

Public Document Pack



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PUBLIC

To: Members of Appointments and Conditions of Service Committee

Monday, 19 June 2023

Dear Councillor,

Please attend a meeting of the **Appointments and Conditions of Service Committee** to be held at **4.00 pm** on **Tuesday, 27 June 2023** in Committee Room 3, 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 8 March 2023 (Pages 1 - 8)
4. Code of Conduct (Pages 9 - 50)

5. Disciplinary Procedure (Pages 51 - 114)

PUBLIC

MINUTES of a meeting of **APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE** held on Wednesday, 8 March 2023 in Committee Room 3, County Hall, Matlock.

PRESENT

Councillor S Spencer (in the Chair)

Councillors J Dixon, R Flatley, M Ford (substitute Member), S Hobson, A Sutton (substitute Member) and S Swann.

Apologies for absence were submitted for Councillors B Lewis, R George and T Kemp.

1/23 TO RECEIVE DECLARATIONS OF INTEREST (IF ANY)

There were no declarations of interest.

2/23 TO CONFIRM THE NON-EXEMPT MINUTES OF THE MEETING HELD ON 6 OCTOBER 2022

The minutes of the meeting held on 6 October 2022 were confirmed as a correct record.

3/23 WORKING ARRANGEMENTS POLICY INCLUDING UPDATES TO THE TRAVEL POLICY

The Committee was asked to approve the new Working Arrangements Policy for implementation on 1 April 2023; and to approve the updates to the existing Travel Policy, the Leave Schemes Policy and the Flexible Working Policy amended to align with the new Working Arrangements Policy for implementation on 1 April 2023.

A survey had been co-developed with Joint Trade Unions and departmental/divisional leads and the feedback had reinforced the need for a clear framework.

The Policy outlined that the Council was committed to enabling its colleagues to be the best they can be, valuing both the benefits that remote working had enabled, whilst remaining committed to in-person interaction. The Policy would enable the right balance between the following four key elements:

- The efficiency and effectiveness of individuals.
- The efficiency and effectiveness of the individual's immediate team.
- The efficiency and effectiveness of the interaction between teams across the council when delivering services to residents and communities.
- The ability to regenerate the workforce for the long term.

Working arrangements would be based on employees being considered fixed-base, field-base and flexible and in exceptional circumstances, employees may be home-based. These employee profiles were aligned to the requirements of roles and the way in which services were delivered across the Council.

Under the Travel Policy, it outlined the organisation's approach to the requirement and eligibility for pay and allowances for undertaking work related journeys and excess travel arrangements for employees who had been redeployed or had moved work base.

RESOLVED:

That the Committee:

- a) Approves the adoption of the Working Arrangements Policy for implementation from 1 April 2023; and
- b) Approves the adoption of the revised Travel Policy (previously referred to as the Travel Guide), the Leave Schemes Policy and the Flexible Working Policy for implementation from 1 April 2023.

4/23 PERFORMANCE MANAGEMENT POLICY

On 24 May 2022, ACOS had approved the interim Performance Development Review (PDR) framework and had noted the intention to seek feedback in order to determine the approach to be deployed during 2023-24. This policy aimed to outline the principles of an organisational approach to employee performance management and detailed guidance would underpin how the PDR would be applied.

As a result of feedback and engagement, it was proposed to cease the My Plan process and introduce the PDR process for all employees with effect from 1 April 2023. The Performance Management Policy, which was attached to the report, had been updated to reflect this. The implementation of this policy would be phased over the coming years, with the following versions of PDR in effect from April 2023 as follows:

- Grade 14+ Senior Leaders – end the 2-year pilot and continue with

the current PDR process.

- Executive Directors – continue with the current PDR process as detailed in the report.
- 1,600 Leaders who managed one or more people – introduce the goal setting, personal development plan, career conversation and 1-1 elements of the PDR process along with a competency framework suitable for managers.
- All colleagues that did not manage a team who currently used My Plan – introduce as per 1,600 leaders minus a competency framework.
- All colleagues who did not currently use My Plan – to have regular 1-1 with their line manager.
- Supervision users – using PDR as per the above depending on their grade and management responsibilities, folding the Supervision elements into 1-1s.

RESOLVED:

That the Committee:

- a) Approves the proposal to cease the My Plan process and introduce the PDR process as the replacement for all employees with effect 1 April 2023; and
- b) Notes the intended implementation plan for rollout of the policy.

5/23 REVISIONS TO THE RECRUITMENT AND SELECTION POLICY

The Committee was asked to approve revisions to the existing Recruitment and Selection Policy, the adoption of a new Probation Policy and the adoption of a new Reference Policy. The purpose of these changes was as follows:

- Recruitment and Selection Policy – to modernise recruitment practices to allow the council to better compete in the current employment market. The proposed changes were highlighted and the revised Policy was attached at Appendix 2 to the report.
- Probation Policy – to facilitate early performance management interventions for new employees of the Council. Currently the Council had no probation period for new employees, which meant that any serious conduct or performance issues would need to be addressed through use of the Council's Disciplinary Procedure and Performance Capability Procedure.

It was proposed that the Probation Policy commenced on 1 April 2023 and applied to all new employees to the Council from 1 April 2023 going forward. The proposed Policy was attached at Appendix 3 to the report.

- Employment Reference Policy – to make the reference process more efficient by moving the responsibility for completing reference from management to Human Resources Services. The other key points of the policy included:
 - That general employment references supplied in respect of current to previous colleagues would be factual references as set out in Appendix 1 of the policy;
 - That employment references in respect of safeguarding roles supplied in respect of current to previous colleagues would be factual references as set out in Appendix 2 of the policy; and
 - That managers will only be able to supply references in a personal capacity and not use the Council's headed paper or email address.

RESOLVED:

That the Committee:

- a) Approves the adoption of the revised Recruitment and Selection Policy;
- b) Approves the adoption of the new Probation Policy; and
- c) Approves the adoption of the new Employment Reference Policy.

6/23 SALARY SACRIFICE ELECTRIC AND HYBRID VEHICLE SCHEME

The Electric and Hybrid Vehicle Scheme (E&HVS) was one of a number of programmes of work to enhance the Council's Employee Value Proposition (EVP) to support the Council's People ambition to be an employer of choice.

The salary sacrifice scheme would enable eligible employees to lease a brand new electric or hybrid car, at a fixed monthly price, inclusive of car insurance, road tax, MOT, maintenance, breakdown cover, replacement tyres and accident assistance. Employees would also benefit from no upfront payments.

The benefits of the scheme for employees and the Council were highlighted.

The Council currently paid 45p per mile for the first 10,000 business miles and 25 per mile thereafter, in line with HMRC rates. The Council proposed to reimburse work related mileage undertaken in a salary sacrifice lease vehicle at 18p per mile for electric vehicles (12p per mile to cover the cost to charge a vehicle and an additional 6p to cover a proportion of maintenance costs covered within the lease agreement). For hybrid vehicles these would be reimbursed at 6p per mile above the top of the HMRC advisory rate for petrol or diesel cars.

RESOLVED:

That the Committee agrees:

- a) To the Council introducing a salary sacrifice vehicle lease scheme for electric and hybrid vehicles; and
- b) To reimburse work related mileage at 18p per mile for electric vehicles and for hybrid vehicles an additional 6p per mile above HMRC fuel advisory rates that will be reviewed and amended quarterly in line with the HMRC fuel advisory rates.

7/23

ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY PROCEDURES FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS

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

This was the first opportunity to bring the attendance management and ill-health capability procedures to the ACOS Committee following negotiations at SJCC. The procedure was consistent with the policy adopted for employees of the County Council wherever possible and provided a sound and fair framework for addressing concerns relating to the absence and ill-health capability of teaching staff not attached to schools. The Procedure document which was attached at Appendix 2 to the report included detailed manager guidance to assist implementation, which had also been agreed at SJCC.

RESOLVED:

That the Committee approves the adoption of an attendance management

and ill-health capability procedure for Teachers employed by the Local Authority and not attached to schools which will be implemented with effect from 1 April 2023.

8/23 **PAY POLICY FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS**

The Committee was asked to note the details of the nationally agreed School Teachers' Pay Award paid from 1 September 2022 and to approve the revised Teachers' Pay Policy for teachers employed by the Local Authority and not attached to schools.

The main changes to the Teachers Pay Policy for 2022 were highlighted.

RESOLVED:

That the Committee:

- a) Notes the details of the nationally agreed School Teachers' Pay Award payable from 1 September 2022; and
- b) Approves the adoption of the revised Pay Policy for Teachers employed by the Local Authority and not attached to schools.

9/23 **RATIFICATION OF THE NJC, CHIEF OFFICER & CHIEF EXECUTIVE PAY AGREEMENT AND APPROVE THE DACES PAY AGREEMENT**

The Committee received a report requesting Members to note the local implementation of national pay awards to the Council's pay structure; to note the ongoing local consultations with Joint Trade Unions in respect of the increased annual leave entitlement and future deletion of pay point 1 with effect from 1 April 2023 within the NJC pay agreement; and to note the position on the national Soulbury Committee pay negotiations (effective 1 September 2022).

The report also sought approval for a one year pay agreement for Derbyshire Adult Community Education Service (DACES) employees for 2022-23, in line with the NJC agreement for other local service workers.

RESOLVED:

That the Committee:

- a) Notes the pay agreements applied covered under national pay agreements as outlined within the report;

- b) Notes that the annual leave entitlement increase and deletion of pay points does not apply to Derbyshire terms and conditions and the Derbyshire pay scales. The Council remains in local consultation with the Joint Trade Unions; and
- c) Approves the proposed pay agreement for DACES employees in line with the National Pay Agreement for Local Government Service Workers at a flat rate uplift of £1,925 (fte) on all DACES pay points effective from 1 September 2022 to 31 August 2023.

The meeting finished at 1.39 pm

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FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE

TUESDAY, 27 JUNE 2023

Report of the Executive Director - Corporate Services and Transformation

Code of Conduct for Employees

1. Purpose

1.1 To agree the updates and amendments to the Code of Conduct for Employees following the scheduled review and refer them to Governance, Ethics and Standards Committee and full Council for approval and inclusion in the Constitution.

2. Information and Analysis

2.1 The Council's employment procedures are updated and reviewed on an ongoing basis to ensure they remain relevant and up to date to ensure the Council meets its commitments outlined in the Council Plan. Work has been undertaken to review and revise the current Code of Conduct for Officers to ensure it remains relevant and fit for purpose.

2.2 The last major review of the Code of Conduct was in April 2015. Minor updates were undertaken in June 2015 to reflect the replacement of the General Social Care Council by the Health and Care Professional Council and in July 2020 to reflect changes to terminology aligned to the current HR model.

2.3 The updated Code of Conduct is aligned to reflect the Council's values and People Strategy and to reflect the recently implemented Working Arrangements Policy.

2.4 Benchmarking has been carried out against other similar organisations with the aim of achieving best practice.

2.5 Prior to any amendments being undertaken, the current document was shared with both Legal and Audit Services to obtain advice and suggestions on any necessary revisions. It has also been shared with Trade Unions for

comments.

2.6 Additionally, Adult Social Care and Health currently have in place a separate Code of Conduct which mirrors the Council Code, but with additional information relating mostly to gifts, hospitality and legacies. Following a suggestion by Adult Social Care and Health, the two documents have been incorporated into one single document and work has been undertaken with the department to facilitate this.

2.7 The amendments to the Code are detailed below:

- To rename it Code of Conduct for Employees
- Technical changes and terminology to ensure links and dependencies and any references to current procedures are accurate and up to date.
- Additional wording has been included to reflect alignment to the Council Plan.
- The scope has been widened to encompass relief workers and apprentices and to suggest that other relevant individuals should adhere to its principles and ethos in line with current legal advice. This includes contractors, agency workers, consultants and those on student / work experience placements.
- A new section is included regarding roles and responsibilities to ensure all those affected are fully aware of their individual responsibilities.
- The section on personal behaviours has been strengthened in order to clarify possible repercussions in regard to attending work when under the effect of alcohol or non-prescription drugs and clarification provided on what might be considered as inappropriate dress.
- The relevant legislation in relation to political neutrality has been referenced as a matter of good practice.
- The section on personal relationships has been updated in order to clarify an individual's personal responsibilities with regard to when it may be necessary to declare a personal relationship, and also to link to other policies, specifically Recruitment and Selection.
- The section on additional employment has been updated. This has enabled additional information contained in the Adult Social Care and Health Code to be incorporated, which includes the requirement of not undertaking private work for clients. This section has also been updated to reference additional requirements of the Officer's Interests Policy.
- The section relating to use of council property has been updated to incorporate additional information from the Adult Social Care and Health document.
- The section on gifts, hospitality and legacies has been updated to incorporate the information in the Adult Social Care and Health document. Legal advice has been sought and incorporated, specifically in relation to

legacies to ensure employees are aware that are required to sign an official disclaimer should they benefit from a client's will.

- An additional section has been included, incorporated from the Adult Social Care and Health document, concerning transactions, correspondence, legal and financial business. This is to ensure employees understand the boundaries to which they must work when undertaking roles in relation to clients.
- It has been suggested by Legal Services that employees be required to sign to confirm that they have received a copy of the Code of Conduct and this will be incorporated into employment contracts.
- Additional wording acknowledging employee's right to a private life.

2.8 Currently the Code of Conduct for Officers is included at Appendix 12 and the Ethics Statement at Appendix 10 of the Constitution. The Ethics Statement is based on the Nolan principles which apply to all those appointed to work in local government and is focused on expected behaviours and are referenced in the revised Code of Conduct. Any amendments to the Constitution must therefore be considered by the Governance, Ethics and Standards (GES) Committee and approved by full Council. In addition to the amendments outlined above, it is proposed that the Appointments and Condition of Service (ACOS) Committee recommend to the (GES) Committee at its meeting on 13 July 2023, to remove the Code of Conduct from the Constitution, and amend the role of the ACOS Committee to delegate authority to approve future changes to the Employee Code of Conduct. In addition, it is proposed that, the Ethics Statement is also removed from the Constitution and incorporated into the revised Employee Code of Conduct as a separate Appendix. Should the GES Committee support the recommendation this would then be presented to Full Council for approval at its meeting on 13 September 2023.

3. Consultation

3.1 Consultation with recognised trade unions has been undertaken initially through the CJC HR Operations Workstream and latterly through the Policy Forum. Initial suggestions have been discussed and wording strengthened on the areas where the trade unions have expressed concerns. Further minor comments were received at the Policy Forum on 16 May 2023. Where appropriate these have been incorporated into the Code of Conduct and the final document has been shared with trade unions. The Code of Conduct for Employees has been developed in consultation with the trade unions however, they have not yet confirmed final agreement.

