

Public Document Pack



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PUBLIC

To: Members of the Appointments and Conditions of Service Committee

Wednesday, 28 September 2022

Dear Councillor,

Please attend a meeting of the **Appointments and Conditions of Service Committee** to be held at **9.00 am** on **Thursday, 6 October 2022** in Committee Room 1, County Hall, Matlock, the agenda for which is set out below.

Yours faithfully,

A handwritten signature in black ink that reads 'Helen E. Barrington'.

Helen Barrington
Director of Legal & Democratic Services

AGENDA

PART I - NON-EXEMPT ITEMS

1. To receive apologies for absence
2. To receive declarations of interest (if any)
3. To confirm the non-exempt minutes of the meeting held on 24 May 2022 (Pages 1 - 6)
4. Interim Recruitment and Retention Payments Policy (Pages 7 - 38)

5. Grievance Procedures for Teachers employed by the Local Authority and not attached to schools (Pages 39 - 72)

PUBLIC

MINUTES of a meeting of the **APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE** held on Tuesday, 24 May 2022 at Committee Room 3, County Hall, Matlock.

PRESENT

Councillor B Lewis (in the Chair)

Councillors S Spencer, J Dixon, R George, S Hobson, T Kemp and S Swann.

Apologies for absence were submitted for Councillor R Flatley.

1/22 TO RECEIVE DECLARATIONS OF INTEREST (IF ANY)

There were no declarations of interest.

2/22 TO CONFIRM THE MINUTES OF THE MEETING HELD ON 3 NOVEMBER 2021

RESOLVED:

That the minutes of the meeting held on 3 November 2021 be confirmed as a correct record and signed by the Chairman.

3/22 CHIEF EXECUTIVE, CHIEF OFFICER, LOCAL GOVERNMENT SERVICE, SOULBURY, DEGREE AND HIGHER APPRENTICE 2021-22 PAY AGREEMENT

The Committee was asked to note the implementation of a one year pay agreement as follows:

The national pay agreement for Local Government Service employees:

- A one year pay deal effective from 1 April 2021
- 2.75% pay award on pay grade 1/2 at to achieve a minimum pay rate of £9.50 per hour
- 1.75% pay award on grade 3 to grade 16

The national pay agreement for Chief Executives and Chief Officers:

- A one year pay deal effective from 1 April 2021
- 1.5% pay award on all pay points for chief executives and chief officers (grade 17 and above)

The national pay agreement for Soulbury employees:

- A one year pay deal effective from 1 September 2021
- 1.75% pay award on all pay points

RESOLVED:

That the Committee notes the pay agreement applied as outlined within the report.

4/22 APPLICATION FOR THE DERBYSHIRE ADULT COMMUNITY EDUCATION SERVICE (DACES) PAY OFFER 2021-22 TO BE AWARDED AT 1.75%

The Committee was asked to consider and approve a one year pay agreement at 1.75% for Derbyshire Adult Community Education Service (DACES) employees for 2021-22.

RESOLVED:

In line with the pay agreement for Local Government Services, it was agreed that the DACES staff on different pay terms are given a pay agreement of 1.75% from 1 September 2021 – 31 August 2022.

5/22 REVISED EMPLOYMENT PROCEDURE: ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY

The Committee was asked to approve the revised Attendance Management and Ill Health Capability procedure.

The updated procedure was aligned to the Council's Wellbeing Strategy as a supportive measure to both managers and employees. Similarly, the Council's approach to Modern Ways of Working had also been considered when making amendments to the procedure. The procedure had now been revised and developed in line with ACAS guidance and the Equality Act 2010 and took account of operational experience and requirements.

The revised procedure which was attached at Appendix 2 to the report included detailed manager guidance to assist implementation. Following feedback from the recognised trade unions, further work would be undertaken to develop employee guidance, including employee responsibilities, signposting to relevant resources and support they could expect from their manager. The main changes to the procedures were detailed in the report.

RESOLVED:

That the Committee approves the revised Attendance Management and Ill Health Capability Procedure which will be implemented with effect from 1 June 2022.

6/22 INTERIM PERFORMANCE DEVELOPMENT REVIEW (PDR)

FRAMEWORK 2022-23

A report was received outlining the performance management process for senior leaders in the form of a Performance Development Review (PDR) framework for roles at grade 14 and above.

Aligned to the Council's People Strategy and following a review of the current My Plan process, a trial of a revised approach for senior leaders was launched. The approach aimed to address some of the key feedback from stakeholders with regard to the My Plan process.

The trial of the PDR framework had commenced in 2021-22 and would continue into 2022-23 for colleagues at grade 14 and above (including Executive Directors). The PDR framework aimed to enable everyone to understand how they contributed to the organisation's success and link their individual objectives to the Council and service plans.

RESOLVED:

That the Committee note the interim PDR framework currently being trialled by all senior leaders at grade 14 and above and the intention to review the approach for 2023-24.

7/22 MANAGING DIRECTOR PERFORMANCE APPRAISAL

In June 2019, the ACOS committee was presented with an Executive Director appraisal process which set how the Leader of the Council would undertake the performance appraisal of the four Executive Directors at that time. Following the approval of the revised Senior Officer leadership in September 2021 and the introduction of the Managing Director role to the Council's structure with effect from 1 January 2022, it had therefore been necessary to develop a new Managing Director Appraisal Policy. The Managing Director would now assume responsibility for undertaking Performance Appraisal for the four Executive Directors.

RESOLVED:

That the Committee:

- a) approves the Managing Director Appraisal Process;
- b) notes the performance appraisal of the Executive Directors be undertaken by the Managing Director with effect from 1 June 2022; and
- c) proposes that the terms of reference for ACOS be amended as detailed in the report and referred to the Governance, Ethics and Standards Committee and then full Council for approval.

8/22 DERBYSHIRE COUNTY COUNCIL'S SENIOR OFFICER

ACCOUNTABILITY FRAMEWORK

A report had been submitted to Full Council in September 2021 relating to the proposal to introduce a permanent senior officer reporting model. Full Council had approved the Director of Organisation Development and Policy to commission an independent review of the council's senior pay and grading framework which was undertaken by Korn Ferry.

An ACOS working group and trade union workstream had considered information relating to the senior accountability framework taking into account the independent report from Korn Ferry.

Korn Ferry supported the Council to develop level descriptors providing a high-level description and more detailed descriptors. The level descriptors would provide the Council with a framework to enable clarity on role boundaries and to ensure accountability levels were clearly defined between the Managing Director, Executive Directors, Directors and Assistant Directors.

Korn Ferry's remit included the provision of market pay data and development of a grading structure. The level descriptors and pay benchmarking data were provided to enable an effective pay and grading structure to be created, however, the ACOS working group was of the view that the pay and grading structure should not be reviewed for senior roles in isolation to the remainder of the workforce.

All roles evaluated had standardised collective leadership responsibilities within the job and person profile to ensure synergy and consistency across the profiles. The job evaluation outcomes undertaken by Korn Ferry demonstrated that reference levels remained appropriate based on the current role portfolios.

RESOLVED:

That the Committee:

- a) approves the adoption of the level descriptors for future use in job design to provide a consistent basis and framework for accountabilities;
- b) supports the development of clear service level agreement with Korn Ferry for future evaluations;
- c) approves that the standardised collective leadership responsibilities within job and person profiles used in this review be utilised for future roles developed, evaluated and advertised to ensure consistency;
- d) agrees that the review of the senior pay and grading framework is complete and that no changes to the pay and grading structure will be made at this time for the reasons set out in the report; and

e) agrees that an update report will be submitted to Full Council at its meeting on 13 July 2022.

9/22 EXCLUSION OF THE PUBLIC

To move that under Section 100(a)(4) of the Local Government Act 1972 that the public be excluded from the meeting for the following items of business on the grounds that in view of the nature of the business, that if members of the public were present exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 would be disclosed to them and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10/22 TO RECEIVE DECLARATIONS OF INTEREST (IF ANY)

There were no declarations of interest.

11/22 TO CONFIRM THE EXEMPT MINUTES OF THE MEETING HELD ON 3 NOVEMBER 2021

RESOLVED:

That the exempt minutes of the meeting held on 3 November 2021 be confirmed as a correct record and signed by the Chairman.

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FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE

6 OCTOBER 2022

Report of the Director of Organisation Development & Policy

Interim Recruitment & Retention Payments Policy

1. Purpose

- 1.1 To seek approval of the Interim Recruitment and Retention Payments Policy which is attached at Appendix 2. This proposed policy expands the Market Supplement Policy to include the ability for the Council to offer recruitment and retention payments.
- 1.2 To seek approval to delegate decisions on individual recruitment and retention payments to the Head of Paid Service, who will consult with the Section 151 Officer, Monitoring Officer, Director of Organisation Development and Policy and the relevant Executive Director to inform the decision.

2. Information and Analysis

- 2.1 At Full Council on 13 July 2022 the Council's Pay Policy Statement (PPS) was updated to enable greater flexibility to apply recruitment and retention payments. Members were advised that, to support the making of recruitment and retention payments, a clear framework would be established. That framework has now been developed and incorporated into the Market Supplement Policy. The policy has been renamed Interim Recruitment and Retention Payments Policy which is attached at Appendix 2
- 2.2 Without developing a clear framework for considering applications there may be inconsistent application, which over time would weaken the

Council's material factor defence, create higher equal pay risk and could lead to employee relations issues.

2.3 The current Market Supplement Policy has been revised and re-named as outlined in section 2.1. The revised policy includes three additional types of recruitment and retention payments which may be considered where there is clear evidence that recruitment and retention issues are impacting on service delivery (which may cause financial, legal and reputational risk to the Council) providing all other non-pay avenues have been explored and discounted. Full details of the payments are outlined within the policy however they are briefly summarised below:

– **Welcome payments (Item 2.3 in the Policy)**

Welcome payments are a one-off lump sum recruitment incentive payment made to eligible successful candidates on appointment to the Council. Welcome payments are made on the agreement that employees will remain in employment in the eligible role for the duration of the qualification period.

– **Retention payments (Item 2.4 in the Policy)**

Retention payments are similar to welcome payments but are paid to eligible employees following completion of a specified period of service. The revised policy allows the flexibility to use welcome and retention payments together, i.e. a welcome payment on joining the council and a retention payment after a specified period of service, or a series of retention payments e.g. at 12 months and 24 months.

– **Recommend a friend payments (Item 2.5 in the Policy)**

Recommend a friend payments (up to £100) may be paid to employees on grade 14 or below who recommend an external candidate for a specified role with the council to support recruitment to hard to fill roles. The payment may be made to the referring employee once the successful candidate has completed 6 months service in that role.

2.4 Market supplement payments are appropriate where market data indicates that the rate of pay for a defined post or group of posts falls below the required level in relation to the comparator market. The additional payment types included in the draft policy enable the council to consider recruitment and retention payments where the market data does not support a market supplement but there is clear evidence of failure to recruit and/or retain suitably skilled staff causing serious risk to service delivery.

2.5 The amended policy, incorporating welcome payments, retention payments and recommend a friend payments is being positioned as an

interim policy to enable the Council to assess the effectiveness of the initiatives in improving recruitment and retention and to monitor how the national and political position impacts our pay line and therefore the necessity of the policy.

