

DERBYSHIRE COUNTY COUNCIL

CABINET MEETING

25 April 2017

Report of the Strategic Director of Corporate Resources

REVISED AND NEW EMPLOYMENT PROCEDURES

1. Purpose of the Report

To seek Cabinet approval to the revised and new employment procedures as detailed below.

2. Information and Analysis

Work has recently been carried out to revise a number of the Council's employment procedures, as listed below, and to newly develop a Secondment Procedure.

- Disciplinary Procedure
- Attendance Management & Ill Health Capability Procedure
- Harassment & Bullying Procedure
- Performance Capability Procedure
- Performance Management Policy

The revised procedures are now submitted for the approval of Cabinet and following approval will be submitted to the Corporate Joint Committee, (CJC).

The procedures have been revised and developed in line with the ACAS Code of Practice and also take account of 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 and operational managers, HR Service Partners, Legal Services, Audit Services and the Council's employee network groups. All parties are in agreement with the procedures attached to this report as Appendices A to F. It should be noted that the trade unions have collectively agreed the procedures through the CJC Policy Workstream but UNISON have also indicated they intend to do further consultation with their members.

The documents attached are supplemented by detailed manager guidance to assist implementation, which has also been revised and agreed with stakeholders.

The main changes to the procedures are detailed below:

A Disciplinary

- Suspension – more guidance on alternatives and considerations before suspending an employee.
- Clarification of pay received whilst suspended.
- Clarification of relationship between disciplinary and grievance cases.
- Requirement to take notes at disciplinary hearings and clarification on retention of notes.
- Clarification around the appeal process (review / rehearing / grounds of appeal).
- Enhanced advice on adjustments and impartiality.

B Attendance Management and Ill Health Capability

- Amended terminology to allow for flexibility around specific cases and differing working patterns.
- Advice added on disciplinary suspension cases.
- Redeployment opportunities to be considered on a council-wide basis and not restricted to departments.
- Additional support for encouraging employees to return to work included.
- Additional information provided on long term sickness and leave.
- Greater emphasis on an employee's entitlement to be accompanied.
- Further advice and emphasis on the Equality Act 2010 provisions and consideration of disability.
- Further advice provided the extending and providing for further review periods.
- Requirement to take notes at hearings in line with other procedures.

C Harassment & Bullying

- Additional references made to protected characteristics.
- Greater emphasis made on the employee's right to accompaniment.
- Greater promotion of mediation.
- Removal of employer liability regarding third party harassment.

D Performance Capability

- Rewording of notice period to bring into line with other procedures.
- Emphasis on offering support and evidencing support offered.
- Arrangement for notes to be taken at hearings in line with other procedures.

E Performance Management Procedure

The policy has been re-written to encompass all the aspects of employee performance management including Induction, My Plan, Performance Capability and Workforce Development Planning.

F Secondment Procedure

Whilst the Council has provided secondments for some time, no formal procedure had previously been developed. The new procedure encourages managers to support secondments and provides for a consistent and fair process for considering and managing secondments and sets out the respective roles and responsibilities of the secondment manager, the substantive manager and the employee, together with the associated contractual requirements. It also provides the detail around how secondments should be managed during organisational reviews.

There will be a need, working with Communications, to publicise the revised procedures to ensure managers and employees are aware of the changes. It is anticipated that this will include:

- A message to SAP Chiefs identifying the main changes, and advising them how to access the revised procedures.
- An article in the 'Our Derbyshire' communication.
- A payslip message informing employees that procedures have been amended and advising them how to access the revised procedures.
- Updating the website and Dnet.

3. Considerations

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

Legal Services have been consulted on all the revised procedures.

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

ACAS Guidance – How to Manage Performance

8. Officer's Recommendation

That Cabinet approves the revised and new employment procedures.

Judith Greenhalgh
Strategic Director for Corporate Resources

DISCIPLINARY PROCEDURE

draft

Version History			
Version	Date	Detail	Author
1.00	28/06/2013	Restoring Elected Member appeal process. Including breach of information security in examples of misconduct.	Nicky Keep
2.00	12/01/2016	Review	Nicky Keep
2.01	24/05/2016	Following TU consultation	Tracey Wall
2.02	22/06/2016	Following 2 nd TU consultation	Tracey Wall
2.03	23/08/2016	Following Legal Services comments	Tracey Wall
2.04	19/10/2016	Following Strategic HR Group comments	Tracey Wall
2.05	22/11/2016	Following Departmental Management Consultation	Tracey Wall
2.06	31/01/2017	Following Additional Equalities Considerations	Tracey Wall
2.07	01/02/2017	Additional comments	Julie Bacon
2.08	02/02/2017	Final Equalities Considerations Unions	Tracey Wall

Links and Dependencies
ACAS Code of Practice on Disciplinary and Grievance Procedures
Discipline and Grievances at Work – The ACAS Guide
‘A Fair Deal for Derbyshire’ - Labour Manifesto 2013
ISO27001 Pre-Certification Audit for Derbyshire County Council

Disciplinary Procedure

1. Purpose

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

2. Scope

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

3. Key Principles

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

- Informal action will be considered where appropriate to resolve problems.
- Employers and employees should deal with issues **promptly** and not delay meetings, decisions or confirmation of those decisions.
- An employee will be advised of the nature of the complaint against him/her and will be given an opportunity to state his or her case before any decision is made.
- No disciplinary action will be taken against an employee until the case has been appropriately investigated by someone at least one management tier senior to that of the employee being investigated. The most junior level of management would not normally be expected to conduct an investigation.
- Employees will be provided with written copies of relevant evidence and relevant witness statements in advance of a disciplinary hearing in a format accessible to them.
- The employee has a statutory right to be accompanied at formal meetings, by a colleague, trade union representative, or an official employed by the trade union.

