

PERSONNEL COMMITTEE – 20TH SEPTEMBER 2016

Report of the Head of Strategic Support

Part A

ITEM 5 APPEAL POLICY

Purpose of the Report

To introduce a revised Appeal Policy and associated documents. Additionally to support related changes to policies following the revision of the Appeal Policy. The changes relate to the Disciplinary, Dignity and Behaviour at Work, Grievance, Probation and Attendance policies. SMT approved the Appeal Policy at its meeting on 27th April 2016 and it was agreed at JMTUM on 14th July 2016.

Recommendations

1. That the revised Appeal Policy attached at Annex A be approved, and that the associated documents and related changes to the Disciplinary, Dignity and Behaviour at Work, Grievance, Probation and Attendance policies be approved.
2. That it be recommended to Council that the Constitution be amended as set out in paragraph 11 of Part B of this report.

Reasons

1. To provide managers with clear and current information on Appeals which meet legislative requirements and recommended best practice.
2. To ensure that the Constitution reflects the procedural amendments if agreed by the Personnel Committee.

Policy Justification and Previous Decisions

The existing Appeals Policy was agreed by Personnel Committee at their meeting on 5th November 2013.

Implementation Timetable including Future Decisions

The Appeal Policy, associated documents and amended policies will be uploaded to the intranet following the agreement of Personnel Committee.

Report Implications

The following implications have been identified for this report.

Financial Implications

There are no financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Background Papers: None

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Part B

Background

1. The Appeal Policy and Procedure has been reviewed and revised to provide clarity in certain areas and outline proposed amendments.
2. In particular, it was felt that the composition of the panel, the grounds for appeal, the management representative and the sanction at appeal should be reviewed. The key proposals within the policy are outlined below.
3. The changes to the appeal policy, including those outlined above, have impacted upon other policies. Therefore, in implementing the revised Appeal Policy, it would be necessary to make the relevant and related changes to the Disciplinary, Dignity and Behaviour at Work, Probation, Grievance and Attendance policies to ensure consistency.
4. An action plan has been included below to address concerns raised, relating to quality and process, which were discussed at SMT on 3rd February 2016 and 16th March 2016. The policy has also been adjusted to take into account the points raised at this meeting where appropriate. The notes of that meeting have been incorporated into the attached report and form the basis of the action plan. It also signposts how the issues raised have been addressed within the policy and through other interventions.

Proposals

5. **Action Plan**

The notes of the SMT meeting on 3rd February 2016 and 16th March 2016 are outlined as an action plan below:

	Objective	Actions
1	Appeals should be focused on the employee's grounds of appeal and full re-hearings only undertaken where there is a clear breach of procedure or the investigation is flawed	The Appeal Registration Form has been amended to help employees to clarify the grounds of their appeal. If insufficient information is provided by the employee, the hearing will be postponed. This decision will be made by the Chief Executive.
2	SMT also wanted to ensure that various roles, including the role of HR advisors in appeals, were clarified.	This is clarified at point 2 of the new policy. This clarification has also been built into other appropriate HR policies and procedures.
3	Ensure that the most appropriate management representative responded to the points of the employees appeal at the hearing.	The Appeal Policy and Procedure to be amended to say that the chair of the first hearing will normally present the management case at an Appeal Hearing.

	Quality Assurance Measures	Actions
4	Widen the pool of Senior Managers involved in panel hearings	All panels to have 3 members, a Chair, Panel Member and HR Manager/Advisor. Amend Appeals and other policies appropriately.
5	Ensure panel members have the skills, knowledge and confidence to challenge evidence appropriately and carry out the role fairly and effectively.	An initial training session has been delivered by ACAS to a pool of nominated senior managers who will be acting as investigators and panel members. Further 'in-house' skills training is planned. A short 'reminder' presentation has also been delivered to CMT.
6	Provide panel members with HR tools to ensure that they effectively manage the hearing, provide the employee with detailed feedback and ensure that any additional 'learning points' are passed on appropriately.	HR has drafted a template introduction to the hearing for the chair of the panel. HR has drafted guidance on summing up and delivering the decision. A proforma, to be completed by the chair of the panel and forwarded to the appropriate manager/HofS, has been agreed with SMT. A copy to be retained by HR for monitoring and providing feedback to SMT.
7	Ensure that decisions are made over an appropriate period e.g.it is sometimes necessary to deliberate for a few days following a complex hearing.	This has been clarified within the appropriate policies and guidance documents.
8	Ensure that investigations are undertaken in a consistent, confidential, thorough, timely and appropriate manner.	A checklist for investigators has been by HR for this purpose.
9	SMT are concerned that employees who are subject to these procedures are properly and competently represented.	Managers and HR support TU representation through these processes and encourage employees to contact their TU if they are members. The role of an employee representative has been articulated in all major policies and TU feedback on the wording would be welcome. A short simple neutral guidance document has been drafted for 'work colleagues', who have been asked to support an employee if they choose to access this.

6. HR Changes to the Current Policy

Furthermore, it is outlined within the policy that unless the grounds for appeal indicate that a full rehearing should occur, the appeal will not consider every point of the original complaint, but rather be a consideration of the points raised in the

appeal and whether the original conclusion reached by the panel or Decision Maker was appropriate (see Appeal Form at the back of the policy).

7. The composition of the panel has also been altered. It used to be a requirement that for JNC officers the appeal would be heard by a panel of three elected members. For all other employees the appeal would be heard by a Strategic Director and a representative from Human Resources.
 - The revised policy proposes that for appeals below JNC level, the panel will consist of 2 Senior Managers (PO grade and above) and in cases that could lead to dismissal, the chair should be at Head of Service level or above.
 - The proposal for appeals at or above JNC level, are that a Strategic Director will Chair the panel, accompanied by a representative from Human Resources.
 - Where dismissal is a potential outcome for a JNC Officer the appeal hearing will be heard by a panel of elected members. The panel will be a sub-committee of the Personnel Committee appointed in accordance with the requirements of the Council's Constitution.
 - When arranging an appeal at JNC officer level and above, the procedure must be read in conjunction with the relevant JNC terms and conditions of employment and the Council's constitution, to ensure that all requirements are met in relation to officers at this level.
8. The section on New Evidence has been developed to propose that where new evidence is submitted, the Chair and HR representative from the original panel will consider whether this could result in new or more serious allegations being levelled against the employee that would result in a new and separate investigation. In this circumstance the appeal panel will still consider the employee's appeal against the outcome of the original hearing.
9. Clarity has been provided with regard to the Management Representative who will present the appeal. This will normally be the chair of the original panel. The officer who presented the original case, accompanied by the HR officer who supported them, will be called as a witness at the appeal hearing.
10. In the original policy, a more serious penalty could be imposed at appeal. This could deter employees from submitting an appeal and potentially be deemed 'unfair'. It is therefore proposed that in the revised policy that the panel are not able to increase any sanction awarded to the employee by the original hearing panel.
11. Should changes be agreed to the composition of the panel, the Constitution would need to be amended in relation to Personnel Committee (e) points 2 and 3 as follows:
 - Point 2 states: To determine appeals by a Chief Officer or Deputy Chief Officer against dismissal. This would need to be amended to replace Chief Officer or Deputy Chief Officer with JNC Officer.

- Point 3 states: To determine all other employment related appeals for JNC staff which are provided for in the Council's procedures. This would need to be deleted.

12. Statutory Officers (Head of Paid Service, Monitoring Officer and S151 Officer) are covered by a separate procedure in relation to dismissal and disciplinary. This does not include redundancy, permanent ill health or infirmity of mind or body, a failure to renew a full term contract (unless the authority has undertaken to renew such a contract) or disciplinary action short of dismissal.

List of Annexes

Annex A – Appeal Policy and Procedure (Including Appeal Registration Form)

Annex B – Disciplinary/Appeal Outcome proforma

Annex C – Disciplinary checklist

Annex D – Hearing Folder Content List Template

Annex E – Conduct of the Hearing – Appeal Hearings

Annex F – Conduct of the Hearing – Non Appeal Hearings

Annex G – Guidance for Work Colleagues Providing Support at Hearings

Annex H – Disciplinary Policy and Procedure (changes highlighted)

Annex I – Disciplinary Guidance (changes highlighted)

Annex J – Probation Policy and Procedure Guidance (changes highlighted)

Annex K – Probation Policy and Procedure (changes highlighted)

Annex L – Attendance Policy and Procedure (changes highlighted)

Annex M – Guidance for Chair of the Panel on Delivering the Decision in Person – Disciplinary Appeal Hearing

Annex N – Guidance for Chair of the Panel on Delivering the Decision in Person – Disciplinary Hearing

Annex O – Grievance Policy and Procedure (changes highlighted)

Annex P – Dignity and Behaviour in the Workplace Policy (changes highlighted)

Appeal Policy and Procedure

1 Scope

This policy applies to all employees of Charnwood Borough Council. It is not applicable to casual workers.

This policy and procedure relates to appeals at all stages of the following policies:

- Attendance Management Policy and Procedure;
- Capability Policy and Procedure;
- Dignity and Behaviour at Work Policy and Procedure;
- Disciplinary Policy and Procedure;
- Grievance Policy and Procedure;
- Probation Policy and Procedure.
- Dismissal on the grounds of redundancy;
- Termination of fixed term contracts.

This policy should be read in conjunction with one or more of the policies listed above.

This policy and procedure does not apply to matters specifically covered by a separate policy and/or procedure (e.g. job evaluation appeals).

The Statutory Officers (Head of Paid Service, Monitoring Officer and S151 Officer) are covered by a separate procedure in relation to dismissal and disciplinary. This does not include redundancy, permanent ill health or infirmity of mind or body, a failure to renew a full term contract (unless the authority has undertaken to renew such a contract) or disciplinary action short of dismissal.

2 Purpose

The purpose of this policy is to ensure that all appeals raised by employees are addressed in a fair and consistent manner.

3 Roles and Responsibilities

HR Services	HR Services will provide advice, coaching and support to managers on the application of the Appeal Policy and Procedure. HR will also act as panel members at hearings and will express a view on whether the case is founded and make recommendations about the appropriate outcome.
Chair of the Original Panel	The Chair of the original panel will normally be required to present the case.
Panel Members	Will support the Chair of the panel and express a view on

	whether the case is founded and make recommendations about the appropriate outcome.
Democratic Services	Democratic Services is responsible for arranging appeal hearings involving individuals employed under the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities.
Management Representative	The management representative, who presented the original case, will normally be called as a witness.
Trade Union Representative or Work Colleague	To support and advise, if appropriate, the employee. At a hearing this may include presenting the employee's case, summarising and conferring with the employee and responding to points on behalf of the employee. The Trade Union or work colleague cannot answer questions put directly to the employee.

4 Composition of an Appeal Panel

Panel members will have had no prior involvement in the investigation or in influencing the original decision making process.

5 Appeals from Employees below JNC Level

Appeals from employees below Head of Service level will be heard by a panel of two officers. The Chair of the panel will be a Senior Manager (PO grade and above), who will be accompanied by a further Senior Manager and representative from Human Resources. In cases that could potentially lead to dismissal, the Chair should be Head of Service level or above.

6 Appeals from Employees at or above JNC Level

Appeals at this level will ordinarily be heard by a Strategic Director who will be accompanied by a representative from Human Resources.

6.1 Where dismissal is a potential outcome for a JNC Officer the appeal hearing will be heard by a panel of elected members. The panel will be a sub-committee of the Personnel Committee appointed in accordance with the requirements of the Council's Constitution.

6.2 This procedure must be read in conjunction with the relevant JNC terms and conditions of employment and the Council's Constitution for appeals at this level.

7 Registering an Appeal

All appeals must be registered with the Chair of the panel or Decision Maker who made the original decision within 7 working days of the employee receiving their outcome letter, unless the relevant policy states otherwise. Appeals submitted outside of this timeframe will only be accepted in exceptional circumstances.

8 Grounds for Appeal

When completing the [Appeal Registration Form](#) the employee should specify the grounds for their appeal (e.g. procedural flaw, unreasonable sanction, new evidence, challenge of the evidence used, due consideration of mitigation) and, if applicable, whether they are appealing against the decision to impose a sanction and/or the level of sanction applied.

8.1 The employee must set out the full reasons for their appeal and provide copies of any supporting evidence that they wish to be considered at the appeal hearing with the appeal registration form. If the employee fails to provide a reasonable level of information then, with the express permission of the Chief Executive of the Council, the Appeal Hearing will be delayed until the reasons for the appeal are fully clarified.

8.2 Unless the grounds for appeal indicate that a full rehearing should occur and this is agreed by the Appeal Panel, the hearing will not consider every point of the original complaint but rather be a consideration of the points raised in the appeal and whether the original conclusion reached by the panel or Decision Maker was appropriate.

9 New Evidence

Any new evidence, submitted as part of an appeal, should be accompanied by an explanation of how it would have influenced the original decision and why it was not available at the original hearing/meeting. The manager or Investigation Officer may also provide new evidence in response to the appeal with the provision outlined above.

9.1 If new evidence is submitted, the Chair and HR representative from the original panel will need to consider whether this information would result in new or more serious allegations being levelled against the employee. If so, an investigation into the new allegations will commence and if there is a case to answer, a new hearing will be convened under the relevant policy to consider the new allegations. In the meantime, the appeal panel will consider the employee's appeal against the outcome of the original hearing. The panel will not be provided with a copy of the new evidence as this will form part of the new investigation/hearing and any subsequent appeal relating to that process.

9.2 In all other cases, the new evidence will be submitted to the appeal panel for consideration. The panel may decide, during the course of the hearing, that further investigation of the new evidence is required before it can be properly considered. In such circumstances, the appeal hearing should be adjourned whilst this is undertaken. The investigation should be completed as quickly as possible and the appeal hearing reconvened at the earliest opportunity. Any new evidence and/or investigation report should be given to all parties within a reasonable time before any reconvened hearing to ensure it can be fully considered.

10 Convening an Appeal Hearing

The appeal hearing should be convened as soon as possible and should normally be scheduled to take place during the employee's working hours. Consideration must be given as to whether the employee requires any adjustments (e.g. hearing loop, disabled access).

- **Employees employed under the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities involving an Elected Member Panel.**

Committee Services is responsible for convening the appeal hearing. This will include confirming the composition of the panel, confirming the hearing date, time and venue, arranging a note taker and ensuring that breakout rooms and refreshments are available. Human Resources will produce the correspondence in relation to the Appeal Hearing.

- **All Other Appeals**

The Management representative from the original panel, in liaison with the HR representative, is responsible for convening the appeal hearing. This will include identifying a panel, confirming the hearing date, time and venue, and ensuring that a note taker, breakout rooms and refreshments have been arranged. Dates should be arranged in liaison with Trade Union representatives where appropriate.

- **Management Representative**

The Chair of the first hearing will normally present the management case at an Appeal Hearing and be accompanied by the HR Representative who provided support to the panel at the original hearing. The officer who presented the case at the first hearing will normally be called as a witness and may be accompanied, when answering questions, by the HR representative who supported them at the first hearing.

10.1 The Chair of the appeal panel will write to the employee to notify them of the details of the hearing, giving them a minimum of 10 working days' notice. Where there is a member panel Human Resources will write to the employee. The letter should include the employee's right to be represented by a work colleague or Trade Union representative and confirm the potential outcomes of the hearing.

10.2 Accompanying the letter, the employee should also receive copies of any relevant supporting documentation such as:

- The Appeal Registration Form (or letter of appeal) submitted by the employee;
- Any new evidence or supporting documents submitted by the employee or management representative as part of the appeal;
- Statement from management in response to the points raised in the appeal;
- All documents used at the original hearing/meeting;
- Notes from the original hearing/meeting;
- The letter confirming the outcome of the original hearing/meeting;
- The names of any witnesses that management intend to call.

10.3 A copy of the documentation should also be provided to each panel member in advance of the hearing.

10.4 A copy of the documentation, which the employee intends to refer to at the hearing and/or the names of any witnesses that the employee wishes to call, should be submitted no later than 5 clear working days prior to the appeal hearing.

11 Witnesses

It is the responsibility of the management representative to ensure that they invite any witnesses (if required) to attend the hearing. Likewise, it is the employee's responsibility to ensure that they invite any witnesses (if required) to support their case at the hearing. Please note that the employee's Trade Union representative / work colleague can act on

behalf of the employee to arrange their attendance at the hearing if permission from the employee has been granted. Witnesses should only be present at the hearing whilst questions are being asked of them by the employee, their representative, the management representative and panel members.

12 Release of Witnesses

Employees who are required to attend an appeal hearing as a witness **must** be released from duty unless this would have a significant impact on service delivery. Advice should be sought from Strategic Human Resources before declining such a request.

13 Failure to Attend

Wherever possible, arrangements for the date of the hearing should be made in consultation with the employee and their representative. Where an employee's chosen representative is unable to attend, on the arranged date of the hearing, the employee can suggest an alternative within 5 clear working days of the original date. It is important that the employee is made aware that if they fail to attend on the given (or rearranged) date without an acceptable reason, the hearing may go ahead in their absence. Where an employee fails to attend the hearing without making the panel aware, reasonable efforts should be made by the panel to ascertain the employee's whereabouts before deciding whether to hold the hearing in their absence.

Where an employee is not able to attend due to ill health it may be necessary, depending on the length of and reason for the absence, to postpone the hearing. In such cases, it may be appropriate for an Occupational Health referral to be made regarding the employee's fitness to attend a hearing.

14 Conducting an Appeal Hearing

The appeal hearing should follow the format below:

- a) The Chair of the panel will introduce those present and outline the procedure to be followed. **They will confirm the points of appeal to be considered or clarify that it will be a full rehearing as determined in the Appeal Registration Form.** An employee who is not accompanied will be reminded of their right to representation.
- b) The employee and/or their representative will present the reason and case for their appeal, including any new evidence.
- c) If applicable, the employee and/or their representative may call witnesses to support their case. The witness will be questioned initially by the employee and/or their representative. Following this, the management representative may question the witness followed by the panel.
- d) The employee and/or their representative will conclude their case.
- e) The management representative may question the employee and their representative on their case presentation.
- f) The panel may question the employee and their representative on their case presentation.

- g) The management representative will present their response to the appeal, including any new evidence.
- h) If applicable, the management representative may call witnesses to support their case. The witness will be questioned initially by the management representative, then the employee and/or their representative may question the witness followed by questions from the panel.
- i) The management representative will conclude their statement of case.
- j) The employee and/or their representative may question the management representative on their case presentation.
- k) The panel may question the management representative on their case presentation.
- l) The employee and/or their representative will have the opportunity to sum up their case.
- m) The management representative will have the opportunity to sum up their case.
- n) The management representative, the employee and their representative will leave the room so that the panel can deliberate.
- o) Having deliberated on the matters placed before them, the panel will reach their decision. Depending on the complexity of the case, it may be appropriate to ask all parties to wait and be recalled to be advised of the outcome. In other cases, it may be more appropriate for the panel to deliberate and to advise the employee and subsequently the management side of the outcome, at a later date. If this is the case, the decision should be made within a reasonable timescale e.g. within a few days and the method of contacting the employee should also be agreed before the hearing is concluded.

15 Possible Outcomes

The possible outcomes of an appeal hearing are:

- Uphold in full the original decision;
- Partially uphold the original decision;
- Overturn the original decision.

14.1 If a sanction was awarded by the original hearing panel, the appeal panel may decide to reduce this sanction. This is particularly the case if new evidence has been brought to light. The panel may also wish to make additional recommendations to both the employee and/or their manager (e.g. training, guidance, workload review, process changes, policy review etc.). The panel are not able to increase any sanction awarded to the employee by the original hearing panel.

16 Notification of Outcome

The Chair of the panel must confirm, in writing, the outcome of the appeal hearing within 5 working days of the decision, unless there are complex or extenuating circumstances that prevent this timescale being met. A copy of the notes from the hearing should also be provided. The employee will have no further right of appeal against the decision.

17 Notification of Outcome to Chief Officer or Deputy Chief Officer in Cases of Dismissal

Notice of dismissal to a Chief Officer (Strategic Director) or Deputy Chief Officer (Head of Service) shall only be made where no well-founded objection from any member of the Cabinet has been received. Following this, the normal notification of outcome process will be followed.

Appeal Registration Form

To be completed and returned to the Chair of the original panel within 7 working days of receiving written notification of the outcome of the hearing/meeting. Please include any relevant supporting documentation that you wish to be considered at the appeal hearing.

Employee Details

Name: _____

Home Address: _____

Job Title: _____

Outcome of the Hearing/Meeting

Policy Hearing/Meeting was Held Under:

Attendance Management	<input type="checkbox"/>
Capability	<input type="checkbox"/>
Dignity and Behaviour at Work	<input type="checkbox"/>
Disciplinary	<input type="checkbox"/>
Grievance	<input type="checkbox"/>
Probation	<input type="checkbox"/>
Redundancy Dismissal	<input type="checkbox"/>
Termination of Fixed Term Contract	<input type="checkbox"/>

Other: _____

Date of Hearing/Meeting: _____

Panel: _____

Outcome of Hearing/Meeting:

First Written Warning	<input type="checkbox"/>
Final Written Warning	<input type="checkbox"/>
Dismissal with Notice	<input type="checkbox"/>
Dismissal without Notice	<input type="checkbox"/>
Not Upheld	<input type="checkbox"/>

Other: _____

Procedural Flaw (please outline specific details of the procedural flaw and clarify how this affected the case and outcome):

Unreasonable Sanction (please state details regarding why the sanction is unreasonable and the reasons for this):

Other (please provide any other grounds of appeal):

(Please continue on a separate sheet of paper if necessary)

Name and Address of Representative: _____

Names of any Witnesses to be called (if known): _____

Dates Unavailable: _____

Name: _____ **Date:** _____

Signature: _____



Disciplinary/Appeal Outcome

Details of Hearing and Date

Panel Members

Sanction

Rationale for Decision

Follow up Issues/Key Learning Points



Disciplinary Checklist

Contents

Getting Started	1
Suggested Timeframes	2
Suspension	2
Initial Discussion	2
Investigation	3
Interviewing witnesses	3
Formal investigatory meeting	3
Concluding the investigation	3
Disciplinary Hearing	4
Hearing preparation	4
Outcome of disciplinary hearing	4
Appeal Hearing	5
Outcome of appeal hearing	5

Getting Started

Establish seriousness of the issue or concern	
Read Disciplinary Policy and Guidance	
Arrange meeting with HR adviser for support, advice and to agree timescales and review schedule	
<p>If case involves any of the following, either at the beginning or during the investigation, contact HR adviser for further advice:</p> <ul style="list-style-type: none"> • Suspension; • Suspected criminal activities – HR and Legal Services will need to be consulted as it may be necessary to refer to the police; • Child or adult protection (safeguarding) issues including strategy meetings - HR Services will need to be consulted as it may be necessary to refer to the police; • Fraud, corruption and financial impropriety - concerns must be reported immediately to HR Services, who will contact the Head of Strategic Support and Head of Finance and Property before proceeding with any investigation; • Use of electronic surveillance – information must be requested through the HR Strategy Team, who will seek guidance and authorisation from the Monitoring Officer; • Trade union representatives; • Data protection breaches. 	
Consider process requirements (e.g. room bookings and note takers for meetings)	

Suggested Timeframes

The [Disciplinary Policy and Procedure](#) does not state specific timeframes for each stage of the policy. However, it does state that an investigation should not normally exceed 3 months' from the date the allegation is formally made, unless there are contributory factors to justify this. The following timescales are provided as a guide. Please note these will depend on the nature of the investigation being undertaken.

Initial discussion	1 week
Investigation	4 – 6 weeks
Writing investigation report	2 weeks
Disciplinary hearing	Minimum of 10 working days after decision to proceed to hearing
Appeal hearing (officer panels only)	Minimum of 10 working days after appeal registration is received. Separate arrangements are in place for member appeal panels.