4. Alternative Options Considered

4.1 An alternative option could be not to update the Code of Conduct however; it is accepted good practice to regularly review current employment procedures to ensure they remain relevant and up to date with current legal advice. By not reviewing the Code of Conduct it could become out of date and out with best practice.

4.2 In addition, it has been considered that the council chooses not to have a code of conduct in place, however this is not the recommended approach. The benefits of having a code of conduct enables the council's mission, values, and principles to be assembled in one document and links them with standards of professional conduct expected and articulates the desired behaviours of employees.

4.3 Finally, an alternative option could be to leave the Code of Conduct in the Constitution. However, this is not recommended as the Constitution does not include any other employment policies, with other employment policies being approved at ACOS. Therefore, amending the delegations to enable the ACOS Committee to approve changes to the Employee Code of Conduct aligns our approach consistently to the approval of the Council's other employment policies.

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 – Revised Employee Code of Conduct

7.3 Equality Impact Assessment

8. Recommendation(s)

That Committee:

- a) Notes and supports the updates and amendments to the Employee Code of Conduct following the scheduled review and refers them to Governance, Ethics and Standards Committee for consideration and referral to Council for approval.
- b) Recommends to Governance, Ethics and Standards Committee and Council that the Code of Conduct for Officers is removed from the Constitution and Council delegates responsibility for the consideration and approval of the Code of Conduct to the Appointments and Conditions of Service Committee.
- c) Recommends to Governance, Ethics and Standards Committee and Council that the Ethics Statement is removed from the Constitution and incorporated into the Employee Code of Conduct as a separate appendix.

9. Reasons for Recommendation(s)

9.1 It is considered that the proposed revisions will provide more clarity for employees and managers and reflect best practice when dealing with conduct issues.

9.2 The removal of the Code of Conduct for Officers and the Ethics Statement from the Constitution will enable future amendments to be implemented in an expedient manner and avoid the need to make future changes and updates to the Constitution as well as aligning the Code of Conduct with other employment policies.

Report Author: Tracey Wall

Contact details: tracey.wall@derbyshire.gov.uk

Implications

Financial

1.1 There are no financial implications connected with this report.

Legal

2.1 Legal advice has been sought and implemented into the revised Code of Conduct.

2.2 Section 9P of the Local Government Act 2000 requires a local authority to prepare and keep up to date a constitution, which must contain a copy of the authority's standing orders and a copy of the authority's code of conduct and such information as the Secretary of State may direct.

2.3 In 2000, the Secretary of State issued the Local Government Act 2000 (Constitutions) (England) Direction 2000 which set out the information that the constitution of a local authority should contain. This includes "A description of the roles of officers of the local authority including...the code of conduct for local government employees issued by the Secretary of State in accordance with section 82 of the Local Government Act 2000." Since the issue of the direction, section 82 has been repealed for England by the Localism Act 2011 and no longer applies. The Council could, therefore, agree to remove the Code of Conduct for Officers from the Constitution and delegate responsibility for its approval to the Appointments and Conditions of Service Committee. This is a non-executive function and can therefore be delegated to the Committee.

2.4 Article 22 of the Constitution makes it clear that changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance, Ethics and Standards Committee.

Human Resources

3.1 Legal comments have been sought and incorporated. Legal Services have suggested it would be advisable to ensure employees be required to sign to confirm receipt of the Code of Conduct. It is proposed to include a statement within the employment contract which outlines that in signing the contract the employee accepts receipt of the Code of Conduct. This is in response to feedback from disciplinary cases whereby an employee has breached the Code of Conduct, but individual's state they were not aware of

it. Work will be undertaken with HR Services to facilitate this.

Information Technology

4.1 There are no IT implications connected with this report.

Equalities Impact

5.1 An Equalities Impact Assessment has been completed and shared for comment with the Equalities, Diversity and Inclusion Manager. A copy of this document is attached as Appendix 3.

Corporate objectives and priorities for change

6.1 To enable organisational transformation and effective employee relations.

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

7.1 None

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Code of Conduct for Employees



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Business

Version	Date	Detail	Author
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1.00	30/4/2015	Revised Code of Conduct – Scheduled review date.	Tracey Wall
1.01	8/5/2015	Amendment of GSCG to HCPC	Tracey Wall
1.02	14/7/2020	Amendment to terminology following HR Review	Roxanne Hardman
2.00	2/12/2021	Scheduled review date	Tracey Wall
2.01	20/5/2022	HR Initial comments	Tracey Wall
2.02	31/10/22	Legal comments	Tracey Wall
2.03	17/05/2023	Trade Union Consultation	Tracey Wall

Links and Dependencies

Council Website:

Customer Charter
Whistleblowing Policy
Anti-fraud and Anti-corruption Strategy
Information Security
Financial Regulations
Equalities
Anti-Money Laundering Policy
Disciplinary Procedure

Employee Website ‘Our Derbyshire’:

Internet and email staff guide
Internet, email and social media- acceptable use policy
Working Here – Employment Policies
Conditions of Service and terms and Conditions
Recruitment and Selection procedure
Dealing with the Media
Health and Safety
Employee Value Proposition
Working Arrangements Policy
Officer’s Interests Policy

National Standards:

Minimum practice standards established by service regulators (e.g. Care Quality Commission)
Codes of Practice established by professional bodies (e.g. General Social Care Council)

Everyone who uses Council services is entitled to expect the highest standards of conduct from Council employees and we are all responsible for delivering efficient and effective, high quality services in line with the Council Plan and to be an enterprising council, delivering value for money and enabling local people and places to thrive whilst respecting that individuals have the right to a private life

This code has been written to take account of the 'Nolan principles' also referred to as the seven principles of public life, which are the basis of the ethical standards expected of public office holders. They are:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

To achieve this you must, whilst at work:

- Act fairly, honestly, objectively and to the best of your ability;
- Not allow personal or private interests to influence your work;
- Not do anything as an employee that may discredit the Council;

For further detail please see Appendix D to this document.

As part of our ongoing employee engagement programme, the Council has developed a People Strategy which sets out how the Council will enable and support employees through our people priorities and our employee values and behaviours. This can be found on Our Derbyshire – News and Engagement – People Strategy

If you don't act in accordance with this Code of Conduct, whether intentionally or not, you may be in breach of your terms of employment and your actions may be investigated under the disciplinary procedure and could result in disciplinary action being taken.

All employees are required to comply with this document and acceptance of a contract of employment signifies you have received and agreed to these terms. If you have any uncertainties or are unsure how this document may affect you, please discuss these with your line manager.

Scope

The Code applies to all employees of the Council together with those working on behalf of the Council such as relief workers and apprentices. The principles and ethos set out in the Code should be adhered to by contractors, agency workers, volunteers, consultants and those on student / work experience placements. Those employed in schools where the governing body performs the function of the employer are subject to a separate school's Code of Conduct. The Code also applies to work related functions that take place outside of normal working hours.

Roles and Responsibilities

Managers

- Have a duty to implement this Code of Conduct in a fair and equitable way and to ensure that the employees they are responsible for understand and adhere to it.
- Have a duty to ensure that any complaints raised in relation to this Code are investigated appropriately, and that complainants are not penalised as a result of making a complaint.
- Must be aware of their own conduct and behaviour and how this can impact on other employees.
- Should demonstrate behaviours in line with the Council's People Priorities, including promoting diversity and inclusion, commitment to the engagement, nurturing and development of their teams, and supporting the wellbeing of their staff and be committed to any Council strategies designed to support this.
- Support their staff to deliver their roles in the most effective way.

Employees

- Have a responsibility to treat colleagues and service users with dignity and respect
- Must be aware of their own conduct and how it can impact on others within the workplace including being committed and motivated to carry out their role
- Should notify their manager of unfair treatment should they become aware of it or if they believe there has been a breach of this Code of Conduct and cooperate with any investigation regarding allegations made in relation to this Code of Conduct
- Must not make false or malicious allegations in relation to this Code of Conduct and be aware that such actions may be investigated under the Disciplinary procedure.
- Should ask for clarification on any aspect of the Code if they are unsure.

- Will provide guidance to managers on the investigation of any complaints in relation to this Code of Conduct

Personal Behaviours

The Council expects certain standards of behaviour from its employees. You should ensure that:

- You treat colleagues, service users, and members of the public with dignity and respect
- You are committed to delivering quality services at all times working within the Council's Policies and Procedures
- You communicate openly and honestly with colleagues
- You carry out your duties in the best interests of our customers
- Your conduct is not discriminatory to others
- You do not use offensive or abusive language or behaviour or display offensive material
- You arrive for work punctually and fit to carry out your duties (this includes wearing your County Council ID badge and items of mandatory uniform or personal protective clothing that are supplied to you). You must not wear items of clothing displaying logos/images/messages/symbols that are likely to cause offence
- You take reasonable care of your own health and safety and others that may be affected by your work activities.
- You must not present for work whilst under the influence of drugs or alcohol.
- Where the behaviour or performance of employees falls below expected standards due to drugs, alcohol, or other substance misuse, this may be investigated under the Council's Disciplinary procedure.
- The Council expects the same standards of behaviour at work related social events and that you continue to treat colleagues with respect on such occasions

Accountability

As an employee you are required to serve the whole of the Council and Elected Members equally. You are accountable for your actions and owe a duty to the Council and are expected, where it is part of your duties, to provide appropriate advice to Elected Members and employees with impartiality.

You must act in accordance with the principles set out in this Code and recognise the duty of all public sector employees to discharge public functions reasonably and according to the law.

Maintenance of Standards

The Council's Customer Charter tells the public what they should expect from us and explains what the Council expects from you in helping to deliver the Council's objectives.

If you are concerned about any practices you see at work and feel they may conflict with this Code, you should discuss it with your manager, or a senior staff member. You can also use the Council's Whistleblowing Policy, which enables such matters to be investigated whilst protecting your identity and confidentiality. For further information please see the Council website for:

- Customer Charter (Your council: Policies, plans and procedures: Customer Charter).
 - Whistleblowing Policy (Your council: Policies, plans and procedures: Whistleblowing policy).
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Disclosure of Information

You may have access to restricted, controlled, or confidential information in the course of your work. You must protect that information in accordance with the Council's policies and procedures and you must not disclose that information or use that information for your own purposes, benefit, or gain, or to discredit the Council, or pass information to others who may use it in such a way.

For further information please see the Council Website for Information Security - Our Derbyshire; Information Security

Political Neutrality

Some Council posts are designated 'politically restricted'. If you hold such a post, you will have been notified of this in your contract of employment. It means that you are required by law to observe certain restrictions regarding your out of work activities in relation to political activity.

Whether politically restricted or not, you must follow Council policies, and not allow your own personal or political opinions to affect or interfere with your work. The Local Government Act 1972 precludes employees of Derbyshire County Council from standing for office as a County Councillor for this authority.

If you are required to provide information or advice to an Elected Member, you should ensure that you remain politically neutral.

See Appendix A for more information. **Page 23**

Relationships

Personal Relationships

Information in this section should be read in conjunction with the officer's interests' policy

You must discuss with your manager any personal relationship with another employee if it is likely to cause a conflict of interest. You must not be involved in making decisions that directly affect your family, friends, or anyone with whom you have a close personal relationship; for example, recruitment and selection processes, disciplinary processes, decisions relating to pay, or tender procedures.

Mutual respect between employees and Elected Members is essential to the effective operation of good local government and working relationships should be kept on a professional basis. Close personal familiarity between individual Elected Members and employees can damage professional relationships and make working relationships difficult for other Elected Members and employees. Situations should be avoided that could give rise to improper conduct or the appearance of such.

Any close personal relationship with an Elected Member must be declared to your Executive Director and consideration will be given to adjustments in working arrangements to avoid any conflict of interest or perceptions of such.

If you have an official relationship with a contractor with whom you have previously had or currently have a close personal relationship, you should declare that relationship in line with the Officers Interests Policy.

Failure to declare close personal relationships, as detailed above, is a breach of the code of conduct and may be investigated under the Council's Disciplinary Procedure.

All orders and contracts must be awarded on merit.

For further information please see the Council Website for Financial Regulations.

Your council: Budgets and spending; Financial regulations

Personal Interests

You must declare in writing to your Executive Director any:

- Financial or non-financial interest which could conflict with the Council's interests.
- Interest in an existing or proposed contract with the Council.
- Membership of any organisation that could conflict with the Council's interests.

For further information please see the Council Website for the Officers Interests Policy

Equalities

The Council is committed to preventing discrimination and advancing equality of opportunity and providing fair access and treatment in employment and when delivering services.

You are expected to comply with and support the Council's Equality and Diversity Policy and promote its objectives and you must familiarise yourself with this document and understand your responsibility in implementing it.

For further information please see the Council Website for Equalities.

Our Derbyshire; Equalities

Additional Employment

The Council accepts that all employees have a right to a private life and recognises that employees may take secondary employment, either within or outside of the Council. You should ensure that any secondary employment you undertake does not conflict with your role within the Council.

If considering taking secondary employment you should read the specific guidance given at Appendix B to ensure you understand the implications of this.

In relation to the provision of private care, employees must never influence, or seek to influence, a client or carer to agree to the provision of private care work from a particular private care provider. Likewise, if an individual or carer approaches you seeking such a service, or advice about such a service, then you must immediately report it to your line manager.

You must not use your position to develop or promote your own business whilst in the employment of Derbyshire County Council.

Use of Council Property

You must not use Council facilities, equipment, or vehicles for your own personal use unless you have been given advance approval by your line manager.

Council telephones and mobile phones should not be used for personal calls and use of personal mobile phones should be in your own time. If you cannot avoid making or receiving a personal call whilst at work, you should keep it as short as possible.

If you work directly with clients, you must not use your mobile phone during the provision of the service. Landlines, if available, must only be used for emergency calls with mobile phones switched off unless agreed with your line manager.

Internet & Email & social media should only be used in accordance with the agreed policies. In particular employees should be aware they must not make confidential information accessible, including information about clients, carers or colleagues, or publish comments that could be perceived as derogatory, abusive or damaging to the Council or other employees.

For further information please see the Council Website for use of Internet and Email.

Safekeeping of Equipment and Information

You are responsible for the safekeeping and proper use of any equipment issued to you and must take reasonable steps to protect it from theft or damage for example do not leave equipment visible in an unattended car.

You are also responsible for ensuring that you process all information in accordance with the Council's policies and that all confidential information is kept secure.

For further information please see the Council Website for Data Security which includes the corporate data protection policy and GDPR advice for employees and the Councils working arrangements policy and can be found on; Our Derbyshire; Working Here; Working Arrangements Policy

Intellectual Property

Intellectual Property, for example, computer programmes or written documents, is property which enjoys legal protection and therefore belongs to the Council not to you personally, even if you have created it at work.

