



CABINET: 1 AUGUST 2001

DISCIPLINARY; CAPABILITY; AND GRIEVANCE PROCEDURES

1 INTRODUCTION

- 1.1 This report recommends the revision of the Council's disciplinary and grievance procedures, and introduces a new capability procedure.

2 BACKGROUND

- 2.1 The Council's disciplinary and grievance procedures have been in place for a number of years. Over time, both managers and employee side have made suggestions as to how these could be improved. Additionally, ACAS produced a new code of practice for disciplinary and grievance procedures during 2000, and it was timely to ensure that our procedures met the requirements of this new guidance.
- 2.2 One of the recommendations of the MacPherson report into the Steven Lawrence enquiry is that organisations should examine their procedures to ensure there is no inadvertent or "organisational racism". One of the explicit terms of reference for the project was to ensure that the procedures met the Council's equal opportunities requirements.
- 2.3 The revised procedures aim to give clear guidance to both employees and managers – together with model formats for letters and for disciplinary and grievance hearings.
- 2.4 The Council has not had a separate capability procedure before, but has relied on the disciplinary procedure. This was not always appropriate as capability looks at skills and abilities rather than conduct. The new capability procedure is designed to be supportive and encourage employees to meet the required standards of performance. In extreme cases it also provides the link between the Council's sickness absence procedures and dismissal.

3 DEVELOPING THE PROCEDURES

- 3.1 The procedures were produced over a six-month period by a project team comprising:

Glynne Miles
Pat Higgins
John Mascal
Martin Devine
Tom Gibbons (on behalf of employee side)
Jayne Griffiths

3.2 The project team was assisted by Jim Rooke, a Personnel consultant who is also a lay member on Employment tribunals.

3.3 Once the procedures were agreed in draft form, these were circulated to the Personnel Information Network and to Employee Side and their comments were incorporated.

4 IMPLEMENTING THE NEW PROCEDURES

4.1 Comprehensive management advice has been produced as part of the procedures. This will be circulated to Heads of Service, and will also be accessible to all via ForestNet. In addition the procedures will be incorporated into the revised Employee Handbook, which will be issued immediately these procedures are approved.

4.2 It will be important to ensure managers/supervisors are briefed in the use of these new procedures. Personnel services have planned a series of workshops to brief managers on employee issues, and this will be one of the first priorities for briefing.

5 FINANCIAL IMPLICATIONS

5.1 There are no financial implications arising from this report.

6 ENVIRONMENTAL IMPLICATIONS

6.1 There are no environmental implications arising from this report.

7 CRIME AND DISORDER IMPLICATIONS

7.1 Employee's criminal activities are covered within the disciplinary procedure. It is hoped that robust and effective disciplinary procedures will reduce the risk of employees engaging in fraudulent or other criminal activity.

8 EMPLOYEE SIDE COMMENTS

8.1 The Employee Side wanted to thank the Project Team for their hard work in developing the revised procedures, which were an improvement on the previous processes.

9 INDUSTRIAL RELATIONS COMMITTEE COMMENTS

9.1 The Committee considered the revised procedures for Disciplinary and Grievance issues, and the new procedures, which had been developed to address capability issues.

9.2 The Committee supported the new disciplinary, capability and grievance procedures, which will be submitted to Cabinet for adoption.

10 CONCLUSIONS

10.1 The disciplinary, grievance and capability procedures have been developed as part of a multi-directorate project team, which included employee side

representation. The procedures comply with the ACAS code of practice issued in 2000 and also with the requirements of the MacPherson report to be free of institutionalised racism or other discrimination.

11 RECOMMENDATIONS

- # 11.1 It is recommended that the attached discipline, capability and grievance procedures (Appendices 1, 2, 3) are adopted with effect from 1 September 2001, subject to full Council approval.

For further information contact:

Additional copies of the complete set of Disciplinary, Capability and Grievance procedures are available from Personnel Services on 023 8028 5276.