Suspension

Consider whether employee should be suspended. This should only be imposed as a last resort. You should consider the possibility of transferring the employee or adjusting their work as an alternative.	
Obtain agreement from Strategic Director	
If employee is a member of the union it may be appropriate for you to make contact with the union prior to the meeting to check if someone would be available to offer support	
Conduct suspension meeting with employee using format in guidance	
Following meeting, confirm suspension in writing using template letter	
If manager is implicated consider who will liaise with employee during suspension	
Maintain contact with employee and provide regular updates on investigation	
Review suspension regularly to see whether this is still necessary	
If suspension is lifted during investigation, confirm to employee and send letter	

Initial Discussion

Contact HR for support and advice	
Arrange initial discussion with employee to ascertain version of events and take notes	
Ask the employee to provide a statement (if applicable)	
Ask any witnesses what they observed (if applicable)	
Establish whether employee has been spoken to about issue before and / or whether there are any current warnings or letters on file	
Decide on course of action in line with Disciplinary Policy and Procedure	
Advise employee verbally of decision	

Provide employee with notes of discussion and give them the opportunity to amend as necessary before signing and returning one copy	
If decision is to deal with matter informally, confirm in writing to employee	
If formal action is to be taken decide who will be the investigating officer	
If considering using an external investigator discuss with HR adviser and obtain agreement from senior manager	
Inform employee who will be the investigating officer	

Investigation

Contact HR for support and advice	
Allocate time to undertake investigation and speak to manager to reassign work where needed	
Keep a chronology of the investigation showing timeframes	
Request to view the employee's personal file by contacting HR	
If you have not done so already establish whether employee has been spoken to about issue previously and/or whether there are any current warnings or letters on file	
Establish the documentary evidence you will require to undertake the investigation (e.g. job description, relevant policies and procedures, management documents e.g. Financial Procedure Rules)	
If you will require data recorded by Council electronic surveillance and ICT equipment complete managers checklist and send to HR team manager for approval	

Interviewing witnesses

Consider who you will need to speak to as part of the investigation	
Book room for interviews at appropriate location	
Arrange a note taker for all interviews through HR	
Prepare questions in advance of meeting(s)	
Refer to witness statement (if obtained)	
Following meeting, provide witness with two copies of notes to check, sign and return	

Formal investigatory meeting

Arrange date and time for meeting	
Book room at appropriate location	
Arrange note taker through HR	
Invite employee to attend meeting using template letter	
Prepare questions in advance of meeting	
Obtain copies of any documentary evidence the employee would like considered	
Following meeting, provide employee with two copies of notes to check and sign	

Concluding the investigation

Produce a report using investigation report format template	
Ensure all witness statements have been agreed and signed	
Arrange meeting with HR adviser if needed to discuss report format	
Send completed report to decision making manager	
Decision making manager should decide appropriate action	
In cases where no further action or informal action is decided, decision making manager to meet with the employee as necessary and send letter to employee confirming decision	

Disciplinary Hearing

Hearing preparation

Identify panel members (should consist of senior manager PO Grade of above and HR representative). In some cases it may be appropriate to have 3 panel members	
Book rooms, refreshments and a note taker for hearing	
Prepare packs for hearing (including folder contents page) as well as the statement of case	
Decide who you will call as witnesses (if anyone) and advise them of hearing date	
Invite employee to hearing using template letter and include any evidence that will be used by management at hearing	
Prepare questions to ask the employee	
Prepare questions for witnesses	
Consider what questions the employee or panel may ask you	
Prepare a summary closing statement for hearing	

Outcome of disciplinary hearing

Chair of panel to send outcome letter to employee (including notes of hearing)	
Ensure copy of hearing outcome letter and any formal sanction are placed on employee's personal file	
In cases of financial loss, discuss with HR Services, Head of Finance and Head of Strategic Support whether action should be taken to recover the loss in accordance with the Council's policy in relation to this matter	
In cases of criminal activity, discuss with HR Services and Legal Services whether the case should be referred to the police	
If appropriate, complete referral to Disclosure and Barring Service - contact HR adviser for advice if required	

Appeal Hearing

Refer to Appeal Policy and Procedure and liaise with HR representative from original hearing panel	
Identify appeal panel members	
Book rooms, refreshments and a note taker for hearing	
Prepare packs for hearing (including folder contents page) as well as the statement of case	
Decide who you will call as witnesses (if anyone) and advise them of hearing date	
Chair of the original panel to invite employee to hearing using template letter and include any evidence that will be used by management at hearing	
Prepare questions to ask the employee	
Prepare questions for witnesses	
Consider what questions the employee or panel may ask you	
Prepare a summary closing statement for hearing	

Outcome of appeal hearing

Chair of panel to send outcome letter to employee (including notes of hearing)	
Ensure copy of hearing outcome letter and any formal sanction are placed on employee's personal file	

Hearing Folder Contents List Template

This template is to provide a framework on how to structure a disciplinary hearing folder. It is not intended to be prescriptive and can be adapted to suit individual requirements.

Name of Employee Disciplinary Hearing Date and Venue of Hearing

Panel Members:

Name, Job Title (Chair)
 Name, Job Title (Panel Member)
 Name, Job Title (Panel Member)

Presenting Officer:

Name, Job Title

Section 1 Disciplinary Policy

- 1.1 Disciplinary Policy
- 1.2 Hearing Format

Section 2 Employment Details

- 2.1 Employee Summary (Job Title, Grade, Hours, Start Date, etc.)
- 2.2 Contract of Employment
- 2.3 Job Description and Person Specification

Section 3 Correspondence

- 3.1 Confirmation of Suspension dated [date]
- 3.2 Invitation to Formal Investigatory Meeting dated [date]
- 3.3 Outcome of Disciplinary Investigation dated [date]
- 3.4 Invitation to Disciplinary Hearing dated [date]

Section 4 Witness Statements / Notes of Meeting / Evidence

- 4.1 Witness statement from [name/job title] dated [date]
- 4.2 Witness statement from [name/job title] dated [date]
- 4.3 Notes from Formal Investigatory Meeting held on [date]
- 4.4 Copies of evidence (e.g. complaint letters, PDR's, etc)

Section 5 Supplementary Information

- 5.1 Induction/Improvement/Training plans from [date]



Conduct of the Hearing –Appeal Hearings

Good morning/afternoon, my name is _____ and I am the Chair of the panel.

I would like all of those present to introduce themselves, starting with the panel members.

NOTE: If the employee is not accompanied, remind them of their right to representation by a work colleague or Trade Union representative.

If there is more than one employee representative e.g. two union officials, ask on what basis all of these persons are present. Ask for clarity on who is the actual employee representative. If there is no legitimate basis for more than one representative, please ask the other person to leave the proceedings. Be sensitive to the impact of more people than necessary on the witnesses.

This appeal hearing will be conducted in accordance with the _____ procedure. The appeal hearing is held today to consider the allegation of/appeal against the outcome of _____

I would like to confirm the points of appeal to be considered and clarify if the appeal will be based on these points, or a full rehearing/I would like to clarify that the appeal hearing will be a consideration of the facts of the appeal and not a full re-hearing.

Can I confirm who either side will be calling as witnesses?

I will now outline the procedure to be followed today:

1. _____(the employee) and/or _____ (employee representative) will outline their case. During the presentation you should refer to documents circulated beforehand to support the evidence.
2. If applicable, you will then be able to invite the employee witnesses to the hearing. You and/or your representative will have the opportunity to question your witnesses, _____ (Presenting Officer) may then question the witness followed by any questions from the panel.
3. You and/or your representative will conclude the case.
4. _____ (Presenting Officer) may question _____ (the employee) and _____(employee representative) on their case presentation (the employee's representative is not able to answer questions on their behalf).

5. The panel may question _____(the employee) and _____ (employee representative) on their case presentation (the employee's representative is not able to answer questions on their behalf).
6. _____ (Presenting Officer) as you are the manager presenting the case you will outline the management statement of case. During the presentation you should refer to documents circulated beforehand to support the evidence.
7. If applicable, you will then be able to invite the management witnesses to the hearing. You will have the opportunity to question your witnesses, _____ (the employee) and/or _____ (employee representative) may then question the witness followed by any questions from the panel.
8. You will then conclude the statement of case.
9. _____(the employee) and/or _____(employee representative) may question you on your case presentation.
10. The panel may then question you on your case presentation.
11. _____(the employee) and/or _____ will have the opportunity to sum up the case. No new evidence can be included at this point.
12. _____ (Presenting Officer) and/or _____ (their representative) will have the opportunity to sum up their case. No new evidence can be included at this point.
13. You will all then leave the room so that the panel can deliberate.
14. Having deliberated on the matters placed before them, the panel will reach their decision and if possible recall and advise those attending the hearing of the outcome. If it is not possible to advise you of the decision on the same day, the panel will do so once they have had the opportunity to consider all of the evidence and reach a conclusion. This will be within a reasonable timescale, and prior to the conclusion of the hearing, we will agree a method of confirming the outcome to all parties.
15. Should anyone present wish for additional adjournments or breaks during the course of the hearing please do let me know, and I will endeavour to accommodate this.
16. Before we begin, I appreciate feelings can run high during the course of a hearing, but may I ask everyone present to deal with each other in a courteous and professional manner.



Conduct of the Hearing – Non Appeal Hearings

Good morning/afternoon, my name is _____ and I am the Chair of the panel.

I would like all of those present to introduce themselves, starting with the panel members.

NOTE: If the employee is not accompanied, remind them of their right to representation by a work colleague or Trade Union representative.

If there is more than one employee representative e.g. two union officials, ask on what basis all of these persons are present. Ask for clarity on who is the actual employee representative. If there is no legitimate basis for more than one representative, please ask the other person to leave the proceedings. Be sensitive to the impact of more people than necessary on the witnesses.

This hearing will be conducted in accordance with the _____ procedure. The hearing is held today to consider

Can I confirm who either side will be calling as witnesses?

I will now outline the procedure to be followed today:

1. _____ (Presenting Officer) as you are the manager presenting the case you will outline the management statement of case. During the presentation you should refer to documents circulated beforehand to support the evidence.
2. If applicable, you will then be able to invite the management witnesses to the hearing. You will have the opportunity to question your witnesses, _____ (the employee) and/or _____ (employee representative) may then question the witness followed by any questions from the panel.
3. You will then conclude the statement of case.
4. _____ (the employee) and/or _____ (employee representative) may question you on your case presentation.
5. The panel may then question you on your case presentation.

6. _____(the employee) and/or _____ (employee representative) will outline their case. During the presentation you should refer to documents circulated beforehand to support the evidence.
7. If applicable, you will then be able to invite the employee witnesses to the hearing. You and/or your representative will have the opportunity to question your witnesses, _____ (Presenting Officer) may then question the witness followed by any questions from the panel.
8. You and/or your representative will conclude the case.
9. _____ (Presenting Officer) may question _____ (the employee) and _____(employee representative) on their case presentation (the employee's representative is not able to answer questions on their behalf).
10. The panel may question _____(the employee) and _____ (employee representative) on their case presentation (the employee's representative is not able to answer questions on their behalf).
11. _____(Presenting Officer) will have the opportunity to sum up the case against _____(the employee). No new evidence can be included at this point.
12. _____(the employee) and/or _____(their representative) will have the opportunity to sum up their case. No new evidence can be included at this point.
13. You will all then leave the room so that the panel can deliberate.
14. Having deliberated on the matters placed before them, the panel will reach their decision and if possible recall and advise those attending the hearing of the outcome. If it is not possible to advise you of the decision on the same day, the panel will do so once they have had the opportunity to consider all of the evidence and reach a conclusion. This will be within a reasonable timescale, and prior to the conclusion of the hearing, we will agree a method of confirming the outcome to all parties.
15. Should anyone present wish for additional adjournments or breaks during the course of the hearing please do let me know, and I will endeavour to accommodate this.
16. Before we begin, I appreciate feelings can run high during the course of a hearing, but may I ask everyone present to deal with each other in a courteous and professional manner.



Guidance for Work Colleagues Providing Support at Hearings

Scope

This guidance applies to all employees of Charnwood Borough Council.

Purpose

The purpose of this guidance is to ensure that work colleagues who agree to be a companion at a hearing are aware of their role in providing support at meetings.

Right to be accompanied

Workers have a statutory right to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union where the disciplinary meeting/hearing could result in:

- A formal warning being issued; or
- The taking of some other disciplinary action; or
- The confirmation of a warning or some other disciplinary action (appeals)

The right to be accompanied is outlined within relevant Council policies. (e.g. Disciplinary, Grievance, Dignity and Behaviour at Work, Attendance Management, Probation and Appeals).

Requesting time to accompany a colleague

Should you agree to accompany a colleague as a companion at a meeting, you should inform your manager of the date and time required to enable you to undertake this role. This should be done as soon as you are aware, to enable your manager to deal with your attendance at the meeting.

At the Meeting/Hearing

If you are accompanying a colleague at a hearing you will be allowed to:

- Address the hearing to put and sum up your colleagues case;
- Respond on behalf of the worker to any views expressed at the meeting;
- Confer with the worker during the hearing;
- Ask relevant questions; and
- Ask for an adjournment.

You will not have the right to:

- Answer questions on the worker's behalf
- Address the hearing if the worker does not wish it; or
- Prevent the employer from explaining their case.

Disciplinary Policy and Procedure

1 Scope

This policy applies to all employees of Charnwood Borough Council employed under the Conditions of Service for National Joint Council for Local Government Employees and the Joint Negotiating Committee (JNC) for Local Authority Craft and Associated Employees'. It is not applicable to employees within their probationary period or casual workers. Managers and employees should refer to the supporting [guidance](#) for further information on the application of the policy.

2 Purpose

The Council's procedures and the [Code of Conduct](#) set the expected standards of conduct at work. Managers and employees should ensure that they read this policy in conjunction with the Code of Conduct.

The purpose of this policy is to ensure that all employees achieve and maintain satisfactory standards of conduct and behaviour. It also provides a fair and consistent method of dealing with alleged failures to observe these standards.

3 Roles and Responsibilities

HR Services	HR Services will provide advice, coaching and support to managers on the application of the Disciplinary Policy and Procedure. HR will also act as panel members at hearings and will express a view on whether the case is founded and make recommendations about the appropriate outcome.
Investigating Officer	When allegations of misconduct are made, an appropriate person, the "Investigating Officer", will be appointed to investigate the concerns and decide whether there is sufficient evidence to take disciplinary action. Further information regarding the role of the Investigating Officer can be found in the supporting guidance .
Decision Maker	Will make decisions about the most appropriate actions to be taken based on the evidence available.
Chair of the Panel	The Chair of the panel will manage the hearing and notify the employee of the decision. They will also normally present the case if the employee exercises their right to appeal against that decision.
Panel Members	Will support the Chair of the panel and express a view on whether the case is founded and make recommendations about the appropriate outcome.

Management Representative	A management representative will present the management case at a hearing. This will usually be the Investigating Officer, however this may be a different representative.
Democratic Services	Democratic Services is responsible for arranging hearings involving individuals employed under the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities.
Trade Union Representative or Work Colleague	To support and advise, if appropriate, the employee. At a hearing this may include presenting the employee's case, summarising and conferring with the employee and responding to points on behalf of the employee. The Trade Union or work colleague cannot answer questions put directly to the employee.

4 Stage 1 Informal Discussion

In cases of misconduct (see [Appendix A](#)), the appropriate manager must make initial enquiries about the incident/concern. This will normally involve a discussion between the manager and the employee concerned to find out their version of events and to establish if there is an acceptable explanation. It is not usual practice for an employee to be accompanied at this stage. However, if the manager or employee feels that it would be appropriate, the employee may be accompanied by a work colleague or Trade Union representative. On the basis of this discussion, the manager may decide:

- No further action is necessary;
- To deal with the matter informally. The employee should be advised of the expected standards and any remedial action which is required;
- That further investigation is required and to refer the matter to a Formal Investigatory Meeting (possibly including [suspension](#) of the employee).

Notes should be taken at this meeting and a copy sent to the employee for agreement.

Where it is not appropriate to deal with an allegation informally or where further investigations are required, the employee should be advised that a Formal Investigatory Meeting will be arranged.

Where the incident/concern involves any of the following, managers are advised to refer to the [Disciplinary Guidance](#) for information on additional procedures that must be followed:

Criminal offences;
 Allegations of financial irregularity;
 Disciplinary action against a Trade Union representative;
 Allegations of safeguarding;
 Use of electronic surveillance records.

5 Suspension

Suspension is not a disciplinary penalty and does not pre-determine in any way the outcome of an investigation. Suspension should only be imposed after careful consideration, which may include the possibility of transferring the employee or adjusting their work as an alternative to suspension. Employees may be suspended at any stage during the investigation process. Suspension should only be considered if there are concerns about the employee remaining in the workplace and once confirmed must be kept under regular review. The reason for the suspension (i.e. due to the seriousness of the concerns) should be made clear to the employee and confirmed in writing.

Advice should be sought from Human Resources before suspending an employee. If the manager believes that the allegation is so serious that it warrants a period of suspension, this should be approved by a Director.

6 Stage 2 Formal Investigatory Meeting

No formal disciplinary action will be taken until the matter has been fully investigated. This includes providing the employee with the opportunity to attend a Formal Investigatory Meeting. Before meeting with the employee the Investigating Officer should make enquiries regarding the concerns, which may include interviewing witnesses, and present evidence to the employee at the Formal Investigatory Meeting. The employee has the right to be accompanied at the meeting by a work colleague or Trade Union representative.

The letter inviting the employee to the meeting should outline the nature of the concerns (e.g. serious concerns regarding your conduct). Notes should be taken at this meeting and a copy sent to the employee for agreement.

At the meeting the Investigating Officer will:

- Make clear to the employee what concerns have been raised;
- Ask the employee to respond to the concern(s) against them;
- Warn the employee that the matter may result in a formal disciplinary hearing at which they will have the right to be accompanied by a work colleague or Trade Union representative;
- Interview/obtain signed statements from witnesses following the employee's evidence (if applicable).

The employee will:

- Respond to the allegations/questions;
- Produce evidence that supports their position;
- Provide the names of witnesses (if applicable).

The Investigating Officer will collect **all of the evidence**, including that which is favourable to the employee, and consider whether there is a case to answer. A report will be produced, for consideration by their manager (or the manager for the employee's service area if the Investigating Officer is external or works in a different department) as to what action should be taken. The potential outcomes are:

- No further action is necessary;
- Deal with the matter informally. The employee should be advised of the expected standards and any remedial action which is required;

- Refer the matter to a formal disciplinary hearing (possibly including [suspension](#) of the employee).

7 Stage 3 Formal Disciplinary Hearing

The Investigating Officer (or the employee's manager if the Investigating Officer is external or works in a different department) will be responsible for arranging a panel, **chaired by a Senior Manager (PO grade or above) and accompanied by another Senior Manager and a representative from Strategic HR.**

Ten working days written notice will be given to attend the formal hearing in which the employee will be informed of the reasons for the hearing and their right to be accompanied by a work colleague or Trade Union representative. If applicable, the letter must state that a potential outcome of the hearing is dismissal. Employees should also receive copies of any relevant documentation that will be used as evidence at the hearing and be given the opportunity to provide any evidence that supports their case. Notes should be taken at the hearing and a copy sent to the employee. Details of the format the hearing should take can be found in the supporting [guidance](#).

The following outcomes are available to the panel dependent on the seriousness of the offence:

- No case to answer / no further action is necessary;
- First written warning (which will remain on file for 6 months);
- Final written warning (which will remain on file for 12 months);
- Dismissal (with or without notice).

Employees should be dismissed with notice except in the case of gross misconduct. In the case of gross misconduct, the employee should be summarily dismissed with no notice.

The employee will be notified in writing of the outcome of the hearing. If the outcome is dismissal, the letter will include the reason for the dismissal and the date this is effective from. The letter must also include details of the employee's right of appeal.

Details of allegations (including warnings) that are connected to the safeguarding of children should be retained on an employee's personal file until the individual has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

In cases involving unacceptable behaviour (i.e. bullying and/or harassment), a mandatory meeting must be held at the end of the disciplinary process, except where the outcome has been dismissal, to re-establish working relationships between the relevant parties.

8 Right of Appeal

Right of Appeal

An employee has the right to appeal against all disciplinary sanctions. Any appeal must be submitted in writing by the employee within 7 working days of receiving notification of the hearing outcome.

Appeals should be submitted to the Chair of the panel and will be heard, in line with the [Appeal Policy and Procedure](#).

Appendix A - Examples of Misconduct and Gross Misconduct

Examples of Misconduct

The following list is not exhaustive but gives examples of offences which may amount to misconduct:

- Persistent bad timekeeping;
- Unauthorised absence from work without reasonable cause;
- Damage to Council property;
- Failure to follow Council procedures;
- Abusive or disruptive behaviour;
- Minor breaches of Health and Safety regulations;
- Misuse of Council facilities;
- Undertaking unauthorised employment;
- Improper behaviour or conduct towards colleagues or members of the public;
- Unreasonable refusal to follow a management instruction;
- Abuse of the E-Communications Policy.

Serious examples of any of the above may amount to gross misconduct.

Examples of Gross Misconduct

The following list is not intended to be exhaustive and gives only an indication of the types of offences which could be considered as gross misconduct:

- Serious incapability as a result of being intoxicated by reason of alcohol, non-prescribed drugs, illegal drugs or prescribed drugs which may have an adverse effect on performance and safety;¹
- Deliberate falsification of reports, accounts, expense claims or self certification forms;
- Theft, removal or unauthorised possession or deliberately aiding another person to remove or failure to properly account for any property or facilities belonging to the Council or to another employee or customer;
- Unauthorised entry to computer records or deliberate falsification of records;
- Serious breach of the Council's E-Communications Policy;
- Repeated refusal to carry out duties or reasonable instructions or to comply with Council policies and procedures;
- Serious breaches of confidence, confidentiality or the Data Protection Act 1988 (subject to the Public Interest Disclosure Act 1988);
- Deliberate or reckless damage to Council property;
- Serious acts of insubordination;
- Acts of bullying, harassment or discrimination;

1 - In certain cases drugs prescribed by a doctor or purchased from a chemist can induce drowsiness and will include the advice not to operate machinery. Employees must inform their line manager if they have taken such medicine and would normally be required to operate machinery or drive a vehicle during the course of their work.

- Serious breach of the Council's safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the Council, its employees or customers;
- Bringing the Council into serious disrepute;
- A criminal offence, which may (whether it is committed during or outside of the employee's hours of work) adversely affect the Council's reputation or the employee's suitability for or ability to undertake the type of work they are employed to perform;
- Violent or threatening behaviour;
- Failure to maintain professional registration where this is a pre-requisite for the post;
- Failure to maintain satisfactory DBS clearance where this is a requirement for the post.



Disciplinary Guidance

<u>Contents</u>	
Purpose	2
Stage 1 - Initial Discussion	2
Suspension	3
Preparing for the Suspension Meeting	3
Conducting the Suspension Meeting	4
Lifting the Suspension	5
Investigation	5
The Investigating Officer	5
Interviewing Witnesses	6
Collecting Evidence	8
*Use of Electronic and Surveillance Equipment	8
Stage 2 - Formal Investigatory Meeting	9
Concluding the Investigation	11
Stage 3 - Disciplinary Hearing	12
Documentation	13
Witnesses	14
Conduct of the Hearing	15
Potential Outcomes	16
Notification of the Outcome	17
Safeguarding Allegations	17
Right of Appeal	17
Grievances Raised During the Disciplinary Process	18
Other Factors	18
Appendix A - Examples of Misconduct and Gross Misconduct	20
Appendix B - Use of Electronic Surveillance Equipment Records and Data in Disciplinary Cases	22
Appendix C - Confirmation of Suspension	25
Appendix D - Lifting of Suspension	27
Appendix E - Invitation to Formal Investigatory Meeting (Stage 2)	28
Appendix F - Outcome of Disciplinary Investigation (Stage 2)	30
Appendix G - Investigation Report Template	31
Appendix H - Hearing Folder Contents List Template	33
Appendix I - Statement of Case Template	34
Appendix J - Invitation to Disciplinary Hearing (Stage 3)	36
Appendix K - Outcome of Disciplinary Hearing (Stage 3)	38
Appendix L - First/Final Written Warning Template	41
Appendix M - Invitation to Appeal Hearing	42
Appendix N - Outcome of Appeal Hearing	44

Purpose

This guidance should be used in conjunction with the Council's Disciplinary Policy and Procedure.

[Back to Contents](#)

Stage 1 - Informal Discussion

On becoming aware of an employee's alleged misconduct (see [Appendix A for examples](#)), an appropriate manager (usually the employee's line manager) should make initial enquiries about the incident/concern. This will normally involve a discussion between the manager and the employee concerned to ascertain the employee's version of events. It is not usual practice for an employee to be accompanied at this stage. However, if the manager or employee feels that it would be appropriate, the employee may be accompanied by a work colleague or Trade Union representative. There is no requirement to provide the employee with notice of this meeting as it is part of normal day-to-day management.

On the basis of the discussion, the manager will need to consider whether any further action is required. The employee should be notified, verbally, of the outcome of the meeting. If it is necessary to remind the employee about the expected standards and any remedial action (e.g. training) which is required, this should be confirmed to the employee in writing. A copy of this letter should be retained by the line manager.

Notes of the discussion should be taken and the employee given the opportunity to amend them as necessary before signing and returning one copy. If the employee makes any amendments, where it is not possible to incorporate these changes, a copy of the amended notes should be kept on file along with the original version. Both copies will need to be presented to the panel if the case proceeds to a disciplinary hearing. Anything discussed as part of this meeting could be used as evidence in any subsequent meeting/hearing.

During or following the meeting, the manager will need to consider whether it is necessary to [suspend](#) the employee.