- 2.6 The ACOS Committee is asked to approve the Interim Recruitment and Retention Payments Policy noting that such payments are restricted to circumstances where there is clear evidence of failure to recruit and retain suitably skilled staff causing serious risk to service delivery.
- 2.7 In addition, the ACOS Committee is asked to consider the delegation of decision-making in respect of the application of the welcome payments, retention payments and market supplement payments to the Head of Paid Service, who will consult with the Section 151 Officer, Monitoring Officer, Director of Organisation Development and Policy and the relevant Executive Director to inform the decision. It is recommended for this delegation to be applied to enable the Council to respond efficiently to current recruitment and retention issues that may arise. Where the decision takes the total remuneration for a post in excess of £100,000 per annum or where the application relates to the Head of Paid Service the decision to apply a welcome payment, retention payment or a market supplement must be determined by Full Council.
- 2.8 Welcome payments, retention payments and market supplements will be payments which are made on an objective basis to a specific group of employees where it is considered by the decision-maker that the roles meet specific requirements as set out in the policy and that the payment is appropriate in light of the identified risks of making and of not making the payment. Therefore, these are policy decisions which, under the Constitution, are the responsibility of the ACOS Committee. In accordance with the Constitution, the Committee is able, to consider delegating the decision-making in respect of these payments to a sub-committee or officer.
- 2.9 The recommend a friend payment is made to specific individuals who meet designated eligibility criteria as set out in the policy. Therefore, this would be a payment made to an individual in compliance with corporate employment policies and consequently fall within the delegations under the general staffing conditions as set out within the Constitution at part A4 of Appendix 1. It would be an officer decision and a matter for Executive Directors as to payments in respect of individual cases.
- 2.10 For consistency, it is suggested that Executive Directors consider the making of these payments are further delegated for approval to the

Head of Service applicable to the service area that wishes to apply these payments. The Head of Service is the budget holder and therefore can assess the appropriateness of applying the payment in consultation with the Recruitment Manager. This would then need to be included in individual departmental schemes of delegation. However, this would be a matter for consideration by Executive Directors.

3. Consultation

- 3.1 Consultation on the Interim Recruitment and Retention Payments Policy has taken place with the joint trade unions. Trade unions raised concerns that the policy does not fall under the usual policy review i.e. 3 year cycle and therefore it is proposed that the policy will be reviewed after 12 months to assess the effectiveness of the initiatives, subject to ACOS agreement.
- 3.2 It was also confirmed to the joint trade unions that processes will be established to monitor payments (as with current market supplement payments) and that regular analysis and reporting of 'recommend a friend' payments would be shared with the joint trade unions via the Reward and Resourcing workstream.
- 3.3 The joint trade unions sought clarification on whether agency workers who work more than 12 weeks should receive recruitment and retention payments, and specifically recommend a friend payments. As outlined in the Equalities Impact section in Appendix 1 at 5.2, such a payment to agency workers is specifically excluded by the relevant legislation and therefore, agency workers will not qualify for this payment

4. Alternative Options Considered

- 4.1 The Council could determine not to implement a policy. Not having such a policy would not prevent consideration of recruitment and retention payments as outlined in the Councils Pay Policy Statement, however these would be considered without a framework in place. This would increase the equal pay risk to the council and challenge from other services as applications would be considered without criteria in place and this could therefore lead to inconsistencies.
- 4.2 Alternatively the Council could decide not to make recruitment and retention payments. However, the Council has already agreed to the ability to make such payments within the Pay Policy Statement. Therefore, a refusal to consider such payments under any circumstances would not be appropriate. Furthermore, without the flexibility to consider these payments, the Council will continue to

encounter issues with recruitment and retention for specific occupational groups which ultimately will impact on the ability to provide required services which could result in financial, legal or reputational risk to the Council.

- 4.3 The recommended approach of implementing an Interim Recruitment and Retention Payments Policy incorporating welcome payments, retention payments and recommend a friend payments provides a clear framework for applications to be assessed against, ensuring they are considered consistently and the Council has a clear rationale for applying the payment and is considered to be the most appropriate option.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 None

7. Appendices

- 7.1 Appendix 1 – Implications.
7.2 Appendix 2 – Interim Recruitment & Retention Payments Policy

8. Recommendation(s)

That Committee:

- a) Approves the draft Interim Recruitment & Retention Payments Policy
- b) Agree that decisions to award a recruitment or retention payment including welcome payments, retention payments and market supplement payments under the policy be made by the Head of Paid Service, who will consult with the Section 151 Officer, Monitoring Officer, Director of Organisation Development and Policy and the relevant Executive Director to inform the decision. Where the decision takes the total remuneration for a post in excess of £100,000 per annum or where the application relates to the Head of Paid Service the decision to apply a welcome payment, retention payment or a market supplement must be determined by Full Council.

- c) Agree that decisions to apply the recommend a friend payment is approved by the Head of Service applicable to the service area that wishes to apply the payment to an advertising campaign in consultation with the Recruitment Manager.

9. Reasons for Recommendation(s)

- 9.1 To support the recruitment and retention of suitably skilled employees where there is serious risk to service delivery considering the financial, legal and reputational risk to the Council.
- 9.2 To enable the Council to be responsive to the market across all sectors and job roles when appropriate.

Report Author:

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Appendix 1

Implications

Financial

- 1.1 Directors/Heads of Service will identify funding for proposed recruitment and retention payments.
- 1.2 The introduction of a recruitment and retention payment does increase the financial risk of settling an equal pay claim however, providing the Council has a clear material factor defence, this risk is mitigated.
- 1.3 If additional budget is required to pay for a retention, welcome or market supplement payment this may need additional approvals through cabinet in line with the expenditure of the payments.

Legal

- 2.1 The Council needs to ensure that any payments under the Interim Recruitment and Retention Payments Policy do not expose it to potential equal pay claims under the Equality Act 2010. Recruitment and retention payments to specific groups could result in a difference in the pay of men and women who are carrying out work which has been rated as equal value under the Hay job evaluation scheme.
- 2.2 The Council may have a defence against an equal pay claim if it can be shown that the difference in pay can be explained by a 'material factor' that does not involve direct or unjustified indirect sex discrimination. The Council would need to demonstrate that (1) the reason for the payments was genuinely due to the difficulty in recruiting to or retaining staff in, the specified role(s); (2) there is a real need and impact upon the services provided by these roles caused by the difficulty in recruiting and/or retaining staff and (3) that the payments are reasonably necessary to improve the recruitment and retention, and likely to achieve positive results.
- 2.3 Any payments should be reviewed to ensure that the relevant conditions that necessitate the payments remains in force and do not expose the Council to unforeseen risk. The material factor defence can be reviewed to ensure it remains relevant. If challenged, the Council will need to satisfy a tribunal that any recruitment and retention payment reflected a genuine need to pay the retention payment to address an on-going issue.

- 2.4 Under the terms of reference, the ACOS Committee is required to approve corporate employment policies, to take key policy decisions in relation to equal pay, single status, job evaluation and market supplement payments and to determine the standard terms and conditions on which all staff hold office. Therefore, it is appropriate for this policy to be considered by the ACOS Committee.
- 2.5 Further legal considerations regarding decision-making and the Constitution are as outlined in the report.

Human Resources

- 3.1 Consultation has taken place with the joint trade unions on the development and implementation of the draft policy as outlined in section 3 of the report.
- 3.2 The policy will be reviewed when it has been in place for 12 months taking into account the national position and the effectiveness of the policy's initiatives.
- 3.3 Eligible employees will be provided with full details of the terms and conditions around any agreed recruitment and retention payments.
- 3.4 Consideration will be given to the effect on related employee groups and the Council will engage with recognised trade unions on all applications.
- 3.5 The effectiveness of recruitment and retention payments will be monitored to assess the impact on recruitment and retention and to ensure they are applied in a consistent and non-discriminatory manner.
- 3.6 Recruitment and retention payments will be aligned with the Council's People Strategy, considered against the total reward package and long-term pay strategy and form part of a cohesive approach to addressing recruitment and retention issues across the Council

Information Technology

- 4.1 None

Equalities Impact

- 5.1 The Equality Impact Assessment (EIA) carried out for the existing Market Supplement Policy will continue to apply to the Interim Recruitment & Retention Payments Policy. The revised policy continues to require that an EIA is carried out for each application to

ensure there is no disadvantage to any protected groups when considering recruitment and retention payments and to ensure compliance under the Equality Act 2010.

- 5.2 Recruitment and retention payments are payable to fixed term and permanent employees. Self employed, agency workers, relief workers and individuals who are seconded into the council from external agencies are not eligible. After an agency worker has been in a job for 12 weeks they qualify for equal rights as someone who is employed directly including equal pay. Pay under the Agency Worker Regulations is defined as “*any sums payable to a worker of the hirer in connection with the worker’s employment, including any fee, bonus, commission, holiday pay or other emolument referable to the employment, whether payable under contract or otherwise...*” but excluding certain payments or rewards. Certain bonuses will be payable to agency workers for example commission linked to sales targets, however, bonuses designed to reward loyalty and service to the organisation, not based on individual performance are not included in the definition of pay under the Agency Worker Regulations. Therefore, agency workers are not eligible for recruitment and retention payments.
- 5.3 Consideration has been given to whether employees who are absent due to sickness during the qualifying period should become ineligible for a retention payment or if the period should be extended to offset the absence. However, employees’ service is maintained throughout periods of sickness and absence should be managed through the Council’s Attendance Management and Ill Health Capability Procedure. There is also a potential risk of discrimination in terms of disability or maternity related sickness. It is not always clear whether a sickness absence is related to a disability as defined under the Equality Act 2010. Due to the potential risk of discrimination, it is not considered this would be appropriate. The policy does not, therefore, include any reference of limiting eligibility to a recruitment and retention payment for sickness absence.

Corporate objectives and priorities for change

- 6.1 This proposal aligns with the people priorities outlined within the Council’s People Strategy and in particular to ‘attract and retain the best people in the most effective way possible, enable responsive workforce plans and develop credible reward strategies’ by enabling the Council greater flexibility when applying recruitment and retention strategies.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 As part of the application, consideration of equal pay risk to the Council must be given and recorded on the Corporate Risk Register, specifically where the market pay rate is not the key driver for the attraction and retention issues.

INTERIM RECRUITMENT & RETENTION PAYMENTS POLICY

Version History			
Version	Date	Detail	Author
1.0	September 2022	New Interim Policy to supersede the existing Market Supplement Policy	S Davis

Links and Dependencies
Derbyshire County Council - Council Plan

	Page	
1	Introduction	
2	Scope	
3	Equality Impact Assessment	
4	Roles and Responsibilities	
5	Guiding Principles	
6	Identifying the comparator market and relevant market data	
7	Additional criteria	
8	Determining amount of recruitment and retention payment	
9	Payment Details	
10	Job Adverts	
11	Contractual documentation	
	Appendix 1 – Recruitment & Retention Payment Application Form	
	Appendix 2 – Recruitment & Retention Payment Process Flow Chart	

1. Introduction

The Council is committed to operating consistent and equitable pay arrangements for all employees. To comply with the Equality Act 2010 male and female employees should generally receive the same level of pay if they are carrying out equivalent work. In order to achieve a pay structure free from gender bias the Council's pay rates are set in accordance with the scoring of roles under the Hay job evaluation scheme.

In exceptional circumstances, where the Council is able to demonstrate that recruitment and retention issues are impacting on service delivery, providing other non-pay related options have been explored and discounted, the payment of a temporary additional element of pay or pay incentive, paid in addition to basic salary may be justified. This should be supported with clear evidence that the Council's rate of pay for a defined post, or group of posts, falls below the required level in relation to the comparator market or evidence provided that a local or national skills shortage or difficulties with occupational groups is causing a significant risk to service delivery and that without an intervention, the Council cannot attract and retain suitably skilled employees. The type of payment and required level of pay supplement will be determined by the Council at the time, taking into account the relevant criteria for the type of payment requested.

This policy sets out the guiding principles for the consideration and approval of recruitment and retention payments. The policy will be reviewed after 12 months taking into account the national position and the effectiveness of the policy's initiatives.

2. Scope

Recruitment and retention payments will be paid to all employees in the relevant post as a separate and clearly identifiable addition to basic pay. It is a post related payment and as such does not relate to the performance, capability, commitment or merit of an individual employee.

Recruitment and retention payments may only be considered where supported by a business case, with the exception of the Recommend a Friend scheme that will require Head of Service approval.