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DISCIPLINARY RULES AND PROCEDURE

1. POLICY STATEMENT

- 1.1** It is the practice of the Council to treat all employees fairly and equitably. As part of that practice, it is important to have disciplinary rules and procedures that promote sound employment relations and set standards of conduct expected of its employees. Rules set the standards of conduct considered necessary at work and procedures help to ensure that these standards are adhered to and applied in a fair and consistent manner in the treatment of individuals who have allegedly failed to observe the employment rules.
- 1.2** The rules and procedure take account of the Human Rights Act, the MacPherson Report, the ACAS code of practice 1 on Disciplinary Procedure, draw a clear distinction between informal and formal processes, provide for consistency of approach, are designed to be transparent, easy to understand, robust in application and to reflect good employment practise.

2. PURPOSE

- 2.1** These disciplinary rules and procedures are designed to help and encourage all employees to achieve and maintain satisfactory standards of conduct and behaviour and to support a healthy and harmonious working environment. They also ensure that effective arrangements exist for dealing with all matters that may warrant disciplinary action in a consistent and fair manner. Further they clarify relationships between the Council, its Employee Side Representatives and employees and assist the Council to operate effectively and efficiently.
- 2.2** Accordingly the aim is to secure improvement in conduct, behaviour and performance, to treat all employees in a fair and consistent manner and to operate a procedure so that all parties know what to expect. It is, therefore, in everyone's interests that any disciplinary matter is dealt with and concluded without undue delay, effectively and above all fairly.
- 2.3** Failure to comply with the following general rules will render employees liable to appropriate disciplinary action. To this end, all employees are expected to behave at all times in a reasonable way towards other employees, the Council, its partners and the public generally.
- 2.4** The Disciplinary Procedure does not cover the initial stages of dealing with impaired performance that results from a lack of capability due to factors such as ill health or lack of ability to cope with changing demands. This is dealt with initially by a separate Capability Procedure. The latter stages of the Capability Procedure do however make use of the Disciplinary Procedure.

3. PRINCIPLES

- 3.1** In accordance with good employment practice and the ACAS code of practice on Disciplinary and Grievance Procedures; the Council's general disciplinary principles are as follows:
- 3.2** Minor shortcomings in an employee's overall conduct shall, where day to day supervision is appropriate, be drawn to the attention of the employee and the possible remedies should be considered before formal steps become necessary.
- 3.3** No management disciplinary action will be taken against an employee until the case has been fully investigated
- 3.4** At every stage in the procedure the employee will be treated fairly, be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- 3.5** At all stages of the formal procedure the employee will have the right to be accompanied by an accredited employee side representative/trade union official or work colleague of their choice but by no one else.
- 3.6** No employee will be dismissed for a first breach of discipline except in the case of Gross Misconduct when the penalty will be dismissal without notice or payment in lieu of notice – dismissal will only be decided upon by those authorised to act (see Annex 1).
- 3.7** Only designated employees/Members will implement the Disciplinary Procedure and take disciplinary action in accordance with the level authorised. (see Annex 1). Those authorised to act will have a copy of the Disciplinary Procedure and will have received training and guidance on how to apply it.
- 3.8** An employee will be given an explanation for any penalty imposed and have the right to appeal against it to the next level of management. (see Authority to Act Annex 1). Such appeals will involve a complete review of the circumstances of the case and the penalty decided upon.
- 3.9** The formal procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 3.10** Consideration will be given to the employee's previous record and length of service with the Council.
- 3.11** Every endeavour will be made to process disciplinary matters without undue delay. The timescales have been established to allow sufficient time for the preparation of a case.
- 3.12** All disciplinary matters will be treated confidentially.

3.13 The Procedure has been drawn up in discussion with the trade unions recognised by the Council.

3.14 Personnel Services will be available for advice and support at every stage of the Procedure and will monitor and advise on its consistent application.

