and defence have been presented both sides will have an opportunity to give the hearing a summary of their cases. The case against the employee will be summarised first. No new evidence can be introduced in closing statements.
14. During the employees closing statement any mitigation as to why a particular sanction should not be imposed will also be given.
15. The officer and adviser presenting the case and the employee and rep will leave the hearing to allow the Chair, with any adviser or advisers, to deliberate in private. The parties can be recalled to clarify any points of uncertainty.
16. Having deliberated, the Chair will generally recall both parties to the room in order to give a decision on the case. It may sometimes be necessary for the Chair to give a decision on the case at a later date if the deliberations are likely to last a long time.
17. If a sanction of written warning or above is imposed, the right to appeal will be advised and the decision will be confirmed in writing.

## 9. APPEALS

9.1 An employee who receives a formal disciplinary sanction of a written warning or above will have a right of appeal against the decision.

- Officer Level Appeals: Appeals against a decision other than dismissal, will be a review of the case carried out by an appropriate manager who will be from outside the appellant's own Directorate.
- Member Level Appeals: Appeals against dismissal will be heard by a panel of 2 Members, who will review the case based on the information provided at the appeal review hearing.

9.2 An HR Adviser (and an adviser from the Legal team) will provide advice to both the member panel and to the officer reviewing the case.

9.3 The individual is entitled to be represented (or accompanied) to an appeal hearing by either their trade union representative or a work colleague of their choice.

9.4 Where there is potentially a serious on-going consequence of a disciplinary decision in respect of future employment or career of the employee, then the employee may choose to have legal representation. See Disciplinary Policy Paragraph 3.15 for details.

9.5 To lodge an appeal, the Disciplinary Procedure Appeal Form (attached at Appendix 1) must be completed in full and sent to the Head of HR within 10 working days of the date of the letter confirming the decision of the disciplinary hearing. An appeal may be lodged outside of this timeframe only if there are exceptional reasons for the delay. The final decision about whether or not to accept the appeal in such circumstances will rest with the Head of HR.

9.6 Failure to supply full reasons for the making the appeal will render the appeal suspended until they are supplied. The Head of HR will make the final decision as to whether the reasons are sufficient.

9.7 Where an appeal is lodged, HR will provide the transcript or notes of the original hearing when confirming receipt of the appeal. Where this is in the form of a transcript the appellant shall be entitled to hear the audio recording in the event of a dispute about accuracy in transcription.

9.8 Appeal hearings will be electronically recorded to ensure an accurate record is captured. The appellant may raise an objection in advance of the hearing date as to why they don't want the hearing recorded. However, the appellant must be aware that a written note of the hearing may not be as accurate as an electronic record.

9.9 Only new evidence which has come to light since the original hearing took place and which may have a material effect on the final outcome may be introduced at the appeal stage. Any such evidence must be provided at the same time as other evidence (ie ten working days in advance of the hearing). Such evidence should only relate to the original allegations and no additional ones.

9.10 Both parties will be expected to exchange any documents relating to the case at least ten working days in advance of the appeal. If management are using the same documents as those used at the service hearing they must confirm this to the appellant no later than ten days in advance of the appeal. Where management introduce new evidence at this point the appellant shall be entitled to submit additional evidence no later than five working days in advance of the appeal, such evidence shall be limited to having a direct relationship to the new management evidence.

9.11 Appeal hearings must be arranged within a reasonable period of time and ideally concluded before the employee's last day of service. However, where this is not possible, the hearing should be concluded within a maximum of 3 months from the date of the service hearing. The date of the appeal should be arranged in consultation with all parties. Flexibility will be expected from an appellant if a proposed date does not at first appear convenient and he/she must be prepared to change their arrangements to try to meet the proposed date. The appellant should be aware that the appeal may go ahead in their absence should they fail to attend without good reason.

#### **9.12 Officer Level Appeals Process**

The review will be conducted by a more senior manager than the person who imposed the original sanction. If a 2nd or 1st tier manager made the decision

another manager at the same level from outside the appellant's directorate may conduct the appeal. The Head of HR will nominate the reviewing officer.

9.13 The review may confirm the original sanction imposed or decrease it, but not increase it as it is not a rehearing of the case.

9.14 The reviewing manager will consider all documentation presented at the final hearing together with hearing notes, outcome letter and the appellant's grounds of appeal. Copies of these documents will be available to the appellant; to his/her representative and to the manager who made the original decision.

9.15 The manager reviewing the case will meet with the appellant and her/his representative and will then meet with the original hearing manager before making a decision.

9.16 The decision of the review manager will be confirmed to the appellant in writing, and the letter should usually be despatched within 3 working days of the decision.

9.17 The decision of the reviewing manager is final.

#### **9.18 Member Level Appeals Process**

An appeal against a decision to dismiss will be a review of the case, heard by 2 Members.

9.19 The manager presenting the case (normally the service manager who heard the final hearing) will present first. If this manager is no longer employed, the HR Adviser who advised the final hearing panel will present the management case.

9.20 The employee (or his/her representative) will present their case after the management case.

9.21 Witnesses may only be called if there has been new evidence introduced which may have a material effect on the outcome and which has come to light since the final hearing or where the individual concerned was unavailable to attend the original hearing. Any witnesses present may be questioned by the presenting manager, appellant or representative, the panel and advisor(s) to the panel. The order of questioning shall be in line with the normal procedure.

9.22 Questioning of either the presenting manager or the appellant may only be carried out by Members or by the HR adviser to the Member panel.

9.23 Once the management and appellant have presented their case, both sides will present a summary of the key points. The case against the appellant will be summarised first. No new evidence can be introduced in closing statements.

9.24 The presenting parties will then leave the hearing to allow the Member panel, with any adviser or advisers, to deliberate in private. The parties can be recalled to clarify any points of uncertainty.



9.25 Having deliberated, the Appeal panel will generally recall both parties to the room in order to give a decision on the case. It may sometimes be necessary to give a decision on the case at a later date if the deliberations are likely to last a long time.

9.26 The decision will be confirmed in writing, and the letter should usually be despatched within 3 working days.

# APPENDIX 1

## DISCIPLINARY PROCEDURE: APPEAL SUBMISSION FORM

Employees who receive a formal sanction of a written warning or above have a right of appeal against this decision. The appeal must be made in writing using this form. The completed form must be returned within 10 working days of the date of the decision letter and must be completed in full, outlining the reasons for the appeal.

<b>Name</b>		<b>Service</b>	
<b>Job Title</b>		<b>Contact Telephone</b>	
<b>Line Manager</b>		<b>Trade Union Rep</b>	

<b>Summary of Finding at Final Hearing:</b>
<ol style="list-style-type: none"> <li>1. Dismissal</li> <li>2. Other sanction – (please specify)</li> </ol>

<b>Indicate your reason for making the appeal</b>	
1. Against the basis on which the allegation was found to be proven	2. Against the level of sanction imposed
3. That the process followed at the original hearing was incorrect	4. To take into account evidence which came to light after the hearing and which you believe to have a material affect on the outcome of the case

<b>Please outline your appeal, giving as much detail as you can (including any evidence you have to substantiate your appeal) (please include your name on any supplementary sheet submitted)</b>

Please note that your appeal will not be lodged until the form is completed in full.

<b>Signature</b>	<b>Date</b>
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The completed form must be returned to:  
 Head of HR, Level 4 Alexandra House, 10 Station Rd, Wood Green, London N22 7TR.