You must not make use of the Council's intellectual property to conduct private work.

Any copies of material taken for use within the Council must only be for use in connection with your role in the Council.

Corruption

It is a serious criminal offence for you to offer, provide or receive something of value – such as cash, gifts, loans, as an inducement or reward for doing or not doing something, or for showing favour or disfavour as part of your job.

For further information please see the Council Website for:

- Anti-Fraud and Anti-Corruption Strategy
- Anti-Money Laundering Policy
- Officers Interests Policy

Your council; Policies, plans and procedures; Corporate Governance

Gifts, Hospitality & Legacies

You should not accept gifts or hospitality from customers, contractors, or service users, if this could place you under an obligation.

Token items up to a value of £50 may be accepted but should be reported to your manager. Typically, this might include chocolates / calendars / pens. Items over £50 should be refused. You must not accept cash, or gift vouchers in any circumstances.

You should only accept hospitality (meals / refreshments) if you are representing the Council. See Appendix C for more detail.

People wishing to make a monetary gift should be advised to donate to charity or an establishment's amenity fund which is the recognised alternative to a monetary gift.

Legacies

Monies or gifts left by a client or service user in a will should never be accepted. If you believe you may become a beneficiary of a service user's will or the will of an individual you have had a professional relationship with as a result of your employment, (this included family members of a service user), you must be report it to your line manager, who will be advised by Legal Services on how to proceed

You must not in any circumstances become involved in any matters relating to a will. You are prohibited from the following:

1. Soliciting any form of bequest or legacy from a service user
2. Offering advice or an opinion
3. Advising an individual on the contents of a will or in connection with any other personal financial matters. (Appendix C)
4. Acting as a certificate provider for a Lasting Power of Attorney

5. Acting as a witness or executor or trustee
6. Any involvement with any other legal document
7. Provide any personal recommendations of legal or professional advisors.

If you were not aware of being named in a will and the person has died, you must refuse the bequest. The fact, if known, of being a named beneficiary must be reported to your line manager immediately. The refusal should be made by a disclaimer and legal services will provide further advice.

If you do not refuse an offer of gifts of over £50 or you do not refuse a bequest in a will, this will be considered a breach of your terms and conditions of employment, and code of conduct, and will be considered a reputational risk to the business. Consequently, you could be subject to investigation under the disciplinary procedure, one result of which may be dismissal.

Legacies made for the benefit of Adult Social Care clients, in either residential or community settings, can be accepted. Where the value of the legacy is under £2,000 the money can be held within the Amenity Fund of the relevant establishment.

For legacies over £2,000 the money should be held in a Trust Fund where it will attract interest. To create a trust fund for a new legacy contact Finance Management (ASCH) team in Corporate Services and Transformation.

Sponsorship

Before agreeing any sponsorship deal on behalf of the council, you will need the approval of your Executive Director. You should also talk to them if you think you may have a conflict of interest with a potential sponsor. If an outside organisation is seeking to sponsor the Council, you must bear in mind the Code's provisions in relation to gifts and hospitality

If you are in a position to influence the provision of grant aid to an organisation, you must not be involved in the decision making process if you have a close association with the organisation concerned or anyone involved in the organisation.

Contact with the Media

Any enquiries from the media should be referred to the Publicity team within Organisational Resilience, People and Communications division. You should not speak to

the media on the Council's behalf unless you have prior approval. You should also familiarise yourself with the guidance on dealing with the media on Our Derbyshire.

Our Derbyshire; Working here; Marketing guidance and corporate style; Dealing with the media.

If you wish to publish books, articles, or letters you have written in connection with your duties, you must first consult your Executive Director. Only with their consent may items be published.

A number of additional sources of guidance are listed here. However, this list is not exhaustive, and you should ensure that you familiarise yourself with any professional standards and relevant guidance which may be provided in respect of your particular area of work. Any queries in this respect should be addressed to your manager or the Advice and Support Team. For further information please see the Council website for:

- Employment Policies
- General Conditions
- Disciplinary Procedure
- Minimum Practice Standards Established by Service Regulators (e.g., Care Quality Commission)
- Codes of Practice Established by Professional Bodies (e.g., Health and Care Professions Council)

All related documents are available on Our Derbyshire and can be downloaded. Alternatively, hard copies of all related documents are available from HR Services.

Transactions, Correspondence, Legal and Financial Business

Cash of any amount, or the offer of a personal loan must always be refused.

Sometimes residential day care legacies or donations are made to amenity funds by way of a gift. This must be officially receipted and signed by the manager and donor, or other counter signatory and dealt with in accordance with the council's financial regulations.

The guidelines below must always be followed:

Day to day transactions

When dealing with day to day transactions as part of a care package, you must ensure you identify and protect yourself from situations where your integrity might subsequently be called into question. If a client requests a transactional service that is not in the support plan, you must explain that you cannot comply with the request and report the incident immediately to your line manager.

On all occasions when a service is provided for day to day support, you must:

- Ensure you are familiar with the Council's Financial regulations, particularly in respect of cash handling;
- Always obtain receipts;
- Keep written records of transactions including amount taken, cost of transaction and amount returned to the client (client / carer to countersign where appropriate), and you also need to sign (dependent upon residential or community);
- Always vary routine when collecting cash amounts to avoid risk of personal injury and theft;
- Avoid handling substantial amounts of cash at any one time;
- Never obtain a client PIN number unless prior agreement with the assessor / line manager has been reached and adequate security measures to protect the PIN are in place;
- Never gainfully utilise personal store cards or reward cards whilst undertaking activities for a client;
- Never use a client's credit card.

Before agreeing to handle clients' personal cash you must satisfy yourself that an appropriate assessment, including risk assessment, has been carried out particularly where clients are unable to advocate for themselves. Any legal agreements must be recorded, such as power of attorney and any best interest decisions.

Any concerns about dealing with clients' finances must be reported to your line manager immediately.

You must never use your own bank account to clear client cheques or offer any other personal support with their finances.

Political Restriction on Council Employees

Standing for office as an Elected Member

No employee of Derbyshire County Council may stand for office as a County Councillor for this authority. This is a restriction under the Local Government Act 1972.

You may stand for office in other elections, providing any conflict of interest is declared.

Politically restricted posts

Certain posts within the Council are designated 'politically restricted'.

If you hold such a post, you will have been notified of this in your contract of employment. It means that you are required by law to observe certain restrictions regarding your out of work activities. For example, you may not:

- Stand for election to local authorities (except Town or Parish councils);
- Stand for election to the House of Commons or the European Parliament;
- Hold office in a political party;
- Canvass at elections;
- Speak or write publicly on matters on party political lines.

If your role is politically restricted because it is a 'specified' post – i.e., a particular named post then there is no right of appeal against political restriction.

If your role is politically restricted because it is a 'sensitive' post – i.e., giving advice to or speaking on behalf of the authority, there is a right of appeal.

For more advice speak to your Advice & Support Team.

All employees

All employees, regardless of political restriction, if required to advise political groups, must do without compromising their political neutrality, i.e., you must not allow your own personal or political opinions to interfere with your work.

Employees Taking Secondary Employment

The Council recognises that employees may undertake secondary employment (either within or outside of the council).

A second job for the purpose of this advice is any job, paid or unpaid, with any employer and or any type of self-employment. The carrying out of public duties does not count as a second job.

Any secondary employment you undertake must not, nor have the potential to:

- Create a conflict of interest, for example, working for a company that either supplies or buys from the Council, or is in competition with the Council;
- Overlap with official duties;
- Make use of Council resources (including knowledge, property or equipment);
- Weaken public confidence in the Council;
- Bring the council into disrepute, for example by undertaking an activity that could be deemed to be incompatible with your role;
- Affect your performance or duties whilst at work.

Any secondary employment you undertake must:

- Be undertaken outside of your working hours with the Council;
- Be undertaken away from your place of work.

If undertaking secondary employment outside the Council, you must declare this to your Executive Director and agree that it be recorded on any register of secondary employment maintained by your department.

You will be expected to inform your manager of:

- The name of your second employer;
- The type of business in which the second employer is involved;
- The type of work involved;
- The proposed hours of work.

When considering accepting secondary employment, either within or external to the County Council, you must consider the implications of the working time directive which stipulates the maximum hours you should work in a week and required rest breaks. In particular, if you will be working over 48 hours per week in your combined roles, you must inform your manager, as this is in contravention of the Working Time Regulations, and you may be required to sign an opt out agreement.

If any conflict between your roles is identified, you must resolve the conflict in favour of your role and duties with the Council.

This appendix should be read in conjunction with the Officers Interests Policy.

Appendix C

Gifts

You may accept 'token' gifts from customers, contractors, or service users up to the value of £50. Acceptable examples are calendars, diaries, pens, or chocolates. All gifts

should be reported to your manager.

You must not accept gifts worth more than £50 and you must report such offers to your Executive Director.

You must refuse any offer of a gift where you suspect that an improper motive may exist – i.e. the giver is seeking to influence your decisions or actions and you must report such offers to your Executive Director. This is the case regardless of the monetary value of the offer.

In no circumstances should you accept a monetary gift, (including gift vouchers) and again, you must report such offers to your Executive Director.

Hospitality

You should only accept hospitality (meals / refreshments) if there is a genuine need to impart information or to represent the Council. You should also ensure that accepting the hospitality does not create a conflict of interest and is not likely to cause embarrassment to the Council.

You should report the offer of hospitality, whether accepted or not, to your line manager, and should ensure that all such offers are recorded in the appropriate hospitality register.

Appendix D

Ethics Statement

Derbyshire County Council works with public and non-profit sectors to provide a range of services to the community. Accordingly, organisations, service providers,

small businesses and individuals can expect high standards of ethical behaviour from Officers. Underpinning these expectations are our organisational values. They drive our behaviour and reflect how we conduct ourselves in our business.

This Statement provides guidance regarding the standards of ethical behaviour that organisations, service providers, small businesses and individuals can expect from Officers and that are expected of them, in their dealings with Council. Our values guide our actions in conducting business in a socially responsible and ethical manner. As an organisation, and as individuals, we respect, apply and comply with the law, support human rights and equal opportunity, protect the environment, achieve operational excellence and work for the benefit of our communities. Officers will, at all times, act with honesty and integrity in an open and transparent manner, performing their roles efficiently, effectively and fairly, thereby attracting the highest level of confidence from our community.

The Council's Code of Conduct for Employees sets the requirements of conduct in carrying out their functions. The Code of Conduct has been developed to assist Officers to:

- (i) Understand the standards of conduct that are expected of them;
- (ii) Enable them to fulfil their duty to act honestly and exercise a reasonable degree of care and diligence; and,
- (iii) Act in a way that enhances public confidence in the integrity of local government.

Key Principles

This statement is based on a number of key principles and sets out standards of conduct that meet these principles and statutory provisions applicable to local government activities. The key principles are:

- (a) Integrity

We must not place ourselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence us in the performance of our duties.

(b) Leadership

We have a duty to promote and support the leadership of the Council in order to maintain and strengthen the public's trust and confidence in the integrity of the Council. By doing so we promote public duty to others in the Council and outside, by our own ethical behaviour.

(c) Selflessness

We have a duty to make decisions in the public interest and not act in order to gain financial or other benefits for ourselves, our family, friends, or business interests. This means making decisions because they benefit the public, not because they benefit the decision maker, or someone associated with the decision maker.

(d) Impartiality

We should make decisions on merit and in accordance with our statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits. This means fairness to all, impartial assessment, merit selection in recruitment and in purchase and sale of Council's resources, considering only relevant matters.

(e) Accountability

We are accountable to the public for our decisions and actions and should consider issues on their merits, taking into account the views of others. This means recording reasons for decisions, submitting to scrutiny, keeping proper records, establishing audit trails and conducting audits.

(f) Openness

We have a duty to be as open as possible about our decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands. This means recording, giving and revealing reasons for decisions, revealing other avenues available to the client or business, when authorised, offering all information, communicating clearly.

(g) Honesty

We have a duty to act honestly. We must declare any private interests relating to our duties and take steps to resolve any conflicts arising in such a way that protects the public interest. This means obeying the law, following the letter and spirit of policies and procedures, observing the Council's Code of Conduct for Employees and exercising any delegated authority strictly for which the authority was delegated.

(h) Respect

We must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy, and recognising the different roles others play in local government decision-making.

In making our business decisions, we strive to obtain the best value for money. Depending on the circumstances, our decision-making takes into account many things including upfront costs, on-going costs, suitability, quality, reliability, availability, experience, reputation, safety, legal compliance, social value and environmental sustainability. While we strive to obtain the best price for goods and services, we do not necessarily buy at the cheapest price, nor sell at the highest price. The Council is required to balance all relevant factors, including initial cost, whole-of-life costs, quality, reliability and timeliness in determining true value for money.

Although Council business dealings must be transparent and open to public scrutiny, there will be times when information on the Council's relationships with private sector suppliers of goods and services, cannot be made publicly available. However we will always act fairly in our decision-making. That means we are objective, reasonable and even-handed. It does not mean that we can satisfy everyone all of the time. We will publicly support our decisions unless we have to maintain confidentiality or protect privacy.

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Equality Impact Analysis Record Form 2023 – Derbyshire County Council

Introduction and context

Policy/ Service under development/ review		Employee Code of Conduct			
Department/ Corporate		CST HR Operations			
Lead officer		Lorraine Booth			
EIA Team:		Lorraine Booth, Jayne Mason, Tracey Wall			
Date analysis commenced:	28 March 2023	Date completed:	26 April 2023	Date approved:	27 June 2023

About the service/ policy or function and the reason for the EIA

<p>What is the purpose of the service, policy or function?</p> <p>The Code of Conduct has been reviewed and updated to:</p> <ul style="list-style-type: none"> - Ensure it remains relevant and up to date with latest guidance and legal advice; - Ensure the council meets its commitments outlined in the Council Plan - Rationalise procedures by combining the corporate code of conduct with the currently separate Adult Social Care and Health code of conduct. <p>This Code applies to all employees (and other workers) of the Council except those employed by schools where the Governing Board is the employer.</p>

Anticipated outcomes of the Code include a fair and consistent approach for all employees who may find themselves under investigation for a breach of the Code of Conduct.

Are there any proposals to change these?

No - This is an update of the current Code of Conduct.

Supporting evidence about impact

What is presently known about how the current service or policy impacts upon people with a protected characteristic, people from disadvantaged communities, armed forces personnel and other groups outlined in the Council's guidance for EIAs?

The Code of Conduct is not an employment procedure in itself, it is a set of guidelines and expected behaviours for employees to follow. Not acting in accordance with the Code of Conduct may mean that an employee is in breach of their terms and conditions and as a result may be investigated under the disciplinary procedure.

