

# Public Document Pack



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To: Members of Appointments and Conditions of Service Committee

Thursday 30 January 2020

Dear Councillor,

Please attend a meeting of the **Appointments and Conditions of Service Committee** to be held at **11.00 am** on **Friday, 7 February 2020** in Committee Room 3, County Hall Matlock, the agenda for which is set out below.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'S Hobbs', written over a light blue horizontal line.

**Simon Hobbs**  
**Director of Legal and Democratic Services**

## **A G E N D A**

### **PART I - NON-EXEMPT ITEMS**

1. Apologies for Absence

To receive apologies for absence (if any)

2. Declarations of Interest

To receive declarations of interest (if any)

3. Minutes (Pages 1 - 4)

To confirm the non-exempt minutes of the meeting of the Appointments and Conditions of Service Committee held on 8 November 2019

4 (a) To consider the report of the Director of Organisation Development & Policy on Parental Bereavement Leave (Pages 5 - 68)

4 (b) To consider the report of the Director of Organisation Development & Policy on Market Supplement Policy (Pages 69 - 86)

4 (c) To consider the report of the Director of Organisation Development & Policy on Mental Health Policy (Pages 87 - 106)

4 (d) To consider the report of the Director of Organisation Development & Policy on Disciplinary Policy and Employee Leave Scheme for Centrally Employed Teachers (Pages 107 - 210)

4 (e) To consider the report of the Director of Organisation Development & Policy on Updated Appraisal Policy and Competence Procedures for Centrally Employed Teachers (Pages 211 - 280)

5. Exclusion of the Public

To move "That under Regulation 21 (1)(b) of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph(s)... of Part 1 of Schedule 12A to the Local Government Act 1972"

### **PART II - EXEMPT ITEMS**

6. Declarations of Interest

To receive declarations of interest (if any)

7. Minutes (Pages 281 - 282)

To confirm the exempt minutes of the meeting of the Appointments and Conditions of Service Committee held on 8 November 2019

8. To consider the joint exempt report of the Executive Director Children's Services and Director of Organisation Development & Policy on Application to extend a Market Supplement Payment to Night Care Assistants (Pages 283 - 292)

9. To consider the report of the Executive Director Commissioning, Communities and Policy on Request to support the Dismissal of an Assistant Director by means of Voluntary Redundancy resulting from the ICT Management Team Restructure (Pages 293 - 296)

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Agenda item 3

**MINUTES** of a meeting of the **APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE** held on 8 November 2019 at County Hall, Matlock

## **PRESENT**

Councillor B Lewis (in the Chair)

Councillors R Ashton, K Buttery, A Foster, T Kemp, S Marshall-Clarke, R Mihaly (substitute Member) and P Smith

Officers in attendance – E Alexander, E Crapper, P Handford, S Hobbs, D Wallace and L Wild

Apologies for absence were received on behalf of Councillor A Western

## **Declarations of Interest**

There were no declarations of interest.

**5/19** **MINUTES RESOLVED** that the minutes of the meeting held on 24 June 2019 be confirmed as a correct record and signed by the Chairman.

**6/19** **PROPOSED TRADE UNION TIME OFF ARRANGEMENT** The current Trade Union Time Off agreement was implemented in 2009. Since then, the organisation had been through a period of significant change, and it was therefore timely to review the provisions of that agreement, to ensure that it continued to meet the needs of the organisation. In addition, as identified within the Revenue and Budget Report 2019-28 presented to Cabinet on 24 January 2019 the Council was looking to reduce its expenditure on TU Facilities Time by 50% which would reduce annual costs from £274,604 (0.08% of pay bill) to £137,302 (0.04% of pay bill). For comparative purposes this would bring the Council in line with similar county councils who had the lowest percentage of TU Facility Time as a proportion of their pay bill. Not all of these cost reductions could be realised as a saving but it was expected that it would generate a proposed saving of £50,000 per annum from 2020-21 onwards.

When considering the above aligned to the proposed future HR Delivery model and the current strategic priorities within the Council, negotiations had been underway to review the current Trade Union Time Off Agreement. Discussions had centred on the Council's desire for greater parity across Trade Unions and the need to simplify where possible to avoid inaccurate interpretation of the provisions contained within the agreement.

Extensions were agreed within the negotiation process in an attempt to ensure agreement could be reached to enable further discussions, as opposed to the reversion to the ACAS code of practice. Unison had notified the Council of its intended agreement to the proposal, with notification pending from Unite and GMB. The revised agreement was detailed within Appendix 1 to the report and the key changes within the proposal were highlighted.

Any outstanding issues or matters arising from further consultations would be brought back to the Committee prior to its implementation on 1 April 2020.

**RESOLVED** to approve the implementation of the revised Trade Union Time Off Agreement with effect from 1 April 2020.

**7/19      APPLICATIONS FOR MARKET SUPPLEMENT PAYMENT EXTENSIONS** Market supplement payments for posts in Investments and Public Health were due to end in December 2019 and for Childcare Solicitors in March 2020.

A full review of market conditions had been carried out to support the continuation of market supplement payments for these posts and business cases were provided in the appendices to the report. It was proposed to continue paying market supplements as follows:-

Head of Pensions and Investments: increase from £15,000 to £22,500 per annum for a period of 2 years to 5 December 2021.

Investments Manager: increase from £5,000 to £10,000 per annum for a period of 2 years to 5 December 2021.

3 Assistant Directors Public Health (including 1 temporary post): increase from £10,000 to £12,000 per annum for a period of 2 years to 5 December 2021.

Childcare Solicitors (including 5 vacant posts): continue to pay £5,000 per annum for 18 months to 30 September 2021.

The additional costs for market supplements would be funded from departmental budgets, with the payments to Public Health staff met from the ring-fenced Public Health Grant those to the Head of Pension Fund and the Investment Manager being charged to the Pension Fund.

**RESOLVED** to agree the extension of market supplement payments within Pension and Investments, Public Health and Legal Services as detailed in the report and appendices.

**8/19      SCHOOL TEACHERS' PAY AWARD AND UPDATED PAY POLICY FOR CENTRALLY EMPLOYED TEACHERS – 1 SEPTEMBER 2019**

The regulations governing teachers' pay and conditions of service were contained in the School Teachers' Pay and Conditions Document (STPCD) which was revised by the Secretary of State annually. Any changes needed to be reflected in the authority's policies for the management of teachers employed in the education support services. The Pay Policy was attached as Appendix A to the report and the main changes proposed for 2019 were as follows:-

- Terminology
- Statutory pay rates and allowance payments
- Procedures for making pay progression decisions based on performance appraisal had been amended to reflect the revised delegations outlined in the new Constitution
- Pay appeal procedures had been updated to reflect the delegations outlined in the new Constitution

The Secretary of State for Education had announced the Teachers' Pay Award, effective from 1 September 2019, to be a 2.75% uplift to the statutory minimum and maximum of all pay ranges and allowances.

In line with previous determinations, a 2.75% uplift to all pay points on all pay ranges and all allowances was recommended for teachers employed by DCC and not attached to schools. In recommending this action and in consideration of the potential impact on recruitment and retention, the following factors had been taken into account:

- This nationally determined pay award had been agreed within the context of cost of living increases. It was reasonable that all teachers should benefit.
- It would be inequitable for teachers on the minimum or maximum of a pay range to receive an automatic pay increase, which was not awarded to other teachers. There was no rationale to support awarding a pay uplift to only some teachers, when no performance criteria were to be applied.
- For some teachers employed by DCC not to receive a nationally agreed cost of living public sector pay award would treat them differently from other categories of DCC employees.
- If the relevant pay uplifts were only added to the maxima and minima of pay ranges, this would introduce an imbalance into each pay range.
- Not to apply the uplift equally within the pay ranges and allowances would be likely to have a negative impact on employee relations, recruitment and retention.

The recommendation to school Governing Boards was that they adopted the same approach and agreed increases as detailed above, giving consideration to the relevant factors outlined and the benefits of a consistent approach across the Authority.

**RESOLVED** to (1) approve the adoption of the Proposed Pay Policy for Teachers Employed by the LA and Not Attached to Schools;

(2) agree the award of a 2.75% increase to all points on all pay ranges and all allowances backdated to 1 September 2019, to all teachers employed by Derbyshire County Council, and not attached to schools; and

(3) agree the recommendation to Governing Boards of a 2.75% uplift on all pay ranges and allowances backdated to 1 September 2019.

**9/19**      **EXCLUSION OF THE PUBLIC RESOLVED** that the public be excluded from the meeting during the Committee's consideration of the remaining items on the agenda to avoid the disclosure of the kind of information detailed in the following summary of proceedings:-

**SUMMARY OF PROCEEDINGS CONDUCTED AFTER THE PUBLIC HAD BEEN EXCLUDED FROM THE MEETING**

1. To consider the exempt report of the Executive Director Adult Care on a request to support the dismissal of a Service Director by means of Voluntary Redundancy following the Senior Management Team Restructure (contains information which is likely to reveal the identity of an individual)



**DERBYSHIRE COUNTY COUNCIL****APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE****7 February 2020****Report of the Director of Organisation Development & Policy****Parental Bereavement Leave****1. Purpose**

To seek approval for the implementation of a Parental Bereavement Leave and Pay scheme, with effect from 1 April 2020.

**2. Information and Analysis**

Following the Parental Bereavement (Leave and Pay) Act 2018 a new type of leave and pay is due to be introduced with effect from 1 April 2020. This is a new, statutory entitlement and provides for 'bereaved parents' of a child to be absent from work with pay for up to two weeks.

'Bereaved parents' includes anyone classed as the primary carer for a deceased child under the age of 18.

The entitlement also includes parents who suffer a still birth 24 weeks or more into pregnancy. The entitlement to leave is a day one right, which means employees will not require a minimum period of service. There are statutory requirements that an employee has 26 weeks service and meets the lower earnings limit to benefit from statutory pay during such an absence. However, due to the nature of this absence, it is proposed that employees continue to receive their basic pay, rather than statutory pay only and for this to be a day one right for all employees who experience such a bereavement regardless of their service and earnings.

The two week entitlement may only be taken as one block of two weeks or two blocks of one week, and may be taken up to 56 weeks from the bereavement. There is scope to agree for Parental Bereavement Leave be taken in single days, but this would prevent the authority from reclaiming the statutory entitlement. It is unlikely that under the circumstances Parental Bereavement Leave is used, employees would request leave to be taken in single days. It is therefore recommended that the statutory provision is agreed. There is no requirement for employees to provide notice for leave taken initially following the bereavement although it is proposed one weeks' notice be provided for leave taken at a

later date. In addition there is no requirement to provide evidence of a bereavement, although a written declaration from the employee may be requested at some point.

We are currently awaiting further detailed guidance on the parental bereavement (leave and pay) regulations from the Government. Once this is available, amendments will be made to the policy clarifying any requirement for written declarations or other amendments that the guidance may identify.

A draft of the policy wording that will be appended to the Leave Schemes and Flexible Working Policy and is attached at appendix 1.

### **3. Financial Considerations**

Although this is an additional entitlement, it is accepted that employees suffering such a bereavement are currently likely to cover any absence either by sickness absence or special leave, and therefore there are no additional costs anticipated.

### **4. HR Considerations**

As contained within the body of the report, officers have engaged with the Trade Unions via the appropriate work stream regarding these changes who were supportive of the new leave entitlement. Trade unions made representations that the Council increase the statutory payment to payment at full basic pay and that entitlement to pay is a day one right.

### **5. Legal Considerations**

As contained within the body of the report.

### **6. Officer Recommendation**

That ACOS agree to implement the Parental Bereavement Leave and Pay scheme as per the policy wording (Appendix 1) with effect from 1 April 2020.

**Emma Crapper**  
**Director of Organisation Development & Policy**

## **Parental Bereavement Leave & Pay**

The Parental Bereavement (Leave and Pay) Act 2018, provides an entitlement for bereaved parents of a child to be absent from work for up to two weeks.

### **Entitlement to Parental Bereavement Leave**

Employees who are primary carers for a deceased child under the age of 18 are entitled to parental bereavement leave. This is a day one right i.e. there is no service requirement for parental bereavement leave.

This entitlement is available to any employee with parental responsibility for the child, for example:

- Birth parent
- Adoptive parent;
- Legal guardian;
- Current foster parents (not short term) – *(will need some rewording but awaiting regulation/guidance)*.

This entitlement also applies to those parents who suffer a still birth 24 weeks or more into pregnancy, although it does not affect a woman's maternity leave entitlement which would be taken prior to any parental bereavement leave.

Bereaved parents will be able to take the leave as one block of two weeks or two blocks of one week. The leave may be taken up to 56 weeks following the death of the child.

This entitlement does not affect other leave entitlements as it is an additional entitlement.

### **Notice period**

There is no notice period required for leave taken immediately following the bereavement. There is no requirement to provide evidence as informal notification will suffice, although at some point employees will be required to provide a written declaration that they are entitled to parental bereavement leave / pay. Managers should contact HR for advice prior to contacting the employee.

Specifically, employees are **not** required to provide either a copy of the death certificate or medical evidence.

For leave taken after the initial bereavement, one weeks' notice will be required.

**Parental Bereavement Pay**

Parental Bereavement Pay is payable for a maximum of two weeks, at full basic pay, regardless of service and earnings.

**DERBYSHIRE COUNTY COUNCIL****APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE****7 February 2020****Report of the Director of Organisation Development & Policy****Market Supplement Policy****1. Purpose of the report**

For the Appointments and Conditions of Service Committee (ACOS) to agree the draft Market Supplement Policy attached at Appendix 1.

**2. Introduction**

A market supplement is a temporary additional payment to a role where there is clear evidence that the Council's total remuneration package causes demonstrable recruitment and retention issues. These issues may lead to the Council's inability to meet essential service needs, statutory responsibilities and cause significant reputational and or financial risks to the Council. Market supplement payments must at all times be justifiable by reference to market conditions and to achieve this they can only be agreed for a maximum of two years. A full review of market conditions will be carried out 6 months prior to the proposed end date to determine whether the payment should be withdrawn, extended and/or changed. The payment of a market supplement may be reviewed at any time in the event it is felt that market conditions no longer justify the payment. Market Supplement applications will require authorisation by ACOS.

In light of the increased application of temporary market supplement payments, a Market Supplement Policy has been developed (based on the existing market supplement procedure) to ensure a robust and consistent process is adopted by the Council in the application of market supplement payments.

This policy sets out the guiding principles to be adopted when considering the payment of a market supplement to ensure legal compliance and minimise the risk of creating an equal pay liability.

Departmental Directors/Heads of Service will be required to identify and contribute to the provision of appropriate market data evidence with support from HR and Legal Services to establish that all other non-pay options have been considered before an application can be submitted.

### **3. Roles, responsibilities and payment terms**

The Policy sets out:

- the roles and responsibilities of Service Directors/Heads of Service, HR, Legal and the Trades Unions
- how to identify the comparator market and relevant market data
- how to determine the amount of market supplement payment
- how the market supplement will be paid and what elements of pay will include the payment
- how jobs with a market supplement payment should be advertised
- the review process

### **4. Pay Considerations**

Market supplement payments have historically been attached to posts where there has not been a requirement for additional hours or for relief employees.

Since the introduction of market supplement payments for Social Workers in Child Protection Teams (July 2019) and Night Care Assistants in Children's Residential Homes (April 2019) it has been necessary to agree in advance of the policy how market supplements will be paid in relation to the following payment types which are set out within the policy:

- part time employees working additional hours up to 37 per week
- relief employees working up to 37 hours per week
- maternity, adoption, parental, foster carer leave
- authorised absences
- accrued leave and bank holidays

The total annual market supplement payment agreed at ACOS is based on a full time employee (paid for 37 hours per week and for 52 weeks per year) and must not be exceeded. Therefore part time and relief employees will only attract market supplement payments for hours worked up to 37 hours per week. For all employees, hours treated as overtime (above 37 hours per week) will not attract market supplement payments.

Where work is undertaken and paid at enhanced rates, market supplement payments will only apply to the plain time element of worked time, up to the maximum of 37 hours within a week.

Market supplement payments will be paid in line with Derbyshire Package terms and conditions for all periods of absence including occupational maternity, adoption and sick pay. Where unpaid elements of the Council's leave schemes apply the salary deduction will include a proportion of market supplement payment.

## **5. HR Considerations**

Market supplements will be paid to all employees in the relevant post as a separate and clearly identifiable addition to basic pay. Separate contract letters will detail the terms and conditions applying to market supplements and include the end date and review period. Consideration will be given to the effect on related employee groups and the Council will engage with recognised trade unions.

The effectiveness of market supplement payments will be monitored to assess the impact on recruitment and retention and to ensure they are applied in a consistent and non-discriminatory manner.

## **6. Financial Considerations**

Service Directors/Heads of Service will identify how additional costs for market supplement payments will be funded.

## **7. Legal Considerations**

The Council needs to take care to ensure that the payment of a market supplement does not lead to exposure to equal pay claims under the Equality Act 2010. The payment of a market supplement may lead to circumstances in which male and female employees are paid differing amounts in respect of work which has been rated as equivalent under the Council's job evaluation scheme. In order to successfully resist equal pay claims the Council will need to show that the difference in pay is explained by a material factor that does not involve direct or unjustified sex discrimination.

In addition to presenting industrial relations issues the payment of market supplements can present a risk of undermining pay and grading structures which can in turn lead to exposure to costly equal pay claims, therefore in view of the potential financial liabilities which could be created in the event that the policy was found to be deficient external counsel has also reviewed the draft policy. Counsel recommended one revision to the draft policy, which gives the Council greater flexibility in circumstances where there are difficulties obtaining comparative market pay data to support an application; this been incorporated in to the current policy.

In addition Counsel advised that:

- The Council needs to ensure that the policy is consistently applied.
- Managers should receive training in how to use/ interpret the policy.
- When market supplements are reviewed they should be subject to the same scrutiny as the initial application.
- In the event payments are not regularly reviewed, or market forces have changed which no longer justify the payment, but the supplement continues

to be paid there is an increased risk that employees would be able to claim the payment as a contractual entitlement.

- Exit interviews can provide useful evidence in terms of justifying market supplement payments.
- The Council needs to be mindful that if the “market rate” itself is tainted by discrimination then a material factor defence would be likely to fail.
- In the event the Council wants to pay a market supplement but is unable to demonstrate that current pay is below the “market rate” this may be permissible but to limit risk of challenge we would need to evidence: (1) payments are genuinely due to difficulties in recruiting/ retaining employees (2) there is/ would be a genuine negative impact upon the service as a consequence of the inability to recruit/retain employees (3) the amount of the payment is justifiable and likely to achieve positive results.

Market supplements have been held to be a ‘material factor’ in some but not all cases. The introduction of the market supplement policy which provides a clear and consistent approach to the application of market supplements and requires the business need for the payment to be robustly evidenced by reference to market data will assist in mitigating the risk of successful equal pay challenge.

## **8. Recommendation**

That ACOS agree the draft Market Supplement Policy;

**Emma Crapper**  
**Director of Organisation Development & Policy**



# MARKET SUPPLEMENT POLICY



**February 2020**

Version History			
Version	Date	Detail	Author
1.00	February 2020	Market Supplement Policy	P Buckley

## Links and Dependencies

Derbyshire County Council - Council Plan
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## **1. Introduction**

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

In exceptional circumstances, where the Council is able to demonstrate that recruitment and retention issues are impacting on service delivery, providing other non-pay related options have been explored and discounted, the payment of a temporary additional element of pay paid in addition to basic salary may be justified. This should be supported with clear evidence that the Council's rate of pay for a defined post or group of posts falls below the required level in relation to the comparator market. The required level will be determined by the Council at the time taking into account relevant market data and the needs of the service.

This policy sets out the guiding principles for the payment of market supplements.

## **2. Scope**

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

## **3. Equality Impact Assessment**

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

The Council will have a defence against an equal pay claim where it can be shown that the difference in pay is explained by a 'material factor' that does not involve direct or unjustified indirect sex discrimination. Market forces have been held in some but not all cases to be a 'material factor'. If the payment of a market supplement involves indirect discrimination, it must be objectively justifiable i.e. a proportionate means of achieving a legitimate aim.

## **4. Roles and Responsibilities**

### **4.1 Senior Management Teams**

Service Directors/Heads of Service will:

- Demonstrate the need for the application of a market supplement payment including collection of evidence from exit interviews, having satisfied all other non-pay avenues
- Identify comparators and contribute to the provision of appropriate market pay data to establish pay differentials between the evaluated rate of pay and that of competitors
- Identify any impact to employee groups across the Council
- Carry out an equality impact assessment to establish any inequality in relation to gender or protected characteristics
- Identify funding for the payment of market supplements
- Submit market supplement applications (Appendix 1) to Corporate Management Team (CMT) and Appointments & Conditions of Service Committee (ACOS)
- Carry out reviews of existing market supplement payments commencing 6 months prior to the end of the fixed period
- Communicate with all those in receipt of a market supplement payment throughout the review period to keep them informed of progress and outcomes
- Ensure jobs with market supplements are advertised in the agreed format
- Review service requirements and resourcing strategies throughout the period of payment of a market supplement to remove the need for a temporary market supplement payment

### **4.2 Human Resources**

The Director of Organisation, Development and Policy will:

- Work with senior management teams to identify causes of recruitment and retention difficulties across the workforce and to implement resourcing and reward strategies
- Establish that the evaluation of the job is consistent with the current duties of the role
- Support activity to identify comparators and contribute to the provision of appropriate market pay data to establish pay differentials between the evaluated rate of pay and that of comparators
- Support activity to identify any impact to employee groups across the Council and to establish any inequality in relation to gender or protected characteristics
- Review market supplement applications and the market data provided prior to submission to CMT
- Ensure jobs with market supplements are advertised in the agreed format

- Provide all affected employees with appropriate contractual documentation
- Record the outcome of all market supplement applications and ensuring the timely review of existing market supplements
- Recommend to ACOS whether a market supplement should be made, following consultation with the CMT.

#### **4.3 Legal Services**

The Director of Legal Services is responsible for:

- Provision of advice on the legal implications of applying market supplement payments in relation to equal pay and other equality considerations.

#### **4.4 Trade Unions**

- Recognised Trade Unions will be engaged in discussion in market supplement applications and reviews, including market data.

### **5. Guiding Principles**

- Market supplements will only be paid where a case for payment is fully justified with supporting evidence that the level of salary is creating the recruitment difficulties and that all other non pay avenues have been considered
- Applications will only be considered via the process outlined in this policy
- Market supplements will be payable for a fixed period, up to a maximum of 2 years, and reviewed 6 months prior to the end of the fixed period to determine whether the payment should be withdrawn or extended and/or changed
- All employees carrying out the role will receive written notification of the market supplement setting out the contractual terms, start date, end date and 6 month review period and the fact it may be withdrawn at any point following notice
- When acting up for a role that receives a market supplement payment, the full duties and responsibilities of the role must be undertaken in order to receive the market supplement payment
- Market supplements should only be paid when justifiable and in scope of the agreed application. Those roles managing employees in receipt of a market supplement not in the scope of the agreed applications should not automatically be increased to maintain pay differentials.
- Where a market supplement payment is due to be withdrawn or changed, all affected employees will receive contractual notice of one month
- Where a market supplement will not continue to apply for any other reason, e.g. redeployment, payment will continue during the contractual notice period
- There is no appeal against the change to, or the withdrawal of, a market supplement payment
- Where agreement has been made to remove or change a market supplement payment candidates already in the recruitment process will be notified of the change prior to interview

- Where a post in receipt of a market supplement is regraded following evaluation a full review of the market supplement should be carried out to determine if the market supplement payment ceases or continues at a revised rate, authorised by CMT. The total remuneration package should not exceed the existing level of pay plus market supplement without further agreement through ACOS
- Market supplement payments should not exceed the agreed annual market supplement amount for a full time employee. For example, if the agreed total market supplement for a full time employee is £3,000, no employee should receive an annual market supplement payment in excess of that

## **6. Identifying the comparator market and relevant market data**

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

Account should be taken of:

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

Care needs to be taken in identifying (market) comparator posts to recruit the right candidates at the appropriate rate. Getting it wrong could be costly as the market supplement will be paid to all employees in the post as well as new starters.

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

Pay data is available from local/national advertisements, neighbouring authorities, regional local government employer networks, HR or profession-specific networks, consultants' pay databases, salary surveys and pay settlement data.

## **7. Determining amount of market supplement**

When the appropriate comparator posts have been identified, together with the relevant market pay data, the amount of the market supplement must be determined.

The starting point is to assess the extent of the difference between the comparator market range and the Council's grade range for the post taking account of any additional allowances.

Market supplements are normally based on the median pay of comparators, however, total remuneration should be sufficient to enable the recruitment/retention of employees and should not exceed the level deemed necessary to attract suitable candidates.

When recruiting to a post that attracts a market supplement payment, care must be taken when appointing on higher pay points within the grade as the total remuneration must justify market conditions.

## 8. Payment Details

Market supplements **will** be:

- Pensionable and subject to tax and NI
- Paid as a clearly identifiable and separate supplement to basic pay (*NB: the market supplement will not be shown as a separate payment for periods of absence that are remunerated through a combination of occupational and statutory pay, e.g. sick or maternity pay*)
- Subject to eligibility, included in occupational and statutory calculations for periods of paid sickness, maternity and adoption leave at the appropriate rate e.g. for maternity leave 6 weeks at 90% pay (including market supplement), 12 weeks at 50% pay (including market supplement) and half rate for periods of half pay sickness, etc. Occupational and statutory rates will be recalculated for employees who are on maternity/adoption leave when a market supplement is introduced. When market supplements are reduced or removed during a period of maternity/adoption leave, only the occupational element is recalculated and reduced from the date of the change
- Paid monthly (pro rata for part-time employees)
- Paid as an additional payment on top of the hourly rate for relief employees
- Paid for authorised paid absences as set out in the Council's Employee Leave Schemes and Flexible Working guidance
- Paid at the appropriate rate for each post where an employee has more than one eligible job
- Adjusted accordingly where there is a change in contracted hours
- Paid at the appropriate hourly rate for hours up to 37 per week, including working hours up to 37 for standby, sleep in and recall to work
- Paid on accrued leave which has been accrued on part time hours up to a maximum of 37 hours per week
- Included in any deductions related to unpaid absences, eg. unpaid leave
- Paid for all additional hours worked up to 37 per week including the plain time hours worked at times that attract enhancements
- Included in Redundancy pay calculations
- Adjusted accordingly where contracted hours are increased/decreased (including a buy out of hours decrease in hours: *NB: the market supplement will be included in the buy out calculation of actual pay for 26 weeks*)

**Market supplements:**

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

**9. Job Adverts**

Job adverts will clearly identify the market supplement as a temporary additional element of pay detailing the end date, review date and review period. Actual salary/hourly rates will be provided setting out basic pay and total pay including the market supplement. The following agreed wording will be included in all job adverts to explain market supplement payments to potential applicants:

*A temporary market supplement is attached to this post, which is a separate payment in addition to the normal salary. A review of market conditions will be carried out 6 months prior to the proposed end date to establish if the market supplement should continue. Further information on market supplement payments is available on our website [link].*

**10. Contractual documentation**

All eligible employees will receive an additional contractual letter detailing all the terms and conditions relating to the temporary market supplement payment.

**Appendix 1 – Market Supplement Application Form**

A Market Supplement Application Form is attached at Appendix 1 detailing the supporting evidence required for consideration of a market supplement payment.

**Appendix 2 – Market Supplement Process Flow Chart**

<b>Policy/Procedure owner:</b>	HR Pay & Reward
<b>Date last reviewed:</b>	



**Appendix 1****APPLICATION FOR THE PAYMENT OF A MARKET SUPPLEMENT**

Completed market supplement applications should be forwarded to the Assistant Director of HR. Applications will be considered by the Corporate Management Team prior to submission to Appointments & Conditions of Service Committee (ACOS).

<b>Job Title</b>		<b>Department</b>	
<b>Benchmark ref/job family</b>		<b>Service area</b>	
<b>Evaluated Grade</b>		<b>Current salary range</b>	
<b>No of staff in post (including vacant posts)</b>		<b>Total amount of market supplement requested</b>	
<b>Period for which the payment is sought</b>		<b>Proposed implementation date</b>	

**Is this application to:**

Assist recruitment to a vacant post(s)		Review a current market supplement	
--	--	------------------------------------	--

1.	Briefly outline the duties/responsibilities of the job or group of jobs for which payment of a market supplement is requested.
2.	Please outline the impact on service provision caused by recruitment and retention difficulties relating to this post.
3.	Has the post been reviewed by the Pay and Reward Team to reflect current job demands? Please provide details and date of assessment by Pay and Reward Team.
4.	Please provide current job and person profile and most recent advert details: <ul style="list-style-type: none"> <li>• Does the job and person profile properly reflect the demands and requirements of the role?</li> <li>• Has the value of the total reward package and all employee benefits been promoted effectively?</li> <li>• Have opportunities for learning &amp; development and career progression been highlighted?</li> <li>• Have other recruitment initiatives been exhausted, e.g. targeted advertising?</li> <li>• Have changes to working arrangements/flexible working, etc. been considered?</li> </ul>

5.	Please provide <b>evidence that consideration has been given to redesigning the job/structure</b> to undertake the work in a different way, e.g. development of trainee roles, reallocation of duties, etc
6.	Please provide <b>evidence that consideration has been given to the use of agency workers, contractors, partnership working, private sector or other providers</b> to undertake the work outlining the advantages/disadvantages and associated costs
7.	Please provide <b>details of turnover rates</b> (in comparison to average turnover rates).
8.	<ul style="list-style-type: none"> <li>• Please provide <b>evidence from exit interviews</b> where employees have moved to an equivalent post and cited pay as a reason for leaving.</li> <li>• Are employees leaving the Council achieving higher rates of pay for carrying out the same/ substantially similar role?</li> <li>• Is there evidence from staff surveys/TU representatives of unresolved workplace dissatisfaction which needs to be resolved by management?</li> </ul>
9.	Please provide information on the <b>number and quality of responses to job advertisements</b> . Include dates advertised, where advertised and recruitment initiatives adopted
10.	Is there a <b>regional/national skills shortage</b> for which new/alternative training schemes would be a more appropriate solution?
11.	<b>Is competitor employers' pay the main driver in attracting staff away from the organisation/deterring potential recruits?</b>
12.	<b>Likely effectiveness of market supplement.</b> <ul style="list-style-type: none"> <li>• Will the application of a market supplement payment trigger a pay spiral with neighbouring organisations raising pay rates to attract the same small group of suitable candidates</li> </ul>

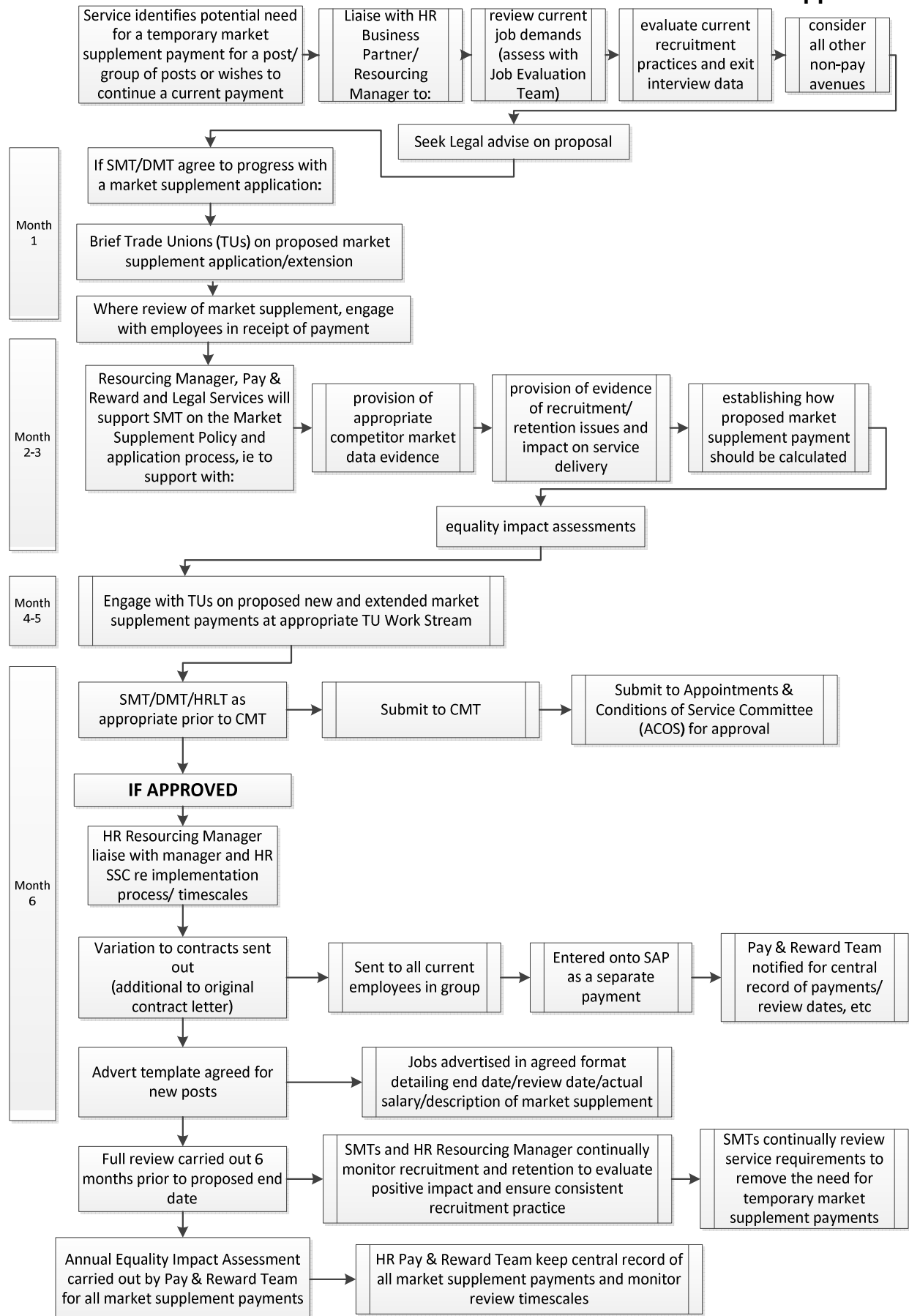
	<ul style="list-style-type: none"> <li>If this is the case, consideration should be given to alternative strategies e.g. partnership working</li> </ul>
13.	<p><b>Analysis of likely impact of market supplement.</b></p> <ul style="list-style-type: none"> <li>This should include evidence to demonstrate that the wider and longer-term impacts throughout the Council have been properly assessed and thought through.</li> <li>The number of employees involved and the effect on their salaries, implications for other employees within the structure and in other employee groups and any equal pay considerations.</li> <li>Further advice should be sought from Legal Services.</li> </ul>
14.	<p><b>Labour market data and the 'going rate' for the job:</b></p> <ul style="list-style-type: none"> <li>provide details of the market data sources used to establish the 'going rate' for the job (e.g. recent media adverts, survey data, pay databases, other local authorities/schools, regional employer networks, Hay User Group, EM Councils, etc.)</li> <li>ensure there is clear evidence that this data relates to genuinely comparable posts and that duties, responsibilities, knowledge, skills, geographical location, associated terms, conditions, benefits and any other unique factors have been considered</li> <li>provide details of main competitors' comparable posts</li> <li>attach relevant job descriptions/person specifications</li> </ul> <p>Legal advice should be sought in all cases where the job group is predominantly male or female to avoid equal pay implications.</p>
15.	<p><b>Proposed amount of market supplement to be paid:</b></p> <ul style="list-style-type: none"> <li>The market supplement should normally be based on the median pay of the comparators, however, a supplement should not exceed the level deemed necessary to attract suitable candidates.</li> <li>Please provide evidence to demonstrate how the proposed market supplement has been calculated.</li> <li>Provide details of how the payment will be made, e.g. monthly</li> </ul>
16.	<b>How will the market supplement be funded?</b>

17.	<b>Review date</b> <ul style="list-style-type: none"> <li>Market supplement rates must be reviewed 6 months prior to the end of the fixed term payment period to ensure that employees receive the minimum contractual notice period of one month to confirm any changes/removal.</li> <li>The outcome of the review will be considered by the CMT before being submitted for approval by ACOS</li> <li>The review will require completion of the full process and will follow the same approval process.</li> </ul>

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

Completed by	
Date agreed by Director/AD HR	
Date of CMT	
Agreed YES/NO	
If no – reason	
Details of any amendment and reason(s)	
ACOS date and outcome	
Date manager informed of decision	
Effective date of payments	
Names & payroll numbers of employees to be paid the supplement	
(SSC) Date employees are informed of decision in writing (with contractual conditions)	
Review date	
(Pay & Reward) Team (central record)	

## Appendix 2



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**APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE****7 February 2020****Report of the Director of Organisation Development and Policy****MENTAL HEALTH POLICY****1. Purpose of the Report**

For the Committee to approve the Mental Health Policy.

**2. Background Information**

Part of the Council's Wellbeing Strategy was to adopt a Mental Health Policy.

The attached draft Mental Health Policy has been drafted with consultation and feedback from the Wellbeing Strategy Working Group, Human Resources Operational Group, Diversity and Inclusion Board, staff network groups, Mental Health Group, Human Resources Leadership Team and Trade Union representatives.

The Policy seeks to facilitate a working environment which promotes a culture of positive mental wellbeing through awareness, support, training and risk assessment.

The policy aims are:

- Ensure a supportive, non-judgmental culture where talking about mental wellbeing and mental health issues is conducted in an open and honest way.
- Promote positive mental wellbeing in the workplace.
- Ensure the mental wellbeing of all staff is supported and appropriate to their needs.
- Support individuals to improve and maintain their mental wellbeing; and identify and tackle workplace factors that may be negatively impacting their mental health.
- Provide timely and responsive support and assistance for staff experiencing mental health problems, relative to their needs.

Support for positive mental health in the workplace will include:

- Wellness Action Plans – to support employees and managers manage mental health impacts in the workplace.
- Work life balance- employees and managers recognising the need not to work excessive hours.
- Training and Development – providing a range of mental health development opportunities.

- Workplace risk assessment – use of the Health and Safety Executive Management Standards in respect of Mental Health.
- Occupational Health Service – Cognitive Behaviour Therapy support and suggested adjustments to working practices for consideration.
- Mental Health First Aiders – a network of trained mental health first aiders to provide signposting to other support.
- Access to Work – accessing the Department of Work and Pensions Access to Works scheme which provides support for workplace adjustments

The draft Mental Health Policy sets out the Council's positive approach to mental health wellbeing in the workplace to facilitate a culture of positive mental wellbeing and reducing sickness absence in the workplace due to mental health reasons.

### **3. Finance Considerations**

There are no financial considerations in respect of the policy document.