Where it is not appropriate to deal with an allegation informally or where further investigations are required, the employee should be advised that a Formal Investigatory Meeting will be arranged.

[Back to Contents](#)

Suspension

Suspension is not a disciplinary penalty and does not in itself imply any presumption of guilt on the part of the employee. It should only be considered if:

- The employee has been arrested or charged with a serious criminal offence which has an impact upon their position or calls into question their suitability for their job;
- There is a demonstrable concern that the employee or others (e.g. colleagues) may be placed at risk by the employee remaining in the work place;
- There is reasonable belief that the employee may seek to influence witnesses or the conduct of the investigation.

Suspension should only be imposed after careful consideration, which may include the possibility of transferring the employee or adjusting their work as an alternative to suspension. Advice should be sought from Human Resources before suspending an employee. Following discussions with HR, if the manager believes that the allegation is so serious that it warrants a period of suspension, this should be approved by a Director. Once the decision has been made it will be necessary for a meeting to be convened with the employee immediately. If the employee is not on site, they should be seen immediately when they are next at work.

Suspending an employee via email, voicemail or text is not considered suitable in any circumstance. Suspension via the phone should only be used in exceptional circumstances (e.g. if there is a safeguarding issue) and should be confirmed in writing to the employee as soon as possible.

In the case of safeguarding issues, theft or other possible criminal offences it may be necessary, as well as suspending the employee, for the Investigating Officer to consider informing the police of their investigation. Advice should be sought from Human Resources if it is felt that this measure is necessary.

Preparing for the Suspension Meeting

When preparing to suspend an employee the following should be considered:

- How the suspension will be carried out (i.e. when, where and by whom). It is important to ensure that confidentiality is maintained;
- Who will accompany the employee to collect their personal belongings;
- How other members of staff will be communicated with (bearing in mind the need to maintain confidentiality);
- What property/records should be obtained from the employee before they leave the premises (e.g. if the investigation is around the falsification of travel

claims it may be necessary to ensure receipt of the employee's work diary in order to verify journeys travelled);

- Contact arrangements with the suspended employee (the employee's telephone number should be confirmed) including frequency of contact. It may be difficult for the employee's line manager to take on this position as they are likely to be the Investigating Officer, therefore a nominated manager will normally take on this role;
- Contact with other employees following suspension;
- How to escort the employee off the premises.

Conducting the Suspension Meeting

During the suspension meeting, the employee is likely to have a number of queries surrounding the nature of the concerns raised against them. It is important that the meeting does not turn into an investigatory interview and that the Investigating Officer does not engage in detailed conversation regarding the allegations. The employee will be invited to attend a Formal Investigatory Meeting where they will have the opportunity to put forward their version of events.

At the suspension meeting the employee should be advised:

- Why they have been suspended (i.e. outline the nature of the allegations but not specifics);
- That suspension is viewed as a neutral act and does not pre-determine the outcome of the investigation;
- That the suspension will be on full pay (providing that they make themselves available to be contacted and/or attend meetings throughout their suspension);
- That they should not enter the premises without prior permission;
- That colleagues and possibly service users will need to be informed of their absence and confirm what reason they would like to be given to explain their absence;
- That they should not discuss/involve/engage with or contact work colleagues, service users or others about the case. (If the employee wishes to call a witness, contact should be made via their representative. If they do not have a representative, contact should be made via the Investigating Officer);
- That they will be invited to attend a Formal Investigatory Meeting and given the opportunity to put forward their version of events / explain their conduct;
- That they should be available to be contacted or attend meetings during their normal working hours. Therefore, if applicable, prior to taking any leave it will be necessary to gain authorisation from their line manager;
- That Trade Union representation and welfare advice is available and should be sought if required. Employees are able to discuss the issues with their Trade Union representative;
- That any sickness during the period of their suspension must continue to be reported in line with the Council's sickness absence reporting procedures;
- That the investigation will be conducted as swiftly as possible and they will be kept updated on how the investigation is progressing. An investigation should

not normally exceed 3 months' from the date that the allegation is formally made, unless there are contributory factors to justify this.

- That they are required to temporarily return any property belonging to the Council which may be required during their suspension (e.g. keys);
- That they are still within the employ of the Council and in line with their contract of employment should not undertake any work for another employer without prior permission;
- That they will receive written confirmation of the suspension meeting (the employee's current address should be confirmed).

The employee is able to be accompanied at the meeting if they wish and should be made aware of this at the beginning of the meeting. If the Investigating Officer is aware that the employee is a member of a union it may be appropriate for them to make contact with the union prior to the meeting to check if someone would be available to offer support to the employee either during the meeting or immediately afterwards. The detail of the concerns should not be divulged to the union representative in order to ensure the employee's privacy is maintained. The meeting should not be delayed if no-one is available to accompany the employee.

The Investigating Officer should confirm to the employee the reason for, and terms of, the suspension in writing as soon as possible after the meeting. A template letter is attached at [Appendix C](#). It is recommended that the duration of suspensions are kept to a minimum and that employees are kept updated on the progress of the investigation on a regular basis.

Lifting the Suspension

During the course of the investigation it may become apparent that it is no longer necessary for the employee to be suspended from work. In such cases, the Investigating Officer should contact the employee as soon as possible to advise them of this and to arrange their return to work. A template letter to confirm arrangements is attached at [Appendix D](#). The employee should be briefed on issues that have occurred during their suspension (e.g. progress on work the team may have been undertaking, appointments to vacant posts, etc). It will also be necessary for the Investigating Officer to advise those employees affected by the investigation that the employee will be returning to work.

[Back to Contents](#)

Investigation

The Investigating Officer

Investigations will normally be conducted by the employee's line manager, unless they are involved in any way. Conducting an investigation can be time consuming therefore it is important, when identifying an Investigating Officer, that the individual has both the ability and time to commit to completing the task.

The role of the Investigating Officer is to collect relevant evidence, including that which is favourable to the employee and make a determination on the allegations based on the evidence. They should not be involved in making a decision on the

disciplinary outcome but will be expected at the end of their investigation to make a recommendation on next steps. This recommendation will be forwarded, as part of the investigation report, to their manager or the manager for the employee's service area if the Investigating Officer is external or works in a different department (i.e. the Decision Maker) for consideration.

The expectation is that disciplinary matters will be dealt with as swiftly as possible and the whole process should be completed within a reasonable period of time. If an investigation exceeds 3 months from the date that the allegation is formally made, the reasons for this will be reviewed by the Decision Making Manager.

Throughout the investigation, the Investigating Officer should:

- Remain impartial and objective, and guard against forming personal opinions. The Investigating Officer's role is to gather the facts, not to make a judgement;
- Not allow personal opinion of the employee to cloud their opinion;
- Consider any mitigating circumstances the employee may wish to have taken into account;
- Focus on facts rather than opinions or assumptions;
- Consider the validity of the witness' version of events (e.g. does the witness have a personal grudge against the employee?);
- Maintain confidentiality;
- Ensure detailed notes are made which are signed and dated by the relevant person to confirm that they are an accurate record. Where the individual requests changes to be made, if it is not possible to incorporate these changes, a copy of the amended notes should be kept on file along with the original version.

Interviewing Witnesses

The Investigating Officer should arrange to meet individually with any witnesses, including those identified by the employee. There is an expectation that when asked, employees should co-operate and assist in the investigation process. If an employee is unwilling to participate, the Investigating Officer should seek to identify the reason for the employee's reluctance and assure them that they will be supported throughout the process. If the person accused of the allegations harasses or victimises a potential witness in any way, this could lead to further disciplinary action being taken.

When arranging to interview a witness the Investigating Officer should ensure that the meeting is held in an appropriate location and consider if any special requirements / reasonable adjustments are needed to support the employee (e.g. hearing loop). The meeting room should be booked to ensure sufficient time is allowed for a thorough meeting to be conducted and time is factored in for rest breaks during the course of the interview.

At the meeting it is not necessary to inform the witness of the full facts of the case, the intention of the meeting is to discover what they have witnessed and obtain any information, including any documentation, which may assist in the investigation. The Investigating Officer should prepare in advance a list of questions for each witness so

that they are clear about what issues they wish to discuss. As the meeting evolves it may be necessary for supplementary questions to be asked if further explanation or understanding is required. If a witness statement was produced immediately following the event, the Investigating Officer should refer to this when questioning the witness.

During the meeting the Investigating Officer should:

- Acknowledge that they appreciate it may be difficult for the employee to provide information about a work colleague and thank them for attending the meeting;
- Introduce the people present and explain their role;
- Explain the purpose of the meeting;
- Advise that breaks can be taken as necessary;
- Advise that a written record of the meeting / witness statement will be taken and sent to them for verification. They will have the opportunity to amend the notes as necessary before signing and returning one copy. Where the individual requests changes to be made, if it is not possible to incorporate these changes, a copy of the amended notes should be kept on file along with the original version;
- Use open questions to gain a broad picture (e.g. what happened next?);
- Reiterate the importance of maintaining confidentiality;
- Inform the witness that if the case proceeds to a disciplinary hearing they may be asked to attend and that the notes of their meeting / witness statement will be used as evidence and may be cross-examined.

As well as work colleagues it may be necessary to consider if any external people should be involved in the investigation process. If this is the case, they should be asked if they would be willing to assist the investigation (e.g. by providing a written statement). There is no general barrier to interviewing children or other client groups (e.g. adults with learning disabilities). The decision to include service users in the investigation must be taken very carefully and if considered necessary, permission should be sought from an appropriate senior manager following discussion with the relevant safeguarding team. Whilst the employee should be made aware of the service user's identity, it will be necessary to ensure that their identity is protected (e.g. by ensuring that initials rather than their full name is used in interview notes) as the paperwork may be seen by parties outside of any disciplinary proceedings (e.g. if a referral is required to the Disclosure and Barring Service).

Having conducted initial interviews with both the employee and witnesses, it may be necessary to re-interview either party if further clarification is needed or other allegations arise. Consideration should be given as to whether, as a consequence of any new information, it may now be necessary for the employee to be suspended if they are currently still at work or have their suspension lifted.

If, as a consequence of the investigation, it is determined that another employee has committed an act of misconduct it will be necessary for a separate investigation to be conducted to consider these concerns.

Collecting Evidence

In addition to interviewing witnesses, the Investigating Officer should collect any documentation that is relevant to the allegations raised. As a matter of course the employee's personal file should be accessed and a copy of the employee's job description and person specification obtained. The Investigating Officer should consider any previous disciplinary warnings the employee may have on file that relate to this or a similar issue.

The types of documents/information required will vary depending on the case but may include:

- Files and documents
- Policies and procedures
- Management documents (e.g. Financial Procedure Rules)
- Rotas and timesheets
- CCTV footage*
- Computer records*
- Telephone records*
- Door access systems*
- Automatic number plate recognition*
- Vehicle tracking systems*
- Training records
- Mileage claims forms
- Text messages (these should be copied and the written document signed by the Investigating Officer and recipient of the text)
- Service user medication records
- Supervision or Personal Review records
- Written complaints
- Witness statements
- Custom and practice

Assistance may need to be sought from colleagues within other departments as part of the investigation process (e.g. IT, Legal Services, Audit, etc) for specific information in relation to accepted practice, rules and procedures.

If the employee would like information from any of the above sources to be considered as evidence, the Investigating Officer should arrange for this to be obtained or enable the employee to obtain the information.

***Use of Electronic and Surveillance Equipment**

If approval is given by Human Resources and the Monitoring Officer to consult the electronic records and these are subsequently used in a formal disciplinary case the following is recommended as best practice:

- The use of any records should be reasonable and proportionate to the issue under investigation;

- Only records which are to be specifically referred to at a disciplinary hearing should be included in the pack of evidence issued by the Investigating Officer;
- Records collated should be kept secure and destroyed at the conclusion of the case (which needs to allow time for an appeal, Employment Tribunal or civil claim);
- Care should be taken to act within the confines of relevant legislation and not inappropriately infringe on the employee's rights. Further advice is available from Human Resources;
- Covert monitoring of employees is rare but may be considered necessary where criminal activity is suspected. Such monitoring is strictly covered by the Regulation of Investigatory Powers Act (RIPA) and advice must be sought from Human Resources and Legal Services before invoking it.

Further guidance on the type of records available and the process for accessing this information is attached at [Appendix B](#).

[Back to Contents](#)

Stage 2 - Formal Investigatory Meeting

The Formal Investigatory Meeting will be conducted by the [Investigating Officer](#). The purpose of this meeting is to establish the facts and allow the employee to respond to the incident / concerns and evidence.

The employee should be informed in writing of the requirement to attend the meeting. This letter should confirm that there are concerns / serious concerns regarding the employee's conduct and, where possible, provide an outline of the concerns. It must also include details of the employee's right to be accompanied at the meeting by a work colleague or Trade Union representative. A template letter is attached at [Appendix E](#).

When choosing a work colleague the employee should bear in mind that it is not reasonable to be accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. A work colleague who has agreed to accompany a fellow employee is entitled to take a reasonable amount of paid time off to fulfil that responsibility. Work colleagues do not have to accept a request to accompany an employee and they should not feel pressurised to do so. The Investigating Officer should ensure that the work colleague is not a potential witness.

The Investigating Officer should ensure that the meeting is held in an appropriate location and consider if any special requirements / reasonable adjustments are needed to support the employee (e.g. hearing loop). The meeting room should be booked to ensure sufficient time is allowed for a thorough meeting to be conducted and time is factored in for rest breaks during the course of the interview. It may also be useful to book a second room in order to provide flexibility (e.g. to give the employee somewhere to wait during adjournments).

At the meeting the Investigating Officer will:

- Explain the purpose of the meeting and their role as Investigating Officer;
- Remind the employee, if they are not accompanied, of their right to representation by a work colleague or Trade Union representative and confirm that they are happy to proceed with the meeting. The representative is not able to answer questions on the employee's behalf;
- Ensure that the employee is clear on the concerns being raised;
- Ask the employee to respond to the concerns against them;
- Obtain details of any witnesses that will need to be interviewed following the employee's evidence;
- Obtain copies of any documentary evidence that the employee wishes to provide;
- Warn the employee that the matter may result in a formal disciplinary hearing at which they will have the right to be accompanied by a work colleague or Trade Union representative.

When interviewing the employee the Investigating Officer should:

- Stick to facts and avoid making assumptions;
- Point out and question any discrepancies;
- Determine whether there are any special circumstances or mitigation to be taken into account;
- Not be afraid to challenge what the employee is saying;
- Be careful not to express disapproval or pass judgement (the Investigating Officer should not get involved in arguments or make personal remarks);
- Summarise the main points of discussion at the end of the meeting, therefore allowing all parties to be reminded of the nature of the offence, the arguments and the evidence put forward;
- Ask the employee, prior to ending the meeting, if there is anything else that they wish to say.

When questioning the employee the Investigating Officer should do so in a non accusatory manner. Open questions should be asked during the interview (e.g. "what happened next?") in order to get a broad picture of the incident. Closed questions requiring a yes/no answer are required only when specific information is needed. Leading questions (e.g. "would you describe Mr Smith as being aggressive?" or "you did everything you could to prevent the situation, didn't you?") should not be asked.

As well as determining the facts of the allegation it is important to ascertain if the employee has an understanding of the consequence of their alleged behaviour / action. In the following scenario, where an unattended child has fallen and hurt themselves, the Investigating Officer may wish to ask the employee responsible for caring for the child the following fact finding questions:

- Why did you leave the child unattended?
- When did you leave the room?
- What was the child doing when you left the room?
- Where was the child lying when you returned to the room?

- Who did you inform that an accident had occurred?

In the case of an employee pushing a member of the public whilst accompanying a service user to the shop the following questions may be considered to see if the employee has an understanding of the consequence of their behaviour:

- How would you act in hindsight if you were confronted by a member of the public again? Why would you do that?
- What do you consider is appropriate behaviour when working in the community?
- What do you think the service user would have felt?

The Investigating Officer is responsible for arranging for an external note taker to be present at the investigatory meeting. The line manager should contact Human Resources to obtain the contact details for external note takers. It is important to ensure that the note taker is competent and has no first hand knowledge of the case. The note taker should be fully briefed on the details of the case and reminded of the importance of confidentiality. It is not expected that a verbatim account of the meeting will be produced. The employee should be advised in any correspondence of who the note taker will be.

Detailed notes should be taken at all meetings and two typed copies provided to the employee as soon as possible. The employee should be given a deadline by which to return one copy, signed to confirm that they are an accurate record. If the employee makes any amendments, where it is not possible to incorporate these changes, a copy of the amended notes should be kept on file along with the original version. Both copies will need to be presented to the panel if the case proceeds to a disciplinary hearing.

Following the meeting, the Investigating Officer will need to consider whether or not it is necessary to [suspend](#) the employee. If an employee is already suspended, consideration should be given as to whether, following the meeting, this can be lifted.

No formal disciplinary action will be taken until the matter has been fully investigated and, only if the matter is deemed to be serious then, a formal disciplinary hearing held.

[Back to Contents](#)

Concluding the Investigation

The investigation is complete once the Investigating Officer has interviewed the employee, any witnesses and/or other relevant parties, and has obtained sufficient evidence on which to base a decision as to whether or not there is a case to be answered. The Investigating Officer will need to consider all of the relevant evidence, including that provided by the employee, and take a balanced view as to whether the allegations against the employee are founded. The standard of proof for any investigation and any subsequent disciplinary hearing will need to be “on the balance of probabilities”.

The Investigating Officer should produce a report, for consideration by their manager or the manager for the employee's service area if the Investigating Officer is external or works in a different department (i.e. the decision making manager), outlining their findings and a recommendation on next steps. As a copy of the report should be included in any disciplinary hearing paperwork, it is important that the report is well structured and clearly defines the background, methods of investigation, and summarises the key points. An example investigation report format can be found at [Appendix G](#).

The decision making manager should take on the role of deciding, based on the contents of the investigation report, what action should be taken and whether the case should proceed to a formal disciplinary hearing. Once a decision has been made, the employee should be advised of the outcome in writing as soon as possible by the decision making manager.

If the investigation concludes that there is no substance to the allegation, a misunderstanding has occurred or there is insufficient evidence to proceed further, the manager may decide that no further action is required. If there is no evidence, the Investigating Officer may wish to consider whether the person who originally made the allegation did so maliciously. If so, disciplinary action may be taken against this person. Advice should be sought from Strategic HR in this instance. A template letter advising the employee that no further action will be taken is attached at [Appendix F](#).

If the investigation reveals some evidence but it appears to be of a minor nature, the manager may decide to address the issue informally. In this instance, the decision making manager will need to arrange a meeting with the employee and reiterate the standards that are expected of them and if necessary implement any remedial action. If any training needs, support and/or coaching for the individual has been identified, the decision making manager will need to decide how best this should be delivered (e.g. via an action plan) and consider the timescales for reviewing progress. The employee should be made aware that if no improvement has been made following the review period it may be necessary to consider if further disciplinary action is required. A template letter advising the employee that the issue will be addressed informally is attached at [Appendix F](#).

If the decision is made to proceed to a disciplinary hearing, the employee should be advised of the specific allegations in the letter inviting them to the disciplinary hearing. A template letter is attached at [Appendix J](#).

[Back to Contents](#)

Stage 3 - Disciplinary Hearing

If the outcome of the investigation is that formal disciplinary action should be taken, a disciplinary hearing will be convened to consider the case. The Investigating Officer (or decision making manager if the Investigating Officer is external or works in a different department) is responsible for organising the hearing, including arranging a

panel, rooms, refreshments, and an external note taker. It is not expected that a verbatim account of the hearing will be produced.

Documentation

The Investigating Officer (or the decision making manager) will write to the employee, on behalf of the Chair of the panel, to notify them of the details of the hearing giving them a minimum of 10 working days' notice. The letter should include:

- The date, time and venue of the disciplinary hearing;
- A clear statement of the allegations;
- Details of the employee's right to be represented at the hearing by a work colleague or Trade Union representative;
- The names of any witnesses that will be attending.

A template letter is attached at [Appendix J](#). **A copy of any evidence that will be relied on at the hearing must also be enclosed.** This should include:

- Brief details of the employee's role and their employment (include a copy of the employee's job description and person specification);
- A copy of the investigation report (including copies of all signed meeting notes and statements);
- Copies of relevant policies and procedures.

An example disciplinary hearing folder contents list can be found at [Appendix H](#). Further guidance on preparing for the hearing can be found in the [Hearing Preparation Guide](#).

The letter to the employee must also request that if they intend to refer to any documentation at the hearing, a copy of this must be sent to the Investigating Officer, (or decision making manager) with the names of any witnesses, at least 5 working days before the date of the hearing. The Investigating Officer (or decision making manager) should ensure that copies are provided to the panel members.

At the disciplinary hearing the Investigating Officer (or decision making manager) will be required to act as Presenting Officer and present a 'statement of case'. This should include information relating to the individual's employment, what the allegations are and how they came about, details of the investigation and its findings. Attached at [Appendix I](#) is an example statement of case format which the Presenting Officer may find useful as a basis for their presentation. It is important that only relevant, factual, concise information which can be evidenced is presented.

In advance of the hearing, the Presenting Officer should try to predict the questions which the employee and panel may ask and prepare the answers. If witnesses are due to attend in support of the management case, questions the Presenting Officer wishes to ask of them should also be prepared in advance.

Failure to Attend

Wherever possible, arrangements for the date of the hearing should be made in consultation with the employee and their representative. Where an employee's chosen representative is unable to attend on the arranged date of the hearing the employee can suggest an alternative within 5 working days of the original date. It is important that the employee is made aware that if they fail to attend on the given (or rearranged) date without an acceptable reason, the hearing may go ahead in their absence.

Where an employee is not able to attend due to ill health it may be necessary, depending on the length of and reason for the absence, to postpone the hearing. In such cases, it may be appropriate for an Occupational Health referral to be made regarding the employee's fitness to attend a hearing.

Witnesses

It is the responsibility of the Presenting Officer (i.e. the manager who will be presenting the case at the disciplinary hearing) to ensure that they invite any witnesses (if required) to attend the hearing.

Likewise, it is the employee's responsibility to ensure that they invite any witnesses (if required) to support their case at the hearing. Please note that the employee's Trade Union representative / work colleague can act on behalf of the employee to arrange their attendance at the hearing if permission from the employee has been granted.

Witnesses should only be present at the hearing whilst questions are being asked of them by the employee/representative, Presenting Officer and panel members.

Release of Witnesses

Employees who are asked to attend a disciplinary hearing as a witness **must** be released from duty unless this would have a significant impact on service delivery. Advice should be sought from Human Resources before declining such a request.

Conduct of the Hearing

1. The panel will introduce those present and outline the procedure to be followed. An employee who is not accompanied will be reminded of their right to representation by a work colleague or Trade Union representative.
2. The manager presenting the case (i.e. the Presenting Officer) will outline their statement of case. They should refer to documents circulated beforehand to evidence their views.
3. If applicable, the Presenting Officer will invite management's witnesses (one by one) to the hearing. The witness will be questioned initially by the Presenting Officer, then the employee and/or their representative may question the witness followed by questions from the panel.
4. The Presenting Officer will conclude their statement of case.
5. The employee and/or their representative may question the Presenting Officer on their case presentation.
6. The panel may question the Presenting Officer on their case presentation.
7. The employee and/or their representative will outline their case. They may refer to documents circulated beforehand.
8. If applicable, the employee or their representative will invite the employee's witnesses (one by one) to the hearing. The witness will be questioned initially by the employee and/or their representative, then the Presenting Officer may question the witness followed by questions from the panel.
9. The employee and/or their representative will conclude their case.
10. The Presenting Officer may question the employee and their representative on their case presentation (the employee's representative is not usually able to answer questions on their behalf).
11. The panel may question the employee and their representative on their case presentation (the employee's representative is not usually able to answer questions on their behalf).
12. The Presenting Officer will have the opportunity to sum up the case against the employee. No new evidence can be included at this point.

13. The employee and/or their representative will have the opportunity to sum up their case. No new evidence can be included at this point.
14. The Presenting Officer, the employee and their representative will leave the room so that the panel can deliberate.
15. Having deliberated on the matters placed before them, the panel will reach their decision. Depending on the complexity of the case, it may be appropriate to ask all parties to wait and be recalled to be advised of the outcome. In other cases, it may be more appropriate for the panel to deliberate and to advise the employee and subsequently the management side of the outcome, at a later date. If this is the case, the decision should be made within a reasonable timescale e.g. within a few days and the method of contacting the employee should also be agreed before the hearing is concluded.

Potential Outcomes

For each allegation the panel will first need to decide whether that allegation is founded or not. If founded, they will then need to consider an appropriate sanction. The following options are available to the panel dependent on the seriousness of the offence. Examples of actions / behaviours / attitudes which may constitute gross misconduct and misconduct are shown in [Appendix A](#).