4. SCOPE OF THE PROCEDURE

The Procedure applies to all employees with exception of:

- a) The Chief Executive, Monitoring Officer and Chief Finance Officer
- b) Employees serving a probationary period
- c) Employees on short-term contracts of less than one year
- d) Cases of redundancy
- e) Employees working on a casual basis, subject to any one period of continuous employment not exceeding one year
- f) **Termination due to incapability; incapability due to ill health and incapability due to lack of skill or aptitude*
- g) **Sickness or disablement – resulting from physical, mental health, accident or injury*

*NOTE: * These situations will be dealt with in the initial steps within the Capability Procedure.*

5. AUTHORITY TO ACT

5.1 Only those so authorised may act in the implementation of this Procedure. A schedule of “Authority to Act” is attached at Annex 1.

5.2 Notwithstanding “Authority to Act” (Annex 1), the Director of Finance may independently initiate disciplinary action against any employee with regard to suspected fraud or financial irregularity

5.3 A designated employee with “Authority to Act” (Annex 1) shall present the management case at an appeal against the decision they have taken.

6. GENERAL RESPONSIBILITIES

6.1 Directors and Managers are responsible for ensuring that the Council’s Disciplinary Rules and Procedure are understood by all employees including those whose first language is not English or have a disability

or impairment. They shall also ensure that the Rules and Procedure are correctly implemented within their services.

6.2 It is the responsibility of Directors and managers to ensure that all notifications are made in accordance with this procedure and that appropriate records are kept of all proceedings.

6.3 Where appropriate, arrangements for training in the use and operation of the Procedure will be initiated by Personnel Services and Directorate Training Co-ordinators.

6.4 Personnel Services will make the necessary arrangements for Disciplinary and Appeal Hearings, which involve Elected Members. They will also provide any advice necessary to Members.

6.5 It is the responsibility of Personnel Services to provide overall guidance and advice, as required, in the implementation of the procedure and to monitor consistency of application throughout the Authority.

7. DISCIPLINARY RULES

7.1 Gross Misconduct

7.1.1 Acts which constitute gross misconduct, are those resulting in a serious breach of the contract of employment and can, therefore, after careful investigation of the alleged offence, justify summary dismissal (dismissal without notice or previous warning).

7.1.2 Whilst it is possible to give examples of what might constitute gross misconduct, each case has to be considered in the light of its own circumstances, since the seriousness of an action often depends on considering a number of criteria. These include:

- a) The nature of the alleged offence
- b) The duties and position in the Council of the employee (how senior they are, and what responsibilities they have)
- c) Wilfulness/intent (whether there has been deliberate intention to breach Council policy and/or standards)**

- d) Length of service – how reasonable is it to assume that the employee should know what is and what is not acceptable

7.1.3 The following acts, and **offences of a like nature or similar gravity**, are normally regarded as gross misconduct; but as indicated earlier this list is not intended to be exhaustive.

- a) serious insubordination to a member of management including refusing to carry out reasonable instructions
- b) theft, or attempted theft, misappropriation of property, fraud/dishonesty or deliberate falsification of, or destruction of, records
- c) fighting, assault on another person or threats of physical violence
- d) serious incapability whilst on duty due to being under the influence of alcohol or illegal drugs or substances
- e) possession of illegal drugs or substances whilst on duty
- f) abusive and/or indecent behaviour
- g) serious infringement of health and safety rules and instructions
- h) serious breach of confidentiality or trust
 - i) serious negligence or carelessness, which causes or might cause unacceptable loss, damage or injury
- j) wilful damage to Council property
- k) sexual offences, deliberate sexual harassment or sexual misconduct
- l) racial offences, deliberate racial harassment or inciting racial hatred
- m) serious harassment of another employee including bullying
- n) serious and deliberate contravention of the Council's standing orders or financial regulations
- o) behaviour likely to damage seriously the image and/or reputation of the Council
- p) improper use of the employee's position for his/her or another's private advantage, or attempt to do so
- q) conduct at work likely to seriously offend decency

- r) canvassing Members of the Council for appointment, promotion or other personal advantage or to frustrate the process or outcome of agreed Council procedures/decisions
- s) reasonable belief, sustained after reasonable investigation, of criminal offence or activity, whether in or outside of work, where in the reasonable opinion of management, such conduct is incompatible with the employee's employment.
- t) serious breach of the Council's information technology systems security policy for the Internet, Intranet and Electronic Mail
- u) unauthorised disclosure of information which is treated as exempt, or confidential under the Local Government Act 1972 or which may not be disclosed under the Data Protection Act
- v) without prior management agreement engage in other paid employment or any other activity which could delay the return to work whilst receiving sick pay or other benefits from the Council during a period of sickness or unauthorised absence