Information relating to any protected characteristic is not collected in relation to use of the Code of Conduct. It is currently issued to all employees with their contract of employment. There is no specific procedure related to breach of the Code of Conduct. Any perceived breaches of the Code may be investigated under the Council's separate disciplinary procedure.

Care has been taken in revising the procedure to take account of cases which have arisen since the last review, and to incorporate lessons learned.

Recent Equalities Profile for Derbyshire County Council employees indicates the following (January 2023) based on 11,194 appointments:

- Age: 17-25 – 4.7%; 26-35 – 14.3%; 36-45 – 18.98%; 46-55 – 29.4%; 56-65 – 28.9%; 66+ - 3.72%
- Gender: female 79.4% and male 20.6%
- Ethnicity: White British 93.9%, ethnic minority background 3.6%, undisclosed 2.49%
- Sexual orientation: LGB* 2.8, Heterosexual 72.49%), undisclosed 24.71%
- Disability: yes 4.7%, no 91.8%, undisclosed 3.45%
- Religion: Christian 42.2%, any other 1.1%, no religion 31.1%, undisclosed 25.6%

By contract type the Council has 40% (4,519) part time appointments, 40% (4,433) full time appointments and 20% (2,242) relief appointments.

Please detail the sources for the above information

Information taken from SAP.

Is consultation planned/ has consultation take place? If Yes, what is this telling us about the likely impact on the protected characteristic and other communities/ groups etc.?

Joint Trade Unions

The Joint Trade Unions have been consulted on the Disciplinary Procedures through the HR Operations Workstream meetings and more latterly the HR Policy Forum as follows:

March 2022 – Current version circulated for initial comments

June 2022 - Workstream meeting – initial comments discussed

September 2022 - Workstream meeting – discussion on feedback

October 2022 – Written summary of changes / amendments distributed to workstream reps

January 2023 – Workstream meeting to discuss final comments including impact of the Officer's Interests Policy

3 February 2023 – Final draft issued to trade unions for comments (no comments received)

8 March 2023 – Reminder issued – no comments received

22 March 2023 – Workstream meeting to finalise draft – no TU attendance

Input has also been requested from legal services and audit and comments incorporated as appropriate.

If there is insufficient information to determine likely impact, what information is needed and how will it be obtained in the future?

Any information required would be gathered in relation to the use of the disciplinary procedure as there is no specific procedure to follow for breach of the code of conduct. Any investigation would be carried out under the council's disciplinary procedure.

Part 3. Analysing and assessing the impact by equality Protected Characteristic group

Use the information, customer feedback and other evidence to determine upon whom the policy/ service and any proposed changes will impact upon and how, highlighting where these have a negative, positive or no impact, including where this could constitute unfair treatment, limit access, or result in additional inequality or disadvantage, hardship, or exclusion.

For any identified negative potential impact, you must provide details of any action or options which could mitigate against this, and in serious cases, you should highlight where the Council would be advised not to proceed with a new or changing policy or service, including any proposals which are being considered.

Please use your action plan towards the rear of this document to record the action and the monitoring that will take place to deliver or identify appropriate mitigation.

<i>Protected Characteristic or Group</i>	<i>Positive impact</i>	<i>Negative impact</i>	<i>No impact</i>
All protected characteristics			Considered – no impact
(Please describe)	N/A		
Age			Considered – no impact
(Please describe)	N/A		
Disability			Considered – no impact

Protected Characteristic or Group	Positive impact	Negative impact	No impact
(Please describe)	N/A		
Gender re-assignment			Considered – no impact
(Please describe)	N/A		
Marriage & civil partnership¹			Considered – no impact
(Please describe)	N/A		
Pregnancy & maternity			Considered – no impact
(Please describe)	N/A		

¹ Under EA 2010 – someone in a CP must not be treated less favourably than a married person

Protected Characteristic or Group	Positive impact	Negative impact	No impact
Race & ethnicity			Considered – no impact
(Please describe)	N/A		
Religion/ belief²			Considered – no impact
(Please describe)	N/A		
Sex or gender³			Considered – no impact
(Please describe)	N/A		

² Under EA 2010 – must also consider non-religious belief

³ Sex and gender can be used at different times depending upon whether you are referring to the EA 2010 and the different duties which exist

Protected Characteristic or Group	Positive impact	Negative impact	No impact
Sexual orientation			Considered – no impact
(Please describe)	N/A		
Human Rights			Considered – no impact
(Please describe)	N/A		
Armed Forces personnel/ households			Considered – no impact
(Please describe)	N/A		
Users of British Sign Languages			Considered – no impact
(Please describe)	N/A		
DCC Employees			Considered – no impact
(Please describe)	N/A		

Protected Characteristic or Group	Positive impact	Negative impact	No impact
Community and Voluntary sector organisations working with protected characteristic groups			Considered – no impact
(Please describe)	N/A		
Other not listed above			Considered – no impact
(Please describe)	N/A		

Part 4. Summary of main findings

Introduction of the revised code of conduct gives the Council an opportunity to ensure that employees are treated fairly and equitably. It may be useful to better understand any relationship between actions taken as a result of a breach of the code of conduct and implementation of the code and the employees affected. This could take place by monitoring implementation of the disciplinary procedure.

This would identify whether any group of employees with protected characteristics are adversely affected. This would allow identification of any potential positive and/or negative impacts and allow specific actions to be taken.

Are there any recommendations for changes to proposals?

Proposed Equality Action Plan

Please complete this Action Plan to outline any mitigation you intend to take.

Issue identified	Action required to reduce impact/ mitigate	Timescale and responsibility	Monitoring and review arrangements
<p>No monitoring of the implementation of the code of conduct in relation to protected characteristics is currently carried out.</p>	<p>Additional personal information would need to be recorded on case files, or an ongoing programme of analysis would need to be implemented based on relevant categories, including protected characteristics. This may be able to be facilitated within the case management system currently being developed but would only be in relation to those disciplinary cases which are a result of a breach of the code of conduct.</p>	<p>In line with case management system development.</p> <p>Tracey Wall</p>	<p>12 months following implementation</p>

Date and outcome of any Cabinet/ Cabinet Member or Council Report to which this was attached and their decision:

Appointments and Conditions of Service Committee – 27th June 2023.



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE

TUESDAY, 27 JUNE 2023

**Report of the Executive Director - Corporate Services and
Transformation**

Disciplinary Procedure

1. Purpose

1.1 The Disciplinary Procedure and associated Manager Guidance is scheduled for review and this report is submitted to ACOS to consider updates and amendments to this procedure.

2. Information and Analysis

2.1 The Council's employment procedures are reviewed and updated on an ongoing basis to ensure they remain relevant and up to date to ensure the Council meets its commitments outlined in the Council Plan. Work has been undertaken to review and revise the Disciplinary Procedure for employees and the associated Manager Guidance.

2.2 The last major review of the Disciplinary Procedure was in February 2017. Minor updates were undertaken in November 2017 to reflect changes to the appeals process, in August 2018 to reflect the General Data Protection Regulation, in July 2019 to reflect further changes to the appeals process, and in July 2020 to reflect changes to terminology aligned to the current HR model.

2.3 The updated procedure is aligned to reflect the Council's values and People Strategy.

24 Benchmarking has been carried out against other similar organisations with the aim of achieving best practice.

25 The amendments to the Procedure for consideration are detailed below:

- Technical changes / terminology to ensure links and dependencies and any references to current procedures are accurate and up to date.
- Additional guidance concerning the recording of meetings following advice from Audit Services
- Strengthening the guidance on the need for neutrality of the Investigating Officer to ensure a fair procedure is followed.
- Strengthening the information regarding an employee's right to be accompanied at all relevant meetings to ensure employees are fully aware of this option.
- Reference has been included to ensure awareness of the requirement in some instances for the organisation to make a notification to relevant professional bodies where this is a requirement of the role. Although the requirement is not new it is not currently referenced within the procedure.
- Additional advice has been provided on making reasonable adjustments for employees subject to disciplinary procedures to ensure we are doing everything possible to facilitate their attendance at meetings and enable individuals to fully participate in the process.
- Additional information incorporated regarding 'alternatives to suspension' to ensure these are reasonable and take account of employee wellbeing.
- An additional section has been included regarding 'adjustments to proceedings' to clarify this may need to be considered in order to accommodate reasonable adjustments for employees and to promote good practice.
- A reminder to employees that support can be obtained throughout the process from their relevant trade union has been included.
- The advice on the implications of receiving a disciplinary sanction whilst a current sanction is still in place has been reworded to provide clarity.
- Clarification has been provided that where an employee wishes to suggest an alternative date for a hearing, due to the unavailability of their preferred representative, consideration will be given to extending the time limit as long as the revised date remains within a reasonable timeframe.
- Grounds of appeal have been incorporated into the procedure
- Minor rewording to the list of examples of misconduct
- It is also intended that the disciplinary procedure and the related manager guidance be incorporated in to one document in order to promote transparency as it has been suggested by the trade unions that currently employees may have difficulty accessing the guidance. Work is currently underway to facilitate this.

3. Consultation

3.1 Prior to any amendments being undertaken, the current document was shared with both Legal and Audit Services to obtain advice on any necessary revisions.

3.2 Consultation with recognised trade unions has been undertaken initially through the CJC HR Operations Workstream and latterly through the Policy Forum. Initial suggestions were discussed and wording strengthened on the areas where the trade unions expressed concerns.

3.3 Final trade union comments were submitted and discussed at the Policy Forum on 16 May 2023. Where appropriate these have been incorporated into the Disciplinary Procedure and the final document shared with the trade unions.

3.4 This document has been developed in consultation with the trade unions however they have not yet confirmed final agreement.

4. Alternative Options Considered

4.1 An alternative option could be not to update the disciplinary procedure however, it is accepted good practice to regularly review current employment procedures to ensure they remain relevant and up to date with current legal advice. By not reviewing the disciplinary procedure it could become out of date or fail to meet good practice.

4.2 The option of not having a disciplinary procedure in place has not been considered as this is a legal requirement that organisations must comply with.

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 – Disciplinary Procedure and Manager Guidance

7.3 Appendix 3 – Equality Impact Statement

8. Recommendation(s)

That Committee:

a) Approve the revised document 'Disciplinary Procedure' and the associated manager guidance for implementation.

9. Reasons for Recommendation(s)

9.1 To ensure the Council's employment procedures remain relevant and in line with the latest guidance and best practice.

Report Author **Tracey Wall**

Contact details **tracey.wall@derbyshire.gov.uk**

Implications

Financial

1.1 No financial implications.

Legal

2.1 No legal implications.

Human Resources

3.1 A communication exercise will be required to ensure employees and managers are aware of the revised procedure.

Information Technology

4.1 No implications

Equalities Impact

5.1 An Equalities Impact Assessment has been completed and submitted to the Equalities, Diversity and Inclusion Manager for consideration and comment.

Corporate objectives and priorities for change

6.1 None

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

7.1 None

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Disciplinary Procedure



Contents

1. Purpose
 2. Scope
 3. Key Principles
 4. Use of the Disciplinary Procedure
 5. Roles and Responsibilities
 6. Suspension
 7. Action against Trade Union Representatives
 8. Examples of Misconduct
 9. The Disciplinary Hearing
 10. Disciplinary Penalties
 11. Disciplinary Measures as an Alternative to Suspension
 12. Confirmation of Disciplinary Action
 13. Expire of Disciplinary Action
 14. Appeals
 15. Disciplinary Records
 16. Adjustments to Proceedings
- Appendix 1 – Examples of Misconduct
- Appendix 2 – Disciplinary - Manager Guidance

Version	Date	Detail	Author
1.00	28/06/13	Restoring Elected Member appeal process.	Nicky Keep

		Including breach of information security in examples of misconduct.	
2.00	12/01/2016	Review	Nicky Keep
2.01	24/05/2016	Following TU Consultation	Tracey Wall
2.02	22/06/2016	Following 2 nd TU Consultation	Tracey Wall
2.03	23/08/2016	Following Legal Services Comments	Tracey Wall
2.04	19/10/2016	Following Strategic HR Group Comments	Tracey Wall
2.05	22/11/2016	Following Departmental Management Consultation	Tracey Wall
2.06	31/01/2017	Following Additional Equalities Considerations	Tracey Wall
2.07	01/02/2017	Additional Comments	Julie Bacon
2.08	02/02/2017	Final Equalities Considerations Trade Unions	Tracey Wall
2.09	13/11/2017	Amendment to appeals process (delegation of function to Strategic Directors)	Tracey Wall
2.10	23/08/2018	Amended to reflect General Data Protection Regulation	Tracey Wall
3.00	08/07/2019	Amendment to appeals process (Transfer from Legal Services to HR Division)	Tracey Wall
3.01	08/07/2020	Amendments to terminology only following HR Review	Roxanne Hardman
4	August 2022	Scheduled review date	Tracey Wall
4.01	February 2023	Following Trade Union consultation	Tracey Wall
4.02	April 2023	Following legal services comments	Tracey Wall
4.03	17 May 2023	Following Trade Union consultation	Tracey Wall
Links and Dependencies			
ACAS Code of Practice on Disciplinary and Grievance Procedures			
Discipline and Grievances at Work - The ACAS Guide			

ISO27001 Pre-Certification Audit for Derbyshire County Council
Equalities and Human Rights Commission Employment Statutory Code of Practice
Employment Relations Act 1999
Equality Act 2010

1. Purpose

The purpose of the formal disciplinary procedure is to provide a fair and consistent means of addressing and improving an employee's conduct where this fails to meet the Council's expectations.

2. Scope

This policy applies to all employees, except those employed in schools where the Governing Body performs the function of the employer and those employed under JNC Chief Officer or JNC Chief Executive conditions, where other arrangements apply.

3. Key Principles

This procedure has been developed in line with the ACAS Guide and the Code of Practice on Disciplinary and Grievance Procedures. It also adheres to the key principles of the Equality and Human Rights Commission Statutory Code of Practice.

- Informal action will be considered where appropriate to resolve problems.
- The Council and employees should deal with issues **promptly** and not delay meetings, decisions or confirmation of those decisions. Any concerns should be communicated as soon as practicable.
- An employee will be advised of the nature of the complaint against them and will be given an opportunity to state their case before any decision is made.
- No disciplinary action will be taken against an employee until the case has been appropriately investigated by someone at least one management tier senior to that of the employee being investigated. The most junior level of management would not normally be expected to conduct an investigation.