- **No Case to Answer / No Further Action Necessary**

There may be instances where the outcome of the hearing is that there is no case to answer (i.e. there is no finding on the disciplinary charge or the findings are so insignificant). In these circumstances the case will be dismissed without any further formal action against the employee although the panel may wish to make recommendations (e.g. training).

- **First Written Warning**

For less serious breaches of discipline a First Written Warning may be issued. The employee will be given a letter confirming the warning including confirmation of any improvement required and the consequences should the required standard not be achieved. A record of this will be kept on file for a period of 6 months from the date of the disciplinary hearing after which time it will be disregarded, unless it is connected to the safeguarding of children and/or vulnerable adults.

- **Final Written Warning**

In cases where there has been a further act of misconduct related to a previous warning, or where the misconduct is sufficiently serious, a Final Written Warning may be issued. The employee will be given a letter confirming the warning including confirmation of the improvement required and the consequences of their future conduct not meeting the required standards. A record of this will be kept on file for a period of 12 months from the date of the disciplinary hearing after which time it will be disregarded, unless it is connected to the safeguarding of children and/or vulnerable adults.

- **Dismissal**

Except for cases of gross misconduct (see [Appendix A](#)), an employee should not usually be dismissed for a first breach of discipline. Employees should be dismissed with notice (or pay in lieu of notice) except in the case of gross misconduct where the employee will be dismissed without notice.

The disciplinary sanctions outlined will normally be followed sequentially in the order shown above. However, offences of a serious nature may be brought into the procedure at any level if an earlier sanction would not be appropriate or severe enough to deal with the issue.

Notification of the Outcome

Where possible, the outcome of the hearing should be confirmed verbally on the same day as the hearing has taken place. The outcome of the hearing should be confirmed in writing as soon as possible by the Chair of the panel. A template letter can be found at [Appendix K](#). The letter should state the reason for the decision, confirm the sanction awarded and advise the employee of their right of appeal. A copy of the notes from the hearing should also be provided.

Safeguarding Allegations

If an employee is dismissed, or resigns before dismissal, where there are safeguarding allegations then a referral must be made to the [Disclosure and Barring Service \(DBS\)](#). Human Resources is available to support the referral process.

Details of allegations (including warnings) that are connected to the safeguarding of children and/or vulnerable adults should be retained on an employee's personal file until the individual has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer. Information which relates to allegations that were unfounded or found to be malicious should not be retained.

Allegations of Unacceptable Behaviour

For cases involving allegations of unacceptable behaviour (i.e. bullying and/or harassment), a mandatory meeting **must** be held at the end of the disciplinary process, except where the outcome has been dismissal, to re-establish working relationships between the relevant parties. This meeting should take place as soon as possible and should focus on agreeing strategies to assist the parties to resume and repair their working relationship. It may be beneficial for a third party (e.g. manager, trained mediator) to be involved in this meeting to help facilitate a solution. Further information on mediation is available from Human Resources.

Right of Appeal

The employee has the right to appeal against all disciplinary sanctions and must be advised of this right in the hearing outcome letter. Any appeal must be submitted in writing by the employee within 7 working days of receiving notification of the hearing outcome.

Appeals against warnings should be submitted to the Chair of the panel and will be heard, in line with the [Appeal Policy and Procedure](#), by a panel of two officers, chaired by a Strategic Director and accompanied by a representative from Human

Resources. Template letters for inviting an employee to an appeal hearing and confirming the outcome can be found at [Appendix M](#) and [Appendix N](#).

[Back to Contents](#)

Grievances raised During the Disciplinary Process

The Council's Grievance Policy should not be used for appeals against disciplinary decisions, as this is the purpose of the [Appeal Policy](#). If, however, the employee has a complaint against the disciplinary process during the course of a disciplinary case, they may raise a grievance using the Council's [Grievance Policy](#). If necessary, the disciplinary procedure may be suspended for a short period until the grievance can be considered. There may be a number of possible outcomes from this including:

- Application of other formal action such as disciplinary against another employee / manager;
- Instigation of other separate investigations which should not prevent the current issue being progressed wherever possible;
- That another manager is brought in to deal with the disciplinary case.

[Back to Contents](#)

Other Factors

Criminal Offences

Advice should be sought immediately from Human Resources if a case appears to involve criminal activity so that a decision can be made as to whether the matter should be referred to the police. In such circumstances the employee will normally be informed of such action unless the police advise otherwise.

Employees who are charged with or convicted of a criminal offence should only face disciplinary action if the conduct which led to such charges has implications on their employment or their suitability for the job. If insufficient evidence is available to form a reasonable view as to whether or not a disciplinary hearing should be held, action should be deferred until further enquiries have been made or the matter is settled by a court.

Allegations of Financial Irregularity

In all cases where fraud, corruption or impropriety are suspected or detected these must be reported immediately to Audit and Finance.

Disciplinary Action against a Trade Union Official

Although normal disciplinary standards will apply to their conduct as an employee, no disciplinary action should be taken against a Trade Union representative until the circumstances of the case have been discussed with a senior Trade Union representative or full-time officer of the Trade Union concerned. Disciplinary action should not be taken against an employee due to trade union related activities.

Allegations of Safeguarding

Any allegations of misconduct that involve potential safeguarding issues connected with children must be discussed with Human Resources prior to any discussions taking place with the employee.

If an allegation is in any way connected to the safeguarding of children or adults then a referral must be made to the [Disclosure and Barring Service \(DBS\)](#) at the appropriate point in the process. Information provided by the police or other agencies (e.g. investigation outcome, statements) should be shared with the employee, unless specifically advised otherwise, particularly if this information will form part of the management case at a subsequent disciplinary hearing.

Use of Electronic Surveillance Records

Managers who strongly suspect employee misconduct and believe that access to electronic surveillance records may support their case must first discuss their concerns with Human Resources. Further information is available in [Appendix B](#).

[Back to Contents](#)

Appendix A - Examples of Misconduct and Gross Misconduct

Examples of Misconduct

The following list is not exhaustive but gives examples of offences which may amount to misconduct:

- Persistent bad timekeeping;
- Unauthorised absence from work without reasonable cause;
- Damage to Council property;
- Failure to follow Council procedures;
- Abusive or disruptive behaviour;
- Minor breaches of Health and Safety regulations;
- Misuse of Council facilities;
- Undertaking unauthorised employment;
- Improper behaviour or conduct towards colleagues or members of the public;
- Unreasonable refusal to follow a management instruction;
- Abuse of the E-Communications Policy.

Serious examples of any of the above may amount to gross misconduct.

Examples of Gross Misconduct

The following list is not intended to be exhaustive and gives only an indication of the types of offences which could be considered as gross misconduct:

- Serious incapability as a result of being intoxicated by reason of alcohol, non-prescribed drugs, illegal drugs or prescribed drugs which may have an adverse effect on performance and safety;¹
- Deliberate falsification of reports, accounts, expense claims or self certification forms;
- Theft, removal or unauthorised possession or deliberately aiding another person to remove or failure to properly account for any property or facilities belonging to the Council or to another employee or customer;
- Unauthorised entry to computer records or deliberate falsification of records;
- Serious breach of the Council's E-Communications Policy;
- Repeated refusal to carry out duties or reasonable instructions or to comply with Council policies and procedures;
- Serious breaches of confidence, confidentiality or the Data Protection Act 1988 (subject to the Public Interest Disclosure Act 1988);
- Deliberate or reckless damage to Council property;
- Serious acts of insubordination;
- Acts of bullying, harassment or discrimination (i.e. unacceptable behaviour);

1 - In certain cases drugs prescribed by a doctor or purchased from a chemist can induce drowsiness and will include the advice not to operate machinery. Employees must inform their line manager if they have taken such medicine and would normally be required to operate machinery or drive a vehicle during the course of their work.

- Serious breach of the Council's safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the Council, its employees or customers;
- Bringing the Council into serious disrepute;
- A criminal offence, which may (whether it is committed during or outside of the employee's hours of work) adversely affect the Council's reputation or the employee's suitability for or ability to undertake the type of work they are employed to perform;
- Violent or threatening behaviour;
- Failure to maintain professional registration where this is a pre-requisite for the post;
- Failure to maintain satisfactory DBS clearance where this is a requirement for the post.

Appendix B - Use of Electronic Surveillance Equipment Records and Data in Disciplinary Cases

This policy does not affect any other policies relating to equipment used at Charnwood Borough Council.

Types of Relevant Equipment in Use

Electronic surveillance equipment of various types is in operation at Charnwood Borough Council, namely:

- CCTV cameras
- Door access system
- In-vehicle monitoring - tracker devices
- Body Worn Video (BMV)
- Mobile hand-sets i.e. hand held
- Car park access system
- Chipside activity data

Data and information from this equipment is monitored and gathered by the Council in the interests of safety and security. It may also include information about employees' activities to ensure that they carry out their duties efficiently and safely, or for training purposes and record-keeping.

E-Communications Data Records

Other sources which leave a data record are:

- Telephony system
- Emails - incoming and outgoing
- Internet usage (Please also see: [Internet and Email Acceptable Usage Policy](#))

Charnwood Borough Council is transparent in the way that it monitors and gathers data and information obtained from electronically collected data. Information collected for another purpose than which employees have been advised, will not be used for another purpose unless it is clearly in the employees interest to do so or the information potentially reveals activity that the Council could not reasonably be expected to ignore. The type of activities which could not reasonably be ignored might include criminal activity in the workplace, gross misconduct or breaches of health and safety rules that jeopardise other workers or members of the public.

Charnwood Borough Council does not use data and information that it holds to deliberately scan or review for issues relating to employee conduct.

Condition of Service / Contracts of Employment

Employees are advised through their individual contracts of employment that data and information from any of the above sources may be used as evidence in suspected disciplinary matters that may involve them where it is believed that gross misconduct may have potentially occurred.

Suspected Misconduct - Management Action

Managers who strongly suspect employee misconduct, should initially meet with the employee to discuss their concerns and, where appropriate, advise them their behaviour is unacceptable informing them of the required standard. Details of the meeting should be followed up in writing and placed on the employee's file. At this stage unless gross misconduct is suspected, there should be no need to gather electronic data. Further occurrences however are likely to be perceived as gross misconduct and the manager is then able to request electronic data as part of their investigation. A formal [checklist](#) is available for this purpose.

Gross Misconduct

Safeguards are in place to ensure there is a justifiable and reasonable reason for managers requesting electronic records. Therefore managers who strongly suspect gross misconduct and believe that the electronic logs from any of the above sources may support their case must first discuss their concerns with the HR Team Manager. Based on the case put forward by the manager, the HR Team Manager will contact the Monitoring Officer who may authorise the electronic logs to be examined and subsequently used where necessary and appropriate. **No electronic surveillance logs can be requested beyond a 12 month period. Information relating to CCTV imaging is only stored for a period of 28 days, therefore any requests should be made as soon as practicable. CCTV imaging may only be requested for footage collected on Charnwood Borough Council premises. Although the final decision to release the footage lies with the CCTV Manager, initial approval is still required from the HR Team Manager.**

On no account should the manager contact Internal Audit/ICS Services directly for access to the information without HR approval and guidance and authorisation from the Monitoring Officer.

As part of any investigation relating to an allegation of gross misconduct, employees who believe that information gathered by the Council's electronic logs will help demonstrate that the allegation is unfounded, will have the right to request access to that information which has been collected within the last 12 month period. This does not affect the employee's right to make a subject access request, however full access requests covering any other personal data held by the Council will be subject to a £10 fee. Information relating to CCTV imaging is only stored for a period of 28 days. This request should be placed with their manager although the final decision to release the footage lies with the CCTV Manager. CCTV imaging may only be requested for footage collected on Charnwood Borough Council premises. Should an employee believe that their request is not being complied with then they have the right to contact their Strategic Director.

It is acknowledged that all cases will differ in nature and severity, and some instances may require immediate and decisive action, i.e. alleged gross misconduct. However, before consulting an HR Team Manager, the manager should:

- Have a reasonably strong suspicion of serious, regular and/or prolonged misconduct amounting to gross misconduct;
- Be clear about the nature of the employee's alleged transgression(s);
- Be able to give an indication of the frequency, level of seriousness and time period over which the employee is alleged to have transgressed. For example, have monitored the situation for a period of time through observation and diary noting events (e.g. arrival and departure times, diminished work output versus time spent on the PC, etc.);
- Be aware of the activities of co-workers and take care not to single out a particular individual;
- Ensure the action he/she takes is proportionate to the alleged case. For example, it may be more appropriate to use censure and correction rather than formal action where the issue may be a minor, one off transgression perhaps through ignorance or forgetfulness or where it is not a regular occurrence or blatant gross misconduct. Simply cautioning the employee against further transgressions may resolve the matter. It may be more appropriate in those instances therefore for the manager to speak to the employee informally, outline why, how and when the employee transgressed pointing to the relevant policy or procedure, and advise him/her that further commissions of the same or similar offence in the future may lead to formal disciplinary action.
- Have already completed an initial investigation except in the instance of suspected gross misconduct.

Appendix C - Confirmation of Suspension

STRICTLY PRIVATE AND CONFIDENTIAL

[Date]

[Address]

[Date]

Dear [Name],

I am writing to confirm the outcome of our meeting on [date] during which you were advised that, following serious concerns regarding your conduct, you were being suspended from work with immediate effect. As I advised, suspension is not a disciplinary penalty and is not a presumption of guilt. To reiterate, I have not come to a view about whether or not the concerns against you are true and will not do so until these have been thoroughly investigated.

During your suspension you will receive your full contractual basic pay and an investigation will be undertaken into the concerns which have been raised. It is a term of your suspension that you should not attend work in any capacity (including casual work) and you should not contact or discuss these concerns with colleagues [or service users].

During the course of your suspension you must be available to be contacted at all times during your normal working hours and will be required to make yourself available for meetings as appropriate. You have the right to be accompanied at any such meetings and this can be a work colleague or a Trade Union representative.

I appreciate that this is a concerning time for you and would like to remind you that the services of AMICA are available to you. Trade union members can also contact their union for advice and support.

If, as a result of the investigations, there are grounds for formal disciplinary proceedings to be invoked, you will be informed in writing of the reasons for this action and given adequate notice of any disciplinary hearing and your rights of representation at that meeting. A copy of the Disciplinary Policy and Guidance is enclosed for your information.

Finally, I would like to assure you that the investigation will be conducted as speedily as possible and I will contact you [insert frequency] to update you on its progress. Once completed, you will be notified of the outcome. As your suspension will be reviewed on a regular basis, if it is decided that it can be lifted, I will of course get in touch with you immediately.

If you have any queries about the contents of this letter then please do not hesitate to contact me on [insert telephone number].

Yours sincerely,

[Name of Investigating Officer]
[Job Title]

Encs

Disciplinary Policy and Guidance
AMICA leaflet

Appendix D - Lifting of Suspension

STRICTLY PRIVATE AND CONFIDENTIAL

[Date]

[Address]

[Date]

Dear [Name],

I am writing to advise that following my letter dated [insert date of suspension letter] I have reviewed your suspension.

Following [enter details of reason why suspension is being lifted, e.g. new evidence] it has been decided that your suspension from work is to be lifted with effect from [date].

In order to assist you with your return to work, I would be grateful if you would contact me to arrange a meeting to discuss how this could be best facilitated. [Or enter details of return if these are already known]

Please do not hesitate to contact me if you have any queries about the contents of this letter.

Yours sincerely,

[Name of Investigating Officer]

[Job Title]

Appendix E - Invitation to Formal Investigatory Meeting (Stage 2)

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

I am writing to invite you to a Formal Investigatory Meeting under Stage 2 of the Disciplinary Policy into [serious] concerns regarding your conduct.

The nature of the allegations are [provide an outline of the nature of the allegations where possible.]

The investigatory meeting will take place at [time] on [date] in [venue]. [Name] will also be in attendance to take notes.

The purpose of this meeting is to give you the opportunity to put forward your case and to provide any relevant information. A copy of the Disciplinary Policy and Guidance is enclosed for your information.

As this is a formal meeting, you are entitled to be accompanied by a work colleague or Trade Union representative.

Once the investigation has been completed you may be required to attend a formal disciplinary hearing. If this is the case, you will be given every opportunity to state your case and outline your version of events. You will again be entitled to be accompanied by either a work colleague or Trade Union representative.

Please sign and return the second copy of this letter as acknowledgement of receipt.

Should you wish to clarify any points in relation to this meeting, please do not hesitate to contact me.

Yours sincerely,

[Name of Investigating Officer]

[Job Title]

I acknowledge receipt of the letter dated [date].

I will/will not be attending the Formal Investigatory Meeting arranged for [date].

Signed: _____

Date: _____

Print Name: _____

Appendix F - Outcome of Disciplinary Investigation (Stage 2)

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

Following the Formal Investigatory Meeting on [date], I am writing to confirm the outcome of the investigation into your conduct.

At the meeting the following concerns were discussed:

[List concerns]

[Name] was present as your representative and [name] to take notes.

[Delete options below as appropriate]

Option One

On the basis of the findings of the investigation, I feel that no further action is necessary as the incident / allegation is not substantiated.

Option Two

As a result of the findings of the investigation, I am satisfied that the incident/allegation has been investigated sufficiently and I will address the issue on an informal basis. [Include details of the standards which are expected and any action which is required]. Please note that failure to achieve and maintain the required standards/improvements may result in formal disciplinary action being taken against you.

Please do not hesitate to contact me if you have any queries about the contents of this letter.

Yours sincerely,

[Name of Decision Making Manager]

[Job Title]

Appendix G - Investigation Report Template

The following guidelines may be useful for the Investigating Officer to consider when preparing their investigation report:

1. Background of Work Employment

Details of the employee's job role, how long they have been employed, etc.

A copy of the employee's job description and person specification should be attached as an appendix.

2. Allegations and how they came to light

3. Methodology

How evidence was gathered

A full list of witnesses interviewed including a brief rationale as to why they were interviewed

What documentation, other evidence was collected / considered

4. Findings

Describe what evidence was found

How the evidence was evaluated

Any contributing factors to the situation

Any mitigating circumstances

Why a particular version of events was preferred when conflicting views were given

Consistencies and inconsistencies in evidence should be outlined and explanations given if known

Any risks identified

5. Conclusion

The Investigating Officer should state clearly if the investigation was conclusive and what the conclusions are.

6. Recommendation

Based on the information that the Investigating Officer has gathered they need to complete their report by providing a recommendation as to how they feel the case should proceed.

When formulating their recommendation and considering whether or not disciplinary proceedings are appropriate the Investigating Officer should:

- View the matter objectively;
- Take into account all of the evidence gathered, including the employee's version of events or explanation of what happened as well as anyone they asked to be interviewed as part of the investigation process;
- Decide the matter by applying the balance of probabilities;
- Take a reasoned decision on whether or not to recommend that disciplinary proceedings against the employee should be instigated;

- Identify any associated risks e.g. safeguarding.

Action recommended may include:

- No case to answer;
- Informal action;
- Disciplinary action to be taken;
- Training and development;
- Mediation.

As part of the investigation report it is necessary to include appendices of any evidence that has been collated which back up the main report.

HR Comments

Appendix H - Hearing Folder Contents List Template

This template is to provide a framework on how to structure a disciplinary hearing folder. It is not intended to be prescriptive and can be adapted to suit individual requirements.

Name of Employee
Disciplinary Hearing
Date and Venue of Hearing

Panel Members:

Name, Job Title (Chair)

Name, Job Title (HR Representative)

Presenting Officer:

Name, Job Title

Section 1 Disciplinary Policy

- 1.1 Disciplinary Policy
- 1.2 Hearing Format

Section 2 Employment Details

- 2.1 Employee Summary (Job Title, Grade, Hours, Start Date, etc.)
- 2.2 Contract of Employment
- 2.3 Job Description and Person Specification

Section 3 Correspondence

- 3.1 Confirmation of Suspension dated [date]
- 3.2 Invitation to Formal Investigatory Meeting dated [date]
- 3.3 Outcome of Disciplinary Investigation dated [date]
- 3.4 Invitation to Disciplinary Hearing dated [date]

Section 4 Witness Statements / Notes of Meeting / Evidence

- 4.1 Witness statement from [name/job title] dated [date]
- 4.2 Witness statement from [name/job title] dated [date]
- 4.3 Notes from Formal Investigatory Meeting held on [date]
- 4.4 Copies of evidence (e.g. complaint letters, PDR's, etc)

Section 5 Supplementary Information

- 5.1 Induction/Improvement/Training plans from [date]

Appendix I - Statement of Case Template

The statement of case is the presentation that the Investigating Officer will make at the disciplinary hearing. Each statement of case will obviously be slightly different but as a rule the following guidelines can be used:

1. Introduction

The introduction should cover general background information about the employee which will also include information on their role and responsibilities, for example:

- Start date
- Job role
- Responsibilities (making reference to job description and person specification contained in the disciplinary hearing folder)
- Hours of work
- Any relevant training
- Any other local arrangements which the Investigating Officer feels the panel should be made aware

2. Allegations

- Set out the allegations investigated
- How the investigation came about
- Details of any previous relevant warnings / concerns and how they may have sparked off more serious concerns

3. Investigation

In order to determine the outcome of the hearing the panel need to ensure that a fair investigation has been conducted. It is therefore necessary for the Investigating Officer to outline how they carried out their investigation making reference to documentation contained in the disciplinary hearing folder.

4. Findings

This should set out the findings of the case. It is recommended to put a chronology of events at the start and then set out under each allegation heading, what was found. A number of specific incidents should be identified and referred to in greater depth.

To support the evidence gathered it will be necessary for the Investigating Officer to call any witnesses who are key to the investigation. This is not confined to people who witnessed the event in question but can include individuals with specialist knowledge of specific procedures.

5. Management Expectation

The Investigating Officer should identify their expectations for example, how an employee should behave in the specified circumstance and why their conduct was not acceptable. Where possible this should be backed up with any documents or policies.

6. Summary

The Investigating Officer should briefly make reference to the key points of their investigation. No new information should be referred to at this stage.

Appendix J - Invitation to Disciplinary Hearing (Stage 3)

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

Following the Formal Investigatory Meeting on [date] and the completion of my investigation, the decision has been made to progress to a disciplinary hearing. I am therefore writing to invite you to a disciplinary hearing and to confirm the arrangements.

The hearing will take place at [time] on [date] in [location] and will be heard by [name, job title], [name, job title] and [name, job title]. Also present will be [name] to take notes. On arrival you should report to [location] and ask for [name].

[Name] will be in attendance at the hearing to present the management case. Enclosed is a copy of the documents that will be referred to at the hearing.

During the course of the hearing you will have the right to hear and question all of the evidence presented. You will also have the opportunity to present your case.

The purpose of the hearing is to consider and seek your explanation about the following allegations:

[Include allegations]

[If applicable] These allegations are in breach of the following policies:

[Include details of policies]

In view of the seriousness of these allegations, consideration will be given as to what disciplinary action to take. You will need to be aware that all disciplinary matters are considered serious and a range of penalties are available, including summary dismissal. [If appropriate: These allegations, jointly or separately, may amount to gross misconduct and could result in your dismissal.]

As this is a formal meeting, you are entitled to be accompanied by a work colleague or Trade Union representative.

Please confirm if you are able to attend the hearing and whether you will be calling any witnesses to support your case so that necessary arrangements can be made. [For your information, I will be calling [name] as a witness]. If you are unable to

provide names of witnesses at this point in time, these may be submitted to [name] no later than 5 days before the hearing. Any documentation that you wish to provide should also be submitted to [name] no later than 5 days before the hearing.

If you are unable to attend the hearing, please contact me as soon as possible to advise me of the reasons for your non-attendance.

Should you or your representative require any special arrangements in order to attend the hearing, please contact me on the above number as soon as possible so that I can facilitate these for you.

A copy of the Disciplinary Policy and Guidance is enclosed within the evidence folder for your information.

Please do not hesitate to contact me if you have any queries about the contents of this letter.

Yours sincerely,

[Name of Decision Making Manager]
[Job Title]

I acknowledge receipt of the letter dated [date].

I will/will not be attending the Disciplinary Hearing arranged for [date] (if not attending please provide a reason and note that if this is not an acceptable reason the hearing may go ahead in your absence). Please note that if you do not respond to confirm your attendance before the hearing date it will be assumed that you will be attending.

I will/will not be calling witnesses (please provide names of any witnesses you intend to call).

Signed: _____ Date: _____

Print Name: _____

Appendix K - Outcome of Disciplinary Hearing (Stage 3)

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

I am writing to confirm the outcome of the Disciplinary Hearing held on [date] which was heard by me along with [name, job title] and [name, job title]. Also present were [name] as your representative and [name] as note-taker.