- An employee will have the right to appeal against disciplinary action taken.
- Neither party is allowed to electronically record meetings held as part of this procedure. The use of recording equipment by either party without consent may constitute a further disciplinary matter.

4. Use of the Disciplinary Procedure

The formal disciplinary procedure should be used if:

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

5. Roles and Responsibilities

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

6. Suspension

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

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

7. Action against Trade Union 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.

8. Examples of Misconduct

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

9. The Disciplinary Hearing

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

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

The employee must take all reasonable steps to attend the disciplinary hearing. Should their colleague/trade union representative not be available, an employee may propose an alternative time which must be within 7 calendar days following the day of the proposed hearing.

Notes will be taken at the hearing and will be made available to any future Appeals Panel and any future Employment Tribunal.

10. Disciplinary Penalties

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

10.1 Written warning

This is given for cases of misconduct.

10.2 Final Written Warning

If the offence is sufficiently serious or there is further misconduct during the currency of a prior warning, a final written warning will be given. This will warn that dismissal may result if there are further acts of misconduct.

10.3 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.

11. Disciplinary Measures as an Alternative to Dismissal

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

12. Confirmation of Disciplinary Action

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

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

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

13. Expiry of Disciplinary Action

All formal warnings shall normally expire after a period of satisfactory conduct and performance of 12 months (written and final written). In

exceptional circumstances the Hearing Officer may consider that the disciplinary warning period should exceed this.

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

14. Appeals

The employee has a right of appeal:

- 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 disciplinary action 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.

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

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

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

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

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

15. Disciplinary Records

Any actions relating to individual employee discipline should be recorded and maintained on relevant logs within Departments and on personal files. Records will be treated as confidential and kept in accordance with the Data Protection Act 1998 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 Director and reported to the Strategic Director Corporate resources on a regular basis.

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Appendix 1 - Examples of Misconduct

The following are examples of misconduct. It is not intended to be an exhaustive list. Some offences are serious enough to be deemed as gross misconduct and thereby destroy the contract between the employer and employee making any further working relationship impossible. Where this is proven to be the case, those offences could lead to dismissal without notice. The ACAS Code of Practice provides examples of acts that may be regarded as gross misconduct. These examples include theft, fraud, physical violence, gross negligence and serious insubordination. However, the seriousness of the offence and the circumstances in which it was committed will determine whether an offence constitutes misconduct or gross misconduct.

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

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

Abuse of a service user

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

Bringing the Council into disrepute

Bullying, intimidation, victimisation or other forms of harassment

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

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

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

Discrimination - against a member of the public or colleagues on grounds of sex, sexual orientation, marriage and civil partnership, age,

race, gender reassignment, pregnancy or maternity, religion or belief or disability.

Dishonesty

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

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

Fraud

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

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

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

Physical violence

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

Rules - failure to observe the provisions of the Council's Standing Orders, Financial Regulations, Policies, Code of Conduct and other applicable rules.

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

Theft

Time Keeping/Attendance - failure to attend work regularly and punctually during agreed working hours; failure to report inability to attend work due to illness or for any other reason, promptly, and in

accordance with the Council's procedures; prolonging absence by neglecting to act on medical advice.

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ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY PROCEDURE



**Judith Greenhalgh
Strategic Director
Corporate Resources
March 2017**

Version History			
Version	Date	Detail	Author
1.00	28/06/2013	Restoring Elected Member appeal process.	Nigel Hughes
2.00	02/02/2016	Review 1 st Draft	Nigel Hughes
3.00	24/05/2016	Trade Union Consultation	Tracey Wall
4.00	16/06/2016	2 nd 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 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 rata 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.

Appendix B

- 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 and / 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.
- Discussing the potential implications of their continued level of absence, which may lead to a Capability Hearing.
- Extending the review period 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:

Appendix B

- 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 unions 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.

HARASSMENT & BULLYING PROCEDURE



**Judith Greenhalgh
Strategic Director
Corporate Resources
March 2017**

Version History			
Version	Date	Detail	Author
1.00	28/06/2013	Restoring Elected Member appeal process.	Nigel Hughes
1.01	11/04/2016	Scheduled Revision Date	Tracey Wall
1.02	23/06/2016	Following TU consultation	Tracey Wall
1.03	26/08/2016	Following legal services consultation	Tracey Wall
1.04	19/10/2016	Following Strategic HR Group comments	Tracey Wall
1.05	23/11/2016	Following Departmental Management consultation	Tracey Wall

Links and Dependencies
ACAS Bullying and Harassment at Work – A Guide for Managers and Employers
ACAS Code of Practice on Disciplinary and Grievance Procedures
'A Fair Deal for Derbyshire' - Labour Manifesto 2013
Acceptable Use of Social Media Policy

Harassment & Bullying Procedure

1. Purpose

The purpose of this procedure is to develop a working environment where harassment and bullying are recognised as unacceptable and where individuals have the confidence to complain in the knowledge that their complaint will be addressed fairly, promptly, and confidentially, and to provide a framework to process any such complaint.

Derbyshire County Council is committed to maintaining a workplace that encourages and supports the right to dignity at work and all employees are expected to respect the rights of individuals to:

- Dignity in their working life.
- Be treated fairly.
- Be respected for their individuality and diversity.