### **4. Legal Considerations**

Legal considerations have been taken into account. The policy supports the Council's approach to the Equality Act.

### **5. Human Resources and Other Considerations**

In preparing this report the relevance of the following factors has been considered: the Council's Constitution, human resources, social care and equality and diversity.

### **6. Director's Recommendation**

The Appointments and Conditions of Service Committee approves the Mental Health Policy.

**Emma Crapper**  
**Director of Organisation Development and Policy**



**DRAFT**

# **MENTAL HEALTH POLICY**

Version History			
Version	Date	Detail	Author
0.1	26.04.2019	First draft	Luan Kay, James Creaghan, Amanda Elkin
0.2	21.05.2019	Update	James Creaghan
0.3	22.05.2019	Update	Luan Kay
0.4	22.05.2019	Update	Amanda Elkin
0.5	28.05.2019	Update	Sandy McKay
0.6	20.06.2019	Update	James Creaghan
0.7	21.06.2019	Update	Amanda Elkin
0.8	27.06.2019	Update	James Creaghan / Jo Hall
0.9	02.07.2019	Update	Sandy McKay
1.0	04.07.2019	Update	Amanda Elkin
1.1	14.08.2019	Update – comments from working group	Amanda Elkin
1.2	11.9.2019	Comments from network groups	Amanda Elkin
1.3	02.10.2019	Comments from mental health group and HR	Amanda Elkin
1.4	09/10/2019	Comments from HRLT and SMT	Lee Gregory
1.5	21/11/2019	Comments from Trade Union representatives	Lee Gregory

### Links and Dependencies

- Attendance Management and Ill Health Capability Procedure
- Capability Procedure
- Code of Conduct
- Equality and Diversity Policy
- Harassment Procedure
- Leave Schemes and Flexible Working
- Mental Health Manager Guidance
- Medical Appointments
- Performance Management
- Redundancy Redeployment and Protection of Earnings
- Recruitment and Selection Procedure
- Stress Management Policy and workplace risk assessment
- Wellbeing Strategy

# Mental Health at Work Policy

## 1. Purpose

The Council recognises the importance of good mental health and aims to facilitate a working environment which promotes a preventative approach to mental health and facilitates a culture of positive mental wellbeing through awareness, support, training and risk assessment.

The Health and Safety at Work Act 1974 states that employers must take all practicable steps to ensure the workplace is safe and healthy. The Equality Act 2010 places duties on employers, such as considering reasonable adjustments for people with disabilities.

The aims of this policy are to;

- Ensure a supportive, non-judgmental culture where talking about mental wellbeing and mental health issues is conducted in an open and honest way.
- Promote positive mental wellbeing in the workplace.
- Ensure the mental wellbeing of all staff is supported and appropriate to their needs.
- Support individuals to improve and maintain their mental wellbeing; and identify and tackle workplace factors that may be negatively impacting their mental health.
- Provide timely and responsive support and assistance for staff experiencing mental health problems, relative to their needs.

## 2. Scope

This policy applies to all employees of the Council except those employed in schools where the Governing Body performs the function of the employer.

## 3. Key principles

- To enable a culture where positive mental wellbeing is promoted and where mental health is discussed in an open and honest way.
- Recognise that communicating in a positive and supportive manner will contribute to good mental wellbeing.
- To ensure that managers and employees understand what appropriate support is available for people experiencing mental health problems in the workplace.
- This policy will facilitate individuals experiencing mental health difficulties to be supported in a fair, empathetic and consistent manner

so that employees can achieve and maintain a satisfactory level of attendance at work.

- To provide signposting to appropriate support for employees who want or need mental health support.
- Reasonable adjustments should be considered for employees where relevant, in accordance with the Equality Act 2010.

This procedure is in accordance with legislative requirements and ACAS guidance.

The Council will not tolerate stigma or discrimination of any kind; and will hold in confidence any information shared unless it concerns the safety of employees, vulnerable adults or children.

#### **4. About Mental Health**

##### **What is mental health?**

Mental health is the way we think and feel and our ability to deal with ups and downs. Mental Health is something we all have. When we enjoy good mental health, we have a sense of purpose and direction, the energy to do the things we want to do, and the ability to deal with the challenges that happen in our lives.

*Reference: Mental Health Foundation*

##### **Facts and figures about mental health**

- 1 in 4 people will have a mental health problem in any given year
- 3 out of 4 adult mental health problems start by age 18
- 9 out of 10 people experience stigma and discrimination
- 80,000 adults in Derbyshire have a common mental health disorder
- Self-reported wellbeing in Derbyshire is similar to England, but potentially 128,000 adults in Derbyshire report feeling very anxious
- Between 60-70% of people with Mental Health problems are in work. Mental Ill Health is estimated to cost UK businesses £35 billion annually and is the leading cause of sickness absence in the UK - (Society of Occupational Medicine: 2018)

##### **Benefits of good mental wellbeing**

The promotion of positive mental wellbeing supports employees to;

- Realise their full potential
- Cope with the pressures of life
- Work productively
- Have positive relationships
- Make good choices
- Have better physical health

- Have reduced sickness absence from work

### **Recognising the signs of mental ill health**

Everyone's mental health varies, and one way to recognise if circumstances are changing in someone's health, physical, emotional or mental, is maybe to be aware of how people usually behave, and if patterns have changed. Any noticeable changes in behaviour may potentially be indicative of a change in levels of wellbeing. For example, an employee may start coming in significantly earlier and staying later at work, or may be starting to isolate themselves from colleagues.

### **Time to Change**

The Council supports the Time to Change campaign. This outlines our commitment to reducing stigma and discrimination, to raising awareness about mental health, to better understanding mental health from the viewpoint of our employees and to enabling a supportive environment. The campaign has worked to encourage open and honest discussions around mental health and illness, to dispel the myths and misunderstandings around mental health and to provide the support necessary to help employees during times of ill health.

There are three key messages;

- 1. Mental health problems are common
- 2. People can, and do, recover
- 3. Anyone can be affected

## **5. Prevention/reducing mental ill health in the workplace for employee and managers**

There are a number of approaches to supporting mental health in the workplace. Some are general principles, some are focused on support available at the Council, and others on support that is available in other settings.

- a) General Mental Health and Wellbeing Principles
- b) Support in the Workplace
- c) Support in Other Settings

### **General Mental Health and Wellbeing Principles**

Five Ways to Wellbeing - Evidence suggests there are 5 steps we can all take to improve our mental wellbeing.

- **Connect** – connect with the people around you: your family, friends or colleagues.
- **Be active** – Find an activity that you enjoy and make it a part of your life.

<ul style="list-style-type: none"> <li>○ <b>Keep learning</b> – learning new skills can give you a sense of achievement and a new confidence.</li> <li>○ <b>Give to others</b> – even the smallest act can count, whether it's a smile, a thank you or a kind word.</li> <li>○ <b>Be mindful</b> – be more aware of the present moment, including your thoughts and feelings, your body and the world around you.</li> </ul>
<p>Look after your physical health</p> <ul style="list-style-type: none"> <li>○ Eat healthily and drink sensibly</li> <li>○ Take regular physical activity</li> <li>○ Find time to relax</li> </ul>
<p>Take notice of your mental health</p> <ul style="list-style-type: none"> <li>○ It's normal to experience ups and downs</li> <li>○ It's not unusual to find coping difficult at times</li> <li>○ It's OK to seek support</li> </ul>
<p><b><u>Support in the workplace</u></b></p>
<p>Wellness Action Plans (WAPS) (Appendix A)</p> <p>WAPS are a voluntary process to help employees and their manager (or an allocated person) through open dialogue, to be aware of early signs and symptoms of their mental health and wellbeing changing, identify things that may exacerbate symptoms and develop methods to mitigate the onset. The plan explores what support would be beneficial from the manager to help the employee to effectively manage their mental health in order to assist work performance and ongoing recovery and ultimately to keep mental health stable.</p>
<p>Work life balance</p> <p>The pressure of work is a pressing challenge to the mental health of employees. The time spent at work can have an effect on people's lifestyles, which can link to overall wellbeing. Managers should ensure that their staff are not working excessive hours and be open to reasonable requests from employees seeking to improve their work-life balance.</p>
<p>Training and Development</p> <p>The Council has a range of training courses available to managers and employees that focus on mental health and wellbeing. For more details, see Appendix C or the Councils on-line training platform at <a href="https://derbyshire.learningpool.com/">https://derbyshire.learningpool.com/</a></p>
<p>Workplace risk assessment</p> <p>It is important that workplaces are set up in a manner that firstly protects workers from getting ill and secondly prevents the exacerbation of existing mental health problems. The Health and Safety Executive has developed the "HSE Management Standards" which cover 6 key areas of work that should be properly managed (<a href="http://www.hse.gov.uk/stress/standards/index.htm">http://www.hse.gov.uk/stress/standards/index.htm</a> )</p>
<p>Occupational Health Service (01629 536969)</p> <p>Contact your GP or 111</p>

<p>Contact the OH service via your manager</p> <p>The CBT service is a self-referral service made through phoning occupational health. Sessions are a stop-gap until counselling can be agreed via a GP. Counselling requests are made via managers. OHU assessments can to help identify what adjustments could be beneficial to support an employee's mental health.</p>
<p><b>Mental Health Networks and Champions</b></p> <p>Mental Health Champions – training is available for employees to become a mental health champion within their department or site. The role involves raising awareness and delivering positive messages related to mental health and wellbeing. Mental health Champions will become part of a supported Council-wide network.</p>
<p><b>Mental Health First Aiders</b></p> <p>Training is available for employees to become accredited mental health first aiders to be a point of contact for colleagues in relation to mental health. Mental health first aiders will become part of a supported Council-wide network.</p>
<p><b>Elected Member Champions</b></p> <p>Elected Members Champions take a lead role in promoting mental health awareness and reducing stigma.</p>
<p><b>Access to work</b></p> <p>Disabled employees can access a government scheme named the Access To Work Scheme. This provides funding to help employers best support disabled people in the workplace.</p> <p>A full guide on Access to Work can be found at:  <a href="https://www.gov.uk/government/publications/access-to-work-guide-for-employers/access-to-work-factsheet-for-employers">https://www.gov.uk/government/publications/access-to-work-guide-for-employers/access-to-work-factsheet-for-employers</a></p> <p>For more information please contact the Disability Employment Service on 01629 532440.</p> <p>For any employee with a long term health condition, or disability, an Occupational Health assessment will need to be completed to ensure the support and adjustments required for an employee are fully assessed. After this, any recommendations can be discussed with the employee and manager. Occupational Health also manage a Corporate Access Budget which can provide funding for equipment, adjustments and support for those employees needing it. For further information, please refer to the Council's Equality Act (2010) guide which can be found at  <a href="https://www.derbyshire.gov.uk/working-for-us/equal-opportunities/equality-act/equality-act-2010-and-employment.aspx">https://www.derbyshire.gov.uk/working-for-us/equal-opportunities/equality-act/equality-act-2010-and-employment.aspx</a></p>
<p><b>Council Network groups</b></p> <p>The Council employee networks have a powerful impact on the Council and your involvement can help employees feel included and promote positive change within the workplace.</p> <p>The council supports four Employee Networks:</p> <ul style="list-style-type: none"> <li>○ Black and minority ethnic group (BME)</li> <li>○ Disabled workers group (DWG)</li> </ul>

<ul style="list-style-type: none"> <li>○ Lesbian, gay, bisexual and transgender group (LGBT)</li> <li>○ Women's network</li> </ul>
<p>Trade Unions</p> <p>The Council recognises a number of trade unions, including UNISON, GMB, UNITE.</p>
<b>Support in other settings</b>
GP and Primary Care – Can refer into therapies, mental health services, prescribe medication or link to other non-clinical support
<p>Talking therapies – People can self-refer or be referred by a health professional. These are group sessions, awareness courses or counselling sessions using different techniques, including cognitive behavioural therapy (CBT). There are 3 providers in Derbyshire</p> <ul style="list-style-type: none"> <li>○ Trent PTS <a href="https://www.trentpts.co.uk/">https://www.trentpts.co.uk/</a></li> <li>○ Talking Mental Health Derbyshire <a href="https://www.derbyshirehealthcareft.nhs.uk/services/talking-mental-health-derbyshire/interested-talking-therapy">https://www.derbyshirehealthcareft.nhs.uk/services/talking-mental-health-derbyshire/interested-talking-therapy</a></li> <li>○ Insight <a href="https://www.insighthealthcare.org/our-services/talking-therapies/find-a-service/derby-and-derbyshire/">https://www.insighthealthcare.org/our-services/talking-therapies/find-a-service/derby-and-derbyshire/</a></li> </ul>
<ul style="list-style-type: none"> <li>• Self help and Support Services – there are a range of tools and resources to support people managing their own mental health and wellbeing. Online, smartphone apps, links to community support opportunities via social prescribing</li> </ul>
<ul style="list-style-type: none"> <li>• Live Life Better Derbyshire Services – available across the county to support people with complex issues they may face (housing, debt etc.) or lifestyle support like stopping smoking, losing weight or becoming more active. People can self-refer <a href="https://www.livelifebetterderbyshire.org.uk/home.aspx">https://www.livelifebetterderbyshire.org.uk/home.aspx</a></li> </ul>

## 6. Supporting mental wellbeing at work – guidance for managers

### Let's talk

A positive culture and communication in the workplace is key, and for managers it is important to listen, be empathetic, supportive, address discrimination and be non-stigmatising in their approach and proactively address stigma where observed. Line managers play an important role in modelling and reinforcing a positive culture within the workplace.

As an organisation we will challenge stigma attached to mental health illness, and we will do this by;

- Having open and honest conversations about mental wellbeing whilst being respectful of any boundaries the individual wishes to keep in terms of the detail of their mental health
- Discussing mental health in team meetings as a standing agenda item
- Discussing mental health in individual meetings between managers and employees.



- Supporting the national Time To Change programme

**Day to day support**

Ensure there is time for team members to discuss their health in private where they won't be interrupted. Be supportive and open. Handle conversations in a positive and supportive manner. Thank the employee for sharing their discussion with you. Give them as much time as they need and arrange a follow up if required. If the employee has not sought medical help from their GP, encourage them to do so.

Remember a whole team can be effected by a team member's mental health. Open discussions can improve support across the whole team who also may feel the impact of their colleague's ill health.

Ensure all employees with a mental health issue have a Wellness Action Plan (WAP) in place (Appendix A), and that this is agreed between the manager and the employee.

Be prepared to consider reasonable adjustments. Occupational Health can provide more detail about suitable adjustments in the workplace, via a referral form/appointment for the employee. Adjustments could include, but are not exclusive to;

- Flexible working and changes to start/finish times for fixed hours workers
- Part time working
- Occasional working from home
- Workplace assessments
- Temporary Changes to duties
- Changes to base location to allow closer working to home/reduced travel
- Further training and development
- Mentoring/coaching
- Consideration of different ways of working
- Counselling Services
- Phased return to work
- Change to role duties/redeployment to different role based on the Occupational Health report

**Dealing with acute Mental Health episodes**

- Talk to occupational health, health and safety, and HR for support and advice.
- You may consider recommending the employee visits their GP
- Remain safe yourself and use the employees' Wellness and Recover Action Plan to contact the employees emergency contacts where necessary.

- Remember all conversations are held in strict confidence, with information being given to others only with the consent of the employee, or where there is an immediate safety concern.
- Contact mental health first aiders

### **Support during absence**

The Attendance Management procedure provides clear guidance on how to progress employees through periods of absence. However, please remember that with absence related to mental health that adjusting visits to people's home, providing regular support and help and contact will assist not only with attendance but with a person's mental health, which may worsen should contact reduce.

Managers should ensure they liaise with Occupational Health services, human resources, and trade unions as needed to support individuals in the workplace.

## **7. Legal Considerations**

All employers have a legal responsibility under the Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999 to ensure the health safety and welfare at work of their employees. This includes both physical and mental health, though it is only the risks caused by work activities that an employer can control. The Council also has obligations under the Employment Rights Act 1996, Protection from Harassment Act 1997, Working Time Regulations 1998 and Equality Act 2010.

If a mental health problem has long-term effect on a person's normal day to day activity, then it is likely that the person will be defined as disabled under the Equality Act 2010. An employer should make reasonable adjustments where appropriate to minimise any disadvantages experienced by disabled people. Reasonable Adjustments can be but need be recommended by Occupational Health as part of an in-service medical or workplace assessment. Any adjustments should be reviewed on a regular basis to ensure they continue to meet the needs of the individual, team and service.

The Council can only provide some of the support needed to help a person with mental health concerns. Employees should always seek the advice of their GP, or other primary care services.

## **8. Training**

It is recommended that all staff complete a minimum level of mental health training. There are various training options available. A full list of training is

available in Appendix B. Contact the Learning and Development team for further details, or visit <https://derbyshire.learningpool.com/>

#### E-learning for all employees – Mental Health Awareness

- Managing Mental Health Awareness (training for managers)
- Mental Health Awareness (training for employees)
- Resilience
- Stress Awareness
- Equality and Diversity for Managers – information and guidance

### 9. Responsibilities for Monitoring

#### For Employees

- Take notice of your mental health and wellbeing
- Register with a GP
- Communicate with colleagues and managers
- Take appropriate steps to maintain good mental health and minimise sickness absence from work
- Reflecting on the impact their own behaviour can have on colleagues

#### For Managers

- Regular one to one/supervision sessions between managers and employees
- Wellbeing discussions management and employee meetings
- Discussions at return to work/absence review meetings
- Reflecting on the impact their own behaviour can have on colleagues

#### For the Council

- Review attendance metrics regularly, and action plan health interventions as necessary
- Employee surveys to seek information and feedback on the mental health and wellbeing of employees
- Regular review of the approach to Mental health across the Council
- Learn and share best practice with other organisations

### 10. Further reading and resources

Information and links can be found on the DCC webpage  
<https://www.derbyshire.gov.uk/social-health/health-and-wellbeing/mental-health-and-wellbeing/mental-health-and-wellbeing.aspx>

- Mental Health Foundation resources  
Evidence based guides on sleep, exercise, mindfulness, stress management, later life and anxiety

[www.mentalhealth.org.uk/howto](http://www.mentalhealth.org.uk/howto)

- MIND

The website contains information, links, contacts and guidance

<https://www.mind.org.uk/>

- Healthy Working Lives

NHS resources for supporting mental health at work

[www.healthyworkinglives.com](http://www.healthyworkinglives.com)

- Access to work

Government funded scheme to support employers to make reasonable adjustments to work

[www.gov.uk/access-to-work](http://www.gov.uk/access-to-work)

## Appendix A

### **Wellness Plan (WAP) Template**

**1.** What helps you stay mentally healthy at work? (For example: taking a lunch break, keeping a to do list)

**2.** What can your manager do to support you to stay mentally healthy at work? (For example: regular feedback and supervision, explaining wider developments in organisation)

**3.** Are there any situations at work that can trigger poor mental health for you? (For example: conflict at work, organisational change, something not going to plan)

4. How might stress / poor mental health difficulties impact on your work? (For example: find it difficult to make decisions, hard to prioritise work tasks)

5. Are there any early warning signs that we might notice when you are starting to feel stressed/ mentally unwell? (For example: changes in normal working patterns, withdrawing from colleagues)

6. What support could be put in place to minimise triggers or to support you to manage symptoms? (For example: extra catch-up time with line manager)

7. If we notice early warning signs that you are feeling stressed or unwell – what should we do? (For example: talk to me discreetly about it, contact someone that I have asked to be contacted) Please include contact names and numbers if you would like your line manager to get in touch with someone if you become unwell.

Contact name 1: \_\_\_\_\_ Number \_\_\_\_\_

Contact name 2: \_\_\_\_\_ Number \_\_\_\_\_

8. What steps can you take if you start to feel unwell at work? (For example: take a break from your desk and go for a short walk, ask your line manager for support)

Steps...

1)

2)

3)

9. Is there anything else you would like to share?

Employee Signature: \_\_\_\_\_ Date \_\_\_\_\_

Manager Signature: \_\_\_\_\_ Date \_\_\_\_\_

Date to be reviewed \_\_\_\_\_

## **Mental Health flowchart for Managers**

It is a manager's job to create a culture where discussing mental health is normal, accepted and looked at as part of a person's overall health and wellbeing. Look at the Council's wellbeing strategy.

### DAY TO DAY SUPPORT

Managers should

- Assess and manage the demands placed on employees
- Allow employees some control in how they carry out their work
- Provide support
- Promote positive relationships
- Provide Signposting to mental health support in the workplace

Remember, adjustments can be made which include flexible working, part time work, changes to duties in the short term, mentoring, coaching, , Counselling, phased return to work. For more options, contact your HR team.

Urgent  
Situation

Support the employee to contact their GP or to ring 111 who will decide best approach. Managers should encourage the employee to be open about their health and to agree ongoing support either with their GP or another support mechanism. In addition employees should be offered access the Council's counselling service. Make time to talk to the employee.

I'm Worried

Make time for a conversation with the employee, or raise concerns in an empathetic way and listen to the person. Explain support is available via

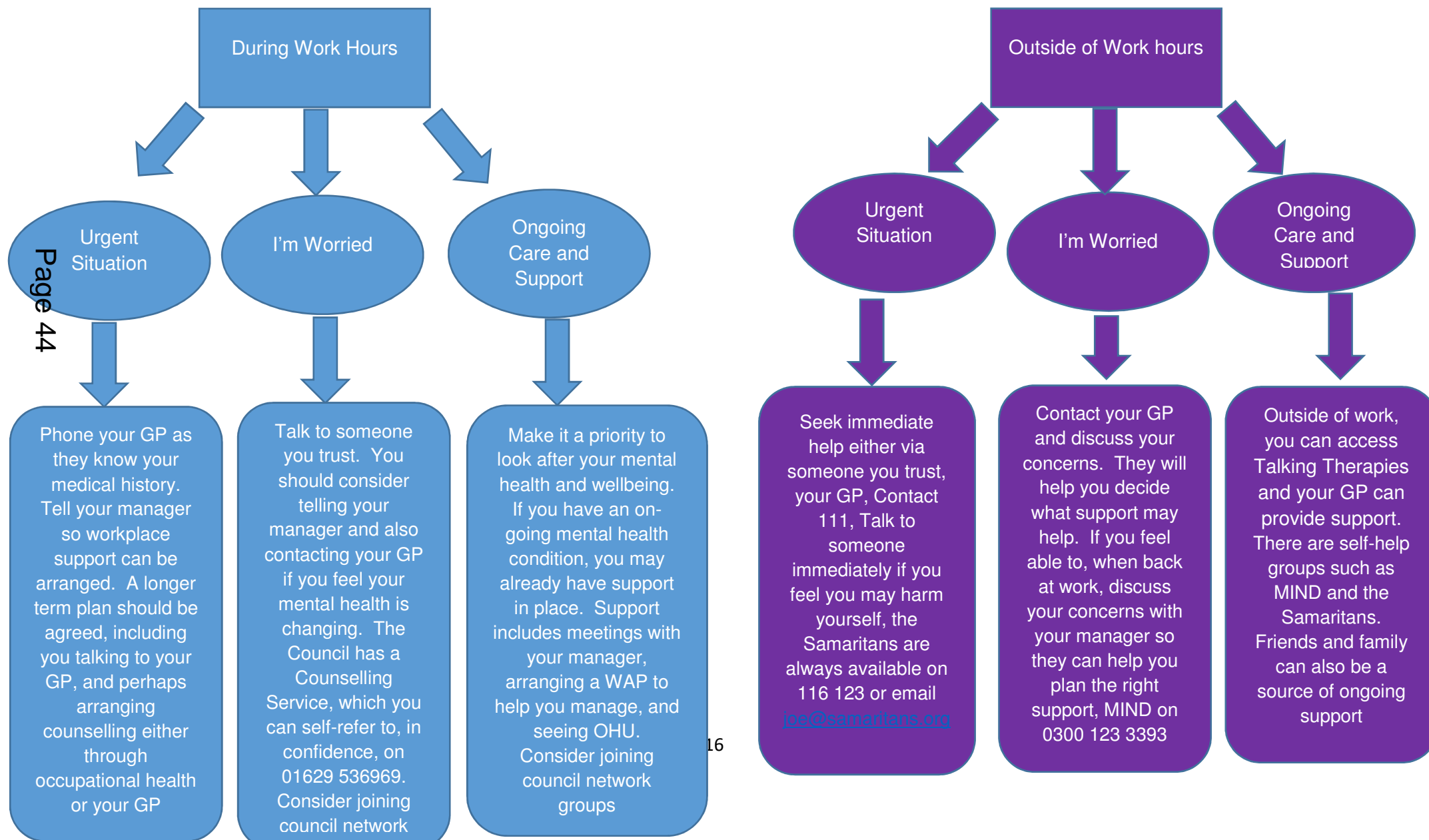
- 1) Departmental HR
- 2) Occupational health
- 3) Counselling service
- 4) GP
- 5) Council mental health first aiders
- 6) Council wellbeing strategy
- 7) Create a WAP

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Ongoing  
Care and  
Support

- 1) Maintain a positive approach to wellbeing
- 2) Meet regularly with your employee
- 3) Offer ongoing support
- 4) Create a WAP if you need a plan for ongoing mental health support
- 5) Be available
- 6) Refer employee to Occupational Health should their health change

## Mental health Flowchart for Employees





### **Council-wide Wellbeing Training and L&D Activities**

A number of training and L&D activities have been identified across departments.

#### **Face to face Training**

##### **Health & Safety:**

- Personal Safety
- Stress Management – managers
- Coping with Stress - employees

##### **General:**

- Diversity Allies training
- First Aid Training (via OHU)
- Mental Health Awareness
- Suicide Awareness and Prevention Training
- Mental Health First Aid
- An Introduction to Positive Behaviour Support
- Employee personal resilience, mindfulness and stress management training
- Manager Attendance Management Training
- Diversity and Wellbeing Events calendar

##### **Leadership and Management**

- Providing effective supervision
- Leading a team

**On-line Training Via Derbyshire Learning Pool <https://derbyshire.learningpool.com>**

- [https://dnet/working\\_for\\_us/core\\_systems/training/workplace\\_elearning/default.asp](https://dnet/working_for_us/core_systems/training/workplace_elearning/default.asp) training on SAP and how to access reports and record sickness –via DNet and SAP Workplace.
- Equality Act
- Equality and Diversity for Managers – information and guidance
- Autism Awareness
- Deaf Awareness
- Dementia Awareness
- Domestic Abuse Awareness
- Drug and Alcohol Abuse Awareness
- Get Active and Healthy
- Hate Crime
- Health and Safety – healthy lifestyles, Intro to H&S, Intro to management of H&S
- LGBT Awareness
- Managing Mental Health Awareness
- Office Safety
- Personal Safety
- Smoking Awareness
- Stress Awareness
- Transgender Awareness
- Working Safely
- Mental Health Awareness

**DERBYSHIRE COUNTY COUNCIL****APPOINTMENTS AND CONDITIONS OF SERVICE  
COMMITTEE****7 February 2020****Report of the  
Director of Organisation Development and Policy****DISCIPLINARY POLICY & EMPLOYEE LEAVE SCHEME FOR CENTRALLY  
EMPLOYED TEACHERS****1. Purpose of the Report**

To seek approval for the adoption of a Disciplinary Policy and Employee Leave Scheme and Flexible Working Policy specifically for teachers employed by the Local Authority and not attached to Schools. These policies have been subject to consultation with the employee organisations who represent teachers and headteachers employed by the Local Authority as part of a locally agreed consultation process.

**2. Background Information**

The regulations governing teachers' terms and conditions of service are contained within the School Teachers Pay and Conditions Document (STPCD). The provisions of the STPCD need to be reflected in the authority's policies for the management of teachers employed centrally in the education support services.

HR policies which apply to local authority employees are negotiated by Derbyshire County Council Corporate Joint Committee (CJC). The accredited representatives of the recognised employee organisations who represent teachers and headteachers employed by the Local Authority are not members of the CJC and have sought a methodology which provides them with the right to be consulted on in relation to policies and procedures which apply to the staff that they represent.

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

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

- Sickness Absence
- Facilities Agreement

This report is the first opportunity to bring to ACOS the Disciplinary Policy and Employee Leave Scheme following negotiation at SJCC.

### **3. Summary of proposals**

The Disciplinary Policy is consistent with the policy adopted for employees of the County Council wherever possible and provides a sound and fair framework for addressing concerns relating to the conduct of staff. It also reflects the model policy already offered to Governing Boards for adoption. As with the schools' policy, whilst there has been considerable co-operation in the development of the document at SJCC, on this occasion it has not been possible to reach a collective agreement on the whole policy with all the unions. Specifically, the NASUWT have withheld agreement to this policy. The final document is the product of significant joint working through SJCC and takes into account ACAS advice and case law. The policy refers within its examples of other misconduct to the Code of Conduct. Both the NASUWT and the NEU have signalled that they would challenge the instigation of an allegation of misconduct which referred to a failure to adhere to a Code of Conduct or to any other policy that these Associations have not agreed through SJCC.

The Employee Leave Scheme and Flexible Working Policy is consistent with the policy adopted for employees of the County Council wherever possible. The discretionary leave of absence provisions contained within this policy are consistent with the approach recommended to schools. The provisions included in this policy for teachers recognises the specific challenges of teachers who are required to work for a specific 195 days specified by the employer. Staff employed on teachers terms and conditions of service are not able to use leave flexibly to take time off on days on which they are required to be at work and therefore it is not possible to apply the policy agreed at CJC to this group of staff. Whilst there has been considerable co-operative development of the document at SJCC, on this occasion it has not been possible to reach a collective agreement on the whole policy with all the unions. The NASUWT and NEU withheld agreement to the policy on the grounds that they determined that the guidance provided on the Discretionary Leave of Absence amounts to an unreasonable deterioration in terms of conditions of employment compared to a previous document which applied to schools.

### **4. Legal Considerations**

The provisions relating to the statutory conditions of employment of school teachers for maintained schools in England and Wales which includes provisions for school teachers employed by the Local Authority and not attached to schools are set out in the School Teachers' Pay and Conditions Document and accompanying statutory guidance.

The provisions within the proposed policies also reflect the Conditions of Service for School Teachers in England and Wales ('Burgundy Book') which is a national agreement between the six school teacher unions and their employer and sets out national conditions of service for school teachers which are incorporated into teachers'

contracts of employment. The Burgundy Book's main provisions relate to notice periods, sick leave and pay and maternity leave and pay.

Local authorities must abide by the statutory requirements and must have regard to the guidance issued, as a court or tribunal may take any failure to do so into account in any legal proceedings.

There has been formal consultation at SJCC with the recognised teacher trade unions and professional associations in relation to the proposed policies. In the main agreement has been reached. There were aspects of each policy where it has not been possible to reach agreement. This is consistent with the model policies adopted by schools. Teacher trade union and professional association colleagues have accepted these policies without agreement and experience would suggest that the good employee relations that currently exists with these trade unions and professional associations will not be affected by the adoption of the policies attached.

## **5. Financial Considerations**

No specific financial implications have been identified as likely to arise as a consequence of the adoption of specific policies and procedures to deal with teacher conduct issues or employee leave schemes which specifically relate to teachers employed by the Local Authority and not attached to schools.

## **6. Legal and Human Rights Considerations**

The disciplinary policy and the employee leave scheme comply with the relevant provisions of anti-discrimination legislation contained in the Employment Relations Act 1999, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, Parental Leave (EU Directive) Regulations 2013, Children and Families Act 2014, Flexible Working Regulations 2014 and relevant ACAS codes of practice. They are also consistent with the principles of public life – objectivity, openness and accountability.

## **7. Other Considerations**

This report does not involve the commissioning or procurement of services or goods so it is not possible to reference the consideration of social value in such a context. However the economic and social well-being of the stakeholders, including vulnerable young people in a variety of guises served by the teachers who will be affected by the implementation of, and fair and equitable approach to deal with concerns about conduct and approval of authorised absences from work should benefit from the positive effect on recruitment and retention of the Teachers employed in these services within the Council.

In preparing this report the relevance of the following factors has been considered: prevention of crime & disorder, equality of opportunity, environmental, health, property, social value and transport considerations.

## **8. Officer's Recommendation**

1. To approve the adoption of a Disciplinary Policy for Teachers employed by the Local Authority and not attached to schools.
2. To approve the adoption of an Employee Leave Scheme and Flexible Working Policy for Teachers employed by the Local Authority and not attached to Schools.

**Emma Crapper**  
**Director of Organisation Development and Policy**

# **DERBYSHIRE COUNTY COUNCIL**

## **DISCIPLINARY POLICY & PROCEDURE FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS**

### **Part 1**

**(Including the Improvement Process, normally  
applied to cases of minor misconduct)**



**FEBRUARY 2020**



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# Disciplinary Policy and Procedure Summary

## FOREWORD

Whilst there has been considerable co-operative development of the document at Schools' Joint Consultative Committee, on this occasion it has not been possible to reach a collective agreement on the whole policy with all the Unions. Specifically, the NASUWT have withheld agreement to this policy. The final document is the product of significant joint working through SJCC with the shared focus of improving clarity, addressing any issues that have been identified as well as taking account of ACAS advice and case law.

Please note that the list of examples of other misconduct includes reference to the Code of Conduct. Both the NASUWT and the NEU have signalled that they would challenge the instigation of an allegation of misconduct which referred to a failure to adhere to the Local Authority's Code of Conduct or to any other policy that these Associations have not agreed. This is because agreement was not reached through the Schools' Joint Consultative Committee (SJCC) on the Local Authority's Code of Conduct.

### 1. Purpose

The purpose of the formal disciplinary Policy and Procedure is to provide a fair and consistent means of considering how to resolve a matter related to the conduct of an individual who is employed by the Council on Teachers' terms and conditions, through agreed and recognised channels which ensure that all concerned are aware of their rights and obligations. It is a means of addressing and improving an employee's conduct where this fails to meet the Council's appropriate expectations.

### 2. Scope

This disciplinary policy and procedure has been determined by Derbyshire County Council (DCC) consistent with the requirements of National and Local Conditions of Service and the Articles and Instruments of Government and the Advisory, Conciliation and Arbitration Service (ACAS). It applies to all individuals employed directly by the Council on Teachers' Terms & Conditions of Service and not attached to schools.

### 3. Key Principles

This policy and procedure has been developed in line with the ACAS Guide and the Code of Practice on Disciplinary and Grievance Procedures. **This summary of the policy and procedure does not stand alone, it is essential to follow the policy in its entirety, including the requirements set out in Part 2 Implementation and Guidance, which provides more detail of the process.**

- 3.1 The Council and employees should deal with issues promptly and not delay meetings, decisions or confirmation of those decisions.
- 3.2 The over-riding consideration should be to investigate the issues

thoroughly and no disciplinary action will be taken against an employee until the case has been appropriately investigated.

- 3.3 At any stage throughout the disciplinary procedure an employee is entitled to consult with and be represented by his/her Professional Association or Trade Union, colleague or friend. This procedure does not recognise representation by a legal representative/solicitor.
- 3.4 Informal action will be considered where appropriate to resolve problems. As a general rule before the formal disciplinary process is invoked, and depending on the nature of the unsatisfactory conduct, concern about the work of an employee will be expressed in the normal course of supervision. Appropriate time for improvement should be allowed and, as appropriate, guidance, supervision and training provided. It is recommended that the employee be allowed access to support from a union/professional association representative, where appropriate during the informal action.
- 3.5 An employee will be advised of the nature of the complaint against them and will be given an opportunity to state his or her case before any decision is made.
- 3.6 As set out in the policy and procedure, employees and their named representative 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.
- 3.7 An employee will have the right to appeal against disciplinary action taken.
- 3.8 Neither party is allowed to make a covert audio or video recording of meetings held as part of this procedure. Recording equipment should only be used with prior mutual agreement. The use of recordings may be considered as part of making reasonable adjustments for relevant parties involved.
  - At least 5 working days prior to the date of the hearing all parties will supply all other parties with any and all documentation and paperwork that will be referred to and relied upon at the Hearing.
  - For the purpose of this procedure "working days" shall mean Monday to Friday excluding school holidays and begins with the day of receipt but does not include the day of the hearing.
  - Notice needs to be given and run, and Hearings need to be arranged, in school term time (unless the premises are closed) or where agreement has been reached with the employee and union representative for a different arrangement. For part time employees

Hearings need to be arranged on their working days, unless otherwise by mutual agreement.

#### **4. 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. The responsibility includes consideration of reasonable adjustments for disabled employees. HR will provide support and guidance to managers in complex cases.

#### **5. Action against Trade Union and Professional Association Representatives**

Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement

#### **6. Improvement Process**

Informal action should always be considered first when there are concerns about an employee's conduct. Cases of minor misconduct are usually best dealt with informally but where the issue is more serious, formal action will be more appropriate.

Where informal action does not achieve the desired effect, the next stage would be formal management improvement. Such action is not considered to be within the terms of the disciplinary policy and procedure, however a formal record will be kept and progress reviewed. Any employees aggrieved by this process shall have the right to implement the grievance procedure.

*(See Part 2 Implementation and Guidance, for details of the improvement, management intervention and guidance process.)*

#### **7. Examples of Misconduct and Gross Misconduct**

Appendix 1 identifies some examples of misconduct and where the conduct might be serious enough to be deemed as gross misconduct. The lists are not intended to be exhaustive.

#### **8. The Procedure**

The formal disciplinary procedure should be used if:

- An employee's conduct fails to meet expectations after previous management action (usually where both informal measures and formal intervention have been applied), and
- Following a specific allegation of misconduct and after a thorough investigation of the circumstances, an investigating officer has clear evidence that there is substance to the allegation. (For an allegation of serious misconduct the formal disciplinary procedure may be applied without earlier informal action.

## 9. Suspension

*(See Part 2 Implementation and Guidance for necessary detail of the considerations when contemplating a suspension and the process that must be followed, including where there is a Safeguarding issue.)*

- 9.1. In certain circumstances, where it appears that an employee may be guilty of gross misconduct or any other reason, it may be necessary to suspend an employee on normal pay while an investigation takes place.
- 9.2. **In law it cannot be assumed that suspension will be viewed as a neutral act but it should be made clear in the documentation and orally to the employee that it is intended as a neutral act, which implies no guilt. The general rule is that suspension is a neutral act and it would be for an employee to prove otherwise.**
- 9.3. It is important to consider whether there are any suitable alternatives to suspension. It may still be possible for the employee to undertake duties other than their normal role. Suspension or alternative arrangements will be for as short a time as possible and will be reviewed on a monthly basis.

## 10. Management Investigation

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 will be required to collect statements in writing from any witness who may be called to support their statements orally at any subsequent disciplinary hearing.