The following are the Council's agreed recruitment and retention payments:

- **Market Supplement payment**
- **Welcome payment**

- **Retention payment**
- **Recommend a Friend payment**

2.1 Threshold for considering applications

- Once the service, in consultation with the Head of Reward & Resourcing, identifies there may be a need for a temporary recruitment and retention payment (having exhausted all other non-pay avenues) an application under this policy may be considered
- When considering making an application under this policy you should be able to meet a number of these trigger points:
 - A corporate risk rating of 10 or above (high or very high) against the following factors:
 - Reputational
 - Physical injury/health & safety
 - Service/operational disruption/key targets/objectives
 - Statutory duties/legal implications
 - Stakeholder implications
 - Evidence of sustained unsuccessful recruitment campaigns, including numbers/types of campaigns/events/social media, with advice and support from Recruitment Campaign Leads, evidencing this has not increased the number of suitable candidates
 - Sustained vacancy issues with:
 - Less than an average of 5 applications per advert
 - Less than an average of 4 applications shortlisted per advert
 - Above average levels of continued turnover relative to the size of the work group
 - High level of continued agency usage
 - Flight risk, through workforce analysis and MyPlan/performance development reviews where you are able to identify a high level of risk within a specific workgroup
 - Exit questionnaire and exit interview data where employees cite pay as the reason for leaving
 - Evidence of alternative solutions considered
 - Competitor market data (where appropriate)
 - Evidence of national/regional/local skills shortages resulting in low levels of suitable skilled applicants

2.2 Market supplement payment

- A market supplement may be considered where there is clear evidence that the Council is paying below the market rate for a specific role, or

roles and this is impacting the Councils ability to recruit and retain employees.

- A market supplement payment is a temporary monthly payment paid for up to two years and is calculated using comparative market salary data
- The award of a market supplement payment does not change the evaluated grade for the post and is a fixed amount paid in addition to the employee's basic salary
- Market supplement payments are not required to be repaid if an employee leaves the Council's employment
- Market supplement payments are subject to Head of Paid Service approval who will consult with the Section 151 Officer, Monitoring Officer and Director of Organisation Development and Policy and the relevant Executive Director to inform the decision.
- Where a market supplement payment is due to be withdrawn or changed, all affected employees will receive contractual notice of one month
- Where a post in receipt of a market supplement is regraded following evaluation, a full review and reapplication of the market supplement should be carried out to determine if the market supplement payment ceases or continues at a revised rate. The total remuneration package should not exceed the existing level of pay plus market supplement without further agreement from the Head of Paid Service.
- Self employed, agency workers and individuals who are seconded into the Council from external agencies are not eligible for market supplement payments

2.3 Welcome payment

- Welcome payments may be an appropriate recruitment incentive where the market data does not support a market supplement payment
- Welcome payments are paid as a one-off lump sum to eligible employees on their appointment with the Council
- Welcome payments may also be considered for fixed term posts dependant on length of fixed term contract, providing the eligibility requirements are met
- It is recommended that the maximum amount payable is 10% of the bottom pay point for the identified role/s pay grade
- Consideration should be given to existing employees in the identified employee group receiving an equivalent retention payment, subject to meeting the relevant criteria
- Self employed, agency workers, relief workers and individuals who are seconded into the Council from external agencies are not eligible for welcome payments

- The payment will be made based on the contractual hours at the employee's appointment start date
- Employees who move to a non-eligible post, or leave the Council's employment within the specified period of time, will be required to repay all, or a proportion of the amount. If a recovery of a welcome payment is due, the Council will recover the balance in line with Council's Recovery of Overpayment Policy.
- The percentage of repayment should be proportionate to the initial payment and the eligibility/retention period. A minimum period of completed service of 12 months is recommended to ensure service delivery needs are met. The length of service in the identified post and repayment arrangements should be clearly stated within the terms as outlined in the example below:

£3,000 2-years' service requirement

Period of service in identified post	Amount to be repaid
Up to 12 months	100%
Between 12 months and 2 years	50%
2 years or more	0%

£500 12 months' service requirement

Period of service in identified post	Amount to be repaid
Up to 6 months	100%
Between 6 months and 1 years	50%
1 year or more	0%

- Welcome payments are made prior to the completion of a specified period of service and are therefore non-pensionable
- All welcome payments are subject to Head of Paid Service approval who will consult with the Section 151 Officer, Monitoring Officer and Director of Organisation Development and Policy and the relevant Executive Director to inform the decision.

2.4 Retention payment

- Retention payments may be an appropriate recruitment incentive where the market data does not support a market supplement payment
- Retention payments are paid as a lump sum to eligible new and/or existing employee(s) on completion of a specified period(s) of time in a post
- It is recommended that the maximum amount payable per year is 10% of the bottom pay point for the identified role/s pay grade

- Self employed, agency workers, relief workers and individuals who are seconded into the Council from external agencies are not eligible for retention payments
- Payments will be made on a pro rata basis reflecting the weekly contractual hours on the date the payment is due as outlined within the application
- It may be preferable to pay a one-off amount after a set period of time, e.g. 10% of salary on completion of 2 years of employment, or a graduated amount over a 2 year period e.g. 2.5% on completion of 1 year, 5% on completion of 2 years
- Payment is based on the grade of the role being undertaken at the time the payment is made. If the role has a career progression framework then all grades are eligible for a retention payment
- Eligible employees will receive the retention payment following completion of the required period of service
- There is no requirement to repay the retention payment on leaving the Council's employment as the employee will have completed the specified period of service.
- Retention payments are made following the completion of a specified period of service and are therefore pensionable
- Retention payments are subject to Head of Paid Service approval who will consult with the Section 151 Officer, Monitoring Officer and Director of Organisation Development and Policy and the relevant Executive Director to inform the decision.

2.5 Recommend a Friend

- Recommend a Friend payment is a lump sum payment to any employee on Grade 14 or below who recommends an external candidate for a specified vacancy who is subsequently appointed to that post
- The role for which a payment relates to should be a permanent or fixed term position within a specified post
- Each referral payment(s) should not exceed £100
- The referring employee must not be involved in the recruitment process for the post (including Recruitment Campaign Leads and the Recruitment Manager)
- The payment may be made to the referring employee once the employee has been successfully appointed into the eligible post following successful completion of 6 months service in that role
- The referring employee must be employed on a permanent, fixed term or relief basis with the Council
- Self-employed, agency workers and individuals who are seconded into the Council from external agencies are not eligible for the payment

- The new employee must not have previously applied for the same post or been referred by another source (e.g. a recruitment agency)
- Both the referring employee and the new employee must be employed by the Council at the time the referral payment is due. Where either party's contract of employment is under notice of termination, whether given by the Council or the employee, the Council reserves the right withhold the payment
- Only one referral payment will be paid for each new employee. The applicant must therefore ensure that they only include the details of one referring employee on their application form. No referral payment will be made where more than one employee has been named, where an employee's details have not been included or where the employee has been introduced by another source
- There is no limit on the number of referrals that an employee can make and there is no requirement for any referral payments to be repaid if the employee subsequently leaves the Council's employment
- Employees must not advertise vacancies on behalf of the Council but can share postings on social media
- The scheme is entirely discretionary, non-contractual and does not form part of the terms and conditions of employment
- The Council reserves the right to withdraw, vary or amend the scheme at any time
- The payment will be funded from the recruiting department's service budget
- Recommend a friend payments are pensionable
- Recommend a Friend payments are subject to Head of Service approval in consultation with the Recruitment Manager to ensure consistency in application.

3. Equality Impact Assessment

The Council will monitor the overall application of the Recruitment and Retention Payments Policy to ensure that it is being applied in a consistent and non-discriminatory manner. An equality impact assessment will be carried out as part of each application.

The Council will have a defence against an equal pay claim where it can be shown that the difference in pay is explained by a 'material factor' that does not involve direct or unjustified indirect sex discrimination. Market forces have been held in some but not all cases to be a 'material factor'. If an employee recruitment and/or retention payment involves indirect discrimination, it must be objectively justifiable. The requirement is to provide evidence that the proposed payments are a proportionate means of achieving a legitimate aim, identifying the relevant aim. The needs of the Council and service should be

identified, confirming why the additional payment is appropriate to achieve the objective and is, therefore, necessary.

4. Roles and Responsibilities

4.1 Head of Paid Service

The Head of Paid Service will:

- Consider recruitment and retention payment applications including welcome payments, retention payments and market supplement applications
- Consult with the Section 151 Officer, Monitoring Officer and Director of Organisation Development and Policy and the relevant Executive Director on the application to ensure consistency, taking into account cross council implications
- Approves to award a recruitment or retention payment including welcome payments, retention payments and market supplement payments under the terms of the policy for posts with a total remuneration of less than £100,000.
- Where the decision takes the total remuneration for a post in excess of £100,000 per annum or where the application relates to the Head of Paid Service the decision to apply a welcome payment, retention payment or a market supplement must be determined by Full Council.

4.2 Senior Management Teams

Service Directors/Heads of Service will:

- Demonstrate the need for the application of a recruitment and retention payment including collection of evidence from recent recruitment campaigns and processes, exit interviews, etc, having satisfied all other non-pay avenues
- Identify comparators and contribute to the provision of appropriate market pay data to establish pay differentials between the evaluated rate of pay and that of competitors
- Provide evidence of market issues, including regional/ national skills shortages, difficulties with occupational groups and the impact and risk to service delivery if the Council is not able to attract suitably qualified/skilled employees
- As part of the application, consideration of equal pay risk to the Council must be given and recorded on the Corporate Risk Register, specifically where the market pay rate is not the key driver for the attraction and retention issues

- Identify any wider impact, including any potential employee relations issues, to employee groups across the Council
- Work with HR Resourcing Managers, and the Equality, Diversity and Inclusion Manager to carry out an equality impact assessment to establish any inequality in relation to gender or other protected characteristics
- Identify funding for proposed recruitment and retention payment
- Submit a recruitment and retention payment application (Appendix 1) to the Head of Paid Service for approval
- Carry out reviews of existing recruitment and retention payments and communicate with the relevant employee groups, as appropriate
- Ensure jobs with recruitment and retention payments are advertised consistently and in the agreed format
- Continually review service requirements and resourcing strategies with the aim of removing the need for recruitment and retention payments
- The relevant Head of Service will make the decision to apply the recommend a friend payment to an advertising campaign in consultation with the Recruitment Manager

4.3 Human Resources

The Head of Reward & Resourcing will:

- Work with senior management teams to identify causes of recruitment and retention difficulties across the workforce and implement resourcing and reward strategies and solutions
- Establish that the evaluated grade of the job is consistent with the current duties of the role
- Support activity to identify comparators and contribute to the provision of appropriate market data to establish pay differentials between the evaluated rate of pay and that of comparators and/or relevant market issues to establish skill shortages/difficulties recruiting to specific occupational groups, etc
- Support activity to identify any wider impact to employee groups across the Council and establish any inequality in relation to gender and/or other protected characteristics
- Review recruitment and retention payment applications and any relevant market data provided prior to submission to the Section 151 and monitoring officer, liaising with colleagues to agree the mechanics of a recruitment and retention payment to individuals
- Record the outcome of all recruitment and retention payment applications, analyse data to assess success, and ensure, where appropriate, the timely review of existing payments

- Make a recommendation to the Head of Paid Service, if the recruitment and retention payment application has been supported by the S151 and monitoring officer

4.4 Legal Services

The Director of Legal Services is responsible for:

- Provision of advice on the legal implications of applying recruitment and retention payments in relation to equal pay and other equality considerations
- Provision of advice on the relevant departmental risk assessment in relation to recruitment and retention payments including the proposed rate and repayment schedule

4.5 Finance

The Director of Finance & ICT is responsible for:

- Provision of advice on the financial considerations and affordability of proposed recruitment and retention payments to the Council

4.6 Trade Unions

- Recognised Trade Unions will be engaged on recruitment and retention payment applications and reviews, including market data.

5. Guiding Principles

- Recruitment and retention payments will only be paid where a case for payment is fully justified with supporting evidence that the level of salary/current market conditions is creating the recruitment difficulties and that all other non-pay avenues have been considered
- Applications will only be considered via the process outlined in this policy
- Recruitment and retention payments will be payable for a fixed period and regularly reviewed
- Employees will receive written notification of the recruitment and retention payment setting out the full contractual terms
- There is no right of appeal against the withdrawal of, or change to, a recruitment and retention payment
- When seconded to a role (for the full qualifying period) that receives a recruitment and retention payment, the full duties and responsibilities of the role must be undertaken in order to receive the relevant payment

- Recruitment and retention payments should only be paid when justifiable and in scope of the agreed application. Those roles managing employees in receipt of a recruitment and retention payment, not in the scope of the agreed application, should not automatically be increased to maintain pay differentials.
- Where a recruitment and retention payment will not continue to apply for any other reason, e.g. redeployment, payment will continue during the contractual notice period
- Where agreement has been made to remove or change a recruitment and retention payment, candidates already in the recruitment process will be notified during the recruitment process

6. Identifying the comparator market and relevant market data

The comparator market will depend on the type and level of the specific posts or group of posts for which an application for a recruitment and retention payment is to be made.

