

DERBYSHIRE COUNTY COUNCIL

CABINET MEETING

30 July 2013

Report of the Director of HR

**EMPLOYMENT APPEALS
(Council Services)**

1. Purpose of the Report

To seek Cabinet approval to restore to Elected Members the responsibility for the hearing of employment appeals against redundancy, disciplinary and capability dismissals and grievance hearing and harassment procedure outcomes.

2. Information and Analysis

Employees have internal rights of appeal against dismissal on the grounds of redundancy, conduct (disciplinary) and capability (ill health and performance) and against the outcomes of grievance hearings and harassment procedure outcomes. Between July 2011 and May 2012 the responsibility for hearing this group of appeals was changed from Elected Members to Strategic Directors and Directors or, in the case of grievance and harassment appeals, to a senior manager from the Leadership Job Family. At the trade unions' request, this was agreed subject to review after 12 months operation.

It is proposed to restore employees' right of appeal to Elected Members for appeals against dismissal on the grounds of redundancy, conduct and capability and against the outcome of grievance hearings and harassment procedure outcomes.

The associated procedures have been revised in draft (subject to discussion with the Elected Members/Trade Unions) and are attached at Appendix 1.

If approved, considerations in implementing this proposal will be:

- Transitional arrangements. It is proposed that, where arrangements for the appeal hearing have already been made and communicated to the employee, existing arrangements would apply. Cases not at this stage in the process would be considered by Elected Members.
- The development needs of Elected Members on the Licensing and Appeals Committee. This will be considered by the Chair of the

Elected Member Development Group. If a need is identified, appropriate training would be provided.

- The processes to be put in place for Democratic Services to resume the organisation and administration of appeals.
- The HR and Legal advice available at appeals.
- The need for an updated equality analysis of the proposed changes. It is not considered a full analysis is necessary.

The trade unions will be consulted on the detail of the proposals through Corporate Joint Committee. Following Cabinet approval, managers and employees will be informed of the revised arrangements.

3. Considerations

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

4. Key Decision

No

5. Call-in

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

6. Background Papers

Draft revised procedures in Appendix 1.

7. OFFICER'S RECOMMENDATION

That Cabinet approves restoration to Elected Members of the responsibility to hear the employment appeals as specified.

**TONI COMPAI
DIRECTOR OF HR**

ATTENDANCE MANAGEMENT AND ILL HEALTH CAPABILITY PROCEDURE

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, 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.

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 and employee guidance supplement 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 medical certificate.
- 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 (pro rata for part-time staff):
 - short term intermittent absence (8 calendar days in any rolling 12 month period) 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

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. 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.
- Where attendance has improved or where further information is awaited, extending the review period.
- 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 must be registered in a letter to the appellant's 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.

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.

DISCIPLINARY PROCEDURE

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 ACAS guidance 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
- The employee has a right to be accompanied at formal meetings, normally by a colleague or trade union representative

- An employee will have the right to appeal against disciplinary action taken.

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. HR will provide support and guidance to managers in complex cases. Manager guidance supplements this procedure.

6. Suspension

In certain circumstances it may be necessary to suspend an employee on full pay whilst an investigation takes place into alleged misconduct. Suspension on full pay is a neutral act and 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.

7. Action against Trade Union Representatives

If an accredited trade union representative is the subject of a disciplinary investigation, the circumstances of the case should be reported to a regional official of the trade union concerned, after obtaining the employee's agreement, and the Director of HR should be notified.

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 7 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, 7 calendar days prior to the hearing.

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.

10. Disciplinary Penalties

The senior officer chairing the hearing will determine what level of sanction, if any, is appropriate. 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 Disciplining Officer may recommend that alternative measures to dismissal may be applied (e.g. removal of incremental progression, redeployment, demotion to a lower graded post) with the consent of the employee. These may be combined with a warning. Where the employee rejects the offered alternatives, dismissal will normally apply.

12. Confirmation of Disciplinary Action

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

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

The employee has a right to be accompanied at the appeal.

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

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 Director and reported to the Director of HR on a regular basis.

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 seriousness of the offence and the circumstances in which it was committed will determine which offences constitute gross misconduct.

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

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

Abuse of a service user

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

Bringing the Council into disrepute

Bullying, intimidation, victimisation or other forms of harassment

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

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

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

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

Dishonesty

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

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

Fraud

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

Insubordination – failure to comply with the reasonable 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.

GRIEVANCE PROCEDURE

Grievance Procedure

1. Purpose

A grievance is a concern, problem or complaint which is raised by an employee about an alleged deficiency in the Council's treatment of them. The purpose of this procedure is to set out the framework by which an employee's grievance will be addressed 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 has a right to be accompanied at formal meetings, normally by a colleague or trade union representative
- If an employee raises a grievance during disciplinary proceedings, the grievance may be heard as a part of those disciplinary proceedings where the two cases are related.
- Mediation should be considered where accessible and appropriate.

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.
- In relation to an incident which happened more than 3 months previously.

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. Manager and employee guidance supplement this procedure.

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, another 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. This would normally be by a colleague or a trade union representative.
- The purpose of the meeting is to give the employee 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 action they are seeking to resolve the grievance.