*(See Part 2 Implementation and Guidance for the management investigation procedure).*

In most cases there will be one of three outcomes:

- i. Complete exoneration from the allegations made. In this case a letter should be sent to the individual informing them of this and to all employees involved thanking them for their co-operation throughout the Management Investigation process.
- ii. Where the Improvement Process has not already been applied and the nature of the allegation does not preclude this, an assessment that there is a potential case of misconduct and an informal or formal management intervention/direction and guidance, through the improvement process, should be undertaken. (Usually there will first be application of the informal process and formal intervention will be utilised only if further action is necessary).
- iii. A recommendation that there are sufficient grounds for a potential case for misconduct or gross misconduct to be made and that a disciplinary hearing should be held.

The employee will be informed of the findings of the investigation and the decision on the outcome in writing.

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 be necessary. A brief note of the date the time and subject of the discussion ( including a note of any explanation put forward by the employee) should be made, a copy of which should be sent to the individual , and provided to the SSC(HR) for the employees personal file.

Where iii. applies, the employee should be advised that a disciplinary hearing is going to be held, and that they will be notified of the date, time and venue of the disciplinary hearing in the near future. A copy of the disciplinary policy and procedure must be provided to the employee. The letter will make clear whether the allegation is considered as, potentially, gross misconduct.

## **11. Formal Disciplinary Hearing**

*(For the **full** procedure that needs to be followed and complementary guidance please see Part 2 Implementation and Guidance).*

The formal disciplinary procedure starts when an employee is notified that they are required to attend a disciplinary hearing. Hearings at which disciplinary action is to be considered shall occur as soon as possible after the event or action which has caused concern and the employee has been given ten term-time working days' notice in writing. Consideration may be given to organising hearings during the school holidays where the employee is not restricted to term time working.

The employee will be informed of:

- The conduct which appears to justify disciplinary action.
- The right of the employee to be accompanied by a representative of a recognised Trade Union, Professional Association or friend to give advice and make representations where necessary.
- That they can call witnesses and present documents relevant to their defence (see Implementation & Guidance).

The Investigating Officer will supply copies of all documents to be relied upon at the Hearing to the Hearing Officer, the employee, and their named representative at least 5 working days prior to the date of the hearing. The statement of case shall not include allegations for which no substantiation was found nor recommendations for action.

At the hearing the Investigating/presenting 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 allegations which have been made, presenting evidence and calling witnesses, as appropriate. See Appendix 2a, procedure of Disciplinary Hearing.

The employee must take all reasonable steps to attend the disciplinary hearing. Should their colleagues/trade union representative not be available, an employee may propose an alternative time which must be within 5 working days following the day of the proposed hearing. (See Appendix 2 of Implementation and guidance on arranging meetings in order to maximise the chance of making robust arrangements.)

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

## **12. Disciplinary Outcomes**

- When the Hearing Officer considers that there is insufficient robust evidence to support the allegation(s) the individual will be exonerated.
- Where the Hearing Officer determines that the shortcomings in the employee's conduct, established by the Hearing, would most appropriately addressed through the improvement process then the outcome of the case will be a referral to this procedure. Where the formal improvement process has already been applied for similar circumstances the period of time that has elapsed will determine the outcome. If more than 12 months has elapsed since the previous process was concluded then referral back to the Improvement Process should be the first consideration.

- Otherwise, where the Hearing Officer has heard the case and determined that, on the balance of probability, the allegation against the employee has been upheld, then 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.

12.1. A written warning:  
This is given for cases of misconduct.

12.2. A final written warning:  
If the offence is sufficiently serious (or there is further misconduct while a previous warning is still live) a final written warning will be considered. This will warn that dismissal may result if there are further acts of misconduct.

12.3. Dismissal:  
If the employee commits an act of gross misconduct or a further act of misconduct following a previous warning, dismissal may result. 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.

### **13. Disciplinary Measures as an Alternative to Dismissal**

Depending on 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.) Such cases will be rare because other posts in the staffing structure may not be available. The measure may be combined with a warning. Where the employee rejects the offered alternatives, dismissal will normally apply.

### **14. Confirmation of Disciplinary Action**

The decision of the Hearing will be confirmed in writing to the employee within 5 working days of the Hearing delivered by hand or special delivery, and will include:

- a) The reasons for the decision
- b) The disciplinary sanctions and reasons for those sanctions
- c) A warning of the consequences if there is no satisfactory improvement, or further misconduct
- d) The expiry date of any warning
- e) The employee's right of appeal
- f) The termination date of the contract in cases of dismissal
- g) Explanation that any formal warnings will be recorded in the employee's personal file;



The employee's colleague/Trade Union or Professional Association representative should receive a copy for information, and a copy kept in the employee's personal file and a record of the outcome made on the Departmental record of Disciplinary Action.

## **15. Expiry of Disciplinary Action and Expunging of Records**

Where an employee completes a period of 12 months satisfactory service, or longer period if specified when the warning was issued, following a formal warning, the **warning** will be expunged from the Register of Disciplinary Action, the employee and their representative will be notified to that effect.

If the Hearing Officer considers that a disciplinary warning should not be automatically expunged, this should be made clear when the warning is issued. Any arrangements for a review of the warning should be made clear. The employee should have the right to make representations for its expunction and to appeal any decision not to expunge a warning.

Details of spent warnings shall remain in personal files but shall be disregarded for the purpose of any future disciplinary proceedings, except in exceptional circumstances, e.g. where they demonstrate patterns of behaviour which give rise for concern. In line with the DfE guidance on 'safer recruitment' details of disciplinary warnings, spent or live, will be included in references where the misconduct affected adversely the safety and wellbeing of children. While live formal disciplinary sanctions for other categories of misconduct should be included on references, details of informal/formal management intervention do not need to be given.

**Substantiated allegations of harm to the safety and wellbeing of children** must be kept in a confidential personnel file and a copy provided to the individual. The record should be retained until the individual has reached normal retirement age or for a period 10 years from the date of the allegation, if that is longer. The record will comprise a comprehensive summary of the allegation, details of how the allegation was followed up and resolved, including a note of any action taken and decisions reached. The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information about an allegation that did not result in criminal conviction and will help to prevent unnecessary re-investigation, if an allegation re-surfaces.

## **16. Appeals**

The employee has a right of Appeal. The employee should do so in writing within 5 working days from the receipt of the written confirmation of the relevant decision:

- Appeals against dismissal are to Executive Directors and must be registered in a letter to the Director of Organisational Development & Policy within 10 working 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 Executive Director, Childrens Services within the same timescales.

Normally the grounds for appeal will be one or more of:

- a) procedural concerns- the employee's case to would focus on their challenge concerning the implementation of the policy and procedure,
- b) the substance and basis of the decision- a rehearing of all the relevant evidence may be needed,
- c) the severity of the sanction- the employee's case would focus on any mitigation and reasons why they believe the sanction is not appropriate.

The employee, or their named representative, should set out clearly the grounds of the appeal.

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 5 term-time working days, acknowledging the registering of the appeal, which will take place as soon as practicable. There will be a minimum of 10 term-time working days' notice of the appeal date. The employee will be informed of the place, date, time and purpose of the meeting.

Any evidence or statements of case on which either the presenting officer or the employee wish to rely, will be provided to the Appeal Hearing Officer and the other party at least 5 term-time working days prior to the appeal.

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

The Appeal hearing Officer may uphold the appeal or confirm the original decision and may decide to impose a lesser penalty, but cannot impose a more severe penalty.

The employee will be informed of the outcome of the appeal in writing within 5 term-time working days. That outcome is the final stage within the Council's procedures.

Appendix 2a and 2b of the implementation and guidance, set out the policy and procedure to be followed at the Disciplinary Hearing and the Appeals Hearing respectively.

## **17. Notice of Dismissal**

Once a decision has been taken to dismiss an employee the employer is responsible for providing a written statement of reasons for the dismissal as required by law.

## **18. Disciplinary Records**

Any actions relating to an individual employee's discipline should be recorded and maintained on relevant logs within Departments and on personal files. Records will be treated as confidential and kept in accordance with the General Data Protection Regulation (2018), which gives individuals the right to request and have access to certain personal data.

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

## Appendix 1

### Disciplinary Rules

In accordance with the requirements of the Employment Protection (Consolidation) Act as amended by the Trade Union Reform and Employment Rights Act 1993, and the ACAS "Code of Practice on Disciplinary and Grievance Procedures" this is to notify you of the school's disciplinary rules.

#### (a) Gross Misconduct

Gross Misconduct is generally seen as misconduct serious enough to destroy the contract between the employer and employee making any further working relationship and trust impossible. An allegation of gross misconduct may therefore lead to immediate suspension from work, pending investigation. If, after due consideration, the allegations are substantiated, the employee will be dismissed without notice unless there are any mitigating circumstances. Examples of gross misconduct relating to all employees include:

- i. Unauthorised removal, possession or theft of property belonging to the Council, a fellow employee, pupil, or member of the public.
- ii. Acts of violence including the physical assault of a fellow employee, pupil or member of the public.
- iii. Falsification of qualifications or information which are a statutory or essential requirement of employment or which result in additional remuneration.
- iv. Sexual misconduct at work.
- v. Deliberate damage to, or serious misuse of, Council property.
- vi. Deliberate falsification of records attendance sheets, bonus sheets, subsistence and expense claims etc.
- vii. Disclosure of confidential matters to public sources, where not required for employee relations purposes; (including disclosure to the third party, without authority of personal confidential information acquired during the course of employment at the Council) or the unauthorised use or disclosure of any computer-held or computer-generated information from which a living individual can be identified.
- viii. Acceptance of bribes or other corrupt practices and other offences of dishonesty.

- ix. Conviction for a criminal offence unconnected with the Council but which removes an employee's acceptability to remain in employment, e.g. sexual abuse of a child, drugs offence etc.
- x. Serious breaches of health and safety rules including deliberate damage to, or misappropriation of, safety equipment.
- xi. Serious negligence, which causes or might cause unacceptable loss, damage or injury.
- xii. Holding unauthorised paid employment during paid working time.
- xiii. Failure to meet the registration requirements of a statutory regulatory body.
- xiv. Serious incapacity through alcohol or being under the influence of illegal drugs, except where the case would be more appropriately dealt with under separate procedures.
- xv. Serious acts of insubordination.
- xvi. Bullying, intimidation, victimisation or other forms of harassment.
- xvii. Downloading or distributing pornographic, obscene, offensive or illegal material.
- xviii. Serious maladministration of statutory tests and examinations.
- xix. Serious misuse of the Council's name.
- xx. Failure to observe relevant Local Safeguarding policies and procedures plus the Council's Financial Regulations.

(b) Other Misconduct

The great majority of breaches of disciplinary rules will not be sufficiently serious to warrant dismissal without previous warning. Examples of offences which will not normally result in dismissal without previous warning are listed below and relate to all employees.

- i. Refusal to comply with the reasonable and lawful instructions of management.
- ii. Negligence in the performance of duties.
- iii. Negligence in the administration of statutory tests and examinations.

- iv. Failure to attend work regularly and punctually during agreed working hours; failure to report inability to attend work due to illness for any other reason, promptly, and in accordance with the school's procedures; unreasonably prolonging absence by neglecting to act on medical advice.
- v. Absenteeism and leaving the workplace without permission.
- vi. Misconduct in relationships with other employees, pupils, or members of the public, to include conduct which is not in accordance with the principles of mutual trust, respect and courtesy.
- vii. Swearing or abuse of members of staff, pupils, or members of the public.
- viii. Being under the influence of drink or other intoxicants sufficient to affect work performance.
- ix. Non-compliance with sickness pay scheme.
- x. Falsification of qualifications or information other than those which are a statutory requirement for employment.
- xi. Abuse of position – using an official position for private advance or for the private advantage of some other person.
- xii. Criminal offences – where the offence/alleged offence has employment implications but is not sufficiently serious to constitute gross misconduct.
- xiii. Employees whose posts are subject to Disclosure & Barring Service– failure to notify line management of any activity likely to result in subsequent criminal investigation, conviction or police caution being served. For those employees subject to the provisions of the Disqualification under the Childcare Act regulations – failure to report a change in status potentially affecting their ability to work with the relevant age groups of children.
- xiv. Damage to Council, or other workplace, property – deliberate damage, misuse, or use without authority of the Council, fellow employees, or other members of workplace community.
- xv. Discrimination – against a member of the public or colleagues on grounds of sex, sexual orientation, marital status, age, race, creed, colour, ethnic or national origin or disability.
- xvi. Failure to observe the policies of the school and relevant Local Safeguarding policies and procedures plus the Financial Regulations, the Council's Code of Conduct and other applicable rules.

- xvii. 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, school users or members of the public.

The lists of examples of breaches of conduct are not comprehensive or exhaustive but should provide an indication of the standards required. The extent and scale of the allegations will be considered when deciding whether or not they are considered to be misconduct or gross misconduct.

## **Appendix 2a**

### **Procedure of Disciplinary Hearing**

1. The Employee shall be given at least 10 term time working days' notice in writing of the date, time and place of the hearing and shall be entitled to be represented by his/her Trade Union or Professional Association representative or friend and shall be able to call witnesses and present documents relevant to his/her defence.
2. Copies of all documents to be relied upon at the hearing shall be submitted to the Committee and the parties concerned at least 5 working days prior to the date of the hearing.
3. The Investigating Officer (or nominated officer), to put the case in the presence of the employee and may call witnesses.
4. The employee, or representative, to have the opportunity to ask questions of the Investigating Officer, on the evidence given by them and any witness whom they may call.
5. The Hearing Officer to have the opportunity to ask questions of the Investigating Officer, and any witnesses.
6. The employee to put their case in the presence of the Investigating Officer, and to call such witnesses as they wish.
7. The Investigating Officer to have the opportunity to ask questions of the employee and their witnesses.
8. The Hearing Officer to have the opportunity to ask questions of the employee and their witnesses.
9. All witnesses will withdraw at this point.
10. The Investigating Officer and then the employee to have the opportunity to sum up their case if they so wish.
11. The Investigating Officer, and the employee with their representative/companion to withdraw.
12. 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 notwithstanding that only one may be concerned with the point giving rise to doubt.



13. After careful consideration of all the information, the Hearing Officer will recall both parties and state the outcome and any consequential action deemed appropriate.
14. In exceptional circumstances there may be a need to review details of the case, and 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).
15. The Hearing Officer's decision will be confirmed in writing within five working days and provided to the SSC (HR) for the employee's personal file and recorded on the confidential departmental Register of Disciplinary Action.
16. The Hearing Officer must make arrangements for notes of the hearing to be taken but these will not be verbatim. 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 make a covert audio or video recording of meetings held as part of this procedure. Recording equipment should only be used with prior mutual agreement. The use of recordings may be considered as part of making reasonable adjustments for relevant parties involved.

## **Appendix 2b**

### **Procedure of Appeals Body**

An employee may appeal against a decision on disciplinary action within 10 term-time working days of receipt of written notification to them of the disciplinary action to be taken. (The date of the deadline to submit an appeal should be included in the letter.)

The appellant shall be notified in writing, at least 10 working 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 5 working 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:

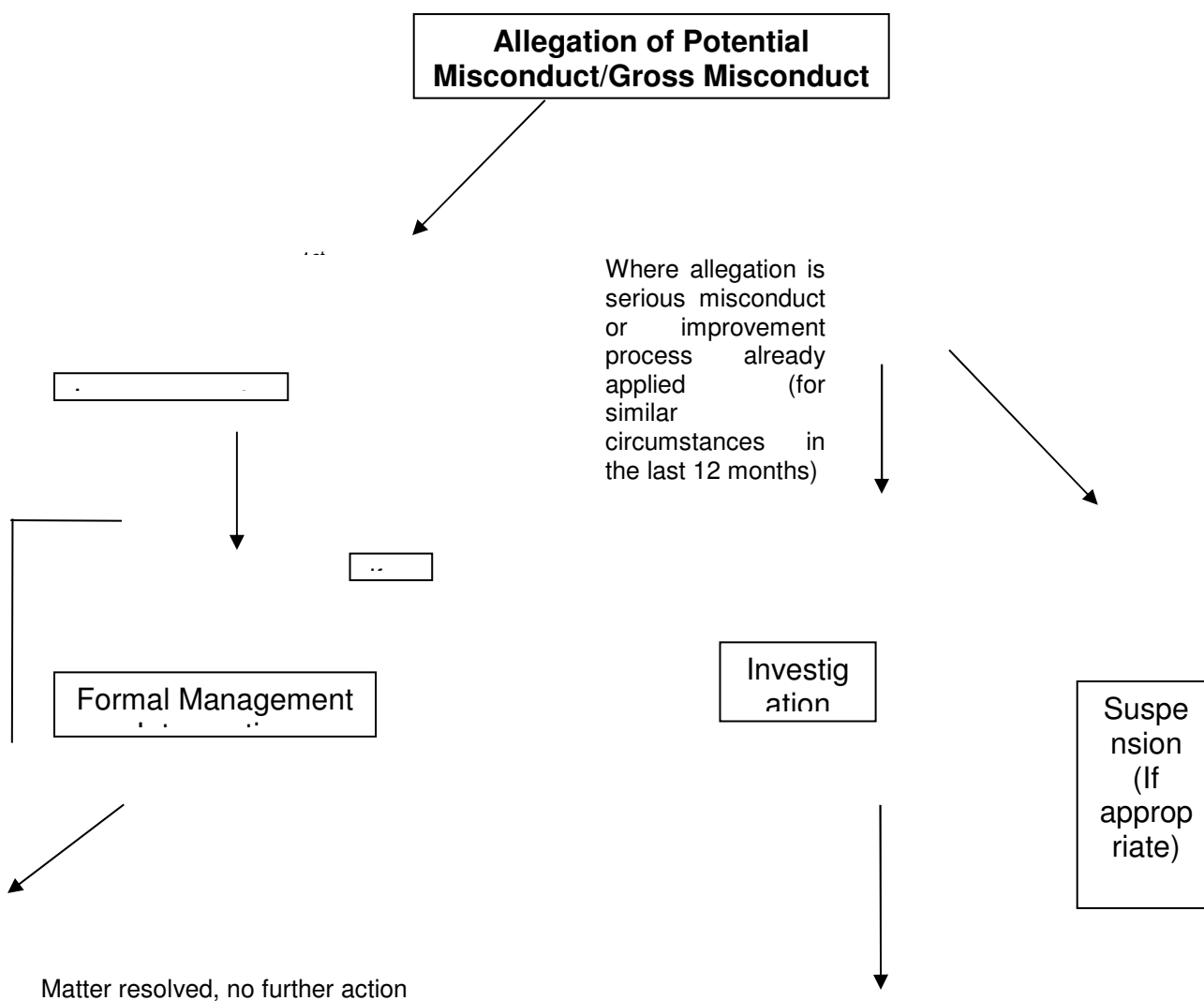
- The Appellant puts his/her case in the presence of the Presenting Officer and calls any witnesses.
- The Presenting Officer, (the Presenting Officer or the Hearing Officer from the original case) followed by the Appeal Hearing Officer have the opportunity to ask questions of the Appellant and his/her 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.

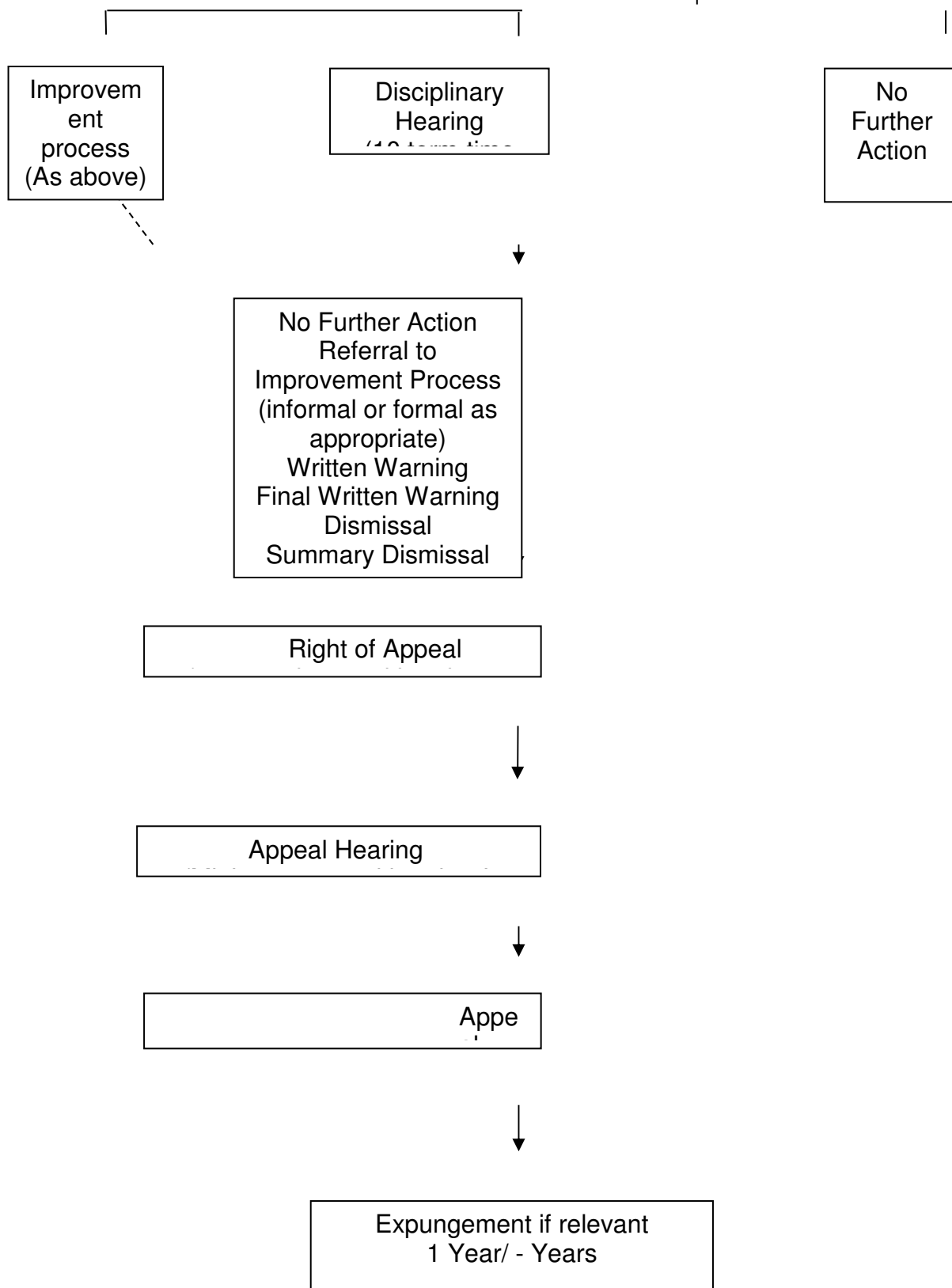
- The Appeal Hearing Officer will decide whether to allow or dismiss the appeal and will notify the decision personally. The decision will be confirmed in writing within 5 term-time working days.
- An appeal decision by the Appeal Hearing Officer will be final.

## Appendix 3

### DISCIPLINARY POLICY AND PROCEDURE TIMELINES



**Please see over for next step**



**PUBLIC**

# **DERBYSHIRE COUNTY COUNCIL**

## **DISCIPLINARY POLICY & PROCEDURE FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS**

### **Part 2**

### **Implementation and Guidance**

**(Including details of the Improvement Process,  
normally applied for cases of minor misconduct)**



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## **PART 2 IMPLEMENTATION AND GUIDANCE**

### **1. Purpose**

The first part of this document sets out the Disciplinary Policy and Procedure to be applied to individuals employed by Derbyshire County Council on Teachers' Pay and Conditions. **Part 1, The Disciplinary Policy and Procedure, does not stand alone, it is essential to follow the requirements set out in this document, Part 2 Implementation and Guidance, which provides more detail of the process as well as for managers.**

A disciplinary case results from an employee's conduct at work. Separate procedures are recommended to address issues of competence or absence from work. However some incidents may be considered to be so serious as to merit direct application of the disciplinary procedure.

### **2. Introduction**

#### **2.1 General**

A disciplinary procedure helps to ensure that necessary standards are maintained. It provides a fair, systematic, timely and consistent means of taking corrective action in a situation where an employee's standard of job performance, conduct, or cooperation fails to meet or falls below expectations.

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.

Disciplinary matters can be a source of potential employee relations difficulties and need to be handled fairly, consistently and with sensitivity.

#### **2.2 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, current legal precedents. The documents will be updated in line with changing advice and codes of practice, and the website should be referred to for the most up to date version.

#### **2.3 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 HR team when considering taking disciplinary action.

Managers responsible for dealing with employee misconduct should seek appropriate advice and support from the HR 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.

#### 2.4 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. See further information on website under 'Working for Us'
- 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 competence procedures as appropriate.

It follows that managers must always apply the Council's disciplinary procedure for teachers employed by the local authority and not attached to schools and comply with the principles contained in these guidance notes in dealing with matters of discipline.

Where any aspect of the disciplinary process might place an employee at a disadvantage, then it should be considered, in conjunction with HR, whether any adjustments are required to the process to accommodate the employee, to ensure a fair process is followed.

## 2.5 Disciplinary Rules

Under the terms of the Employment Protection (Consolidation) Act 1978, as Amended by the Trade Union Reform & Employment Rights Act 1993, Employers are required to provide employees with a written statement of the main terms and conditions of their employment. Such statements must contain details of disciplinary rules and procedures applicable to them. Disciplinary Rules should define standards, examples of MISCONDUCT and indicate what the level of transgression would constitute GROSS MISCONDUCT. Rules should be non-discriminatory, objective, easy to understand, and be seen to be reasonable and just.

Disciplinary Rules will be reviewed from time to time to ensure that they are still valid.

Job and Person Profiles constitute rules that set a framework of tasks and duties against which standards of work performance can be assessed. It is therefore essential that Job and Person Profiles are well defined, structured, and drawn up for every post within the Service. These should, therefore, be signed by the post holder, indicating acceptance of the requirements of the job. Whether signed by the staff member or not, they remain the descriptors through which expectations are clarified and defined.

Appendix 1 of the Disciplinary Policy and Procedure identifies some examples of misconduct and where the conduct might be serious enough to be deemed as gross misconduct, it is not intended to be an exhaustive list.

## 2.6 Disciplinary Records

It is important, and in both the employer 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 in line with GDPR requirements. See the Human Resources Retention Schedule on the website under 'Working for Us' 'Data Security', 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 provided to the SSC (HR) for the employee's 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, reasonable adjustments will be considered. For example, the language could be

simplified, or additional time offered for employees to consider the paperwork, or a face to face meeting could be held 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 HR team who will maintain a register of all formal disciplinary warnings, dismissals 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

## 2.7 Roles and Responsibilities

Key Roles within the disciplinary process are:

**Investigating Officer** – investigates allegations, ascertaining 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 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 Business Partners, HR Advice & Support Lead) - 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, downgrade 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 HR advice & support at the appeal from a different department to that in which the original hearing was held

**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

### **3. Improvement Process.**

#### **3.1 Informal Management Improvement**

**It is anticipated that informal action will be the first step through which concerns (relating to the conduct of an employee) are addressed.** A two way discussion between the manager and the employee should be held to point out any shortcomings in conduct and to encourage improvement. Constructive criticism should place an emphasis on finding ways in which the employee can remedy and shortcomings. The manager should listen to any explanation put forward by the employee.

It is the manager's responsibility to clarify the areas of concern and the required standards, appropriate action to meet the required standard should be agreed and a review date set at which to assess progress. Where appropriate, the manager should offer training and any other relevant support in order to assist the employee to improve. This is a normal part of the managerial role.

A brief note of the Informal Intervention and Guidance discussion, along with the details of action taken, should be kept and supplied to the SSC to be placed on the employee's personal file. While not an agreed document, a copy of the file note should be sent to the individual for information. There is no set time for the note to remain on file but it should cease to be taken into account after 12 months has passed, if further Informal Management Intervention is required. *(It is good practice to adopt a schedule for the review of personal files with staff in order to identify any outdated and irrelevant items.)*

#### **Formal Management Improvement**

Where the above has failed to achieve a desired improvement in an employee's job performance or conduct, or the matter requires a formal response, Formal Management Improvement should be undertaken. In cases where the employee's conduct is giving serious concern, the manager may arrange for the conduct of a management investigation to determine whether a disciplinary procedure needs to be invoked or that Formal Management Improvement is appropriate.

The objective of this process 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.

The employee should be informed in writing of the requirement to attend a Formal Interview at a specific time and place and that they may, if so desired, have a representative of their choice to support them.

- The letter should make it clear to the employee that the Formal Management Improvement Process does not constitute part of the Formal Disciplinary Procedure but it is a reasonable and lawful instruction for an employee to attend an interview and it is not optional.
- The process should be a two way discussion. The manager should state the nature of the individual's conduct they consider to be below standard and aim to identify the cause of the problem by questioning and discussion.
- At the conclusion of the discussion if the manager is still of the view that the employee's conduct is below the required standard, it is the manager's responsibility to clarify the areas of concern, establish 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 the manager will confirm in writing to the employee, with a copy to the personal file, the outcome of the meeting and the mutually agreed action plan (if appropriate) and progress review date. If relevant, this should include any details of training and specialist help/counselling sessions also agreed.
- Throughout the review period the manager will monitor the progress of the employee towards achieving the expected standards. Formal Management Improvement may often be more satisfactory for resolving problems than a disciplinary interview, especially for staff that have recently joined the school, or have otherwise a record of long and satisfactory service at the school.
- If however during the discussion, it becomes obvious that the matter is more serious, the discussion should be adjourned and the manager should make it clear that the matter will be pursued through the formal disciplinary procedure.
- At the end of the review period a further interview should be arranged to discuss progress. If the employee has reached a satisfactory standard no further action is necessary. If the employee has made insufficient progress towards achieving the required standards then the review date may be extended.
- If the employee has made no progress towards achieving the required standard without a relevant and acceptable reason the manager should then

advise the employee that their failure to improve the specific standard may lead to the implementation of the formal disciplinary procedure.

- In all cases the employee should be informed in writing of the outcome of the Formal Management Improvement, with a copy of the same document supplied to the SSC to be retained in their personal file. The employee may wish to submit a statement with their own perspective on the process/outcome and express any challenge. *(As stated above it is good practice to adopt a schedule for the review of personal files with staff in order to identify any outdated and irrelevant items.) The record of this intervention should cease to be taken into account after a period of 12 months has passed since the conclusion of the associated action and review, should further Formal Management Improvement be considered in future.*

## 4. 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. Employees should never be suspended automatically.

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.

### 4.1. Introduction

Suspension is traumatic for the member of staff, their family, and their colleagues as well as pupils and their parents. It is, therefore, important to have, and follow, an appropriate procedure to ensure that suspension does not occur unnecessarily and to avoid potential challenges when it is believed to be appropriate and takes place.

**In all cases where a teacher is to be suspended the following considerations and process must, therefore, be followed:**

### 4.2. Reasons for Suspension

There must be a good reason for the suspension of an employee of staff, it should only be considered where:

- a) There are Safeguarding issues, such that a child or children are at risk.
- b) The allegation is likely to be of gross misconduct and dismissal is possible.
- c) An allegation of misconduct has been made against the teacher and it is judged that their continued presence in the workplace may impede or prejudice the investigation (e.g. potential removal/destruction/contamination of evidence;

influencing witnesses).

- d) An allegation of misconduct has been made against an employee the nature of which could involve potential risks to pupils or other employees.
- e) Where the employer 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 him/herself if allowed to remain in the workplace.
- f) Other relevant circumstances arise, such as Formal Competence Procedures and evidence is available that no teaching or learning is taking place, and which will lead to a recommendation that the teacher be dismissed.

No extra travel costs should be incurred by the employee as a result of suspension.

In relation to circumstances a) and c) above suspension should only be considered in a case where there is cause to suspect a child or other children is/are at risk of harm or the case is so serious that it might be grounds for dismissal.

The employee should be given the reason(s), which will normally one or more of those listed above, which have determined that they should be suspended. The reason(s) should be included in the written confirmation of suspension. It should be made clear to the employee that suspension is not an assumption of guilt and is not considered a disciplinary sanction.

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.

In cases where there is an allegation of harm to children, it may be assessed that the investigation can be clarified or resolved quickly, without the need for suspension. If the LADO, police and children's social care services have no objections to the member of staff continuing to work during the investigation, the manager should be as inventive as possible to avoid suspension. Based on an assessment of risk, the following alternatives should be considered before suspending the individual. 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.

- Redeployment within the service, so that the individual does not have direct contact with the child or children concerned;
- Providing a colleague to be present when the individual has contact with children;
- Redeploying to alternative work in the Council so the individual does not have unsupervised access to children;
- Moving the child or children where they will not come into contact with the

staff member. (The principle is that the child should not be negatively affected because an allegation has been made but, where moving a child is considered, it must be made clear that this is not a punishment and agreement reached with the child's parents. Advice should also be taken from HR).

To suspend a member of staff following an allegation that is clearly malicious or vexatious is unnecessary and may be damaging. The employer should consider the potential permanent professional reputational damage to employees that can result from suspension.

Managers should be aware of Derbyshire's Child Protection Procedures when dealing with allegations against employees and considering whether suspension is an appropriate and proportionate response to the allegation.

Whether the decision is to suspend or not to suspend the following should be clearly recorded and confirmed in writing to the employee,

- The decision
- The reason(s) for the decision
- If the decision was to suspend, what alternatives to suspension were considered and why they were not appropriate

A Draft Specimen Letter is available

#### 4.3. 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 Assistant Director HR consulted.

#### 4.4. Procedure for Suspension

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.

- The suspension is carried out face to face with the employee concerned at a specifically convened meeting. The employee should be offered the opportunity to be accompanied, usually by their trade union representative, at the meeting and the manager may be accompanied by a representative from HR. In rare circumstances, for instance where an employee is absent, it may be necessary to write and notify the employee of a suspension, to ensure they are aware of the situation. However, it would normally be preferable to wait until the member of staff returns.



- The meeting must be handled sensitively. The employee should be informed that an allegation has been made against them and that they are being suspended as a precautionary measure pending a full investigation of the allegation. Also that the suspension is intended as a neutral act (in law it cannot be assumed that suspension will be viewed as a neutral act), implies no guilt, and will be on normal contractual pay. It should be reiterated that suspension does not form part of the formal disciplinary procedure.
- The teacher should be given as much information, including reasons for their suspension, as is consistent with not interfering with or prejudicing the investigation of the allegation. Where relevant, consultation should take place with the LADO. If, on the advice of child protection agencies, the employee is not provided with the exact allegation they should be given the reason, e.g. at another agency's request.
- The date and time from which suspension shall apply and that the suspension will be for as short a period as possible with initial and ongoing reviews.
- The employee should be assured that they will remain an employee of the Council. The employee should also be informed that they will be required to attend an investigation interview and will be given the opportunity to state their version of events and any other information they think relevant. In cases of allegations which relate to child protection this interview/investigation will normally be conducted by the Police beforehand.
- The employee should be advised to seek advice and assistance from their professional association or trade union. A teacher who is not a member of a professional association or trade union may seek advice from and be assisted by a companion or fellow worker.
- A named contact should be offered to the employee, to provide clarification on any issues relating to the suspension, preferably one who is acceptable and agreed between the manager and employee. The employee can raise any questions through this officer and receive information on service developments during their absence. The suspending officer should retrieve any Council equipment from the employee such as their security badge, uniform, laptop etc.
- The member of staff should also be given information on the employee counselling service and asked if they need any other support. Where there is a need to suspend a member of staff on a Friday or immediately before a holiday period, special consideration should be given to the support arrangements.
- It should be explained to the member of staff that their suspension will be on normal pay. This means that, where relevant, a suspended employee should still submit sickness returns and would, when suffering sickness absence, receive the appropriate sick pay. If an employee is subsequently dismissed

they shall not be entitled to salary other than the sum (if any) due up to the date of termination of contract, but they shall be allowed to retain any sum already paid during the period of suspension. If they are reinstated there shall be full restitution of earnings.

- Previously agreed annual leave which falls within the period of suspension will be honoured. Where permitted in their contract, other leave may be taken during the period of suspension subject to agreement and should be notified to the named contact.
- The member of staff must not undertake additional employment for the time they are employed at the service, during the period of the suspension.
- The member of staff will be required to be available to respond to contact during working hours on the days they are employed within the service during their suspension although the employer may attempt to make reasonable contact outside of these hours. However there is no particular requirement/obligation on the employee to respond outside of working hours
- They will be informed that, in order not to prejudice the objectivity of the investigation, they will not be permitted to attend the workplace without prior invitation. The employee should not use Council equipment, including IT equipment, provided in connection with their employment without permission.
- The employee must give careful consideration in relation to communication of any kind, including email and social networks, with work colleagues during the period of suspension, without prior discussion with the investigating officer. It is important to avoid any potential challenge of interfering with the investigation or influencing possible witnesses. Requests for colleagues to act as witnesses should be made via the employee's representative and the Contact Officer's advice can also be sought on queries concerning social communication with colleagues or for information about work.

It is recognised that there may be particular reasons why the employee needs to contact certain other staff and it is acceptable to maintain existing patterns of social interaction but it is important to ensure that no discussion in relation to the reason for the suspension takes place. While consideration should be given to the relationships staff may have with their colleagues it must be emphasised that the investigation may be compromised if the employee discusses the circumstances with colleagues.

They should be advised to maintain discretion and if in any doubt to seek advice.

- The employee should be informed that their suspension will be confirmed in writing, that the period of suspension will be kept under review and that they will be kept informed of the progress of the investigation.
- Following suspension, an initial review of the case should take place as soon

as possible, normally within five term-time working days or longer by mutual consent, with the aim of minimising the length of the suspension.

- Following the initial review, ongoing reviews should take place at least monthly - unless it is mutually agreed not to (e.g. ongoing investigation by an outside agency) in which case an appropriate review date should be agreed.
- Wherever possible written confirmation should be prepared and handed to the individual at, or provided as soon as possible after, the meeting. It should include the allegation, unless it has been decided, in conjunction with outside agencies, that this may prejudice the investigation.
- The manager should agree with the member of staff what their colleagues wider work contacts will be told about their absence. This is particularly important in sensitive situations and will allay continued suspicions or doubts about the absence if the member of staff returns to work, when the investigation or associated action has been concluded.
- Once the investigation is concluded and where the employee is informed that the case will be referred to a hearing, they may approach relevant members of the service who they wish to call as witnesses. This is best undertaken by their representative. No pupils should be approached without prior discussion with the manager and agreement as to necessity. Parents' would also first need to be approached for their agreement.
- Arrangements should be made for the employee to return any further Council or pupils' books, property, or keys, and by agreed arrangement and supervision, collect any personal belongings which they might need during their suspension.
- The above must be confirmed in writing.

#### 4.5. Reviews of Suspension

The following principles will apply to all Reviews of Suspension:

- Management should undertake an initial review of the suspension and if the suspension continues there should be further regular, usually monthly, reviews.
- Whilst suspension reviews may well take place as a meeting with the employee and, if mutually agreed, this may not always be appropriate, for example where circumstances have not changed.