7.2 Misconduct

7.2.1 Any employee may, after careful investigation of the alleged offence, have disciplinary action taken against them. Depending on the nature or seriousness of the act, omission or complaint, the process may be started at any of the stages set out in the Procedure. Examples of misconduct that may result in the Procedure being invoked are:

- a) insubordination
- b) irregular timekeeping or continual lateness
- c) unauthorised absence from work or the work place
- d) truculent/foolish behaviour likely to cause offence to other employees or members of the public
- e) incompetent work performance/failure to improve faults that build into a pattern of unacceptable behaviour, performance or attitude
- f) disregard of safety/hygiene rules and instructions
 - g) smoking in unauthorised areas
- h) sleeping on duty, without management approval

- i) being under the influence of alcohol or other substances
- j) repeated and significant misuse of Council paid working time or facilities (e.g. telephones, parking in unauthorised areas, fax machines)
- k) neglect of responsibilities
- l) wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under capability procedures).
- m) any other act or omission that might otherwise (if the context were judged to be more serious) be dealt with as a matter of gross misconduct

8. INFORMAL STAGE

Minor issues of conduct or omission will, in the main, be dealt with informally by the Supervisor/Manager in accordance with 8.1 below. The fact finding stage described in 8.2 does not form part of the formal Disciplinary Procedure and Suspension pending investigation does not constitute disciplinary action.

8.1 Day to Day Supervision of Employees

8.1.1 The day-to-day supervision of employees and monitoring of their conduct and performance is part of the normal management process within the Council.

8.1.2 When a minor incident occurs and it is suspected that an employee has committed an act of misconduct, the employee shall normally be interviewed by their supervisor or manager told of the incident and given the right to reply.

8.1.3 It is expected in the majority of cases, the matter will be resolved at this stage without reference to the formal procedure by clear instruction and the employee informed of the conduct or standard expected within a specified timescale. It may be appropriate to consider offering either/or a combination of training, coaching or counselling.

8.1.4 If the required improvement is insufficient or a further instance of misconduct occurs, the formal stage of the disciplinary procedure will apply.

8.1.5 A brief note of the discussion(s) will be kept for reference purposes. This can be a diary record. Where, however, it is considered appropriate for the employee to receive written confirmation of the outcome a copy of this note must be appended to the employee's personal file.

8.1.6 Where, however, the employee's conduct or omission is considered to constitute a more serious breach of discipline, or where the employee has failed to respond to previous instructions, the matter shall be the subject of further consideration. (see 8.2 below)

- 8.1.7 Where there is a suspected irregularity affecting the resources of the Council, the supervisor or manager should comply with the Council's financial regulations on the subject (Refer to Internal Audit – Suspected Irregularities)
- 8.1.8 Where the supervisor or manager has reasonable grounds for believing that the incident is one of gross misconduct or believes there are grounds to doubt the suitability of the employee continuing at work, the employee must be suspended pending investigation, in accordance with Section 8.3 of this Procedure.

8.2 Preliminary Investigation and Consideration

- 8.2.1 Any alleged breach of discipline, which has not been, or is not appropriate to be, resolved by day-to-day supervision of employees as per Section 8.1 shall be fully investigated.
- 8.2.2 The investigation process will be carried out speedily but without comprising fairness or thoroughness. It should be undertaken as discreetly and privately as possible to avoid unjustified damage to reputations. As a guideline, unless there are special circumstances, which make it impossible, the investigation should be completed and recommendations made within one calendar month. If appropriate Personnel Services should be consulted. There should be as much investigation as is reasonable in the circumstances. It should be sufficient to:
- a) Establish a genuine belief that the alleged misconduct, act or omission has taken place; and
 - b) Provide reasonable grounds to sustain that the belief on the balance of probabilities; or
 - c) Establish that there is a case to answer
- 8.2.3 Normally, as part of the fact finding, it will be appropriate for the person undertaking the investigation to interview the employee in a relatively informal setting, giving him or her the opportunity to offer an explanation and the facts from his or her point of view.