Consideration should be taken of:

- The employment sector – local authority (unitary/district/county); wider public sector; not-for-profit; private sector
- The geographic labour market – national, regional or local - where are recruits expected to come from and where are competitor employers located?
- The organisations considered to be the main competitors for the post in question
- The size and resources of the comparator organisation (number of staff employed; budget size; functions; population/client base served)

It is important that appropriate (market) comparator posts are identified to ensure the additional cost of paying incentive payments to existing employees and/or new recruits can be justified.

In identifying comparator posts from market data, the posts should be the same, in terms of duties and responsibilities, or broadly similar in terms of the required knowledge, skills and responsibilities. All elements of earnings should be compared, i.e. total salary and wider benefits package. Equal pay challenges may arise where a claimant considers the market data used is not comparable.

7. Additional criteria to support the application for a recruitment and retention payment

The following criteria must be considered in order to support the application of a recruitment and retention payment:

- Evidence of a consistent failure to recruit to a specific post(s) and/or a high level of staff turnover in a specific post(s). Outlining the number of vacancies and why current resources are insufficient to undertake key activity
- Evidence that different attraction recruitment methods or solutions have been utilised or considered i.e. recruitment campaigns, recruitment events, advertising in relevant media including social media such as Facebook and Linked in
- Analysis of key metrics to evidence the application and the conclusions drawn from the data to support the narrative - turnover rates, agency usage and national workforce data
- Supporting exit interview information
- Evidence of the departmental risk assessment to consider the impacts of not being able to recruit and retain staff in the specified areas considering the following areas:
 - Failure to provide a statutory or regulatory services
 - Financial risk to the Council
 - Legal risk to the Council
 - Reputational risk to the Council
- Total reward package
- Any other relevant labour market factors, such as regional/national skills shortages, difficulties recruiting to specific occupational groups, foreseeable organisational and/or operational problems, evidence from the outcomes of any inspections/reviews of the service(s) where the need to maintain a stable skilled and experienced workforce is identified as a requirement for improvement, etc.

Pay data is available from local/national advertisements, other local authorities, regional local government employer networks, HR or profession-specific networks, consultants' pay databases, salary surveys and pay settlement data. Evidence to support other non-pay market issues can be provided from surveys, professional body information, journal articles illustrating skill shortages, difficulties recruiting to specific occupational groups, large numbers of advertisements for similar posts, etc.

8. Determining amount of recruitment and retention payment

Payments should be objectively justified with a detailed rationale of the payment calculation and terms. Although the market rate may not be the key driver in all cases, the evidence should show, where applicable, that pay is a

crucial factor in the Council's ability to recruit and/or retain employees in the specific job.

For market supplement payments, the amount is normally calculated based on the difference between pay rates of appropriate comparator posts (the market rates) and the Council's grade range for the post, taking account of any additional allowances.

Payments are normally based on the median pay of comparators. However, total remuneration should be sufficient, but not exceed the level necessary, to enable the recruitment/retention of employees. Supplements may be based on a rate below the median.

Where the market rate is not the key driver for a recruitment and retention payment, the application must provide evidence and factors that determine the appropriate effective and justifiable level of payment. This must be proportionate and reasonable and within the guidelines outlined within the Policy.

9. Payment Details

9.1 Market Supplements

Market supplements **will** be:

- Pensionable and subject to tax and NI
- Paid as a clearly identifiable and separate supplement to basic pay (*NB: the market supplement will not be shown as a separate payment for periods of absence that are remunerated through a combination of occupational and statutory pay, e.g., sick or maternity pay*)
- Subject to eligibility, included in occupational and statutory calculations for periods of paid sickness, maternity and adoption leave at the appropriate rate e.g., for maternity leave 6 weeks at 90% pay (including market supplement), 12 weeks at 50% pay (including market supplement) and half rate for periods of half pay sickness, etc. Occupational and statutory rates will be recalculated for employees who are on maternity/adoption leave when a market supplement is introduced. When market supplements are reduced or removed during a period of maternity/adoption leave, only the occupational element is recalculated and reduced from the date of the change
- Paid monthly (pro rata for part-time employees)
- Paid as an additional payment on top of the hourly rate for relief employees
- Paid for authorised paid absences as set out in the Council's Employee Leave Schemes and Flexible Working guidance

- Paid at the appropriate rate for each post where an employee has more than one eligible job
- Paid at the appropriate hourly rate for hours up to 37 per week, including working hours up to 37 for standby, sleep in and recall to work
- Paid on accrued leave which has been accrued on part time hours up to a maximum of 37 hours per week
- Included in any deductions related to unpaid absences, eg. unpaid leave
- Paid for all additional hours worked up to 37 per week including the plain time hours worked at times that attract enhancements
- Included in Redundancy pay calculations
- Adjusted accordingly where contracted hours are increased/decreased (including a buy out of hours decrease in hours: NB: the market supplement will be included in the buy out calculation of actual pay for 26 weeks)

Market supplements:

- Will not be paid if an employee moves to, or is seconded to, a post without a market supplement
- Will not attract pay award increases or be affected by incremental progression
- Will not be paid for any hours over 37 per week, i.e., overtime. Market supplement payments should not exceed the agreed annual market supplement amount for a full-time employee.
- Will not be paid on enhancements
- Will not be included in pay protection

9.2 Welcome & Retention Payments

Welcome & Retention payments **will** be:

- Subject to tax and NI
- Non-pensionable where payments are made prior to completion of a specified period of service, eg. welcome payments
- Pensionable where payments are made following a completion of a specified period of service, eg. retention payments
- Paid as a clearly identifiable and separate payment to basic pay
- Paid pro rata to contracted hours at the time the payment is due and paid at the agreed rate and timescales as set out in the contract
- Paid pro rata for each post where an employee has more than one eligible job
- Included in the statutory calculations for periods of paid sickness, maternity and adoption leave

Welcome & Retention payments, including Recommend a Friend Payments:

- Will not be included in Redundancy pay calculations
- Will not be included in occupational calculations for periods of paid sickness, maternity and adoption leave and holiday pay calculations, etc
- Will not be paid if an employee moves to, or is seconded to, a post without an employee welcome/retention payment
- Will not attract pay award increases or be affected by incremental progression
- Will not be included in pay protection

9.3 Recommend a friend payments are:

- Subject to tax, NI and are pensionable
- Paid as a clearly identifiable and separate payment to basic pay

10. Job Adverts

Job adverts and/or supporting information must refer to the recruitment and retention payment as a temporary additional element of pay detailing, where applicable, the end date, review date and review period.

Managers should liaise with Recruitment Campaign Leads to agree the wording for adverts to ensure potential candidates are clear around the terms of recruitment and retention payments. Some examples are set out below:

Market Supplement Payments

A temporary market supplement of £xxx is attached to this post, which is a separate payment in addition to the normal salary. A review of market conditions will be carried out prior to the proposed end date of xxxxx to establish if the market supplement should continue. Further information on employee retention payments is available on our website at [link].

Welcome Payment

An initial one off lump sum Welcome payment of £xxx is attached to this post payable in your first salary. If you voluntarily leave the Council's employment within xx years you are required to repay [set out specific terms]. Further information on employee retention payments is available on our website at [link].

Retention Payments

The following retention payment is attached to this post:

e.g. £xxx after 12 months satisfactory service, £xxx after 24 months satisfactory service. Further information on retention payments is available on our website at [link].

Recommend a Friend Payments

A 'recommend a friend' payment of £xxx is attached to this post. Further information on recommend a friend payments is available on our website at [link].

11. Contractual documentation

All eligible employees will receive an additional contractual letter detailing all the terms and conditions relating to the recruitment and retention payment.

Appendix 1 – Recruitment & Retention Payment Application Form

A Recruitment & Retention Payment Application Form is attached at Appendix 1 detailing the supporting evidence required for consideration.

Appendix 2 – Recruitment & Retention Payments Process Flow Chart

Policy/Procedure owner:	HR Pay & Reward
Date last reviewed:	September 2022

Appendix 1

APPLICATION FOR A RECRUITMENT & RETENTION PAYMENT

Completed applications should be forwarded to the Head of Reward & Resourcing. Applications will be subject to Head of Paid Service approval in consultation with the Section 151, Monitoring Officer and Director of Organisation Development and Policy.

Job Title		Department	
Job Evaluation ref/job family		Service area	
Evaluated Grade		Current salary range	
No of staff in post (including vacant posts) and FTE		Total recruitment and retention payment requested	
Payment type:			
Period for which the payment is sought 'Qualifying Period'		Proposed implementation date and end date	

Is this application to:

Market Supplement Payment		Welcome Payment	
Retention Payment		Review of current payment	

1.	Briefly outline the duties/responsibilities of the job or group of jobs for which a recruitment and retention payment is requested.
2.	Please outline the impact and risk on service provision caused by recruitment and retention difficulties relating to this post/s.
3.	<p>Has their been a significant change to the post since it was evaluated? If so, please discuss this with the HR Business Partner and the Pay and Reward Team to ensure the evaluation reflects the current job demands.</p> <ul style="list-style-type: none"> • Does the job and person profile properly reflect the demands and requirements of the role? • Has the value of the total reward package and all employee benefits been promoted effectively? • Have opportunities for learning & development and career progression been highlighted? • Have other recruitment initiatives been exhausted, e.g. targeted advertising? • Have working arrangements/flexible working, etc. been considered? • Has consideration been given to redesigning the job/structure to undertake the work in a different way, e.g. development of trainee roles, reallocation of duties, etc