The purpose of the hearing was to consider the following allegations:

[List allegations]

[Delete options below as appropriate]

Option One

Having considered all of the evidence provided at the hearing, the panel has decided that [include decision (i.e. founded or unfounded) on each of the allegations making reference to mitigating circumstances if applicable]. As a result, no further action will be taken against you on this occasion.

[Include further details as to why this decision was made and, if applicable, any recommendations/expectations given by the panel.]

In cases of alleged unacceptable behaviour (bullying and/or harassment):

[You are required to attend a **mandatory** meeting to discuss and agree strategies to assist you and [name] to re-establish your working relationship. Your manager will confirm the details of this meeting to you as soon as possible.]

Option Two

Having considered all of the evidence provided at the hearing, the panel has decided that [include decision on each of the allegations (i.e. founded or unfounded) making reference to mitigating circumstances if applicable].

Given the above, the panel has decided that you should be issued with a [first/final] written warning. This warning will remain on your file for [6/12] months. [As this warning relates to an allegation of safeguarding of children/vulnerable adults then it will remain on your file until you reach normal retirement age or for a period of 10 years from the date of the allegation, whichever is longer.]

As explained to you at the hearing, an immediate improvement in your conduct is expected. [Include details of the required improvements.] If you fail to demonstrate an acceptable improvement, or if any offence of a different nature occurs during the life of this warning, the likely consequence is that further formal disciplinary action will be taken against you. This could include the termination of your employment.

I have enclosed a copy of the Appeal Policy and Procedure along with an appeal registration form. You have the right to appeal against this decision and should complete and return the appeal registration form to me within 7 working days of receiving this letter.

In cases of alleged unacceptable behaviour (bullying and/or harassment):
[You are required to attend a **mandatory** meeting to discuss and agree strategies to assist you and [name] to re-establish your working relationship. Your manager will confirm the details of this meeting to you as soon as possible.]

Option Three

Having considered all of the evidence provided at the hearing, the panel has decided that [include decision on each of the allegations (i.e. founded or unfounded) making reference to mitigating circumstances if applicable].

Given the above, it is the panel's view that your actions did constitute gross misconduct and therefore, you are summarily dismissed from the Council's employment with immediate effect. Your P45 will be forwarded to you shortly.

[As a result of your dismissal, I must advise you that I will be informing the Disclosure and Barring Service who may wish to undertake their own investigation.]

You are required to return any property which is still in your possession and [name] will be in contact with you to arrange this.

I have enclosed a copy of the Appeal Procedure along with an appeal registration form. You have the right to appeal against this decision and should complete and return the appeal registration form within 7 working days of receiving this letter.

Should you decide to appeal; the effect of the dismissal will still stand pending the outcome of the appeal hearing.

Option Four

Having considered all of the evidence provided at the hearing, the panel has decided that [include decision on each of the allegations (i.e. founded or unfounded) making reference to mitigating circumstances if applicable].

On [date of previous letter] you were informed in writing that you had been given a final written warning in accordance with the Disciplinary Policy. In that letter you were advised that failure to improve your conduct or committing another act of misconduct, whether the act was of the same or different nature, could result in your dismissal.

Given the above, it is the panel's view that your conduct is not satisfactory and therefore, you are dismissed from the Council's employment. As this is not summary dismissal, you are entitled to [duration] paid notice from the date of the hearing and therefore your employment will terminate on [date]. You [are/are not] required to work this notice. Your P45 will be forwarded to you shortly.

[As a result of your dismissal, I must advise you that I will be informing the Disclosure and Barring Service who may wish to undertake their own investigation.]

You are required to return any property which is still in your possession and [name] will be in contact with you to arrange this.

I have enclosed a copy of the Appeal Procedure along with an appeal registration form. You have the right to appeal against this decision and should complete and return the appeal registration form within 7 working days of receiving this letter.

Should you decide to appeal; the effect of the dismissal will still stand pending the outcome of the appeal hearing.

A copy of the notes taken at the hearing is enclosed for your information.

Please sign and return the second copy of this letter in acknowledgement of receipt.

Yours sincerely,

[Name of person who chaired the hearing]
[Job Title]

Appendix L - First/Final Written Warning Template

DISCIPLINARY POLICY - [FIRST/FINAL] WRITTEN WARNING

Name: [Employee's Name]

Job Title: [Job Title]

1. Date Issued

This warning was issued at a Disciplinary Hearing on [date]. The purpose of the hearing was to consider the following allegations:

[List allegations and whether they were founded or unfounded and a description as to the reason for this decision]

2. Status of Warning

This is a [first/final] written warning issued under the Disciplinary Policy.

3. Nature of Offence

You were issued with this warning as you had [list allegations which were founded].

4. Improvements Required

At the Disciplinary Hearing on [date] you were advised that you would be required to [enter details of standard / improvements in behaviour/conduct required]. Your conduct will therefore be monitored on an ongoing basis.

5. Support to be Given

[Enter details of any agreed support that will be provided, e.g. training]. Your manager, [name], is available to provide you with any help or support that you may need.

6. Retention of Warning on Personal File

A copy of this warning will be kept on your personal file for [6/12] months from [date of Disciplinary Hearing]. [If appropriate: As this warning relates to an allegation of safeguarding of children/vulnerable adults, it will remain on file until you reach normal retirement age or for 10 years, whichever is longer.] Reference to this warning will only be made if your conduct relating to your employment is found to be unacceptable during this timescale or you request a reference while the warning is in effect.

7. Consequences of Failure to Maintain

If you fail to comply with the requirements set out in paragraph 4 above, or if you commit further disciplinary offences of a similar or different nature, this warning may be taken into account in determining any penalty at any subsequent disciplinary hearing. If the case against you was proven, the likelihood is that a more severe penalty would be imposed (i.e. action up to and including dismissal).

Appendix M - Invitation to Appeal Hearing

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

Following receipt of your appeal under the Disciplinary Policy against the [first / final written warning you were issued / termination of employment], I am writing to invite you to attend an appeal hearing. Your appeal will be heard by [name, job title], [name, job title] and [name, job title] at [time] on [date] in [location]. [Name] will also be in attendance to take notes. On arrival you should report to [location] and ask for [name].

You may, if you wish, be accompanied by a work colleague or Trade Union representative.

Enclosed for your attention is a copy of management's response to your appeal statement, along with supporting documents. I will be in attendance at the hearing to present the management case.

The outcome of the appeal hearing will be to either:

- Uphold the original decision taken and maintain any sanction;
- Overturn the original decision and implement a new decision along with any appropriate sanction/action. [first / final written warning - In cases where new evidence is provided, this could include increasing the original sanction.]

Please be advised that the decision of the appeal hearing will be final and there is no further right of appeal.

I would be grateful if you would please acknowledge if you are able to attend the hearing and whether you will be calling any witnesses to support your case or providing any additional documentation so that necessary arrangements can be made. [For your information, management will be calling [name(s)] as their witness]. If you are unable to provide names of witnesses at this point in time, these must be submitted to [name] no later than 5 days before the hearing, together with any additional documentation that you wish to submit.

Should you or your representative require any special arrangements in order to attend the hearing, please contact me on the above number as soon as possible so that I can facilitate these for you.

Please sign and return the second copy of this letter as acknowledgement of receipt.

Yours sincerely,

[Name of chair of original hearing]
[Job Title]

I acknowledge receipt of the letter dated [date].

I will/will not be attending the Disciplinary Appeal Hearing arranged for [date] (if not attending please provide a reason and note that if this is not an acceptable reason the hearing may go ahead in your absence).

I will/will not be calling witnesses (please provide names of any witnesses you intend to call).

Signed: _____

Date: _____

Print Name: _____

Appendix N - Outcome of Appeal Hearing

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

I am writing to confirm the outcome of the Disciplinary Appeal Hearing held on [date] which was heard by me along with [name, job title] and [name, job title]. Also present was [name] as your representative and [name] as note taker.

You appealed against the decision made at the Disciplinary Hearing on [date]. The reason for your appeal was [reason].

Having considered the evidence provided at the hearing, the panel have decided to [uphold the original decision to issue you with a first written warning / final written warning / terminate your employment] or [overturn the original decision to issue you with a first written warning / final written warning / terminate your employment]. Include reasons for decision and details of any additional actions/recommendations.]

The decision of the appeal hearing is final and there is no further right of appeal.

Yours sincerely,

[Name of person who chaired the appeal hearing]

[Job Title]



Probation Policy and Procedure Guidance

Contents

Purpose.....	1
Induction	1
Early Probation Hearing	1
First Probation Review Meeting	2
Progress Review Meetings(s)	3
Final Review Meeting.....	3
Extending Probationary Period	4
Formal Probation Hearing	4
Other Factors	8

1 Purpose

This guidance should be used in conjunction with the Council's Probationary Policy and Procedure.

2 Induction

Line Managers are responsible for ensuring that an induction programme is in place for each new starter. In the case of new employees to the Council, a copy of this guidance should be given to them on the first day of employment. Line Managers are responsible for setting the standards expected and familiarising new employees with the work area and requirements of the job.

3 Early Probation Hearing

If during the probationary period it is considered that a probationary employee is totally unsatisfactory and not reaching the required standard, or if it can be shown that the poor performance was due to the fact that they had misled the recruitment panel regarding their qualifications, skills and/or experience on their application form or during selection, and they clearly are unable to demonstrate the necessary skills to do the job it may be necessary to convene a Formal Probationary Hearing early into the probationary period, the likely outcome of which will be that the employee will be terminated. In such circumstances advice should be sought from HR Services. ([Link to Letter P1](#))

Probation Manager Guidance v2
Last date amended: 14/04/2015
Agreed at: Personnel Committee

4 First Probation Review Meeting

By the end of the first week a date and time must be set for the first review meeting which must take place no later than 3 months after the employee started. Ideally the meeting should take place around 2 months after commencement as it will have given the employee an opportunity to settle into their role and the Line Manager will have been able to start to assess performance.

The manager should explain that the required standard must have been reached for all essential duties of the post, attendance and conduct by the time of the final review meeting which will take place 5 months after commencement. Managers should ensure that employees have a copy of the job description/person specification (job profile) for the role.

Reassurance should be given that training and support will be in place to assist in reaching the required standard and review meetings will provide the opportunity to identify any training or support it is felt is required, however, employees must be clear about the standards required in the role and know what to expect at the first review meeting.

Following the review the Line Manager must complete the relevant sections of the [Probation Review Meeting Record](#) document.

4.1 Satisfactory Performance

Where the performance/attendance/conduct is at the required standard, the Line Manager will confirm this and set a date for the Final Probation Review Meeting, not later than 5 months from the employee's start date.

4.2 Unsatisfactory Performance

If the Line Manager does not feel that the performance/attendance/conduct is meeting the required standard the Line Manager must reaffirm the required standards of performance, draw up an improvement plan and set up a progress review meeting to take place in 2 -4 weeks.

When considering what constitutes a satisfactory standard of attendance, the trigger points in the Attendance Management Policy of 3 instances of absence in a 6 month period should be used.

In some circumstances the manager may consider that the employee's performance/attendance/conduct is not going to reach the required standard by the Final Probation Review Meeting. If the manager is satisfied that all reasonable levels of support and assistance have been explored with the employee, an Early Probationary Hearing can be arranged. Further advice should be sought from HR Services.

4.3 The Improvement Plan

The [improvement plan](#) must set goals and targets and identify measures of support to assist the employee in reaching the required standard of

Probation Manager Guidance v2
Last date amended: 14/04/2015
Agreed at: Personnel Committee

performance/attendance/conduct. It may include additional training, supervision, provision of additional information, working alongside a colleague, assistance with time management/task allocation, counselling or other appropriate action. Line Managers should seek to identify areas of support and re-examine training provided, task allocation, time management and other areas of assistance.

5 Progress Review Meeting(s)

At the Progress Review Meeting the Line Manager will review the improvement plan with the employee. The Line Manager should clearly set out expectations and the required standard that is expected of the employee within the role. Any further training or support that is required should be discussed and the outcomes of the meeting should be documented.

Progress Review Meeting(s) should take place every 2 – 4 weeks to review progress against the improvement plan until the Final Probationary Review.

You will need to ensure that the employee is very clear that unless the required standard of performance/attendance/conduct is reached by the Final Probation Review Meeting then the matter will be referred to a Formal Probation Hearing which may lead to their dismissal.

If the Manager consider that the employee's performance/attendance/conduct is not going to reach the required standard by the Final Probation Review Meeting, and all reasonable levels of support and assistance have been explored, an Early Probationary Hearing can be arranged.

6 Final Review Meeting

At five months of employment the Line Manager must meet with the employee, review performance/attendance/conduct, and feedback positive and/or negative issues, including relevant examples. You should ensure that the Final Review Meeting section of the [Probation Review Meeting Record](#) document is completed.

6.1 Satisfactory Performance

Where satisfactory performance has been achieved for all the essential duties of the post and you are satisfied with the employee's conduct, performance and attendance:

- the employee should be told that they will be confirmed in post and a letter confirming appointment should be issued within 2 weeks of the end of the probation period by the line manager. ([Link to Letter P7](#))
- any further training or support should be identified for the future, linked to the Personal Development Review Process.

6.2 Unsatisfactory Performance

Where the performance/attendance/conduct is not satisfactory and you do not consider that an extension to the probation period would resolve matters, the issue must be referred to a Formal Probation Hearing. ([Link to Letter P2](#)). The employee

will have the right to be represented by a Trade Union Representative or work colleague at the Formal Probation Hearing.

7 Extending Probationary Period

Where you consider that the employee has not quite reached the required standards in the essential duties of the post/attendance/conduct, but considers that these standards will be attained in the near future with some additional training/support, an extension to the probation period of up to three months may be granted without a Formal Probation Hearing. The manager should confirm this by [letter](#). The Line Manager will draw up an improvement plan setting goals and targets and identifying with the employee any training and / or support needed.

The extension can only be agreed provided that the employee and the Line Manager's own Manager (or the Head of Service) are in agreement with this.

The Line Manager will meet with the employee at the end of the extension period to review progress and complete the [Probation Review Meeting Record](#); if this is acceptable the employee will be confirmed in post, if progress is not acceptable, the issue will be referred to a Formal Probation Hearing. ([Link to Letter P2](#))

8 Formal Probation Hearing

The Line Manager is responsible for organising the Formal Probation Hearing. They will need to arrange the date, time and venue, the panel and note taker and book the rooms and refreshments. It is not expected that a verbatim account of the hearing will be produced. Additionally the Line Manager is responsible for arranging for all the necessary paperwork to be sent out in the correct timescales.

The Formal Probation Hearing will be heard by a panel of 3 officers, chaired by a Senior Manager (PO grade or above) and accompanied by another Senior Manager and a representative from Strategic HR.

8.1 Documentation

The Line Manager will write to the employee to notify them of the details of the hearing giving them a minimum of 10 working days' notice. The letter should include:

- The date, time and venue of the Formal Probation Hearing;
- A clear statement of the alleged unacceptable performance/attendance/conduct;
- Details of the employee's right to be represented at the hearing by a Trade Union Representative or work colleague;
- The names of any witnesses that will be attending

A template letter is attached ([Link to Letter P2](#)). **A copy of any evidence that will be relied on at the hearing must also be enclosed.** This should include:

- Brief details of the employee's role and their employment (include a copy of the employee's job description and person specification);
- Any relevant documents to be used in evidence such as examples of unacceptable work, copies of complaints received etc, together with a copy of the improvement plan;
- Copies of relevant policies and procedures;
- Any witness statements.

The employee will have the right to submit documentary evidence in advance of the hearing and to call witnesses; this should be done 5 days before the hearing.

8.2 Statement of Case

The Line Manager will be responsible for collating a 'Statement of Case' which should include the following:

- An introduction which covers basic information in respect of the employee, e.g., when they were appointed, what they are employed to do etc. Include a copy of the employee's job description and person specification in your appendices.
- When the performance issues were first brought to your attention, what these were and what action you took. The process you have followed, include within your appendices a copy of any notes of discussions/meetings held. A copy of the improvement plan and any subsequent amendments. All of these documents can be used as evidence to support your case.
- What the reaction of the employee was and how you dealt with this.

It is important that only relevant, factual, concise information which can be evidenced is presented.

In advance of the hearing, the Line Manager should try to predict the questions which the employee and panel may ask and prepare the answers. If witnesses are due to attend in support of the management case, questions the Line Manager wishes to ask of them should also be prepared in advance.

8.3 Witnesses

It is the responsibility of the Line Manager to ensure that they invite any witnesses (if required) to attend the hearing.

Likewise, it is the employee's responsibility to ensure that they invite any witnesses (if required) to support their case at the hearing. Please note that the employee's Trade Union representative / work colleague can act on behalf of the employee to arrange their attendance at the hearing if permission from the employee has been granted.

Witnesses should only be present at the hearing whilst questions are being asked of them by the employee/representative, Line Manager and panel members.

8.4 Release of Witnesses

Employees who are asked to attend a Formal Probation Hearing as a witness **must** be released from duty unless this would have a significant impact on service delivery. Advice should be sought from HR Services before declining such a request.

8.5 Failure to Attend

Wherever possible, arrangements for the date of the hearing should be made in consultation with the employee and their representative. Where an employee's chosen representative is unable to attend on the arranged date of the hearing, the employee can suggest an alternative within 5 working days of the original date. It is important that the employee is made aware that if they fail to attend on the given (or rearranged) date without an acceptable reason, the hearing may go ahead in their absence.

Where an employee is not able to attend due to ill health it may be necessary, depending on the length of and reason for the absence, to postpone the hearing. In such cases, it may be appropriate for an Occupational Health referral to be made regarding the employee's fitness to attend a hearing.

8.6 Conduct of Hearing

1. The panel will introduce those present and outline the procedure to be followed. An employee who is not accompanied will be reminded of their right to representation by a work colleague or Trade Union representative.
2. The manager presenting the case (i.e. the Line Manager) will outline their statement of case. They should refer to documents circulated beforehand to evidence their views.
3. If applicable, the Presenting Officer will invite management's witnesses (one by one) to the hearing. The witness will be questioned initially by the Presenting Officer, then the employee and/or their representative may question the witness followed by questions from the panel.
4. The Presenting Officer will conclude their statement of case.

5. The employee and/or their representative may question the Presenting Officer on their case presentation.
6. The panel may question the Presenting Officer on their case presentation.
7. The employee and/or their representative will outline their case. They may refer to documents circulated beforehand.
8. If applicable, the employee or their representative will invite the employee's witnesses (one by one) to the hearing. The witness will be questioned initially by the employee and/or their representative, then the Presenting Officer may question the witness followed by questions from the panel.
9. The employee and/or their representative will conclude their case.
10. The Presenting Officer may question the employee and their representative on their case presentation (the employee's representative is not usually able to answer questions on their behalf).
11. The panel may question the employee and their representative on their case presentation (the employee's representative is not usually able to answer questions on their behalf).
12. The Presenting Officer will have the opportunity to sum up the case against the employee. No new evidence can be included at this point.
13. The employee and/or their representative will have the opportunity to sum up their case. No new evidence can be included at this point.
14. The Presenting Officer, the employee and their representative will leave the room so that the panel can deliberate.
15. Having deliberated on the matters placed before them, the panel will reach their decision. Depending on the complexity of the case, it may be appropriate to ask all parties to wait and be recalled to be advised of the outcome. In other cases, it may be more appropriate for the panel to deliberate and to advise the employee and subsequently the management side of the outcome, at a later date. If this is the case, the decision should be made within a reasonable timescale e.g. within a few days and the method of contacting the employee should also be agreed before the hearing is concluded.

8.7 Potential Outcomes

The panel will first need to decide whether the allegation is founded or not. If founded, they will then need to consider an appropriate sanction. The following options are available to the panel dependent on their decision.

- Performance/attendance/conduct is considered by the Panel to be of an acceptable level and the employee should be confirmed in post;

Probation Manager Guidance v2
 Last date amended: 14/04/2015
 Agreed at: Personnel Committee

- A formal extension (not exceeding three months) to the probation period should be given (it is unlikely that this option will apply if there has already been an agreed extension). Following this extension there will be a Formal Review Hearing before the same panel;
- Performance/attendance/conduct is of an unacceptable level. The employee is dismissed.

The outcome of the hearing will be confirmed in writing within 5 working days by the Chair of the panel. (Link to Letters; [P3 – Extension to Probation](#), [P4 – Performance Acceptable](#), [P5 - Dismissal](#)). The letter should state the reason for the decision, confirm the outcome and advise the employee of their right of appeal if dismissed. A copy of the notes from the hearing should also be provided. If the hearing has resulted in a sanction, the HR Adviser, who has been supporting the case, will arrange for details to be input into i-Trent against the employee's record.

8.8 Right of Appeal

The employee has the right to appeal against dismissal and must be advised of this right in the hearing outcome letter. Any appeal must be submitted in writing by the employee within 5 working days of receiving notification of the hearing outcome. The appeal must be submitted in writing and sent to the Chair of the panel within 7 working days of receiving their letter of confirmation.

The appeal will be heard **in accordance with the Appeal Policy and Procedure.**

9 Other Factors

9.1 Resignation before a Hearing

Occasionally an employee may recognise that their performance is not satisfactory and may voluntarily offer to resign or be dismissed in order to avoid a hearing. If an employee is suggesting this course of action they should be advised to consult their Trade Union Representative (if applicable) and allowed time to reflect on their decision (one or two days). Once management is completely satisfied that this is the course of action the employee wishes to take and fully understands the implications of their actions, it is acceptable not to hold a hearing, however, any such decision must be taken in consultation with a senior manager and/or HR Services.

9.2 Disability and Reasonable Adjustments

You will need to have a detailed discussion with the employee to gain a full understanding of their disability and you should discuss what reasonable adjustments could be put in place to assist the employee in being able to reach the required standard of performance or attendance. You can tell the employee about the advice and support available through their Trade Union representative and/or Amica you will be able to access specialist advice from Occupational Health and Human Resources.

9.3 Absence during the Probationary Period

If an employee is absent for a substantial part of their probationary period, for example, due to sickness, consideration may be given to completing the probationary period at a later date. This will enable the employee's actual work performance in the

Probation Manager Guidance v2
Last date amended: 14/04/2015
Agreed at: Personnel Committee

job to be assessed over a length of time up to that which is equal to the probationary period.

In such circumstances, advice should be sought from HR Services. Each case should be considered individually and this approach should only be considered where the length of absence during the probationary period is extensive and leads to a potentially difficult situation in assessing and reporting on the employee. The duration of the extension may equate to the balance of the probationary period still to be served at the point that it was interrupted by the sickness absence. The employee should be kept informed in writing, of any such extensions to the probationary period. ([Link to Letter P6](#))

9.4 Disciplinary issues during Probationary Period

If during the Probationary Period a significant conduct issue arises that needs to be addressed formally, the Disciplinary Procedure – Probationary Employees should be followed.

Following reasonable investigation a decision will need to be made to

- continue probation with no additional action;
- continue probation with clear and closely monitored targets;
- follow the relevant disciplinary procedure

It is advisable to seek support from HR Services in such instances.



Probation Policy and Procedure

1 Scope

This procedure applies to all new entrants to Charnwood Borough Council including fixed term appointments. This policy is not applicable to casual workers.

All new employees who are appointed for 6 months or more, including those with previous continuous local government service are required to satisfactorily complete a 6 months probationary period before they are confirmed in post.

In the case of fixed term staff with a contract shorter than the length of the probationary period the probation process will be followed for the period during which the individual is employed by the Authority.

2 Purpose

The purpose of a probationary period is to ensure that all new employees to Charnwood Borough Council have the opportunity to become familiar with the main duties and tasks of their post and to demonstrate the standard of performance, attendance and behaviour expected of them. Probationary periods give the Council the opportunity to assess a new employee's suitability as a permanent or temporary member of staff and for the employee to demonstrate their ability to effectively and efficiently perform their duties.

3 Roles and Responsibilities

HR Services	HR Services will provide advice, coaching and support to managers on the application of the Probation Policy and Procedure. HR will also act as panel members at hearings and will express a view on whether the case is founded and make recommendations about the appropriate outcome.
Management Role	To manage the probationary period appropriately, ensuring that review dates are met and that the employee receives regular feedback on performance. To set the standards expected of the employee and familiarise them with the work area and requirements of the job.
Chair of the Panel	The Chair of the panel will manage the hearing and notify the employee of the decision. They will also normally present the case if the employee exercises their right to appeal against that decision.

Panel Members	Will support the Chair of the panel and express a view on whether the case is founded and make recommendations about the appropriate outcome.
Management Representative	A management representative will present the management case at a hearing. This will usually be the Manager who has managed the probationary period, however this may be a different representative.
Trade Union Representative or Work Colleague	To support and advise, if appropriate, the employee. At a hearing this may include presenting the employee's case, summarising and conferring with the employee and responding to points on behalf of the employee. The Trade Union or work colleague cannot answer questions put directly to the employee.