- Employees will be provided with written copies of relevant evidence and relevant witness statements in advance of a disciplinary hearing in a format accessible to them.
 - The employee has a right to be accompanied at formal meetings, by a colleague, trade union representative, or an official employed by the trade union.
 - Reasonable adjustments may need to be implemented to ensure disabled employees are not put at a substantial detriment
 - An employee will have the right to appeal against disciplinary action taken.
 - Neither party is allowed to electronically record meetings held as part of this procedure. The use of recording equipment by either party without consent may constitute a further disciplinary matter. In certain circumstances, the council may permit a meeting to be recorded electronically, for example, where it is a reasonable adjustment for an employee with a disability. In such circumstances, the council will take responsibility for making the recording. Requests for meetings to be recorded will be considered.
-

4. Use of the Disciplinary Procedure

The formal disciplinary procedure should be used if:

- An employee's conduct fails to meet expectations after previous management action and/or,
- Following a specific allegation of misconduct and after a thorough investigation of the circumstances, an Investigating Officer believes there is substance to the allegation.

Where appropriate, an employee's professional body may be notified of the investigation under the disciplinary procedure. It is a management responsibility to ensure this is carried out.

In some cases, employees also have a duty to declare this, for example, social workers are required to make such a declaration to Social Work England.

Following any disciplinary sanction, management should ensure any relevant notification is made to the professional body.

5. Roles and Responsibilities

Managers are responsible for implementing the disciplinary policy and procedures and for ensuring that their responsibilities under the Equality Act 2010 are carried out. This responsibility includes consideration of reasonable adjustments for disabled employees. Advice & Support will provide support and guidance to managers in complex cases. Manager guidance supplements the Disciplinary procedure.

Employees can consult their relevant Trade Union for support and assistance.

6. Suspension

In certain circumstances it may be necessary to suspend an employee on normal* pay whilst an investigation takes place into alleged misconduct. Suspension on normal pay does not form part of the formal disciplinary procedure. Suspension or alternative work arrangements will be for as short a time as possible and will be reviewed on a monthly basis.

*Normal pay is based on contracted hours and will include enhanced rates of pay for unsociable hours in accordance with the employee's work schedule. It will not include any incidental or ad hoc payments, such as for additional hours but will include allowances such as standby and sleep in if the employee is normally included on a rota.

Further advice regarding grounds for suspension and the process can be found in the manager guidance appended to this procedure.

7. Action Against Trade Union Representatives

Where disciplinary action is being considered against an employee who is a trade union representative, consideration should be given, in consultation with the Advice

and Support Team, as to whether the normal disciplinary procedure should be followed or whether the matter should be referred to the relevant Trade Union.

In either circumstance, the matter should be discussed with the relevant branch secretary, or an official employed by the Trade Union.

8. Examples of Misconduct

Appendix 1 identifies some examples of misconduct. This list is not intended to be exhaustive.

9. The Disciplinary Hearing

The formal disciplinary procedure starts when an employee is notified that they are required to attend a disciplinary hearing. There should be a period of not less than 14 calendar days between the employee receiving written notice of the hearing and the date of the hearing. The employee should be provided with details of the alleged misconduct and be provided with copies of all relevant documents, 14 calendar days prior to the hearing. The Statement of case should not include recommendations for action by the hearing officer.

At the hearing, the Investigating Officer will explain the complaint and go through the evidence, calling witnesses as appropriate. The employee will be asked to set out their case and answer the allegations which have been made, presenting evidence and calling witnesses as appropriate.

The employee must take all reasonable steps to attend the disciplinary hearing. Should their colleague / trade union representative not be available, an employee may propose an alternative time which should be within 7 calendar days following the day of the proposed hearing. A further postponement may be considered provided that the proposed date is within a reasonable timeframe.

Notes will be taken at the hearing and will be made available to any future Appeal Hearing Officer and any future Employment Tribunal.

10. Disciplinary Penalties

The senior officer chairing the hearing (The Hearing Officer) will determine what level of sanction, if any, is appropriate. The Hearing Officer must be independent and not have been involved in the investigation. The seriousness of the allegation will determine the level of sanction imposed.

10.1 Written Warning

This is given for cases of misconduct.

10.2 Final Written Warning

If the offence is sufficiently serious or a further act of misconduct occurs whilst a warning is still current, a final written warning will be given. This will explain that further acts of misconduct may result in dismissal.

10.3 Dismissal

If an employee commits an act of gross misconduct or a further act of misconduct whilst a warning is still current, this may result in dismissal

For cases of gross misconduct, the dismissal may be regarded as summary and there will be no entitlement to notice. In the case of other misconduct, appropriate notice will be given. Where appropriate the employee may be offered pay in lieu of notice or may not be required to attend work during the notice period.

11. Disciplinary Measures as an Alternative to Dismissal

Depending upon the circumstances, the hearing Officer may recommend that alternative measures to dismissal may be applied (e.g., removal of incremental progression, redeployment, demotion to a lower graded post). These may be combined with a warning. Where the employee rejects the offered alternatives, dismissal will normally apply.

12. Confirmation of Disciplinary Action

The Hearing Officer's decision will be confirmed in writing to the employee within 7 calendar days of the hearing, and include:

- The reasons for the decision.
- The disciplinary sanctions and reasons for those sanctions.
- A warning of the consequences if there is no satisfactory improvement, or further misconduct.
- The expiry date of any warning.
- The employee's right of appeal.
- The termination date of the contract in cases of dismissal.

The employee's representative / colleague should receive a copy for information, and a copy should be kept on the employee's personal file and a record of the outcome on the departmental record of Disciplinary Action.

13. Expiry of Disciplinary Action

All formal warning shall normally expire after a period of satisfactory conduct and performance of 12 months (written and final written). In exceptional circumstances the hearing Officer may consider that the disciplinary warning period should exceed this.

Details of spent warnings shall remain on personal files but shall be disregarded for the purposes of any future disciplinary proceedings, except in exceptional circumstances e.g. where they demonstrate patterns of behaviour which give rise for concern.

14. Appeals

The employee has a right of appeal against the outcome of a disciplinary hearing on the following grounds:

- The sanction is not appropriate
- The evidence did not support the Hearing Officer's conclusion
- New evidence has emerged which is relevant to the original case
- The investigation and/or the Hearing was conducted in a way which was procedurally unfair.

Appeals against dismissal must be registered in a letter to the Director of Organisation Resilience, People and Communications within 7 calendar days of receipt of the written notification of the hearing decision.

An appeal against any other disciplinary sanction must be registered in a letter to the appellant's Executive Director within the same timescales.

Appeals will be heard by an Executive Director, or a member of their Senior management team, normally from a different Department to that in which the original hearing was held.

The employee will receive a reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of 7 calendar days' notice of the appeal date.

Normally the appeal hearing will be a review of the investigation and of the Hearing Officer's conclusions rather than a full rehearing.

Any evidence or statements of case on which either management or the employee wish to rely, will be provided to the Appeal Hearing Officer and other party at least 7 calendar days prior to the appeal.

A legal adviser and an HR adviser will be present at any appeal against dismissal to advise on the law and procedure.

The employee has a right to be accompanied at the appeal, by a colleague or trade union representative, or an official employed by the trade union.

The employee will be informed of the outcome of the appeal in writing within 7 calendar days. that outcome is the final stage within the Council's procedures.

15. Disciplinary Records

Any actions relating to individual employee discipline should be recorded and maintained on relevant case logs within the Advice and Support Team and on employee's EDRM personal files. Records will be treated as confidential and kept in accordance with the Data Protection Act [2018] and the General Data Protection Regulation which gives individuals the right to request and have access to certain personal data.

Monitoring of disciplinary action will be undertaken by the responsible Executive Director and reported to the Executive Director of Commissioning, Communities and Policy on a regular basis.

16. Adjustments to Proceedings

Where an employee has a disability that may impact on their ability to participate fully in this procedure, or an employee needs assistance because English is not their first language, appropriate arrangements will be discussed with them or their representative.

Where an employee is too ill to participate in the disciplinary procedure, the council must ensure that they understand the allegations against them, that they are given an opportunity to respond, either in writing or via their representative. The process may continue in their absence if the employee has failed to attend scheduled meetings or if there is no indication that the employee will return to work following a period of absence.

Appendix 1 – Examples of Misconduct

The following are examples of misconduct. It is not intended to be an exhaustive list. Some offences are serious enough to be deemed as gross misconduct and thereby destroy the contract between the employer and employee making any further working relationship impossible. Where this is proven to be the case, those offences

could lead to dismissal without notice. The ACAS Code of Practice provides examples of acts that may be regarded as gross misconduct. These examples include theft, fraud, physical violence, gross negligence and refusal to carry out reasonable and lawful instructions. However, the seriousness of the offence and the circumstances in which it was committed will determine which offences constitute gross misconduct.

Abuse of the Council’s ICT policies and procedures - in respect of computer, e-mail, internet etc. e.g. accessing, downloading or distributing pornographic, obscene, offensive or illegal material.

Abuse of position – using an official position for private advantage or for the private advantage of some other person. Misuse of the Council’s property or name.

Abuse of a service user

Behaviour – conduct which is not in accordance with the principles of mutual trust, respect and courtesy, in particular, violent, offensive, abusive, indecent or otherwise inappropriate behaviour, in any form.

Bringing the Council into disrepute

Bullying, intimidation, victimisation or other forms of harassment

Criminal Offences – where the offence / alleged offence has employment implications.

Damage to Property – deliberate damage, misuse, or use without authority of the property of the Council or fellow employees.

Disclosure of Information – including disclosure to a third party without authority, of personal or confidential information acquired during the course of Council employment or breach of information security which contravenes the Council’s policies, procedures or guidance.

Discrimination – against a member of the public or colleagues on grounds of sex, sexual orientation, marriage and civil partnership, age, race, gender reassignment, pregnancy or maternity, religion or belief or disability.

Dishonesty

Employees whose posts are subject to Criminal Records Checks / Other Clearance – failure to notify line management of any activity likely to result in subsequent criminal investigation, conviction or police caution being served.

Falsification of Records – including the deliberate falsification of qualifications or records e.g. working time, expenses, client records or similar documents.

Fraud

Incapability through alcohol or being under the influence of illegal drugs – other than where the case would be more appropriately dealt with under separate procedures.

Insubordination – failure to comply with the reasonable lawful instructions of management.

Negligence – which causes or might cause unacceptable loss, damage or injury.

Physical violence

Registration requirements – failure to meet the registration requirements of a statutory body.

Rules – failure to observe the provisions of the Council’s Standing Orders, Financial regulations, Policies, Code of Conduct and other applicable rules.

Safety – failure to act in accordance with applicable Health and Safety Policies; any act or omission on the part of the employee which endangers the health or safety of themselves, other employees, service users or members of the public.

Theft

Timekeeping / Attendance – failure to attend work regularly and punctually during agreed working hours; failure to report inability to attend work due to illness or for any other reason, promptly, and in accordance with the Council’s procedures; prolonging absence by neglecting to act on medical advice.

Appendix 2

Disciplinary Procedure – Manager Guidance

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Version	Date	Detail	Author
1.00	31/07/2013	Restoring Elected Member appeal process.	Nicky Keep
2.00	12/01/2016	Review	Nicky Keep
2.01	24/05/2016	Following Trade Union Consultation	Tracey Wall
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2.04	19/10/2016	Following Strategic HR Group Comments	Tracey Wall
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2.06	31/01/2017	Following Additional Equalities Considerations	Julie Bacon
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4.03	16 May 2023	Following Trade Union Consultation	Tracey Wall
Links and Dependencies			
ACAS Code of Practice on Disciplinary and Grievance Procedures			

17. Introduction

The purpose of the disciplinary procedure is to provide a fair and consistent means of addressing an employee's conduct where this fails to meet the Council's

expectations. The overall aim is to ensure the Council is objective and non-discriminatory in its approach to employee discipline issues.

Attendance or performance issues should be addressed in accordance with the Council's Attendance Management and Capability Procedures.

It is good practice that all actions taken by management in relation to issues within this document are confirmed in writing to the employee, with a copy retained on the employee's EDRM personal file.

This advice is guidance, and as each case is individual the particular circumstances will determine the approach to be taken.

However, when implemented, the Disciplinary Procedure must be followed, to ensure compliance with the requirements of employment legislation.

18. Review

The Council's Disciplinary Procedure and Guidance Documents have been reviewed in the light of and are consistent with the ACAS Code of Practice and, current legal precedents. The documents will be updated in line with changing advice and codes of practice, and Our Derbyshire or the website should be referred to for the most up to date version.

19. Seeking Advice

Discipline issues must be dealt with fairly, reasonably, consistently, systematically and in a timely fashion, following the laid down procedure and considering the circumstances of the specific case.

Managers should always notify the Advice & Support Team when considering taking disciplinary action.

Managers responsible for dealing with employee misconduct should seek appropriate advice from the Advice & Support Team. Managers should allocate appropriate time and priority to dealing with disciplinary cases, to ensure they are managed effectively.

A representative from HR must be in attendance at all formal disciplinary hearings.

20. Acting Reasonably

The law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues. What is reasonable will depend on the circumstances of each case, however, the core principles that managers should work to are below:

- Use procedures to help and encourage employees to improve rather than as a way of imposing punishment.
- Deal with issues as thoroughly and promptly as possible.
- Ensure that the provisions of the Equality Act are adhered to. Further guidance can be found on the website under 'Our Derbyshire' – Equality & Diversity – Equality Act.
- Act consistently.
- Keep information confidential.
- Inform the employee of the complaint against them and provide them with an opportunity to state their case before decisions are made.
- Allow employees the opportunity to be accompanied at disciplinary meetings, by a colleague, trade union representative or an official employed by the trade union.
- Make sure that disciplinary action is not taken until the facts of the case have been established, and the action is reasonable in the circumstances.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.

New employees may be inexperienced in working life and unsure of what is expected from them. Make sure that your induction procedures are thorough and that all

employees receive detailed training in what they have to do and how to do it. If conduct or behaviour is an issue for concern, be more explicit as to the standards which are required, and if the problem persists, consider the use of the disciplinary or capability procedures as appropriate.

It follows that managers must always apply the Council's disciplinary procedure and comply with the principles contained in these guidance notes in dealing with matters of discipline.

Where any aspect of the disciplinary procedure might place an employee at a disadvantage, then you should consider, in conjunction with the Advice & Support Team, whether any adjustments are required to the process to accommodate the employee, to ensure a fair process is followed.

21. Disciplinary Records

It is important, and in both the employer's and employee's interest to keep written records during the disciplinary process. Disciplinary records should be maintained in the strictest confidence and kept no longer than necessary. See the Human Resource's Retention Schedule on Our Derbyshire – Information Security – Confidential Information – Records Retention Schedule – Human Resources, for guidance on how long documents associated with the disciplinary process should be kept.

Copies of meeting records should be given to the employee and their representative (if applicable) and a copy retained on the employee's EDRM personal file.

