

**DERBYSHIRE COUNTY COUNCIL**

**Cabinet Meeting**

**26 October 2017**

**Report of the Strategic Director – Commissioning, Communities and Policy**

**REVISED EMPLOYMENT PROCEDURES**

**1. Purpose of the Report**

To seek Cabinet approval to the revised employment procedures as detailed below, following consideration and approval by Corporate Management Team.

**2. Information and Analysis**

As Strategic Directors are aware work has recently been carried out to revise a number of the Council's employment procedures, and to newly develop a Secondment Procedure. These procedures were the subject of a CMT report on 15<sup>th</sup> March 2017, and were subsequently approved by Cabinet on 25<sup>th</sup> April 2017.

Since March the Council's Grievance Procedure has also been revised, having last been updated in 2013, and is now submitted for the approval of Cabinet.

The revised procedure is aligned with the ACAS Code of Practice and also take account of relevant legislative changes, ACAS guidance and operational experience and requirements.

There has been extensive consultation on the revised and new procedures with the joint trade unions, council-wide HR Advisors, operational managers, HR Service Partners, Legal Services, Audit Services and the Council's employee network groups.

**Grievance Procedure**

Unfortunately, collective agreement with the trade unions has not been achieved in relation to the revised grievance procedure. This is because it does not provide for a separate 'Collective Grievance provision' which would allow trade union representatives to submit a collective grievance on

behalf of their members, (as opposed to the Council's current requirement that employees themselves submit a grievance). The grievance procedure does not preclude a group of employees raising a group grievance and the trade unions are able to raise matters of concern through the Council's collective negotiation and consultation procedures.

The revised Grievance Procedure attached is supplemented by detailed manager guidance to assist implementation, which has also been revised and agreed with the Stakeholders detailed above.

The main changes to the procedure are detailed below:

- More emphasis on using mediation throughout the grievance process;
- Additional exclusions from the grievance procedure, (misconduct by another employee and complaints about disciplinary action taken) both of which it is proposed should be dealt with under the disciplinary procedure;
- Consent for complaints to be considered which are 'out of time' in extenuating circumstances, bringing grievance procedure into line with other procedures;
- Additional emphasis on right to trade union accompaniment;
- Advice on handling grievances raised during the disciplinary process;
- Clarification that electronic recording of meetings is not allowed;

### **Attendance Management and Ill Health Capability Procedure**

In addition, following consultation with their members, the trade unions have withdrawn their agreement to the revised Attendance Management and Ill Health Capability Procedure which was previously submitted to CMT and Cabinet on the basis of having collective agreement. The reasons for their non-agreement are that the trade unions would like to see the following amendments:

- Part-day absences (due to sickness) not to be recorded as sickness absence;
- Phased returns to work to be on full pay (without the need for the employee to utilise annual leave or to record the absence as sickness absence);
- A disability leave policy to be implemented (whereby sickness absence related to a disability is not considered in relation to absence triggers or attendance management procedures);
- Absence due to industrial injury / accident at work not to be considered in relation to sickness absence triggers or attendance management procedures.

These issues have been discussed in the appropriate joint workstream meetings. The trade unions have been advised that pay related issues cannot be considered until there is clarity as to the revised pay and grading structure and that the manager's duty of care and responsibilities to support employees relate as much to disabled employees as to other employees, and, as such, the provisions of the attendance management procedure should be fully implemented. Managers should, and do, take account of employees' disabilities and consider the use of reasonable adjustments as appropriate and as required by the procedure.

Earlier in the year the trade unions had indicated their agreement to this revised procedure, and many of the amendments were at their suggestion. Other amendments are to reflect updated terminology and to provide clarity on the procedure, and are beneficial to employees.

It is therefore intended to implement both these procedures without trade union agreement.

### **3. Considerations (to be specified individually where appropriate)**

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

## **4 Legal Considerations**

On the basis that none of the proposed changes to the Grievance Procedure or Attendance Management Procedure constitute any significant detriment to employees it is considered reasonable to amend the existing procedures as described in the report without formal trade union agreement.

### **5. Key Decision**

No

### **6. Call-in**

Is it required that call-in be waived in respect of the decisions proposed in the report? No

## **7. Background Papers**

ACAS Code of Practice – Disciplinary and Grievance Procedures  
ACAS Guidance – Discipline and Grievance at Work

**6. OFFICER RECOMMENDATION**

That Cabinet approves the progression of revised employment procedures as detailed in the body of the report.