4 Procedure

Regular reviews will ensure that any areas of unsatisfactory performance are recognised and dealt with before major problems develop. During an employee's probationary period any issues such as low attendance, poor performance or conduct will be dealt with under the probation procedure.

Managers are responsible for setting realistic and achievable targets and making sure employees understand what is required. Any shortfall in performance will be pointed out to the employee concerned and consideration given to whether the reason could be due to inadequate instruction, training, supervision, or the changing nature of the work.

Employees will be given support and assistance to improve their performance. A probationary period may be extended following discussion with the manager and the employee concerned. However, the Council cannot guarantee to maintain employment if an acceptable level of performance is not achieved during the probationary period. An employee whose performance is unsatisfactory during a probationary period will, following due process, have their employment terminated.

Employees will have the right to be accompanied by a Trade Union Representative or a work colleague during any Formal Probationary hearings or subsequent appeal hearings.

5 Early Probation Hearing

If during the probationary period it is considered that a probationary employee is not meeting the required standard, or if it can be shown that the poor performance was due to the fact that the probationer had misled the recruitment panel regarding their qualifications, skills and / or experience on their application form or during selection, and they clearly are unable to demonstrate the necessary skills to do the job it may be necessary to convene a Formal Probation Hearing early into the probationary period. The likely outcome of the hearing will be termination of employment.

6 First Probation Review Meeting

It is the Line Manager's responsibility to advise the new employee during their induction that there will be two Probation Review Meetings during the 6 month's probationary period and that the required standard must be reached for all of the essential duties by the Final Probation Review Meeting. The Line Manager will set the date for the first Probation Review as part of the induction process.

The Line Manager will meet with the employee, no later than 3 months from their start date, to review performance / attendance / conduct. They will feedback positive and / or negative issues, with examples where possible, re-affirming that the required standard must be reached for all of the essential duties by the Final Probation Review Meeting. The Line Manager will note the employee's progress on the Probation Review Meeting Record document.

Whilst Probation Review Meetings should not require the employee to be accompanied by a Trade Union or work colleague, Line Managers should not refuse such a request if the employee feels they need support.

6.1 Satisfactory Performance

Where the performance / attendance / conduct is at the required standard, the Line Manager will confirm this and set a date for the Final Probation Review Meeting, not later than 5 months from the employee's start date.

6.2 Unsatisfactory Performance

Where the performance / attendance / conduct is not at the required standard, the Line Manager must:

- Re-affirm the required standards,
- Draw up an improvement plan setting goals and targets and identifying with the employee any training and / or support needed,
- Set up a Progress Review Meeting to take place in 2 - 4 weeks. The employee will not normally be represented at this meeting, but representation should not be refused at this or subsequent meetings if requested.

If it is evident at the Probation Review Meeting that the performance / attendance / conduct is still not at the required standard, the Line Manager should advise the employee that if the required standards are not met by the Final Probation Review

Meeting, the matter will be referred to a Formal Probation Hearing. The Progress Review Meetings will continue every 2 – 4 weeks until the Final Probation Review Meeting.

In some circumstances the manager may consider that the employee's performance/attendance/conduct is not going to reach the required standard by the Final Probation Review Meeting. If the manager is satisfied that all reasonable levels of support and assistance have been explored with the employee, an Early Probationary Hearing can be arranged. Further advice should be sought from HR Services.

7 Final Probation Review Meeting

After 5 months' employment the Line Manager must again meet with the employee, review their performance / attendance / conduct, and feed back positive and / or negative issues, including examples where possible.

7.1 Satisfactory Performance

Where satisfactory grades have been achieved for all the essential duties of the post and the Line Manager is satisfied with the employee's conduct and attendance:

- the employee should be told that they will be confirmed in post and a letter confirming appointment should be issued by the Line Manager within 2 weeks of the end of the probation period;
- relevant further training or support should be identified for the future linked to the Personal Development Review process.

7.2 Unsatisfactory Performance

Where the performance / attendance / conduct is not at the required standard and the Line Manager does not consider that an extension to the probation period would resolve matters, the employee must be advised by the Line Manager that the matter will be referred to a Formal Probation Hearing at which the employee may be dismissed. The employee must be advised of their right to be accompanied by a Trade Union Representative or a work colleague.

8 Extension to Probation Period

Where the Line Manager considers that the employee has not reached the required standard, but considers that it will be attained in the very near future with some additional training / support, an extension to the probation period of up to three months may be granted without a Formal Probation Hearing. The Line Manager will draw up an improvement plan setting goals and targets and identifying with the employee any training and / or support needed.

This extension can only be agreed provided that the employee and the Line Manager's own Manager (or the Head of Service) are in agreement with this.

In such circumstances the Line Manager will meet with the employee at the end of the extension period to review progress; if this is acceptable the employee will be confirmed in post, if progress is not acceptable, the issue will be referred to a Formal Probation Hearing.

The Line Manager will complete the Probation Review Meeting Record in relation to the Final Probation Review Meeting and any further review meeting if an extension is agreed.

9 Formal Probation Hearing

Every effort should be made to set a mutually acceptable date for the hearing in consultation with the employee and their representative.

The Line Manager is responsible for organising the Formal Probation Hearing. The employee must be given at least 10 working days written notice of the hearing. The notice must specify the alleged unacceptable performance / attendance / conduct to enable the employee to prepare their response. Any relevant documents to be used in evidence must be supplied to the employee at this stage together with details of any witnesses the Line Manager will be calling.

Any documentary evidence which the employee wishes to submit together with names of witnesses they wish to call should be made available to the Panel no later than 5 working days prior to the disciplinary hearing.

The Formal Probation Hearing will be heard by a panel of 3 officers, chaired by a Senior Manager (PO grade or above) and accompanied by another Senior Manager and a representative from Strategic HR.

The employee will have the right to be accompanied by a Trade Union Representative or work colleague.

9.1 Possible Outcomes

- Performance / attendance / conduct is considered by the Panel to be at the required standard and the employee should be confirmed in post;
- A formal extension (not exceeding three months) to the probation period should be given (it is unlikely that this option will apply if there has already been an agreed extension). Following this extension there will be a Formal Review Hearing before the same panel;
- Performance / attendance / conduct is not at the required standard. The employee is dismissed.

The outcome of the hearing will be confirmed in writing within 5 working days. If the hearing has resulted in a sanction, the HR Adviser, who has been supporting the case, will arrange for details to be input onto i-Trent against the employee's record.

10 Appeal

An employee has a right to appeal against dismissal. The appeal must be submitted in writing and sent to the Chair of the panel within 7 working days of receiving their letter of confirmation.

The appeal will be heard in accordance with the Appeal Policy and Procedure.

Probation Policy and Procedure version 2.1
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11 Other Factors

11.1 Extending Probationary Period

In circumstances where it is felt appropriate to extend the probationary period beyond six months in order to meet the required standards, the extension must not exceed a total of three months and the employee must be advised of the extension before the expiry of the original probationary period and this be confirmed in writing to the employee.

11.2 Capability and Attendance Issues and Disability

Consideration must be given as to whether the employee's capability or poor attendance is due to a disability and if this is the case, what reasonable adjustments may be put in place to assist the employee in being able to reach the required standard of performance or attendance. Further specialist advice may be sought from Occupational Health and Human Resources.

11.3 Absence during the Probationary Period

In the majority of cases if an individual is absent for a substantial part of their probationary period this will be taken into account in monitoring their performance and may lead to their dismissal. However, in exceptional circumstances, consideration may be given to extending the probationary period. This will enable the employee's actual work performance in the job to be assessed over a length of time up to the amount of time equal to the probationary period.

In such circumstances, advice should be sought from HR Services. Each case should be considered individually and an extension should only be considered where the length of absence during the probationary period is extensive and leads to a potentially difficult situation in assessing and reporting on the employee. The employee should be kept informed in writing, of any such extensions to the probationary period.

11.4 Previous Continuous Local Government Experience

All new employees are required to complete a probationary period, including those with previous continuous local government service.

11.5 Allegations of Harassment and Bullying or a Grievance raised against the Manager

If the employee raises an allegation of harassment and bullying or a grievance against the manager who is leading on the probation procedure, the probation case may need to be suspended so the allegation can be investigated. Alternatively, and dependent on the issues being raised, to enable the probation procedure to continue to be invoked, consideration can be given to allocating the case to another manager.

11.6 Conduct related Disciplinary issues during Probationary Period

Following an investigation by the Manager a decision will need to be made to:

- continue probation with no additional action;

- continue probation with clear and closely monitored targets in relation to conduct and capability;
- follow the disciplinary procedure applicable to probationary employees ([Appendix A](#)).

APPENDIX A

12 Disciplinary Procedure – Probationary Employees

12.1 Statement of Grounds of Action and Invitation to Meeting

The Manager will advise the employee in writing of the details of the alleged conduct which has led to disciplinary action being contemplated.

12.2 The Meeting

- The employee will be invited to attend a meeting in order to discuss the matter with 10 working days' notice.
- The meeting should be held with a Senior Manager (PO grade and above), another Senior Manager and a representative from HR Services.
- The meeting must take place before action is taken, except in the case where action consists of suspension. The meeting should be held with the Head of Service.
- The employee must take all reasonable steps to attend the meeting. If the employee is unable to attend the meeting for a valid reason, then the Manager must re-arrange the meeting.
- The manager will present the details of the alleged conduct and investigation at the meeting.
- The employee should be allowed to answer any allegations that have been made, this includes presenting evidence, calling witnesses and asking questions.
- The employee has a right to be accompanied by a Trade Union Representative or work colleague.
- Notes should be taken of the meeting
- After the meeting the employee will be informed of the decision.

12.3 Appeal

- Employees have a right of appeal against a decision.
- This Appeal must be made to the appropriate Director within 7 working days of receiving written notification of the decision.
- The employee must take all reasonable steps to attend this meeting.
- The Appeal will be heard by an appropriately designated Manager from the employing department and a representative from HR Services.
- The employee has the right to be accompanied by a Trade Union Representative or work colleague.
- After the meeting the employee must be informed of the final decision.



Attendance Management Policy and Procedure

1 Scope

This document applies to all employees of Charnwood Borough Council employed under the Joint Negotiating Committee for Local Government Services (JNC), National Joint Council for Local Government Services (NJC) and Joint Negotiating Committee for Local Authority Craft and Associated Employees (Craft).

Further information on the application of the policy is available in the supporting [Guidance](#) and this policy should be read in conjunction with that document.

It is not applicable to employees within their probationary period or casual workers.

2 Purpose

The purpose of the Council's Attendance Management Policy and Procedure is to provide a supportive framework for employees where a shortfall in attendance has been identified in order to assist employees to improve, reach and maintain the standard of attendance expected within their area of work.

It is acknowledged that, at times, employees need to take time off work due to personal illness or injury. The Council provides appropriate paid (or in some instances unpaid) leave in such circumstances and expects its employees to respond by ensuring they take reasonable care of their health and attend work unless they are unable to do so.

3 Roles and Responsibilities

HR Services	HR Services will provide advice, coaching and support to managers on the application of the Policy and Procedure. HR will also act as panel members at hearings and will express a view on whether the case is founded and make recommendations about the appropriate outcome.
Line Manager or Management Representative	Will support and manage the employee through the process and will normally act as the management representative if a hearing is convened.
Chair of the Panel	The Chair of the panel will manage the hearing and notify the employee of the decision. They will also normally present the case if the employee exercises their right to appeal against that decision.
Panel Members	Will support the Chair of the panel and express a view on whether the case is founded and make recommendations about the appropriate outcome.

Attendance Management Policy and Procedure
Version: 2016 - 2
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Trade Union Representative or Work Colleague	To support and advise, if appropriate, the employee. At a hearing this may include presenting the employee's case, summarising and conferring with the employee and responding to points on behalf of the employee. The Trade Union or work colleague cannot answer questions put directly to the employee.
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4 Short Term / Frequent Absences

This is described as an employee having regular periods of sickness absence from work on health grounds. This is normally 3 or more absences in a 6 month period, but will depend on the circumstances.

5 Long Term Absence

This is normally defined as being a continuous absence of 4 weeks or more, which is medically certified and attributable to an underlying medical condition or specific reason.

6 Monitoring of Employee Attendance

All absences should be reported, recorded, monitored and analysed on an ongoing basis in order to identify problems, review individual cases and decide upon any appropriate action.

Absences which may require further attention / investigation, may include, but will not be limited to the following:

- Three periods of absence in 6 months;
- A pattern of absence e.g. regular Friday / Monday absences or linked to annual leave;
- Two long periods of absence (which is over 1 week but less than 4 weeks) in a 6 month period;
- A long term absence of 4 weeks or more;
- A stress related absence or reoccurrence of a stress related absence;
- Regular repetition of the same / similar type of illness.

Authorised absence (e.g. unpaid leave) should not be counted towards the 'triggers' shown above.

7 Return to Work Meetings

Managers should complete a return to work interview with employees following every period of absence. In many cases the meeting may be as brief as a quick chat to ensure the employee is fit to return, welcome them back to work and provide any support that could help them.

8 Support Mechanisms

Managers may wish to explore the following options:

- a) [Referral to Occupational Health](#) to seek medical advice and opinion.
- b) [Rehabilitation / Phased Return to Work Plan](#) to assist the employee to return back to work on a planned and phased basis, usually following a medical recommendation.

- c) [Reduction in Hours](#) to assist the employee to return back to work on a temporary or permanent basis, which must be mutually accommodated and agreed. The employee's contract of employment will then be changed accordingly.
- d) [Flexible Working](#) this would enable employees to adjust their working arrangements on a temporary basis where this can be accommodated by the service. Adjustments may include an element of home working or a different pattern of work.
- e) [Temporary Redeployment](#) to a different role to enable the employee to return to work.
- f) [Preferential Treatment Status](#) where applicable, to obtain alternative work on the Council's redeployment register to enable the employee to return back to work. If the employee is appointed to another post, there will be no entitlement to pay protection or additional travel expenses.
- g) [Reasonable Adjustments](#) to support the employee in their role and to improve their attendance levels.
- h) [Amica Counselling Service](#) to access counselling and support on a range of issues (e.g. financial worries, family concerns, work-related problems, etc).

9 Employee's with a Disability

Consideration should be given as to whether an employee's level of attendance is due to a disability, and if so, what [reasonable adjustments](#) may be needed to assist the employee in being able to reach the acceptable level of attendance. If an underlying disability is suspected an Occupational Health referral is usually required for advice on reasonable adjustments. Further advice should be sought from HR Services.

10 Employees with a Serious Medical Condition

The Council recognise that employees can develop serious medical conditions which can affect their attendance at work. This may be evident through long-term or short term frequent absences. Managers should be particularly sensitive and supportive to employees in these circumstances, working with HR to provide appropriate supportive measures as outlined above. Managers should also give due consideration, taking into account advice received from Occupational Health, to when it is appropriate to adopt different stages within the policy. Where possible, solutions should be sought, which are beneficial to both the employee and the service.

11 Sickness Absence during Pregnancy

If the employee is off work ill, or becomes ill, with a pregnancy related illness during the last four weeks before the expected week of child birth (EWC), maternity leave will normally commence on the day after the first day of absence. Pregnancy related absences during this period may be disregarded at the manager's discretion.

Sickness absence prior to the last four weeks before the EWC, supported by either a fit note or a self-certificate, shall be treated as sickness absence in accordance with normal sickness absence provisions. However, pregnancy related absences may be disregarded for the purpose of invoking the formal stages of the policy and for any future employment related decisions.

12 Annual Leave and Bank Holidays

Annual leave will continue to accrue during sickness absence. Employees on long term sickness absence (i.e. over 4 weeks) will also accrue their public holiday entitlements.

13 Links to Disciplinary Policy and Procedure

Where sickness absence patterns emerge and where it is believed that absences are not attributed to genuine sickness, this will be investigated through the [Disciplinary Policy and Procedure](#).

14 Escalation to Stage 4

In most cases there will be four stages to the attendance management process. However, there may be occasions in cases of long term sickness absence where the medical reports indicate that a return to work is not possible within a reasonable time period. In these circumstances the manager must ensure that all avenues of [support](#) such as [ill health retirement](#) and [redeployment](#) have been exhausted as applicable, but may proceed to Stage 4 of the attendance management process without completing all and/or any of the other three stages. Where the manager wishes to progress to Stage 4 before the preliminary action stage has been completed, this must be agreed by the employee. The employee should ensure that they are in receipt of all appropriate information before making the decision. Advice must be sought from Strategic HR before escalating to Stage 4.

15 Stage 1 Preliminary Action

If there are concerns regarding an employee's level of attendance, the manager will arrange a meeting with the employee to review their absence record and if relevant, draw up a [support plan](#). A review period should be agreed (which will vary in individual cases, but generally this will be between 4 and 8 weeks) and [support mechanisms](#) considered.

It is not usual practice for an employee to be accompanied at this stage. However, if the manager or employee feels that it would be appropriate, the employee may be accompanied by a work colleague or Trade Union representative.

A meeting should be held with the employee at the end of the review period to determine whether the support plan has been achieved. If the employee has not achieved the level of attendance required by the end of the review period, the line manager may consider progressing to Stage 2 of this procedure.

However, if the employee has made sufficient improvement, the attendance management procedure will cease. If the improvement is not sustained for 4 months from the end of the review period then the manager may progress to Stage 2 of this procedure.

Brief notes of all meetings should be taken to record what has been discussed and a copy provided to the employee for their agreement.

16 Stage 2 – Formal Action

Where there are continuing concerns over an employee's attendance, the manager will invite the employee to attend a Formal Attendance Management Meeting. Ten working days' notice will be given for this meeting, the purpose of which is to establish the facts, to allow the employee to respond to concerns about their attendance and if applicable, put further support mechanisms in place. The employee has the right to be accompanied by a

work colleague or Trade Union representative. Notes should be taken at this meeting and a copy will be sent to the employee for their agreement, together with any relevant documents e.g. the agreed [support plan](#).

The person conducting the meeting will:

- Identify the level of attendance not being met, and give clear [guidance](#) on the standard of attendance required (support plan);
- Explore any [support mechanisms](#) available to help the employee improve their attendance;
- Specify the monitoring and review period for improvement (which will vary in individual cases, but generally this will be between 4 and 8 weeks);
- Advise the employee of the potential outcomes of the meeting noting that failure to improve to the required attendance level within the timescale could lead to the manager arranging an attendance management hearing whereby the employee could be issued with a final written warning.

The employee will:

- Provide an explanation as to any reasons why their attendance is not meeting expectations and explore any factors that may be having an impact (e.g. domestic circumstances, underlying health problems, work concerns, etc.);
- Identify any support mechanisms that they feel may help them to improve their attendance.

17 Review Meeting

A review meeting will be held at the end of the support plan period. Employees have the right to be accompanied by a work colleague or Trade Union representative. Notes should be taken at this meeting and a copy will be sent to the employee along with a letter confirming the outcome of the meeting.

Both the person conducting the meeting and the employee will have an opportunity to present evidence to support their position.

The potential outcomes of the meeting are:

- If the employee has made sufficient improvement, the attendance management procedure will cease. However, if the improvement is not sustained for 9 months from the end of the review period then the manager may recommence at [Stage 3](#) of this procedure.
- If some improvement has been made and further progress is likely, it may be appropriate to extend the review period by 4-6 weeks. In the majority of cases it will be appropriate to extend the review period just once during the attendance management process.
- If no, or insufficient improvement has been made, the employee will be advised that a Stage 3 Attendance Management Hearing will be arranged at which they could be issued with a Final Written Warning.
- If applicable, [escalation](#) to a Stage 4 Attendance Management Hearing (see No. 13 above).

18 Stage 3 – Final Action

Attendance Management Hearing

The manager will be responsible for arranging a panel which will be chaired by a Senior Manager (PO Grade or above), supported by a further Senior Manager and a representative from HR Services, who will act as panel members. All of the panel should have had no prior involvement in the employee's case. The manager should also arrange a note-taker.

Ten working days written notice will be given to attend the formal hearing in which the employee will be informed of the reasons for the hearing and their right to be accompanied by a work colleague or Trade Union representative. The letter should state that a potential outcome of the hearing is a final written warning. Employees should also receive copies of relevant documentation e.g. support plan(s), notes of meetings, etc. within an evidence folder. Employees will also be given an opportunity to provide evidence and this must be submitted to the Chair of the panel at least 5 working days before the date of the hearing. Details of the format the hearing should take can be found in the supporting [Guidance](#).

The panel may find:

- The level of attendance is acceptable;
- It is appropriate to issue the employee with an extension (4-6 weeks) to the review period of the support plan agreed during [Stage 2](#). This should only be considered if an extension has not previously been given during the attendance management procedure or in exceptional circumstances. The panel will reconvene at the end of the extension period;
- The level of attendance is not acceptable. If the panel are satisfied that the employee has been unable to improve their attendance to the required standard, they will issue the employee with a final written warning. Within 7 days of the hearing, the manager should meet with the employee to agree a further [support plan](#) and review period. A date and time should also be agreed for the final (and any mid-point) review meeting. The panel may wish to make recommendations at the hearing regarding the contents or duration of the support plan;

The employee should receive written confirmation of the outcome of the hearing including information on their right to appeal the decision.

19 Final Written Warning

Where an employee has received a Final Written Warning, this will remain on their file for 12 months.

20 Right of Appeal

An employee has the right to appeal against their final written warning and it must be submitted in writing by the employee within 7 working days of receiving notification of the hearing. For further information, please refer to the [Appeal Policy](#).

21 Review Meeting

A review meeting will be held at the end of the support plan review period. The employee has the right to be accompanied by a work colleague or Trade Union representative. Notes should be taken at this meeting and a copy will be sent to the employee together with a letter confirming the outcome of the meeting.

The potential outcomes of the meeting are:

- If the employee has made sufficient improvement, the attendance procedure will cease. However, if the improvement is not sustained within 12 months from the end of the review period then the manager may recommence at Stage 4 of this procedure;
- If some improvement has been made and further progress is likely, it may be appropriate to extend the review period by 4-6 weeks. This should only be considered if an extension has not previously been given during the attendance management procedure;
- If no, or insufficient, improvement has been made, the employee will be advised that a Stage 4 Attendance Management Hearing will be convened to consider the case and that a potential outcome is dismissal.

22 Stage 4 – Attendance Management Hearing

The manager will be responsible for arranging a panel, chaired by a Senior Manager (PO Grade or above), supported by a further Senior Manager and a representative from HR Services, who will act as panel members. All of the panel should have had no prior involvement in the employee's case.

If a hearing has already been held under Stage 3 of the procedure then, where possible, the same panel should be used for this hearing. The manager should also arrange a note-taker.

Ten working days written notice will be given to attend the hearing in which the employee will be informed of the reasons for the hearing and their right to be accompanied by a work colleague or Trade Union representative. The letter should state that a potential outcome of the hearing is dismissal. Employees should also receive copies of relevant documentation e.g. support plan(s), notes of meetings, etc. within an evidence folder. Employees will also be given an opportunity to provide evidence and this must be submitted to the Chair of the panel at least 5 working days before the date of the hearing. Details of the format the hearing should take can be found in the supporting [Guidance](#).

The panel may find:

- The level of attendance is acceptable;
- It is appropriate to issue the employee with an extension (4-6 weeks) to the review period of the support plan agreed during [Stage 3](#). This should only be considered if

an extension has not previously been given during the attendance management procedure. The panel will reconvene at the end of the extension period;

- The level of attendance is not acceptable. If the panel are satisfied that the employee has been unable to improve their attendance to the required standard, having considered the grounds of the appeal including any reasons for the failure to reach the required standard, it is likely that they will dismiss the employee from the Council's employment with notice.

The employee will be notified in writing of the outcome of the hearing including their right of appeal. If the employee has been dismissed, the letter should include the reason for the dismissal and the employee's termination date. A copy of the notes from the hearing should also be provided.

23 Right of Appeal

An employee has the right to appeal against their dismissal from the Council and it must be submitted in writing by the employee within 7 working days of receiving notification of the hearing. For further information, please refer to the [Appeal Policy](#).



Guidance for Chair of the Panel on Delivering the Decision in Person – Disciplinary Appeal Hearing

Scope

This guidance applies to those employees who Chair a panel in a disciplinary appeal hearing.

Purpose

The purpose of this guidance is to ensure that the Chair of the Panel delivers the decision in a consistent manner, covering the relevant requirements. The document will need to be adapted to suit the individual hearing.

Safeguarding

Safeguarding is a term used to denote measures to protect the health, well-being and human rights of individuals, which allow people, especially children, young people and vulnerable adults to live free from abuse, harm and neglect.

If an employee is dismissed, or resigns before dismissal, where there are safeguarding allegations then a referral must be made to the [Disclosure and Barring Service \(DBS\)](#). Human Resources is available to support the referral process.