The continuation of suspension should be considered by the operational manager, who will normally be advised by HR and the employee informed of the outcome accordingly.

The employee and their representative will have the option to call a Review of Suspension meeting at each review point or provide written representation in advance of and to inform any review, which does not necessitate a meeting, or in response to a review outcome

The purpose of a review is to ensure that the suspension is as short as possible, once the Council has sole responsibility to deal with the case. It is unfair to an employee to delay the investigation and resolution of any issues, particularly disciplinary, arising from it. It is expected that the situation will be addressed as a matter of urgency and priority, owing to the impact of suspension on the individual concerned and the school.

Where there is a delay in the investigation of the allegation and resolution of the case, this must be justified with the reasons (e.g. where an outside agency takes precedence and the school is not cleared to proceed). This should be clarified to the employee.

Except in very complex circumstances where it is, or may be, unavoidable, a protracted suspension may be open to subsequent challenge.

A checklist which prompts the issues to be considered should be filled in at the time of each review. Specimen letters for the initial and subsequent suspension reviews are available.

#### 4.6. Lifting Suspensions

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

## **5. Management Investigation**

In dealing with an allegation, it is important that the process from investigation to disciplinary hearing should be undertaken as quickly as possible, without prejudicing a full and thorough investigation.

If, following the management Improvement process, consideration of further action is warranted, or in the event of an allegation being made against an employee, then a proper investigation should take place. An essential stage in the consideration of an allegation of misconduct against an employee is the formal Management Investigation. This process should have the following primary objectives:

- a) To be conducted promptly with minimal delay.
- b) To investigate the facts and circumstances relating to the alleged misconduct.
- c) To enable the employee to respond to the allegation.

- d) To be thorough enough to provide a clear balanced view, upon which a fair and objective decision can be made as to the requirement for further action, based upon the balance of probabilities.
- e) 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.

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 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 and sufficient 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 wrongdoing, only a genuine and reasonable belief in the employees guilt.

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. Investigating Officers should be aware that Employment Tribunals may uphold complaints of unfair dismissal due to insufficient or inadequate management investigation.

The investigation is a neutral act and does not imply the guilt of an employee nor is it part of the Formal Disciplinary Procedure. In order to protect the interests of the employee and to ensure co-operation with any investigation, colleagues should be reminded of this.

### 5.1. Informing the Employee

When the manager first hears of the allegation, it may be appropriate to have a short conversation with the employee to ascertain the facts, dispel rumours etc. This can be done 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 5 working days and the right of representation. **This may not be appropriate if the allegation concerns the safety and welfare of children, when the advice of the LADO will be required.**

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.

## 5.2. Procedure

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.

- a) 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 the case, so that the employee has a chance to respond to them, including providing copies of any relevant paperwork. If new evidence emerges as the Investigating Officer proceeds, one or more additional meetings may be held.
- b) The investigating officer will formally write to all those individuals who are required to attend an investigation interview, informing them of the nature of the events being investigated, including the date and time of any specific incident, and the date, time and venue for the interview, and giving them the opportunity to be accompanied by a Trade Union/Professional Association representative, friend or colleague.

The Investigating Officer will need to balance the necessity to carry out a prompt investigation with reasonableness in allowing time for individuals to make arrangements to be accompanied at the interview. In this respect five term-time working days' notice is reasonable or less by mutual agreement. The employee should be informed in writing that an allegation of misconduct which requires investigation has been received and that an investigatory officer has been designated.

If there is a specific allegation being made against an employee, then that individual should be made fully aware of the allegation in writing prior to the Investigation interview in order that s/he may prepare a response to the allegation. The employee must also be informed of the requirement to co-operate with the investigation, such as attending the investigatory interview.

- c) The Investigating Officer should ensure that the venue for the interviews will be free from interruption or distraction and there should be a room available for the employee and their representative to confer in private.
- d) 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.

- e) Other people believed to have information relating to the alleged misconduct should be interviewed and written statements obtained from them, if possible.

If the employee wishes to approach colleagues or other parties as potential witnesses this should be conducted through the employee's representative.

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 a member of the public or other person who is not an employee, 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 staff member before the incident took place and those to whom he or she spoke immediately after it.

During the course of the investigation, notes should be taken of any interviews held. These notes are not intended to be a verbatim record, but a representation of the conversation that took place. The purpose of these notes is to aid the Investigating Officer in making an informed decision in respect of the allegation.

Neither party is allowed to make a covert audio or video recording of meetings held as part of this procedure. Recording equipment should only be used with prior mutual agreement. The use of recordings may be considered as part of making reasonable adjustments for relevant parties involved. *(For further advice see ACAS article on covert recording in Tools, Templates & Resources, Workplace Snippets, [acas.org.uk](https://www.acas.org.uk))*

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

- They will receive a copy of the notes to confirm they are accurate or to make comment on.
- If they agree the notes are accurate, 2 copies should be provided and they should date and sign each page of one copy and return this signed copy to the Investigating Officer.
- The investigating Officer will accept any minor amendments provided they do not change the substance of the employee's answers.

- If they have any comments or reasons why they believe the notes are not accurate they should confirm them in writing to the Investigating Officer and they will be included with the Investigating Officer's notes in the record of the investigation.
- The notes of the meeting, including any comments and or reasons provided by the employee, may be used in evidence at any disciplinary hearing arising from this investigation.
- They will have five working days to sign and or comment on and return the notes of the meeting.

Notes made of interviews with potential witnesses do not have to be shared with the employee under investigation at this stage.

- f) Having carried out a fair and thorough investigation, the Investigating Officer will make a considered assessment of whether there is a case to answer, based upon the balance of probabilities. 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.
- g) The main requirement is to be able to come to a fair decision on the balance of probabilities, based on 'Is there a reasonable suspicion amounting to a belief that there is a case of alleged misconduct to answer, and are there sufficient grounds for that belief?'
- h) 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. When a number of allegations were made against the employee and have been investigated, the letter should indicate whether all, or which, of the allegations are to be taken forward for consideration at a hearing.

In most cases there will be one of three outcomes:

1. Complete exoneration from the allegations made. In this case a letter should be sent to the employee thanking them for their co-operation throughout the Management Investigation process.
2. Where the Improvement Process has not already been applied in similar circumstances and the nature of the allegation does not preclude this, an assessment that there is a potential case of misconduct and an informal or formal management intervention/direction and guidance,



through the improvement process, should be undertaken.

3. A recommendation that there are sufficient evidenced grounds for a potential case of misconduct or gross misconduct to be made and that a disciplinary hearing should be held.

Only those allegations where sufficient grounds for a case of misconduct to be considered will be taken forward. The employee will be informed of the findings of the investigation and the decision on outcome in writing.

Where relevant, the employee should be advised that a disciplinary hearing is going to be held, and that they will be notified of the date, time and venue of the disciplinary hearing in the near future. A copy of the disciplinary procedure should be enclosed.

The letter should indicate whether the hearing will consider a case of misconduct or gross misconduct (or both) and the appropriate adaptations made to the sample letter provided with the policy.

In some cases where it is not considered appropriate to invoke the disciplinary procedure, other options should be reviewed. The matter may be dealt with by discussion with the employee or by other actions such as arranging coaching, training or implementing the Improvement Process. 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 (including a note of any explanation put forward by the employee) should be made, a copy of which should be sent to the individual and placed on their personal file.

As a result of the investigations undertaken, the Investigating Officer may identify a breakdown in procedures/regulations directly attributable to a lack of instruction. Under these circumstances, the relevant employees should be required to attend a meeting with their line Manager, on an individual basis, at which management instructions would be issued and confirmed in writing. This meeting would not constitute a disciplinary meeting, and there would be no requirement for the employee to be accompanied at this meeting.

**NB. It is not appropriate for the investigating officer to determine what the outcome of the Hearing should be.**

### 5.3. 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 HR teams on how to proceed in these circumstances.

#### 5.4. Written Statements

To assist in this investigation process, it is important that written statements are procured from all those individuals involved, or witness to events resulting in an allegation being made against an employee. In order to ensure that these statements or accounts are as accurate as possible, it is important that they are procured as soon as is practicably possible following the event.

All Statements must be dated and signed on each page by the individual making the statement in order that it may be regarded as a validated account of events as perceived by that individual.

The Investigating Officer might wish to confirm and seek further information from those individuals providing statements, as part of the investigation process, and in order to seek a balanced overview of events. This might result in a need for supplementary statements from the individuals concerned. These statements would then form the basis for the Investigation, and may be used as documentary evidence in any disciplinary hearing resulting from the investigation. 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 a hearing in person.

It is important to have followed the process in relation to taking statements, for both the employee alleged to have committed misconduct and the witnesses.

#### 5.5. Disclosure of Statements

When Statements are taken to assist the Management Investigation, there is no requirement to disclose all the statements to the member of staff who is being investigated during the investigation.

However, any statements which are to be relied on as evidence to be presented at a disciplinary hearing will need to be disclosed to the employee against whom allegations are made, in advance of that hearing and in accordance with the disciplinary procedure detailed in the next few pages.

Any documents which the investigating officer intends to present at the disciplinary hearing should be made available to the employee at least 5 term-time working days in advance of the hearing.

In conducting the investigation, evidence may be gathered which is not relevant i.e. does not support or add to the management case which the investigating officer does not intend to use at a 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.

It should be noted that interview notes and witness statements are disclosable at

an Employment Tribunal.

## 5.6. Audit Services' Investigations

### **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 Strategic 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 will be 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.

## **6. The Formal Disciplinary Hearing**

The purpose of the disciplinary procedure is primarily to help and encourage employees address any shortfalls in conduct rather than just as a way of imposing punishment. The procedure provides a fair and consistent mechanism through which employees' conduct may be corrected to achieve the standards required and, when appropriate, sanctions applied, up to and including dismissal.

### **6.1 Action In Advance Of the Disciplinary Hearing**

Once it has been ascertained that there is a case to be answered, a Hearing should occur as soon as possible. The employee should be given ten working days' formal notification in writing of the date, time and venue for the hearing. Consideration may be given to organising hearings during school holidays where the employee is not restricted to term time. This notification should be either given by hand, or sent by special delivery post. A copy should be provided to the SSC (HR) for the employee's personal file.

The employee will be informed of:

- the specific allegations of conduct which appears to justify disciplinary action (omitting any allegations that will not form part of the case),
- who will conduct the hearing and, if appropriate, advisers,

- the right to be accompanied by a representative of a recognised Trade Union or Professional Association or friend, to give advice and make representations where necessary,
- the right to call witnesses and present documents relevant to their defence,
- 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).

Copies of all documentation that is going to be presented at the hearing should be sent to all parties, including the employee, at least five working days prior to the date of the hearing by hand or special delivery post.

Similarly, the employee and or their named representative should supply copies of all documents to be relied upon at the Hearing, to the Hearing Officer and the Investigating Officer, at least 5 working days prior to the date of the Hearing.

Arrangements should be made for the hearing to be minuted appropriately.

The venue for the Hearing should have sufficient rooms available for the respective parties to be able to confer in private, and be free from interruption or distraction. Therefore the provision of separate 'breakout' rooms, for the employee with his/her representative and the presenting officer with their Advising Officer, are recommended. Sufficient time for the case to be fully considered should be allowed, anything from a few hours, to a few days depending upon the complexity of the case.

## 6.2 General Points

It is important that strict confidentiality is maintained in order to ensure a fair hearing. Staffroom discussion, and community speculation should be actively discouraged as much as is possible.

### a) **Deferment**

At the Hearing Officer's discretion, it is good management practice to allow deferment of the hearing (usually up to 5 working days), due to circumstances such as illness or another substantial reason for not being able to attend. In reaching a decision on deferment management should give consideration to what is fair and reasonable. It may be necessary at a later stage to be able to evidence the consideration that was given to such a request and therefore the request and reasons given for a deferment as well as the Hearing Officer's response and reasons should not only be recorded but acknowledged and the response communicated to the employee and their nominated representative.

- If the request for deferment arises from the unavailability of the employee's representative it is necessary to agree the deferment, in order that the right of

representation is fulfilled. The employee may propose an alternative date which should not exceed 5 working days from that originally set. It would be better to agree the new date as suitable for all parties. (Only in exceptional circumstances should more than one postponement take place, and the hearing process may continue without the employee's representative).

- It should be noted however that whilst a request for deferment should not unreasonably be refused, repeated requests are not justification for the progress and completion of disciplinary process to be postponed indefinitely. The Hearing Officer will need to consider the extent to which the disciplinary process is being (unreasonably) frustrated and the extent of the impact further delay will have on the effective and efficient running of the service, the employee who is the subject of the allegation(s), and on other employees affected.
- In circumstances where an employee, is not able to attend in person their right to representation remains unchanged. The employee should be offered the opportunity to be represented at and or submit a written statement to any interview or hearing they are not able to attend but which it has been decided will go ahead in their, and or their representative's, absence.

It may be necessary at a later stage to be able to evidence that consideration was given to deferring or proceeding with a hearing in the absence of the employee and or their representative. If the Hearing Officer decides to proceed with a hearing in the absence of the employee and or their representative the case for and reasons for the decision to do so should be recorded and communicated to the employee and their representative along with the outcome of the hearing.

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 HR or Legal Services as appropriate.

#### b) Pre-hearing

In certain circumstances, for example particularly complex cases, it may be necessary to arrange a meeting prior to the hearing (a pre-hearing), to discuss procedural matters in advance of the hearing itself.

#### c) Right to be Accompanied

Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- A formal warning being issued; or
- some other disciplinary action being taken; or
- Confirmation of a warning or some other disciplinary action (appeal hearings).

The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Employees may also alter their choice of companion if they wish. As a matter of good practice, in making their choice employees should bear in mind the practicalities of the arrangements. For instance, a teacher may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

To exercise the statutory right to be accompanied, employees must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, an employee should provide enough time for the employer to deal with the companion's attendance at the meeting. Employees should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

If an employee's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed. The companion should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the worker does not wish it or prevent the employee from explaining their case.

### 6.3 Hearing Procedure

The procedure for the Disciplinary Hearing is given in the Disciplinary Policy & Procedure. The Hearing Officer shall only consider the facts presented in the presence of the employee and make a decision on the balance of probabilities, based on a reasonable belief in the light of the evidence presented. The Hearing has the power to deal with the case in one of the following ways:

- i. Complete exoneration and, where the employee has been suspended, reinstatement). Should it be found that the allegation may have been malicious, a recommendation that this is investigated may be included
- ii. Management Improvement process (and lifting of suspension, where relevant)
- iii. In exceptional circumstances, following a request from the employee, they may be granted an opportunity to resign, as an alternative to dismissal. (Employees should be strongly advised to consult with their

trade union or professional association if considering such a request)  
Where an employee is to be dismissed as a result of misconduct relating to child welfare and safeguarding, they must be reported to the DBS and Teachers Regulation Agency (where relevant), whether or not they resign before dismissal

- iv. Issue of a sanction
- v. Granting an opportunity to accept a reduction in position or status as an alternative to dismissal
- vi. Granting, in appropriate cases, an opportunity to obtain medical advice or treatment before any further decision is made
- vii. Dismissal

#### 6.4 Sanctions

The general expectation is that, unless it is inappropriate to do so, serious consideration will be given to utilising the informal or formal management Improvement process where the staff member has no record of previous conduct issues on their personal file, or more than 12 months has passed since the conclusion of a previous management Improvement process. However, it is recognised that for serious misconduct or repeated misconduct, that is proven (on the balance of probabilities), the sanctions below may be given.

##### **Written Warning**

For **serious** misconduct, or where a further misconduct has occurred (either of a similar or of a different nature), following formal management intervention and guidance through the improvement process, a written warning may be issued. It should detail the offence and the improvement required and timescale allowed. It should warn of further disciplinary action if there is no improvement, and provide a right of appeal. A copy should be held on the personal file and school disciplinary register until expunged (usually 12 months).

##### **Final Written Warning**

For a **very** serious act of professional misconduct/gross misconduct, or where there has been a failure to improve conduct despite previous written warnings, it should detail the offence and warn that dismissal will result if there are any further offences, or if there is no improvement within a set timescale. It should provide a right of appeal. A copy should be held on the personal file and school disciplinary register until expunged (usually 12 months).

##### **Dismissal**

For serious acts of gross misconduct, dismissal will be regarded as summary dismissal and there will therefore be no entitlement to payment in lieu of notice.



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.

### **Notice of Sanction**

A formal warning or resolution to issue of a notice of dismissal will:

- a) be in writing or confirmed in writing as soon as possible and within 7 calendar days;
- b) be delivered by hand directly to the employee or to their home address or by special delivery;
- c) state whether the employee exercised the right of representation at the disciplinary hearing;
- d) include a warning of the consequences if there is not satisfactory improvement or if further misconduct occurs;
- e) in the case of formal warnings explain that they will be recorded in the employee's personal file;
- f) explain the reasons for the disciplinary action;
- g) explain the right of appeal, appeals against dismissal should be registered in a letter to the Director of Legal Services 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;
- h) appeals against other sanctions should be registered with the appropriate Executive Director;
- i) be copied to the employee's Trade Union or Professional Association representative;
- j) give the termination date in cases of dismissal;
- k) state that a copy letter has been provided to the SSC (HR) for the employee's personal file and on the register of disciplinary action and that it will be 'spent' after, normally, 12 months satisfactory conduct and performance and the expiry date of any warning.

For dismissal as a result of continued misconduct, payment in lieu of notice would normally be given.

### 6.5 Expiry of Disciplinary Action

All formal warnings shall normally expire after a period of satisfactory conduct and performance of 12 months. In exceptional circumstances and particularly when the misconduct relates to the safety and welfare of pupils, the Hearing Officer may consider that the disciplinary warning period should exceed this. This must be determined when the sanction is issued and include a statement of how long it will be retained on file, when it will be reviewed (usually annually) and make reference to the employee's right to make representations for the warning to be expunged from the disciplinary record as part of the review.

For warnings that are not due to expire after 12 months, clarification should also be provided of who will review the warning, on what grounds, and when. The basis for the review will be the conduct of the employee during the period since the issue of the sanction, in relation to the nature of the misconduct.

Details of spent warnings will be kept on personal files. They will not normally be taken into account if there is a further instance of misconduct, in determining the sanction, but an expired warning for a similar type of misconduct, or pattern of misconduct, should be considered when deciding how long any subsequent warning is 'live'. 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.

A decision to dismiss should not be made on the basis of an expired warning but the fact that there is an expired warning may explain why the employer does not substitute a lesser sanction. A spent warning will not increase the severity of a sanction but may provide a reason not to reduce a sanction in response to mitigation.

**The managing allegations procedure of the Derbyshire Children's Safeguarding Board requires that allegations of harm to the safety and wellbeing of children are kept on the individual's confidential personal file, excepting those that are found to be malicious. It is important that a copy is provided to the individual.** The record should be retained until the individual has reached retirement age or for a period 10 years from the date of the allegation, if that is longer. The record will comprise a comprehensive summary of the allegation, details of how the allegation was followed up and resolved, including a

note of any action taken and decisions reached. The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information about an allegation that did not result in criminal conviction and will help to prevent unnecessary re-investigation, if an allegation re-surfaces.

A copy of the warning will be supplied to the employee.

The “exceptional” circumstances referred to above will be justified by the Hearing Officer at the time of decision and the employee may appeal.

## **7. Appeals Procedure**

An employee may appeal against a decision on disciplinary action within 10 working days of receipt of written notification to him/her of the disciplinary action to be taken.

Where an employee appeals against dismissal:

- Notice must be given, in writing, to the Director of Legal Services setting out the grounds on which the appeal is based. If no grounds are given these must be sought before proceeding.
- The Director of Legal Services will reply to the appeal letter within 5 working days, acknowledging the registering of the appeal which will take place as soon as practicable. There will be a minimum of 10 working days' notice of 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 5 working 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 his / her own witnesses.

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.

For example:

- For an appeal on procedural grounds the case presented by the employee would focus on the evidence related to their challenge concerning the implementation of the disciplinary policy and procedure.
- For an appeal related to the level of sanction issued, rather than a challenge to the substance of the allegation, the case would focus on any mitigation and reasons why the employee considers the sanction not to be appropriate.
- For an appeal that challenged the judgement reached at the original hearing, a re-hearing of all the relevant evidence in the case would be needed for the Appeal Officer to formulate their own assessment of the case.

The employee will be informed of the place, date time and purpose of the Appeal hearing with at least 5 term-time working days' notice. The Presenting Officer may call witnesses and will arrange for these to attend. If the employee wishes to call witnesses they will arrange for their attendance. All the original case papers should be distributed to the Appeal Officer, plus the record of the Disciplinary Hearing, no unrelated matters will be considered.

The employee is entitled to attend before the Appeal Officer with their Trade Union/Professional Association representative or friend to present their appeal.

**The procedure to be followed in a Disciplinary Appeal Hearing is set out in Appendix 2b, attached to the main Disciplinary Procedure.**

The venue for the Appeal Hearing should have sufficient rooms available for the respective parties to be able to confer in private, and be free from interruption or distraction. Therefore the provision of separate 'breakout' rooms, for the employee with his/her representative and the presenting officer with his/her HR adviser, are recommended. Sufficient time for the appeal to be fully considered should be allowed, anything from a few hours, to a few days depending upon the complexity of the appeal.

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.

Copies of any documents relevant to the case and intended for submission/consideration should be exchanged at least 5 term-time working days in advance of the hearing.

## **8. 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. In these circumstances the employee must be so advised in advance, and invited to make a written submission to the hearing 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 should be sought from HR.

## **9. Grievance**

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

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

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

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

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

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

case to be completed.

In certain circumstances, a grievance may be considered after an employee has been dismissed.

For these purposes, grievance will be taken to include any employee led complaint including complaints of harassment.

## **10. 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 be automatically 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 HR for advice.

### **ROLE OF THE CONTACT OFFICER**

#### **1. Introduction**

It is recognised that there is a need, to provide some means of support to a member of staff who is the subject of an allegation at work, or who has been suspended as a consequence of an allegation. The member of staff involved may experience feelings of stress, worry, and depression and may also feel isolated from their workplace, colleagues, friends and relatives.

It is important that any member of staff in this situation is regularly informed about what is happening in relation to the allegation and investigation, as a lack of information may itself lead to further stress and potential ill health. It should be recognised and appreciated that the allegation may have placed the member of staff in a difficult situation when handling the implications of the allegation for their family.

In order to provide support in these circumstances, and particularly where a member of staff is suspended, an appropriate person should be asked to act as Contact Officer for the member of staff. The Contact Officer should be totally objective and not involved in the investigation or subsequent action in any way. Their role is only to provide support to the member of staff.

Professional support relating to the investigation will also be available to the member of staff from their professional association or trade union. It is intended that the support from the Contact Officer will be complementary to this support.

#### **2. Allocation of a Contact Officer**

- The Contact Officer will normally be from a senior colleague in the relevant service.
- The Contact Officer should be a sensitive and caring person who will be able to provide the necessary level of support to the member of staff and, if appropriate, make any contacts on their behalf.
- The Contact Officer should be acceptable to the employee and if not, for whatever reasons, every effort will be made to identify an alternative Contact Officer.
- The name and contact arrangements should be confirmed in writing to the member of staff and reference to the Contact Officer should be made in any letter of suspension.
- The Contact Officer will make initial contact with the member of staff as soon as practicable. Subsequent contact will be according to the wishes of the

member of staff and their professional association or trade union representative.

### **3. Role of the Contact Officer**

The role of the Contact Officer is to:

- Reassure and offer confidential help and support to the member of staff. In particular, the Contact Officer should be available to listen to and identify any indications about the state of health and well-being of the member of staff.
- Recognise that the circumstances may be personally very stressful to the member of staff and to help them to cope with this. This may involve supporting the member of staff in seeking additional help or counselling from their GP, Council, or other counselling.
- Feedback any concerns, without breaching any confidentiality about the health and well-being of the member of staff so that appropriate action can be taken by the Council.
- Provide or secure appropriate provision of, and access to, relevant information (including, when requested, material required to support their case) and updates from their workplace.
- Offer any other support which may be necessary.
- Support the member of staff until the investigation and any subsequent action is concluded. Depending on the outcome this may involve continuing the support, until the member of staff has returned to, and settled back into, their workplace.

### **4. Management Support**

The Contact Officer has a key role in supporting a member of staff who has had an allegation made against them. Support from a Contact Officer will be made available to all members of staff who are suspended, but particular attention will be paid to situations which, by their nature, are especially sensitive, such as those relating to matters of a sexual nature or where allegations of abuse of children may be involved. Because of the particular pressures that such allegations create, there may be a need for additional specialist support for the member of staff.

The Contact Officer's own line manager needs to be aware of their involvement in supporting a member of staff and the impact and effect which this may have on the Contact Officer in personal terms and in relation to time commitment.



### **Guidance on the arrangement of formal meetings with staff involving Union/Professional Association representatives**

The arrangement of a formal meeting with a member of staff is a fairly occasional event in most services. This will particularly be the case in small services.

Such meetings are likely to be in connection with one of the Human Resources policies, e.g. Disciplinary Policy, Absence Management, Competence Procedure. When the need arises to meet with a member of staff in connection with such processes or to arrange a hearing, there is an entitlement for him/her to be accompanied by a chosen representative. This representative will usually be from one of the trade unions or teachers' professional associations.

Senior Leaders are advised to ask for the name/organisation of the representative, where possible, and make contact to ascertain their availability before setting dates and times. It can be very unsettling and disruptive to relationships, at an already difficult time, when a date is set and then has to be postponed owing to the unavailability of the representative:-

The legal position is as follows (The Employment Relations Act 1999 Section 10, paragraph 4)

"If:

- (a) a worker has a right under this section to be accompanied at a hearing,
- (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
- (c) the worker proposes an alternative time which satisfies subsection (5),

the employer must postpone the hearing to the time proposed by the worker.

5 An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer".

Unions/associations are likely to quote this when they are presented with a date they cannot accommodate. The service will have no choice, at this point, but to make new arrangements. This can cause considerable inconvenience for everyone concerned. A further difficulty is likely to be caused because the legal requirement calls for the representative to set a new date, within 5 days, and this will probably not be convenient for other people involved.

It is best to try and avoid a difficult period where parties struggle to set a mutually suitable date, colleagues (and sometimes pupils) in service may suffer because of the delay and resentment may develop.

Service leaders need to consider the perspective of the employee and their representative. Most employees would not expect to be called to a formal meeting, or any other management process, outside of working hours. The representatives

themselves are sometimes employees of the union/association, who have scheduled working time, and branch officials are allocated particular times away from their 'day job' for their union duties. They may struggle to obtain release at other times.

It has been possible, on occasions, to arrange such hearings/meetings in the evenings but Heads of Service should expect to be challenged if making such arrangements. If at all possible, meetings in working hours are also preferable because the participants are more likely to be able to contribute effectively, than at the end of the day.

When informed that a representative cannot attend a meeting and a considerable number of other stakeholders have been assembled (Heads of Service, witnesses, HR Consultant, minute taker), Heads of Service have sometimes challenged the union to send a different representative to facilitate the process and save the impact of further delay on the employee. This is not easy for some associations to accommodate. They may have an agreement where only an individual union representative is authorised to receive the details of the case and to act on the member's behalf.

Heads of Service are advised to take these factors into consideration, in order to enable arrangements to be made in co-operative fashion. Alongside this guidance there has also been correspondence to the unions/associations seeking a similarly collaborative approach from their representatives. For instance, in recognising the requirement to co-operate with the process and offer a reasonable number of possible dates when meetings are needed. We reminded the association that just asserting their rights can foster a defensive response.

The need for formal meetings invariably means that there are challenging situations to manage, not just with the employee concerned but also possibly colleagues and the wider service. The 'tone' of all actions in connection with progressing the issue of concern will play a large part in minimising disruption, negative relationships and the ability to re-establish normal working practice afterwards.

Heads of Service may wish to contact the HR Service, if they are having difficulty in working with the unions on these matters.

PUBLIC

# **DERBYSHIRE COUNTY COUNCIL**

## **EMPLOYEE LEAVE SCHEMES AND FLEXIBLE WORKING FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS**



**FEBRUARY 2020**

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## **FOREWORD**

Whilst there has been considerable co-operative development of the document at Schools' Joint Consultative Committee, on this occasion it has not been possible to reach a collective agreement on the whole policy with all the unions.

The NASUWT and NEU withheld agreement to the policy on the grounds that they determined that the guidance provided on the Discretionary Leave of Absence amounts to an unreasonable deterioration in terms of conditions of employment.

### **1. INTRODUCTION**

The Council supports the promotion of work-life balance for employees. This Document sets out the leave schemes and flexible working arrangements which will assist Teachers employed by the Local Authority and not attached to schools in achieving this balance, while maintaining a high standard of service.

The procedure applies to Teachers employed by the Local Authority and not attached to schools.

A separate policy applies to all other employees of the Council except those in schools where the Governing Body performs the function of the employer.

All leave entitlements referred to within this document are pro rata for part-time employees.

All applications for leave or time off should be discussed initially with the manager and the time recorded on Workplace or through other means as appropriate to employment.

Sickness absence should be recorded by the line manager.

An appropriate request form should be authorised by the line manager where an employee does not have access to workplace

### **2. SCOPE**

All employees have a basic entitlement to leave of absence within their contracts of employment. These basic entitlements are detailed within their contracts of employment and are supplemented by jointly agreed local arrangements. Subject to both local and national conditions of service, the granting and authorisation of leave is a matter to be determined by the Local Authority.

However, in addition to their entitlement to leave of absence under their contract of employment, employees also have a statutory entitlement to leave of absence for other reasons as set out below.

### **3. PURPOSE**

This document provides guidance Heads of Service on current legislation and local and national conditions affecting leave of absence, and the extent of their discretionary powers. It has been discussed and agreed with all the recognised professional associations and trade unions at Schools' Joint Consultative Committee.

### **4. PUBLIC DUTIES**

The Employment Protection (Consolidation) Act 1978 gives statutory rights to reasonable time off for the following purposes:

- Magistrates/Justices of the Peace
- Education body – Chair of school/college governors (other governors see below)
- Statutory tribunal
- Police Authority
- Service Authority for National Criminal Intelligence Service or National Crime Squad
- Board of prison visitors or prison visiting committee
- Probation boards
- Members of court boards
- Health Authority
- Environment Agency
- Youth Offending Panels
- Meetings of SACRE & attendance at Diocesan Education Committee, or equivalent education body, meetings

#### **Time off for Public Duties**

With effect from 1 October 2018, the Time Off For Public Duties Order 2018 extends the right to time off for public duties under Section 50 of the Employment Rights Act 1996 to:-

- Members of a panel of lay observers, appointed under section 81 (1) (1) (b) of the Criminal Justice Act 1991. These are volunteers who monitor conditions for prisoners under escort and in court custody;
- Members of Visiting Committees, for the immigration and detention estate, appointed under section 152(1) of the Immigration and Asylum Act 1999. These committees monitor the immigration detention estate;
- Members of Visiting Committees appointed to monitor short-term immigration holding facilities, for example at airports; and
- Independent prison monitors in Scotland appointed under section 7B (2) of the Prisons (Scotland) Act 1991.

Although under the Employment Rights Act 1996 the right to time off for these and other public duties is not to be paid. Teachers have entitlements comparable with

those of local authority officers so far as paid and unpaid leave entitlement is concerned for public service.

The “Burgundy Book” States that: “Teachers shall have entitlements comparable with those of local authority officers as far as paid and unpaid leave entitlement is concerned for jury and other public service”

The entitlement for local authority officers contained within the Green Book, states that the right is for such time off to be paid.

Leave arrangements for all staff to carry out recognised public duties have been agreed on the basis of up to 18 days/36 half days paid leave per year.

- Education body – School/College Governors - Employees may apply for a maximum of 7 days paid leave and 7 days unpaid leave in a leave year to undertake school/college governor duties.
- Chair of Governors – those elected as Chair of Governors may apply for a maximum of 18 days paid leave in a leave year to undertake Chair of Governor duties.

Before committing to public duties, employees must seek the approval of their manager. When doing so they should give a clear indication of what level of commitment is likely to be required.

Further reasonable unpaid time off for public duties may be granted at the discretion of the Head of Service.

All time off for public duties is pro rata for part time employees.

Other Special Leave arrangements have also been agreed and should be granted on the following basis:

- Jury Service –time off without financial detriment is allowed for jury service. The employee is issued with a loss of earnings form from the Court, which they receive prior to their attendance. This is sent to DCC Shared Service Centre (SSC) to complete with the details and then returned for the employee to claim from the court, once they have attended for jury service. The school notifies SSC of the dates the employee attended jury service and the necessary amount is deducted from the employee’s pay so the relevant sum is not costed to the school’s budget. For more information on jury service go to <https://www.gov.uk/jury-service/overview> .
- Elected member duties with other Local Authorities up to 208 paid hours per year.
- Trade Union Duties – These are set out in the Authority’s Facilities Agreement.

Further advice can be sought from the Shared Services Centre on how to record these types of leave.

## **5. SERVICE IN NON-REGULAR FORCES (RESERVISTS)**

Employees are entitled to up to 2 weeks to attend summer camp as a volunteer member of the non-regular forces.

Any request for additional time off to undertake specific non-regular forces training that cannot be undertaken in non-working time will be considered by the Executive Director, taking into account service requirements.

If an employee is mobilised into full time service, this will be unpaid.

## **6. ADOPTION**

### **6.1. Pre-Adoption Leave Entitlement**

Employees who have completed the initial enquiry stage of the adoption process and wish to proceed to Stage 1 are eligible to apply for up to 5 days paid leave and 5 days unpaid leave, in a rolling 12 month period, specifically for pre-adoption activities; for example, training, introductory meetings, assessments, adoption panel. This is per adoption not per child.

The total hours recorded for the day whether all classed as 'pre-adoption leave' or a combination of 'pre-adoption leave' and working time, should not be for longer than the employee's planned working time.

### **6.2 Adoption Leave Entitlement**

Eligible employees are entitled to 52 weeks adoption leave comprising:

- 26 weeks ordinary adoption leave;
- 26 weeks additional adoption leave.

There is no requirement for a period of qualifying service.

During adoption leave, all employment terms and conditions (except normal pay) will continue. Only one person in a couple can take adoption leave.

### **6.3 Eligibility**

In order to qualify for adoption leave the employee must:

- Be the only partner taking adoption leave;
- Be newly matched with a child for adoption and by an approved adoption agency;
- Commence your adoption leave on the date of the child's placement or from a pre-determined date which can be up to 14 days before the expected date of placement. In the case of a child adopted from overseas, you may commence your adoption leave on the date the child enters Great Britain or from a pre-determined date that is no later than 28 days after this.



An employee does not qualify for statutory adoption leave or pay if they:

- Arrange a private adoption;
- Adopt a family member or a step child.

#### **6.4 Adoption Pay**

Is paid up to a maximum of 39 weeks, dependent upon eligibility for Statutory Adoption Pay (SAP) and Occupational Adoption Pay (OAP). This comprises:

- 4 weeks at full pay and 2 weeks at 90% of earnings made up of both OAP and SAP;
- 12 weeks (weeks 7 to 18) at half pay OAP plus SAP (providing this does not exceed normal full pay)
- 21 weeks of SAP (weeks 19 to 39).

Eligibility for 12 weeks OAP at half pay is dependent on being continuously employed in local government service for 52 weeks, when the adoption commences

The 12 weeks half pay is paid if the employee is returning to work for at least 3 months and can be spread over a longer period if requested. If they are unsure whether they intend to return to work they can opt to have the half pay frozen and paid at a later date.

Eligibility for SAP is dependent on being employed continuously in local government service for at least 26 weeks at the date of matching, and you must earn, on average, at least equal to the lower earnings limit for National Insurance purposes.

An individual can check current statutory rates and check your eligibility on the government website, GOV.UK.

#### **6.5 Applying For Adoption Leave**

An employee will need to:

- Inform their manager as soon as possible that you are adopting a child;
- Notify their manager in writing of:
  - o The date their child will be placed;
  - o The date their adoption leave will commence.
- Provide the matching certificate;
- Send the original documentation to the Shared Services Centre
- Record their adoption leave on Workplace or through other means as appropriate to their employment.
- Following the receipt of their notification letter:

They will receive a written acknowledgment, within 28 days, from the Shared Services Centre, informing them when they are due back at work;

- The employee must return the slip from this letter to the Shared Services Centre, to confirm their adoption pay arrangements during your adoption leave.
- No notice period is required if they intend to return to work at the end of the full adoption leave period.

## **6.6 Keeping in Touch (KIT) Days**

Prior to commencing adoption leave the employee should discuss and agree with their manager the type and frequency of contact they prefer whilst you are away from work. The manager may wish to contact the employee to inform them of any training opportunities, significant work developments, any relevant promotional opportunities or job vacancies that may occur during the absence. An employee can work for up to 10 days during your adoption leave period, by mutual agreement, although there is no obligation for them to do so. These working days or hours are known as Keeping in Touch days (KIT).

Payment for the hours worked will not affect their Statutory Adoption Pay or leave entitlement, and they will remain on adoption leave throughout this period.

The additional hours worked can be claimed through Workplace, or their usual time recording process, and will be paid at their existing rate of pay. They will only be paid for the time worked, i.e. if they attend work for 1 hour this will count as 1 KIT day. They must not work in excess of your standard day.

## **6.7 Return to Work**

An employee will normally be able to return to their existing post after taking ordinary adoption leave. If they also take additional adoption leave they have the right to return to their original job unless this is not reasonably practicable. Then they will be offered suitable alternative employment on terms no less favourable than their original post.

The employee has the right to request flexible working. Please see the section entitled 'Flexible Working Arrangements'.

The employee can change their return to work date but must provide 8 weeks' notice.

A model letter to advise the Shared Services Centre that an employee is adopting a child is available below. The employee should keep a copy of this letter, give one to their manager, and submit one to the Shared Services Centre

## Letter for Employee Taking Adoption Leave

Dear.....

Name

Employee Number

Service:

I wish to inform you that I have been matched with a child for the purpose of adoption and I enclose for your information the Matching Certificate issued by the adoption agency.

The date the child is due to be placed with me is .....  
and I therefore wish to take adoption leave with effect from .....

I intend to take ..... weeks adoption leave, however should I decide to return to work earlier I will write to you again giving you 8 weeks' notice of this and the date I wish to return.

Yours sincerely,

**Send completed letter to Shared Services Centre at  
Pay@Derbyshire.gov.uk**

## **7. FOSTER CARERS**

An employee who is registered with Derbyshire County Council as a foster carer may apply for a maximum of 5 days paid leave and 5 days unpaid leave in any rolling 12 month period.