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.
- 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.

7. Monitoring

Grievance cases will be monitored by HR and reported quarterly to the Director of HR.

HARASSMENT & BULLYING PROCEDURE

Harassment & Bullying Procedure

1. Purpose

The purpose of this procedure is to develop a working environment where harassment and bullying are known to be 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, 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. This applies not only at the workplace during working hours but at other work related activities – for example training courses, conferences and social functions.

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 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. 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
- 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

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.

- 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 has a right to be accompanied at formal meetings, normally by a colleague or trade union representative
- Mediation should be considered where accessible and appropriate.

5. Exclusions

The harassment procedure will not apply:

- 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, this may be treated as misconduct and lead to disciplinary action.
- 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, or if it is in the interest of the Authority to continue with the complaint.

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:

- 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
- Promote a working environment in which harassment and bullying cannot flourish.

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 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.

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.

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.
- 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 has 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 or 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.
- 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

Employers are potentially liable for harassment of their employees by third parties, for example customers or clients. Employers are liable when harassment has occurred on at least two previous occasions, they are aware harassment has occurred, and they have not taken reasonable steps to prevent it from happening again.

If an employee makes a complaint about a third party, an investigation should be carried out and action taken to prevent a reoccurrence. 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.

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) and the Standards Committee.

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 Director of HR.

PERFORMANCE CAPABILITY PROCEDURE

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 formal meetings, normally by a colleague or trade union representative

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 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 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 ones. 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. The discussion should include:

- evidence of the lack of progress during the review period
- 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 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 must be registered in a letter to the appellant's 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.

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.

REDUNDANCY, REDEPLOYMENT, PROTECTION OF EARNINGS AND BUY OUT OF HOURS POLICIES

1. Contents

1. Contents	2
2. Introduction	3
3. Scope	3
4. Redundancy Policy	3
5. Roles & Responsibilities	4
6. Avoiding or Minimising Redundancies	4
7. Formal Consultation	5
8. Selection	8
9. Appeal	10
10. Notice	11
11. Suitable alternative employment	11
12. Support Measures	11
13. Redeployment Policy	12
14. Pay Protection Policy	14
15. Buy Out of Hours Policy	15
Appendix 1	17
Redundancy Outline Timetable	
Appendix 2	19
Selection Criteria Assessment Form	
Appendix 3	21
Measures to support employees who are at risk/under notice of redundancy or on pay protection	
Appendix 4	23
Basic pay protection policy	
Appendix 5	27
Buy Out Matrix Based On Current Hourly Rate And 26 Week Multiplier	
Appendix 6	29
Redundancy Pay	

2. Introduction

These policies set out the approach to redundancy, redeployment, protection of earnings and buy out of hours within the Council. They are key elements in a wider organisational change framework. There is a clear need and expectation that for employees affected by the application of any of these policies, there is effective communication and engagement with them. This communication should seek to ensure that employees understand the reasons for the changes being proposed, the impact on them and importantly the support available from the Council.

The sum of these policies contribute to the Council a consistent, transparent and effective process for dealing with such situations, ensuring compliance with good practice and statutory requirements, balancing the needs of the County Council and employees in making organisational changes.

3. Scope

The Council accepts its responsibilities as a single employer. However, it is implicit within these policies that the successful handling of redundancy and redeployment requires the active support, participation and co-operation of all parties, Chief Officers, managers, trade unions and employees.

These policies apply to all employees (excluding schools employed staff where other arrangements apply). All other Council employees based in schools where the LEA is the employer are within the scope of the policy.

4. Redundancy Policy

This policy is in accordance with legislative requirements and ACAS guidance, and an Equality Impact Assessment (EIA) has been carried out to ensure it meets the requirements of the Equalities Act 2010.

The Council is committed to maintaining high quality services and will, where feasible, make all reasonable efforts to avoid redundancies through careful planning including; workforce planning, vacancy control measures, natural wastage and redeployment and retraining where possible. The aim is to ensure that the valuable skills, experience and knowledge of our employees are retained where circumstances permit.

The Council is committed to full and meaningful consultation with employees and with our recognised trade unions regarding proposed organisational changes. The aim is to safeguard the interest of employees and ensure their engagement in the process of change whilst meeting the prime objective of maintaining high quality and cost effective services. Consultation will include consideration of ways of avoiding redundancies, reducing them to a minimum and/or mitigating the consequences of dismissals.

Consultation will be undertaken with a view to reaching agreement and any representations or counter proposals made will be appropriately considered. The Council will work with the trade unions to explore all reasonable alternatives to compulsory redundancy within the prevailing circumstances.

An EIA of the policy has been undertaken. This reflects the Council's commitment to equalities and aims to ensure that employees are treated fairly and without discrimination on the grounds of race, nationality, ethnic or national origin, gender (including gender reassignment), marital status, disability, age, sexual orientation, trade union membership or activity, religion, belief, unrelated criminal conviction, pregnancy and maternity. An EIA should be carried out as part of any major service change that has staffing implications. Separate guidance is available on conducting EIAs.