Where there is any indication that the employee may not fully understand the paperwork, for example if an employee has dyslexia or learning disabilities, you should ensure that reasonable adjustments are considered. For example, could the language be simplified, or additional time offered for employees to consider the paperwork, or should a face to face meeting be offered to explain the issues to them?

A copy of any letter relating to the decision of a disciplinary hearing and a copy of the hearing notes should be sent to the Advice and Support Team who will maintain a case management log of all formal disciplinary warnings, dismissal and disciplinary action detailing:

- The complaint against the employee.

- Their response to allegations made.
- Findings made, actions taken and reasons for it.
- The date action was taken.
- Whether an appeal was lodged.
- The outcome of the appeal.
- Any subsequent developments.

Template letters and statement of case are available on SharePoint – link to be inserted.

22. Roles

Key roles within the disciplinary process are:

Investigating Officer – investigates allegations, ascertain the facts and circumstances to establish whether there is any substance to the suspected alleged act of misconduct, and normally presents the management case at any disciplinary hearing or subsequent appeal. The Investigating Officer should have the necessary skills to undertake the investigation and should be at an appropriate level of seniority (i.e. at least one management tier senior to that of the employee being investigated). The most junior level of management would not normally be expected to conduct an investigation. The Investigating Officer recommends suspension of the employee to senior management if appropriate. The Investigating Officer should be provided with sufficient information, time and co-operation to conduct an adequate investigation.

The Investigating Officer should not recommend a decision or participate in the decision making function at any disciplinary hearing relating to an investigation they have conducted.

Hearing Officer – chairs a disciplinary hearing and is responsible for the conduct of the hearing, the decisions and determining the appropriate action. Hearing Officers should be managers in the Leadership Job Family (Grade 15 and above). To maintain impartiality, the Hearing Officer should not have a close working or personal relationship with the employee being investigated.

Advising Officer (e.g. Director of Legal Services, HR Advisor) – consider the evidence provided during the disciplinary hearing and provide advice in order to assist in the Hearing Officer decision making process. The responsibility for any decision taken remains with the Hearing Officer.

Appeal Hearing Officer – hears the appeal brought by the employee against the decision of the Hearing Officer and determines whether to confirm, amend or reject the original decision. Appeals against dismissal are heard by an Executive Director (or a member of their Senior Management Team), normally from a different Department to that in which the original hearing was held). Appeals against other disciplinary hearing outcomes are heard by a manager more senior than the Hearing Officer. Impartiality is strengthened by having an HR advisor at the appeal who will not have had any previous involvement in the case.

Trade Union Representative or Workplace Companion – may address hearings, make submissions, and respond on the employee’s behalf to any view expressed at the hearing, 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.

23. The Improvement Process

It may be that, rather than using the formal disciplinary procedure, the problem may be better dealt with informally by the manager working with the employee to improve their conduct. This approach is sometimes useful where the misconduct is relatively minor and caused by thoughtlessness, inexperience, or a lack of knowledge or understanding. If the shortcomings are caused by a lack of ability, rather than a failure of judgement, then the performance capability process may be more appropriate. Ask the Advice and Support Team if unsure which process is suitable. The objective of an improvement session is to identify any underlying causes for below standard conduct and to agree with the employee what action is necessary for the employee to meet the required standards.

Informal Improvement

Informal improvement is a first step by which you as a manager may express your concerns regarding below standard conduct to the employee. If the problem is caused by absence due to ill health, please refer to the Attendance management and Ill health Capability Procedure Guidelines. In many cases, the right word, at the right

time, may be all that is needed to help an employee achieve the satisfactory standards expected by the Authority.

- Informal improvement is a normal part of the managerial role. Sessions can take place as the need arises without notice and without union representation.
- Wherever possible you should call the employee away from their immediate work area to a private location free from interruptions. It should be a two way discussion between you and the employee aimed at pointing out any shortcomings in conduct and encouraging improvement.
- Be constructive with your criticism and emphasise finding ways in which the employee can remedy any shortcomings. You should listen to any explanation put forward by the employee for their problems. Where appropriate, you should offer / provide training and any other support e.g. employee counselling service in order to assist the employee to improve.
- Explain to the employee that, if there is no improvement, the next stage will either be the formal improvement process or the formal disciplinary procedure. If, during the improvement meeting, it becomes obvious to you that the matter is more serious, and constitutes an act of misconduct, the discussion should be adjourned and you should make it clear that the matter will be pursued under the formal disciplinary procedure.
- A brief note of the informal improvement discussion, along with details of action taken, should be kept and a copy retained on the employee's EDRM personal file. While not an agreed document, a copy of the file note should be sent to the individual for information.
- Where the above has failed to achieve the desired improvement in an employee's conduct, a formal improvement session would be undertaken by the employee's immediate supervisor and / or manager.

Formal Improvement

You should inform the employee in writing of the requirement to attend a formal improvement interview and that they may, if so desired, have a representative of their choice to support them.

- You should make it clear to the employee that the formal improvement process does not constitute part of the formal disciplinary procedure, but it is a reasonable management requirement and is not optional.
- The formal improvement process should be a two way discussion. You should state the nature of the individual's conduct you consider to be low standard and aim to identify the cause of the problem by questioning and discussion.
- If at the conclusion of the discussion you are still of the view that the employee's conduct is below the required standard, it is your responsibility to clarify the areas of concern, agree where appropriate with the employee any action necessary to assist them in meeting the required standard, and a review date at which to assess progress.
- After the interview you should confirm in writing to the employee, with a copy retained on the employee's EDRM personal file, the outcome of the meeting and the mutually agreed action plan (if appropriate) and progress review date, if relevant. This should include details of any training and specialist help / counselling sessions also agreed.
- Throughout the review period you should monitor the progress of the employee towards achieving expected standards, giving help and encouragement as necessary either through formal or informal meetings / discussions. If any matters of concern arise these should be addressed at the time they arise, rather than at the review date.
- If, during the improvement meeting it become obvious to you that the matter is more serious, the discussion should be adjourned and you should make it clear that the matter will be pursued under the formal disciplinary procedure.
- In all cases, at the end of the review period a further meeting / interview should be arranged with yourself and the employee to inform and discuss their progress. If the employee has achieved a satisfactory standard no further action is necessary. If the employee has made some progress towards achieving standards, then the review date may be extended if further progress is likely.
- However, if the employee has made no, or insufficient progress towards achieving the required standard without a relevant and acceptable reason, you should then advise the employee that their failure to improve to the

specific standard may lead to the implementation of the formal Disciplinary Procedure.

- In all cases, the employee should be informed in writing with a copy retained on the employee's EDRM personal file.
-

24. Suspension

It may be that when an allegation first comes to light, it is of such a nature that suspension is considered. Suspension on normal pay does not constitute part of the formal disciplinary procedure.

Normal pay is based on contracted hours and will include enhanced rates of pay for unsociable hours in accordance with the employee's work schedule. It will not include any incidental or ad hoc payments, such as for additional hours, but will include allowances such as standby and sleep in if the employee is normally included on a rota.

In all cases, suspension or alternative arrangements will be for as short a time as possible and subject to ongoing review by the Investigating Officer and the Suspending Officer on a monthly basis as a minimum. It is particularly important that investigations into allegations where an employee is suspended are completed in as timely a manner as possible.

Reasons for suspension

An employee may be suspended from duty on normal pay in the following circumstances, although this list is not exhaustive:

- Where an investigation is being undertaken and may be impaired in any way by the employee's continued presence at their place of work.
- Where the employer has grounds to suspect that the employee is guilty of gross misconduct.
- Where the employee has grounds to suspect that the employee may seriously damage documents, property or systems or presents a potential risk / danger

to the Council and its reputation, service users, other employees or themselves if allowed to remain in the workplace.

It should be made clear to the employee that suspension is not an assumption of guilt and is not considered a disciplinary sanction.

Consultation with Assistant Director / Service Director

Before suspension, which should only be considered as a last resort when all other alternatives have been considered, the employee's manager or the investigating officer must consult with the Assistant / Service Director to determine whether suspension is necessary. It is essential that, as the Assistant / Service Director may be involved at any subsequent disciplinary hearing, any such consultation should be restricted to the nature of the allegation and the reasons for seeking suspension.

Alternatives to suspension

Before suspension takes place, alternatives to suspension should always be considered first, e.g. relocation to a different work base, working from home, changes to shift patterns, for example working days instead of nights or other working arrangements which would alleviate the problem, or ceasing to carry out a particular part of the role. A checklist which prompts the issues which must be considered should be filled in for all cases where suspension is being considered and endorsed by the Assistant / Service Director.

Employees must co-operate with alternatives to suspension when a suitable alternative is identified. There must be a genuine work requirement and the employee must be offered appropriate duties.

Should alternatives to suspension not be practicable, suspension should only be used when it is necessary as detailed above and should be for as short duration as possible.

Support whilst suspended

An employee who is suspended from work is likely to be concerned about the ongoing investigation. The employer's duty of care to support staff during suspension remains

To do this you can:

- Ensure the employee understands that suspension is no confirmation of guilt

- Providing appropriate and regular communication
- Ensuring the suspension only lasts as long as it is needed
- Providing contact details if the individual has concerns

Suspension of trade union representatives

Suspension shall not normally be imposed upon an accredited trade union representative employed by the Council until the circumstances of the case have been discussed with a regional official of the union concerned and the Senior HR Business Partner consulted.

Informing the employee

If the Assistant / Service Director decides that the employee is to be suspended from duty then the employee shall, in the first instance, be offered the opportunity to respond to the allegation.

Oral Confirmation.

Where the employee is to be suspended, they shall initially be informed **orally** of:

- The reason for the suspension, reiterating that suspension does not form part of the formal disciplinary procedure.
- The allegation of misconduct and that an investigation of the case will be conducted.
- The date and time from which the suspension shall apply and that the suspension will be for as short a period as possible with initial and ongoing reviews.
- The period of suspension on normal pay (although it may often be difficult to be precise).
- That, during the period of suspension it is necessary for the employee to make themselves available during normal working hours should it be necessary to contact them at any time in order to facilitate further investigation.
- That the employee should not return to or enter their place of work during the period of suspension without the prior consent of their manager / investigating officer.

A named contact should be offered to the employee, to provide clarification on any issues relating to the suspension. The suspending officer should retrieve any Council equipment from the employee such as their security badge, uniform, laptop etc.

Written Confirmation

Written confirmation of suspension should include, in addition to the above, details of the employee's rights and responsibilities as set out below, together with any other requirements. If possible, it should be handed to the employee before they leave the workplace. If not, it should be delivered to their home address by hand or by first class mail and recorded delivery as soon as reasonably practicable.

Employee's Rights and Responsibilities during Suspension

- The employee will receive normal pay during the period of suspension.
- If an employee falls sick during a period of suspension, they must notify their department via their nominated point of contact on the first day of the sickness and submit medical certificates in the normal way. Sickness payments will be made in accordance with normal procedures.
- Previously agreed annual leave which falls within the period of suspension will be honoured. Other leave may be taken during the period of suspension subject to agreement and should be notified to the named contact.
- For accredited trade union representatives, time off to undertake trade union duties may be granted subject to agreement.
- An employee must not undertake additional employment with another employer during normal contracted working hours, during the period of the suspension.
- There should be regular contact with the employee during the period of suspension from the nominated point of contact, and they should receive formal notification of all stages of the disciplinary process in good time.
- The employee must ensure that they remain contactable during normal working hours and cooperate fully with the disciplinary investigation.

- The employee must not enter the workplace, nor enter into communication of any kind including e-mail and social networks with service users or work colleagues during the period of suspension without the consent of the investigating officer. The employees should not use Council equipment including IT equipment provided in connection with their employment without permission. Any contact should be made with the person who has been nominated as a contact point.

It should be recognised however, that there may be occasions when an employee may need to approach colleagues, e.g. to contact witnesses, and this will be borne in mind when considering requests for access.

Failure to observe the terms of suspension procedures may itself result in disciplinary action being taken.

Review of Suspension

Following suspension, an initial review of the case should take place as soon as possible with the aim of minimising the length of the suspension. Following the initial review, ongoing reviews should take place at least monthly. The continuation of suspension should be considered by an operational manager and the employee informed of the outcome accordingly. A checklist which prompts the issues to be considered should be filled in at the time of each review.

Ending the Suspension

A period of suspension may be lifted at any time, at the employer's discretion, and the employee will be notified in writing.

25. Investigation

When a reasonable suspicion or allegation of misconduct comes to management's attention, the first step should be to investigate a prompt, proper and thorough investigation. The purpose of the investigation is to consider whether there is substance to the allegation and whether it is serious enough to constitute misconduct (i.e. which 'rule' has been broken). This involves:

- Investigating the facts and circumstances surrounding the alleged misconduct.
- Giving the employee the opportunity to offer a response to the allegation.
- Taking a balanced view of the information that emerges.
- Reaching a decision as to whether or not there are sufficient grounds for an allegation of misconduct and if so whether the matter should be dealt with through the formal disciplinary procedure.

It is in everyone's interest (and management's responsibility) to ensure that the investigation is carried out with the minimum of delay. This will enable information to be gathered before memories fade, minimise the impact of suspension etc.

Audit Services' Investigations and the Disciplinary Process

Recognising the need for audit investigation and consideration of potential disciplinary action to be separate in order to maintain the independence of both actions and taking into account the provisions of the Council's Financial Regulations, the following process has been agreed:

- All employees are required to report matters relating to fraud, misappropriation or loss promptly to the Assistant Director of Finance (Audit) & RIPA Monitoring Officer.
- On receipt of such notifications, and prior to the start of the investigative process, the Assistant Director of Finance (Audit) & RIPA Monitoring Officer will discuss with the relevant Executive Director / Director whether any joint investigation is required, and, if so, how it should progress.
- Where there is any disagreement between Audit Services and the Executive Director / Director, the Assistant Director of Finance (Audit) & RIPA Monitoring Officer and Executive Director / Director will discuss the situation with the Head of Paid Service who will determine the appropriate investigative process to follow.

The investigation will be one of the following:

- An audit investigation as detailed above with any subsequent disciplinary action being taken on the conclusion of the audit investigation with minimal or no further management investigation.

- Joint investigations by audit / departmental management where the matter relates to both financial and other misconduct and where a two strand approach may be beneficial. In these cases, in order to ensure effective liaison with the employee or employees affected, a lead officer will be agreed between the two investigating officers and arrangements made for each such investigation to reflect the individual requirements of the case. Normally, but not always, it will be appropriate for the lead officer to be the appropriate departmental manager.
- Management investigation under the disciplinary procedure where after discussion between the Executive Director / Director and the Assistant Director of Finance (Audit) & RIPA Monitoring Officer, it is agreed that any potential fraud or financial loss to the Council, e.g. through time recording or misuse of the internet and e-mail policy, is not considered material / significant (subject always to the caveat that the designated investigating officer must inform Audit Services immediately of any new information disclosed during the investigation as it proceeds which changes the perception of the nature / potential extent of the fraud / financial irregularity). Audit will assist to establish the extent of any loss and provide specialist advice or assistance in such cases where necessary.