This leave is for activities essential to foster caring e.g. training, introductory meetings and promotional events. The leave allocation is in total and not per child.

The total hours recorded for the day whether classed as 'foster care leave' or a combination of 'foster care leave' and working time should not be for longer than the time the employee is planning to work.

This quota is pro rata for part time employees.

## **8. MATERNITY LEAVE**

With regard to pregnancy and maternity leave, the following definitions are used:

- 'Expected week of childbirth' (EWC) means the week, starting on a Sunday, during which you are expected to give birth;
- 'Qualifying Week' (QW) means the 15<sup>th</sup> week before the expected week of childbirth.

### **8.1. Ante-natal Care**

Once an employee has advised their manager that they are pregnant, they are eligible to paid time off to attend antenatal appointments, as advised by their doctor, registered midwife or health visitor. The manager can request to see the appointment card after the first visit.

During maternity leave, all terms and conditions (except normal pay) will continue.

### **8.2. Maternity Leave Entitlement**

Pregnant employees are entitled to 52 weeks maternity leave comprising:

- 26 weeks ordinary maternity leave; followed by
- 26 weeks additional maternity leave.

There is no requirement for a period of qualifying service.

The earliest maternity leave can commence is the beginning of the 11<sup>th</sup> week before your baby is due.

Maternity leave will commence automatically 4 weeks before your baby is due if the employee is off work due to a pregnancy related illness.

If the baby is born earlier than expected, the maternity leave will commence automatically on the day following the birth.

The employee does not have to take the whole 52 weeks but they **must** take 2 weeks leave immediately after your baby is born.

### **8.3. Eligibility**

To be eligible for maternity leave, the employee must provide notice by the qualifying week:

- That you are pregnant;
- Of the expected week of childbirth; and
- The date you intend to commence your maternity leave.

Ideally, they should inform their manager as soon as possible that they are pregnant to enable them to carry out a risk assessment for you. He/She may request help to do this from either Occupational Health, or Health and Safety.

The pregnant worker risk assessment for is available on <https://www.derbyshire.gov.uk/site-elements/documents/pdf/working-for-us/employment-policies/health-and-safety/new-and-expectant-mothers-at-work-guidance.pdf>

The manager will need to notify the Shared Services Centre of the employee's intention once the employee provides the maternity leave notice in writing. They will need to provide the Shared Services Centre with the original MATB1 form once this is issued, which will be approximately 20 weeks before the EWC.

Once the SSC have been notified of the employee's intention to take maternity leave, they will respond within 28 days, confirming the date on which they are due to return if they take the full 52 week entitlement to maternity leave.

The employee can change their return to work date but they must provide 8 weeks' notice.

### **8.4. Sickness and maternity leave**

In the unfortunate event of a still birth, the employee is entitled to the full provisions of the maternity leave scheme if this occurs after 24 weeks of pregnancy. If earlier than this, then the Executive Director may grant time off under the provision of the Council's Special Leave Scheme.

### **8.5. Maternity Pay**

Is paid up to a maximum of 39 weeks, dependent upon eligibility for Statutory

Maternity Pay (SMP) and Occupational Maternity Pay (OMP). This comprises:

- 6 weeks at 90% of earnings made up of both OMP and SMP; If the Teacher meets the service requirements they will be paid full pay for the first 4 weeks of the maternity leave and 2 weeks at 90% of Pay
- 12 weeks at half pay OMP plus SMP (provided this does not exceed normal full pay);
- 21 weeks of SMP.

Eligibility for OMP is dependent on being employed in local government service for 52 weeks by the 11<sup>th</sup> week before the expected week of childbirth (i.e. at week 29 of your pregnancy you have been employed for 1 year or more).

The 12 weeks half pay OMP is paid if they are returning to work for at least 3 months and can be spread over a longer period if requested. If they are unsure whether they intend to return to work you can opt to have the half pay frozen and paid to them at a later date.

Eligibility for SMP is dependent upon being employed continuously for at least 26 weeks by the 15<sup>th</sup> week before the expected week of childbirth (week 25) and they must earn, on average at least equal to the lower earnings limit for National Insurance purposes 8 weeks prior to this date (between weeks 17 to 25).

An employee can check their eligibility and find the current statutory rates on the government website GOV.UK.

#### **8.6. Non Qualification for SMP**

If an employee does not qualify for SMP they may be eligible to claim a maternity allowance through Jobcentre Plus for 39 weeks. An SMP1 form will be sent to you confirming the reason why SMP is not payable. The 12 weeks half pay OMP (weeks 7 to 18) will be paid in addition to any maternity allowance paid provided it does not exceed full pay. OMP will be reduced by the maternity allowance for the first 6 weeks

#### **8.7. Childcare Vouchers**

The maternity pay will be reduced if the employee use childcare vouchers during this period. Details relating to childcare vouchers are available through HR. Childcare vouchers offer national insurance and tax deductions from the childcare costs.

From April 2018, new entrants to the childcare voucher scheme are not permitted. Parents already in the scheme will however, be able to remain in the scheme for as long as they require.

The employee may be eligible to participate in the government's tax free childcare scheme instead.

For more information check the government website GOV.UK.

### **8.8. Applying for Maternity Leave**

Following receipt of our notification letter, the employee will receive a written acknowledgment from the Shared Services Centre within 28 weeks, informing them when they are due back at work. They must return the slip from this letter to the Shared Services Centre to confirm maternity pay arrangements during your maternity leave.

### **8.9. Contact during maternity leave / Keeping in Touch days (KIT Days)**

By mutual agreement an employee can work up to 10 days during their maternity leave although they are not obliged to do so.

They will receive payment for the number of hours worked without it affecting their SMP or maternity leave entitlement.

They will remain on maternity leave during this period.

The additional hours worked can be claimed through Workplace, or your usual time recording process, and will be paid at your existing rate of pay. They will only be paid for the time worked i.e. if they attend work for 1 hour this will count as 1 KIT day. They must not work in excess of your standard day.

### **8.10. Returning to work after maternity leave**

An employee can return to work at any time during their maternity leave, provided they give the appropriate notification, which is 8 weeks' notice of the date they intend to return. Alternatively, they can take the full period of maternity leave entitlement and return to work at the end of this period.

They have the right to return to their existing post after taking ordinary maternity leave (up to 26 weeks).

If they also take additional maternity leave they have the right to return to their original job unless this is not reasonably practicable. In that case, they will be offered suitable alternative employment on terms no less favourable than your original post. They have the right to request flexible working. Please see the section on 'Flexible Working Arrangements'.

If they are still breastfeeding when they return to work they will need to notify their manager who will carry out a risk assessment and discuss appropriate arrangements with the employee. If they decide during their maternity leave that they do not want to return to work, they should provide written notice of resignation as soon as possible, and in accordance with the terms of their contract of employment.

## EMPLOYEE'S MATERNITY LEAVE PLAN

1	Name..... Date..... Employee No..... Department.....	
2	I am pregnant and my baby is due in the week beginning (expected week of childbirth): Date.....	Please let us know at least 15 weeks before the expected week of childbirth when you intend to start maternity leave (week 25)
2. (a)	As you requested I have attached the original MATB1 certificate confirming this	We require you to produce an original certificate from your doctor or a midwife giving the expected week of childbirth.
3	I intend to take Ordinary Maternity Leave  <b>Yes/No</b> (delete as appropriate)	Ordinary Maternity Leave lasts for 26 weeks
3 (a)	I also intend to take my full SMP entitlement (39 weeks maternity leave):  <b>Yes/No</b> (delete as appropriate)	Ordinary Maternity Leave lasts for 26 weeks and Additional Maternity Leave lasts for 26 weeks
3 (b)	I also intend to take the full amount of Additional Maternity Leave (52 weeks maternity leave):  <b>Yes/No</b> (delete as appropriate)	<b>Additional Maternity Leave runs from the end of Ordinary Maternity Leave</b>
	Return to work <b>Yes/No/Defer Decision</b> (delete as appropriate)	
<p>In order to qualify for 12 weeks additional half pay employees must return to work for 3 months and have been employed in local government service for 52 weeks by the 11th week before the expected week of childbirth.</p> <p>Please choose 1 from the following options:</p> <p>a) at present I intend to return to work – please pay me my 12 weeks half pay which I will repay if I subsequently do not return to work</p> <p><b>YES/NO</b></p> <p>b) at present I do not intend to return after the birth of my child – please withhold my 12 weeks half pay</p> <p><b>YES/NO</b></p> <p>c) at present I do not know/I do not wish to tell you whether I am returning to work – please retain my 12 weeks half pay which will become payable should I return to work for 3 months or more</p> <p><b>YES/No</b></p>		

**Submit completed plan to your manager with a copy for the shared services Centre at [pay@derbyshire.gov.uk](mailto:pay@derbyshire.gov.uk) who will write to you with details of your entitlement to pay.**



## Letter for Employee taking Maternity Leave

You may use this as a letter to advise the Shared Services Centre that you are pregnant. Notification must be at least 15 weeks before your expected week of childbirth (week 25). You should keep a copy of this letter and give one to your manager.

Dear.....

Name:

Employee Number:

Service:

I am writing to tell you that I am expecting a baby, and the baby is due on.....

At present I intend to take maternity leave from..... and I \*expect/do not expect to return to work after the baby is born. Please send me all relevant information.

If my circumstances change I will let you know.

Yours sincerely,

\*Please delete as appropriate

**Send completed letter to Shared Services Centre at [Pay@Derbyshire.gov.uk](mailto:Pay@Derbyshire.gov.uk)**

## **9. PARENTAL LEAVE**

Eligible employees can take **unpaid** parental leave to look after their child's welfare. To qualify they must:

- Have one year's continuous service **and**
- Be a named parent on the child's birth certificate or adoption certificate or expect to have parental responsibility for a child under 18 years old

**and**

- The purpose of requesting the leave is to care for a child.

### **9.1. Parental Leave Entitlement**

Is 18 weeks unpaid leave (pro rata if part time), to be taken before child's 18<sup>th</sup> birthday. This also applies to adopted children. The maximum leave that can be taken in one year is four weeks, although a longer period may be agreed in exceptional circumstances. The leave does not have to be taken in one period.

Parental leave should be taken in blocks of a week or multiples of a week. It can only be taken in single days if you have specific approval from your manager or if their child is disabled. Time taken as parental leave will be treated as continuous service all contractual terms and benefits will accrue during this period.

The Council may postpone parental leave for up to 3 months for operational purposes and will provide the reasons for the postponement in writing together with the agreed revised commencement and end dates. It cannot be postponed if it immediately follows the birth or adoption or if postponement means the employee would no longer qualify for the leave.

You have the right to return to your existing post.

If the employee falls ill during a period of parental leave and you give the Council relevant notification and documentation you will be entitled to pay under the sickness scheme (where applicable) and this period will not count towards their parental leave entitlement.

### **9.2. Applying For Parental Leave**

Requests should be discussed with the line manager providing at least 21 days' notice of any proposed days of absence, with a copy of the relevant documentation (either the birth certificate or adoption certificate). The employee will need to request time off through Workplace as appropriate. If they do not have access to Workplace they should complete the Parental Leave Application Form submitting the completed form and relevant documentation to the Shared Services Centre. The employee will need to record the time off as appropriate to your working arrangements.

The government website GOV.UK gives more detail and enables an employee to check their eligibility for Parental Leave.

## PARENTAL LEAVE APPLICATION FORM

Name	
Job Title	
Employee Number	
Service	
Child's Name (if known)	
Dates requested (pro rata for part time employees)	
Dates of any previous parental leave taken (current or previous employer)	
The date the baby is due to be born / placed on, OR if the child has been born / placed, the actual date of birth / placement	
I am named on the child's birth certificate, OR I have, or expect to have, parental responsibility OR I am an adoptive parent, foster parent or a spouse or partner of any of the above who is living with the child	YES/NO*
<b>PENSIONS</b>	I have Sought Guidance from Teachers Pensions in relation to the implications of a period of unpaid on my Teachers Pension
The purpose in requesting leave is to care for the child or make arrangements for the child's welfare	YES/NO*
<b>Pension</b>	
Employee's Signature	
Date	
Head of Service Approved / Not Approved* (*delete as appropriate)	
Signature	
Date	

**Please enclose relevant documentation, either a copy of the birth certificate or adoption certificate and send completed form to Shared Services Centre at [Pay@Derbyshire.gov.uk](mailto:Pay@Derbyshire.gov.uk)**

## **10. SHARED PARENTAL LEAVE**

### **10.1. Overview**

An entitlement to Shared Parental Leave (SPL) and Shared Parental Pay (ShPP) is available and replaces Additional Paternity Leave and Pay which was previously available to fathers.

SPL enables mothers to end their maternity leave and pay early and to share the untaken balance of leave and pay as SPL with their partner. SPL is designed to allow couples greater freedom to decide how to take their leave and is also available to adoptive parents. The partner does not have to be employed by the Council to partake in this scheme.

SPL must be taken in blocks of at least one week. Individuals can request to take SPL in one continuous block (in which case an employer is required to accept your request provided that you meet the eligibility and notice requirements), or as a number of discontinuous blocks of leave (in which case the employee will need your employers agreement). Each parent can make up to three separate requests.

An employee can choose how much SPL each of you will take, and they can take it at the same time or separately. Shared Parental Leave and Statutory Shared Parental Pay must be taken between the baby's birth and first birthday (or within 1 year of adoption).

### **10.2 Eligibility and Entitlement**

To be able to take SPL, both the employee and their partner must have at least 26 weeks' continuous employment with their employer by the 15th week before the expected week of childbirth and remain in employment with that employer until the week before any period of shared parental leave they are planning.

The employee must supply notices to the Council and their partner must supply notices to their employer. These are made up of three elements:

- A 'leave curtailment notice' from the mother setting out when she proposes to end her maternity leave;
- A 'notice of entitlement and intention' from the mother or partner giving an initial (non-binding) indication of each period of SPL that he/she is requesting;
- A 'period of leave notice' setting out the start and end dates of each period of SPL being requested.

### **10.3 Statutory Shared Parental Pay**

An employee can get ShPP if one of the following applies:

- They qualify for Statutory Maternity Pay or Statutory Adoption Pay
- They qualify for Statutory Paternity Pay and have a partner who qualifies for Statutory Maternity Pay or Maternity Allowance or Statutory Adoption Pay

If an employee thinks they may be interested in Shared Parental Leave, they should discuss this in the first instance with their manager.

For more details about SPL and ShPP please see the guidance on the government website GOV.UK. This provides details of the notices that are required as well as templates of letters that can be used to apply. An employee can check whether they and their partner are eligible for SPL and ShPP.

Alternatively, they can contact HR Shared Services Centre, adjustments team who will be able to provide further advice.

## **11. PARENTAL BEREAVEMENT LEAVE**

The Parental Bereavement (Leave and Pay) Act 2018, provides an entitlement for bereaved parents of a child to be absent from work for up to two weeks.

### **Entitlement to Parental Bereavement Leave**

Employees who are primary carers for a deceased child under the age of 18 are entitled to parental bereavement leave. This is a day one right i.e. there is no service requirement for parental bereavement leave.

This entitlement is available to any employee with parental responsibility for the child, for example:

- Birth parent
- Adoptive parent;
- Legal guardian;
- Current foster parents (not short term) – *(will need some rewording but awaiting regulation/guidance).*

This entitlement also applies to those parents who suffer a still birth 24 weeks or more into pregnancy, although it does not affect a woman's maternity leave entitlement which would be taken prior to any parental bereavement leave.

Bereaved parents will be able to take the leave as one block of two weeks or two blocks of one week. The leave may be taken up to 56 weeks following the death of the child.

This entitlement does not affect other leave entitlements as it is an additional entitlement.

### **Notice period**

There is no notice period required for leave taken immediately following the bereavement. There is no requirement to provide evidence as informal notification will suffice, although at some point employees will be required to provide a written declaration that they are entitled to parental bereavement leave / pay. Managers should contact HR for advice prior to contacting the employee.

Specifically, employees are **not** required to provide either a copy of the death certificate or medical evidence.

For leave taken after the initial bereavement, one weeks' notice will be required.

## **Parental Bereavement Pay**

Parental Bereavement Pay is payable for a maximum of two weeks, at full basic pay, regardless of service and earnings.

## **12. PATERNITY LEAVE**

Paternity leave and pay is available for employees whose partner is having a baby, adopting a child, or having a child through a surrogacy arrangement.

### **12.1 Eligibility for Ordinary Paternity Leave (OPL)**

To qualify for paternity leave:

- Have or expect to have responsibility for the child's upbringing; **and**
- Be the biological father of the child OR the mother's husband / partner
- Have worked for us continuously for 26 weeks ending with the 15th week before
- the baby is due, or the end of the week in which the child's adopted is notified of being matched with a child, or the date the child enters the Great Britain (overseas adoptions).

### **12.2 Ordinary Paternity Leave**

An employee is entitled to:

- 5 half days with pay to accompany your partner to antenatal appointments (e.g. relaxation classes, exercise and parent craft classes, medical appointments). These examples are not exhaustive.
- 10 days leave with contractual pay (pro rata for part time employees). This is regardless of the number of children born as the result of the same pregnancy.

All days must be taken within 8 weeks of the date of birth (or if the baby is born early within the period from the actual date of birth up to 8 weeks after the first day of the expected week of birth) or within the placement date for adoptive parents.

The employee does not have to give a precise date when they want to take leave. Instead they can give the general time (e.g. from the day after the birth or from one week after the birth).

The employee has the right to return to their existing post.

An employee can take your paternity leave in blocks of one week or as individual days spread throughout the 8 week period. Taking leave in blocks of one week enables the Council to reclaim some of the costs. If they take their leave in this way they should therefore record it as 'Paternity Leave – Full Week'.

If an employee prefers to take your paternity leave as individual days, they should record it as 'Paternity Leave – In Days'.

### **12.3 Applying For Paternity Leave**

The employee should notify your manager of the proposed dates of absence in writing prior to the 15th week (week 25) before the expected week of childbirth or as soon as is reasonably practicable and complete your time recording on Workplace as appropriate. If they do not have access to Workplace they should complete the Paternity Leave Application Form below and submit the completed form to the Shared Services Centre.

The employee does not have to provide evidence of pregnancy or birth but must provide notice in writing. They can use form SC3 on the gov.uk website, and forward it to the Shared Services centre to help them with this.

In the case of adoptive parents, a copy of the matching certificate should be provided in order to qualify for paternity pay. The employee must also provide notice in writing and they can use form SC4 or SC5 on the gov.uk website, and forward it to the Shared Services Centre to help with this.

If they change their mind about the date on which they want their leave to start they should inform their manager at least 6 weeks in advance (unless it is not reasonably practicable to do so).

### **12.4 Statutory Paternity Pay**

To qualify for Statutory Paternity Pay an employee must meet the eligibility conditions for OPL as stated above. In addition they must have average weekly earnings of at least the lower earnings limit for NI purposes over the 8 week period ending with the 15th week before the EWC (or matching date in the case of adoption).

See the government website GOV.UK for more details on paternity leave and pay.

## PATERNITY LEAVE APPLICATION FORM

Name	
Job Title	
Employee Number	
Service	
Dates requested	
The date the baby is due to be born / placed on / OR if the child has been born / placed, the actual date of birth / placement	
I confirm that I expect to have responsibility for the child's upbringing and the purpose of requesting leave is to care for the child	YES/NO* (please delete)
Employee's Signature	
Date	
Head of Service Approved/Not Approved* (* delete as appropriate)	
Signature	
Date	

- Please enclose form SC3, SC4, or SC5 and in the case of adoptive parents the matching certificate.
- If the dates change please inform your manager/Shared Services Centre as soon as possible.

Send completed forms to Shared Services Centre at [Pay@Derbyshire.gov.uk](mailto:Pay@Derbyshire.gov.uk)



### **13. ADVERSE WEATHER**

(This is covered in the DCC Adverse Weather Policy document).

### **14. SICK LEAVE**

Information relating to sick leave and pay can be found in the Management of Sickness Absence policy, in the Burgundy Book for Teachers.

### **15. TIME OFF IN LIEU (TOIL)**

Where it is mutually suitable and agreeable, TOIL may be available for some employees. TOIL is time off for additional hours not “payment for”. TOIL is subject to the Head of Service or Line Manager’s approval on an hour-for-hour basis and with the agreement of the employee. i.e. there is no Enhancement reference should be made to the relevant section of the STPCD.

A specific policy relating to the accrual of TOIL is in development and this guidance will be updated when this is available.

### **16. DISCRETIONARY LEAVE OF ABSENCE**

#### **16.1 Leave of Absence with Pay**

The types of leave of absence outlined below provide details of the circumstances where it is considered reasonable for the Local Authority to grant leave of absence with pay. It is the responsibility of the Head of Service to ensure that the number and pattern of absences do not individually or collectively adversely affect the smooth-running of the Service.

For the purposes of leave of absence, with or without pay, the definition of a near relative will be relationships outlined in the kinship regulations i.e. father, mother, step-father, step-mother, husband, wife, civil partner, son, daughter, step-son, step-daughter, adopted son or daughter, sister, brother, father-in-law, mother-in-law, brother-in-law, sister-in-law. In addition, there are occasions when, despite the lack of a direct family relationship, it is clear that the member of staff concerned should be regarded as a near relative. Thus, the term “near relative” shall include any other person with whom the member of staff has a close personal relationship which, in the opinion of governors or managers, justifies leave of absence with pay.

It should be remembered that all requests for leave are at the discretion of the service and where the Head of Service considers that a request is not reasonable in all the circumstances, it should be declined. The Head of Service should not hesitate to contact HR for advice if they have any reservations as to the reasonableness of any requests.

Any member of staff, regardless of their working pattern, may find it necessary to apply for leave of absence (paid or unpaid). Each individual case must be considered on its own contributory factors. A high level of consistency is important when reaching a decision if staff are to be treated equitably.

As the agreements for leave of absence with pay cover most contingencies, it is not expected that Heads of Service will have to consider many requests of leave of absence without pay.

## **16.2 Types of discretionary leave**

When requesting leave of absence members of staff should only apply for the amount of time they genuinely need, bearing in mind the effect on pupils, colleagues and the organisation. The list below is neither prescriptive nor comprehensive. A sympathetic consideration of requests for leave of absence on compassionate grounds, and where staff are not in a position to control or influence the timing of important activities, should be taken. Circumstances should be considered on their own contributory factors and in the context of maintaining effective and efficient smooth running of the service.

The table below outlines examples of leave of absence that are discretionary and should not be seen as an entitlement. Should a staff member experience more than one such situation, the potential durations of leave to be granted exemplified below are not cumulative but are per event.

Reason for absence	Period of absence	Paid/unpaid
<b>Category 1</b> – Bereavement/Serious illness		
Death of immediate family i.e. mother, father, husband, wife, partner, civil partner, son, daughter, brother, sister, grandparent, or grandchild.	Up to 5 days (including the day of the funeral) As a principle: Up to 2 days including the day of the funeral (½ or 1 day where only attendance at a funeral is required) 3 days for funeral arrangements and attendance 5 days for funeral arrangements, attendance at a funeral and dealing with affairs of deceased.	Paid
Death of an aunt, uncle, nephew, niece, cousin, mother-in-law, father-in-law, sister-in-law, brother-in-law, spouse's/partner's close relative	Up to 2 days including the day of the funeral (½ or 1 day where only attendance at a local funeral is required)	Paid
Appointment as Executor of the will/arrangements	5 days maximum (not in addition to the above)	Paid
Serious illness of near relative *	Up to 5 days	Paid

**Where the leave of absence is granted in relation to activities beyond attendance at the funeral the days authorised may not necessarily be continuous.**

\* 'Serious illness of near relative' – examples could be a life threatening, life changing, terminal illness, or serious accident. This list is neither prescriptive nor comprehensive. As above, a sympathetic consideration of requests for these types of leave of absence should be taken. Circumstances should be considered on their own contributory factors and in the context of maintaining effective and efficient smooth running of the service

<b>Category 2 - Medical</b>			
Ante-natal care appointments			Paid
Medical appointment or screening <u>where the time or the appointment cannot be chosen to fall out of working hours</u>			Paid
IVF treatment – any medical appointments related to IVF, see above re hospital appointments. Where treatment causes illness, refer to management of absence procedure.			Paid
Emergency dental/medical appointments		Max 1 day	Paid

Routine dental appointments to be made outside of working hours. Routine medical appointments should be made outside of working hours but exceptionally, where particular circumstances prevail (arising either from the condition concerned or the nature of the medical service) consideration will be given to granting paid leave of absence. Where the employee is unsure whether the nature of their appointment would be classified as routine, they should discuss this with the Head of Service. The Head of Service is advised to consult HR

Managers should also consult the DCC Managers Guidance “Time off for Medical Appointments”

**FOR CATEGORY 3 DISCRETIONARY LEAVE OF ABSENCE REQUESTS, UP TO A MAXIMUM OF 5 DAYS INCLUSIVE (NOT PER EXAMPLE), IN AN ACADEMIC YEAR, IS THE NORMAL EXPECTATION, FOR ALL EXAMPLES LISTED BELOW.**  
*(See below “Requests for Leave of Absence” paragraph for details of how to request leave of absence, consideration of circumstances outside of the norm and right of appeal.)*

<b>Category 3 – personal &amp; domestic considerations</b>	For all of the examples below, an initial allowance of up to 1 day's paid leave per incident may be granted by the Head of Service. This may be extended to 2 days where it is clear to the Head of Service that particular circumstances require this. Where the nature of the event determines that the staff member needs to request further leave of absence, a case should be submitted to the Executive Director, Childrens Services	
Urgent, personal & domestic e.g. property damage due to fire, flood, storm, impact, subsidence or burglary.		Paid
To attend to the care of a dependant where no other care is immediately available and to make arrangements for alternative care.		Paid
	<b>Applications for Leave of Absence, where the event is known in advance should be submitted to the Head of Service as far in advance as possible. This would apply to the examples below. Any leave granted will be based on the particular event and impact on the Service</b>	
Some foreseen events e.g. hospital appointment or planned operation for a child or partner, pre-adoption leave (see Maternity, Paternity, Parental & Fostering leave scheme)		Paid
Attendance at meetings or associated activities of examining bodies where these are not already funded by the Local Authority		Paid
Interviews in connection with an application for another post.		Paid
Attendance at any court as a witness		Paid
Attendance at ceremonies such as graduation, Duke of Edinburgh's award,		Paid

presentations, investitures etc. where the individual employee or a near relative is involved.		
Sitting examinations to improve qualifications which are not requirements of your service role but could be useful for the role.		Paid
Training and associated activities with any branch of HM Forces		Paid
Participating in County, Regional, National or International sporting or cultural event.		Paid
Attendance at conferences or training courses organised by an approved educational body.		Paid
Absence from last day of Spring term until 30 April (retiring teachers only)		Paid
Moving house	1 day	Paid
Weddings of near relatives	1 day - Closeness of relative/relationship and location of wedding to be taken into consideration	Paid

### 16.3 Requests for Leave of Absence

Applications should be submitted to the Head of Service on the form provided and he/she may have the authority to agree those that fall within the guidelines above or refuse those which fall outside. Particularly in the case of urgent, unforeseen requests the Head of Service should have the ability to make a decision, although this may be in consultation with the Executive Director, Childrens Services, where discretion in the application of the policy is required.

The employee will state whether leave is sought with or without pay. Throughout, the Head of Service or Executive Director's, response will make clear their decision both in relation to the leave requested and to pay.

For applications:-

- related to one event, which require a decision beyond that which the Head of Service can determine (as outlined in the table above) or
- for Leave of Absence when the normal cumulative total of days leave in Category 3 has already been utilised, the case outlining the reasons and circumstances must be submitted in writing to the Executive Director, Childrens Services Where the nature of the event is urgent and unplanned then the Head of Service is empowered to initially grant unpaid Leave of Absence, beyond the

2 days paid leave which is at their discretion, and the employee's request for the leave to be paid can subsequently be considered by the Executive Director, Childrens Services. The Head of Service may consult with the Executive Director, Children's Services in deciding whether to grant the unpaid leave.

Where the Head of Service does not authorise leave of absence that is within their remit, reasons should be given. If the employee wishes to challenge the decision, they should first request a meeting with the Head of Service in order to make representations. At this meeting the employee should state the reasons why they believe their leave should be approved. The employee may be represented by their trade union/professional association or other representative.

Where the Head of Service continues to refuse the request, the employee may appeal to. Executive Director, Childrens Services. If the employee wishes to appeal they must notify the Executive Director, Childrens Service in writing within 5 term-time working days of receiving the response to their application for leave of absence. The Executive Director, Childrens Service or their representative will liaise to arrange the meeting. There will be a minimum of 10 days' notice of the appeal meeting date. The application for leave, the Head of Service's reasons for refusal and any additional factors the employee wishes to submit should be provided to all parties 5 working days before the meeting.

The employee may choose to present their case to the committee in person and may be accompanied by their representative. In such circumstances the Head of Service will also attend the meeting to explain their decision and answer questions.

If the employee does not wish to present their case in person the Executive Director, Childrens Services can consider the request on the basis of the written submissions. The Executive Director Childrens Service's decision will be final and communicated to the employee as soon as possible and confirmed in writing within 5 term-time working days.

Where the employee's request for leave has **first** been considered by the Executive Director (because it fell beyond the Head of Services remit) and has not been agreed, then there is a right of appeal to a member of the Senior Leadership Team from another department. The arrangements and employee entitlements will follow the same pattern as outlined above for appeals to Executive Director, Childrens Services.

#### **16.4 Leave of Absence without Pay**

Requests for leave of absence without pay shall be determined by The Executive Director, Childrens Services.

In considering such requests, The Executive Director, Childrens Services will wish to take into account the nature of the request and the effect on the effective and efficient smooth running of the Service.

Leave of absence without pay should not normally be granted to enable employees to pursue private interests, or to extend periods of holiday.

As well as submitting requests for leave which is all unpaid, employees can request unpaid leave, to follow a period of paid leave of absence, to be authorised. The Executive Director, Childrens Services may wish to grant additional unpaid leave following a period of paid leave granted for an urgent personal or domestic situation, which is ongoing.

Reasonable consideration should be given for requests for unpaid leave to undertake religious observance.

Employees should be made aware that where a leave of absence (with or without pay) request has not been authorised and the employee decides to take the leave, this will be classed as unauthorised leave of absence and subject to disciplinary action.



## DISCRETIONARY LEAVE APPLICATION FORM

Name	
Job Title	
Part-Time FTE ( e.g. 0.5 FTE)	
Employee Number	
Date(s) requested (paid) (pro rata entitlement for part time employees)	
Date(s) requested (unpaid) (pro rata entitlement for part time employees)	
Date(s) of any previous special leave taken within 12 months *	
Reason for the request (please provide full details to enable your request to be fully considered by your manager)	
Employee's Signature	
Date	
Approved/Not Approved* (*delete as appropriate) Please include reasons for the decision.	Approved/Not Approved*
Head of Service	
Signature	
Date	

\*This information can be provided by your line manager on request.

## **17. FLEXIBLE WORKING**

The Local Authority seeks to support any employee who wishes to work flexibly but this has to be balanced against the needs of the Organisation. Employees wishing to work flexibly should initially discuss their request with the Head of Service /line manager.

Every employee has a statutory right to ask to work flexibly after 26 weeks continuous service (6 months). Employees making a request in relation to a reasonable adjustment under the Equality Act 2010, due to one or more of the protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation) should state this on the form.

In normal circumstances, requests for flexible working should be submitted 3 months before employees would like the change to be implemented.

Each request will be considered on an individual basis. In considering the request the Head of Service/line manager will need to weigh up the benefits to the employee and the service against any adverse business impact of implementing the proposed changes.

The consideration process should be completed within 3 months of receipt of the application but this time limit can be extended if the employee agrees.

Employees can only apply once under the statutory process for flexible working during a twelve month period.

Please see below a list of examples where flexible working might apply. Please note, this list is neither prescriptive nor exhaustive:

An employee who is returning from maternity, paternity, adoption, shared parental leave who is seeking to return part time due to childcare arrangements.

An employee who may welcome a decrease in their professional responsibilities or workload because of the increased burden of responsibility for a dependent relative or other domestic commitment.

An employee who has had a break from working, for whatever reason, and wishes to return to work but wants to do so on a part time basis.

An employee who wishes to pursue a part time study course alongside their job.

An employee who is nearing retirement and wishes to reduce their hours before they finally finish work.

### **17.1 Applying to Work Flexibly (see Application Form)**

Employees should initially discuss their request with their line manager/ Head of Service. Following this discussion, they will need to formally submit this in writing to their line manager.

All applications for flexible working will be dealt with as follows:

The line manager/ Head of Service will arrange to discuss the application with the employee as soon as is reasonably practicable. If a meeting is required this will take place within 28 days of receipt of the written request and the employee will have the right to be accompanied by a work colleague or trade union representative. If the employee fails to attend the meeting or a rearranged meeting, their line manager/Headteacher can consider their request as being withdrawn.

The line manager/Head of Service will inform the employee in writing regarding the decision reached within 7 days of the discussion/meeting. If the request is accepted, or accepted with modifications, the line manager/Head of Service will discuss with the employee any required modifications and how and when the changes might best be implemented.

If the decision reached has been to refuse the application, the reasons for the decision will be given to the employee in writing and they will have the right of appeal.

If the application to work flexibly is turned down it could be due to one or more of the following reasons:

- Burden of additional costs
- Detrimental effect to service delivery
- Inability to re-organise work amongst existing employees
- Inability to recruit additional employees
- Detrimental effect on quality
- Detrimental effect on performance
- Insufficiency of work during the periods the employees proposes to work
- Planned structural changes

If the employee wishes to challenge the decision, they should first request a meeting with the Head of Service in order to make representations. At this meeting they should state the reasons why they believe their flexible working request should be approved. The employee may be represented by their trade union/professional association or other representative.

If the employee wishes to appeal against the decision they should write to the Executive Director, which must be registered in a letter to the Director of Organisational Development & Policy within 5 days of receiving the notification that the application has been refused. The employee will receive a reply within 5 days, acknowledging the registering of their appeal which will take place as soon as practicable. There will be a minimum of 10 days' notice of the appeal meeting date.

Appeals will be heard by the Executive Director, Childrens Services or a member of their Senior Management Team, normally from a different Department if the Executive Director, Childrens Service refused the application.

The employee may choose to present their case to the Hearing Officer in person and may be accompanied by their representative. In such circumstances the Head of Service will also attend the meeting to explain their decision and answer questions

If the employee does not wish to present their case in person Hearing Officer can consider the request on the basis of the written submissions. The Hearing Officers will be final and communicated to the employee as soon as possible and confirmed in writing within 5 working days.

If the employee states their intention to present their appeal in person but fails to attend the appeal hearing or rearranged appeal, their request will be considered withdrawn.

## **17.2 Flexible Working Options**

- **Part Time Working**

The employee's hours of work are less than full time

- **Compressed Working Weeks/Fortnights**

This form of flexible working follows similar principles to annualised hours, in that the employee's contracted hours still have to be worked, but they are worked over a shorter time period e.g. 4 days per week or 9 days per fortnight. The remaining day would therefore be a non-working day.

### **WORKING FLEXIBLY APPLICATION FORM**

Name	
Job Title	
Employee Number	
Part-time FTE /location and pattern of work	
New part-time FTE/location and pattern of work applied for	
Date you require your new FTE/location to start	
Reason for the Request (if applicable, include any reasonable adjustments relating to the Equality Act 2010)	
Have you previously applied to work flexibly	<p>Yes/No*</p> <p>If Yes please state the date (you can only make one statutory application in any 12 month period)</p>
I think this change in my working pattern will affect the Service and my colleagues as follows	
I think the effect on the Service and my colleagues can be dealt with as follows	
If approved, your manager must inform the Shared Services Centre to enable them to make the relevant change to your record.	
Employee's Signature	
Date	
Manager Approved/Not Approved* (*delete as appropriate)	
Signature	
Date	

## **18. CAREER BREAK SCHEME (UNPAID LEAVE)**

The Career Break Scheme provides an opportunity for employees to have an extended period away from work.

If an employee wishes to apply for a career break they would need to discuss this request with their line manager/Head of Service. They would also need to complete the Career Break Application Form. The completed form would then need submitting to the Head of Service. The Head of Service may consult with the Executive Director, Childrens Services before reaching a decision. Where possible, applications for a planned career break should be made at least 3 months before the proposed start date.

The Executive Director, Childrens Services will retain discretion over the granting of a career break, however, it will normally be taken for such activities as:

- Caring responsibilities
- Extended foreign travel
- Personal development - education or training
- Voluntary/community work

A career break will NOT be granted for employees:

- To take up other paid employment.
- Where a temporary or permanent reduction in contractual hours would be more appropriate
- Where other time off provisions apply e.g. time off to undertake public duties

Heads of Service should consider before granting a career break:

- The possible effects on service delivery and team workloads.
- Any anticipated difficulties in the cost effective temporary replacement for the period of the career break.

If the employee wishes to challenge the decision, they should first request a meeting with the Head of Service in order to make representations. At this meeting they should state the reasons why they believe their request for a career break should be approved. The employee may be accompanied by their trade union/professional association or other representative.

If the employee wishes to appeal against the Head of Service's decision they should write to the Executive Director, Childrens Services within 5 days of receiving the notification that the application has been refused. The employee will receive a reply within 5 days, acknowledging the registering of their appeal which will take place as soon as practicable. There will be a minimum of 10 days' notice of the appeal meeting date.

The employee may choose to present their case to Executive Director, Childrens Services in person and may be accompanied by their representative. In such

circumstances the Head of Service will also attend the meeting to explain their decision and answer questions.

If the employee does not wish to present their case in person the committee can consider the request on the basis of the written submissions. The Executive Director, Childrens Services decision will be final and communicated to the employee as soon as possible and confirmed in writing within 5 working days.

If the employee states their intention to present their appeal in person but fails to attend the appeal hearing or rearranged appeal, in normal circumstances their request will be considered withdrawn.

### **18.1 During the Career Break**

- The maximum duration of a career break will be 12 months.
- Depending on individual circumstances, the employee may be invited to attend regular 'keeping in touch' meetings and should plan regular contact with their manager.

### **18.2 Following the Career Break**

- When the employee returns to work the manager will ensure they are suitably inducted back into the workplace and developments and changes that have occurred during the period of absence will be discussed with them.
- An employee has a right to return to their job following an extended career break.

### **18.3 Conditions for Career Break Scheme**

During any period of absence when on a career break, employees should be advised to consider the impact on their pensions, Statutory Sick Pay, Statutory Maternity, Statutory Adoption or Statutory Shared Parental Pay, National Insurance related benefits, annual leave entitlement (If applicable), statutory holidays and qualification training. An employee's continuous service will be maintained throughout the career break. For further information on how a career break may affect any of the above, the employee should contact HR.