5. Roles & Responsibilities

Chief Officers have overall responsibility for ensuring the fair and consistent application of the Redundancy Policy, including consultation with the trade unions supported by HR, taking into account legal advice as appropriate.

6. Avoiding or Minimising Redundancies

Redundancy arises when employees are dismissed due to:

- Cessation of business.
- Cessation of business at the place where the employee was employed.
- A reduction or cessation, or anticipated reduction or cessation of work.
- A reduction or cessation, or anticipated reduction or cessation, of work at the place where the employee was employed

The Council will manage redundancies in line with good practice and legal requirements, and aims to minimise the adverse impact on both

those employees who lose their jobs and on those remaining in employment.

The Council will ensure every effort is made to avoid or minimise compulsory redundancies, through applying the following measures when appropriate:

- Human Resource strategies and workforce planning
- Natural wastage e.g. employee turnover/retirements
- Vacancy control
- Reduction of overtime
- Reduction of casual and agency staff and additional hours working and utilisation of potentially redundant employees against any continuing variable resource demands
- Voluntary reduction in hours/buy out of hours
- Redeployment into suitable alternative employment or temporary employment
- Seeking volunteers for Voluntary Redundancy/Voluntary Early Retirement/Flexible Retirement
- Voluntary Sabbaticals

This list is not exhaustive and all measures should be considered.

Appendix 1 sets out an outline timetable for managing potential redundancies.

7. Formal Consultation

Details of proposed redundancies, the issuing of notices under sections 188 and / or 193 of the Trade Union and Labour Relations Act 1992 (TULRA) and financial implications will be agreed in consultation with Cabinet or Cabinet Member as appropriate and the Director of HR.

The Council is committed to consulting with relevant trade unions and individuals as soon as practicable and keeping them informed as fully as possible. Responsibility for consultation lies with the Director of HR and the relevant Chief Officers, supported by managers and Departmental HR as appropriate.

When

The Council will consult with the full time official of the relevant trade unions in accordance with Section 188 of the TULRA and also inform the Secretary of State of its proposals under Section 193, when this is appropriate.

Where ever possible, the Council will communicate with employees and trade unions at the earliest opportunity, where proposals are at a sufficiently formative stage to enable consultation to be meaningful. It is acknowledged that in certain circumstances service user considerations will need to be taken into account and will influence the process and timescales. Consultation will however be in 'good time' and the statutory minimum timescales will be observed which are:

Number of employees it is proposed to dismiss at a single establishment within 90 days	Length of formal consultation period
100 or more	90 days
20-99	30 days

Redundancies involving 20 or more employees will be consulted on in accordance with the timescales and will be referred to as formal consultation within this policy.

Where redundancies involve less than 20 employees it is good practice to apply the 30 days consultation period as a minimum.

The consultation process with employees and their representatives will precede any public announcement of specific redundancies.

How

In respect of formal consultation, there is a legal requirement to disclose information regarding the proposals in writing to affected employees and recognised trade unions. The Council will provide a consultation document which will be considered draft during the formal consultation period and may be amended to reflect agreed changes as a result of consultation.

Formal consultation does not start until the employer has provided the Trade Union with the following information in writing (this is also the information required on form HR1, see below).

- The reasons for the redundancy proposals
- The numbers and descriptions of employees whom it is proposed to dismiss as redundant
- The total number of employees of any such description employed by the employer at the establishment
- The proposed method of selecting the employees who may be redundant
- The proposed method of carrying out the dismissals, including the period over which the dismissals are to take effect
- The method of calculating redundancy payments

- Current and proposed structure charts (if appropriate)

Consultation will cover the above issues, and also ways of:

- avoiding the dismissals
- reducing the number of employees to be dismissed
- mitigating the effects of dismissals.

An EIA should be undertaken on each redundancy exercise to examine the implications of the proposals and discussed with the trade unions.

The method of calculating Redundancy Pay can be seen at Appendix 6.

With whom?

Consultation will take place with the relevant recognised trade union(s) appropriate to the employees affected, whether or not any of the employees are trade union members. 'Employees affected' means employees who are at risk of redundancy and those affected by measures associated with the redundancies e.g. employees taking on re-allocated work.

Employees, including those on maternity/adoption/paternity leave, long term sickness absence, secondment and career breaks will also be formally consulted and appropriate arrangements put in place, e.g. inviting them to meetings, sending information to home addresses, visiting employees at home or communicating through appropriate representatives. Details of this must be recorded by the relevant manager.

The number of individual and collective meetings throughout the formal consultation process should be appropriate to the scale of change proposed to ensure that employees and Trade Unions are given sufficient opportunities to consider the proposals, ask questions and suggest alternative options. Managers should keep a record of dates, time of meetings, details of attendees and notes of the meetings.

Consideration should also be given to informing / consulting with other stakeholders/partners, e.g. other Council services, external partners, and the public if appropriate. However, this is not a statutory requirement.

These requirements also apply when it is proposed to terminate contracts and offer re-engagement in order to implement changes in terms and conditions on which it has not been possible to reach agreement.