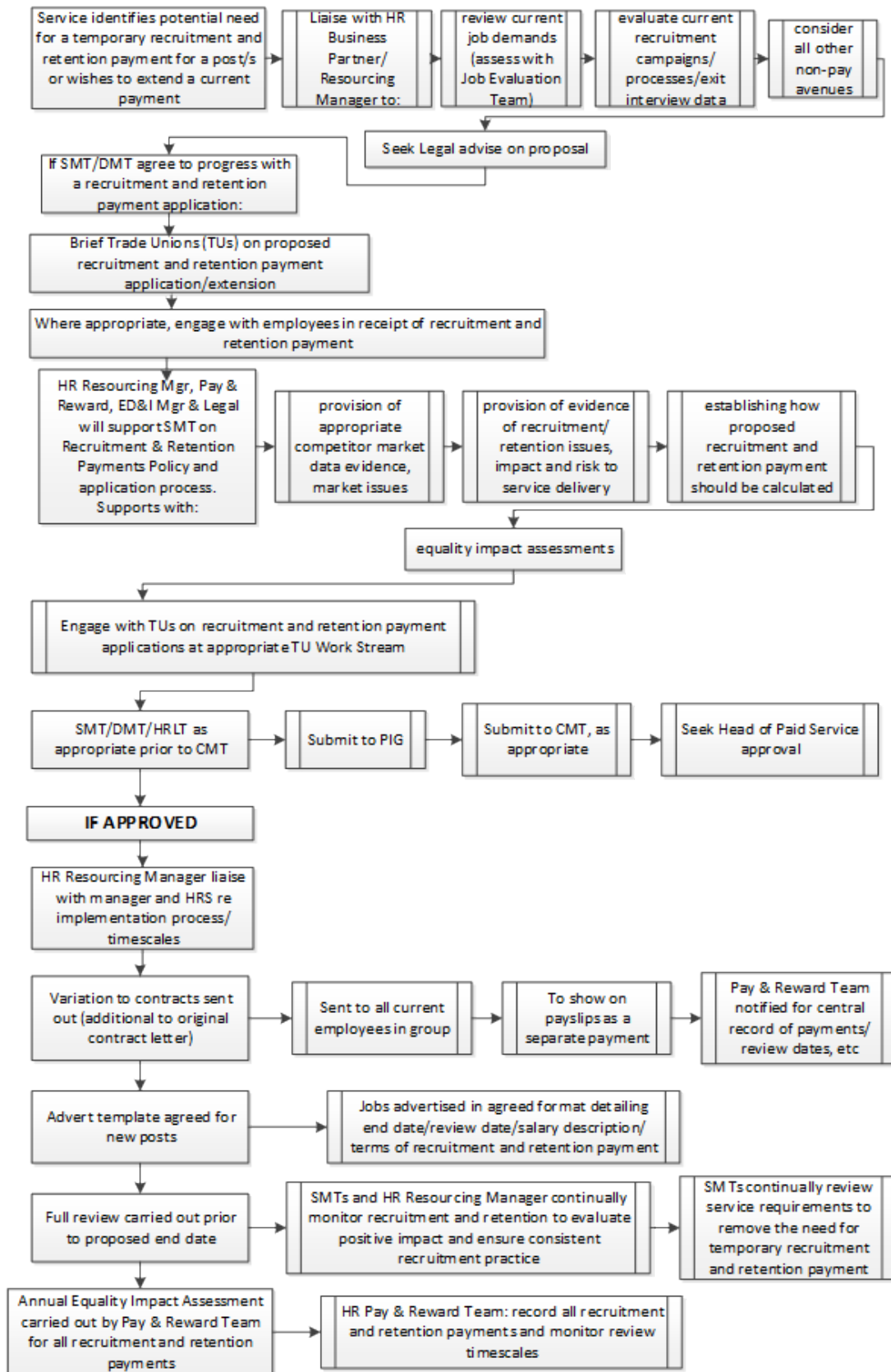
	<ul style="list-style-type: none"> • Has consideration has been given to the use of agency workers, contractors, partnership working, private sector or other providers to undertake the work outlining the advantages/disadvantages and associated costs
4.	Please provide details of turnover rates (in comparison to average turnover rates).
5.	<ul style="list-style-type: none"> • Please provide evidence from exit interviews where employees have moved to an equivalent post and cited pay as a reason for leaving. • Are employees leaving the Council achieving higher rates of pay for carrying out the same/ substantially similar role? • Is there evidence from staff surveys/TU representatives of unresolved workplace dissatisfaction which needs to be resolved by management? • Detail agency usage and relevant costs
6.	Please provide information on the number and quality of responses to job advertisements. Include dates advertised, where advertised and recruitment initiatives adopted
7.	Is there a regional/national skills shortage
8.	<p>Likely effectiveness of a recruitment and retention payment</p> <ul style="list-style-type: none"> • Provide evidence that the proposed payments are reasonably necessary to improve recruitment and retention and likely to achieve positive results • Will the application of a recruitment and retention payment contribute to a pay spiral with other employers recruiting from the same pool, leading to pay inflation? If this may be the case, consideration should be given to alternative strategies e.g. partnership working to cap rates
9.	<p>Analysis of likely impact of an employee retention payment</p> <ul style="list-style-type: none"> • This should include evidence to show the wider and longer-term impacts throughout the Council. • The number of employees involved and the effect on their salaries, potential negative implications for other employees within the employee group/structure and in other employee groups and any equal pay considerations. • Further advice should be sought from Legal Services.

10.	<p>Labour market data and the 'going rate' for the job:</p> <ul style="list-style-type: none"> • Taking care to anonymise commercially sensitive data where relevant, please provide details of the market data sources used to establish the 'going rate' for the job (e.g. recent media adverts, survey data, pay databases, other local authorities/ schools, regional employer networks, Korn Ferry Hay User Group, East Midlands Councils, etc.) • ensure there is clear evidence that this data relates to genuinely comparable posts and that duties, responsibilities, knowledge, skills, geographical location, associated terms, conditions, total benefits package and any other unique factors have been considered • provide details of main competitors' comparable posts <p>Legal advice should be sought in all cases where the job group is predominantly male or female to avoid equal pay implications.</p>
11.	<p>Market issues not wholly related to pay</p> <p>Provide clear evidence that without an intervention the Council</p> <ul style="list-style-type: none"> • may not be able to retain, in the longer term, suitably skilled and well performing staff in a high profile, statutory or regulated functions • may not be able to meet its statutory duty • may cause financial, legal or reputational risk to the Council <p>Evidence to support non-pay market issues can be provided from surveys, professional body information, journal articles illustrating skill shortages, difficulties recruiting to specific occupational groups, large numbers of advertisements for similar posts, etc.</p>
12.	<p>Proposed amount of recruitment and retention payment:</p> <ul style="list-style-type: none"> • The rate for a Market Supplement Payment should normally be based on the median pay of the comparators, however, a supplement should not exceed the level deemed necessary to attract suitable candidates and this may be below the median point. • Please provide evidence to demonstrate how the proposed recruitment and retention payment has been calculated. • What are the factors that determined the proposed recruitment and retention payment amount, where market rate is not a principal driver • Provide details of how the recruitment and retention payment will be made, e.g. monthly, at the end of a fixed period, lump sum(s), etc • If applicable (welcome payments) what are the payment service requirements and repayment arrangements if the employee leaves their employment

13.	How will the recruitment and retention payment be funded?
14.	Review date <ul style="list-style-type: none"> Recruitment and retention payments should be reviewed in advance of the end of the agreed application period. Market supplement payments must be reviewed prior to the end of the fixed term payment period to ensure that employees receive the minimum contractual notice period of one month to confirm any changes/removal. All recruitment and retention payment reviews will require a new application and will follow the same approval process.

I agree that a recruitment and retention payment is appropriate in this instance; that all the necessary checks have been carried out in accordance with the Council's policies and procedures and that all other non-pay avenues have been explored appropriately.

	Date
Completed by	
Reviewed by Head of Reward & Resourcing	
Approved by the Section 151, Monitoring Officer and the Director of Organisation Development and Policy	
Approved by the appropriate Executive Director	
Approved by Head of Paid Service	





FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE

THURSDAY, 6 OCTOBER 2022

Report of the Director - Organisation, Development & Policy

**Grievance Procedures for Teachers employed by the Local Authority
and not attached to schools**

1. Purpose

- 1.1 To consider and approve the adoption of a Grievance Procedure for teachers employed by the Local Authority and not attached to schools.

2. Information and Analysis

- 2.1 In October 2016, a Local Agreement was reached with the representatives of teachers and headteachers employed by the Local Authority that the negotiation mechanism for the following policies and agreements developed specifically for teachers employed by the Local Authority and not attached to schools will be undertaken by Derbyshire County Council Schools' Joint Consultative Committee (SJCC):-

- Teachers' Pay
- Teacher Competence
- Teacher Appraisal
- Leave of Absence
- Disciplinary
- Grievance
- Sickness Absence
- Facilities Agreement

- 2.2 This is the first opportunity to bring to ACOS the grievance procedures following negotiation at SJCC.

- 2.3 The regulations governing teachers' terms and conditions of service are contained within the School Teachers Pay and Conditions Document (STPCD) and the Conditions of Service for School Teachers in England and Wales ('Burgundy Book').
- 2.4 The provisions of the School Teachers Pay and Conditions Document (STPCD) and the Conditions of Service for School Teachers in England and Wales ('Burgundy Book') need to be reflected in the authority's policies for the management of teachers employed centrally in the education support services.
- 2.5 HR policies which apply to local authority employees are negotiated by Derbyshire County Council and approved by ACOS, for noting at the Corporate Joint Committee (CJC). The accredited representatives of the recognised employee organisations who represent teachers and headteachers employed by the Local Authority are not members of the CJC and have sought a methodology which provides them with the right to be consulted on in relation to policies and procedures which apply to the staff that they represent. In light of this and as teachers are employed on different terms and conditions to other local authority staff, it is important to have a grievance procedure which reflects those differences and is tailored to reflect those differences.
- 2.6 The grievance procedure which is attached at Appendix 2 is consistent with the policy adopted for employees of the County Council wherever possible. This policy is consistent with the approach recommended to schools.
- 2.7 The Conditions of Service for School Teachers in England and Wales ('Burgundy Book') imposes a duty on Local Education Authorities to draw up appropriate procedures at a local level to deal with individual grievances for teachers.
- 2.8 The provisions within the proposed procedure reflects the national conditions of service for school teachers contained within the School Teachers Pay and Conditions Document (STPCD) which are incorporated into teachers' contracts of employment.
- 2.9 The procedure will be made available to relevant managers and employees so that they are aware of the specific procedures in relation to teachers employed by the Local Authority and not attached to schools.
- 2.10 It is anticipated the revised procedure will be implemented with effect from 1 November 2022.

3. Consultation

- 3.1 The proposed procedures have been developed with extensive consultation at SJCC with the recognised teacher trade unions and professional associations and agreement has been reached.

4. Alternative Options Considered

- 4.1 An alternative option would be to not have separate procedures for Teachers employed by the Local Authority and not attached to schools and continue to use the procedures which apply to all other employees employed by Derbyshire County Council. However this would not reflect all of the provisions of the School Teachers Pay and Conditions Document (STPCD) or the local negotiations.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 School Teachers Pay and Conditions Document 2022

Conditions of Service for School Teachers in England and Wales ('Burgundy Book')

7. Appendices

- 7.1 Appendix 1 - Implications
7.2 Appendix 2 – Grievance Procedures for Teachers employed by the LA and not attached to schools.

8. Recommendation(s)

That Committee approves the adoption of grievance procedures for Teachers employed by the Local Authority and not attached to Schools which will be implemented with effect from 1st November 2022.

9. Reasons for Recommendation(s)

- 9.1 The procedures meet the council's obligations in relation to the statutory conditions of employment of school teachers for maintained schools in

England and Wales which includes provisions for school teachers employed by the Local Authority and not attached to schools are set out in the Conditions of Service for School Teachers in England and Wales ('Burgundy Book')

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Implications

Financial

- 1.1 No additional costs or savings are associated with the adoption of procedures to deal with individual grievances for teachers employed by the Local Authority and not attached to schools.

Legal

- 2.1 General employment law requirements and good practice are that employers have appropriate measures to deal with grievances raised by employees. The Conditions of Service for School Teachers in England and Wales ('Burgundy Book') also impose a duty on Local Education Authorities to draw up appropriate procedures at a local level to deal with individual grievances brought by teachers.
- 2.3 Local authorities must abide by the statutory requirements and must have regard to the guidance issued, as a court or tribunal may take any failure to do so into account in any legal proceedings. Therefore, a grievance procedure is required and in light of the differences in contractual provisions between teachers and other employees, it is appropriate for there to be a specific procedure for teachers employed by the Council.
- 2.4 The procedure is a non-contractual document and does not therefore, require the agreement of the relevant workforce prior to application. However, this is a procedure which will apply to all relevant employees in accordance with their terms and conditions of employment. Therefore, the recognised trade unions have been consulted in accordance with the trade union recognition agreement.
- 2.5 The terms of reference for the Appointments and Conditions of Service Committee provide for the Committee to approve corporate employment policies and to determine terms and conditions on which staff hold office, including procedures for their dismissal.

Human Resources

- 3.1 There has been formal consultation at Schools' Joint Consultative Committee (SJCC) and agreement reached with the recognised trade unions and professional associations in relation to the proposed grievance procedure.

Information Technology

- 4.1 There are no IT implications in applying a specific Grievance Procedures for Teachers employed by the Local Authority and not attached to schools.

Equalities Impact

- 5.1 The provisions of the grievance procedures are compliant with the relevant provisions of anti-discrimination legislation contained in the Employment Relations Act 1999, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. It is also consistent with the principles of public life – objectivity, openness, and accountability.
- 5.2 Monitoring of equalities will take place throughout the implementation of these procedures.

Corporate objectives and priorities for change

- 6.1 The grievance procedures align with the Council's People Strategy and People Priorities.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 N/A

Derbyshire County Council

GRIEVANCE PROCEDURE FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS

Grievance Procedure

Contents	Page No
Purpose	2
Scope	2
Key Principles	3
Exclusions	4
Timescales	4
Roles & Responsibilities	5
Addressing a Grievance - Informal Stage	6
Stage 1 (Formal)	7
Stage 2 (Appeal)	9
Head of Service	10
Flow Chart	11

Grievance Procedure

Purpose

The purpose of the Grievance Procedure is to set out the framework by which an employee's grievance will be addressed as quickly and fairly as possible. A grievance is a concern, problem or complaint which is raised by an employee relating to their employment.