The Council recognises the harmful effects of harassment and bullying which can include:

- Anxiety, distress, and other mental health issues;
- Reduced job satisfaction and productivity;
- Sickness absence;
- Poor working relationships;
- High staff turnover.

and is committed to implementing policies and procedures to:

- Prevent bullying and harassment at work;
- Promote the provisions of this procedure;
- Handle complaints seriously, fairly and confidentially;
- Ensure complainants do not suffer further treatment which could be considered to be bullying or harassment as a result of raising concerns regarding their treatment.

Any form of intimidating behaviour including harassment and bullying may be treated as a disciplinary matter and will be investigated under the disciplinary procedure. This applies not only at the workplace during working hours but at other work related activities – for example training courses, conferences and social functions.

It may also apply to conduct outside of work, for example the use of social media tools in relation to bullying and harassment.

2. Scope

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

3. Definitions

Harassment is unwanted conduct that violates an individual's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that individual. In the case of harassment, it is conduct that may be related to a protected characteristic; sex, race, religion or belief, disability, sexual orientation, age, gender reassignment, marriage or civil partnership, or pregnancy and maternity, or any other personal characteristic.

Bullying may be described as offensive, intimidating, malicious or insulting behaviour or, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

In both cases, it is behaviour that the recipient finds demeaning, offensive or unacceptable, which meets the above definitions. It may be persistent or an isolated incident.

There are many forms of harassment and bullying and some examples are detailed below. This is not an exhaustive list.

- Spreading malicious rumours, or insulting someone.
- Unwelcome personal comments or personal insults.
- Offensive jokes, language or gossip.
- Humiliation, for example criticising a colleague in front of others.
- Failure to safeguard confidential, personal information.
- Ridiculing or demeaning someone – picking on them or setting them up to fail.
- Aggression or intimidation.
- Exclusion or victimisation.
- Unfair treatment including due to a protected characteristic as detailed above.
- Overbearing supervision or other misuse of power or position.
- Unwelcome sexual advances or physical contact.
- Coercion for sexual favours.
- Making threats or comments about job security without foundation.
- Persistent overloading, criticism or setting impossible deadlines.
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.

- Cyber bullying – such as posting inappropriate photographs, offensive or threatening comments or sensitive personal information on social media sites.

Bullying and harassment are not necessarily face to face; they may be written, verbal, visual, (displaying posters etc.), physical or electronic.

Employees should be aware that it is the effect of the behaviour that determines whether bullying or harassment has occurred; even if the alleged harassment is unintentional, this can still be considered as harassment. An employee can submit a claim that behaviour amounts to bullying or harassment even if the behaviour is not directed at the employee who complains, but the behaviour creates an environment that any individual who witnesses the behaviour finds intimidating, hostile, degrading, humiliating or offensive.

4. Key Principles

This procedure has been developed in line with ACAS guidance and the Council's Equality and Diversity Policy.

The Council believes that harassment, discrimination, bullying or unfair treatment of any kind is unacceptable and is committed to promoting dignity and respect at work. Accordingly, any such act may be considered to constitute an act of misconduct in accordance with the Council's disciplinary procedure.

The primary focus should be on attempting to resolve such matters at the earliest opportunity, with the aim of achieving early conciliation between those concerned.

High performance and productivity are dependent on effective working relationships, and the fair and reasonable handling of complaints is an important element in creating and maintaining those relationships.

Managers and employees should approach complaints constructively, deal with issues promptly and not delay meetings, decisions or confirmation of those decisions.

Harassment and bullying are to be distinguished from a manager making reasonable requests to a member of staff.

The employee can choose to be accompanied throughout the procedure by a colleague or trade union representative.

Mediation should be considered where appropriate.

Behaviour can still amount to harassment in the absence of any deliberate intention – the key issue is the effect on the person on the receiving end of the behaviour.

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.

5. Exclusions

The harassment procedure will not apply in the following circumstances:

- Where there are separate, specific Council procedures to address an issue e.g. Grievance Procedure, Confidential Reporting Code, Recruitment and Selection Procedure.
- Where the complaint is considered to be frivolous, malicious or vexatious; such complaints may be treated as misconduct by the complainant and lead to disciplinary action, for which any right of appeal would lie within the disciplinary procedure.
- To matters relating to personal grievances or for addressing personal differences between employees
- To incidents which happened more than 3 months previously. However, complaints may be considered which are out of time where there are extenuating circumstances.

HR can provide further advice on whether a complaint is covered by or outside the scope of this procedure.

6. Roles and Responsibilities

Employees have a responsibility to:

- Protect the dignity of colleagues
- Avoid behaviour that may cause an individual to feel the subject of harassment or bullying.
- Challenge inappropriate behaviour from other employees.
- Familiarise themselves with the harassment and bullying procedure
- Participate in an investigation when requested to do so by an investigating officer

Managers have a responsibility to:

- Promote a working environment in which harassment and bullying cannot flourish.
- Familiarise themselves with the harassment and bullying procedure and ensure it is complied with
- Protect their employees from harassment and bullying

- Take prompt action to stop any harassment or bullying they become aware of, whether a complaint has been raised or not
- Ensure their staff are aware of the Council's policy on harassment and bullying
- Ensure the workplace is free of offensive posters, documents or use of language which may constitute harassment or bullying
- Attempt to resolve such complaints fairly, promptly, and confidentially

HR staff have a responsibility to:

- Provide support and advice to managers and employees on the operation of the procedure.
- Provide support and advice to facilitate the resolution of complaints raised through the procedure

Manager guidance supplements this procedure.

7. Addressing a Complaint of Harassment or Bullying

Informal Stage

Employees and their managers should aim to settle any complaint informally before implementing the formal procedure as an informal approach can often resolve matters quickly and effectively. Where this is not possible, the formal process should be followed.