A trade union representative should be invited to collective meetings with the affected employees. Every effort should be made to agree the date, time and venue with the appropriate trade union representative. However, the responsibility to consult remains with the employer, and therefore it may be more important on occasions for the meeting to proceed, subject to having given reasonable notice to both employees and their representatives.

Ideally collective consultation with the trade unions should be commenced in good time and prior to individual consultation.

Form HR1

Proposed redundancies of 20 or more employees at one establishment in a 90 day period must be notified to the Department for Business, Innovation and Skills (BIS) on form HR1. A copy of the HR1 should also be sent to regional trade union full time officials or other employee representatives who were consulted, and should also be copied to the local trade union branch as good practice.

Individual Consultation

In accordance with best practice, individuals should be consulted early about impending redundancies, be kept informed as fully as possible, and consulted on ways of avoiding redundancy, selection methods and possible alternative work. This can be done at a group meeting or individual meeting.

Any employee(s) directly affected, for example if their job is proposed to be deleted, must be advised individually before any collective meeting.

<h2>8. Selection</h2>

Where, following efforts to minimise or avoid compulsory redundancies, the need for redundancies remains and there is a choice between potentially redundant employees to be made, an objective selection process will be applied. There are two possible approaches to the selection of employees for redundancy: an appointment in process as part of the implementation of a revised organisation structure or the application of selection criteria for redundancy as detailed below.

Where only an individual or whole work group is affected by redundancy, selection will not be required. When considering selections for redundancy the underlying consideration will be the needs of the service - the Council must maintain a balanced workforce, able to meet service and client needs. Any workforce reductions shall reflect service delivery requirements.

The following selection criteria should be used, in the order set out:

1. Needs of the service - the Council must maintain a balanced workforce, able to meet future service and client needs. Any workforce reductions shall reflect envisaged service delivery requirements.
2. Specific skills, essential qualifications or experience relevant to the needs of the service.
3. Additional transferable skills and experience: to be considered as evidence of flexibility and approach to work which may be a relevant service need.
4. Attendance and discipline records.
5. Length of cumulative local government service

A selection criteria matrix attached at Appendix 2 should be used.

In those cases where the appointment in process approach is applied, this will be taken to have complied with the requirement to apply 1, 2 and 3 above.

The purpose of the criteria is to ensure that employees are fairly selected for redundancy. The selection process should be consistent and objective, and based on the specific needs of the service in the part of the organisation in which the selection criteria will be applied.

Care must be taken to ensure that the selection process is not directly or indirectly discriminatory.

Records must be kept throughout the selection process. The most important consideration for the future success of the Council is to ensure that services can be delivered and a balanced workforce can be maintained after the redundancies have been carried out. Specific skills, experience, flexibility and approach to work are likely to be the most relevant considerations.

In assessing skills and experience the following should be considered:

- The time period to which an evaluation should refer
- The availability of reliable information relating to an individual's employment.

It will be necessary to ensure that attendance and disciplinary records are accurate in order to be fairly applied as selection criteria.

Before using attendance as a criterion for selection the reasons for and extent of any absences must be known and advice should be taken on cases in which disability may apply.

The application of length of cumulative local government service should be seen as a last resort and only applied in those circumstances where it is not possible to distinguish between employees by reference to the other selection criteria.

Following the selection process

Once the consultation and selection is complete individuals selected for redundancy will be notified in writing that they are 'at risk' of being made redundant. They will be invited to a meeting to discuss this, which is the first part of the individual consultation. The actual number of meetings will depend on the complexity of the proposals and what the employee has to say and the Council will consider arguments that the employee puts forward.

Once the individual consultation has been completed, and if redundancy cannot be avoided, the employee will be given 12 weeks notice in writing of their dismissal, and be given an explanation of the redundancy payment that will be applied and their right of appeal.

Employees are entitled to be represented by a trade union representative or a work colleague at individual meetings. Managers must ensure individuals are consulted with appropriate representation.

9. Appeal

An appeal against the Chief Officer's decision must be made in writing to the Director of Legal Services setting out the grounds of the appeal, within 10 working days of notification of the decision.

The appeal will be heard by a panel of Elected Members supported by HR and legal officers.

The appeal will be arranged within 10 working days of receipt of the formal notice of appeal or by mutual agreement and the employee informed of the place, date and time of the appeal in writing.

The employee will be entitled to attend the appeal with his/her trade union representative or other representative, friend or colleague.

The Appeals Panel may uphold the appeal or confirm the original decision.

The individual employee, relevant trade unions and Chief Officer will be

informed in writing of the Appeals Panel decision as soon as practicable.

The decision of the Appeals Panel will be final.

10. Notice

Where redundancy is confirmed, an employee shall be given 12 weeks notice of redundancy.

11. Suitable alternative employment

The Council has a statutory duty in redundancy situations to consider whether suitable alternative employment exists, and if it does, offer such employment subject to a minimum 4 week trial period.

If the Council determines that the role is not a suitable alternative, the employee reverts to being made redundant.

12. Support Measures

It is recognised that the possibility of facing redundancy can be an extremely anxious time for employees and managers have a responsibility to provide appropriate support and advice. Guidance will be made available to managers to help support their staff.