In respect of the above, the following will apply:

- Audit investigations will be conducted in accordance with professional best practice and the guidance in the Council's disciplinary procedure where this is likely to lead to a disciplinary hearing.
- Recognising the need for confidentiality and the possible implication of management involvement in the alleged act under investigation, there may be a need for regular communication between the Assistant Director of Finance (Audit) & RIPA Monitoring Officer and the nominated departmental manager as to the progress of the investigation.
- All relevant documentation, interview notes or witness statements obtained during the course of an audit investigation will be made available, if required, for the purposes of any subsequent disciplinary hearing. The audit report will be made available and appended to the statement of case and a hearing should follow promptly thereafter.

The over-riding consideration should be to investigate thoroughly and to address the issues as speedily as possible.

Management Investigations and the Disciplinary Process

Informing the Employee

When you first hear of the allegation, it may be appropriate to have a short conversation with the employee to ascertain the facts, dispel rumours etc. You can do this immediately, but the meeting should be very brief and if there is any indication that a formal investigation may be required, then a proper investigatory interview should follow with the requisite notice of 7 days and the right of representation.

The employee should be informed in writing that an allegation of misconduct has been received which requires investigation and that a named Investigating Officer has been designated to undertake the investigation. The employee must also be informed of the requirement to co-operate with the investigation, such as attending an investigatory interview.

Investigatory Interview

When interviewing the employee concerned, the Investigating Officer should make it clear that it is an investigatory interview to ascertain the facts surrounding an act of suspected or alleged misconduct, not a disciplinary hearing. Another member of staff should normally be present at the interview to take notes, to enable the investigating officer to focus on listening, ensure no points are missed, and to provide an additional management witness in the event of disagreement.

The employee should be offered the facility of having a trade union representative or workplace companion present. It is important to cover in the investigatory meeting all the points which will form the basis of your case, so that the employee has a chance to respond to them, including providing copies of any relevant paperwork. If new evidence emerges as you go along you may have to have one or more additional investigatory meetings.

Information Gathering

Other people believed to have information relating to the alleged misconduct should be interviewed and written statements obtained from them, if possible. This could include employees, service users, members of the public, or employees of other organisations.

The investigation must be adapted to the circumstances of the alleged misconduct. If, for example, allegations have been received from colleagues in respect of an employee's conduct, it will be necessary to not only interview the complainants and obtain written statements from them, but also to interview some, at least, of those who have not complained but who can reasonably be expected to have knowledge as to whether the allegations are justified or provide evidence.

If an allegation is received from someone who is not an employee e.g. service user or member of the public, that person should be seen and invited to make a written statement setting out the details of the allegation. If any employee is thought to have witnessed the incident, or to have information about it which might be relevant to the investigation, he or she should be seen and a written statement obtained. Where there are no witnesses to an alleged incident, it may be necessary to interview those who last spoke to the employee before the incident took place and those to who they spoke immediately after it.

Interview Notes

During the course of the investigation, notes should be taken of any interviews held, and two copies should be sent to the employee who should sign and date the bottom of each page as being accurate and return one copy to the Investigating Officer. If the employee wishes to make any amendments, these will be recorded alongside the original text. These do not have to be agreed. The purpose of these notes is to aid the Investigating Officer in making an informed decision in respect of the allegation.

Witness Statements

Witness statements are factual statements obtained from people who have relevant knowledge of an alleged incident or event. They may support, or not, any allegation that has been made. Witness statements are usually developed from notes taken at a meeting with the witness, and all statements should be dated and signed at the bottom of each page by the witness. Any such statements would be given to the employee under investigation if it were decided to proceed with formal disciplinary action.

Signed and dated witness statements may also be used in the absence of the witness at any subsequent disciplinary hearing, although it should be noted that they are not likely to carry the same weight as a witness attending in person.

It should be noted that interview notes and witness statements are disclosable at an Employment Tribunal.

Witnesses may be accompanied by a colleague or trade union representative if they so wish during the investigation.

Potential witnesses may be unwilling to give evidence at either an investigation or at a hearing. In these circumstances you should discuss their concerns, provide reassurance as appropriate, and encourage them to attend.

Investigation

What amounts to an adequate investigation will depend on the circumstances of the particular allegation of misconduct. If it is something to which the employee readily admits, the extent of the investigation may well be confined to that, or to obtaining a measure of confirmation of it. In a disputed case the investigation will need to be as sufficient as is reasonable in the circumstances.

The main requirement is to be able to come to a fair decision on the balance of probabilities based on the question 'Is there a reasonable suspicion amounting to a belief in respect of the employee's alleged misconduct, and are there reasonable grounds for that belief?' Unlike a criminal court where the burden of proof is required to be 'beyond all reasonable doubt', the burden of proof for disciplinary decisions only needs to be 'on the balance of probabilities' i.e. you do not need direct proof of wrong doing, only a genuine and reasonable belief in the employee's guilt.

Outcome of Investigation

On completion of the investigation, the Investigating Officer should decide whether or not to recommend that the formal disciplinary procedure is invoked based upon the facts and evidence obtained, and, if the disciplinary procedure is to be invoked, whether the allegation(s) constitute(s) misconduct or gross misconduct.

However, it is not appropriate for the Investigating Officer to recommend a course of action to the Hearing Officer.

The employee should be informed of the decision.

If it is not considered appropriate to invoke the disciplinary procedure, other options should be reviewed. The matter may be dropped or dealt with by an improvement session with the employee or by other actions such as arranging coaching, or training. If merited, the employee may be advised that if further misconduct occurs, action under the formal disciplinary procedure may then be necessary. A brief note of the date, time and subject of the discussion should be made, and a copy retained on the employee's EDRM personal file.

Sick Leave

If the employee is on sick leave at the time of investigation, this does not necessarily preclude an investigation being conducted. Advice should be sought from the Advice & Support Team on how to proceed in these circumstances.

26. Arranging the Hearing

Where it is decided, following investigation, that the formal disciplinary procedures should be invoked, a disciplinary hearing should be arranged, chaired by the Hearing Officer at the correct level (refer to paragraph 6.2 above) to consider the matter. It is essential that the Hearing Officer has not had any previous direct involvement in the case.

When arranging a hearing, consideration should be given to the anticipated length of the hearing, in order to avoid lengthy adjournments.

Notifying the Employee

There should be at least 14 calendar days between the employee receiving notice of the hearing and the date of the hearing. The employee should be notified, in writing, of the following:

- That the formal disciplinary procedure is being implemented and of the requirement to attend a disciplinary hearing.
- The location, date and time of the disciplinary hearing.
- Details of the alleged misconduct or circumstance and the grounds upon which the allegation is based.
- Who will conduct the hearing, the other panel members and if appropriate, advisers.
- The right of representation by their trade union representative, an official employed by the trade union or a workplace companion.
- The right of appeal against any action taken.
- The requirement to confirm their intention to attend the hearing and a warning that non-attendance may constitute a disciplinary offence.

- A warning that their actions may place their employment at risk (dependent upon the gravity of the alleged offence).
- Where the employee's representative is not available at the time proposed for the hearing, the employee may propose an alternative date which should not exceed 7 calendar days from that originally set. A further postponement may be considered provided that the proposed date is within a reasonable timeframe. (Only in exceptional circumstances should more than one postponement take place, and the hearing process may continue without the employee's representative).

Copies of any relevant documents should be enclosed (see 11. 'Disclosure' below).

This letter should be either handed to the employee, or delivered to their home address by hand or sent by first class mails and also by recorded delivery. A copy should be retained on the employee's EDRM Personal file.

Deferment

It is good management practice and at the Hearing Officers discretion to allow one deferment of the hearing (usually up to 7 calendar days), due to circumstances such as illness. At a later stage it may be useful to be able to evidence management fairly / reasonably considering an employee's request for deferment.

27. Disclosure

An employee facing disciplinary action has the right to know what is alleged and the case to which they have to answer. The document which the investigating officer intends to present at the disciplinary hearing is known as the statement of case and should be made available to the employee at least 14 calendar days in advance of the hearing. All allegations should have previously been presented to the employee together with an opportunity to comment on them.

In conducting the investigation, evidence may be gathered which does not support the management case or which the investigating officer does not intend to use at the

disciplinary hearing. A list of all such evidence, including a description of the contents, should be made available to the employee who may request copies.

28. Right to be Accompanied

Employees have a statutory right to be accompanied at disciplinary hearings by a trade union representative, an official employed by the trade union, or workplace companion. There is no right for an employee to have legal representation at a disciplinary hearing. The chosen companion is entitled to take a reasonable amount of paid time off to fulfil that responsibility.

The companion should be allowed to address the hearing to put the employee's case, sum up the employee's case, and respond on the employee's behalf to any view expressed at the hearing. The companion has no right to answer questions on the employee's behalf, or address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.

In determining the reasonableness of time off the Council should look at the circumstances surrounding the matter such as the duration of the hearing and potential preparation time required. Consideration should also be given to the existing amount of time off provided to Trade Union Representatives for such activities. Trade Union Time Off should be requested in the normal manner – see separate guidance.

29. Employee Absence During the Hearing

There may be exceptional circumstances in which there may be no option but to conduct the hearing in the employee's absence, for example due to a custodial sentence, resignation prior to the conclusion of the disciplinary process, long term absence or sick leave. In these circumstances the employee must be so advised in advance and be offered the opportunity for their representative to attend the hearing in the absence of the employee.

Where the employee fails to attend a hearing without any notification, consideration should be given to conducting the hearing in their absence.

Further advice may be sought from the Advice and Support Team or Legal Services as appropriate.

30. Disciplinary Hearing Process

The disciplinary hearing will be chaired by the Hearing Officer and shall proceed as follows:

- The Investigating Officer (or nominated officer) shall put the case in the presence of the employee and may call witnesses.
- Firstly, the employee, and then the Hearing Officer, shall have the opportunity to ask questions of the Investigating Officer and witnesses regarding the evidence given.
- The employee may put their case in the presence of the Investigating Officer and call such witnesses as they wish.
- Firstly, the Investigating Officer and then the Hearing Officer, shall have the opportunity to ask questions of the employee and witnesses.
- The Investigating Officer, followed by the employee shall have the opportunity to sum up their case if they so wish.
- The Investigating Officer and the employee, representative / companion and witnesses shall withdraw.
- Any advisors to the Hearing Officer should remain in the room while a decision is made.
- The Hearing Officer shall deliberate, only recalling the Investigating Officer and the employee to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return, even though only one may be concerned with the point requiring clarification.

- After careful consideration of all the information the Hearing Officer will recall both parties and state the action deemed appropriate. Where this is not possible due to the need to review details in the case, the Hearing Officer may defer the decision. No unreasonable delay should occur before reconvening the Hearing nor should the case be discussed with outside parties (unless further professional advice is required from either the Director of Legal Services or from HR).
- The Hearing Officer's decision will be confirmed in writing within seven calendar days and a copy retained on the employee's EDRM personal file and recorded on the case management log held by the Advice and Support Team.
- The Hearing Officer must make arrangements for notes of the hearing to be taken but these will not be a verbatim note. A copy of these notes will be provided to the Appeal Hearing Officer in the event of an appeal and any future Employment Tribunal.
- Neither party is allowed to electronically record meetings held as part of the disciplinary procedure. The use of recording equipment by either party without consent may constitute a further disciplinary matter. In certain circumstances, the council may permit a meeting to be recorded electronically, for example, where it is a reasonable adjustment for an employee with a disability. In such circumstances, the council will take responsibility for making the recording.

31. Confirming Disciplinary Action

Written confirmation of the disciplinary action will normally be issued within seven calendar days of the disciplinary hearing. The letter should either be handed to the employee or delivered to a home address by hand or sent by first class mail and recorded delivery, and include:

- The reasons for the decision
- The disciplinary sanctions and reasons for those sanctions.

- If the employee exercised the right of representation at the disciplinary hearing.
- A warning if the consequences if there is not satisfactory improvement or if further misconduct occurs.
- That a copy letter has been retained on the employee's EDRM personal file and on the register of disciplinary action and that it will be 'spent' after, for example, 12 months satisfactory conduct and performance and the expiry date of any warning.
- The employee's right of appeal and how to exercise it. Appeals against dismissal should be registered in a letter to the Director of Organisation Development and Policy who will determine who will hear the appeal. This will be an Executive Director, or a member of their Senior Management Team, normally from a different department to that in which the original hearing was held.
- Appeals against other sanctions should be registered with the appropriate Executive Director.
- The termination date of the contract in cases of dismissal.

Where the employee is being represented by a trade union or colleague, a further copy should be sent to them for information.

A record of any action taken will be retained on the employee's EDRM personal file and to the Advice and Support Team to be added on the case management log.

32. Dismissal

Dismissal is the ultimate penalty in the disciplinary procedure; it should only be used where it is merited by gross misconduct or if an employee's conduct has failed to improve over time.

A decision to dismiss may only be taken by a member of the Leadership Job Family (grade 15 and above).

As an employer has an obligation to consider the appropriateness of alternatives to dismissal (e.g. transfer to another post) it is important that actions short of outright dismissal in the paragraph below are considered.

33. Actions Short of Dismissal and Other Disciplinary Measures

Depending upon the circumstances, the Hearing Officer may consider dismissing the employee from their existing post, but offer alternative employment within the Council (e.g. redeployment, demotion to a lower graded post) or recommend that alternative measures to dismissal are applied (e.g. removal of incremental progression) with the consent of the employee. These may be combined with a warning.

Granting of such alternatives will be dependent upon the nature and circumstances of each case. The employee will be told that they are facing dismissal prior to being offered an alternative. If the employee rejects the offer, dismissal will normally apply.

In some cases, an employee may choose to resign before any disciplinary action can be taken. In these circumstances the process will not necessarily come to an end at that point. The Investigating Officer may wish to continue with the case and take the issue to a disciplinary hearing, whether the ex-employee chooses to take part or not.

34. Appeals Process

An employee may appeal against a decision on disciplinary action within 7 calendar days of receipt of written notification to them of the disciplinary action to be taken.

Where an employee appeals against dismissal:

- Notice must be given, in writing, to the Director of Organisation Development & Policy setting out the grounds on which the appeal is based. If no grounds are given these must be sought before proceeding.