If possible, the complainant should make it clear to the person against whom the complaint is being made that their behaviour is inappropriate and ask the harasser to stop. If the employee feels unable to do this, they may ask their manager, colleague or trade union representative to act on their behalf, or to accompany them. Alternatively, they may prefer to contact Departmental HR or the Council's employee counselling service.

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

Initial steps should be taken to resolve the matter through face to face discussion and mediation, if necessary, to determine the most appropriate course of action.

Where complainants wish to attempt to resolve the issue informally, they should be supported in this wherever possible. However, if the investigation shows that an informal approach is inappropriate, due to the seriousness of the allegations, or fear that the complainant may be at risk, formal action should be considered.

Mediation

The purpose of mediation is to find a solution acceptable to each party. Mediation is a voluntary process and both parties must agree to it. Either party may choose to withdraw at any point. The mediator is impartial and cannot impose a decision. The resolution must be reached by voluntary agreement between the two parties so parties to mediation cannot be accompanied.

Mediation is most successful when both parties:

- understand what is involved,
- enter into the process voluntarily,
- are prepared to attempt to repair the working relationship

It can be particularly helpful in cases where the person against whom the allegation has been made is unaware of the impact of their actions and also in situations where, whether the allegation is proven or not, there is a need to restore the employment relationship.

Mediation can be accessed through Departmental HR contacts.

Formal Stage 1 – Meeting***Employee***

If the employee considers:

- that they have a complaint regarding an incident which occurred in the last three months; or
- that their complaint has not been resolved to their satisfaction informally; or
- their complaint is so serious that an informal approach is not appropriate

They should submit their complaint in writing to a more senior manager within three months of the alleged incident and include:

- Name/s of the individuals concerned.
- Details of the allegation/s including relevant dates, locations and nature of the incident
- 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, or why the informal procedure is inappropriate
- Details of any outcomes sought

Manager**Potential Misconduct**

At this stage the manager should consider whether the nature of the allegation constitutes potential misconduct, according to the Council's disciplinary procedure.

If so, from this point, the Council's disciplinary procedure should be followed and the complainant should be advised of this decision.

Further Investigation Required

If the complaint does not appear to concern behaviour which could be considered to be misconduct, but it is felt by the manager that further investigation will be required to clarify the issue and to determine what action should be taken, then the manager will undertake that investigation.

- At this stage, HR advice should be sought
- Separate meetings should be held with the complainant and the person against whom the allegation has been made, as soon as practically possible, but within seven calendar days of receipt of the employee's written complaint.
- Both the complainant and the person against whom the complaint has been made may choose to be accompanied at these meetings, by a colleague or trade union representative.
- If necessary, other witnesses should be interviewed, if this is considered necessary, to ascertain facts which may have a bearing on the case
- Should the relationship between the two parties create an unworkable situation, alternative working arrangements can be considered, if this appears to be the only option. HR advice should be sought in these cases and this step should only be considered as a short term temporary measure.
- Having concluded interviews, if the allegation is found to be unsubstantiated, attempts should be made to conciliate between the two parties. Following satisfactory conciliation, the process is complete.
- Where the allegation is found not to be substantiated, but it is not possible to reach conciliation (the complainant remains aggrieved) there is a right of appeal. In these cases, both employees may need further support to successfully re-establish good working relationships.
- Where the claim appears to be substantiated, (i.e. harassment may have occurred) then the manager should pursue the allegations of misconduct derived from the findings of the investigation under the disciplinary procedure. In these circumstances, it may not always be necessary to conduct a separate investigation.

All parties should be notified in writing of the decision taken and of any actions to be put in place.

Formal Stage 2 - Appeal

- If the complainant is not satisfied with the outcome of the formal stage, there is a right of appeal to Elected Members which must be registered in writing to the Director of Legal Services within seven calendar days of receipt of the written notification of the outcome of the formal Stage 1.
- The grounds for appeal are that the Claimant believes that:
 - new substantial and relevant evidence has come to light;
 - there is evidence that the complaint was not adequately properly investigated in accordance with the procedure;
 - there is evidence that the complaint was not fairly investigated.
- The grounds of the 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 seven calendar days of receipt, acknowledging the registering of the appeal and arrange the hearing as soon as practicable. There will be a minimum of seven calendar days' notice of the appeal date.
- Any statements of case or evidence on which either management or the employee intends to rely should be provided to the Appeals Panel and other party at least seven calendar days prior to the hearing.
- The employee has the 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 seven calendar days.

That outcome is the final stage within the Council's procedures.

There is no right of appeal for the complainant regarding sanctions imposed on the harasser following disciplinary action.

8. Further Guidance

For advice on what constitutes harassment or bullying and for examples, please see Manager Guidelines to Harassment.

Harassment by third parties

There may be circumstances in which an individual is subjected to unwanted conduct from a third party such as a client or contractor. Abusive, offensive or threatening behaviour will not be tolerated.

If an employee makes a complaint about a third party, an investigation should be carried out and action taken to prevent a recurrence. When a complaint is upheld, consideration should be given to actions necessary to rectify the

situation. This may include mediation, conciliation and, where the third party is a service user, may result ultimately in the withdrawal of service provision.

Social Media and Bullying

Social media has presented opportunities for bullying in a different form – through the internet. This form of bullying may not be so tangible, as the victim may not see it personally, though colleagues may, and it can carry on away from the workplace. Cyber bullying will be dealt with in the same way as other forms of bullying, as it can be as damaging to the individual as any other form of bullying.