Time off to arrange training or seek alternative employment

Employees under notice of redundancy have a statutory entitlement to a reasonable amount of paid time off to look for another job or arrange training inside or outside of the Council.

An employee will be granted reasonable time off work with pay during his/her notice period to look for new employment or to make arrangements for training for future employment. This will include time off to attend job interviews, visit an employment agency or job centre in connection with new employment.

Other Support Measures include

- Identification of vacancies to consider suitable alternative employment opportunities
- Priority and guaranteed interview status
- Application and interview support and guidance
- Careers counselling and redeployment support

- Financial planning advice and guidance
- Assistance with job seeking
- Employee Assistance /Counselling

Managers and employees should consider and discuss what training and development opportunities are available and appropriate. Managers should endeavour to meet reasonable training and development requests from employees who are displaced or under notice of redundancy.

See Appendix 3 for the Support Matrix provisions.

13. Redeployment Policy

Eligibility

This redeployment policy applies to employees with over one year's service in the following circumstances:

- **At risk of redundancy** - as a result of reorganisations and restructuring. This may also include the ending of a fixed term contract where the reason for termination or non-renewal falls within the definition of redundancy. In these cases advice must be sought early from HR.
- **Disability, illness and injury** - where the Occupational Health physician has declared the employee permanently unfit and/or where it is agreed in light of advice, that the employee should be redeployed on medical grounds. The redeployment policy applies in these circumstances to all employees to whom disability as defined in the Equalities Act 2010 applies.

The redeployment process does not apply to employees subject to basic pay protection that commences after the effective date of this policy.

Responsibilities for Redeployment

Strategic Directors/Directors

Chief Officers and line management have primary responsibility for redeployment and will ensure that there are effective redeployment arrangements in place within the corporate framework. They must liaise with the Director of HR for advice where employees are at risk of redundancy to seek suitable redeployment opportunities across the Council.

Vacancies not filled by a priority candidate will not be advertised externally until the Director of HR is satisfied that a priority candidate cannot meet the essential criteria with training and development.

Employees

Employees have a shared responsibility with the Council in seeking redeployment and should adopt a reasonable and flexible approach when considering alternative jobs.

Employees must ensure that they inform the potential recruiting manager that they are subject to redeployment by indicating this clearly on the application form.

Where the employee is disabled the Council will take all reasonable steps and consider reasonable adjustments to support the employee in securing redeployment. Consideration must be given to the need to provide a greater degree of assistance in finding alternative work.

Priority Consideration

Where established employees who are eligible for redeployment under this procedure meet the essential criteria for a vacancy, or could do so with reasonable training/support, they must be given priority consideration in advance of other applicants. Priority consideration will be for jobs on a comparable grade to the employee's substantive grade or below (provided there are no essential / statutory qualification requirements).

Where there is more than one employee eligible for redeployment into a job, there will normally be a competitive process amongst priority candidates to fill the job. Consideration should be given to the individual circumstances of each case, in particular the extent to which the employee is at risk of redundancy, dismissal or requirements under the Equality Act. Further advice should be sought from HR.

It must be remembered that employees on maternity, adoption or additional paternity leave have an entitlement to be offered suitable alternative employment, if such exists. Such consideration is in advance of that given to any other employees.

Managers should seek early advice from the Director of HR in relation to the cessation of a fixed term contract and whether the fixed term employee has access to the Redeployment Process.

When considering applicants who have priority consideration for a vacancy, the recruiting manager must consider whether:

- Reasonable training and development to enable the employee to carry out the job effectively is likely to result in the applicant being able to successfully undertake the job within a reasonable timeframe
- If so, an appropriate trial period (not less than 4 weeks) to determine suitability must be offered.

Guaranteed consideration

Employees subject to the Redeployment Process will receive a guaranteed interview for jobs involving a promotion where they meet the essential criteria or could fulfil the job with reasonable training/support.

14. Pay Protection Policy

The Council's policy on Pay Protection can be seen at Appendix 4. This provides protection for an employee's basic pay where it is reduced as a result of:

- organisational restructuring
- redeployment into a suitable alternative vacancy where the individual is at risk of or under notice of redundancy
- redeployment into a suitable alternative vacancy on ill health grounds.
- the introduction of a revised pay and grading system

Cases of redeployment for example as a result of capability or disciplinary procedures should be considered for pay protection on a case by case basis and advice should be sought from HR services.

Terms and conditions of employment which are not remuneration will be those of the new job.

Employees in receipt of basic pay protection will receive guaranteed interview status for jobs at the same level or below if they meet the essential criteria of the job (provided no essential/ statutory qualification requirement exists) and there are no employees at risk of redundancy eligible for priority interview, for the period of pay protection. The vacancy must represent a realistic career opportunity in order for pay protection to continue if appointed. This judgement is to be made by the Chief Officer in consultation with the Departmental HR Service

Partner. Employees should identify in their job application that they are on pay protection and have guaranteed interview status.

Guaranteed interview arrangements will not apply to jobs which constitute promotion for employees on pay protection.