Emma Alexander

Strategic Director – Commissioning, Communities and Policy

# **GRIEVANCE PROCEDURE**



**Emma Alexander  
Strategic Director  
Commissioning, Communities  
and Policy  
October 2017**

<b>Version History</b>			
<b>Version</b>	<b>Date</b>	<b>Detail</b>	<b>Author</b>
1.00	28/06/2013	Restoring Elected Member appeal process.	Nigel Hughes
2.01	01/02/2016	Policy Review	Tracey Wall
2.02	01/05/2016	TU Consultation	Tracey Wall
2.03	01/06/2016	2 <sup>nd</sup> TU consultation	Tracey Wall
2.04	24/08/2016	Following legal comments and additional mediation	Tracey Wall
2.05	19/10/2016	Following Strategic HR Group comments	Tracey Wall
2.06	23/11/2016	Following Departmental Management consultation	Tracey Wall
2.07	August 2017	Following continued TU consultation	Tracey Wall

<b>Links and Dependencies</b>
ACAS Code of Practice on Disciplinary and Grievance Procedures
Discipline and Grievances at Work – the ACAS Guide

# Grievance Procedure

## 1. Purpose

A grievance is a concern, problem or complaint which is raised by an employee if they feel unhappy about an aspect of their work or treatment they have received.

The purpose of this procedure is to set out a process to address an employee's grievance as quickly and fairly as possible.

## 2. Scope

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

## 3. Key Principles

This procedure has been developed in line with ACAS guidance and the Code of Practice on Disciplinary and Grievance Procedures.

- The Council believes that all employees should be treated fairly and with respect.
- High performance and productivity are dependent on effective working relationships and the fair and reasonable handling of grievances is an important element in creating and maintaining those relationships.
- Managers and employees should approach grievances constructively, deal with issues promptly and not delay meetings, decisions or confirmation of those decisions.
- The prime focus of managers and employees raising a grievance should be on resolving the issue informally, without the need for reference to the formal procedure.
- Employees should be allowed full opportunity to explain their grievance and be provided with feedback at all stages.
- The employee can be accompanied by a colleague or trade union representative throughout the process.
- If an employee raises a grievance during disciplinary proceedings, both issues can be dealt with concurrently. Where a grievance is raised which is separate and wholly unrelated to the matter in hand, consideration can be given to dealing with the grievance separately at the conclusion of the disciplinary process.
- Mediation should be considered where appropriate at every stage of the procedure including after an appeal has been lodged.

- Neither party is allowed to electronically record meetings held as part of this procedure. The use of recording equipment by either party without consent may constitute a disciplinary matter.

#### **4. Exclusions**

This grievance procedure will not apply:

- Where there are separate, specific Council procedures to address an issue e.g. Harassment Procedure, Confidential Reporting Code, Recruitment and Selection Procedure.
- To issues which are the subject of collective negotiation or consultation with the trade unions or to collective disputes. This does not preclude a group of employees raising a collective grievance.
- Where the complaint is considered to be trivial, frivolous, vexatious or repetitive.
- Where there is an attempt to use the grievance procedure for potentially false or malicious accusations. This may be treated as misconduct and may lead to disciplinary action.
- In relation to the grading of a post.
- To complaints about allegations of misconduct by another employee; these will be investigated under the disciplinary procedure.
- To complaints about disciplinary action taken against an employee; these should be dealt with as an appeal under the disciplinary procedure.
- In relation to an incident which happened more than 3 months previously. However, complaints may be considered which are out of time where there are extenuating circumstances.

#### **5. Roles and Responsibilities**

Managers and employees are responsible for attempting to resolve grievances.

HR will provide support and guidance to managers on the operation of the procedure and offer access to the Council's mediation process if required. Manager guidance supplements this procedure.

Employees may be accompanied if they choose throughout the process by a colleague or a trade union representative.

#### **6. Addressing a Grievance**

##### **Informal Stage**

Employees and their managers must aim to settle a grievance by discussing it informally before proceeding to formal, written grievance statements. The majority of concerns, problems and complaints should be settled in this way. If



the complaint is about the employee's manager, a more senior manager should be involved. Employees can take advice from departmental HR on who to approach.