Harassment by Elected Members

Complaints against Elected Members should be made in writing to the employee's Chief Officer. Such complaints will then be reported by the Chief Officer to the Council's Monitoring Officer (the Director of Legal Services).

Harassment by Chief Executive

Complaints against the Chief Executive should be made in writing to the Council's Monitoring Officer (the Director of Legal Services) who will consider the complaint in accordance with the procedure.

Harassment by Chief Officers

Complaints against an employee's Chief Officer should be made in writing to the Chief Executive who will consider the complaint in accordance with the procedure.

9. Monitoring

Cases of harassment or bullying will be monitored by HR and reported quarterly to the Strategic Director – Corporate resources, reporting in line with Public Sector Equality requirements as required.

PERFORMANCE CAPABILITY PROCEDURE

Version History			
Version	Date	Detail	Author
1.00	28/06/13	Restoring Elected Member appeal process.	Nigel Hughes
2.00	14/03/16	Review	Nigel Hughes
3.00	24/05/16	Following trade union consultation	Tracey Wall
3.01	23/06/16	Following trade union consultation	Tracey Wall
3.02	26/08/16	Following legal services consultation	Tracey Wall
3.03	20/10/2016	Following SHRG comments	Tracey Wall
3.04	23/11/2016	Following Departmental Management consultation	Tracey Wall

Links and Dependencies
Performance Management Policy
My Plan Process

Performance Capability Procedure

1. Purpose

This procedure sets out the approach to managing performance when it fails to meet or falls below the expected standard.

The overriding aim of performance management is to achieve continuous improvement within a supportive framework. However there will be occasions when performance does not meet the required standard. Individual performance is monitored and reviewed through the Council's My Plan process.

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 improve performance to a satisfactory level through support, training and review.
- The expected standard of performance should be agreed and progress reviewed on a regular basis.
- Where the employee can perform to the required standard but chooses not to, the disciplinary procedure is more appropriate.
- Capability issues need to be dealt with fairly and confidentially.
- The manager must be able to provide evidence of under performance and raise this with the employee promptly.
- The manager should maintain full documentation throughout in applying this procedure.
- The manager must consider whether there are any underlying problems or impacting personal circumstances, and provide support as appropriate.
- Reasonable adjustments should be considered for employees where relevant, in accordance with the Equality Act.
- The employee will be given the opportunity to input to action plans aimed at improving their performance. Sufficient time should be given for the employee to demonstrate improvement.

- The employee should be given the opportunity to improve in their current job.
- The employee has a right to be accompanied at meetings held under this procedure, normally by a colleague or trade union representative.
- 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 are responsible for managing the performance of their employees. HR will provide support and guidance to managers on the operation of the procedure. Manager guidance supplements this procedure.

5. Managing under – performance

Managers should review performance against agreed objectives through regular My Plan one to one meetings, and any issues should be dealt with at the earliest opportunity. Ideally most should be resolved on an informal basis.

Stage 1: Informal meeting

If however there is no improvement, the employee should be informed at the next one to one meeting that the concerns about performance are being considered now under the informal stage of the Performance Capability Procedure. This one to one should be documented and include:

- Details of the under performance.
- The improvement required.
- The timescale for achieving this improvement.
- A date for review (up to a maximum of three months review).
- Any support or training that will be provided to assist the employee.

Review period

The period of review will be 1 to 3 months, dependent on circumstances, during which time performance will be monitored and regular feedback provided through one to one meetings. These meetings should be documented. Managers should provide support and training as appropriate during this period. At the end of the review period, the manager should confirm the outcome in writing:

- The employee has reached the expected standard and there is no longer cause for concern.

- There has been some improvement but not to the required standard overall, and the review period will be extended.
- If there has been no improvement, the employee should be invited to a Stage 2 meeting.

Stage 2: Formal meeting

The employee should be invited to attend a formal meeting to discuss the shortfall in performance. This should be in writing and give seven days' notice. The discussion should include:

- Evidence of the lack of progress during the review period and support offered.
- Any extenuating circumstances that may be affecting performance.
- A formal warning that failure to improve performance could lead to dismissal.
- Further targets for improvement.
- Further support/training that may assist.
- Any reasonable adjustments, if appropriate, that may be required.
- What will happen during the forthcoming review period.

The formal warning and agreed action plan should be confirmed in writing to the employee.

Review period

The period of review will be from 1 to 3 months, dependent on circumstances, during which time performance should be closely monitored and regular feedback provided as a minimum on a monthly basis which should be documented. At the end of the review period, the manager should confirm the outcome in writing:

- If the employee has reached the expected standard and there is no longer cause for concern.
- There has been some improvement but the employee is not yet fully at the required standard and the review period will be extended. Consideration should be given to a further written warning in these circumstances.
- If there has been no improvement, or consistent inadequate improvement, the employee should be invited to a Capability Hearing.

Stage 3: Capability Hearing

This should be arranged if performance has not improved to the required standard overall and stages 1 and 2 have been followed. The employee should be asked in writing to attend a formal hearing, and seven calendar days notice should be given. The letter should explain that dismissal is a potential outcome and provide or refer to the evidence that will be considered during the hearing.

The Hearing will be chaired by a manager from the Leadership Job Family and an HR officer will advise. The decision of the Chair will be notified at the hearing. Outcomes may include:

- Dismissal with notice.
- Redeployment to another role at the same level that better meets the skills and experience of the employee.
- Redeployment into a job which incurs a reduction in grade. This will not attract pay protection.
- Final written warning with a further review period.
- No sanction appropriate.