Employees who unreasonably refuse an offer of suitable employment may, depending upon consideration of individual circumstances, lose any entitlement to redundancy pay. Such judgements will be made by the Chief Officer in consultation with the Director of HR.

15. Buy Out of Hours Policy

One of the measures to minimise redundancies is to reduce workforce costs by giving employees an opportunity to reduce their contractual hours.

This Policy provides for a buy out payment that reflects the grade and pay point of employees calculated according to their actual pay for 26 weeks. This payment would be subject to tax and pension contributions. The Scheme would be targeted primarily at specific employee groups or sections where savings are required and applied with the agreement of the Director of HR.

Scheme application

As an alternative to avoiding redundancies in a specific function or team, employees will be asked if they wish to reduce their contracted hours.

Employees can opt to reduce their contractual hours in increments of one hour per week.

The one off payment will be calculated pro rata to the reduction in hours using the Buy Out of Hours payment matrix. (attached at Appendix 5)

The working pattern for the reduced contractual hours will be agreed by the relevant Chief Officer and individual depending upon service need and the flexibility required. This might include for example reducing hours on one day a week or working a reduced number of hours spread over the week.

The one off payment (subject to tax and NI) will be made upon reduction in hours and signed agreement.

Hours will be bought out on an indefinite basis and the payment must be repaid in full if the employee leaves the Council within six months.

Limits

Maximum buy out of hours is equivalent to 2 days per week.

No payment will exceed £5,000.

No payment will exceed the amount that would be received in redundancy pay.

Qualifying criteria

All employees within the affected function or team can apply, approval will be determined by service need.

Employees must have a minimum service with the Council of one year.

Exclusions

Employees taking voluntary redundancy or VER or flexible retirement.

Employees subject to (non-disability related) capability procedures and who are recommended to reduce their hours.

Requests will not be approved where the work that the employee carries out cannot be absorbed by the employee, by others or ceased. There will not be an increase in headcount, use of agency staff, overtime or additional hours to accommodate a request to reduce hours.

Process

The process will be coordinated by HR and the senior manager of the function or team affected.

Requests to be considered in light of service need and continuity by relevant Head of Service.

The start date for working reduced hours to be agreed by relevant Head of Service once the application is approved.

Redundancy Outline Timetable

Timescales are indicative and subject to the size and complexity of the redundancy exercise, the amount of consultation required, Cabinet meeting dates and Appeals Panels required.

Procedure	Week
<ul style="list-style-type: none"> Trade union provided with statutory information; if appropriate, Department for Business, Innovation and Skills notified on form HR1. 	0
<ul style="list-style-type: none"> Director consults with trade unions with a view to reaching agreement as to the potential need for compulsory redundancies, provide statutory information and proposes selection method, if necessary, in accordance with Council's selection criteria. 	1
<ul style="list-style-type: none"> Director considers any responses received from Trade Unions as a result of consultation. 	3
<ul style="list-style-type: none"> Details of proposed redundancies and financial implications to be agreed through Co-ordination Group 	4
<ul style="list-style-type: none"> Details of proposed redundancies and financial implications to be agreed by Cabinet Member(s) 	5
<i>If selection of individuals necessary:</i>	
<ul style="list-style-type: none"> Individual selection criteria forms completed, and Director identifies individuals affected by applying selection criteria. 	6
<ul style="list-style-type: none"> As soon as reasonably practicable, Director notifies in writing the individuals provisionally identified and the relevant trade unions of his/her intentions, and the right of the individuals to make oral/written representation to the Director. 	8
<ul style="list-style-type: none"> If individual exercises right of representation employee(s)/trade union receive five working days' notice of the meeting and are informed in writing of the place, date and time. 	
<ul style="list-style-type: none"> Director consults further as appropriate and considers 	

Procedure	Week
<p>any further oral/written representation and informs all employees concerned and relevant Trade Unions in writing of their decision.</p> <ul style="list-style-type: none"> • If the decision is to confirm the redundancy, dismissal notification is sent to the employee and trade union giving notice of dismissal (12 weeks) and advising of right of appeal • Consultations continue with trade unions on ways to avoid/reduce dismissals or mitigate consequences of dismissal • Directors commence and continue search for redeployment opportunities until end of notice period. 	
<p>Appeal</p> <ul style="list-style-type: none"> • An appeal against the decision of the Director must be made in writing to the Director of Legal Services within 10 working days of the decision. • The appeal to be called within ten working days' of receipt of the formal appeal notice (or by mutual agreement as soon as practicable thereafter). The employee will be informed of the place, date and time of the appeal hearing in writing. • Appeal heard by an independent Director. • If appeal not upheld the Director writes to employee confirming date of dismissal. • Dismissals effective from 12 weeks from the date of the original notice. 	<p>10</p> <p>12</p> <p>End of week 20</p>

Appendix 2

Selection Criteria Assessment Form

Name	
Department/Section	
Current Job Title	
Current Grade	
Cumulative Local Government service	

	Weighting	Score
Skills		
Qualifications		

	Weighting	Score
Experience		
Transferable skills		
Attendance		
Discipline		

Selection Criteria Assessment Form

Guidance Notes

- The proposed selection criteria and weightings will be the subject of consultation with the Trade Unions.
- The criteria and their relative weightings will be determined by the current and future needs of the business. Weightings will take into account the Council's service delivery requirements and need to maintain a balanced workforce.
- To achieve a total score for each employee, criteria should be weighted by a factor to reflect its relative importance.
- Assessments must be objective and supported by documented and verifiable evidence wherever possible. Managers should not allow preconceived opinions to influence the assessment process.
- Scoring should be carried out independently by two managers who know all employees in the selection pool. The marks from the two assessors should then be added together to give a total score for each employee.
- Detailed notes should be kept at all stages of the assessment process, in order that they can be referred to in any appeal.