Issues that may cause grievances and are covered under this policy including:

- The Council's application of terms and conditions of employment e.g., temporary contract, part-time working, etc
- Health and Safety
- Work relations
- Working practices, including new working practices
- Working environment
- Organisational change not covered by restructure/redundancy procedure
- discrimination
- The expectations of the allocated job role in school
- Workload/wellbeing concerns
- Bullying and harassment only where addressing the issue under an alternative specific bullying and harassment procedure would not be appropriate

This also covers grievances by more than one person on the same issue.

The list of examples of possible grievances are not comprehensive or exhaustive.

Scope

This grievance procedure has been determined by the Council and is consistent with the requirements of National and Local Conditions of Service and the Articles and Instruments of Government. It applies to all teaching staff employed by the Local Authority and not attached to schools. The appended Managers Guidance is an integral part of the policy, and it is essential that this is followed. Employees and managers should aim to settle most grievances informally. Many problems can be raised and settled during the course of everyday working relationships. This also allows for problems to be settled quickly. In cases where the line manager is the subject of the grievance, individuals should be able to discuss their concerns with another manager or another appropriate person.

A Grievance Guidance bulletin agreed by and produced on behalf of all of the Trade Unions and professional associations is attached as Appendix 1. It is a useful reference document for use by managers.

Key Principles

This procedure has been developed in line with ACAS guidance and the Code of Practice on Disciplinary and Grievance Procedures and is based on the following principles:

- The Council believes that all employees should be treated fairly and with respect.
- High performance and productivity are dependent on effective working relationships and the fair and reasonable handling of grievances is an important element in creating and maintaining those relationships.
- Managers and employees should approach grievances constructively, deal with issues promptly and not delay meetings, decisions, or confirmation of those decisions.
- The prime focus of managers and employees raising a grievance should be on resolving the issue.
- Employees should aim to settle most grievances informally with their line manager. Many problems can be raised and settled during the course of everyday working relationships. This also allows for problems to be settled quickly. In cases where the line manager is the subject of the grievance, individuals should be able to discuss their concerns with another manager or another appropriate person.
- Employees should be allowed full opportunity to explain their grievance and be provided with feedback at all stages.
- Any employee against whom a grievance is lodged should be allowed full opportunity to respond.
- An employee raising a grievance has a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the employee. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a Trade Union.
- If an employee raises a grievance during the disciplinary process the Council can pause the Disciplinary Procedure and deal with the grievance first. If the disciplinary and grievance cases are related, the Council can deal with both at the same time. Please refer to the Manager Guidance for information.
- Mediation should be considered where appropriate at every stage of the procedure including after an appeal has been lodged. Mediation can only take place if all parties agree to participate. Electronic recording of meetings held as part of this procedure is strictly prohibited unless expressly agreed by all parties. The use of recording equipment by any party without consent may constitute a disciplinary matter.

- Any reference to “days” or “working days” shall mean Monday to Friday normally during term-time, excluding bank holidays. With the agreement of all parties, it may be possible to expedite the process.

Exclusions

The Grievance Procedure will not apply:

- Where there are separate, specific Council procedures to address an issue e.g., normally, Confidential Reporting Code, Pay Policy for teachers employed by the Local Authority and not attached to schools.
- To issues, where the Harassment & Bullying Procedure would normally apply. Careful consideration should be given to which is the most appropriate procedure to follow.
- To issues, which are the subject of collective negotiation or consultation with the Trade Unions. This does not preclude a group of employees raising a collective grievance in relation to any of the issues described above.
- If the complaint is repetitive of a previous grievance, the substance has been dealt with through another procedure or the matter is considered to be more appropriately dealt with through another process.
- Where there is an attempt to use the grievance procedure for frivolous, malicious, or vexatious accusations. This may be treated as misconduct and may lead to disciplinary action.
- Where it is determined that the nature of the allegation constitutes potential serious misconduct, according to the Council’s Disciplinary Policy & Procedure for teachers employed by the Local Authority and not attached to schools. If so, the Council’s Disciplinary Policy & Procedure for teachers employed by the Local Authority and not attached to schools should be followed and the complainant should be advised of this decision.

Timescales

Employees are strongly encouraged to raise concerns in a timely way preferably within 3 months of the incident occurring, to ensure colleagues/managers are aware of the issues and early consideration can be given. However, flexibility should be exercised when circumstances (e.g., absence or accumulation of concerns, or if the employee has needed time to build up the confidence to disclose their concerns) mean that relevant evidence refers to incidents which occurred prior to 3 months before the submission of the grievance.

Roles and Responsibilities

Key Roles within the grievance process are:

- Heads of Service/managers and employees are responsible for attempting to resolve grievances.
- Advice & Support will provide support and guidance to managers on the operation of the procedure and offer access to the Council's mediation process if required. Manager guidance supplements this procedure.

a) **Investigating Officer**

An appropriate person will be assigned to the role of Investigating Officer. They will take responsibility for formal Stage 1 of this procedure and the investigation of the facts and feedback.

They will be:

- The manager
- or
- Another manager within the service, who may undertake this role where this is delegated to them by the Head of Service or where the manager has been involved in informal attempts to resolve the grievance.

Where the aggrieved has a concern about the assigned Investigating Officer, they may write to the Head of Service giving reasons. Where legitimate concerns are raised these will be carefully considered and an alternative Investigating Officer may be offered, if possible.

b) **Trade Union representative or workplace companion**

A worker who raises a formal grievance about a duty owed to them by their employer has a right to be accompanied at a grievance hearing*. This includes any meeting held with them to hear about, gather facts about, discuss, consider, or resolve their grievance.

(*At a grievance hearing the companion must be allowed to attend and address the meeting in order to: • put the employee's case • sum up the employee's case • respond on the employee's behalf to any view expressed at the hearing • confer with the employee during the meeting but has no right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.) It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions.

The right to be accompanied

All employees are entitled in law to be accompanied, if they wish, at any formal grievance meeting, normally by a colleague or a Trade Union representative. If the employee's chosen companion is not available at the proposed time of the grievance meeting, they may request a reasonable alternative time for the meeting that falls within 5 working days of the time originally proposed. In this case, the meeting must be postponed as requested.

In some cases, the employee may wish to bring the companion along simply for moral support rather than for representation.

Addressing a Grievance - Informal Stage

It is recommended that wherever possible grievances are dealt with at an informal stage. However, it might be appropriate for an employee to raise the grievance formally, for instance but not exclusively, if:

- they feel raising it informally has not worked
 - it's a serious issue
 - they do not want to resolve it informally
- **Employee Action** – Raising a Concern

Where a grievance involves another employee, an attempt should first be made by those involved to resolve the matter as soon as possible, bearing in mind that all employees have an overall responsibility to work co-operatively with colleagues in a climate of mutual respect. The majority of concerns, problems and complaints should be settled in this way.

If discussions between the parties is insufficient, more formal mediation should be considered at this stage. There is a mediation service available via the Advice & Support Team.

- The employee should raise the grievance with their line manager if an approach to the individual is unsuccessful

If the grievance is about the line manager, the employee should raise the matter with the next appropriate senior manager. The employee may request that they be supported by their Union representative or other representative at this stage. Employees can take advice from the Advice & Support Team on who to approach.

- **Line Manager Action**

The line manager will meet with the employee, listen, and clarify the issues.

They will make initial informal enquiries, which may include raising the complaint with the individual who is subject to the grievance, to try to seek a resolution or establish whether a more detailed investigation under the formal Stage 1 procedures is required and will provide

feedback to the employee about whether a resolution can be found. The line manager may consult with the Advice & Guidance Team.

Stage One (Formal)

Employee action

If the employee considers that their grievance has not been resolved to their satisfaction by informal discussion or the informal stage of the procedure is not deemed to be appropriate by any party the grievance should be considered under formal Stage 1. The complainant may refer the matter to their recognised professional association or Trade Union, to allow representations to be made on their behalf.

If the Head of Service has not been involved previously in dealing with the complaint the grievance should be submitted in writing to the Head of Service.

In the event that the complaint is against the Head of Service (or the Head of Service has dealt with the grievance at the informal stage), the complaint should be sent in writing to another Senior Manager. Employees can take advice from the Advice & Support Team on who to approach.

The employee will be requested to provide:

- Full name and post title
- A summary of the facts of the grievance
- Dates and times of any incidents, in order
- Details of any witnesses or supporting evidence
- Details of what efforts the employee and others have made to resolve the complaint
- The reason(s) why the employee remains dissatisfied with the outcome of the informal stage of the procedure, if applicable
- Details of who will accompany the employee to the grievance meeting
- Details of what resolution/outcome the employee would like

Where an employee has met the line manager to try and resolve the grievance informally this information can be obtained as part of the informal meeting and a written record of this can be used as the basis of the formal grievance.

Management Action – Including investigating the facts

An appropriate person will be assigned to the role of Investigating Officer.

- The manager

or

- Another manager within the service, who may undertake this role where this is delegated to them by the Head of Service or where the line manager has been involved in informal attempts to resolve the Grievance

Any employee who is named as the subject of the grievance will be notified that the complainant has raised a grievance which is being dealt with under the formal procedures.

Mediation may be considered. **The Investigating Officer will assess whether there is any scope for an informal resolution with the agreements of both parties.**

The working arrangements in place immediately prior to the grievance or if the subject of the grievance is that the working arrangements are being changed then the working arrangements in place prior to the grievance being lodged should remain in place until the procedure has concluded – except where the Headteacher considers that one or more of the following overrides that principle:

- Relevant legislation, e.g., Health and Safety
- Safeguarding requirements
- The safety of students and staff

The Advice and Guidance Team may provide support to the Investigating Officer.

The Investigating Officer will reply to the grievance letter within 5 working days and arrange a formal grievance meeting under Stage 1 of the Grievance Procedures to listen and clarify the issues.

- The meeting will take place as soon as possible and at the latest within 15 working days.
- The purpose is to give the employee opportunity to explain their grievance and to seek a resolution, to the employee's satisfaction, taking into account the Council's procedures, policies and the need for consistency and fairness. It should be noted that this is intended to be a meeting focused on resolutions rather than a formal meeting.
- The employee should go to the meeting prepared to explain their case and to make clear the outcome they are seeking
- There is a right to be accompanied to the meeting – usually by a colleague or Trade Union representative. Efforts should be made to accommodate all parties.

- The employee should be given the option of accessing mediation. Mediation will only take place if all parties agree. This would entail pausing the grievance process whilst mediation is explored.

After the meeting, the Investigating Officer will investigate the facts, including where appropriate raising the complaint with any employee who is the subject of the grievance and secure a written record of their response. They will check the situation with other witnesses and obtain written statements, where relevant. If the grievance is upheld the Investigating Officer will determine an appropriate resolution.

Wherever possible the investigation should take no longer than 15 working days to complete however, the period for the investigation will depend on the complexity of the grievance, the number of people and documents involved.

When the investigation is complete the Investigating Officer will feed back the findings from the investigation and provide their conclusion and decision. This may be in writing or at a reconvened grievance meeting.

Where a reconvened grievance meeting takes place, the employee will be given 5 working days' notice of the meeting and has the right of representation. The Investigating Officer will confirm the outcome (findings, conclusion, and decision) in writing within 5 working days of any reconvened meeting.

The employee will have the right of appeal should they be dissatisfied with the outcome.