## CAREER BREAK (UNPAID LEAVE) APPLICATION FORM

Name	
Job Title	
Full-time/ Part-time FTE	
Employee Number	
Service	
Grade (Pay Point)	
Requested Dates for Career Break: Number of days requested shown as <ul style="list-style-type: none"> <li>• Days</li> <li>• Hours and Minutes</li> </ul>	
<b>Pensions</b> – I have Sought Guidance from Teachers Pensions in relation to the implications of a period of unpaid on my Teachers Pension.	
I have read and agree to the conditions relating to the scheme.  Employee's Signature:  Date:	
<b>To be Completed by Head of Service</b>	
Application Approved/Not Approved*  Reason for Decision (if application refused)  Signature:  Date:	
For Shared Services Centre completion - Details of deductions:	Confirmed number of hours/minutes to be deducted:



## **Guidance on the arrangement of formal meetings with staff involving Union/Professional Association representatives**

The arrangement of a formal meeting with a member of staff is a fairly occasional event in most services. This will particularly be the case in small services.

Such meetings are likely to be in connection with one of the Human Resources policies, e.g. Disciplinary Policy, Absence Management, Competence Procedure. When the need arises to meet with a member of staff in connection with such processes or to arrange a hearing, there is an entitlement for him/her to be accompanied by a chosen representative. This representative will usually be from one of the trade unions or teachers' professional associations.

Senior Leaders are advised to ask for the name/organisation of the representative, where possible, and make contact to ascertain their availability before setting dates and times. It can be very unsettling and disruptive to relationships, at an already difficult time, when a date is set and then has to be postponed owing to the unavailability of the representative:-

The legal position is as follows (The Employment Relations Act 1999 Section 10, paragraph 4)

“If:

- (a) a worker has a right under this section to be accompanied at a hearing,
- (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
- (c) the worker proposes an alternative time which satisfies subsection (5),

the employer must postpone the hearing to the time proposed by the worker.

5 An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer”.

Unions/associations are likely to quote this when they are presented with a date they cannot accommodate. The service will have no choice, at this point, but to make new arrangements. This can cause considerable inconvenience for everyone concerned. A further difficulty is likely to be caused because the legal requirement calls for the representative to set a new date, within 5 days, and this will probably not be convenient for other people involved.

It is best to try and avoid a difficult period where parties struggle to set a mutually suitable date, colleagues (and sometimes pupils) in service may suffer because of the delay and resentment may develop.

Service leaders need to consider the perspective of the employee and their representative. Most employees would not expect to be called to a formal meeting,

or any other management process, outside of working hours. The representatives themselves are sometimes employees of the union/association, who have scheduled working time, and branch officials are allocated particular times away from their 'day job' for their union duties. They may struggle to obtain release at other times.

It has been possible, on occasions, to arrange such hearings/meetings in the evenings but Heads of Service should expect to be challenged if making such arrangements. If at all possible, meetings in working hours are also preferable because the participants are more likely to be able to contribute effectively, than at the end of the day.

When informed that a representative cannot attend a meeting and a considerable number of other stakeholders have been assembled (Heads of Service, witnesses, HR Consultant, minute taker), Heads of Service have sometimes challenged the union to send a different representative to facilitate the process and save the impact of further delay on the employee. This is not easy for some associations to accommodate. They may have an agreement where only an individual union representative is authorised to receive the details of the case and to act on the member's behalf.

Heads of Service are advised to take these factors into consideration, in order to enable arrangements to be made in co-operative fashion. Alongside this guidance there has also been correspondence to the unions/associations seeking a similarly collaborative approach from their representatives. For instance, in recognising the requirement to co-operate with the process and offer a reasonable number of possible dates when meetings are needed. We reminded the association that just asserting their rights can foster a defensive response.

The need for formal meetings invariably means that there are challenging situations to manage, not just with the employee concerned but also possibly colleagues and the wider service. The 'tone' of all actions in connection with progressing the issue of concern will play a large part in minimising disruption, negative relationships and the ability to re-establish normal working practice afterwards.

Heads of Service may wish to contact the HR Service, if they are having difficulty in working with the unions on these matters.

**DERBYSHIRE COUNTY COUNCIL****APPOINTMENTS AND CONDITIONS OF SERVICE  
COMMITTEE****7 February 2020****Report of the  
Director of Organisation Development and Policy****UPDATED APPRAISAL POLICY & COMPETENCE PROCEDURES FOR  
CENTRALLY EMPLOYED TEACHERS****1. Purpose of the Report**

To seek approval for the adoption of a revised appraisal policy and revised competence procedures for teachers employed by the Local Authority and not attached to Schools that reflect the delegations outlined in the revised Derbyshire County Council Constitution.

**2. Background Information**

The Education (School Teachers' Appraisal) [England] Regulations 2012 requires the Local Authority to adopt an appraisal policy which sets out the appraisal for teachers employed by the Local Authority and not attached to Schools. The regulations that govern teachers' appraisal procedures also incorporate an initial framework for dealing with underperformance prior to invoking the formal competence procedures.

The revised Appraisal Policy and Competence Procedures are intended to be utilised in the management of teachers employed by the Council in the education support services.

The support services are:-

Behaviour Support Service  
Out of School Tuition Service  
Support Services for Sensory and Physical Impairment  
Support Service for children with Special Educational Needs (SSSEN)  
Early Years SEN Support Service  
Virtual School  
Music Partnership

**3. Summary of proposals**

It is proposed to update the Appraisal Policy and the Competence Procedures for teachers employed by the Local Authority and not attached to Schools as follows:

Appraisal Policy:

- As the policy has not be updated since 2014 general updating has been undertaken to update terminology and formatting where required
- Procedures for making and scrutinising pay progression decisions based on performance appraisal have been amended to reflect the revised delegations outlined in the new Constitution
- Changes have been made to reflect the revised responsibilities of individuals who have a role in the pay progression process including their role in the decision making and scrutiny and in the management and operation of the appeals process. This is to reflect the revised delegations as outlined in the new Constitution.

#### Competence Procedures:

- As the policy has not be updated since 2017 general updating has been undertaken to update terminology and formatting where required
- Changes have been made to reflect the revised responsibilities of individuals who have a role in the competence procedures. This include responsibilities at the decision making meeting and the appeals process. This is to reflect the revised delegations as outlined in the new Constitution.

#### **4. Legal Considerations**

Formal consultation has taken place with the recognised trade unions and professional associations representing teachers, with regard to the proposed Teacher Appraisal Policy and Competence Procedures, at Schools' Joint Consultative Committee. Collective agreement has been reached on the policies as they match the model policies already offered to the Governing Boards of schools for adoption.

In additional to the requirements outlined in the Education (School Teachers' Appraisal) [England] Regulations 2012 the appraisal policy also incorporates the framework given in the DfE model policy 'Teacher Appraisal and Capability', the provisions outlined in School Teachers' Pay and Conditions Document and accompanying statutory guidance, which impose various duties on the Local Authority in relation to the determination of teachers' pay for those teachers employed by the Local Authority and not attached to schools.

The Competence Procedures provide a fair and clear way of addressing concerns about teacher competence with an emphasis on enabling teachers to develop professionally and deliver expected levels of performance, as described in the national Teachers' Standards 2012.

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Local authorities must abide by all of the above statutory requirements and must have regard to the guidance issued, as a court or tribunal may take any failure to do so into account in any legal proceedings.

## **5. Financial Considerations**

The costs of any performance pay progression as referenced in the Appraisal Policy will be met by the individual support services existing budgets. Pay progression must be awarded to eligible teachers, unless their performance has not met the relevant criteria.

No specific financial implications have been identified as likely to arise as a consequence of the adoption of a specific procedure to deal with teacher competence.

## **6. Legal and Human Rights Considerations**

The proposed Teacher Appraisal Policy and Competence Procedures incorporate the framework given in the DfE model policy 'Teacher Appraisal and Capability' and the relevant provisions of the Education (School Teachers' Appraisal) [England] Regulations 2012.

The individual pay progression making decisions and scrutiny are compliant with the relevant provisions of anti-discrimination legislation contained in the Employment Relations Act 1999, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. It is also consistent with the principles of public life – objectivity, openness and accountability.

## **7. Other Considerations**

This report does not involve the commissioning or procurement of services or goods so it is not possible to reference the consideration of social value in such a context. However, the economic and social well-being of the stakeholders, including vulnerable young people in a variety of guises served by the teachers will benefit by the implementation of the pay progression methodology, and a robust approach to addressing any concerns about a teacher's performance that is pro-active, supportive and promotes the maintenance of appropriate professional standards. Stakeholders should also benefit from the positive effect on recruitment and retention of the teachers employed in these services within the Council as a consequence of the Council adopting a fair and equitable approach to the management of teachers' performance and pay within a climate of good staff relations.

In preparing this report the relevance of the following factors has been considered: prevention of crime & disorder, equality of opportunity, environmental, health, property, social value and transport considerations.

## **8. Officer's Recommendation**

1. To approve the adoption of the revised Appraisal Policy for Teachers Employed by the Local Authority and not attached to Schools. This policy includes the methodology and scrutiny of managing pay progression for teachers based on their annual performance review as required by the STPCD.

2. To approve the adoption of the revised Competence Procedures for Teachers Employed by the Local Authority and not attached to Schools. The procedure includes the process to be followed should action to dismiss a teacher on the grounds of lack of competence be necessary.

**Emma Crapper**  
**Director of Organisation Development and Policy**

**PUBLIC**

# **DERBYSHIRE COUNTY COUNCIL**

## **APPRAISAL POLICY FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS**



**February 2020**

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## **FOREWORD**

The attached Appraisal Policy has been the subject of full consideration and negotiation with the recognised unions and professional associations, representing teachers and headteachers, at Schools Joint Consultative Committee (SJCC).

The Local Authority will ensure that relevant staff are fully conversant with the document. In particular, appraisers will be clear of their responsibilities and appraisees will understand the implications for them.

### **Classroom Observation Protocol**

Within this policy is an attached classroom observation protocol which defines the maximum number of observations as 3 per year and each visit limited to one hour in duration. The regulations provide for heads of service to conduct an undefined number of observations, relative to the context of the service and the teacher's circumstances. Account has been taken of feedback that the limit of 3 observations was generally sufficient for appraisal purposes and linked quality assurance processes. This pattern was adopted under the previous regulations and found to be fit for purpose.

### **Teachers Experiencing Difficulty**

The policy makes provision for additional observations to be arranged where there is cause for concern regarding a teacher's practice. Thus, the policy does not constrain schools from addressing issues of performance and, with the addition of the Appendix, 'Teachers Experiencing Difficulty – Advice on Informal Structured Support and Monitoring', it provides a framework and additional guidance for heads of service tackling concerns about teachers' practice. Both the Teachers Experiencing Difficulties process within Appraisal and the Competence Procedures should only be used in cases of genuine, evidence based inadequacy or incompetence and not only as a consequence of an observation, or observations, where teaching is assessed as "requires improvement". If the Teacher is judged as "requiring improvement" this should normally be addressed through the routine appraisal process. The process to be adopted in such circumstances should be determined in relation to an assessment of the teachers overall performance, informed by Teacher Standards.

### **Monitoring Progress**

The policy recognises that there is no requirement to schedule formal meetings to review progress through the year. It is, however, very important to maintain professional dialogue to ensure the appraiser and appraisee are both clear about whether progress is on track or whether any adjustments are advisable. It is advised that heads of service, in consultation with their staff, determine how this is best managed in the context of the service. On the one hand there is a commitment to avoid unnecessary workload and bureaucracy and, on the other, the recognition that the appraisal process is a priority both in enabling teachers to develop/progress and services to improve. Clearly the occasions when teachers receive feedback on observations could provide opportunities for appraiser and appraisee to 'touch base' on the overall progress towards objectives and how planned CPD is impacting. The watch words of the previous performance management regulations are still good advice – there should be 'no surprises'

# **Appraisal Policy for teachers employed by the Local Authority and not attached to schools**

Derbyshire County Council adopted this policy on \_\_\_\_\_

It will review it two years from the date of adoption or earlier if there is a change in the relevant regulations

## **1. Purpose**

This policy sets out the framework for a clear and consistent assessment of the overall performance of teachers, including the heads of support services who are employed on teachers' pay and conditions of service, and for supporting their development within the context of the Council's, Department's and Services' plans for improving educational provision, performance and the standards expected of teachers. The council is committed to providing high quality professional development that, in turn, supports pupils in achieving their potential. The policy is intended to reflect the principles of fairness, equity, accountability and confidentiality.

This policy is written in accordance with the Education (School Teachers' Appraisal) (England) Regulations 2012. The policy also complies with the School Teachers' Pay and Conditions Document (STPCD). Which states that decisions regarding the pay progression of teachers will be made on the basis of performance, with reference to the teachers' appraisal reports and the pay recommendations they contain.

The policy links to the Pay Policy for Teachers Employed by the Local Authority (LA) and Not Attached to Schools, which details arrangements relating to the determination of teachers' pay, in accordance with the STPCD. The pay policy contains the procedure for appeals against pay decisions.

## **2. Application of the policy**

The policy applies to all unattached teachers employed by the council, except those on contracts of less than one term, Newly Qualified Teachers and those subject to the Formal Competence Procedure. *(Wherever school terms are cited in this policy, this refers to the standard 3 term school year, not the model adopted by Derbyshire County Council of 6 shorter terms.)*

Appraisal in the council will be a supportive and developmental process designed to ensure that all teachers have the skills and support they need to carry out their role effectively. It will contribute to ensuring that teachers are able to continue to improve their professional practice and to develop as teachers.

All appraisal activities will take place within the teacher's directed time, but not within Planning and Preparation (PPA) time.

This policy is complemented by the School's Pay Policy which details arrangements relating to the determination of teachers' pay, in accordance with the STPCD. The pay policy contains the procedure for appeals against pay decisions.

The appraisal procedure will address any concerns that are raised about a teacher's performance. If the concerns cannot be resolved through this process there will be consideration of whether to commence the formal competence procedure. This Appraisal Policy will dovetail with the Council's procedure for dealing with situations where a teacher's level of competence falls below expectations, *as detailed in the appendix 'Teachers Experiencing Difficulty- Advice on Informal Structured Support and Monitoring' and the Formal Competence Procedures for Teachers employed by the Local Authority and not attached to schools.*

### **3. The Appraisal Period**

The appraisal period will run for twelve months in line with the academic year. Each service may decide the exact timing of the review period, for instance whether to hold meetings in July or the beginning of the autumn term. The process of undertaking appraisal reviews and making pay recommendations will be completed by 31 October, except for heads of service where they will be completed by 31 December.

Teachers who are employed on a fixed term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the period will be determined by the duration of their contract.

Where a teacher begins employment with the service the relevant Assistant Director may determine that the initial appraisal period in respect of that teacher is shorter or longer than 12 months. Where a teacher starts their employment part-way through a cycle, the head of service or, in the case where the teacher is the head of service, the relevant Assistant Director shall determine the length of the first appraisal cycle, with a view to bringing the cycle into line with that for other teachers in the service as soon as possible.

### **4. Appointing Appraisers**

#### **Head of Service**

Heads of Service will be appraised by the relevant Assistant Director (AD), or a line manager, delegated by the AD. Where the Appraiser does not hold QTS they will be supported and advised by a suitably skilled and experienced member of the Advisory Service.

The head of service may write to the Assistant Director (or Executive Director if the AD is the Appraiser) if they wish to request that their Appraiser be changed, giving reasons. The AD will reply in writing with their decision and is advised that they consult first with HR for support in considering the request.

## Teachers

The head of service will decide who will appraise other teachers. Where teachers have a concern about their nominated appraiser, they may write to the head of service, giving reasons. Where legitimate concerns are raised, these will be carefully considered by the head of service and an alternative appraiser may be offered, if possible. It is anticipated that appraisers will be those who hold some leadership and management role in relation to the teacher. The nominated appraiser will hold an appropriate position in the staffing structure and have the necessary knowledge, skills and experience to undertake the role. If, for any reason, the nominated appraiser is unable to conduct the role, an appropriately experienced alternative colleague will be appointed.

The appraiser will conduct all aspects of the review, including making pay recommendations, for teachers who are eligible.

It is advised that each appraiser allocated no more than 4 teachers to appraise.

Where there are concerns about a teacher's performance, and the head of service is not the appraiser, s/he may consider undertaking the role them self or appoint an alternative senior member of staff.

## 5. The Planning Meeting

The meeting will include:

- The setting/agreeing of objectives,
- Evidence to be collected,
- Identifying success criteria,
- Deciding the support/training programme,
- Determining the focus and timing of observations.

The head of service's objectives will be set by their appraiser, who may be the appropriate AD or another line manager, after consultation with a nominated member of the advisory service, acting as an external adviser. Should agreement not be reached between the head of service and appraiser, the appraiser may determine the objectives. In line with the section on representation and appeals, if the head of service believes the objectives are not suitable he/she should raise the matter with the appropriate AD in writing, in the first instance.

Objectives for each teacher will be set before, or as soon as practicable after, the start of each appraisal period. The objectives set for each teacher, will be Specific, Measurable, Achievable, Realistic and Time-bound and will be appropriate to the teacher's role and level of experience. In setting the objectives, appraisers will have regard to the context of the teacher and the demands of the objectives. consistent with the LA's approach to promoting staff wellbeing. The Teachers' Standards will inform the objectives set for the teacher

The appraiser and appraisee will seek to agree the objectives. Objectives may be revised if circumstances change. Any amendment to the objectives or supporting requirements will be recorded in writing and the expectations of the teacher clarified. The teacher may add comments on the appraisal planning statement. The head of service will moderate the appraisal process to ensure objectives are consistent between teachers with similar experience and levels of responsibility. If agreement cannot be reached between the appraiser and appraisee, the appraiser will determine the objectives but the final decision rests with the head of service, through the moderation process.

The measures of success for meeting the objectives should be made clear to the teacher and recorded. Teachers and their appraisers may identify expected sources of evidence for achievement of objectives and fulfilment of relevant standards but this will not preclude the addition of other sources of information that may become available, provided they are agreed to be relevant. Appraisers will seek to identify a comprehensive range of sources of information to be utilised as a basis for assessing performance and the achievement of objectives. Sources of evidence should be agreed with the teacher, where possible, and the teacher may record any reservations they hold on the planning statement.

The planning statement will also contain details of any support and development which the teacher will receive to support them in achieving objectives.

The objectives set for each teacher will, if achieved, contribute to the council's plans for improving educational provision and performance and improving the education of pupils within the Local Authority and will take account of the professional aspirations of the teacher. This will be ensured by the head of service (*or for the head of service's objectives, relevant AD*) quality assuring objectives against the relevant council plans. The teacher's professional aspirations will be taken into account when setting objectives.

In the support services 3 objectives will normally be set for each teacher, unless agreed otherwise. It is recognised that some objectives incorporate greater scope and breadth than others. It is expected that objectives will reflect the range of each teacher's role, responsibilities and working time. Objectives will address key areas of core professional practice.

The expected level of performance will be reflected and specified in the wording of the success criteria. These may include a focus on (as appropriate, taking into account the responsibilities of the teacher's post and pay range):-

- Impact on pupil progress (including beyond own teaching groups, where appropriate),
- Impact on wider outcomes for pupils,
- Improvements in specific elements of practice,
- Impact on effectiveness of other teachers/staff
- Wider contribution to the improvement of the service.

There will also be recognition of the quality of actions and effort to progress objectives.

Appraisers will consider whether reasonable adjustments to the objectives are appropriate, in the light of an individual's circumstances, for instance where the teacher has a disability or has experienced long term absence.

*Before, or as soon as practicable after, the start of each appraisal period, each teacher/head of service will be informed of the standards against which that teacher's performance in that appraisal period will be assessed. All teachers, including heads of service who teach, must be assessed with reference to the 'Teachers' Standards' which came into effect from September 2012 and, where relevant, against other sets of standards published by the Secretary of State that are relevant to them. Therefore relevant teachers' performance will be considered against the criteria adopted in the Pay Policy for teachers employed by the Local Authority and not attached to schools to be paid on the Upper Pay Range, expectations of Leading Practitioners.*

All teachers must still fulfill the Teachers' Standards but those applying to be paid on the Upper Pay Range will need to meet the relevant criteria shown in Appendix B of the Teachers' Pay Policy. The National Standards for Head Teachers may be utilised to inform the objectives and success criteria for heads of service. For Qualified Teaching, Learning & Skills (QTLS) holders, that may include the overarching professional standards for the lifelong learning sector, held by the Learning and Skills Improvement Service. Heads of service will decide whether QTLS holders will be assessed against the Teachers' Standards instead of, or as well as, the lifelong learning sector standards.

## **6. Observation and Other Evidence**

The council believes that teacher observation is important both as a way of assessing teachers' performance, in order to identify any particular strengths and areas for development they may have, and of gaining useful information which can inform service improvement more generally. All observation will be carried out in a supportive fashion, in an atmosphere of constructive engagement, collaboration and co-operation. *(An observation protocol is attached to this policy in Appendix 1.)*

Classroom observation, for those who work directly with pupils, will form an integral part of the review process to inform teachers' performance, identifying strengths and weaknesses and, where good and excellent practice is in evidence, to make use of this to inform service improvement more generally. Classroom observations will not ordinarily exceed 3 per appraisal cycle with single lesson observations lasting a maximum of one hour. Following discussion, the teacher and the appraiser may agree to revisit the amount of lesson observations in order to support the meeting of objectives. The current Teachers' Standards will inform and underpin the objective setting process. Any such changes will be formally recorded within the appraisal documentation and signed by the teacher and appraiser. Further observations may form part of the programme adopted when the 'Teachers Experiencing Difficulty' process is applied.

Observation of teachers' work with pupils or in supporting other teachers will be carried out by those with Qualified Teacher Status.

In general, observations will be multi-purpose and provide information regarding the teacher's strengths, achievement of objectives and standards, development needs as well as contributing to the service quality assurance processes. The services will seek to minimise the total number of occasions on which teachers are observed by using the findings of each observation for other management requirements where possible. It is not a requirement to utilise all 3 observations allowed. Observations will not be arranged as a matter of routine but will have clear purpose, in relation to the teacher's development needs and/or the service's quality assurance programme.

Teachers (including the head of service) who have responsibilities outside of pupil/teacher interaction should also expect to have their performance of those responsibilities observed and assessed.

To be fair and transparent, assessments of performance will be properly rooted in evidence. It is recognised that there are a variety of other sources of evidence to indicate the quality and impact of teaching and learning across the services. The Council aims to utilise a range of data, which is carefully evaluated, to identify progress, attainment and areas for improvement. The evidence to be utilised may include, where agreed, self-assessment, pupil progress, planning documentation, peer review, pupil work analysis, surveys, pupil feedback, school/family feedback, marking and assessments of pupil learning. Observation is particularly important in identifying the specific strengths and areas for development of individual teachers. The council is committed to providing accurate feedback in order for teachers to benefit from support that is tailored to their professional development needs. The planned and focused sharing of staff's strengths, to enhance the skills of colleagues, is believed to be one of the most powerful strategies for continuing professional development, promoting a culture of collaborative reflective practice. Peer observation, arranged for the purpose of professional development and not utilised to provide evidence of a teacher's performance, is not included in the 3 observations allowed for appraisal purposes.

Feedback will be provided, taking account of the Teachers' Standards that are relevant to the particular activities observed (and other standards relevant to the individual) and appropriate development strategies identified. Observations should be utilised, in order for the service leadership to formulate, along with other information indicating quality of teaching across the service, reports for senior officers/members, priorities for service improvement initiatives and training/development activities.

## **7. Development and support**

Appraisal is a supportive process which will be used to inform continuing professional development (CPD). The council wishes to encourage a culture in which all teachers take responsibility for improving their teaching through appropriate professional development. Opportunities for professional development will be linked to service improvement priorities and to the ongoing development needs and priorities of individual teachers. Teachers will be expected to evaluate the impact of their CPD and share their learning with colleagues, where appropriate, in line with the service's approach to CPD. Self-evaluation of performance against the Teachers' Standards and their own objectives will be facilitated.

The service's CPD programme will be informed by the training and development needs identified as part of the appraisal process. The council will take account of the resources needed for the operation of the appraisal process, in setting the service budget annually.

Where there are competing demands on the service budget with regard to the provision of CPD, a decision on the relative priority will be informed by the extent to which:

- a) The training/support will help the service achieve its priorities
- b) The identified CPD is essential for the appraisee to meet their objectives.

Account will be taken in the annual review of performance of whether the support/development recorded in the planning statement has been delivered.

## **8. Feedback and In-Year Monitoring**

The appraiser and teacher will confirm to each other when any piece of evidence to be cited for appraisal purposes is identified.

Teachers will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other relevant evidence has come to light, relating to the performance management planning and review process. Feedback will highlight particular areas of strength as well as any areas that need attention.

There is no requirement to schedule formal meetings. It is important to maintain ongoing professional dialogue to track progress towards the objectives and check on the provision of support and training. Interim review meetings may be held, if significant evidence relating to the planning and review process comes to light and it is impractical/inappropriate to wait for the next scheduled annual review meeting. They may also be held if both appraiser and appraisee agree. Any meetings taking place as part of appraisal will be held in directed time, but not the teacher's PPA time.

If a lack of progress towards objectives or concerns that standards are not being met are such that there is a risk the teacher's annual appraisal may not be successful and, potentially, pay progression not recommended, this will be made clear to the teacher in writing. A meeting should be called directly if an appraiser identifies significant concerns that practice is not sustaining the standards or/and is not on track to meet objectives. The appraiser should not wait for the next scheduled meeting if this is not in the near future.

Relevant support/development activities, with the aim of rectifying the situation will be put in place through the appraisal process.

Please refer to paragraph on teachers experiencing difficulties and Appendix 2 'Teachers Experiencing Difficulties – Advice on Informal Structured Support' and the flowchart attached to the competence procedures for teachers employed by the Local Authority and not attached to schools for the process of dealing with concerns about potential underperformance.



## 9. Annual Assessment

Each teacher's performance will be formally assessed in respect of each appraisal period. In assessing the performance of the head of service, the AD/Appraiser will consult with a designated Adviser from the Advisory Service.

This assessment is the end point to the annual appraisal process, but performance and development priorities will be reviewed and addressed on a regular basis throughout the year as appraisers maintain ongoing professional dialogue with their appraisee(s). There should be no surprises concerning the overall assessment of a teacher's performance at the annual review meeting.

The council must:

- a) assess the teacher's performance of their role and responsibilities during the appraisal period with reference to:
  - the standards applicable to the teacher, which will not be used as a checklist, Teachers will be assumed to be meeting the Teachers' Standards unless concerns have been raised with them and clear documented evidence to the contrary is provided.
  - the teacher's objectives;
- b) assess the teacher's professional development needs and identify any action that should be taken to address them; and
- c) where relevant, include a recommendation relating to the teacher's pay.

No request to submit additional evidence will be made to the teacher at the review meeting, although the teacher may do so if they wish.

The teacher will receive as soon as practicable, following the end of each appraisal period – and have the opportunity to comment in writing on - a written appraisal report. In the services, teachers will receive their written appraisal reports by 31 October (31 December for the head of service). The appraisal report will include:

- details of the teacher's objectives for the appraisal period in question;
- an assessment of the teacher's performance of their role and responsibilities against their objectives and the relevant standards;
- an assessment of the teacher's training and development needs and identification of any action that should be taken to address them;
- a recommendation on pay where the teacher is eligible (NB – pay recommendations need to be made by 31 December for heads of service and by 31 October for other teachers);
- a space for the teacher's own comments

The appraisal report will be drawn up in discussion between the appraiser and the teacher.

The assessment will clearly relate to the success criteria set for each objective and the standards of performance defined for the teacher's pay range.

The assessment of performance and of training and development needs will inform the planning process for the following appraisal period. It is expected that the discussion will include the utilisation and impact of training and development undertaken and any contribution the teacher has made to the development of a colleague(s). Appraisers may include reference to any significant impact in the appraisal report.

## **10. Pay Progression**

The Local Authority will award pay progression on the basis of successful performance (i.e. that the teacher has met or made significant progress towards their objectives and continued to fulfill relevant standards), with reference to teachers' appraisal reports. Where a teacher is eligible, a recommendation on pay progression will be made by the appraiser based on the assessment of their performance against the agreed objectives and their responsibilities, the Teachers' Standards and any other relevant standards.

The decision of the Local Authority will be made in accordance with the Council's Pay Policy for Teachers employed by the Local Authority and not attached to schools and statutory guidance set out in the STPCD, where applicable.

The Local Authority has set out, in its Pay Policy for Teachers employed by the Local Authority and not attached to schools, the salary scales for the main pay range, upper pay range, unqualified teachers' pay range and leading practitioner pay range. Teachers are eligible for consideration to receive pay progression through the main pay range on an annual basis until the maximum of the scale is reached. The policy sets out the arrangements for teachers to apply to be paid on the upper pay range (UPR) and further progression. Movement through the UPR would normally only be considered on a bi-annual basis.

The process of reporting the outcome of annual appraisal reviews and pay recommendations to the Executive Director, Childrens Services for consideration is set out in Appendix 4

## **11. Representation and Appeals**

Any recommendation on pay will be referred by the head of service to the Executive Director, Childrens Services as referenced in the Teachers' Pay Policy. The procedure for a teacher to make representations concerning a pay decision or to appeal, is also contained in the Pay Policy.

If a teacher wishes to request changes or raise concerns about any other aspect of the appraisal process and documentation they should write to the head of service

setting out their grounds within 10 days of receiving the statement of objectives and appraisal review statement. The head of service will, if necessary, meet with the teacher and then determine whether any action should be taken or changes made. If the head of service is the appraiser of the teacher, the letter should be submitted to the Assistant Director, if the teacher is unable to resolve the matter informally with the head of service. Likewise, a head of service would write to the AD with any concerns. The AD will seek the advice of HR when meeting with the teacher, if necessary, and reaching a decision on the representations. If the teacher (or Head of service, if they have made representations concerning their Appraisal statement) remains unhappy they may appeal using the procedure in the pay policy. The appeal will follow the same process as detailed in the pay policy for pay appeals.

## 12. Teachers Experiencing Difficulties

When responding to a teacher who is experiencing difficulties in meeting the requirements of their role, action will be taken to provide support and guidance, through the appraisal process, to enable their performance to improve and meet expectations.

(It is important to refer to Appendix 2 'Teachers Experiencing Difficulties – Advice on Informal Structured Support and Monitoring' and the flowchart attached to the competence procedure for Teachers employed by the Local Authority and not attached to schools as what follows is a summary)

If an appraiser identifies through the appraisal process, or through other sources of information, that a teacher is experiencing difficulties such that, if not rectified, there will be detriment to the educational provision delivered to pupils and/or the formal competence procedure may be implemented, the appraiser will inform the head of service, who will review the situation and may consider whether it would be appropriate to appoint a new appraiser.

Where there are concerns about any aspects of the teacher's performance the appraiser will meet the teacher formally to:

- give clear feedback to the teacher about the nature and seriousness of the concerns;
- give the teacher the opportunity to comment and discuss the concerns;
- make mutually suitable arrangements to meet the teacher to discuss targets for improvement and any support (eg coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
- in consultation with the teacher at the above meeting, establish an action plan with clear expectations, success criteria and support to be provided.
- make clear in the plan how, and by when, the appraiser will review progress. It may be decided to revise objectives and it is likely that some priority short term targets will be identified, aimed at enabling the Teachers' Standards to be met. It will be necessary to define sufficient time for the required improvement. *The amount of time will reflect the nature of the improvement required and the seriousness of the concerns;*
- explain the implications and process if no – or insufficient – improvement is made.

The teacher's progress will continue to be monitored as part of the appraisal process and as detailed in the plan. The provision of the support will also be monitored. During this period the teacher will be given feedback on progress and arrangements will be made to adjust the programme if there is good reason to do so. The period identified for the teacher's performance to improve and meet the standards needs to be reasonable and will depend on the circumstances.

When progress is reviewed at the conclusion of the period identified, if the appraiser is satisfied that the teacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process. The teacher should be informed at the formal review meeting that there is no longer consideration of invoking the formal competence procedure.

### **13. Transition to Capability Procedure**

If the appraiser is not satisfied with progress, the teacher will be notified in writing that a meeting to determine whether the formal capability procedure needs to be applied, having followed the process set out in the Appendix 2 'Teachers Experiencing Difficulty – Advice on Informal Structured Support and Monitoring' and the flowchart attached to the competence procedure for Teachers employed by the Local Authority and not attached to schools. They will be informed that if this decision is taken then the appraisal system will no longer apply and that their performance will be managed under the competence procedure. The appraiser will consult with the head of service when contemplating this action (or designated alternative senior staff member).

*Please refer to the competence procedure for further details of conducting the formal meeting to consider application of the procedure.* The teacher will receive at least 5 working days' notice of the meeting and may be assisted by a trade union representative or work colleague. The head of service will consider whether it would be appropriate to appoint another suitable appraiser, in the circumstances, or perform the role themselves.

### **14. Monitoring and Evaluation of the Process and Policy**

The Appraisal process will be treated with confidentiality. However, the desire for confidentiality does not conflict with the need for Quality Assurance of the operation and effectiveness of the appraisal system. In the services we will ensure fairness through-

- providing clarity on the nature of objectives,
- having higher expectations of teachers on higher pay ranges or with paid responsibilities,
- including clear success criteria and evidence to be utilised,
- ensuring that relevant training and development is provided
- head of service review of teachers' objectives and appraisal records in order to to ensure compliance with the policy. (In larger services the head of service may delegate this review to other relevant senior leaders.)

In addition, only the teacher's line manager(s) will be provided with access to the objectives, where it is necessary to enable the line manager to discharge their duties.

The head of service also needs to be aware of any pay recommendations that they have made in order to refer these to the Executive Director.

The head of service will make arrangements for the details of training and development needs to be communicated to anyone with responsibility in the service for the delivery of continuous professional development.

The council will monitor and evaluate the policy. Policy review will be conducted in consultation with the recognised unions and professional associations representing teachers, through the Schools' Joint Consultative Committee (SJCC).

## **15. General Principles Underlying This policy**

### **Confidentiality**

The appraisal and formal competence processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head of service and AD/Council to quality-assure the operation and effectiveness of the appraisal system.

### **Consistency of Treatment and Fairness**

The Council is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### **Workload**

The operation of the appraisal process should not add to the teacher's workload. It will reflect the responsibilities detailed in the teacher's Job Description and the overall duties of a teacher as defined in the School Teachers' Pay and Conditions Document. It will focus on the key priorities of the service and for the individual's role. The process will take place within directed time but not the teacher's PPA.

### **Definitions**

Unless indicated otherwise, all references to "teacher" include the head of service.

### **Delegation**

Normal rules apply in respect of the delegation of functions by local authorities.

### **Monitoring and Evaluation**

The heads of service/ADs will monitor the operation and effectiveness of the services' appraisal arrangements and report to the Executive Director.

### **Retention**

The Council, through the heads of service, will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

## Appendix 1

### **OBSERVATION PROTOCOL**

The Local Authority is committed to ensuring that observation is developmental and supportive. The effective and efficient operation of the appraisal process requires observation to be a confidential process of constructive engagement within an atmosphere of professional trust and co-operation. Accordingly those involved in the process will:

- carry out the role with professionalism, integrity and courtesy;
- seek to reach agreement in advance on how classroom observations will be carried out;
- evaluate objectively; taking account of any particular circumstances affecting the observation on the day;
- report accurately and fairly; and
- respect the confidentiality of the information gained.

### **Planning and Preparing for Observation**

In keeping with the council's commitment to supportive and developmental classroom observation the head of service will:

- consult with teachers concerning the overall pattern of observations for the academic year
- leave capacity for appraisers to agree with teachers the timing of any observation particular to that teacher's objectives
- provide for those being observed for all purposes to receive final notice at least 5 working days in advance
- arrange, as far as possible for observations to take place at a time agreed with the teacher
- ensure there is a reasonable amount of time between observations
- ensure classroom observation is undertaken solely by persons with qualified teacher status and the appropriate training and skills to undertake observation, provide constructive oral and written feedback, in the context of professional dialogue. The observer should be able to provide any consequent support for the teacher or ensure this need is addressed by the relevant staff member.

Planning for observation will take place at the start of the appraisal/performance management cycle and will include details of:

- the amount of observation,
- the focus of the observation,
- the maximum duration of the observation,
- when during the appraisal cycle the observation will take place and
- who will conduct the observation.

Information gathered during the observation will be used, as appropriate, for a variety of purposes including to inform service evaluation and improvement strategies, in accordance with the authority's commitment to streamlining data collection and minimising bureaucracy and workload burdens on staff.

### **Conducting Observation**

Time for preparation and feedback for classroom observation will be made available within the teacher's directed time, but not PPA time. The total period for observation arranged for any teacher will not exceed three visits per cycle each of no more than an hour in length, having regard to the individual circumstances of the teacher. There is no requirement to use all of the three hours. The amount of observation for each teacher should reflect, and be proportionate to, the needs of the individual and the service.

In each case 'proportionate to need' will be determined by the particular role of the teacher, and the focus of their objectives.

Observations of practice involving students or of the teacher providing support to other teachers/teaching assistants, when directly engaged in teaching pupils will only be undertaken by persons with QTS (*ie leading meetings/delivering INSET etc. may be observed by an appropriate line manager who does not hold QTS*)

### **Feedback**

Oral feedback will be given as soon as possible after the observation and the appraiser will aim to provide this before the end of the following working day. (It is recognised that, in support service settings, leaders are often travelling to meet with teachers at various bases and a short delay may arise) Feedback will be given during directed time in a suitable, private environment.

The circumstances of the education support services, with teachers not all working in one base, may affect the scheduling of feedback but appraisers will agree with teachers on the earliest suitable arrangement to deliver oral feedback.

Written feedback will be provided within five working days of the observation taking place. If issues emerge from an observation that were not part of the focus of the observation, as recorded in Appraisal plan, these should also be covered in the written feedback and the appropriate action taken in accordance with the policy and guidance.

### **Records**

The written record of feedback will also include the date on which the observation took place, the lesson observed and the length of the observation. The teacher has the right to append written comments on the feedback document. No written notes in addition to the written feedback will be kept. The appraiser will be given sufficient time within the working day to put in written form the conclusions and outcomes of the observation, where possible agreeing these with the teacher.

It is recognised that an observation provides a 'snapshot', not an overview of a teacher's performance. Other information will be utilised to assess the teacher's overall effectiveness and the impact of their quality of teaching. Observation feedback will be formulated with reference to the Teachers' Standards (and any other standards applicable to the teacher) relevant to the activities observed. Any lesson observation outcome is to enable leaders to report generic quality of teaching information to senior officers and members, identify service development needs and prepare for Inspection

### **Classroom Observation and Formal Capability Procedures**

Where evidence emerges about the appraisee's performance which gives rise to concern during the cycle, additional observations to those recorded at the beginning of the cycle may be arranged, subject to a formal review meeting being held in accordance with the policy.