Appendix 3

Measures to support employees who are at risk/under notice of redundancy or on pay protection

At risk/under notice of redundancy	Pay Protection
Application and interview support and guidance	
Notification of vacancies via HR redeployment officer, application through internal advert on the intranet. Employees without intranet/internet access will be provided details hard copy personally.	Refer to internal vacancies advertised on the intranet or hard copy at DCC sites across the county. Employees can set up alerts for vacancies advertised on the website.
	Portable protection to posts equivalent to (or lower than) the protected level of pay, provided the move to the post represents a genuine and broader career development opportunity.
<p>Priority interview for jobs on same grade or below (provided no essential/statutory qualification requirement).</p> <p>Guaranteed interview for jobs involving a promotion where essential criteria are met and individual able to fulfil job role with reasonable training/support.</p>	<p>Guaranteed interview for jobs on same grade or below (provided no essential/statutory qualification requirement) and no displaced employees eligible for priority interview, for the period of protection. The vacancy must also represent a realistic career opportunity.</p>
Reasonable paid time off for interviews, internal for all and external also for employees under notice of redundancy.	
Application of excess travel on redeployment in accordance with the Derbyshire Package, currently 3 years.	
Consider for internal assignments/secondments for example, instead of using agency staff.	
Utilise against overtime, additional	

At risk/under notice of redundancy	Pay Protection
hours, relief work, agency pool requirements for a temporary holding period pending redeployment/expiry of notice period and based on consideration of individual circumstances.	
Training and development to support career move identified through My Plan/1:1s and the related EPDR process.	
Offer tasters/shadowing and trial periods.	
Mentoring offered.	
Access to Job Centre Plus Rapid Response Service which provides a range of practical support and advice for employees under notice of redundancy (job seeking, career counselling, CV writing, benefits and other support).	
Financial planning advice offered to employees under notice of redundancy through Affinity Connect half day workshops.	
Outplacement service to be considered on an initial trial basis where circumstances allow.	
Refusal of a suitable alternative offer of redeployment may result in the withdrawal of these provisions and loss of redundancy pay, depending upon consideration of individual circumstances.	

Basic pay protection policy

Introduction

This policy aims to support successful organisational change by providing for employees' basic pay to be protected where it is reduced as a result of:

- introduction of a revised pay and grading system
- organisational restructuring
- redeployment into a suitable alternative vacancy where the individual is displaced or under notice of redundancy
- redeployment into a suitable alternative vacancy on ill health grounds.

The policy complements the Council's guidelines on organisational change and replaces the Council's previous Protection of Earnings Policy.

The Council recognises the need to ensure that any pay protection arrangements do not perpetuate inequalities in pay. This policy is based on existing equal pay legislation and the recognised need to achieve full pay equality. The cost of protecting employees' basic pay will be met by the employing department and pay protection costs must be taken into account when the business case for change is made.

Who is covered by the policy?

The policy applies to all Council employees except teachers. It is recommended to those schools where the governing body carries out the function of the employer.

Employees will receive written notification of pay protection arrangements applicable to them and the support available.

When will it apply?

On issue of a new contract of employment to existing and new Council employees.

What pay is protected?

The pay protected will be the substantive pay rate which is the basic pay for the job as defined in the pay and grading structure.

Pay protection will be for a maximum two year period from the date of change of pay.

The following components of pay are protected:

- basic salary/hourly rate
- basic contract hours (including contracted overtime)

Any sick pay, holiday pay, maternity, paternity or adoption pay will reflect the level of protected basic pay.

All protected pay is pensionable.

The following previous and existing components of pay are not protected:

- additional hours worked over the minimum contractual guarantee
- all pay-related allowances e.g. standby, sleeping in, letting fees, shift allowances (removed on implementation of Single Status)
- all pay-related enhancements e.g. overtime, unsocial hours, bank holiday working
- all non-pay-related allowances e.g. car allowances, subsistence allowances, telephone allowances, annual leave
- adjustments to the hourly rate resulting from the standardisation of the working week e.g. 37 hours and number of working weeks per year
- market supplements and acting up and honoraria payments
- any increase in minimum contractual hours introduced after the operative date of pay protection

Pay protection:

- will not apply where employees voluntarily move to another job
- will not apply where the reduction in pay is as a result of a reduction in hours
- will be adjusted where employees voluntarily reduce their hours
- will not increase to cover additional hours, whether these are permanent or adhoc.
- will not be applied to overtime

What happens during the protection period?