Stage 2 (Appeal)

Employee Action - Complainant dissatisfied with outcome of formal Stage 1

- Where it has not been possible to resolve the grievance at formal Stage 1, the complainant should submit formal written notice of appeal to the Executive Director of Children's Service, who will register it with the Director of Organisational Development and Policy within 10 working days of receipt of the written notification of the outcome of Stage 1 of these procedures.
- The specific grounds of the appeal should be set out in the appeal letter e.g., evidence does not support the conclusion, or issues in relation to the application of the procedures. and the employee or representative will use these grounds to establish their case at the beginning of the appeal. The appeal will focus on the parts of the decision with which the employee is not satisfied.
- The Director will respond to the letter of appeal within 10 working days of receipt, inviting the employee to attend an appeal hearing. The hearing will take place as soon as practicable. There will be a minimum of 10 working days' notice of the date of the hearing. Any employee who is the subject of the grievance will also be informed of the Appeal Hearing. If the appeal relates to the substance of the case, then the subject of a grievance will have the right to attend whole, or part, of the hearing, depending on

whether there are other aspects to the grievance. If the appeal focuses on how the investigation was carried out or the actions proposed as a result of the findings at a previous stage, then any employee who is named in the case will only attend as a witness, as relevant.

- The Investigating Officer will prepare a written statement of case as soon as possible for the Appeal Hearing Officer.
- The statement will summarise the findings of the Investigating Officer in investigating the grievance and make reference to outcome/actions determined in the response.
- Any statements of case or evidence on which either management or the employee seek to rely, will be provided to all relevant parties at least 5 working days prior to that hearing.
- The aggrieved has a right to be accompanied at the appeal by a colleague or Trade Union representative.

The outcome of the appeal will be provided in writing to the employee within 5 working days. Any employee who is a subject of the grievance will also be informed of the outcome. That outcome is the final stage within the Council's procedures.

Head of Service

- In the event the aggrieved person is the Head of Service and it is not possible to address or resolve the matter at an informal stage, it will be referred to the appropriate Assistant Director who will seek to resolve the grievance personally and may also seek consultation with the Executive Director for Children's services or their representative, and/or with representatives of the professional association(s) concerned, as may be thought appropriate.
- Where, despite the attempts made in the above point it has not been possible to resolve the grievance, the Head of Service should submit a formal written notice of the grievance to the appropriate Assistant Director.
- Upon receipt of the formal written notice, the Assistant Director will arrange for the procedures outlined in Stage 1 and Stage 2 above to be followed. They may wish to consult the Advice & Support Team for further support.

GRIEVANCE PROCEDURE FLOW CHART

Informal Stage

Employee raises with colleague/their manager, or another Senior Manager depending on the circumstances and seeks to resolve.*

If matter is not resolved go to Stage 1

Formal Stage 1

- Employee puts grievance in writing to:
 - Line Manager - if the grievance is about the actions of another employee.
 - Another Senior Manager - if the grievance is about the actions or decisions of the line manager.
- An Investigating Officer is appointed.
- The Investigating Officer arranges a grievance meeting where the employee will be asked to explain their concerns and desired outcome.
- The Investigating Officer undertakes an investigation of the facts.
- The Investigating Officer will feed back and provide their conclusion and decision either in writing or at a further meeting.
- Written confirmation of the outcome will be provided by the Investigating Officer and will include right to appeal.

If matter is not resolved go to Stage 2

Formal Stage 2 (Appeal)

- Employee submits formal written notice to the Executive Director, Childrens Services, who will register it with the Director of Organisational Development & Policy. The appeal should set out the grounds and be within 10 working days of the receipt of outcome letter.
- The Director arranges a grievance appeal hearing to take place as soon as practicable.
- Outcome is confirmed in writing with 5 working days.

End of Procedure

NOTE: Mediation can be helpful in providing a solution and can be explored at any stage of the grievance process.

Grievance Guidance -

This brief guidance is intended for colleagues who are line managers and any employees who believe they have a problem or issue which needs dealing with. It does not replace the Grievance Policy. It simply aims to guide everyone involved in the right direction, which might mean the concern is resolved or needs to be taken further.

It is important to note that line managers have an entitlement to take out a grievance in the same way as any employee.

Childrens Services Staff work in a fast paced, ever changing environment which can become emotionally charged because employees are dealing with children. There are high expectations and demands which make working with children both challenging as well as significantly rewarding. However, the dynamic nature of the work the wide variety of activities and complex organisational demands can cause problems. All staff, including Service Managers, whatever their role can make mistakes, say or do the wrong thing. It is how we deal with those situations which lead to them being easily resolved or requiring further attention and potentially becoming a grievance.

Grievances are less likely to occur where school leaders/ line managers.....

Listen as well as lead

Model positive relationships

Always treat staff with respect

Have reasonable expectations

Challenge staff in an appropriate way – high expectations are fine so long as they are accompanied by the right level of support and training

Choose the right staff for particular roles

Explain decisions and introduce change in the right way

Change direction where necessary and acknowledge misjudgements

Don't pass stress down to staff

Are appropriately supportive and compassionate

Employees have responsibilities as well

If there are problems or concerns let your line manager know - don't suffer in silence. They can't help if they don't know there is an issue. Relatively small concerns can potentially develop into significant problems over time if not tackled early.

Be professional, respectful and considered in any discussion with your line manager. By being reasonable it helps the conversation to focus on solutions rather than the problem. There is a recognition, of course, that frustration, anger and upset can be difficult to manage but successful outcomes are more easily achieved when they are. Emotive language from anyone involved tends to hinder progress. Having suggestions to potentially help resolve the problem can be welcomed, management don't always have the answers and may welcome your input.

Grounds for grievances

If you feel that you have been treated unfairly, unreasonably or inappropriately you may well have the basis for a grievance. There are never circumstances when you should be treated without respect. If you are asked to do something which you are contractually obliged to do there may still be a potential grievance if you are expected to do it more often than other staff, or if the circumstances are in any other way unreasonable. However, if it is simply some particular aspect of the job you don't enjoy, which is probably true for all staff, including Service Managers at times, it is perhaps unlikely that this in itself would be strong grounds for a grievance. However, it is important to recognise that any employee has the legal right to raise a grievance over any aspect of their working life if they wish.

Discuss with an appropriate colleague

If you have a problem it may well be upsetting, resulting in stress and anxiety. It is advisable to consult with someone who you trust and has some understanding of the circumstances of your concern from another viewpoint. It needs to be someone you know will tell you what they think rather than what they believe you want to hear. It also needs to be someone who understands confidentiality.

Next Steps

Not every workplace or line manager follows the guidance for good practice listed above. Even the best line managers don't necessarily manage to follow best practice consistently. As referred to above, things can go wrong, mistakes are made, people are human. We are far more likely to forgive someone an error of judgment if generally that person is reasonable and approachable. It is sometimes possible to upset someone without there being any intent or malice. Misunderstandings and miscommunication are sometimes inevitable in a busy school. Often, potential grievances can be discussed and where necessary apologies are made and the matter resolved.

However, if your grievance is not dealt with informally to your satisfaction and you are unhappy with the outcome then that is the point at which you would consult the more formal sections of the Grievance Policy.

If the person responsible for the problem is dismissive of the issue and/or unrepentant, the formal route detailed in the Grievance Policy would almost certainly be your next move.

Some grievances at the more serious end of the scale are highly unlikely to be resolved by a quick, friendly discussion followed by an apology. It is important to recognise that any employee has the right to go straight to a formal grievance if they consider it is justified to do so.

Procedure of Appeal Stage

1. The aggrieved employee shall be given at least 10 working days* notice in writing of the date, time and place of the hearing and shall be informed of the right to be represented by their Trade Union or professional association representative or colleague and shall be able to call witnesses and to present the documents relevant to their case.

If another employee is a subject of the grievance, they will also receive at least 10 working days' notice in writing of the arrangements. They will be provided with a copy of all documentation relevant to their involvement.

2. Copies of all documents to be relied upon at the hearing shall be submitted by the aggrieved, the Investigating Officer, to the Appeal Hearing Office at least 5 working days prior to the date of the hearing. The Investigating Officer should have provided to those hearing the case, and other relevant parties, all documentation to be relied upon, so there should be no need for any subject of the grievance to submit any material.

The subject of the appeal will* attend throughout the presentation of the case, where the entirety of the grievance pertains to them. Otherwise, they will attend only as a witness for the relevant section. (ii)

3. The Investigating Officer will present their report of the investigation and outcome of the case at the previous stage. They may call witnesses.
4. The aggrieved will have the opportunity to ask questions of the Investigating Officer and any witnesses.
5. Any employee who is the subject of the grievance will have the opportunity to ask questions of the Investigating Officer and any witnesses.
6. The Appeal Hearing Officer will have the opportunity to ask questions of the Investigating Officer and any witnesses.
7. The aggrieved will put their case, which will focus on those areas of the Investigating Officer's findings that they do not accept. They may call witnesses.
8. The Investigating Officer will have the opportunity to ask questions of the aggrieved and his/her witnesses.
9. Any employee who is the subject of the grievance will have the opportunity to ask questions of the aggrieved and their witnesses.

10. The Appeal Hearing Officer will have the opportunity to ask questions of the aggrieved and any witnesses.
11. The subject of the grievance will put their response to the grievance, which will focus on any areas where they do not accept the Investigating Officer's findings. They may call witnesses.
12. The Investigating Officer will have the opportunity to ask questions of the respondent and any witnesses.
13. The aggrieved will have the opportunity to ask questions of the respondent and any witnesses.
14. The Appeal Hearing Officer to have the opportunity to ask questions of the respondent and their witnesses.
15. All witnesses will withdraw at this point.
16. The aggrieved employee, Investigating Officer and the subject of the grievance to have the opportunity to sum up their case if they so wish.
17. The aggrieved employee, Investigating Officer and the subject of the grievance to withdraw.
18. The Appeal Hearing Officer to deliberate only recalling the aggrieved employee, Investigating Officer and subject of the grievance to clarify points of uncertainty on evidence already given. If recall is necessary, all 3 parties are to return, notwithstanding that only 1 may be concerned with the point requiring clarification.
19. The Appeal Hearing Officer will announce its decision to the employee personally and to their representative, Investigating Officer and subject of the grievance. This will be confirmed in writing within 5 working days.

** For the purpose of this procedure "working days" shall mean Monday to Friday normally during term-time, excluding bank holidays and the time begins with the day of receipt but does not include the day of the hearing. With the agreement of all parties, it may be possible to expedite the process.*

(i) The aggrieved may be represented by an accredited Trade Union representative or by a friend/colleague. The representative may present the case on their behalf, question witnesses and sum up but the aggrieved will provide any responses to questions.

The subject of the grievance may be represented by an accredited Trade Union representative or a friend/colleague. The representative may present their response to the grievance, ask questions of witnesses, and sum up but the subject of the grievance will respond to any questions.

(ii) Where a subject of the grievance is attending the hearing only as a witness, all references to the subject of the grievance presenting a case, asking questions of the aggrieved and the Investigating Officer calling witnesses or summing up should be omitted. Therefore points 11 to 14 will not be included in the procedure.

(iii) In some circumstances it may be reasonable to agree that the subject of the grievance is not required to attend. Where this is the case mitigations should be put in place to ensure that a fair process is followed.

Derbyshire County Council

GRIEVANCE PROCEDURE FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS

MANAGER GUIDANCE

Manager Guidance - Grievance Procedures for Teachers employed by the Local Authority and not attached to schools.

	Page No
Contents	
Introduction	2
Mediation	2
Handling a Grievance	2
<ul style="list-style-type: none">• Gathering Information• Interviewing Witnesses• Conducting a Grievance Meeting• Discussing the Grievance with any subject of the Grievance	
Repetitive or Potentially Inappropriate Grievances	7
False/Malicious Accusations	7
Time Limit	7
Collective Grievance	7
Relationship with Disciplinary	8
Grievance Records	9

Introduction

This guidance provides further information and advice in relation to the LA's model Grievance Procedure for teachers employed by the Local Authority and not employed by Schools. It forms the basis upon which the Authority could best offer support and has been the subject of consultation and agreement with the recognised Teacher Unions/Associations. It is essential to follow the requirements set out in this Managers' guidance, which provides more detail of the process as well as guidance in respect of grievance matters.

This procedure is not appropriate for salary or grading appeals for which separate procedures are specified elsewhere.

Mediation

If it is not possible to resolve the grievance informally, mediation may be an option without having to revert to formal procedures

Consider whether mediation is appropriate where, after every effort to resolve the grievance informally, it might possibly produce an acceptable outcome without the need for the formal stages of the Procedure.