Details of allegations (including warnings) that are connected to the safeguarding of children and/or vulnerable adults should be retained on an employee's personal file until the individual has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer. Information which relates to allegations that were unfounded or found to be malicious should not be retained.

Delay in Delivering the Decision

Depending on the complexity of the case, it may be more appropriate for the panel to deliberate and to advise the employee and subsequently the management side of the outcome, at a later date. If this is the case, the decision should be made within a reasonable timescale e.g. within a few days and the method of contacting the employee should also be agreed before the hearing is concluded.

Proposed Wording for Delay in Decision

Thank you to all parties for attending today's hearing, and for conducting yourselves in a professional manner, in a situation that can be very difficult.

Due to the complexity of the case, the panel has decided to deliberate further before reaching a decision. Once the panel has been able to reach a decision, you will be advised of the outcome. We will ensure this is in a timely manner to avoid unnecessary delays. We expect to reach a decision within [x days].

Could I please confirm the most appropriate method to contact you with the outcome?

Thank you once again for attending the hearing.

Delivering the Decision

The Chair of the Panel should deliver the decision to the employee involved in the hearing, their representative and the management representatives at the same time. The decision should be followed up in writing and delivered to the employee following the hearing.

Proposed Wording for Decision

Thank you to all parties for attending today's appeal hearing, and for conducting yourselves in a professional manner, in a situation that can be very difficult.

I would like to confirm the outcome of the Disciplinary Hearing held today/on [date]

The purpose of the hearing was to consider the following allegations:

[List allegations]

[Delete options below as appropriate]

Option One – Uphold the Decision

Having considered all of the evidence provided at the appeal hearing, the panel has made the following decisions in relation to each allegation. I will list the allegations individually and outline the rationale and conclusion for each.

[List allegation individually, outline rationale for decision and include decision on each of the allegations (i.e. founded or unfounded) making reference to mitigating circumstances if applicable.]

As a result the panel has decided to uphold the original decision to [uphold the decision to issue you with a first written warning / final written warning / terminate your employment].

[Include further details of any recommendations/expectations given by the panel where relevant.]

In cases of alleged unacceptable behaviour (bullying and/or harassment):

[You are required to attend a **mandatory** meeting to discuss and agree strategies to assist you and [name] to re-establish your working relationship. Your manager will confirm the details of this meeting to you as soon as possible.]

The decision of the appeal hearing is final and there is no further right of appeal.

Option Two – Overturn the Decision

Having considered all of the evidence provided at the appeal hearing, the panel has made the following decisions in relation to each allegation. I will list the allegations individually and outline the rationale and conclusion for each.

[List allegation individually, outline the rationale for decision and include decision on each of the allegations (i.e. founded or unfounded) making reference to mitigating circumstances if applicable].

As a result the panel have decided to [overturn the original decision to issue you with a first written warning / final written warning / terminate your employment].

In Cases of Safeguarding Allegations

[As this warning relates to an allegation of safeguarding of children/vulnerable adults then it will remain on your file until you reach normal retirement age or for a period of 10 years from the date of the allegation, whichever is longer.]

As a result of the outcome of the hearing, the authority will expect an immediate improvement in your conduct. [Include details of the required improvements.] If you fail to demonstrate an acceptable improvement, or if any offence of a different nature occurs during the life of this warning, the likely consequence is that further formal disciplinary action will be taken against you. This could include the termination of your employment.

In cases of alleged unacceptable behaviour (bullying and/or harassment):

[You are required to attend a **mandatory** meeting to discuss and agree strategies to assist you and [name] to re-establish your working relationship. Your manager will confirm the details of this meeting to you as soon as possible.]

The decision of the appeal hearing is final and there is no further right of appeal.

Thank you once again for attending the hearing. You will be provided with an outcome letter confirming the decision of the panel. This will be posted to you as soon as possible following the delivery of this decision, and it is anticipated that this will be within 3 working days.

Guidance for Chair of the Panel on Delivering the Decision in Person – Disciplinary Hearing

Scope

This guidance applies to those employees who Chair a panel in a disciplinary hearing.

Purpose

The purpose of this guidance is to ensure that the Chair of the Panel delivers the decision in a consistent manner, covering the relevant requirements. The document will need to be adapted to suit the individual hearing.

Safeguarding

Safeguarding is a term used to denote measures to protect the health, well-being and human rights of individuals, which allow people, especially children, young people and vulnerable adults to live free from abuse, harm and neglect.

If an employee is dismissed, or resigns before dismissal, where there are safeguarding allegations then a referral must be made to the [Disclosure and Barring Service \(DBS\)](#). Human Resources is available to support the referral process.

Details of allegations (including warnings) that are connected to the safeguarding of children and/or vulnerable adults should be retained on an employee's personal file until the individual has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer. Information which relates to allegations that were unfounded or found to be malicious should not be retained.

Delay in Delivering the Decision

Depending on the complexity of the case, it may be more appropriate for the panel to deliberate and to advise the employee and subsequently the management side of the outcome, at a later date. If this is the case, the decision should be made within a reasonable timescale e.g. within a few days and the method of contacting the employee should also be agreed before the hearing is concluded.

Proposed Wording for Delay in Decision

Thank you to all parties for attending today's hearing, and for conducting yourselves in a professional manner, in a situation that can be very difficult.

Due to the complexity of the case, the panel has decided to deliberate further before reaching a decision. Once the panel has been able to reach a decision, you will be advised of the outcome. We will ensure this is in a timely manner to avoid unnecessary delays. We expect to reach a decision within [x days].

Could I please confirm the most appropriate method to contact you with the outcome?

Thank you once again for attending the hearing.

Delivering the Decision

The Chair of the Panel should deliver the decision to the employee involved in the hearing, their representative and the management representatives at the same time. The decision should be followed up in writing and delivered to the employee following the hearing.

Proposed Wording for Decision

Thank you to all parties for attending today's hearing, and for conducting yourselves in a professional manner, in a situation that can be very difficult.

I would like to confirm the outcome of the Disciplinary Hearing held today/on [date]

The purpose of the hearing was to consider the following allegations:

[List allegations]

[Delete options below as appropriate]

Option One – No Further Action

Having considered all of the evidence provided at the hearing, the panel has made the following decisions in relation to each allegation. I will list the allegations individually and outline the rationale and conclusion for each.

[List allegation individually, outline rationale for decision and include decision on each of the allegations (i.e. founded or unfounded) making reference to mitigating circumstances if applicable.]

As a result, no further action will be taken against you on this occasion.

[Include further details of any recommendations/expectations given by the panel.]

In cases of alleged unacceptable behaviour (bullying and/or harassment):

[You are required to attend a **mandatory** meeting to discuss and agree strategies to assist you and [name] to re-establish your working relationship. Your manager will confirm the details of this meeting to you as soon as possible.]

Option Two – First/Final Written Warning

Having considered all of the evidence provided at the hearing, the panel has made the following decisions in relation to each allegation. I will list the allegations individually and outline the rationale and conclusion for each.

[List allegation individually, outline the rationale for decision and include decision on each of the allegations (i.e. founded or unfounded) making reference to mitigating circumstances if applicable].

Given the above, the panel has decided that you should be issued with a [first/final] written warning. This warning will remain on your file for [6/12] months.

In Cases of Safeguarding Allegations

[As this warning relates to an allegation of safeguarding of children/vulnerable adults then it will remain on your file until you reach normal retirement age or for a period of 10 years from the date of the allegation, whichever is longer.]

As a result of the outcome of the hearing, the authority will expect an immediate improvement in your conduct. [\[Include details of the required improvements.\]](#) If you fail to demonstrate an acceptable improvement, or if any offence of a different nature occurs during the life of this warning, the likely consequence is that further formal disciplinary action will be taken against you. This could include the termination of your employment.

You have the right to appeal against this decision. To do so you should complete and return the appeal registration form to me within 7 working days of receiving the outcome letter. You will be sent a copy of the Appeal Policy along with that letter.

[In cases of alleged unacceptable behaviour \(bullying and/or harassment\):](#)
[\[You are required to attend a **mandatory** meeting to discuss and agree strategies to assist you and \[name\] to re-establish your working relationship. Your manager will confirm the details of this meeting to you as soon as possible.\]](#)

Option Three - Summary Dismissal

Having considered all of the evidence provided at the hearing, the panel have made the following decision in relation to each allegation. I will list the allegations individually and outline the rationale and conclusion for each.

[\[List allegation individually, outline the rationale for decision and include decision on each of the allegations \(i.e. founded or unfounded\) making reference to mitigating circumstances if applicable\].](#)

Given the above, it is the panel's view that your actions constitute gross misconduct and therefore, you are summarily dismissed from the Council's employment with immediate effect.

In Cases of Safeguarding Allegations

[For Safeguarding posts - As a result of your dismissal, I must advise you that I will be informing the Disclosure and Barring Service who may wish to undertake their own investigation.]

You have the right to appeal against this decision. To do so you should complete and return the appeal registration form to me within 7 working days of receiving the outcome letter. You will be sent a copy of the Appeal Policy along with that letter.

Should you decide to appeal; the effect of the dismissal will still stand pending the outcome of the appeal hearing.

Option Four – Dismissal Following a Warning

Having considered all of the evidence provided at the hearing, the panel have made the following decision in relation to each allegation. I will list the allegations individually and outline the rationale and conclusion for each.

[\[List allegation individually, outline the rationale for decision and include decision on each of the allegations \(i.e. founded or unfounded\) making reference to mitigating circumstances if applicable\].](#)

On [date of previous letter] you were informed in writing that you had been given a final written warning in accordance with the Disciplinary Policy. In that letter you were advised that failure to improve your conduct or committing another act of misconduct, whether the act was of the same or different nature, could result in your dismissal.

Given the above, and the conclusion of the hearing, it is the panel's view that your conduct is not satisfactory and therefore, you are dismissed from the Council's employment. As this is not summary dismissal, you are entitled to [duration] paid notice from the date of the hearing and therefore your employment will terminate on [date]. You [are/are not] required to work this notice.

In Cases of Safeguarding Allegations

[For Safeguarding posts - As a result of your dismissal, I must advise you that I will be informing the Disclosure and Barring Service who may wish to undertake their own investigation.]

You have the right to appeal against this decision. To do so you should complete and return the appeal registration form to me within 7 working days of receiving the outcome letter. You will be sent a copy of the Appeal Policy along with that letter.

Should you decide to appeal; the effect of the dismissal will still stand pending the outcome of the appeal hearing.

Thank you once again for attending the hearing. You will be provided with an outcome letter confirming the decision of the panel. This will be posted to you as soon as possible following the delivery of this decision, and it is anticipated that this will be within 3 working days.



Grievance Policy and Procedure

1 Scope

This policy applies to all employees of Charnwood Borough Council. It also applies to students on placements with the Council, apprentices, volunteers and casual workers.

Where a grievance is raised by a Chief Officer, this procedure must be read in conjunction with the relevant JNC terms and conditions of employment and the Council's constitution.

Grievances from ex-employees may be considered at the Council's discretion. There will be no automatic right to a meeting in respect of such a grievance and any response that may be provided will be in writing only. This will also apply in situations where the employee's grievance was raised prior to them leaving the Council's employment but where it has not been possible to resolve the issue before their termination date.

2 Purpose

The purpose of the Council's Grievance Policy and Procedure is to provide a framework to assist employees to raise individual or collective complaints and to have those complaints resolved quickly, fairly and where appropriate as informally as possible.

3 Roles and Responsibilities

HR Services	HR Services will provide advice, coaching and support to managers on the application of the Grievance Policy and Procedure. HR will also act as panel members at hearings and will express a view on whether the case is founded and make recommendations about the appropriate outcome.
Decision Maker	Will make decisions about the most appropriate actions to be taken based on the evidence available.
Chair of the Panel	The Chair of the panel will manage the hearing and notify the employee of the decision. They will also normally present the case if the employee exercises their right to appeal against that decision.

Panel Members	Will support the Chair of the panel and express a view on whether the case is founded and make recommendations about the appropriate outcome.
Management Representative	A management representative will present the management case at a hearing. This will usually be the Investigating Officer, however this may be a different representative.
Democratic Services	Democratic Services is responsible for arranging hearings involving individuals employed under the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities.
Trade Union Representative or Work Colleague	To support and advise, if appropriate, the employee. At a hearing this may include presenting the employee's case, summarising and conferring with the employee and responding to points on behalf of the employee. The Trade Union or work colleague cannot answer questions put directly to the employee.

4 What is a Grievance?

Grievances may be concerned with a wide range of issues, including terms and conditions of employment, health and safety, working practices and environment.

This policy should not be used to raise grievances regarding:

- Statutory and voluntary deductions from pay (e.g. Income Tax, Pension contributions, National Insurance);
- Matters specifically covered by a separate procedure (e.g. harassment, bullying, disciplinary, whistle blowing);
- Matters that should properly fall under Collective Disputes and differences.

Grievances would normally relate to issues that are current. Should the complaint raised be related to historical issues, the reason for raising it after the event should be demonstrated as part of the complaint.

5 Informal Procedure

If an employee has a grievance relating to their employment, they should raise the matter verbally with their manager in the first instance. If the grievance relates to their manager, the employee should raise the issue with the next most relevant manager.

At this stage, attempts will be made by the manager to resolve the complaint informally. The manager will aim to meet with the employee within 5 days of the grievance being raised, except where circumstances do not allow. The purpose of

this meeting is to discuss the details of the complaint and how the employee feels the issue could be resolved. Following the meeting, the manager should provide the employee with a written record of the discussion and any actions agreed. If more than one service area is involved, then managers must work together to try and resolve the grievance informally and may meet employees together.

In some cases it may be appropriate for the manager or next most relevant manager to undertake an investigation where it is felt this is necessary to establish evidence that may be beneficial to either side. Further advice should be sought from Human Resources in this circumstance.

Following the investigation the manager should meet with the employee as soon as possible to discuss the details of the investigation. The manager should provide the employee with a written record of the discussion and any actions agreed.

The involvement of a third party may assist in resolving the issue. The use of a third party to mediate or facilitate a solution is dependent on the agreement of all persons affected by the grievance. Any mediation/facilitation should be conducted over an agreed timescale after which the situation should be reviewed and a decision taken on whether the matter has been resolved.

An employee who wishes to raise a grievance can seek confidential advice and support from one or more of the following sources:

- AMICA - Counselling Service;
- Trade Union;
- Independent manager;
- Work colleague.

6 Formal Procedure

If an informal approach does not resolve the issue or the complaint is too serious to be dealt with informally, the employee should submit the grievance in writing to their manager (or the next most relevant manager if the grievance relates to their manager).

The complaint should set out, in detail, the nature of the grievance, the names of any witnesses and what action has already been taken to attempt to resolve the issue. Any supporting evidence should be provided with the complaint. It should also identify how the employee feels the issue could be resolved.

On receipt of a grievance, the manager should:

- Determine whether the grievance applies to more than one person. If so, refer to the [Collective Grievance Procedure](#) for further information;
- Review what action has already been taken by the complainant to resolve the situation. If [informal action](#) has not been attempted but would be considered appropriate, the employee should be encouraged to consider pursuing this option before a grievance hearing is arranged;
- In some cases it may be appropriate to undertake an investigation, prior to a formal grievance hearing, with an independent investigator appointed, where it is felt formal investigation is necessary to establish evidence that may be beneficial to either side. Further advice should be sought from Human Resources in this circumstance.
- Should it be determined that an independent investigator be appointed, an investigation will be undertaken establishing the facts of the case. An investigation report will be produced by the investigator for consideration by a **Decision Maker** who is a Senior Manager (**PO Grade or above**).
- The Senior Manager will consider the recommendations outlined within the report, and discuss the findings with the complainant. If the complainant is not satisfied with the outcome of the investigation, they can continue to a grievance hearing and should confirm this in writing to their manager (or the next most relevant manager if the grievance relates to their manager).
- Acknowledge receipt of the complaint and invite the employee to attend a formal grievance hearing (allowing 10 working days' notice of the hearing date). A template letter is available by clicking [here](#).

7 Grievance Hearing

The manager is responsible for organising the grievance hearing, including arranging a panel, booking rooms, refreshments and an externally sourced note taker by contacting Human Resources. The employee has the right to be accompanied at the hearing by a work colleague or Trade Union representative. Wherever possible, arrangements for the date of the hearing should be made in consultation with the employee and their representative. Where an employee's chosen representative is unable to attend on the arranged date of the hearing the employee can select another date within 5 working days of the original hearing date. If the employee fails to attend the re-arranged hearing without there being exceptional circumstances, the hearing will go ahead in their absence.

If the employee is disabled, or English is not their first language, it may be necessary to provide special arrangements for the hearing such as specific access facilities, a hearing loop or an interpreter. The manager should consider this when making arrangements for the hearing.

The grievance will be heard by a panel of 3 officers, chaired by a Senior Manager (PO grade or above) and accompanied by another Senior Manager and a representative from Strategic HR.

Any additional evidence which the employee wishes to be considered should be made available to the panel no later than 5 working days prior to the grievance hearing. This includes the names of any witnesses.

At the hearing the employee will be asked to present the facts of their case to the panel and call any witnesses. The manager will then have the opportunity to ask questions of the employee and/or any witness, following which the panel may also do the same.

The manager will then have the opportunity to respond to the employee's case, putting forward any information which they feel is relevant and calling any witnesses. This should include any steps taken by the manager to resolve the grievance informally or details of any investigation if applicable. The employee will then have the opportunity to ask questions, following which the panel may do the same.

Full details of how the grievance hearing will be conducted can be found at [Appendix A](#).

8 Potential Outcomes

Potential Outcomes

There are two possible outcomes open to the panel:

- Uphold the grievance - This may mean that arrangements should be made to implement, where appropriate, the employee's desired outcome or the panel may choose to make its own recommendations;
- Not to uphold the grievance - The employee should be made aware of the rationale for this decision.

The panel may also wish to make recommendations on other implications arising from the case (e.g. training, review relevant policies and/or procedures, etc.).

The decision and any remedy will normally be conveyed verbally to the employee at the end of the grievance hearing. However, where complex issues are being addressed it may be necessary for the grievance panel to reconvene within an agreed timescale to conclude their deliberations.

The outcome of the hearing should be confirmed in writing to the employee as soon as possible after the hearing. A template letter is available by clicking [here](#). A copy of the letter and the notes from the hearing should be retained on the employee's personal file.

9 Right of Appeal

The complainant has the right to appeal against the outcome of the grievance hearing. An [appeal registration form](#) must be submitted to the chair of the panel within 7 working days of receiving the hearing outcome letter. When completing the registration form the employee should specify the grounds for their appeal (e.g. procedural flaw, new evidence) and attach any supporting evidence.

The appeal hearing should be convened as soon as possible and will be conducted in accordance with the [Appeal Policy and Procedure](#).

The appeal panel will consider the points raised in the appeal registration form and whether the original conclusion reached by the grievance hearing panel was appropriate. New evidence will only be considered if it is relevant and there was a good reason why it was not provided as part of the original hearing.

The format of the appeal hearing will be in line with the [Appeal Policy and Procedure](#). The chair of the grievance hearing will present their reason for reaching their decision and may call the management representative as a witness. The employee may be accompanied by a work colleague or Trade Union representative.

The appeal process is the last stage of the Grievance Procedure therefore the decision of the appeal panel is final.

10 Collective Grievance Procedure

The procedure above is also intended to cover a collective grievance held by more than one employee about a particular issue regarding their employment. The scope and principals detailed at the start of this document apply in addition to the following points:

- The procedure is designed so that the stages of an individual grievance are the same as those for a collective grievance. This ensures that should an individual's grievance become a collective grievance, it will not be necessary to revert to the beginning of the procedure.
- Where the grievance involves a number of employees, a nominated spokesperson of the group and/or Trade Union representative(s) will present the case on behalf of their colleagues. Information on the numbers of employees involved in the collective grievance and the areas involved should be provided to the manager.
- This procedure for collective grievance is based on acceptance that, industrial action will be used as a last resort and after all steps in this procedure have been exhausted.
- Both parties will accept that normal working practices prevailing prior to the grievance shall continue to operate pending settlement, the "status quo", and both parties will co-operate to ensure that the spirit of this clause is maintained, except where to continue the existing practice would constitute a hazard, or where statutory obligations apply.

11 Grievances raised during the Disciplinary Process

The Council's Grievance Policy should not be used for appeals against disciplinary decisions, as this is the purpose of the [Appeal Policy](#). If, however, the employee has a complaint against the disciplinary process during the course of a disciplinary case, they may raise a grievance under this policy. If necessary, the disciplinary procedure may be suspended for a short period until the grievance can be considered. There may be a number of possible outcomes from this including:

- Application of other formal action such as disciplinary against another employee / manager;
- Instigation of other separate investigations which should not prevent the current issue being progressed wherever possible;
- That another manager is brought in to deal with the disciplinary case.

Appendix A - Grievance Hearing Format

The format of the grievance hearing will be as follows:

1. The Chair of the panel will introduce those present, outline the procedure to be followed, and inform the employee and their representative that they may ask to adjourn the hearing at any time. An employee who is not accompanied will be reminded of their right to representation.
2. The employee and/or their representative will present their case to the panel, including any new evidence.
3. If applicable, the employee and/or their representative may call witnesses (one by one) to support their case. The witness will be questioned initially by the employee and/or their representative, then the management representative may question the witness followed by questions from the panel.
4. The employee and/or their representative will conclude their case.
5. The management representative may question the employee and their representative on their case presentation.
6. The panel may question the employee and their representative on their case presentation.
7. The management representative will present their response to the employee's case, including any new evidence.
8. If applicable, the management representative may call witnesses (one by one) to support their case. The witness will be questioned initially by the management representative, then the employee and/or their representative may question the witness followed by questions from the panel.
9. The management representative will conclude their statement of case.
10. The employee and/or their representative may question the management representative on their case presentation.
11. The panel may question the management representative on their case presentation.
12. The employee and/or their representative will have the opportunity to sum up their case (no new evidence).
13. The management representative will have the opportunity to sum up their case (no new evidence).
14. The management representative, the employee and their representative will leave the room so that the panel can deliberate.
15. Having deliberated on the matters placed before them, the panel will reach their decision. Depending on the complexity of the case, it may be appropriate to ask all parties to wait and be recalled to be advised of the outcome. In other cases, it may be more appropriate for the panel to deliberate and to advise the employee

and subsequently the management side of the outcome, at a later date. If this is the case, the decision should be made within a reasonable timescale e.g. within a few days and the method of contacting the employee should also be agreed before the hearing is concluded.



Dignity and Behaviour in the Workplace Policy

1 Scope

This policy applies to all employees of Charnwood Borough Council, including those within their probation period. It also applies to individuals who may be working on behalf of the Council (e.g. placement students, volunteers, casual workers).

Complaints of unacceptable behaviour directed at an employee by a third party (e.g. contractors, agency workers, customers) are also covered by this policy and should be dealt with using the process detailed below under [Third Party Harassment](#).

2 Purpose

Charnwood Borough Council is committed to creating and maintaining a working environment where people are treated with courtesy, consideration and respect. Employees, and others working on the Council's behalf, are therefore required to conduct themselves in a professional and acceptable manner at all times.

This policy is designed to encourage employees to consider their own behaviour and how this may be perceived by others. It also provides examples of the types of behaviour that the Council considers unacceptable and sets out the informal and formal approaches that will be used to address such behaviour.

The Council's [Code of Conduct](#) sets out the minimum standards of behaviour expected from its employees. Managers and employees should ensure that they read this policy in conjunction with these documents.

3 Roles and Responsibilities

Managers and Employees	Have a responsibility to support the Council's commitment to create and maintain a working environment free of unacceptable behaviour.
HR Services	HR Services will provide advice, coaching and support to managers on the application of the Policy and Procedure. HR will also act as panel members at hearings and will express a view on whether the case is founded and make recommendations about the appropriate outcome.
Decision Maker	Will make decisions about the most appropriate actions to be taken based on the evidence available. They will also ensure that a mandatory meeting is held at the end of the process to re-establish working relationships

Dignity and Behaviour at Work Policy
Version 2015 v1
Agreed at: Personnel Committee
Date Agreed: 17/11/15

Investigating Officer	To conduct the investigation in a timely, confidential and objective manner
Chair of the Appeal Panel	The Chair of the panel will manage the hearing and notify the employee of the decision. They will also normally present the case if the employee exercises their right to appeal against that decision.
Appeal Panel Members	Will support the Chair of the panel and express a view on whether the case is founded and make recommendations about the appropriate outcome.
Trade Union Representative or Work Colleague	To support and advise, if appropriate, the employee. At a hearing this may include presenting the employee's case, summarising and conferring with the employee and responding to points on behalf of the employee. The Trade Union or work colleague cannot answer questions put directly to the employee.