During the protection period:

- there will be no annual incremental progression on the protected grade
- pay awards will not be applied until the substantive grade is equal to or greater than the protected salary.
- Protection may end or be reduced within the two year period where:
 - the employee is successful in securing another role which does not provide an enhanced career opportunity
 - the new substantive grade catches up with the protected basic salary.

Employees subject to pay protection will be given support by their line manager under the personal development review process and in addition receive:

- support in accessing vacancies
- support in undertaking a personal skills analysis
- application and interview training and support;
- guaranteed interview status (priority status if at risk or under notice of redundancy) as appropriate to the vacancy concerned - this will not apply where the targeted job constitutes promotion
- skills and development training
- 1:1 careers counselling advice
- work experience tasters
- trial periods

Employees have a shared responsibility in seeking redeployment and must adopt a reasonable and flexible approach when considering alternative roles.

Where the employee on pay protection is also at risk/under notice of redundancy, the Redeployment Policy will apply.

What happens at the end of the protection period?

At the end of the two year period, pay will be adjusted to the top point of the substantive grade and the right to guaranteed interview status will cease. There is no right of appeal at the end of pay protection.

What is the effect on pension benefits?

Benefits in the Local Government Pension Scheme (the Scheme) are calculated on a member's "final pay" and period of membership in the Scheme. "Final pay" is the pensionable pay in:

- either the year ending on the day an employee stops being an active member or,

- if it would produce a higher figure, either of the two years immediately before that.

In certain circumstances it is possible to protect pension benefits where there has been a reduction in pensionable pay within 10 years of retirement.

The calculation is made by taking the highest three consecutive years pensionable pay (ending 31 March) within the last 10 years of Scheme membership, and dividing this by three. The figure is increased in line with the relevant index identified by the Government for use in this calculation.

Where a Scheme member does not benefit from the above protection, they can opt out of the Scheme to preserve their benefits on higher pay and rejoin from the next pay period. Anyone considering opting out of the Scheme should read the factsheet, "Reductions in Pensionable Pay" before making their decision.

There is more information including examples of how final pay is calculated in the factsheet, "Reductions in Pensionable Pay". This is available on the pensions section on the Council's website at www.derbyshire.gov.uk/working_for_us/pensions Alternatively, a copy can be obtained from Call Derbyshire on 08 456 058 058.

Review period of Policy

To be undertaken jointly and 12 months after implementation.

Appendix 5

Buy Out Matrix Based On Current Hourly Rate And 26 Week Multiplier

Point	Existing Pay Grade	Hrly Rate	Buy out per hour reduced 26 wks
1	1 & 2	£6.25	£162.50
2		£6.38	£165.88
3		£6.51	£169.26
4		£6.64	£172.64
5	3	£6.77	£176.02
6		£6.90	£179.40
7		£7.03	£182.78
8	4	£7.20	£187.20
9		£7.36	£191.36
10		£7.53	£195.78
11		£7.70	£200.20
12	5	£7.87	£204.62
13		£8.04	£209.04
14		£8.21	£213.46
15		£8.38	£217.88
16	6	£8.60	£223.60
17		£8.82	£229.32
16		£9.04	£235.04
19		£9.27	£241.02
20	7	£9.55	£248.30
21		£9.84	£255.84
22		£10.13	£263.38
23		£10.42	£270.92
24	8	£10.71	£278.46
25		£10.99	£285.74
26		£11.28	£293.28
27		£11.57	£300.82
28	9	£11.86	£308.36
29		£12.15	£315.90
30		£12.44	£323.44
31		£12.72	£330.72
32	10	£13.21	£343.46
33		£13.69	£355.94
34		£14.17	£368.42
35		£14.66	£381.16
36	11	£15.16	£394.16
37		£15.65	£406.90
38		£16.15	£419.90
39		£16.65	£432.90
40	12	£17.16	£446.16
41		£17.67	£459.42
42		£18.18	£472.68
43		£18.69	£485.94
44	13	£19.24	£500.24
45		£19.79	£514.54
46		£20.34	£528.84

47		£20.89	£543.14
48	14	£21.73	£564.98
49		£22.56	£586.56
50		£23.40	£608.40
51		£24.24	£630.24
52	15	£25.08	£652.08
53		£25.92	£673.92
54		£26.75	£695.50
55		£27.59	£717.34
56	16	£28.45	£739.70
57		£29.32	£762.32
58		£30.18	£784.68
59		£31.05	£807.30

Appendix 6

Redundancy Pay

The Council calculates redundancy payments in the same way for both voluntary and compulsory redundancies. However on occasion voluntary redundancy payment may be enhanced.

To be entitled to a redundancy payment, an employee must have a minimum of 2 years of continuous service.

The calculation is based upon:

- 0.5 weeks pay for each full year of service where the employee's age is under 22
- 1 weeks pay for each full year of service where the employee's age is 22 or above, but under 41
- 1.5 weeks pay for each full year of service where the employee's age is 41 or above

The maximum number of weeks payable is 30.

Any amount of redundancy payment over £30,000 is subject to tax.