### **Formal Stage 1 – Meeting**

#### ***Employee***

If the employee considers that their grievance has not been resolved to their satisfaction by informal discussion, they have a right to submit the grounds of their grievance in writing to a more senior manager. This must include:

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

#### ***Manager***

- The working arrangements in place immediately prior to the grievance being lodged will remain for the duration of the grievance, unless the manager considers that one or more of the following override that principle:
  - relevant legislation e.g. health and safety,
  - safeguarding requirements,
  - professional accountability,
  - the safety of service users and staff or
  - the efficiency of the service.
- The manager will reply to the grievance letter within 7 calendar days, inviting the employee to attend a meeting to discuss the grievance. The manager may need to gather information before or after the meeting, whichever is most applicable to the case.

#### ***Meeting***

- The meeting will take place as soon as practicable after the letter has been received.
- There is a right to be accompanied at the meeting, by a colleague or a trade union representative.
- The purpose of the meeting is to give the employee the opportunity to explain their grievance and to seek a way to resolve it, taking into account the Council's policies, procedures and rules and the need for consistency and fairness.

- The employee should go to the meeting prepared to fully explain their case and to make clear what outcomes they are seeking to resolve the grievance.
- The employee should be given the option of accessing the Council's mediation process. This would entail pausing the grievance process whilst mediation is explored.

### **Outcome**

- The manager will normally inform the employee of the decision made on the grievance at the end of the meeting. In some cases an adjournment will be necessary to consider the case or to investigate it further.
- After the meeting the employee will be informed in writing within 7 calendar days of the manager's decision on the grievance. The letter will inform the employee of the action the manager proposes to take in response to the grievance or that no action can be taken.
- The employee will be informed of the right of appeal.
- The employee should discuss the proposed outcome with their line manager, where appropriate.

### **Formal Stage 2 – Appeal**

- If the employee is not satisfied with the outcome of the grievance meeting, there is a right of appeal to Elected Members which must be registered in a letter to the Director of Legal Services within 7 calendar days of receipt of the written notification of the meeting decision.
- The appeal will focus on the parts of the decision the employee is not satisfied with.
- The grounds of appeal should be set out in the appeal letter and the employee or their representative will use those grounds to establish their case at the beginning of the appeal.
- The Director will reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal, the hearing of which will take place as soon as practicable. There will be a minimum of 7 calendar days notice of the appeal date.
- Any statements of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeals Panel and other party at least 7 calendar days prior to the hearing.
- The employee has a right to be accompanied at the appeal, by a colleague or trade union representative.
- The employee will be informed of the outcome in writing within 7 calendar days. That outcome is the final stage within the Council's procedures.

# **ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY PROCEDURE**

Version History			
Version	Date	Detail	Author
1.00	28/06/13	Restoring Elected Member appeal process.	Nigel Hughes
2.00	02/02/2016	Review 1 <sup>st</sup> draft	Nigel Hughes
3.00	24/05/2016	Trade Union Consultation	Tracey Wall
4.00	16/06/2016	2 <sup>nd</sup> Trade Union Consultation	Tracey Wall
5.00	26/08/2016	Legal Services Consultation	Tracey Wall
6.00	23/11/2016	Following Departmental Management Consultation	Tracey Wall

Links and Dependencies
'A Fair Deal for Derbyshire' - Labour Manifesto 2013

# **Attendance Management and Ill Health Capability Procedure**

## **1. Purpose**

The purpose of this procedure is to set out the framework by which short and long term sickness absence will be addressed.

## **2. Scope**

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

## **3. Key principles**

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

- The aim of the procedure is to promote high levels of attendance at work which will in turn lead to better levels of service provision.
- Following this procedure will enable sickness absence issues to be addressed in a fair and consistent manner so that employees can achieve and maintain a satisfactory level of attendance at work.
- The Council will provide appropriate support for employees who are absent due to sickness.
- Abuse of the sickness scheme will be dealt with under the Council's disciplinary procedure.
- Employees have a right to be accompanied at formal meetings, held as part of this procedure, normally by a colleague or trade union representative.
- Employees will be given a minimum of 7 calendar days notice, in writing, of all formal meetings held under this procedure.
- Reasonable adjustments should be considered for employees where relevant, in accordance with the Equality Act 2010.

- Neither party is allowed to electronically record meetings held as part of this procedure. The use of recording equipment by either party without consent may constitute a disciplinary matter.

#### **4. Roles and responsibilities**

- Line managers have responsibility for managing the sickness absence of their employees.
- HR will provide advice and guidance as appropriate up to stage 2 of the process.
- Where required HR will accompany the Manager from stage 2 of the procedure onwards.
- Manager guidance supplements this procedure.