Mediation is a voluntary process where the mediator helps the parties in dispute to attempt to reach an agreement. Mediation can only be used where all parties involved in the grievance agree to it, but its use is strongly encouraged as it can provide effective solutions to workplace conflict

Mediation is more effective if used at an early stage in the process but can be used at any stage as a complement to formal procedures if parties agree to pause procedures.

Consult the Advice and Support Team on whether mediation is appropriate and available.

Handling a Grievance

It is suggested that a systemic approach, similar to that detailed below is adopted when handling a grievance.

It is helpful to try to view an employee raising a grievance constructively. If a grievance is raised, this provides an opportunity to resolve a workplace problem. Knowing about a problem is much better than remaining ignorant of the fact that an employee is unhappy or disgruntled about some aspect of their employment.

If an employee raises a grievance, it should be discussed with them informally before it is taken further, unless the complainant wishes to move directly to a formal grievance. If the complaint is against the line manager another senior manager should be involved. It is clearly in everyone's interests to resolve problems before they can develop into major difficulties for all concerned.

Where the employee has made a complaint verbally, this can normally be classed as informal grievance. Line Managers should be willing to deal with an employee's grievance irrespective of whether it is raised verbally or in writing.

It is not helpful to insist that an employee who has raised a complaint verbally should also put it in writing, as some employees may not wish to do so.

Informal enquiries should be undertaken to identify and clarify the issues, establishing the essence of the problem. The manager should listen sympathetically but be clear when trying to distinguish the facts, ensuring that the perspective of any other employee named in the grievance is taken into account. They will need to consider employees' points of view and, if possible, provide a solution or part solution. The manager will provide feedback to the employee about what can, and/or cannot, be done to resolve the grievance informally or notify the employee that an investigation needs to be undertaken and that the matter will be referred to the formal Stage 1 of the procedures. This may be in writing where necessary.

If the grievance is relatively minor, the chances are that it can be resolved quickly and easily. This will help to build trust and respect and enhance management/staff relationships.

To effectively handle a grievance the manager dealing with the grievance should:

- Deal with the matter promptly. This does not mean that the grievance should be dealt with in haste, but that a meeting should be arranged with the employee to discuss the matter and start any necessary information gathering without undue delay.
- Take the grievance seriously, considering why the employee feels aggrieved.
- Identify and clarify the issues, establishing the essence of the problem.
- Listen sympathetically but be clear when trying to establish the facts.
- Ascertain what resolution/outcome the employee is seeking to redress their grievance.
- Actively look for a solution that will satisfy the employee without causing disproportionate difficulty for the service or the employee's colleagues and taking into account the council's policies and procedures, the resources available and the need for consistency and fairness.
- Ensure that all parties involved understand precisely what has been decided and take action as necessary.
- Follow through and ensure the agreement is carried out.
- Review, checking that the grievance has been resolved.

In addition, during any formal investigation:

- notes should be taken to build up a short-written statement of the problem.
- information should be gathered on the facts and surrounding circumstances.
- the evidence should be checked by questioning and talking to any subject of the grievance and witnesses and obtain written statements where relevant.
- an evaluation should take place and a decision made when all the facts have been gathered. If the grievance is against another employee, no conclusion should be reached, or views expressed until the matter has been discussed with the individual concerned.

Gathering Information

A grievance may raise matters about which the Investigating Officer is uncertain or does not have all the background facts. Information on such matters will need to be gathered promptly, impartially, and thoroughly.

The information gathering may be before a grievance meeting:

- Checking the wording of policies or procedures.
- Discussing with HR Advice & Support Team.
- Accessing the employee's file to check the history of their employment terms or general background. (Only when appropriate).
- Reviewing any other relevant documentation; and
- Discussing the matters the employee has raised with other employees to establish their version of events.

Interviewing Witnesses

As part of the process of a formal investigation into a grievance, it may be necessary for other employees, managers and possibly people outside the organisation to be interviewed. To ensure that this is done effectively and fairly, the Investigating Officer should:

- prepare a list of questions in advance of each interview.
- present the facts of the employee's complaint objectively and without embellishment and ask for comment.
- avoid making assumptions.
- point out, and question, any discrepancies in the evidence.
- make sure that the whole story is uncovered; and

- take notes.

Witness statements are factual statements obtained from people who have relevant knowledge of an alleged incident or event. They are usually developed from notes taken at a meeting with the witness, these notes are not intended to be a verbatim record, but a representation of the conversation that took place. The purpose of these notes is to aid the Investigating Officer in making an informed decision in respect of the grievance. Neither party is allowed to make a covert audio or video recording of meetings held as part of this procedure. Recording equipment should only be used with prior mutual agreement. The use of recordings may be considered as part of making reasonable adjustments for relevant parties involved. *(For further advice see ACAS article on covert recording in Tools, Templates & Resources, Workplace Snippets, acas.org.uk).*

At the start of the interview the employee should be informed that:

- *They will receive a copy of the notes to confirm they are accurate or to make comment on.*
- *If they agree the notes are accurate, 2 copies should be provided, and they should date and sign each page of one copy and return this signed copy to the Investigating Officer.*
- *The Investigating Officer will accept any minor amendments provided they do not change the substance of the employee's answers.*
- *If they have any comments or reasons why they believe the notes are not accurate they should confirm them in writing to the Investigating Officer and they will be included with the Investigating Officer's notes in the record of the investigation.*

They will have 5 working days to sign and or comment on and return the notes of the meeting.

In order to ensure that these statements are as accurate as possible, it is important that they are procured as soon as is practicably possible following the event. The Investigating Officer might wish to confirm and seek further information from those individuals providing statements, as part of the investigation process, and in order to seek a balanced overview of events. This might result in a need for supplementary statements from the individuals concerned. These statements would then form the basis for the investigation.

Conducting a Grievance Meeting

A grievance meeting is not the same as a disciplinary hearing, it is a formal meeting when discussion and dialogue may lead to an amicable solution.

The Investigating Officer should:

- allow the employee to be accompanied at the meeting by a TU representative or colleague.
- invite the employee to re-state their grievance and how they would like to see it resolved.

- ask questions to clarify the facts and explore the matter fully.
- achieve a clear understanding of the grievance and why it has arisen.
- distinguish between matters of fact and matters that represent the employee's opinion about the issue.
- discuss any alternative solutions, and if there might be room for compromise.
- provide the employee with any relevant information about Council's policies and rules, or availability of resources.
- not be afraid to point out and question any discrepancies or challenge what the employee is saying.
- focus on what can be done to resolve the problem.

At the end of the meeting, the Investigating Officer should confirm what has been discussed, check understanding and agree what will happen next.

Discussing the Grievance with any subject of the Grievance

In a meeting with any subject of the grievance the Investigating Officer will:

- allow any employee who is the subject of the grievance to have representation.
- allow any employee who is a subject of the grievance to present their response.
- ask questions to clarify the facts and explore the matter fully.
- distinguish between matters of fact and matters that represent the employee's opinion about the issue.
- not be afraid to point out and question any discrepancies or challenge what the employee is saying.
- focus on what can be done to resolve the problem.

At the end of the meeting, the Investigating Officer should confirm what has been discussed, check understanding and agree what will happen next.

Upon completion of the investigation, the aggrieved will be informed of the decision made on the grievance and provided with an explanation of what action has been taken, or will be taken, to resolve the grievance or an explanation that no action will be taken, along with the reasons for this. Decisions should be communicated to the employee within 5 working days.

This may be in writing or at a reconvened grievance meeting and confirmed in writing. Where the grievance meeting is re-convened 5 working days' notice of the re-convened meeting should be given. The employee can be accompanied by a Trade Union professional association representative at any reconvened grievance meeting.

Where an employee's grievance is not upheld, the Investigating Officer should make sure the reasons are carefully explained. Any other employee who is the subject of the grievance should also receive written notification of the outcome.

If an employee is not satisfied with the decision after a grievance meeting, they should be informed that they have a right of appeal.

Repetitive or Potentially Inappropriate Grievances

If, for any reason, it is considered that the complaint may be inappropriate for consideration under the Grievance Procedure. The Advice & Support Team should be contacted in the first instance to assess the situation. As the policy seeks to provide all employees with the opportunity to explain their grievance and receive feedback, it is important that consultation and full consideration is given to such cases. If, having considered and consulted on the matter fully, it is decided that the concern, problem, or complaint expressed by the employee should not be progressed under the Grievance Procedure the employee should be advised, verbally and in writing, explaining why no further steps will be taken. The employee will be entitled to re-submit the complaint with further evidence or explanation which demonstrates that it is a substantive grievance.

False/Malicious Accusations

Where there is an attempt to use the Grievance Procedure for potentially false or malicious accusations, this may be treated as misconduct and may lead to disciplinary action.

Time Limit

Preferably grievances will be raised within 3 months of the incident occurring. Concerns should be raised as soon as possible. The longer the matter is left unaddressed, the less likely it is that a positive resolution can be achieved.

While recognising that grievances should preferably be raised as quickly as possible, there are exceptions to this. For example, where it is alleged that there has been a long-term pattern and the event that triggers the complaint is the latest incident, or, where the incident complained of is of such a serious nature that it would be in the interest of the school to continue with the complaint. There are also circumstances where the employee has been absent from work, either because of the alleged harmful behaviour or for other reasons and been unable to raise their concerns within 3 months. It may also be the case that an employee has needed time to build up the confidence to raise their complaint.

Collective Grievance

Occasionally a collective grievance may arise where two or more of people have the same grievance at the same time.

A collective grievance can be raised by a workplace representative - either a Trade Union representative or a person acting on behalf of a number of colleagues.

It is recommended that wherever possible grievances are dealt with informally. An attempt should first be made by those involved to resolve the matter as soon as possible, bearing in mind that all employees have an overall responsibility to work co-operatively with in a climate of mutual respect. The majority of concerns, problems and complaints should be settled in this way.

If an informal approach is unsuccessful or if the complainants wish to go directly to the formal stage a Collective Grievance should be submitted in writing to the * Head of Service and must be signed by all employees who are party to the grievance.

**Where the grievance is brought against the Head of Service, or the Head of Service has been involved in informal attempts to resolve the grievance, the formal collective grievance should be submitted to another Senior Manager. Employees can take advice from the Advice & Support Team on who to approach.*

The arrangements for considering a collective grievance are in accordance with this policy

Regular council consultation mechanisms are also a useful way for a number of staff to raise their concerns

The Council will not consider separate individual grievances on the same issue that are raised simultaneously or issues that are being considered through formal collective negotiation mechanisms.

Relationship to Disciplinary

Should a grievance be raised by the employee during the course of the disciplinary process, normally, where the issues relate to the substance/context of the disciplinary matter, these may be appropriately dealt with as part of the disciplinary process.

Where an employee raises a grievance relating to the procedure during or before a meeting it may be appropriate to consider stopping the hearing and suspending the disciplinary procedure in order to deal with the grievance.

Examples of when the procedure is likely to be suspended include:

- An alleged conflict of interest that the person(s) hearing the case or otherwise involved in the case may have
- Alleged bias in the conduct of the disciplinary hearing
- There is possible discrimination
- It is alleged that information has been withheld in the material presented to support the case, or that wholly irrelevant material has been included

- Other challenge to the way the procedure has been conducted

Advice should always be sought from the Advice & Support Team. Where a grievance is raised during the disciplinary meeting, which is separate and unrelated to the matter in hand, this will be considered separately at the conclusion of the disciplinary process.

If the grievance is raised before the disciplinary hearing takes place, a separate investigation of the issues can be instigated, without waiting for the disciplinary case to be completed.

In certain circumstances, a grievance may be considered after an employee has left their employment. For these purposes, grievance will be taken to include any employee led complaint including complaints of harassment and bullying where the procedures outlined in the harassment and bullying procedure may have been applied.

Grievance Records

It is important, and in both the employer and employee's interest to keep written records during the grievance process. Grievance records should be maintained in accordance with the requirements for processing personal sensitive data as outlined in Data Protection Act 1998. They should be kept in the strictest confidence and kept no longer than necessary.

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