- The Director of Organisation Development & Policy will reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of 7 calendar days prior to the appeal date. Any evidence or statements of case upon which either management or the employee wish to rely, shall be provided to the Appeal Hearing Officer at least 7 calendar days prior to the appeal. The employee will be entitled to attend before the Appeal Hearing Officer with a trade union representative or workplace companion if wishing to present the appeal.

Where an employee appeals against a disciplinary action other than dismissal, the appeal should be addressed to their Executive Director who will arrange for the case to be heard.

The template letters which inform the employee of their right to appeal set out the possible grounds of appeal. The letters state that the appeal will normally take the form of a review based on the grounds the employee has identified. However, witnesses previously called by management can be available for the appeal hearing if this is identified by the appellant in their letter of appeal. It is a management responsibility to arrange this.

Recall of witnesses would normally be because the employee is appealing on the grounds that the findings of the Disciplinary Hearing, based on the evidence and facts of the case, did not support the Hearing Officer's conclusions.

The appellant is responsible for calling their own witnesses. If a witness previously called by management has agreed to attend as a witness for the employee, consideration should be given as to whether in fact it would be more appropriate for the witness to be called by management.

The key thing is that at the appeal all parties are clear about what the procedure will be and are suitably prepared. A legal adviser and a HR adviser will be present at any appeal against dismissal. The employee has the right to be accompanied at the appeal. The employee will be informed of the outcome of the appeal in writing within 7 calendar days. That outcome is the final stage within the Council's procedures.

35. Disciplinary Appeals Hearing

The role of the Appeal Hearing Officer shall be to consider matters raised which are related to the original hearing and its outcome. No unrelated matters shall be considered.

The Appeal Hearing Officer can confirm, amend or reject the original decision. Alternative disciplinary sanctions may be applied, but these should not be of greater severity than those originally applied.

The appellant shall be notified in writing, at least 7 calendar days in advance, of the time and place of the hearing. They shall be entitled to be represented by a trade union representative or colleague and shall be able to call witnesses and to present information and documents relevant to the case. Copies of any documents relevant to the case and intended for submission / consideration should be exchanged at least 7 calendar days in advance of the hearing.

The management statement of case would normally be presented by the original hearing officer as they assume ownership of the decision made at the original hearing and would call the original presenting officer as a witness. In some circumstances the original presenting officer may present the case and the original hearing officer would attend as a witness.

The Appeals Hearing shall be conducted as follows:

- The Appellant puts their case in the presence of the Presenting Officer and calls witnesses.
- The Presenting Officer, (the Presenting Officer or the Hearing Officer from the original case) followed by the Appeal Hearing Officer have the opportunity to ask questions of the Appellant and their witnesses.
- The Presenting Officer puts the case in the presence of the Appellant (and representative where applicable) and may call witnesses.
- The Appellant, followed by the Appeal Hearing Officer, have the opportunity to ask questions of the Presenting Officer and witnesses regarding the evidence given.

- The Appellant, followed by the Presenting Officer, has the opportunity to sum up their case.
- The Appellant and Presenting Officer withdraw.
- Any advisers to the Appeal Hearing Officer remain in the room during deliberation.
- The Appellant and Presenting Officer may be recalled by the Appeal Hearing Officer to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding that only one may be concerned with the point giving rise to doubt.
- The Appeal Hearing Officer will decide whether to allow or dismiss the appeal and will notify the decision personally. The decision will be confirmed in writing within 7 calendar days.

An appeal decision by the Appeal Hearing Officer will be final.

36. Expiry of Disciplinary Action

All formal warnings shall normally expire after a period of satisfactory conduct and performance of 12 months (written and final written). For example, a warning given on 12 December 2016 would have an actual expiry date of 11 December 2017.

If, in exceptional circumstances, a Director or their nominated representative considers that the disciplinary warning period should be in excess of this, it should be determined and imposed at the time of the Disciplinary Hearing. Once 'spent' there is no provision for the warning to be extended.

Details of spent warnings shall remain on personal files but shall be disregarded for the purposes of disciplinary proceedings, except in exceptional circumstances.

Where an employee's conduct is satisfactory throughout the period the disciplinary warning is in force but lapses very soon after, or a particular pattern of behaviour emerges over time, the employee's disciplinary record should be borne in mind in deciding subsequent disciplinary action.

There may be exceptional circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. In such

circumstances it should be made very clear that the final written warning will remain on file and that any reoccurrence may lead to dismissal.

37. Grievance

Should a grievance (understood to be any complaint including harassment) be raised by the employee during the course of the disciplinary process, the following action should be considered.

- Normally, where a grievance is raised and the issues relate to the disciplinary matter, these will be considered as part of the disciplinary process. In these circumstances advice should be sought from the Advice & Support Team.
 - Where a grievance is raised which is separate and unrelated to the matter in hand, the two processes can be run in parallel. Alternatively, the grievance can be considered separately at the conclusion of the disciplinary process.
 - Whilst there is no obligation to consider a grievance after an employee has left their employment, it is good practice to investigate any potential areas of dispute.
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38. Criminal Offences

Criminal offences committed outside the workplace will be dealt with on the facts of each case but always in accordance with advice contained in the appropriate ACAS Guidance. The main consideration should be whether the offence / alleged offence is one that makes an employee unsuitable for their type of work. Similarly, an employee should not automatically be dismissed solely because they are absent from work as a result of being remanded in custody.

A criminal offence involving dishonesty (e.g. theft or fraud as specified in the Financial Regulations), whether or not arising in the course of employment, is likely to be regarded as gross misconduct in the case of an individual employed in a position of trust concerning property and should be reported to internal Audit.

The need for investigation and a disciplinary hearing still applies in circumstances relating to criminal offences irrespective of the outcome of any criminal process.

Unless expressly instructed by the police to the contrary, it is possible to conduct an investigation and disciplinary process whilst police procedures are underway. Contact the Advice & Support Team for more advice.

39. Adjustments to Procedures

If an employee is likely to be off sick on a long term basis, you should obtain a view from Occupational Health on adjustments that could be considered to enable the employee to participate in the disciplinary process.

It may be advisable to place the disciplinary procedure on hold and continue managing the absence through the attendance management procedure. In this case you should inform the employee that the matter has been put on hold pending their recovery. You should take advice from the Advice and Support Team in these cases.

If it is not possible to put the matter on hold, you may wish to consider inviting the employee to make written submissions, or to nominate a representative to attend on their behalf.

This action should only be considered when it is the only reasonable way to proceed in the particular circumstances and advice should be sought from the Advice & Support Team.

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Equality Impact Analysis Record Form 2023 – Derbyshire County Council

Introduction and context

Policy/ Service under development/ review		Disciplinary Procedure			
Department/ Corporate		CST HR Operations			
Lead officer		Lorraine Booth			
EIA Team:		Lorraine Booth, Jayne Mason, Tracey Wall			
Date analysis commenced:	28 March 2023	Date completed:	11 April 2023	Date approved:	27 June 2023

About the service/ policy or function and the reason for the EIA

<p>What is the purpose of the service, policy or function?</p> <p>This procedure has been reviewed and updated to:</p> <ul style="list-style-type: none"> - Ensure it remains relevant and up to date with latest guidance and legal advice; - Provide a framework to support managers in implementing the procedure fairly and consistently; and - To ensure employees are aware of their personal obligations with regard to the Disciplinary Procedure. <p>This policy applies to all employees of the Council except those employed by schools where the Governing Board is the employer, and those who are employed under JNC Chief Officer or JNC Chief Executive conditions.</p>
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Anticipated outcomes of the procedure include a fair and consistent procedure for all employees with the ability to adjust procedures where necessary to ensure all employees are able to participate fully in the process should they become subject to a disciplinary investigation / process.

The revised procedure outlines roles and responsibilities more clearly and reminds employees that, certain professions require notification if an employee finds themselves subject to disciplinary proceedings.

Are there any proposals to change these?

No - This is an update of the current disciplinary procedure.

Supporting evidence about impact

What is presently known about how the current service or policy impacts upon people with a protected characteristic, people from disadvantaged communities, armed forces personnel and other groups outlined in the Council's guidance for EIAs?

Information relating to any protected characteristic is not collected and is not available to anyone involved in the disciplinary process (Investigating Officer / Hearing Officer /Advice and Support).

It is necessary to ensure that the framework provides clear guidance and advice in the approach to disciplinary investigations and procedures to ensure employees are treated in a fair and consistent way.

Care has been taken in revising the procedure to take account of cases which have arisen since the last review, and to incorporate lessons learned with regard to the necessity of amending procedures to accommodate employees with protected characteristics to ensure they are able to participate fully in any proceedings.

Recent Equalities Profile for Derbyshire County Council employees indicates the following (January 2023) based on 11,194 appointments:

- Age: 17-25 – 4.7%; 26-35 – 14.3%; 36-45 – 18.98%; 46-55 – 29.4%; 56-65 – 28.9%; 66+ - 3.72%
- Gender: female 79.4% and male 20.6%
- Ethnicity: White British 93.9%, ethnic minority background 3.6%, undisclosed 2.49%
- Sexual orientation: LGB* 2.8, Heterosexual 72.49%), undisclosed 24.71%
- Disability: yes 4.7%, no 91.8%, undisclosed 3.45%
- Religion: Christian 42.2%, any other 1.1%, no religion 31.1%, undisclosed 25.6%

By contract type the Council has 40% (4,519) part time appointments, 40% (4,433) full time appointments and 20% (2,242) relief appointments.

Please detail the sources for the above information

Information taken from SAP.

Is consultation planned/ has consultation take place? If Yes, what is this telling us about the likely impact on the protected characteristic and other communities/ groups etc.?

Joint Trade Unions

The Joint Trade Unions have been consulted on the Disciplinary Procedures through the HR Operations Workstream meetings as follows:

March 2022 – Current procedure circulated for initial comments

June 2022 - Workstream meeting – initial comments discussed

September 2022 - Workstream meeting – discussion on feedback

October 2022 – Written summary of changes / amendments distributed to workstream reps

January 2023 – Workstream meeting to discuss final comments

3 February 2023 – Final draft issued to trade unions for comments (no comments received)

8 March 2023 – Reminder issued – no comments received

22 March 2023 – Workstream meeting – no TU attendance

The trade unions have commented on the need to ensure amendments to standard procedures may be required for employees with protected characteristics and a new section regarding revised arrangements has been incorporated into the procedure. The joint trade unions comments also incorporated include more inclusive language.

Input has also been requested from legal services and audit and comments incorporated as appropriate.

If there is insufficient information to determine likely impact, what information is needed and how will it be obtained in the future?

It would be possible to further report on gender, age, disability, race and ethnicity and religion to identify if certain groups are adversely affected by the use of the disciplinary procedure. This would entail additional recording processes within the current procedure.

Part 3. Analysing and assessing the impact by equality Protected Characteristic group

Use the information, customer feedback and other evidence to determine upon whom the policy/ service and any proposed changes will impact upon and how, highlighting where these have a negative, positive or no impact, including where this could constitute unfair treatment, limit access, or result in additional inequality or disadvantage, hardship, or exclusion.

For any identified negative potential impact, you must provide details of any action or options which could mitigate against this, and in serious cases, you should highlight where the Council would be advised not to proceed with a new or changing policy or service, including any proposals which are being considered.

Please use your action plan towards the rear of this document to record the action and the monitoring that will take place to deliver or identify appropriate mitigation.

Protected Characteristic or Group	Positive impact	Negative impact	No impact
All protected characteristics			Considered – no impact
(Please describe)	N/A		
Age			Considered – no impact
(Please describe)	N/A		
Disability		Yes	

Protected Characteristic or Group	Positive impact	Negative impact	No impact
(Please describe)	Amendments have been made to the procedure to mitigate against any potential disadvantage that may be experienced by employees with a disability. This allows for amendments to standard procedures to allow disabled employees to fully participate in the process. One example is that an employee with learning disabilities may wish to be accompanied by a support person in addition to their trade union representative or colleague.		
Gender re-assignment			Considered – no impact
(Please describe)	N/A		
Marriage & civil partnership¹			Considered – no impact
(Please describe)	N/A		
Pregnancy & maternity			Considered – no impact
(Please describe)	N/A		

¹ Under EA 2010 – someone in a CP must not be treated less favourably than a married person

Protected Characteristic or Group	Positive impact	Negative impact	No impact
Race & ethnicity			Considered – no impact
(Please describe)	N/A		
Religion/ belief²			Considered – no impact
(Please describe)	N/A		
Sex or gender³			Considered – no impact
(Please describe)			

² Under EA 2010 – must also consider non-religious belief

³ Sex and gender can be used at different times depending upon whether you are referring to the EA 2010 and the different duties which exist

Protected Characteristic or Group	Positive impact	Negative impact	No impact
Sexual orientation			Considered – no impact
(Please describe)	N/A		
Human Rights			Considered – no impact
(Please describe)	N/A		
Armed Forces personnel/ households			Considered – no impact
(Please describe)	N/A		
Users of British Sign Languages	Yes		
(Please describe)	The Council must ensure that relevant reasonable adjustments requirements are considered and in place for employees who are deaf and are users of British Sign Language. Relevant arrangements can be discussed with Occupational Health. Should an employee be in need of an interpreter, they would be allowed to be accompanied in addition to the normal accompaniment rights (trade union representative or colleague)		
DCC Employees			Considered – no impact
(Please describe)	N/A		

Protected Characteristic or Group	Positive impact	Negative impact	No impact
Community and Voluntary sector organisations working with protected characteristic groups			Considered – no impact
(Please describe)	N/A		
Other not listed above			Considered – no impact
(Please describe)	N/A		

Part 4. Summary of main findings

Introduction of the revised procedure gives the Council an opportunity to ensure that an appropriate, fair and equitable process is followed. The procedure will be applied to all employees equally.

The Council needs to ensure that it meets the needs of employees with disabilities to consider and make reasonable adjustments to allow employee to fully participate in the procedure.

It may be useful to better understand any relationship between implementation of the procedure and the employees affected. Monitoring of the implementation of the procedure would identify whether any group of employees with protected characteristics are adversely affected. This would allow identification of any potential positive and/or negative impacts and allow specific actions to be taken.

Are there any recommendations for changes to proposals?

Proposed Equality Action Plan

Please complete this Action Plan to outline any mitigation you intend to take.

Issue identified	Action required to reduce impact/ mitigate	Timescale and responsibility	Monitoring and review arrangements
No monitoring of the procedure in relation to protected characteristics is currently carried out.	Additional personal information would need to be recorded on case files, or an ongoing programme of analysis would need to be implemented based on relevant categories, including protected characteristics. This may be able to be facilitated within the case management system currently being developed	In line with case management system development. Tracey Wall	12 months following implementation

Date and outcome of any Cabinet/ Cabinet Member or Council Report to which this was attached and their decision:

Appointments and Conditions of Service Committee – 27th June 2023.

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