

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.

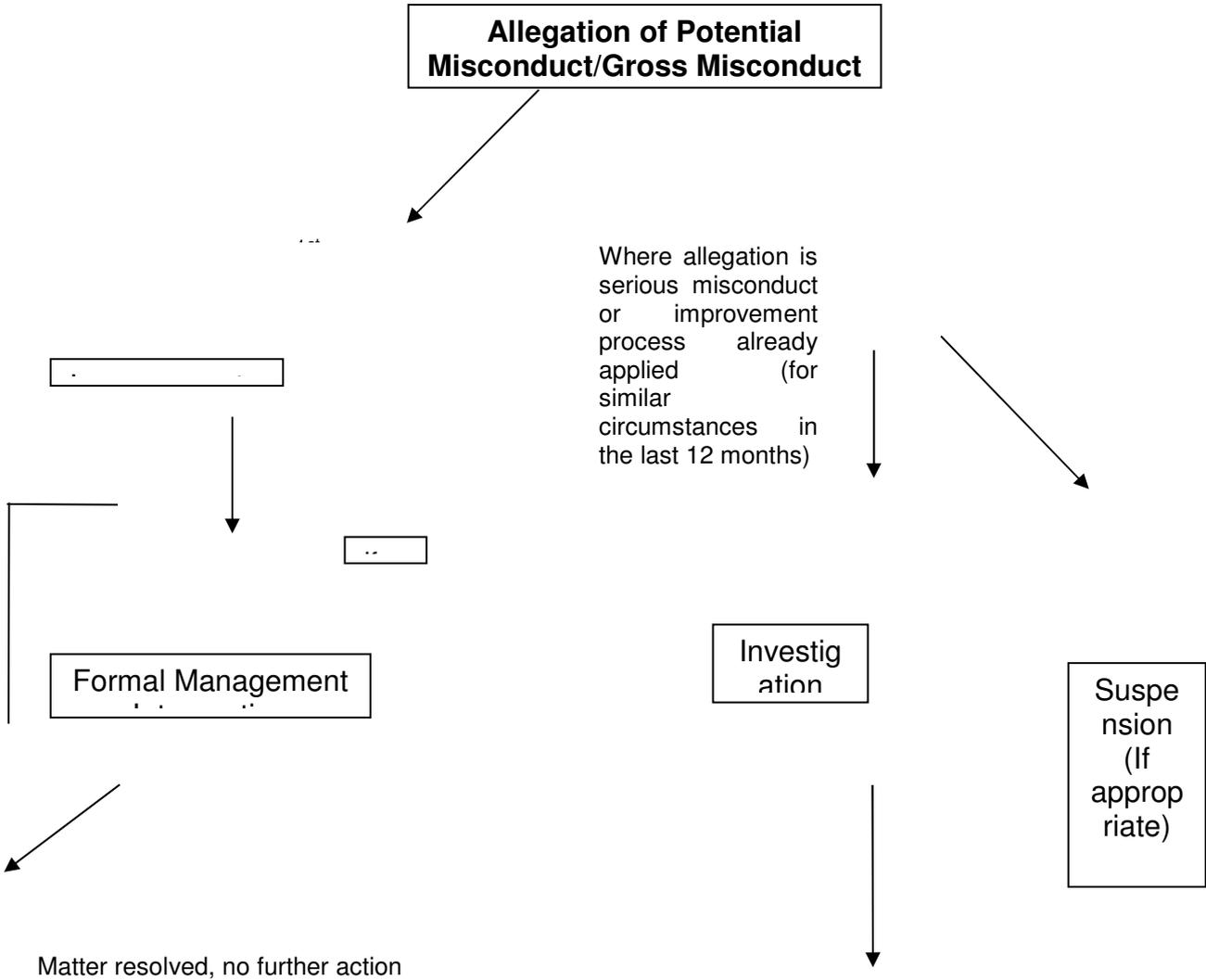
- The Appeal Hearing Officer will decide whether to allow or dismiss the appeal and will notify the decision personally. The decision will be confirmed in writing within 5 term-time working days.
- An appeal decision by the Appeal Hearing Officer will be final.

Appendix 3

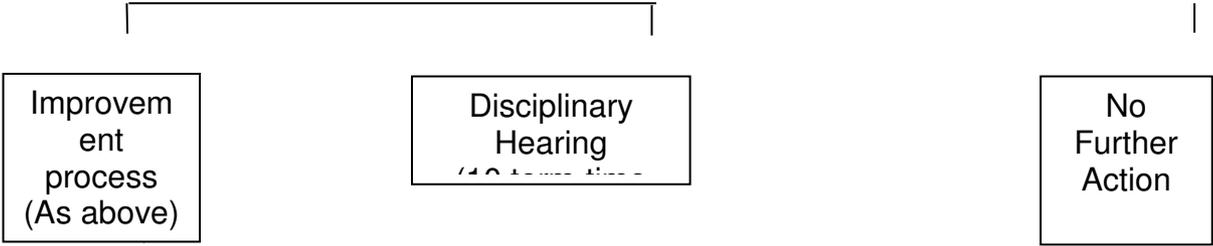
**DISCIPLINARY POLICY AND PROCEDURE
TIMELINES**

**Allegation of Potential
Misconduct/Gross Misconduct**

Where allegation is serious misconduct or improvement process already applied (for similar circumstances in the last 12 months)



Please see over for next step



No Further Action
Referral to Improvement Process (informal or formal as appropriate)
Written Warning
Final Written Warning
Dismissal
Summary Dismissal

Right of Appeal



Appeal Hearing



Appeal Decision



Expungement if relevant
1 Year/ - Years

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)*

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

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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 15th 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 11th 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 11th 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 15th 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 Yes/No (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): Yes/No (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): Yes/No (delete as appropriate)	Additional Maternity Leave runs from the end of Ordinary Maternity Leave
	Return to work Yes/No/Defer Decision (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>YES/NO</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>YES/NO</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>YES/No</p>		

Submit completed plan to your manager with a copy for the shared services Centre at 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

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 18th 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*
PENSIONS	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*
Pension	
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

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

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
Category 1 – 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

Category 2 - Medical			
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.)

Category 3 – personal & domestic considerations	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
	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	
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	Yes/No* If Yes please state the date (you can only make one statutory application in any 12 month period)
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"> • Days • Hours and Minutes 	
<p>Pensions – I have Sought Guidance from Teachers Pensions in relation to the implications of a period of unpaid on my Teachers Pension.</p>	
<p>I have read and agree to the conditions relating to the scheme.</p> <p>Employee's Signature:</p> <p>Date:</p>	
<p>To be Completed by Head of Service</p>	
<p>Application Approved/Not Approved*</p> <p>Reason for Decision (if application refused)</p> <p>Signature:</p> <p>Date:</p>	
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.