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 Appeal 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 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.

draft

PERFORMANCE MANAGEMENT POLICY



**Judith Greenhalgh
Strategic Director
Corporate Resources
March 2017**

Version History			
Version	Date	Detail	Author
V.01	15\03\2016	First draft of the policy review	Sally Hunter
V.02	28/03/2017	Links and dependencies and reference to Capability Procedure	Sally Hunter

Links and Dependencies
Performance Capability Procedure and Guidance

PERFORMANCE MANAGEMENT POLICY

1. Purpose

This policy sets out the Council's commitment to employee performance management. This is a key component of the broader organisational performance management process, and a key factor in enabling the Council to make best use of resources, achieve its objectives and deliver high quality services to our customers.

This policy introduces a framework that enables employees' performance to contribute to the goals of their teams and the Council as a whole, and ensures that employees are clear about the link. The aim is to continuously improve the performance of individuals and therefore that of the Council from their first day and throughout their career with Derbyshire County Council.

2. Scope

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

It encompasses the following processes which each have their own separate guidance/procedure;

Induction
My Plan
Performance Capability
Workforce Development Planning

It is intended to complement the "Supervision" practice in Adult Care, Youth Offending Service and Children's Services which will be maintained in line with the Skills for Care and the Children's Workforce Development Council's "Providing effective supervision" requirements. It will also complement any other professional supervision.

Where poor performance is due to ill health the Attendance Management and Ill Health Capability procedure should be used.

3. Key Principles

- Performance management is a line management responsibility, supported by the Council's HR processes.

- It aims to ensure that the investment in the workforce and workforce development supports the ambitions and priorities of the Council.
- It facilitates innovation and improvement by enabling greater flexibility in the deployment of the workforce to meet future needs.

4. Ongoing Performance Management:

4.1 Induction

- All new starters at Derbyshire County Council will receive an appropriate induction as detailed in the Induction Policy and Guidance.
- The induction period establishes the council's commitment to performance management and support for employees to continuously improve within their role.
- Induction is a line management responsibility with support from HR as required.

4.2 My Plan

Once the induction period is completed, all line managers will ensure that their staff are engaged in the My Plan process.

As a minimum the My Plan approach will include;

- ✓ Agreeing performance objectives, measures and timescales in line with the service plan and personal development priorities for a twelve month period.
- ✓ A formally recorded interim review during the twelve month period.
- ✓ A formally recorded annual review.

How this is achieved may vary according to the service situation. The My Plan guidance provides examples of approaches that could be adopted.

- Guidance and documentation for My Plan is available to support this policy.
- My Plan should both recognise and build upon good performance, creating a culture of continuous improvement, and make timely interventions to address any areas of underperformance.

5. Formal Management of Poor Performance

5.1 Performance Capability

If, through the My Plan process it becomes clear that despite regular feedback and appropriate support, there continues to be concern about the level of performance in relation to agreed objectives the performance capability procedure will be used.

The employee will be informed that the management of their performance is moving from the My Plan process to the capability procedure, until it is agreed that performance has achieved the expected levels.

6. Workforce Development Planning

In order to meet the workforce needs in terms of required skills, numbers and locations, workforce development plans will be produced annually in support of the service planning process. These workforce development plans will inform the support employees require to meet the changing skill sets resulting from service changes and the ongoing development of the organisation.

The plans will also enable succession planning within services through the identification of potential gaps in the future workforce. Therefore workforce development plans will underpin individual performance management, identifying future workforce requirements and potential development opportunities for those showing the potential to take on new challenges and areas of responsibility.

In turn these plans will be supported by the Job Family framework which was introduced to enable greater flexibility in the deployment and development of employees.

7. Roles and Responsibilities

7.1 Management have a responsibility to ensure the following.

- ✓ Role profiles, job specifications and person specifications accurately convey the main purpose and scope of the posts within their team and that new appointees have been properly assessed at interview against the person specification for the job.
- ✓ Induction is planned, delivered and reviewed for all new employees and appropriate action is taken if there are performance issues during the induction period.

- ✓ All employees have the opportunity to discuss and agree performance objectives and expected levels of performance and understand how these contribute towards the wider team, service and council objectives.
- ✓ Performance is managed on a regular basis and the My Plan process is used to ensure high quality feedback and discussion on performance is available for all employees.
- ✓ Priority development needs are identified in line with service priorities and personal development activity and review takes place as part of the My Plan process.
- ✓ High levels of performance are recognised and recorded and built upon to encourage a culture of continuous improvement.
- ✓ Poor performance is identified and discussed and action taken to support improved performance.
- ✓ Where poor performance indicates a move into formal performance management, i.e. performance capability, this is made clear to the employee and the correct procedures are followed.
- ✓ Workforce development is planned in line with service and team priorities and within available resources.

7.2 The Human Resources division have the responsibility to ensure;

- ✓ All aspects of the performance management process are fair and equal both in practice and in regard to legislation.
- ✓ To provide support and advice to managers on the implementation and appliance of the performance management policy and related processes.
- ✓ To regularly review guidance and resources that support performance management to ensure they reflect up to date practice and are fit for purpose.

7.3 All employees have a responsibility to;

- ✓ Undertake their contractual responsibility to achieve a satisfactory level of performance. All employees are required to take part in induction and the My Plan process.
- ✓ Actively engage in personal development planned as part of the induction, My Plan or capability processes.
- ✓ Attend all meetings arranged in relation to the capability process and for making every effort to improve in the identified areas.
- ✓ Seek clarification of any points not fully understood around the feedback they receive on performance and any expected actions they are asked to undertake to improve performance.