For teachers entering the 'Teachers Experiencing Difficulty' section of the Appraisal Policy or already on a formal capability procedure, an important part of the support offered will be a clearly defined amount of classroom observation, with structured oral and written feedback. The amount of observation will be discussed with the teacher and (where indicated in the Teachers Experiencing Difficulty Appendix) their union representative. Pupils will not undertake classroom observations.



## **Appendix 2**

### **Appraisal- Teachers Experiencing Difficulties**

#### **Advice on Informal Structured Support and Monitoring**

The council's appraisal policy details the necessary process and steps to be taken to address any identified underperformance issues within appraisal. This document provides additional advice and guidance for heads of service in implementing informal structured support and monitoring for relevant teachers.

It is important that the 'Teachers Experiencing Difficulties' section of the Appraisal Policy is read first.

#### Preamble

1. Underperformance or lack of competence may affect teachers at all levels any time in their careers and such teachers are entitled to sympathetic consideration and active support from colleagues in the service. This procedure deals with identifying the nature of the problems, the needs of the teacher and establishing an appropriate support programme.
2. The nature of concern about performance or omission, its level of seriousness and cause(s), must be communicated at the outset to the teacher, investigated and identified by structured information gathering and systematic recording.
3. The Appraiser must inform the Head of Service when they develop concerns about the performance of a teacher, such that they are contemplating a review meeting to consider implementation of a structured support and monitoring programme. Likewise, a Head of Service or senior leader who identifies significant concerns about a teacher's performance should ensure the appraiser is informed and that appropriate measures are taken.
4. The Head of Service (HoS) will need to ensure that the Appraiser has the necessary knowledge, skills and experience to determine an appropriate structured support and monitoring programme and its implementation. The Head of Service should review whether:
  - the appraisal process has been operated fairly and appropriately so far
  - whether the teacher has received appropriate, timely feedback and clarity on the expected standards of performance and
  - relevant CPD, through the performance management process and provision linked to service priorities in recent cycle(s).
5. The HoS should ensure that the teacher is involved in determining an appropriate support programme. It should be stressed that the aim of the support programme is to help the teacher to improve and develop the

performance of his/her duties in the interests of the pupils, teacher and the service as a whole. Ideally the action plan should be agreed with the teacher.

6. Advice on these procedures may be sought from the HR Advice and Guidance Service at this stage.

### Identifying the Problems

1. Where there is any concern about a teacher's professional performance it is necessary, at the outset, to identify any specific problems being encountered by the teacher.
2. Where there is evidence from a G.P. and/or the Authority's Occupational Health Physician that health may be a factor impairing work performance, their advice will be sought:
  - To ensure the teacher is fit for work and the duties of a teacher
  - To seek recommendations as to whether any reasonable adjustments should be considered to enable the teacher to fulfil their duties.
3. Consideration should also be given to whether there are any other council policies or procedures which are relevant to the circumstances and that they are applied appropriately. (eg Stress Management, Management of Sickness Absence)
4. The appraisal process will be the key source of information that raises any concern and prompts a decision to investigate further. Annual, ongoing evaluation of a teacher's performance, in the context of the Teachers' Standards, conducted by the appraiser and through the teacher's self-evaluation, will clarify any areas of concern. Teachers will be assumed to be meeting the Teachers' Standards unless clear documented evidence to the contrary is provided.
  - a) Evidence of unsatisfactory teaching from a Service Review or Inspection may provide information about a teacher's performance which raises, or contributes to, the identification of a concern and/or the need to investigate further. It is acknowledged that this is only an example of the teacher's practise and may just relate to an aspect of performance. Therefore the decision to investigate and address a concern would only arise where there is other evidence that suggests there is an ongoing problem.
  - b) Observation within the teaching situation by a senior member of staff and/or an Adviser may assist in clarifying the precise nature and origin of the difficulties. Where this is in addition to the observations identified within the original appraisal programme, these should be arranged in consultation with the teacher concerned wherever possible.

- c) Observation reports will be supplemented by all available information from the service's Quality Assurance systems and, in particular, pupil outcomes.

In assessing how serious are the identified performance concerns, impact on pupils' learning will be a key consideration. The HoS will also have regard for any wider impact on pupils and/or service delivery. Performance concerns, in relation to additional responsibilities of teachers and senior leaders may also arise and would, likewise, need to be identified and evidenced.

5. It is important that the teacher knows at the outset what is expected of them. During the annual appraisal meeting the appraiser should check that the teacher is clear on:

- the responsibilities of their job (is the Job description up to date?)
- the standards expected in the job (Teachers Standards 2012 for all teachers, except QTLS holders, and Upper Pay Range criteria, expectations of leading practitioner post etc., where relevant)
- the person to whom he/she is responsible for the job (line manager)

If the person specification for the job is available this would also help to clarify the competence requirements in terms of knowledge, skills and experience.

### Timescale

The timescale adopted will be in accordance with the seriousness of the identified underperformance. The period given within the Appraisal process for significant improvement to take place would normally be 10 weeks and not less than 6 weeks. (see Flowchart within the formal Competence Procedures document for overview)

It is strongly advised that an interim review is scheduled for around 6 weeks into the programme. This will enable the appraiser and teacher to establish whether expected progress is underway and whether any adjustments to the plan should be made. If the appraiser identifies concerns that reasonable progress is not being made they should inform the HoS, who is advised to take action as detailed in paragraph 5 below. This will involve initiating a new 10 week programme or, *in extreme cases, where there are health and safety concerns and the learning of pupils is jeopardised, a maximum of 4 weeks will be allowed for improvement to take place. The level of improvement would need to be such that the health and safety issues are resolved and learning is taking place. Where this is not secured, a meeting will be called to consider the application of the Formal Competence procedure.*

Where there is evidence that sufficient improvement is taking place the programme of structured support and monitoring may continue for, up to, a total of 10 weeks aimed at securing performance at the expected standard.

Action

1. Having identified any concerns about performance through everyday staff management and appraisal, a teacher should have the opportunity to explain the reasons for the concerns and have an opportunity to address the situation.
2. Details of any concern about performance will be brought to the teacher's attention. The Appraiser will record any action taken and the teacher's response when explanation is sought. The teacher will be informed that he or she has a responsibility to achieve a professionally acceptable standard. The teacher will be informed what is required, how their performance will be reviewed, the period of review, what support will be available and that application of the Formal Competence Procedure will need to be considered if there is insufficient improvement. Subsequent advice and support may achieve the desired and agreed changes in performance.
3. It is anticipated that most concerns will be dealt with through this management process and within appraisal.
4. Where the cause of the criticism or complaint concerning a teacher's professional competence continues, further action will be necessary to deal with the specific problems which are being encountered by the teacher and which are a cause of concern. If the teacher has not been willing to co-operate in addressing the concerns this may be regarded as misconduct, leading potentially to action under the authority's established disciplinary procedures.
5. The period of informal support and counselling should not go on for too long. The period of informal support should therefore be no longer than 10 weeks and less may sometimes be appropriate. There should be a clear indication of improvement. As noted above, an interim review should be held around 6 weeks into the plan. Where the appraiser then informs the HoS that little progress has been achieved, the HoS is advised to call a meeting outside of the appraisal process with the teacher, their representative and the appraiser. The HoS may be supported by their HR adviser.

The purpose of the meeting is for the HoS to assess the overall situation, receive the views of the teacher and their representative about the process they are undergoing and consider the wider context of the teacher and the service. As a consequence, the HoS should review the process and plan for improvement. This meeting enables the union representative to be fully informed of their member's situation, to advise their member accordingly and provide their professional input, including seeking to reach agreement on the objectives and monitoring arrangements, ensuring the programme of support is the most effective and relevant possible. As outlined above, two outcomes are possible:-

- a) Taking account of the additional information available, a revised 10 week programme should be adopted. It is good practice for this to be agreed

with the teacher. During the programme for improvement an interim review with the teacher, appraiser, union representative and HR officer is advised. At end of the agreed period (normally 10 weeks), a further meeting outside of appraisal should be held with the same relevant parties to assess whether the changes have enabled the programme of support delivered to have been appropriate and robust. An assessment will be made of the teacher's progress.

If the standards are now being met, the normal appraisal process would then continue. If there has been significant improvement and standards are nearly met, the HoS has the option to instigate a further 6 to 10 week programme of monitoring and review to enable the teacher to fully meet agreed expectations and show these can be sustained.

- b) Alternatively, the HoS may assess that the situation is exceptional and so serious (as described above) that a 4 week programme to seek resolution of Health and Safety concerns and/or ensure that pupil learning is taking place should be applied.

## **Outcomes**

A formal review meeting will be held at the end of the adopted period of review and assessment, involving observation and collection of a range of other information illustrating the quality of performance. A firm conclusion should be reached and the outcome will be one of the following:

- i) Confirmation that the expected standards have been reached and that the normal appraisal cycle will continue.
- ii) Extension to the period of informal support to allow time for further improvement. This would be appropriate where significant improvement has been demonstrated, yet further development in performance is necessary to meet all the required standards and for the teacher to demonstrate they can sustain these independently. The extension would be of 6 to 10 weeks in length. The Appraiser/HoS will take account of any previous extensions to the programme of support and monitoring.
- iii) The calling of a formal meeting to consider the implementation of the Formal Competence Procedure. (details of the requirements to fulfil and guidance on arrangements can be found in both the Appraisal Policy and Competence Procedure)

## **Making it work**

### Identifying the Problems

The following may help in determining what exactly is contributing to the performance issues and thus the considerations that should inform any action to address.

- What is the wider context – the service’s situation, turbulence, judgements on overall effectiveness?
- New leadership in the service/team or new Appraiser? How robust/shared are judgements and strength of service’s Quality Assurance processes?
- Individual teacher – new to service or to role? Career stage and previous ‘judgements’/indicators of performance? Is this the first time any issues have been raised in any way? Has something changed suddenly or over time? Has all feedback from various sources been accurate, fair and honest (in terms of what is included or significant omissions)?
- Individual teacher- personal circumstances (where shared by teacher), health issues, commitment demonstrated to their role and the school, self-evaluation?
- What are relationships like between colleagues and what support is available within the service? Are all teachers clearly subject to the same expectations?

### Action

- ✓ HoS ensures Appraiser is suitable for the circumstances and has mentor support.
- ✓ Teachers’ Standards are a regular reference point in the service and staff know what meeting the teaching standards looks like in terms of the day to day practice in the service (not treating them as a checklist), using the service’s own systems/policies relating to Teaching & Learning.
- ✓ A richness of data is used to identify specifically what needs to improve.
- ✓ An action plan format would facilitate the detailing of the necessary components of the support and monitoring process, with a range of evidence and concrete success criteria to ensure clarity of expectations for all parties.
- ✓ The original appraisal objectives may be revised or elaborated and broken down into actions.
- ✓ A systematic, incremental approach is recommended.
- ✓ Listen to what the teacher thinks about the type of support/training they find most helpful in determining what, of the available choices, should be incorporated into the plan. Familiarity in the service with self-evaluation, peer working, coaching and the use of leading professionals to develop other’s practise will broaden the strategies available. Other council services, and partnerships may provide sources of support.
- ✓ Strongly advise the teacher to consult with their union/professional association for advice/guidance on making best use of the programme of structured support and monitoring during appraisal. They could share the plan with their representative and bring back any suggestions for consideration. The involvement of the union/professional association is usually very helpful in ensuring the action taken is appropriate and as effective as possible. In exceptional cases the union may have a concern about the way the process is being applied and, in these circumstances should request a meeting with the

HoS. The HoS should then seek advice from HR in assessing whether any revisions should be made. Use of a meeting called by the HoS, outside of the appraisal process enables all information and views to be considered by the head in ensuring the process being applied to the teacher is fair and robust. Should a formal meeting to consider entry into the Competence Procedure then subsequently be necessary, it is less likely that issues will emerge that require the earlier steps to be repeated.

- ✓ Build in regular, constructive feedback throughout the programme so that success is recognised and built upon, the effectiveness of the support is monitored and amendments can be considered as soon as is necessary.
- ✓ Allow time for the support to be digested by the teacher, for reflection with the person providing support and for further development/embedding of the improvement to practise. An initial period for improvement of around 6 weeks should be sufficient to demonstrate whether the process adopted is effective and any outstanding improvement still required is likely to be secured through a short extension to the plan.
- ✓ Ensure the teacher understands that models of good practise are provided to help them and illustrate how the desired learning may be achieved but that it is their responsibility to take ownership of the process, such that their practise is effective in securing the learning of the pupils they teach. (For those not in a direct teaching role the responsibility will be to take ownership of the process, such that their practise is effective in securing the effective delivery of the service)
- ✓ Although the role of the Appraiser, in setting/agreeing the plan with the teacher and assessing improvement, is separate from the teacher's mentor (who provides and manages support) they need to be very consistent in their understanding of the expectations sought.
- ✓ Consider whether further personal/welfare support is required

## **Appendix 3**

### **Guidance on the arrangement of formal meetings with staff involving Union/Professional Association representatives**

The arrangement of a formal meeting with a member of staff is a fairly occasional event in most services. This will particularly be the case in small services.

Such meetings are likely to be in connection with one of the Human Resources policies, e.g. Disciplinary Policy, Absence Management, Competence Procedure. When the need arises to meet with a member of staff in connection with such processes or to arrange a hearing, there is an entitlement for him/her to be accompanied by a chosen representative. This representative will usually be from one of the trade unions or teachers' professional associations.

Senior Leaders are advised to ask for the name/organisation of the representative, where possible, and make contact to ascertain their availability before setting dates and times. It can be very unsettling and disruptive to relationships, at an already difficult time, when a date is set and then has to be postponed owing to the unavailability of the representative:-

The legal position is as follows (The Employment Relations Act 1999 Section 10, paragraph 4)

"If:

- (a) a worker has a right under this section to be accompanied at a hearing,
- (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and
- (c) the worker proposes an alternative time which satisfies subsection (5),

the employer must postpone the hearing to the time proposed by the worker.

5 An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer".

Unions/associations are likely to quote this when they are presented with a date they cannot accommodate. The service will have no choice, at this point, but to make new arrangements. This can cause considerable inconvenience for everyone concerned. A further difficulty is likely to be caused because the legal requirement calls for the representative to set a new date, within 5 days, and this will probably not be convenient for other people involved.

It is best to try and avoid a difficult period where parties struggle to set a mutually suitable date, colleagues (and sometimes pupils) in service may suffer because of the delay and resentment may develop.



Service leaders need to consider the perspective of the employee and their representative. Most employees would not expect to be called to a formal meeting, or any other management process, outside of working hours. The representatives themselves are sometimes employees of the union/association, who have scheduled working time, and branch officials are allocated particular times away from their 'day job' for their union duties. They may struggle to obtain release at other times.

It has been possible, on occasions, to arrange such hearings/meetings in the evenings but Heads of Service should expect to be challenged if making such arrangements. If at all possible, meetings in working hours are also preferable because the participants are more likely to be able to contribute effectively, than at the end of the day.

When informed that a representative cannot attend a meeting and a considerable number of other stakeholders have been assembled (Heads of Service, witnesses, HR Consultant, minute taker), Heads of Service have sometimes challenged the union to send a different representative to facilitate the process and save the impact of further delay on the employee. This is not easy for some associations to accommodate. They may have an agreement where only an individual union representative is authorised to receive the details of the case and to act on the member's behalf.

Heads of Service are advised to take these factors into consideration, in order to enable arrangements to be made in co-operative fashion. Alongside this guidance there has also been correspondence to the unions/associations seeking a similarly collaborative approach from their representatives. For instance, in recognising the requirement to co-operate with the process and offer a reasonable number of possible dates when meetings are needed. We reminded the association that just asserting their rights can foster a defensive response.

The need for formal meetings invariably means that there are challenging situations to manage, not just with the employee concerned but also possibly colleagues and the wider service. The 'tone' of all actions in connection with progressing the issue of concern will play a large part in minimising disruption, negative relationships and the ability to re-establish normal working practice afterwards.

Heads of Service may wish to contact the HR Service, if they are having difficulty in working with the unions on these matters.

## **Appendix 4**

### **The Appraisal of teachers employed by the Local Authority and not attached to Schools**

#### **Reporting Arrangements**

1. Appraisers and Area Managers will provide the Head of Service with a standard annual report on the Appraisal Reviews they have carried out in the previous year.
2. This report will include:
  - Total number of employees.
  - Number of Annual Reviews completed.
  - Confirmation that objectives have been set for the following year.
  - Number of teachers who have achieved a successful performance review on each of the pay ranges
  - Number of teachers with unsuccessful appraisal review.
3. The Senior Officers responsible for the performance management of Heads of Service, the leader of the Music Partnership and Heads of Service, will provide the Schools HR Advisory Service with a standard annual composite report on Appraisal.

The Schools HR Advisory Service will provide collate the annual reports and will provide an annual standard composite report to the Executive Director, Children's Services
4. The Executive Director, Children's Services will approve and arrange to action approval of any pay recommendations agreed.

## REPORT ON APPRAISAL FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS

*Service Name:* .....

Total number of teachers employed

Numbers of Annual Reviews completed

Objectives have been set for all teachers for Year .....

Number of teachers who have achieved a successful performance review

Number of teachers with unsuccessful appraisal review.

Brief summary of issues and actions required in the 20../20.. cycle, from the reviews in Autumn 20..

A confidential appendix, listing all teachers employed in this Establishment\*/Service\*/Team\* indicating the categorisation of teachers' performance, in my professional judgement is attached to this report.

Signed: .....

Date:

Position.....

\* Delete as appropriate

**PUBLIC**

# **DERBYSHIRE COUNTY COUNCIL**

## **FORMAL COMPETENCE PROCEDURES FOR TEACHERS EMPLOYED BY THE LOCAL AUTHORITY AND NOT ATTACHED TO SCHOOLS**

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## **FOREWORD**

The attached Competence Procedure, with the accompanying flowchart has been the subject of full consideration and negotiation with the recognised unions and professional associations, representing teachers and headteachers, at Schools Joint Consultative Committee (SJCC).

Heads of service should ensure that all relevant staff are made aware and given easy access to this procedure.

### **Concerns Regarding Teacher Performance within Appraisal**

The LA recognises the importance of tackling issues of concern effectively, as early as possible. The 'Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring' outlined in the appraisal policy should be used before any Implementation of the competency procedure. This 'Teachers Experiencing Difficulties' guidance seeks to clarify the process that should take place to identify, raise and address significant concerns about a teacher's performance, in the interests of both the teacher and the service. It is of critical importance that best use is made of this process and it is sufficiently robust. This guidance also provides for meetings outside of appraisal, if necessary, where the Head of Service should involve the teacher's union representative and a HR consultant, in addition to the appraiser and teacher. This can be triggered when a teacher is making little or no progress during a structured support and monitoring programme. The aim is to enable all relevant issues and perspectives to be aired, in order for the improvement programme to be as accurately tailored to the teacher's, and service's, circumstances as possible. It is important that the plan for improvement provides the strongest opportunity for the teacher to meet expectations at the earliest stage possible in the process. The inclusion of additional relevant professional colleagues is likely to inform the adoption of the most appropriate, robust and supportive approach. A flowchart is included to illustrate the potential steps included in the application of 'Teachers Experiencing Difficulties' during appraisal and how this should link to the Competence Procedure.

Observation is only one type of evidence of a teacher's effectiveness and needs to be considered alongside other indicators, such as work analysis, pupil progress etc. Therefore, it is recommended that an overall assessment is made of a teacher's performance, through appraisal, which also utilises the service's Quality Assurance information. It is advised that assessment of teachers' performance should be in the light of the Teachers' Standards. Significant concerns about a teacher's practice would be identified when the range of evidence indicates that, generally, the teacher is not meeting the standards. In such circumstances the Appraiser is likely to need to call a meeting with the teacher to consider whether they enter the 'Teachers Experiencing Difficulty' section of the appraisal policy.

Heads of service must use the Teachers' Standards in describing and assessing teachers' performance as these are a requirement of the School Teachers' Pay & Conditions Document (STPCD). They reflect a robust level of teacher effectiveness and support an informed decision on whether a teacher should continue to receive a focused and pro-active, but routine, appraisal process or when concerns are of significant underperformance, where it will be appropriate to consider entry into the 'Teachers Experiencing Difficulties' regime. DfE guidance is clear that teachers

should meet all of the standards across their practice but there is also recognition that the standards support a holistic assessment of a teacher's effectiveness and are not a checklist and should not be used as such.

For teachers who have any areas of practice, or specific teaching groups, where their teaching is a concern the approach would be to highlight these areas for particular, focused development within the routine application of the appraisal process, not the Teachers Experiencing Difficulties process. All teachers are entitled to ongoing feedback on strengths and development areas, plus professional development/support to address their needs. The vast majority of teachers will be able to develop their teaching through the normal, routine appraisal process and successfully address any individual areas of practice that do not always fully meet the standards.

Both the Teachers Experiencing Difficulties process within Appraisal and the Competence Procedures should only be used in cases of genuine, evidence based inadequacy or incompetence and not only as a consequence of an observation, or observations, where teaching is assessed as "requires improvement". If the Teacher is judged as "requiring improvement" this should normally be addressed through the routine appraisal process. The process to be adopted in such circumstances should be determined in relation to an assessment of the teachers overall performance, informed by Teacher Standards.

### **Timescales**

The timescales recommended for tackling concerns about teacher underperformance during Appraisal are best described on the attached flowchart. Periods of between 6 and 10 weeks are proposed for programmes designed to address concerns, with the expectation that usually the maximum period would be adopted. In circumstances where a teacher is making progress, but not yet sufficient to exit the programme and return to the normal appraisal process, progress of the programme should be revised and extended. The process aims to provide the maximum opportunity for the teacher to succeed in meeting expectations, within the appraisal regime and transfer to the competence procedure should only be triggered when there is clear evidence that the teacher is consistently falling below acceptable professional standards, despite appropriate training and support.

### **Competence Procedure**

The procedure provides for 2 stages, each of between 4 and 10 weeks, with the potential for the review period to be extended in relevant circumstances. It is expected that the maximum initial period will usually be adopted to allow sufficient time for the identified support/training to be provided, absorbed and embedded into a teacher's practice.

Although a 2 stage process is detailed in the procedure, the option to institute a 4 week programme, to assess a teacher's capability to continue through the process, remains for use in exceptional cases where the health, safety and welfare of pupils is potentially at risk and/or little or no learning is taking place.

# **Formal Competence Procedures for teachers employed by the Local Authority and not attached to schools**

## **1. Purpose and Definition**

1.1. A teacher's competence can be questioned in various ways and may even call into question the continued employment of the teacher concerned. It is essential, therefore, to have procedures which:

- are soundly based in law, and
- balance the rights of the individual with those of the pupils and with the needs of the Local Authority

1.2. This document is intended to give clear guidance to all concerned where issues of professional competence are to be addressed. The document has been produced after consultation with the recognised Teachers' Associations.

1.3. A definition of competence

It is important at the outset to define "competence" which is regarded as the ability of a teacher to discharge his/her duties to a professionally acceptable standard. Therefore, the competence procedures are appropriate where, due to lack of capability and/or application a teacher fails consistently and over a period of time to discharge his/her duties to the professionally acceptable standard. School Teachers' Pay & Conditions Document (STPCD) incorporates the Teachers' Standards 2012, which define, in Part 1 of the document, the level of practice at which all qualified teachers are expected to perform. A distinction is made between this and "misconduct".

"Misconduct" is an act or omission by a teacher which is considered to be unacceptable professional behaviour. It can also have very serious dimensions, including those involving criminal behaviour. Part 2 of the Teachers' Standards defines the personal and professional conduct expected of teachers and will be utilised by the Teachers Regulation Agency in considering cases of misconduct referred by employers.

Misconduct may be considered so serious as to merit direct application of the disciplinary procedure, and is therefore to be dealt with under the Council's disciplinary procedures. The issue of competence is to be dealt with under the competence procedures, which may lead to dismissal on the grounds of competence.



#### 1.4. Child Protection

Where complaints are made against teachers by parents or others which involve child protection issues, then the Local Authority's Child Protection Procedures must always be followed in the first instance.

## **2. Scope and application of the Competence Procedure**

- 2.1. The procedure should be read in conjunction with the Appraisal Policy for Teachers Employed by the Local Authority and Not Attached to Schools. The guidance on policy and procedure applies to all teachers employed by the Local Authority under the terms of the School Teachers' Pay and Conditions Document (STPCD), including relevant Heads of Service whether they are full-time or part-time, about whose performance there are serious concerns, which the application of the appraisal process has been unable to rectify.
- 2.2. Teachers with health problems or those experiencing stress may also require particular support. Where health may be a factor and it impairs performance through absence from work the Council will apply the Attendance Management Procedure adopted by the Local Authority which applies to teachers employed by the Local Authority and not attached to schools. Specific guidance is included in Appendix 1
- 2.3. These competence procedures are concerned with situations where a teacher is experiencing significant difficulty in discharging his/her professional responsibility to the extent that additional structured support is necessary. This support will be designed to further identify and clarify the causes of the difficulties and to determine an appropriate response.
- 2.4. Concerns relating to the performance of Newly Qualified Teachers will first be addressed through the Statutory Induction Arrangements. In particularly serious cases it may be necessary to instigate the Competence Procedure at a stage before the end of the induction procedure.

## **3. Introduction**

- 3.1. Teachers, as professionals, are constantly striving to improve their knowledge, skills and expertise in order to develop their effectiveness. In this task, they may draw upon support available from the service within which they work, from other LA support services and/or from the school improvement service, other providers and from their own Associations.
- 3.2. The prime responsibility for the assessment of performance and the management of the process rests with the Head of Service. The responsibility of the Local Authority rests in ensuring that the authority has adopted an appropriate competence procedure and for the Executive Director, Children's Services, and/or their nominee, to ensure that the

procedure is implemented appropriately, monitoring, evaluation and review are undertaken.

- 3.3. At service level, teachers may look to the advice, support and encouragement available from colleagues, particularly their appraiser under the Appraisal Policy, those with professional leadership roles such as senior members of staff and Heads of Service.
- 3.4. Within the Local Authority a range of professional support services exist and a programme of in-service training for teachers is available. The strength of ongoing support within the service, and between services, forms of professional development (e.g. coaching, mentoring, peer collaboration, shadowing) are recognised as particularly effective strategies.
- 3.5. Continuing Professional Development (CPD) is recognised as the entitlement and expectation for all teachers regardless of experience, deployment or seniority. It is recognised, however, that there are particular points in a teacher's career where additional or concentrated advice and/or support may be necessary:
  - Teachers entering the profession have special requirements which are met through specific induction arrangements based on guidelines from the Department for Education.
  - Experienced teachers taking up new posts require induction support, particularly where changed or additional responsibility is involved.
  - Further developments in the curriculum which require dissemination and familiarisation/training.
  - To address issues of professional competence, however these may be identified.

These everyday processes of support, training and advice are fundamental to professional effectiveness and wherever possible any difficulties should be resolved informally in the spirit of personal development and advice, including the performance management framework of review, self-evaluation, objective setting, and continuing professional development.

## **4. Principles**

The Local Authority recognises its obligation to pupils, parents and staff to maintain a competent and skilled teaching force. The purpose of the competence procedure is to help and encourage all teachers to achieve and maintain an acceptable standard of performance.

- 4.1. The role of the line manager is to identify any concerns with performance and discuss them with the teacher concerned. Teachers, including heads of service, who are experiencing performance difficulties, will be initially

provided with a programme of support and monitoring through the 'Appraisal Policy'. (Also see the document entitled Appraisal-Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring' contained within the Appraisal Policy and the Appraisal/Competence Procedure Flowchart (Appendix 3))

- 4.2. The aim of that programme is to help a teacher who is experiencing such difficulties to identify and overcome any shortcomings, provide appropriate support, enable them to contribute positively to their own professional development, and thus to circumvent the need for application of the competence procedure. It is expected that any teacher will act positively in refining, developing and expanding his/her skills.
- 4.3. The Local Authority intends that:
- job descriptions will accurately reflect the main purpose and scope of each post and the tasks involved;
  - job descriptions will be consistent with the roles and responsibilities of teachers as determined in the School Teachers' Pay & Conditions Document (STPCD),
  - the services have a process where job descriptions will be the subject of regular review and discussion with the post holder and any variations will normally be by consent;
  - teachers will be made aware from the outset of their employment of the Appraisal Policy and procedures, plus support and review arrangements, as well as the consequences of failing to meet normal standards of competence;
  - the formal procedures which will be used to support and monitor progress operate in a climate where immediate and consistent feedback is accepted as the norm as, not only does positive feedback provide reinforcement of good performance, but also it is easier for a teacher to accept challenging feedback when necessary.
- 4.4 The expectations for teacher performance are set out in the Teachers' Standards, introduced from September 2012 and, for relevant teachers, Post Threshold Standards, National Standards for Headship, Standards for Leading Practitioners.
- 4.5 If an issue of competence arises, it is strongly recommended that the Senior Manager/Head of Service seeks early advice from HR.
- 4.6 Where the formal procedure is ended at any stage, as the required improvement has been reached, but performance subsequently falls below the agreed standard within a term (two Derbyshire Terms), the formal procedure may be reinstated at the point where it stopped.

- 4.7 No action will be taken under the formal procedure in respect of a trade union representative until the circumstances of the case have been discussed with a senior representative or paid official of the trade union, with the consent of the employee. If the employee does not agree to the involvement of the senior union official, a record will be made of this decision and the procedure will be implemented. The Head of Service is advised to seek HR advice before taking any action.
- 4.8 The provisions for the employee's right to be accompanied comply with the ACAS code. The employee has the right to be accompanied at meetings under the formal procedure. The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the employee. In exercising their statutory right to be accompanied, the employee must make a reasonable request. What is reasonable will depend on the circumstances of each individual case.
- 4.9 If an employee's unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning or to the fast track procedure as appropriate. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the authority/pupils
- 4.10 Should the employee persistently be unable or unwilling to attend a formal competence meeting, without good cause, the Local Authority may make a decision based on the evidence available. A postponed meeting should be re-arranged within 5 working days, or as soon as possible, without the employee if they continue to be unavailable.

## **5. Transfer from Appraisal**

It is necessary that where, during the programme for improvement, progress through the 'Teachers Experiencing Difficulties' section of the Appraisal Policy has not been sufficient a consultation meeting with the teacher and their representative, outside of the appraisal process itself, will have been called by the Head of Service to ensure they have provided the best possible opportunity for improvement to be secured and in order for any wider management issues to be identified. (Please see Flowchart (Appendix 3) and document entitled 'Appraisal- Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring' contained within the Appraisal Policy)

When, at the conclusion of a period of support, review and monitoring to address significant concerns about a teacher's performance, insufficient improvement has been secured, the appraiser will inform the teacher in writing that consideration will be given to whether the appraisal system will still apply. The teacher will be invited to a formal meeting where a proposal to manage their performance under the competence procedure will be considered.

The appraiser will consult with the Head of Service to make arrangements for a formal meeting.

## **6. Meeting to consider entry into Competence Procedure-Stage One**

- 6.1 Depending on the size of the service, staffing structure and specific context, the Head of Service will determine whether the Appraiser or another senior colleague will present, to a formal competence meeting, the evidence of:
- performance concerns,
  - support provided,
  - targets for improvement and outcomes,
  - review period.
- 6.2 At least 5 working days' written notice will be given of the meeting, including time, place and right for the teacher to be accompanied by a companion who may be a trade union representative or other representative. The notification will include sufficient information about the performance concerns and their possible consequences, for the teacher to prepare to answer the case at the formal competence meeting. Meetings should be planned to ensure that timings and locations are reasonable to both parties. In the event that the employee or their companion is unable to attend the meeting, an alternative date within 5 working days should be arranged. (See guidance on arranging meetings *Appendix 2*).
- 6.3 Two working days prior to the meeting, the employee should provide the name of their representative. They should also submit any further evidence they wish to present to support their case at least 2 days before the meeting. The Head of Service, or their nominated representative, will conduct the meeting. The meeting is intended to establish the facts and agree a way forward. The Appraiser (or other nominated staff member, which may be the head of service) will present the concerns and evidence. The Head of Service may be advised by a representative of HR. All the documentation to evidence the concerns (e.g. lesson observation feedback, notes of meetings, pupil data etc.) will have been supplied by the Appraiser/Head of Service at least 5 working days before the meeting.
- 6.4 The teacher, and their representative, will have the opportunity to respond to the concerns about their performance and to make any relevant representations. They may present further information or a different context to the information/evidence already collected.
- 6.5 The Head of Service may conclude that there are insufficient grounds for pursuing the competence issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the competence procedure will not be implemented. The Head of Service may also adjourn the meeting, for example if they decide

that further investigation is needed, or that more time is needed in which to consider any additional information supplied. Information may be presented by a member of the School Improvement Service, if relevant.

- 6.6 If there is no adjournment, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
- ensure that the employee is fully aware of the expectations of performance, and the professional shortcomings have been identified.
  - ensure that the required standards have been set at a reasonable level;
  - consider whether the context in which the employee works has altered significantly and whether this has been addressed;
  - explore whether there are underlying health problems affecting performance and whether an occupational health referral is appropriate;
  - explore whether there are any personal issues or problems affecting performance;
  - consider whether necessary training has been given and recap on support already provided.

If the procedure is to be implemented the person conducting the meeting will:

- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal competence procedures (*this may include the setting of new objectives focused on the specific issues that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*);
- Identify any support that will be available to help the teacher improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The length of timetable designed to enable the teacher to meet the relevant standards will depend on the circumstances of the individual case but will be of *between four (exceptional cases only) and ten weeks' duration. It is for the service to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place (it is expected that the maximum period for improvement will be utilised, other than in exceptional cases. It is advised that there is an interim review meeting with all relevant parties at around 5/6 weeks, which may determine necessary amendments to the plan )*; and

- warn the teacher formally, in writing, that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

*The teacher should be invited to contribute to and comment upon the content of the programme for improvement, in order that it most effectively meets their development needs. Ideally the action plan to be followed should be agreed with the teacher. The head of service should arrange for an early meeting with the teacher and his/her representative, once the programme has been distributed, to hear any further comment or suggestions from the teacher or their representative. It is important to allow sufficient time for the support to be absorbed by the teacher and to make a difference to their practice.*

- 6.7 Where a warning is issued, this will be confirmed in writing to the teacher within 5 working days of the meeting, with information about the procedure and time limits for submitting an appeal.

Details relating to lodging appeals are given below. Where a teacher appeals against a decision to issue a warning, the appeal will be heard by a senior manager of grade 15 (equivalent) or above from the Leadership Job Family and an HR officer will advise. Lodging of an appeal will not delay the commencement of the programme of support and monitoring but will mean that the teacher is not yet deemed to have entered the formal competence procedure.

- 6.8 Notes will be taken of formal meetings and a copy sent to the member of staff. The teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage as soon as possible, and within 10 working days.

## **7. Monitoring and Review Period following a Formal Competence Meeting**

- 7.1 A performance monitoring and review period will follow the formal competence meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Regular feedback will be provided to the teacher on their performance and progress. The provision of the identified support and its impact will be monitored. *Regular review of progress, collaboration on how to address any problems, build on success and adapt the programme to maximise effectiveness is recommended. Heads of Service are advised to hold an interim review meeting with the teacher, their representative and an adviser from HR to share progress and consider whether any changes need to be made to the plan.*
- 7.2 At the end of the review period the member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

- 7.3 At any stage in the competence procedure a review period may be cut short if there is evidence that the concerns about the teacher's performance are so serious that no learning is taking place, or the health, safety or welfare of children is at risk. In these circumstances an early review meeting will take place and consideration will be given to the issue of a final written warning (if not already in place).
- 7.4 The teacher will be reminded of the necessity to cooperate with the process of addressing the concerns about their performance.

## **8. Formal Review Meeting- Consideration of Progression to Stage 2**

- 8.1 As with the formal competence meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. All material to be utilised in the meeting will be provided at least five working days in advance.
- 8.2 The Head of Service will Chair the meeting, unless they have been involved in supporting the teacher during the process, in which case the meeting will be chaired by a manager from the Leadership job family. They will be advised by a HR representative. The appraiser/senior teacher monitoring the competence procedure will present the evidence from the review period.
- 8.3 The teacher will have the opportunity to respond.

If the Chair of the meeting is satisfied that the teacher has made sufficient improvement, the competence procedure will cease and the appraisal process will re-start.

- If some progress/improvement has been made, standards partially met and there is confidence that further necessary improvement is likely, it may be appropriate to extend the monitoring and review period. The programme of support and monitoring will be reviewed. The total period allowed for making the necessary improvement to meet and sustain the required standards may exceed 10 weeks in these circumstances. *(The Chair will take into account whether any previous extensions to programmes for improvement have been implemented, since the current performance concerns were identified and the overall context.)*
- The Chair has the discretion to extend the review period for a further time to ensure that the required level of performance is consistently sustained without support. This should not normally exceed 6 weeks.



- If no, or insufficient, improvement has been made during the monitoring and review period, the procedure will move to Stage Two and the teacher will receive a final written warning, unless there are contextual reasons identified that have prevented the improvement sought.
- If the employee has reached the agreed standard of performance, the procedure may cease at this point and this will be confirmed to the employee within five working days of the review meeting. The warning letter issued at Stage One will remain live for 12 months. If there is a re-occurrence of related performance concerns after 2 Derbyshire terms but within the 12 months, the process will be re-instated with a meeting to consider entry into Stage One of the Formal Competence Procedure.

## 9. Implementation of Stage Two

9.1. The purpose of the Stage Two meeting is to reiterate the ongoing areas of concern and to agree a way forward. The following may be revised in the light of any progress made or further clarification of the performance concerns:

- Identification of the professional shortcomings, in relation to expected standards and targets previously set.
- Clear guidance on the improved standard of performance required to remove the teacher from the competence procedure (the specific objectives may be revised to focus on the outstanding areas of underperformance, success criteria refined and any further evidence to be utilised in assessing improvement identified)
- Support provided may be reviewed and amended, taking account of the need for teachers to demonstrate that the required standards can be sustained once the programme is completed.
- The timetable for improvement will be set out, monitoring and review arrangements clarified. The timetable will depend on the circumstances of the individual case. The period will be reasonable and proportionate to provide sufficient opportunity for improvement to take place. The review period will be between 4 and 10 weeks in length. It is anticipated that the maximum period for improvement will be utilised unless there are exceptional circumstances. *Heads of Service are advised to hold an interim review meeting with the teacher, their representative and an adviser from HR to share progress and consider whether any changes need to be made to the plan.*

9.2. Where a final written warning is issued it will mirror any previous warnings given and will be provided within five working days. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the

procedure and time limits for appealing against the final warning. Arrangements for lodging appeals are detailed below. Where a teacher appeals against a decision to issue a final written warning, the appeal will be heard by a senior manager of grade 15 (equivalent) or above from the Leadership Job Family.