#### **5. Managing Sickness Absence**

##### **Sickness Reporting**

- Employees have a responsibility to report their sickness absence as set out below.  
Day 1 - Employee reports absence to manager in line with agreed timescales.  
Day 4 - Employee updates manager on nature / duration of the absence.  
Day 8 - Employee, if still absent, provides a Fit Note.
- Where an employee fails to comply with these timescales managers should contact the employee to discuss the absence.

##### **Return to work discussion**

- Return to work discussions will take place within 2 working days of an employee returning to work regardless of the length of absence.
- The discussion will be “face to face” wherever possible. Where this is not practicable, the discussion may take place via telephone.
- After the meeting the return to work documentation will be completed where appropriate.
- Consideration should be given as to whether a review meeting is appropriate as detailed below.

##### **Review process**

- Managers should review absences when the triggers have been reached:
  - Short term absence including intermittent absence (8 working days in any rolling 12 month period) (pro rate for part time staff) or
  - Long term absence (28 calendar days in any 12 month period) or
  - Where there is other cause for concern on the level or pattern of absence.
- Managers will make a record of all discussions, meetings and actions taken, ensure they are placed on the personal file and give a copy to the employee.

## **Stage 1 Informal Meeting**

Employees may be accompanied by a colleague or trade union representative if they choose.

At the meeting considerations will include:

- The employee's absence record.
- The reasons for absence.
- Up to date medical information provided by the employee.
- Referral to Occupational Health, physiotherapy or counselling where appropriate.
- Temporary alternative duties where these would allow an employee to return to work.
- Ending the process where the employee has returned to work and no further action is necessary.
- Setting a review period of 1 to 3 months, dependent on circumstances.

At the end of the review period there must be a discussion with the employee which should include:

- The actions taken at Stage 1.
- Steps the employee has taken to improve his/her attendance.
- Current available medical information, including information from the employee and any Occupational Health report where appropriate.
- Reasonable adjustments if these would help the employee to return to work or improve their attendance at work.
- Referral to Occupational Health where this has not previously been done.
- Reinforcement of the operational effects of absence from work.
- Removal from the process where attendance has improved to a satisfactory level or the employee has returned to work.
- Moving to a Stage 2 meeting.

## **Stage 2 Meeting**

The employee should be invited to a formal meeting to discuss their sickness absence. They may be accompanied by a colleague or trade union representative. At the meeting considerations will include:

- Reviewing information in relation to the employee's sickness.
- Reviewing the outcomes of all earlier meetings.
- Further referral to occupational health.
- Reasonable adjustments where appropriate.
- Redeployment where the Occupational Health Physician has stated the employee is fit for alternative duties.
- Ill health retirement where appropriate.
- Setting a further review period and advising the employee that if his/ her attendance at work does not improve or there is not a return to work within

a set timescale (1 to 3 months, dependent on circumstances), it may be necessary to arrange a Capability Hearing, the outcome of which may be dismissal.

At the end of the review period there must be a discussion with the employee which should include:

- Reviewing information about the employee's sickness.
- Reviewing the outcomes of all earlier meetings.
- Discuss the potential implications of their continued level of absence, which may lead to a Capability Hearing.
- Extending the review period where attendance has improved but there are still concerns about the employee's overall pattern of attendance, or where further information is awaited.
- Consideration of removal from the process where attendance has improved to a satisfactory level or the employee has returned to work.

### **Stage 3: Capability Hearing**

A capability hearing should be arranged if attendance at work has not improved to the required standard or if a return to work date has not been agreed.

The employee should be advised in writing of the requirement to attend a formal hearing and be provided with a statement of case a minimum of seven calendar days prior to the hearing.

The hearing will be chaired by a manager from the leadership job family (grade 15 and above) and an HR officer will advise. The decision of the Chair will be notified at the hearing.

Outcomes may include:

- Dismissal with notice (redeployment may be sought in appropriate circumstances).
- Final written warning.
- Further review period to allow time for attendance to improve.

A letter confirming the outcome of the hearing will be sent to the employee within 7 calendar days.

## **6. Appeal**

The employee has a right of appeal:

- An appeal against dismissal is to Elected Members and this must be registered in a letter to the Director of Legal Services within 7 calendar days of receipt of the written notification of the hearing decision.



- An appeal against any other outcome will be heard by a member of the Leadership Job Family (grade 15 and above) and must be registered in a letter to the appellant's Strategic Director within the same timescales.

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

Any statements of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeals Panel and other party at least 7 calendar days prior to the hearing.

A legal adviser will be present at any appeal against dismissal.

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

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