8. Evaluation and Review

Embedding this policy and related procedures in an organisation as large and diverse as Derbyshire County Council will require regular reviews and where necessary updating of support and guidance and the policy itself.

The HR Division will work with management teams to carry out this evaluation and review every 3 years as a minimum.

draft

DRAFT

SECONDMENT PROCEDURE

Version History			
Version	Date	Detail	Author
0.09	26/11/14	9 th draft incorporating comments from Legal Services, HROG, HR SMT, SSC, Tus	Diane Jones
0.10	25/07/16	10 th draft updated and flowchart added	Jeanette Moore/Liz Aris
0.11	27/09/16	11 th draft updated in line with comments from SHRG and TU	Liz Aris
0.12	4/10/16	Updated in line with JB comments and clarification from Legal Services on secondment converting to FTC upon deletion of substantive job.	Jeanette Moore Jeanette Moore
0.13	7/10/16	Added section 8 re secondments into/out of DCC. Legal approval of document.	Jeanette Moore
0.14	13/10/16	Minor updates following SHRG approval	Liz Aris
0.15	15/12/16	SSC and Manager comments	Liz Aris
0.16	21/12/16	TU comment	Liz Aris

Links and Dependencies
LGE Employers' E-Guide No 6: A Guide to the Law on Secondments
Hay User Group example Secondment Policies: Leicestershire, Essex, Hertfordshire, North Somerset
Previous Council Secondment Policy
2016: Leicestershire County Council, London Borough of Islington, Aberdeen City Council (job swapping), Lincolnshire County Council, City and County of Swansea, CIPD Factsheet Nov 2015

DERBYSHIRE COUNTY COUNCIL

SECONDMENT PROCEDURE

1. Purpose

The secondment procedure supports managers in adopting a consistent and fair process when considering and managing secondments.

2. Scope

This procedure applies to all employees of Derbyshire County Council and is recommended to those schools where the Governing Body performs the function of the employer.

3. Introduction

The term secondment is defined as the temporary movement or 'loan' of an employee to another part of the organisation (or to/from an external organisation) for the mutual benefit of the employee and the organisation where the employee's substantive job remains available for them to return to at the cessation of the secondment.

A secondment is not a fixed term contract. Separate guidance for fixed term contracts can be found on Dnet at [http://dnet/policies_and_procedures/human_resources/Fixed Term Contracts](http://dnet/policies_and_procedures/human_resources/Fixed_Term_Contracts)

Temporary jobs will be advertised and recruited to in accordance with the Council's normal recruitment and selection procedure and employees are encouraged to apply for these on a secondment basis, returning to their specific substantive job on completion of the secondment.

Secondments must be mutually agreed in advance between the employee, substantive manager and secondment manager.

There is no automatic right to be released to undertake a secondment opportunity although the Council actively encourages managers to agree to release employees (see 3 below).

Secondees have no automatic right to be slotted into secondment positions which become available on a permanent basis. The normal recruitment process would apply in these circumstances.

Secondments will be either:

- Internal - within or between sections / departments / schools
- External - from the Council to an external organisation* where the Council will remain the employer and the secondee will continue to be subject to the Council's policies and procedures
- Inward - from an external organisation to the Council* where the Council is the Host, not the employer.

*For a secondment into/out of the Council, see section 8 below, and seek HR advice.

A secondment could be either:

- Full time – whole working time of secondee
- Part time – where part of the secondee's working time is spent in the substantive job and part in the seconded job

A secondment would not apply in the following circumstances:

- “Acting up” or “temporary promotion” within the same team: An employee may be asked to “act up” to undertake all or some of the responsibilities of a more senior role to cover a short term absence (up to three months), or pending recruitment. “Acting up” opportunities will not always be advertised unless there is likely to be competition amongst a number of people in the team. If duration is anticipated to be over three months, it should be formally advertised as a temporary job. A Variation to Contract relating to the temporary promotion would be issued and arrangements for remuneration agreed in accordance with the appropriate terms and conditions.
- Short term placements, such as work shadowing, which are arranged informally between teams.
- Work tasters

4. Benefits to the employee and the Council

Managers are encouraged to agree the release of employees for secondment opportunities when temporary jobs are advertised as there are a range of benefits for both the employee and the organisation:

- Opportunity for employees to gain enhanced skills and knowledge to support career development
- Providing a short-term resource for specific projects, fluctuating service needs, maternity leave cover, staff shortages, etc
- Directing expertise and sharing skills and knowledge across the organisation and wider community
- Supporting service improvement and cross departmental working
- Supporting partnership working
- Strengthening a culture of flexibility
- Attracting employees who are flexible and keen to develop

5. Duration

The typical duration will be for a period up to one year and secondments will only be extended beyond two years in exceptional circumstances. All parties will need to agree any extension to the original secondment.

Managers should seek the advice of their HR Service Partner prior to advertising secondments which are more than two years in duration, or extending a secondment beyond two years. Consideration should be given in these circumstances as to whether the job should be/continue as a secondment or be appointed to on a permanent basis through the normal recruitment procedure.

Services should track secondments to ensure they do not continue indefinitely.