4 What constitutes unacceptable behaviour?

Unacceptable behaviour is any unwanted action or behaviour which could reasonably be described as:

- Bullying - offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient;
- Harassment - unwanted conduct related to a relevant protected characteristic (i.e. age, disability, gender reassignment, race, religion or belief, sex, sexual orientation) which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual;
- Victimisation - subjecting a person to a detriment because they have, in good faith, made, or supported someone to make, a complaint of discrimination or harassment or given evidence in relation to a complaint.

Unacceptable behaviour does not necessarily have to be face-to-face; it can also be via telephone or written communications. The behaviour can be persistent or an isolated incident. Employees are able to complain of behaviour that they find offensive even if it is not directed at them. They need not possess the relevant characteristic themselves and can complain of behaviour they find offensive because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one, or are treated as if they do. It is the impact of the behaviour on the recipient which is important and, if the recipient feels that they have been subjected to unacceptable behaviour, the complaint must be taken seriously and, where appropriate, investigated.

Examples of the different types of unacceptable behaviour can be found in [Appendix A](#).

The Council is opposed to any incident or behaviour which could reasonably be classified as unacceptable behaviour, whether explicitly stated within the definitions contained within this policy or not. Incidents involving colleagues that take place outside of the work place (e.g. work-related social events held either on or off the Council's premises, bullying comments made via social media) will also fall within the remit of this policy.

5 Counter Complaints

Managers are responsible for appropriately managing an employee's behaviour or job performance where there are legitimate and justifiable reasons to do so. Carrying out these functions in a fair, firm and consistent manner does not constitute unacceptable behaviour, although it is recognised that some staff may feel stressed or anxious whilst the procedures are ongoing.

Managers who are using Council procedures to address an employee's performance, attendance or conduct will not be regarded as demonstrating unacceptable behaviour unless there is evidence to show that they have acted inappropriately. Where a complaint is solely or largely related to the commencement of these procedures, the manager's manager will meet with the complainant to discuss their concerns. The complaint will only be investigated further under this policy if evidence is provided which suggests that the manager has acted inappropriately or the concerns raised are not a consequence of the instigation of these procedures. Complaints that relate to disciplinary or performance management proceedings should be raised as part of those proceedings and/or any related appeal process.

6 How you can help prevent unacceptable behaviour

Both employees and managers have an important role to play in supporting the Council's commitment to creating and maintaining a working environment free of unacceptable behaviour. There are a number of steps that individuals can take to help do this, including:

- Being aware of how their own behaviour may be perceived by others and if necessary, changing it;
- Treating colleagues with dignity and respect;
- Taking a stand if inappropriate jokes or comments are being made;
- Making it clear to others if they find their behaviour unacceptable;
- Intervening, if possible, to stop unacceptable behaviour and providing support to recipients;
- Reporting unacceptable behaviour and supporting the Council in the investigation of any complaints.

Managers also have a particular responsibility to:

- Set a good example by their own behaviour;
- Ensure that employees are aware of the standards of behaviour that are expected of them;
- Intervene as early as possible to put a stop to unacceptable behaviour;
- Take complaints of unacceptable behaviour seriously and take appropriate action to address them.

7 What to do if you witness unacceptable behaviour

Anyone who witnesses behaviour which they deem to be unacceptable should take action rather than ignoring what they've observed. This could include:

- Speaking directly to the perpetrator of such behaviour to make them aware of how their behaviour has been perceived;
- Speaking directly to the recipient of such behaviour to offer support and encourage them to address the issue;
- Reporting their observations to their manager.

The individual should make a detailed note of the behaviour witnessed and the action they took as this may be required if they are asked to provide information as part of a formal investigation.

Managers who witness unacceptable behaviour, or have an issue reported to them, should ensure that they take action rather than dismissing the problem. Intervening at an early stage can put an end to behaviour and stop it escalating. Advice can be obtained from Human Resources.

Managers have a legal duty of care to protect their employees from unacceptable behaviour and should therefore ensure that they deal with any such complaints as quickly as possible. Failure to do this may result in action being taken against the Council or specific individuals.

If the recipient requests that no action is taken, the manager will need to assess the seriousness of the reported unacceptable behaviour and determine what the next steps should be (e.g. monitor the situation, speak to the individual concerned, instigate a formal investigation, etc.).

8 Informal Procedure

8.1 What to do if you feel you are being subjected to unacceptable behaviour

An employee who feels that they are being subjected to unacceptable behaviour may find it useful to discuss the details with an independent person (e.g. a work colleague, Trade Union representative, manager) in the first instance. Having a second opinion can help the employee to determine whether they have reacted reasonably or if they may have misinterpreted the situation.

If the employee still believes that they are being subjected to unacceptable behaviour, they should attempt to resolve the matter informally by raising it with the person subjecting them to the behaviour. The employee should explain that they found the behaviour offensive and/or unwelcome and request that it is not repeated. This initial approach can be made either in person, by email or by telephone. If the employee feels unable to make the approach on their own, they can ask their manager (or the next most relevant manager if the complaint is about their manager) to make the approach on their behalf.

Once the initial approach has been made, both parties should meet to discuss the situation and agree a way forward. Depending on the nature of the complaint, it may be beneficial for a third party (e.g. a manager) to be involved to help facilitate the meeting and reach a solution. If the matter involves employees from two different teams, consideration should be given to as to which manager will facilitate this meeting or whether it would be more appropriate to involve another independent manager. Human Resources can advise and support managers on this process.

In situations where a manager has become involved as a third party, that manager should ensure that all parties are clear on the outcome of the meeting. The agreed way forward should be confirmed in writing to the employee's. Managers should record any attempts to seek an informal resolution to the problem. This will include recording unsuccessful attempts to resolve the issue. Any attempts that have been declined should also be recorded, alongside the reasons for this.

It may be appropriate to consider other solutions, such as mediation. Individuals are therefore encouraged to engage in any mediation meetings offered during the informal or formal process in order to try and resolve the matter at the earliest opportunity. Human Resources can provide further advice on mediation.

The employee should keep a record of the action they have taken and the response. If the unacceptable behaviour continues or reoccurs, this information could be used as evidence in any formal investigation.

If an informal approach does not resolve the situation, or the complaint is too serious to be dealt with informally (e.g. threatening behaviour), the employee can raise a [formal complaint](#). In very serious cases, a criminal offence may have been committed and the employee may also wish to report the matter to the police as well as their manager.

Employees should note that any formal investigation may result in both parties being required to attend a mandatory meeting to agree strategies to repair their working relationship.

8.2 What happens if you are accused of unacceptable behaviour?

Dignity and Behaviour at Work Policy

Version 2015 v1

Agreed at: Personnel Committee

Date Agreed: 17/11/15

If an employee is approached informally about their behaviour, they should not simply dismiss the complaint without giving it consideration. Although there may be occasions where a complaint is found to be malicious, the employee should assume that any approach received is genuine until established otherwise.

As a way of resolving the matter informally, it may be necessary for both parties to meet to discuss the matter and agree a way forward. Possible outcomes of this meeting could include providing the other party with an apology, an explanation and/or reassurance that the behaviour won't happen again. Provided it is not repeated, no further action should need to be taken. Employees may want to discuss any complaint with their manager for advice and/or support.

However, if the behaviour continues after the informal approach or the complaint is of a serious nature (e.g. threatening behaviour) then it will be necessary to undertake a formal investigation under the [Formal Complaint Procedure](#), details of which are set out below.

8.3 What support is available to employees during the process?

Where a manager has been informed of an issue involving a member of their team, it is their responsibility to take steps to support the individual to resolve the matter informally. However, individuals may also benefit from seeking additional support from one of the following whilst the situation is being resolved. The following methods of support are available to the complainant and the alleged perpetrator:

- AMICA
- Trade Union (CBC recognised Trade Unions: Unison, GMB, UCATT)
- Independent manager;
- Work colleague.
- Advice from Human Resources in relation to policies.

9 Formal Complaint Procedure

If an informal approach does not resolve the issue or the complaint is too serious to be dealt with informally (e.g. threatening behaviour), a formal investigation will be undertaken. Any investigation will be handled in a manner that respects the confidentiality of those involved.

An employee who wishes to raise a formal complaint should do so in writing to their Head of Service. The Head of Service will be the Decision Maker in relation to the complaint, unless the Council considers it is inappropriate in the circumstances.

If a complaint relates to a Head of Service then any complaint should be made to the employee's Strategic Director. The Strategic Director will be the Decision Maker in relation to the complaint, unless the Council considers it is inappropriate in the circumstances. Any complaints in relation to Strategic Directors should be made to the Chief Executive. In these situations the Chief Executive will be the Decision Maker in relation to the complaint, unless the Council considers it is inappropriate in the circumstances.

The complaint should set out, in detail, the names of parties involved, the nature of their complaint, the date(s) and time(s) that any alleged conduct occurred, the names of any witnesses and what action has already been taken to attempt to resolve the issue. Any supporting evidence should be provided together with the complaint. It should also identify how the employee feels the issue can be resolved with the individual(s) involved. Requests for permanent redeployment will not ordinarily be considered at this stage. Employees should note that a copy of the complaint (excluding the names of any witnesses) will be provided to the alleged perpetrator at the start of the investigation process.

Generally it will be for an employee to decide whether they wish to raise a formal complaint. However, the Council has a duty to protect all employees and reserves the right to commence an investigation into complaints raised informally, even where the employee has not made a formal complaint, if it considers it appropriate to do so.

9.1 Confidentiality

Complaints of unacceptable behaviour will be dealt with sensitively and confidentiality will be maintained where possible. However, there may be circumstances in which this will not be possible. The alleged perpetrator will be made aware of the nature of the complaint. Details of the investigation and the names of the person making the complaint and the person accused must only be disclosed on a “need to know” basis. Breach of confidentiality in this respect may give rise to disciplinary action under the Council’s [Disciplinary Policy and Procedure](#).

Employees should note that information relating to a complaint by or about an employee may be placed on the employee’s personal file where the complaint is founded or where it is found that the complaint has been raised maliciously. A record of the outcome and of any notes or other documents compiled during the process may also be retained on the employee’s personal file.

10 Process

On receipt of a complaint, the Decision Maker should:

- Determine whether the complaint relates to a third party. If so, refer to the section on [Third Party Harassment](#) for further information;
- Review what action has already been taken by the complainant to resolve the situation. If [informal action](#) has not been attempted but would be considered appropriate, the employee should be encouraged to consider pursuing this option before any formal investigation is commenced;

- Acknowledge receipt of the complaint as soon as possible and advise the complainant that they will be invited to attend a Formal Investigatory Meeting;
- Contact the alleged perpetrator to advise them that a formal complaint has been made against them and that they will be invited to attend a Formal Investigatory Meeting. Where the alleged perpetrator is in another service or department, this contact should be made via the employee's manager;
- Consider whether the working arrangements (including reporting lines) of the complainant and alleged perpetrator need to be altered to limit their contact during the investigation or whether either employee may benefit from more [flexible working arrangements](#) whilst the issue is resolved;
- Remind both the complainant and the alleged perpetrator that support is available from AMICA.

10.1 Investigation

An 'Investigating Officer' will be appointed by the Decision Maker to establish the facts and explore the full details of the complaint.

The Council has created a pool of independent investigator who are employees identified through the PDR process and trained appropriately, to act as investigators. Wherever possible, the independent investigator should be employed in a different Service or Department to the complainant or the alleged perpetrator. If it is not possible for the Decision Maker to obtain an investigator from this pool, consideration should be given to appointing an external investigator. Human Resources can provide further advice on this.

If it is not possible to appoint an investigator from the pool of independent investigators, and it is not possible and/or considered inappropriate to appoint an external investigator the Decision Maker may appoint an alternative investigator. Wherever possible, this individual should be employed in a different Service or Department to the complainant or alleged perpetrator and should be someone with appropriate experience and no prior involvement the complaint. The investigation should be thorough, impartial and objective and carried out with sensitivity and due respect for the rights of all parties concerned. Human Resources are available to advise managers and/or support at investigations.

The Investigating Officer will endeavour to complete the investigation in a timely and confidential manner.

Managers should note that they have a legal duty of care to protect their employees from unacceptable behaviour and should therefore ensure that any such complaints are resolved as quickly as possible. Failure to do this may result in action being taken against the Council or specific individuals.

As part of the investigation, the Investigating Officer will:

- Check whether the alleged perpetrator has been spoken to previously, either informally or formally, about the same or similar behaviour;
- Interview the complainant to ascertain the full details of their complaint and obtain copies of any supporting evidence and/or names of witnesses;
- Interview the alleged perpetrator to give them the opportunity to respond to the allegations against them and provide copies of any supporting evidence and/or names of witnesses. The individual should be provided with a copy of the complaint;
- Interview any individuals who may have witnessed the alleged unacceptable behaviour or have evidence which either supports or contradicts the allegations. In order to maintain confidentiality, questions will only be asked of individuals who can provide evidence in relation to the alleged behaviour; speculative interviews of individuals will not be conducted. The importance of confidentiality will be emphasised to any witnesses interviewed;
- Adopt an objective and balanced approach to the gathering of information;
- Assess objectively whether they believe, on the balance of probabilities, that the alleged behaviour did take place and if it could reasonably be deemed as offensive.

In certain circumstances it may be necessary to suspend or temporarily redeploy the alleged perpetrator whilst the investigation is completed. Suspension is not a disciplinary penalty and does not pre-determine the outcome of the investigation. The details of any suspension should be confirmed in writing to the employee. There may also be situations where consideration will need to be given to temporarily redeploying or altering the reporting lines of the complainant (e.g. where a complaint is raised against a number of employees in the same team or the complaint is against the employee's manager).

The Council will also consider any requests made by the complainant or alleged perpetrator for changes to their working arrangements (e.g. change of hours) during the course of the investigation to avoid or minimise any contact between the relevant parties.

The Investigating Officer should refer to the [Disciplinary Guidance](#) for further information on undertaking an investigation, conducting formal investigatory interviews and producing an investigation report.

In situations where the complainant or the alleged perpetrator refuses to attend an investigatory interview due to ill health, it may be necessary, depending on the length of and reason for the absence, to conclude the investigation without this evidence. In such cases, it may be appropriate for an occupational health referral to be made regarding the employee's fitness to attend any meetings relating to the complaint.

11 Potential Outcomes

The Investigating Officer will produce a report for consideration by the Decision Maker as to what action should be taken. The standard of proof for any investigation and any subsequent disciplinary hearing will be “on the balance of probabilities”.

The potential outcomes of the investigation are:

- There is nothing to suggest that any unacceptable behaviour took place. In these circumstances no further action will be taken;
- It is believed that unacceptable behaviour took place and further action is required. Depending on the severity of the behaviour, it may be appropriate to deal with the matter informally (e.g. an apology, reassurance of no repeated harassment, training, counselling, instigating capability proceedings, as appropriate). However, in serious cases it will be necessary to refer the matter to a formal disciplinary hearing (see Stage 3 of the Disciplinary Policy for further information or the Probationary Policy for those within their probation period). It **will not** be necessary to undertake another investigation as the Investigating Officer’s report and evidence, including witness statements, can be used for the basis of the disciplinary. A copy of the Investigating Officer’s report should be included in the disciplinary hearing folder.

Regardless of the outcome of the complaint, the Council will consider how best to manage the relationship between the employee and persons concerned which may include some form of mediation or counselling. Any change to duties, working locations or reporting lines of one or both parties may be considered if appropriate and feasible.

Any employee who deliberately provides false information or otherwise acts maliciously in the course of an investigation may be subject to action under the Council’s [Disciplinary Policy and Procedure](#).

11.1 Confirming the Outcome of the Investigation

As soon as possible following the conclusion of the investigation, the Decision Maker should meet separately with the complainant and the alleged perpetrator to provide them with the outcome. During the meetings, the Decision Maker should provide a detailed summary of the investigation’s findings and confirm the outcome of the investigation and what action, if any, will be taken. The manager should be as transparent as possible, whilst taking into account an employee’s right to confidentiality. The contents of the discussion should then be confirmed in writing. A copy of the investigation report should **not** be provided to either party at this stage. If the matter progresses to a disciplinary hearing, the alleged perpetrator will be provided with a copy of the investigation report as part of the hearing paperwork.

12 Right of Appeal

The complainant has the right to appeal if they are not satisfied with the outcome of the investigation. An [appeal registration form](#) must be submitted to the Decision Maker within 7 working days of receiving the outcome letter. When completing the registration form the employee should specify the grounds for their appeal (e.g. procedural flaw, new evidence) and attach any supporting evidence.

The appeal hearing should be convened as soon as possible. For the majority of employees, the appeal will be heard by a panel of three officers, **chaired by a Senior Manager (PO grade or above) and accompanied by another Senior Manager and a representative from Strategic Human Resources.** However, appeals for those employed under the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities will be heard by a panel comprised of at least three elected Members

The appeal will not be a reinvestigation of the original complaint but rather a consideration of the points raised in the appeal and whether the original conclusion reached by the Decision Maker was appropriate. New evidence will only be considered if it is relevant and there was a good reason why it was not provided as part of the original investigation.

The format of the appeal hearing will be in line with the [Appeal Policy and Procedure](#). The Decision Maker will present their reason for reaching their decision and may call the Investigating Officer as a management witness. The employee may be accompanied by a work colleague or Trade Union representative.

12.1 Right of Appeal against Disciplinary Sanctions

Where the outcome of the investigation has been referred to a disciplinary hearing and a disciplinary sanction imposed, an employee has the right to appeal against that sanction. Further information can be found by clicking [here](#). (Disciplinary Guidance)

13 Re-establishing Working Relationships

In situations where the complaint has either not been upheld or the outcome is informal action, the alleged perpetrator and the recipient **must** attend a mandatory joint meeting to discuss what support or action is required to assist them to re-establish their working relationship. The Decision Maker should ensure that this meeting is scheduled to take place as soon as possible after the parties have been advised of the investigation outcome. A third party (e.g. manager, HR representative) should be involved in this meeting to help facilitate a solution.

The meeting should focus on agreeing strategies to assist the parties to resume and repair their working relationship. A potential outline of the meeting might include:

- Explaining the purpose of the meeting (i.e. it is not to revisit the complaint previously investigated, it is about moving forward);

- Identifying potential areas of concern and explore these with the parties;
- Encouraging open and honest communication;
- Confirming the key points agreed to help move forward.

13.1 Protection and Support for those involved

Employees who make complaints or who participate in good faith in any investigation must not suffer any form of retaliation or victimisation as a result. Anyone found to have retaliated against or victimised someone in this way will be subject to disciplinary action under the Council's [Disciplinary Policy and Procedure](#).

Any employee that believes that they have been subjected to any such treatment should inform their manager. If the matter is not resolved then a complaint may be made under this policy or the Council's [Grievance Policy and Procedure](#), as may be appropriate.

13.2 Malicious Complaints

If it is determined that an employee has made a complaint or given evidence that they know to be untrue, this may lead to disciplinary action being taken against them.

14 Third Party Harassment

The Council acknowledges that its employees may suffer unacceptable behaviour by users of its services. Unacceptable behaviour directed at an employee of the Council by a third party (e.g. customers, suppliers, contractors, agency staff, member of the public) should be reported immediately to the employee's manager.

The Council will investigate any complaint of unacceptable behaviour made by an employee against a third party and take appropriate action. The manager should investigate the allegation appropriately depending upon the circumstances of the complaint. The investigation should include speaking to the complainant and may include speaking to any witnesses or the alleged perpetrator if possible.

The Council's responses to unacceptable behaviour towards its employees by third parties may be restricted by the lack of applicable sanctions or by statutory duties to provide services. Within these restrictions, however, the following guidelines must be observed by all supervisors and managers of employees who have been subjected to unacceptable behaviour in the course of their employment, by a third party:

- Any employee who has been subjected to unacceptable behaviour must be dealt with sympathetically and supportively by management, and should be offered suitable counselling;
- Managers should deal explicitly with perpetrators with a view to withdrawing their services if appropriate;
- Where the complainant is likely to remain in contact/close proximity with the alleged perpetrator it may be appropriate to make a request to the contractor /

agency / supplier for the alleged perpetrator to be temporarily removed from the workplace if possible / appropriate;

- Only where the employee has requested a transfer or has asked not to deal with the third party again, and the Council provides a statutory service to the user, should substitution of staff be considered. Not every case can be covered by such advice and managers must use their discretion in appropriate circumstances. Further advice and support can be obtained from Human Resources.

APPENDIX A - Definitions of Unacceptable Behaviour

Unacceptable behaviour can occur in all forms of communications including face-to-face, written, visual, electronic, or telephone. The following list provides some examples of possible unacceptable behaviour; this list is not exhaustive:

Bullying

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

Possible examples of bullying include:

- Constantly criticised and subjected to destructive criticism;
- Spreading malicious rumours, or insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief);
- Subjected to nit-picking and trivial fault finding;
- Undermined, especially in front of others, overruled, ignored, sidelined, marginalised, ostracised;
- Isolated and excluded from what's happening;
- Singled out and treated differently;
- Belittled, degraded, demeaned, ridiculed, patronised, subject to disparaging remarks;
- Regularly the target of offensive language, personal remarks, or inappropriate bad language;
- Threatened, shouted at, humiliated;
- Set unrealistic goals and deadlines which are unachievable or are changed without notice;
- Have their responsibility increased but their authority removed;
- Denied information or knowledge necessary for undertaking work and achieving objectives;
- Either over-loaded with work without reason or when others have a much lesser workload, or have their work taken away.

Harassment

Harassment is unwanted behaviour related to a relevant protected characteristic which includes age, disability, gender reassignment, race, religion or belief, sex and sexual orientation or any other personal characteristic which is reasonably considered to have the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Harassment is normally characterised by more than one incident of unacceptable behaviour. One minor incident will not usually constitute harassment however, a series of incidents, particularly where an employee has expressed a dislike of such behaviour and has asked for it to stop or just one incident if it is sufficiently serious (e.g. threatened or actual violence or threats of dismissal) may constitute harassment.

Harassment includes the following:

- **Harassment based on association.** It is unlawful to discriminate against or harass any individual for association with another individual who has a protected characteristic;
- **Harassment based on a perception.** It is unlawful to discriminate against or harass any individual based on a perception that he or she has a particular protected characteristic;
- **Third party harassment.** Employers can be found liable for harassment of an employee in the course of his or her employment, based on any of the protected characteristics.

Possible examples of harassment include:

Age Discrimination

- Ridiculing or demanding behaviour focused towards people because of their age.

Disability Harassment

- Mimicking the effect of a disability or speech impairment;
- Ostracising, “freezing out”, ignoring and staring;
- Making fun of a disability;
- Use of inappropriate terms;
- Inappropriate personal questions/comments about a disability;
- Belittling or patronising comments/nicknames;
- Moving a wheelchair without the user’s agreement;
- Practical jokes, e.g. hiding a disability aid;
- Touching a visibly impaired person, to annoy.

Sexual Harassment

- Unwanted non-accidental physical contact ranging from unnecessary touching, patting or brushing against a colleague’s body, to assault and coercing sexual relations;
- Unwelcome sexual advances, offensive flirting, propositions or pressure for sexual activity, continued suggestions for social activity within or outside the workplace, after it has been made clear that such suggestions are unwelcome;
- The display of pornographic or sexually suggestive pictures, objects or written materials;
- Leering, whistling or making sexually suggestive comments or gestures, innuendoes or lewd comments;
- Conduct that denigrates or ridicules or is intimidatory or physically abusive because of his or her sex, such as derogatory or degrading abuse or insults which are gender related and offensive comments about appearance or dress;
- Harassment of a sexual nature related to gender reassignment;

- Making decisions on the basis of sexual advances being accepted or rejected.

Racial Harassment

- Conduct that denigrates or ridicules a colleague because of his or her race, such as derogatory remarks, graffiti, jokes. Such conduct can be verbal or physical;
- The display or sending of offensive letters or publications; threatening behaviour;
- Being “frozen out” of conversations;
- Jostling or assault, or other non-accidental physical contact;
- Derogatory nicknames or racial name calling or jokes.

Homophobic Harassment

- Conduct that denigrates or ridicules a colleague because of his or her actual or presumed sexuality, such as derogatory remarks, graffiti, jokes. Such conduct can be physical or verbal;
- The display or sending of offensive letters, publications, threatening behaviour;
- Being “frozen out” of conversations;
- Jostling or assault, or other non-accidental physical contact;
- Derogatory nicknames or homophobic name calling or jokes;
- Intrusive or inappropriate comments about someone’s personal life or family circumstances.

Religious Discrimination

- Discriminatory behaviour which fails to acknowledge the rights or needs of people with different beliefs or practices.

Victimisation

- Where a person is treated less favourably than other people because, for example, that person has brought proceedings, given evidence, or complained about the behaviour of someone who has been harassing or discriminating against them.

Aids/HIV

- Harassment, ridicule or exclusion of people, due to their real or suspected infection with Aids/HIV.