- 9.3. Notes of the formal review meeting will be taken and a copy sent to the member of staff. The details of the standards to be achieved, relevant support and handling of the further monitoring and review period will be included. This written confirmation will be provided as soon as possible and within 10 working days.
- 9.4. At the end of the review period, a Stage Two review meeting will take place. The teacher will be invited to attend the Stage Two review meeting and has the right to be accompanied and represented by their trade union representative or work colleague. The Head of Service (or an alternative Chair) may be supported by their HR adviser.
- 9.5. If the employee has reached the agreed standard of performance, the employee will be told that the procedure ceases and this will be confirmed by the Head of Service/Chair of meeting in writing within five working days of the meeting. The existing final written warning will remain live for a period of 18 months. If there is a re-occurrence of related performance concerns after 2 terms but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.
- 9.6. The Head of Service/Chair of meeting should make this decision only if there is strong evidence that performance now meets the relevant standards and can be sustained.
- 9.7. The Head of Service/Chair of meeting has the discretion to extend this review period to ensure the required level of performance is consistently sustained without support. This period should not normally exceed 6 weeks.
- 9.8. If the teacher has failed to achieve the agreed standards, the Head of Service/Chair of meeting will advise the employee that the process will move to the final stage and arrange for a Decision Meeting to be held with an appropriate manager of grade 15 (or equivalent) or above from the Leadership Job Family (Hearing Officer).
- 9.9. The Head of Service/Chair of meeting will assess whether any additional arrangements are required to ensure that the education received by relevant pupils remains at least satisfactory during this period.

## 10. Decision Meeting

The case will be presented by the Head of Service and heard by a senior manager from the leadership Job Family (Hearing Officer).

- 10.1 As with formal competence meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or trade union representative who has been certified by their union as being competent. The letter will outline the purpose of the Decision Meeting and advise the employee that a possible outcome may be dismissal. All documents to be relied upon at the decision meeting will be provided at least five working days in advance. The teacher should be notified of any witnesses to be called and the authority notified by the teacher of any witnesses he/she proposes to call. The teacher may present further evidence to support their case; this should be submitted at least 2 working days before the meeting.

If the teacher, or their companion is unable to attend the meeting, an alternative date within five working days of the original meeting should be arranged. (see guidance on arranging meetings *Appendix 2* ) At least two working days prior to the meeting, the teacher should provide the name of their companion.

- 10.2 The Hearing Officer will conduct the meeting. The Head of Service will be advised by HR and the meeting Chair will be advised by a HR or legal /adviser.
- The Head of Service will present the case and may call any senior member of staff who conducted the support and monitoring procedure as a witness. Other witnesses may be called if appropriate. (e.g. School Improvement Advisers who have evaluated performance)
  - The teacher/representative will have the opportunity to ask questions.
  - The Chair will have the opportunity to ask questions. (Any witness to then withdraw)
  - The teacher/representative will present their response to the performance concerns and any other relevant information. They may call witnesses, if appropriate.
  - The person presenting the case will have the opportunity to ask questions.
  - The Chair will have the opportunity to ask questions. (Any witness to then withdraw)
  - The person presenting the case and the teacher (or representative) will each have the opportunity to sum up.
  - The person presenting the case, the teacher and their representative, will all withdraw. The Chair will consider the case and reach a decision. The HR/legal representative will provide advice and guidance.
- 10.3 If the Chair decides that the employee will not be dismissed, the final written warning will remain in place for 18 months and the employee will be

expected to sustain the agreed level of performance. The Chair will indicate whether there should be a further review period within the Formal Competence procedure. If there is a re-occurrence of related performance concerns after 2 Derbyshire Terms, but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.

If the Chair decides to dismiss the teacher, they will be informed in writing as soon as possible, within five working days, of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. It is expected that the teacher will be suspended from teaching duties, pending outcome of any appeal.

## **11. Decision to Dismiss**

Once the decision to dismiss has been taken, the Local Authority will dismiss the teacher with notice

## **12. Appeal**

If a teacher feels that a decision to dismiss them, or other action taken against them under this policy, is wrong or unjust, they may appeal in writing against the decision within five working days of the written notification of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply, as with formal competence meetings and review meetings. As with other formal meetings, notes will be taken and a copy sent to the teacher.

An appeal will be dealt with impartially and, by persons who have not previously been involved in the case. The Executive Director will be advised by a representative of legal services.

- An appeal against dismissal is to Executive Directors and this must be registered in a letter to the Director of Organisational Development & Policy within five working days of receipt of the written notification of the hearing decision.
- An appeal against any other outcome must be registered in a letter to the Executive Director, Children's Services 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 heard.

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

Any statements of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeal Panel and other party at least five working days prior to the hearing.

Legal and HR Advisors may attend the appeal.

A legal adviser will be present at any appeal against dismissal.

The employee has a right to be accompanied at the appeal by a colleague or trade union colleague.

The employee will be informed of the outcome of the appeal in writing within five working days. That outcome is the final stage within the Council's procedures.

### **13. Appeal Procedure**

- The Head of Service - accompanied by the Chair of the Decision Meeting, where appropriate (The Presenting Officer) will present the case for dismissal and explain the reasons for their decision. Other witnesses may be called.
- The teacher/representative may ask questions of the presenting officer or any other witnesses called.
- The Executive Director may ask questions of the presenting officer or any other witnesses called. (Witnesses will then leave)
- The teacher/representative will present their case and may call witnesses
- The presenting officer may ask questions of the teacher and any witnesses called.
- The Executive Director, may ask questions of the teacher and any witnesses called. (Witnesses will then leave)
- The presenting officer may sum up
- The teacher/representative will have the opportunity to sum up.
- The presenting officer, teacher and representative will all withdraw. The Executive Director, will reach a decision and will be advised by a member of legal services.

The teacher will be recalled and informed of the outcome of the appeal hearing in person where possible. The appeal may be upheld in the employee's favour, the

original decision confirmed or different sanctions applied. The outcome will be confirmed to the teacher in writing within five working days. The decision is final.

***\*If the teacher's grounds of appeal are confined to certain aspects of the case or are procedural, then the teacher will be asked to present their appeal first and the Head of Service or chair of decision meeting present their response second, following the same pattern as set out above.***

## **14. Competence Procedure for Heads of Service (employed on School Teachers' Pay & Conditions)**

- 14.1. Where a senior officer undertaking the Head of Service's appraisal has concerns about their performance or evidence of concerns has been referred to them, they will first follow the Appraisal Policy to address these concerns. The Appraiser is advised to call an interim review meeting with the Head of Service, during the programme of improvement within appraisal. If there are concerns about progress through the plan, a meeting outside of the Appraisal process, where the Head of Service's representative and a HR officer are also invited, is advisable. This meeting can address any wider context and seek to ensure that the plan for improvement is as robust as possible (*Please see Appraisal Policy, Teachers Experiencing Difficulties section and additional advice*).
- 14.2. If it is assessed that there has been insufficient improvement and the programme of support and monitoring has been delivered, The Head of Service will either be informed that the issues will continue to be addressed through the appraisal process or receive written notification that a formal meeting will be held to consider whether the Appraisal Policy should no longer apply and that their performance should be managed through the Competence Procedure.

## **15. Meeting to consider entry into Competence Procedure – Stage One**

- 15.1 When it has been assessed to be necessary to consider entry into the Formal Competence Procedure, the Head of Service will be given at least five working days' notice of a meeting to consider the application of the formal competence procedure. The notification will contain sufficient information about the performance concerns and their possible consequences to enable the Head of Service to prepare to answer the case at a formal hearing. It will contain:

- copies of any written evidence of performance concerns;
- support provided and review period
- the details of the time and place of the meeting;

and will advise the Head of Service of their right to be accompanied by a companion, who may be a colleague, trade union official, or a trade union representative who has been certified by their union as being competent.

Meetings should be planned to ensure that timings and locations are reasonable for all parties. In the event of the employee or their representative being unable to attend the meeting, an alternative date within five working days should be arranged (see advice on arranging meetings – *Appendix 2*).

- 15.2 A manager from the Leadership Job Family (of appropriate seniority) will conduct the meeting. The Appraiser will present the case, a relevant LA Adviser may be called to provide a further professional assessment of the evidence giving rise to concerns and the expected standards of performance.

In addition, the Chair of the hearing will be advised by a representative of HR, on the conduct of the meeting.

- 15.3 The formal Competence Meeting will be conducted as detailed in paragraphs 6.1 to 6.8 of the Competence Procedure, including notification of right of appeal.
- 15.4 Local Authority Adviser(s) may be commissioned to undertake support/monitoring and evaluation roles in the programme adopted in order to bring about the necessary improvement. All details of the review period, formal warning and appeal information will be provided to the Head of Service in writing as described above.

## **16. Monitoring and Review Period Following a Formal Competence Meeting**

- 16.1. A performance monitoring and review period will follow the formal competence meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Regular feedback on performance, progress towards meeting the appropriate standards will be provided. The delivery of any support detailed in the programme, and its impact, will be monitored. It is advised that an interim review meeting with all parties is held to share progress and consider whether any amendments should be made to the programme for improvement. At the conclusion of the review period, the Head of Service will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting.
- 16.2. At any stage in the competence procedure, a review period may be cut short if there is evidence that the concerns about performance are so serious that no learning is taking place or the health, safety and welfare of children is at risk. In these circumstances an early review meeting will take place and consideration given to the issue of a final written warning (if not already in place).

- 16.3. The Head of Service will be reminded of the necessity to co-operate with the process of addressing the concerns about their performance.

## **17. Formal Review Meeting**

- 17.1. Any evidence to be considered at the meeting will be provided at least five working days in advance of the meeting. The manager from the Leadership Job Family (grade 15 equivalent or above) will chair the meeting and will be advised by a representative of HR. If a Local Authority Adviser has been commissioned to monitor and evaluate progress and improvement, they may present their findings in person.
- 17.2. The Head of Service may be accompanied by a companion who may be a colleague, trade union official or a trade union representative who has been certified by their union as being competent.
- 17.3. After the evidence has been presented by the Appraiser (and Adviser where involved), the Head of Service will have the opportunity to respond. The Chair will withdraw to consider their decision, advised by HR.

If the chair is satisfied that the Head of Service has made sufficient improvement, the competence procedure will cease and the appraisal process will restart.

- If some significant progress/improvement has been made and there is confidence that there is the capacity and likelihood that this will continue, it may be appropriate to extend the monitoring and review period (*Account will be taken of any previous extensions to the timetable for improvement, since the performance concerns were first identified*)
- The programme of support and monitoring will be reviewed. The total period allowed for making the necessary improvement to meet and sustain the required performance may exceed 10 weeks in these circumstances;
- if the Chair of the meeting exercises the discretion to extend the review period to ensure that the required level of performance is consistently sustained without support, this should not exceed 6 weeks.
- If no, or insufficient, improvement has been made during the monitoring and review period, the procedure will move to Stage Two and the Head of Service will receive a final written warning, unless there are contextual reasons identified that have prevented the improvement sought.
- If the Chair is satisfied that the Head of Service has made sufficient improvement, the competence procedure will cease and the appraisal process will re-start. This will be confirmed to the Head of Service in writing within 5 working days. The warning letter issued at Stage One will remain live for 12 months. If there is a re-occurrence of related performance concerns after 2 Derbyshire terms but within the 12 months, the process will



be re-instated with a meeting to consider entry into Stage One of the Formal Competence procedure.

## **18. Implementation of Stage Two**

18.1. The purpose of the Stage Two meeting is to reiterate the ongoing areas of concern and to agree a way forward. The following may be revised in the light of any progress made or further clarification of the performance concerns:

- Identification of the professional shortcomings, in relation to expected standards and targets previously set.
- Clear guidance on the improved standard of performance required to remove the teacher from the competence procedure (the specific objectives may be revised to focus on the outstanding areas of underperformance, success criteria refined and any further evidence to be utilised in assessing improvement identified)
- Support provided may be reviewed and amended, taking account of the need for teachers to demonstrate that the required standards can be sustained once the programme is completed.
- The timetable for improvement will be set out, monitoring and review arrangements clarified. The timetable will depend on the circumstances of the individual case. The period will be reasonable and proportionate to provide sufficient opportunity for improvement to take place. The review period will be between 4 and 10 weeks in length. It is anticipated that the maximum period for improvement will be utilised unless there are exceptional circumstances. *Appraisers/Senior managers conducting the process are advised to hold an interim review meeting with the Head of Service, their representative and an adviser from HR to share progress and consider whether any changes need to be made to the plan. It is possible for the period to be extended for no more than 6 weeks, if good reason to do so is identified. (eg This might be owing to a delay in the delivery of development opportunities, service contextual issues, significant progress underway but confidence needed that it can be sustained.)*

Within ten working days the notes of the formal review meeting will be copied to the Head of Service.

18.2. The final warning will be confirmed in writing within five working days and will mirror any previous warnings that have been issued. Where a final written warning is issued, the Head of Service will be informed in writing that failure to achieve an acceptable standard of performance, within the set timescale, may result in dismissal.

18.3. The Head of Service will also be informed of the arrangements and time limits for appealing against the final written warning. Details relating to

lodging appeals are given below. Where a Head of Service appeals against a decision to issue a warning or final written warning, this will be heard by a manager of the leadership Job Family (of appropriate seniority, grade 15 equivalent or above), who will be advised by an officer from HR.

- 18.4. At the end of the review period, a Stage Two review meeting will take place.
- 18.5. The Head of Service will be invited to attend the Stage Two review meeting and has the right to be accompanied and represented by their trade union representative or work colleague. The Chair of the meeting may be supported by their HR adviser.
- 18.6. If the employee has reached the agreed standard of performance, the employee will be told that the procedure ceases and this will be confirmed in writing within five working days of the meeting. The existing final written warning will remain live for a period of 18 months. If there is a re-occurrence of related performance concerns after 2 terms but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.
- 18.7. The Chair of meeting should make this decision only if there is strong evidence that performance now meets the relevant standards and can be sustained.
- 18.8. The Chair of meeting has the discretion to extend this review period to ensure the required level of performance is consistently sustained without support. This period should not normally exceed 6 weeks.
- 18.9. If the Head of Service has failed to achieve the agreed standards, the Chair of meeting will advise the employee that the process will move to the final stage and arrange for a Decision Meeting to be held with a different manager of grade 15 (equivalent) or above from the Leadership Job Family.
- 18.10. The Chair of the meeting will assess whether any additional arrangements are required to ensure that the education received by relevant pupils remains at least satisfactory during this period.

## **19. Decision Meeting**

- 19.1 The Appraiser will consult with the Local Authority adviser (if involved) and HR at the end of the review period to assess whether it appears as if sufficient improvement has been made. Depending on the evidence, the Appraiser will follow either a) or b) below.
  - a) Where the initial review of the evidence from the Appraiser suggests that sufficient improvement may have been secured, the decision meeting will be arranged as follows:

At least five working days' notice will be given and the Head of Service will be advised of the time, place and right to be accompanied. All documents

to be relied upon in the meeting will be issued at least five working days in advance.

If the Head of Service, or their companion/representative, is unable to attend the meeting an alternative date within five working days of the original meeting should be arranged, or mutually agreed alternative date (see guidance on arranging meetings – *Appendix 2*). At least 2 working days prior to the meeting the Head of Service should provide the name of their companion/representative.

The manager from the Leadership Job Family, of appropriate seniority, will chair the meeting and consider the evidence of concerns/improvement provided by the senior officer presenting the case and the Head of Service's response. If an acceptable standard of performance is confirmed as having been achieved during the further monitoring and review period, the competence procedure will end and the appraisal process will re-start. The Chair has the discretion to extend the review period to ensure the required level of performance is consistently sustained without support. This period should not normally exceed 6 weeks. In making this decision the Chair may receive advice from the HR adviser.

- b) Where the initial review of evidence by Chair suggests there is case to be heard, that the improvement may not have been sufficient and the expected standards of performance may not have been met, he/she will refer the matter for a Decision meeting.

19.2 As with formal competence meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the Head of Service of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. All parties provided with any documents to be relied upon in considering the case, at least five working days in advance of the meeting.

#### 19.3 Procedure of the Decision Meeting:

- The manager from the Leadership Job Family who chairs the meeting will be advised by a HR officer.
- The Presenting Officer/Appraiser will present the case. She/he may call witnesses.
- The Head of Service/representative will have the opportunity to ask questions
- The Chair may ask questions
- Any witness will withdraw
- The Head of Service/representative will have the opportunity to present their response.
- The Head of Service may call witnesses
- The Presenting Officer/Appraiser will have the opportunity to ask questions
- The Chair may ask questions

- Any witness will withdraw
- The Presenting Officer/Appraiser may sum up
- The Head of Service/representative will have the opportunity to sum up.
- The Presenting Officer/Appraiser, Head of Service and their representative will leave the meeting.

The Chair will reach a decision and will receive advice and guidance on procedure from HR.

The Head of Service, Presenting Officer/Appraiser will be recalled and informed in person of the outcome of the meeting, wherever possible.

19.4 Where relevant, the Head of Service will be informed as soon as possible, and within five working days, in writing of the reasons for their dismissal, the date on which employment will end, the appropriate period of notice and their right of appeal.

19.5 Where the Chair decides not to dismiss the Head of Service, the final written warning will remain in place for 18 months and the Head of Service will be expected to maintain the agreed level of performance. The Chair will indicate whether a further review period within the procedure should be implemented. If there is a re-occurrence of related performance concerns after 2 Derbyshire Terms, but within 18 months, the process will be re-instated with a meeting to consider entry into Stage Two of the Formal Competence Procedure.

## **20. Appeal**

If a Head of Service feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of the written notification of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion/representative will apply, as with formal competence meetings and review meetings. As with other formal meetings, notes will be taken and a copy sent to the Head of Service.

- Appeals against a decision to issue a written warning or final written warning will be heard by an appropriate manager from the Leadership Job Family (grade 15 equivalent or above).
- Appeals against dismissal will be heard by the Executive Director

An appeal will be dealt with impartially and, by persons who have not previously been involved in the case. The Executive Director will be advised by a representative of legal services.

## 21. Appeal Procedure

(see \* below)

- The presenting officer/Appraiser will present the case for dismissal. (The Chair of the decision meeting will be available to explain the reasons for their decision).
- They may call witnesses
- The Head of Service/representative may ask questions of the Appraiser/Chair or any witnesses called.
- Executive Director/ appropriate manager from the Leadership Job Family may ask questions of the presenting officer/ Appraiser or any witnesses called.
- The Head of Service/representative will present their case and may call witnesses
- The presenting officer/Appraiser may ask questions of the Head of Service and any witnesses called.
- Executive Director / appropriate manager from the Leadership Job Family may ask questions of the Head of Service and any witnesses called
- The presenting officer/Appraiser may sum up
- The Head of Service/representative will have the opportunity to sum up.
- The presenting officer/Appraiser, Head of Service and representative will all withdraw. Executive Director/ appropriate manager from the Leadership Job Family will reach a decision and will be advised by the legal representative.
- The Head of Service will be recalled and informed of the outcome of the appeal hearing in person where possible. The outcome will be confirmed to the Head of Service in writing within five working days.

**\*Where the Head of Service's appeal relates to a specific part of the previous case for dismissal or is procedural, then the Head of Service will be asked to present their appeal first and the Appraiser/Chair of Decision Meeting will present their response second.**

## 22. References

Where a member of the teaching staff at a school (or other establishment) applies for a teaching post at another school, which is a maintained school or an Academy, the appropriate Body must advise in writing whether or not the teacher has, in the preceding 2 years, been the subject of formal competence procedures. (These procedures are referred to as Capability procedures in the legislation and by some

LAs and schools). The Appropriate Body must provide written details of the concerns which gave rise to the application of the procedure, the duration of the process and their outcome.

This requirement would apply to the Local Authority in the case of teachers employed by the Local Authority and not attached to schools.

There is a general expectation of employers that any reference provided is honest, truthful and fair. It is necessary that the reference would stand up to scrutiny and legal challenge. It is good practice to discuss the contents of a reference with a member of staff, as it should only contain fact and judgements that have already been shared with them. Although employers may state that they have supplied a confidential reference, it is likely the subject of the reference could obtain a copy through a Data Protection Act – Subject Access Request as this is the case Heads of Service are recommended to inform prospective employers that they have shared the reference with the employee.

## **23. Reporting**

Should the council dismiss a teacher on the grounds of lack of competence and failure to meet relevant standards there is no longer a requirement to report this to a central body. The General Teaching Council was decommissioned in 2012 and any orders made by that body still stand.

The Teachers Regulation Agency deals with cases of serious misconduct, where a teacher has been, or was likely to be, dismissed if they had not resigned. Therefore the TRA may use Part Two of the Teachers' Standards when hearing cases of serious misconduct, as these relate to personal and professional conduct. At the Local Authority such circumstances are appropriately dealt with through application of their Disciplinary Procedure.

## **24. General Principles Underlying This Policy**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures.**

The policy will be implemented with the provisions of the ACAS Code of Practice.

### **Consistency of Treatment and Fairness**

The Council is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### **Definitions**

Unless indicated otherwise, all references to "teacher" include the heads of the teaching support services.

### **Confidentiality**

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the heads of service and the Executive Director (or his/her representative) to quality-assure the operation and effectiveness of the system for managing teacher underperformance. Heads of Service will monitor the evaluation of teacher performance by other appraisers within the service to ensure appropriate standards are utilised and that any programmes for improvement reflect the appropriate level of challenge and support. The Executive Director will correlate performance management reports on the outcomes for each education support service with the annual report on teacher appraisal and recommendations for performance pay progression in order to identify whether development areas are being addressed.

### **Grievances**

Where a member of staff raises a grievance relating to the competence procedure, the procedure may be temporarily suspended in order to deal with the grievance. However it may be appropriate to deal with both issues concurrently. The Head of Service or senior manager is advised to consult with HR.

### **Monitoring and Evaluation**

The council will monitor and evaluate the procedure. The review will be conducted in consultation with the recognised unions and professional associations representing teachers, through the Schools' Joint Consultative Committee (SJCC).

## **Advice and Guidance for Heads of Service and Managers**

### **Introduction**

The majority of services will not need to utilise the Formal Competence Procedure particularly if the following are in place:-

- A robust appraisal process, which is monitored and evaluated by the Head of Service and Assistant Director.
- Continuing professional development for all staff is clearly linked to appraisal and the service and Council's priorities.
- A collaborative approach to the development of quality of teaching & learning, through reflective practise and regular reference to the Teachers' Standards is embedded.
- Regular leadership development is undertaken to ensure senior staff can offer clarity of expectations and support to their teams.
- The service has a range of data (hard and soft) to inform the identification of areas for development and this regularly prompts appropriate action.
- The culture of the service supports and values all members of the service and facilitates them in contributing to their full potential.

### **The Context of Teachers Experiencing Difficulties**

**Heads of Service and managers are advised to read the document 'Appraisal – Teachers Experiencing Difficulties, Advice on Informal Structured Support and Monitoring', as much of the advice and guidance provided there concerning the delivery of support and monitoring programmes is also relevant to managing the successful application of the Formal Competence Procedure.**

The context for tackling performance concerns is also addressed in paragraph 3 of this document, 'Introduction'.

### **Teachers with Health Problems**

Teachers with health problems or those experiencing stress may require particular support.

The performance of teachers experiencing personal crisis, or a challenging context in their wider life, may decline. Managers will want to support such staff through



difficult periods and minimise any impact on the education of pupils. The Head of Service will need to use their professional judgement to determine, on balance, where the application of the competence procedure is appropriate and necessary, in such circumstances.

Heads of Service will be aware of any adjustments required to support teachers with a disability in the workplace and may seek further advice from Occupational Health when considering issues of underperformance from such staff. They are also advised to seek advice from HR to ensure the needs of staff who are covered by Equality Act 2010 are addressed.

Where a member of staff has been diagnosed with workplace stress, a risk assessment should be conducted. (A form and guidance are available from the Council's Health & Safety section) The Council's policy for the management of stress will provide further guidance. A proactive approach to identifying and responding to any sources of stress, in collaboration with the teacher, their professional association representative (where relevant), and HR adviser is recommended.

It is recognised that a proposal to initiate the Formal Competence Procedure may, in itself, be a cause of stress, therefore managers should plan to mitigate this effect through the quality of professional relationships, communication, positive approach and consideration for the colleague's dignity that is displayed.

The inclusion of mentoring that provides personal support, as well as professional guidance, in the programme drawn up to facilitate improvement of the teachers performance, is recommended.

### **III Health Absence**

#### **a) Before or at the outset of Formal Competence Procedures**

Where a teacher is absent due to ill health just before the meeting called to determine whether the procedure should be applied or soon after a decision is made, clearly the procedure cannot progress further until the teacher returns.

It should be made clear that the procedure will be applied after a suitable settling in period on their return.

If the meeting to consider transfer from Appraisal has not taken place it is advised that this be arranged a couple of weeks after their return. If the decision to enter the competence procedure has already been made, the teacher may be given a settling in period with support to develop his/her practice (as defined in the programme of support and monitoring) but the introduction of formal monitoring is deferred. This period should not exceed 4 weeks. During this time the teacher may be expected to co-operate with development activities and receive feedback from a coach or mentor.

The period allowed for the necessary improvement, when the formal monitoring of progress will be implemented, should commence at the end of the settling in period.

The support programme should specifically include arrangements to take account of the teacher's health and to minimise any potential for the procedure to contribute to a recurrence of ill health.

The advice of the Occupational Health Physician may be sought, as appropriate, concerning the teacher's fitness for work and any implications of their health for the continued application of the competence procedure.

Long term absence should be addressed through the Attendance Management procedure, which also includes the process for dealing with repeated short term absences.

#### **b) Absence in the Early Stages of Formal Competence Procedures**

The aim of the procedure is to improve performance through targeted support and regular developmental feedback. Unless there is consideration of issuing a final written warning at the same time as the teacher is notified of entry into the formal competence procedure (*exceptional cases*), there are potentially two periods of support and monitoring each of between 4 and 10 weeks. (normally the maximum period would be utilised)

Where a teacher is absent due to ill health during the first period, a decision cannot be made on whether to issue another warning at the time of review, unless:-

- the absence is short and they have returned before the review, or
- the teacher's absence only commenced just before the formal review meeting at the scheduled end of Stage One and sufficient evidence of progress and capacity to improve has been generated **and**
- the review meeting can still be held. (*It is possible that the teacher is sufficiently fit to attend the meeting even if they are not fully fit for work. The advice of occupational health should be sought.*) It may be possible to hold the review meeting in the teacher's absence through their representation by a professional association.

Otherwise, when the teacher returns to work, a settling in period, as described above, should be identified before the procedure continues.

Reviewing and revising the programme of support and monitoring should be considered and the teacher's health should be taken into account in any updated programme. The agreed programme of support should include arrangements to address and minimise the potential effects of the application of the competence procedure on the teacher's health and, in particular, a re-occurrence of previously experienced health concerns. Managers are advised to consult the Attendance Management and Stress Management Policies to facilitate consideration of the individual's situation.

Short absences of up to 2 weeks may not delay the timetable for the formal competence procedure, depending on the length of the review period and whether there has been sufficient time for the identified support to be delivered, enacted and consolidated.

### **c) Absence in the later stages of Formal Competence Procedures**

As already stated, Formal Competence Procedure should last for between 8 and 20 weeks. Where a teacher is absent due to ill health towards the end, or in the later stages (the second period of 4 to 10 weeks) of Formal Competence Procedures what action is taken will depend on the teacher's progress so far. The decision may be easier where the period has almost run its course and Formal Competence Procedures are close to a conclusion.

Reasonable steps should be taken to enable the teacher to attend evaluation meetings. Where the teacher is unable to attend, these may proceed in their absence, if delay would otherwise compromise the maximum timescale set aside for the procedure. The teacher's Professional Association Representative will be invited to attend and make a statement or representations on their behalf. A full and detailed record of the review should be provided in the letter confirming the decision taken.

If the teacher has made significant progress, and there is evidence to support this, they may be removed from Formal Competence Procedures.

If no significant sustainable progress has been made, or this is limited, and there is substantial evidence to support the view that Formal Competence Procedures will result in potential dismissal the Procedure should continue on this basis. In these circumstances the Head of Service, in the case of other teachers, or the relevant member of Children's Services senior management, in the case of the Head of Service, must decide what action should be taken.

The options are to:

1. Postpone Formal Competence Procedures until the teacher returns and implement the Attendance Management Procedure.
2. Continue Formal Competence Procedures.

In reaching a decision the Head of Service, in the case of other teachers, or senior manager, in the case of the Head of Service, will need to consider:

- The likelihood of significant sustainable progress being made during the remaining weeks of Formal Competence Procedures.
- The impact that a prolonged period before the situation is resolved will have on the effective, efficient management and operation of the service.
- The extent to which known ill health has now, or previously, affected the teacher's performance.

Particular attention should be paid to the last of these as this is a potential source of significant challenge to a decision to continue Formal Competence Procedures.

If the decision is to postpone Formal Competence Procedures it should be made clear to the teacher that Formal Competence Procedures will continue, after a suitable settling in period of no longer than four weeks, when they return. As already indicated it will be necessary to take account of the potential effects of ill health on the teacher's performance. The agreed programme of support should, therefore, include arrangements to address and minimise those potential effects to avoid action that may lead to a reoccurrence of ill health and therefore potential challenges to subsequent decisions.

If the decision is to continue Formal Competence Procedures the matter should be referred to an appropriate manager from the Leadership Job Family for a decision on the outcome of Formal Competence Procedures as set out in the Competence Procedure adopted by Council. The manager will be advised by a member of legal services. The manager will need to be presented with all the available evidence and circumstances before deciding whether to:

1. Postpone Formal Competence Procedures until the teacher returns and implement Attendance Management Procedure
2. Dismiss the teacher on the grounds of competence

If the decision is to dismiss, this will probably be challenged. The manager will therefore need to be satisfied and confident that there is substantial evidence to support its decision. In particular, that any further period of structured support, monitoring and review would not have led to significant and acceptable improvement in performance. Also, Council must ensure that employment rights to representation and appeal are met.

### **Guidance on the Arrangement of Formal Meetings with staff Involving Union/Professional Association Representatives**

The arrangement of a formal meeting with a member of staff is a fairly occasional event in most services. This will particularly be the case in small services.

Such meetings are likely to be in connection with one of the Human Resources policies, e.g. Disciplinary Policy, Absence Management, Competence Procedure. When the need arises to meet with a member of staff in connection with such processes or to arrange a hearing, there is an entitlement for him/her to be accompanied by a chosen representative. This representative will usually be from one of the trade unions or teachers' professional associations.

Senior Leaders are advised to be asked for the name/organisation of the representative, where possible, and make contact to ascertain their availability before setting dates and times. It can be very unsettling and disruptive to relationships, at an already difficult time, when a date is set and then has to be postponed owing to the unavailability of the representative:-

The legal position is as follows (The Employment Relations Act 1999 Section 10, paragraph 4)

"If:

- (a) a worker has a right under this section to be accompanied at a hearing,*
- (b) his chosen companion will not be available at the time proposed for the hearing by the employer, and*
- (c) the worker proposes an alternative time which satisfies subsection (5),*  
*the employer must postpone the hearing to the time proposed by the worker.*

*5. An alternative time must—*

- (a) be reasonable, and*
- (b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer".*

Unions/associations are likely to quote this when they are presented with a date they cannot accommodate. The service will have no choice, at this point, but to make new arrangements. This can cause considerable inconvenience for everyone concerned. A further difficulty is likely to be caused because the legal requirement calls for the representative to set a new date, within five days, and this will probably not be convenient for other people involved.

It is best to try and avoid a difficult period where parties struggle to set a mutually suitable date, colleagues (and sometimes pupils) in service may suffer because of the delay and resentment may develop.

Service leaders need to consider the perspective of the employee and their representative. Most employees would not expect to be called to a formal meeting, or any other management process, outside of working hours. The representatives themselves are sometimes employees of the union/association, who have scheduled working time, and branch officials are allocated particular times away from their 'day job' for their union duties. They may struggle to obtain release at other times.

It has been possible, on occasions, to arrange such hearings/meetings in the evenings but Heads of Service should expect to be challenged if making such arrangements. If at all possible, meetings in working hours are also preferable because the participants are more likely to be able to contribute effectively, than at the end of the day.

When informed that a representative cannot attend a meeting and a considerable number of other stakeholders have been assembled (Heads of Service, witnesses, HR Consultant, minute taker), Heads of Service have sometimes challenged the union to send a different representative to facilitate the process and save the impact of further delay on the employee. This is not easy for some associations to accommodate. They may have an agreement where only an individual union representative is authorised to receive the details of the case and to act on the member's behalf.

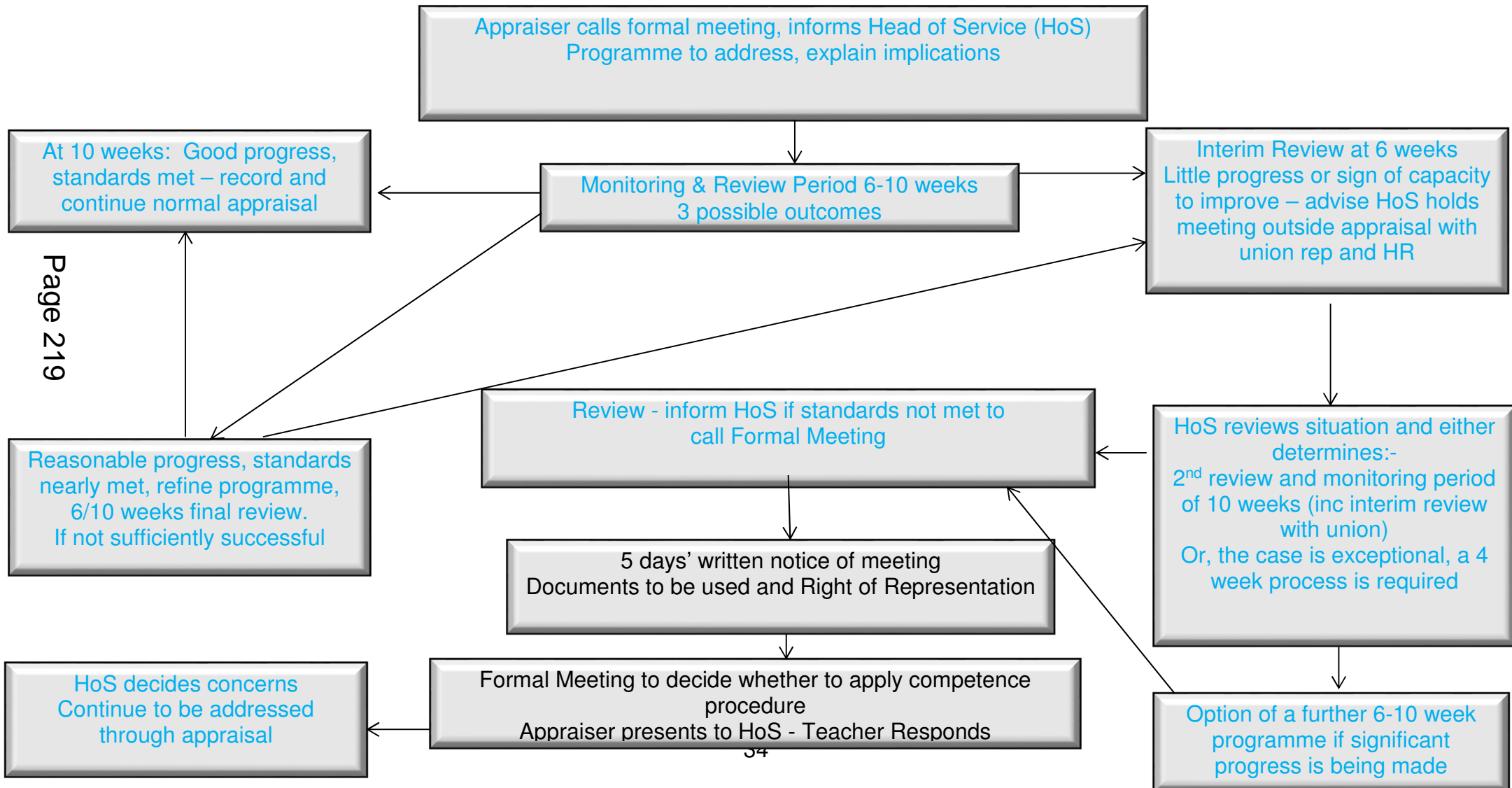
Heads of Service are advised to take these factors into consideration, in order to enable arrangements to be made in co-operative fashion. Alongside this guidance there has also been correspondence to the unions/associations seeking a similarly collaborative approach from their representatives. For instance, in recognising the requirement to co-operate with the process and offer a reasonable number of possible dates when meetings are needed. We reminded the association that just asserting their rights can foster a defensive response.

The need for formal meetings invariably means that there are challenging situations to manage, not just with the employee concerned but also possibly colleagues and the wider service. The 'tone' of all actions in connection with progressing the issue of concern will play a large part in minimising disruption, negative relationships and the ability to re-establish normal working practice afterwards.

Heads of Service may wish to contact the HR Service, if they are having difficulty in working with the unions on these matters.

# **Dealing with Underperformance- Flowchart - Appendix 3** **(Summary only – Please refer to procedure for necessary detail)**

## **Within Appraisal**



**Within  
Formal  
Competence  
Procedure**

HoS Decision to implement formal competence at **Stage one**,  
written warning or final written warning (exceptional)

4 to 10 week programme (normally maximum)  
Arrangements and expectations confirmed

Monitoring and Review Period  
Recommend interim review

5 days' notice of Formal Review Meeting  
HoS extends monitoring or issues Final Written Warning  
3 outcomes

Confident standards met and can  
be sustained – procedure ended

Standards partially met,  
confidence in improvement –  
may extend review period (if not  
already extended). If standards  
then met, procedure ends

Standards Met  
Competence procedure ends

Standards not met – Enter **Stage two** for  
2<sup>nd</sup> Monitoring & Review Period - 4 to 10 weeks  
**Hold interim review**  
HoS assesses improvement & whether to proceed

HoS may extend review period  
for no more than 6 weeks for  
standards to be met sustainably

If standards not met 5 days' notice, invite to Decision Meeting  
HR advice  
Decision on Dismissal

Written notification within 5 working days - Arrangements for  
appeal - Suspend from teaching duties

Possible appeal lodged within 5 working days of notice

Any extensions to time frames set will be  
subject to consideration of whether earlier  
extensions have been implemented, the  
context, impact and total time taken to  
address the areas of under-performance  
since the concerns were identified.



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Regulation 21(1)(A) of the Local Authorities (Executive  
Arrangements) (Access to Information) (England)  
Regulations 2000.

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