6. Responsibilities

Secondment Manager

- Advertises the job under normal vacancy control and recruitment and selection procedures to give employees equal opportunity to apply
- Meets the salary costs of the secondee, including any contractual/statutory sick pay, maternity/paternity pay, etc
- Ensures that the SSC are notified and any required pre-employment checks, eg. DBS check/medical, etc, are carried out prior to commencement of the secondment
- Ensures any reasonable adjustments are put in place prior to the commencement of the secondment
- Provides an induction, in line with our induction policy and process, and any training and development that may reasonably be required to carry out the job
- Agrees objectives relating to the seconded job, which should be reflected in the secondee's My Plan
- Assumes day to day management responsibility, including for leave, absence
- Report to the substantive manager any performance, health and safety, grievance or disciplinary matter that relates to the secondee which arises out of, or is in any way connected with, the secondment
- Has responsibility for reviewing the secondment and contacts the substantive manager at least three months prior to the secondee's proposed return date to their substantive job
- Evaluates the success of the secondment and makes recommendations for further development
- If the secondment arrangement is with an external organisation, liaises with Finance and the external organisation to ensure that appropriate cross charging arrangements are in place

Substantive Manager

- Makes the decision whether or not to 'release' the employee from their substantive job, for the period of the secondment
- In the event of a release on secondment, or an extension to the secondment, not being agreed, the job may be offered to the employee as a fixed term contract. HR advice must be sought in these circumstances and the employee made fully aware, in writing, of the implications, ie. that they will be giving up their right to their substantive job. When the fixed term contract comes to an end, employment will be terminated unless another job has been secured
- Considers the temporary backfill arrangements, impact on the team, additional training required and whether to cover the absence on a fixed term contract basis (see Fixed Term Guidance)
- Makes arrangements to ensure the secondee is kept in touch regularly with general developments affecting their substantive job
- Includes the secondee fully in any consultation process which affects their substantive job
- On return, discuss the value of the secondment and reset My Plan objectives.

Employee

- Required to discuss any secondment opportunities with their substantive manager and gain approval for release prior to applying

- If a release on secondment, or extension to a secondment, is not agreed, and the employee wishes to apply for the job on a fixed term contract basis, he/she should discuss with their substantive manager the implications of doing so on their employment contract, with advice from HR if required.

7. Contractual arrangements

- A secondment agreement for the secondment will be formally issued by the Shared Services Centre (SSC)
- The salary, grade and terms and conditions of employment of the seconded employee will be those applicable to the advertised secondment
- The secondment agreement should include a break clause
- If there is no agreement from the substantive manager to release the employee from their substantive job, or to extend an existing secondment agreement (see 'Employees' above), the employee may decide to accept an offer of a fixed term contract instead and resign from their substantive job. There will be no right of return to their substantive job and a fixed term contract will be issued
- If a secondment is to be extended (see section 5), the secondment manager must obtain agreement from the substantive manager and employee prior to contacting the SSC and completing a 'Generic Employee Variation' form on SAP Workplace. The SSC will then issue a Secondment Extension
- If the secondment is required to end early for any reason, instigated by any party eg, there is a change to service requirements, the secondment will end with the agreement of the secondment manager and substantive manager, subject to a minimum notice period to be agreed between all parties, usually one month. If the employee resigns from Derbyshire County Council (DCC) employment, the normal contractual notice period will apply
- Employees seconded to external organisations retain full continuity of employment with DCC and will remain an employee of the Council throughout.

Organisational reviews

If the employee's substantive job is included in a restructure during the secondment period, the employee will automatically be fully included in any consultation or process which affects the job. If the substantive job is deleted from the structure, the term "secondment" will no longer apply as there is no substantive job to return to. The secondees may continue in the secondment role until their last day of notice, provided that that was agreed with all parties and the notice provisions of the secondment were adhered to. Following this, if the employee continued in the temporary job, this would have to be on a fixed term contractual basis (which would also include a statutory four week trial period). At the end of the fixed term contract period, employment would be terminated unless an alternative job could be secured. HR advice should be sought and the employee made fully aware, in writing, of the implications of the changed contractual status, prior to them being asked to make a decision as regards to their continuation or otherwise in their substantive job.

8. External secondments

Out of DCC

A "template" Agreement should be used (drawn up by Legal Services and issued by HR) in cases where an employee is seconded to an external organisation. The general principles

in the previous sections of this procedure will still apply to external secondments (both into and out of DCC), where appropriate. HR and legal advice should always be sought in relation to any external secondment to ensure that the “template” is appropriate to the circumstances and takes into account any changes in the law. Advice should also be taken where the external secondment is to be to an organisation with whom DCC has an arrangement such as an honorary contract or a s.113 agreement (e.g. NHS).

Into DCC

Most secondment agreements are, in broad terms, an extension of the employee’s current contract and therefore it would be more usual for the external organisation to provide the contractual agreement for a secondment into DCC. HR and legal advice should be taken on each occasion and it may be possible for DCC (Legal Services and HR) to provide the agreement in particular circumstances. Advice should also be taken where the external secondment is to be from an organisation with whom DCC has an arrangement such as an honorary contract or a s.113 agreement (e.g. NHS).

For both external and inward secondments, specific consideration must be given in relation to cross charging eg. the reimbursement of salary/contractual and statutory sick, maternity or paternity pay.

9. Job Swapping

Job swapping is an informal, mutually agreed arrangement where employees in jobs at the same grade and terms and conditions, temporarily swap jobs for a maximum period of six months as a development opportunity. Both managers and both employees need to agree to these arrangements and where allowances, etc, may differ, these need to be agreed at the outset. The job swap can be ended at any time with the agreement of all parties.

Employees who wish to be considered for a job swap should discuss this with their manager in the first instance. Their manager should then contact the manager of the potential ‘job swap’ position to discuss whether a swap may be possible.

A job swap may not always be possible due to operational requirements or where a job requires specialist skills or specific qualifications.

HR advice must be sought in all cases. The terms of the job swap will be confirmed in writing by departmental HR.

10. Review

The procedure will be subject to review as part of any further development of the Internal Jobs Market.

SECONDMENT FLOWCHART