8.2.4 There is no right of representation at this stage although the person undertaking the investigation will, wherever practicable and appropriate, inform the employee that he or she may be accompanied by an employee side representative or a work colleague of their choice, but no one else.

8.2.5 The employee will be told clearly what the allegations are, that an investigation is being conducted, how it will be conducted, and that he or she will be kept informed of progress and the likely timescale.

8.2.6 Care must be taken to ensure that the preliminary investigation does not turn into a Disciplinary Hearing. Where it becomes evident that this likely or a Disciplinary Hearing is appropriate then the investigation should stop, proceedings adjourned and a Disciplinary Hearing convened in accordance with this procedure.

8.2.7 In the case of suspected fraud or financial irregularity, the responsible manager must immediately inform the Director of Finance who will instigate an independent investigation.

8.2.8 Investigations instigated by the Director of Finance will be undertaken in consultation with the appropriate manager(s) and in accordance with the principles contained in this Section covering all investigations. In such cases the employee shall be advised of the involvement of the Director of Finance in the proceedings.

8.2.9 The person undertaking the investigation may interview other employees and, if appropriate the public if they made an allegation or were eyewitnesses to an event or incident. They will be asked for the facts and circumstances of the alleged incident and signed, dated written statements taken. Witnesses may be asked to attend a Disciplinary Hearing.

8.2.10 The person undertaking the investigation may, if appropriate, discuss the all findings and witness statements with the employee and note any further explanations before finalizing the report and recommendations.

8.2.11 If, after careful consideration of all the information available, the person(s) undertaking the investigation, in consultation with other management personnel as appropriate, decides that the alleged breach of discipline should be the subject of a Disciplinary Hearing, arrangements shall be made for the Disciplinary Hearing to take place as soon as is practicable. The person conducting the Hearing (see Appendix D – Format for Hearings) may be accompanied by a representative from Personnel Services or other management personnel. The employee shall be notified, in writing, of:

- a) The date, time and place of the Hearing
- b) The stage of the Disciplinary Procedure under which the Hearing will be held
- c) The nature of the allegation(s) against him/her and the nature of the action that could be taken, including, if applicable, that they may lead to dismissal
- d) The right to be accompanied by an employee side representative or a work colleague of their choice and the right to call witnesses and/or present documentary evidence at the Hearing.
- e) The name of the employee/composition of the Panel taking the Hearing

8.2.12 If there is a Disciplinary Hearing, the person undertaking the investigation shall normally present the allegations or concerns and the results of the investigation. This employee may act as a witness during any subsequent Hearings and Appeals.

8.3 Suspension Pending Investigation

8.3.1 Suspension should normally occur only when, after careful consideration, there is a **genuine belief** that the continuing presence at work of the employee may impede the investigation, or that they and/or the reputation of the Council may be put at risk. Suspension from work, with pay, is not a disciplinary penalty but is intended to allow for a proper investigation. The period of suspension should be **as brief as practicable** and reviewed to ensure it is not unnecessarily protracted.

8.3.2 Where reasonable grounds exist for believing that the alleged breach of discipline constitutes an act of gross misconduct then the employee must be suspended. Other examples of when suspension may be appropriate are:

- a) Contact by the individual with other employees may constrain them from co-operating fully with enquiries
- b) A genuine belief is held that the investigation could be prejudiced by the continuing presence at work of the employee
- c) Further offences may be committed
- d) Evidence may be destroyed or tampered with

- e) The Council may be brought into disrepute should the employee continue in the workplace pending the investigation

8.3.3 Full pay in this context shall be the employee's normal holiday pay, calculated in accordance with local conditions of service. If, on completion of the investigation the person undertaking the investigation believes it to be appropriate, the period of suspension may be extended until the Disciplinary Hearing has been held and a decision communicated to the employee.

8.3.4 The decision to suspend an employee shall be taken by a designated employee (see "Authority to Act" Annex 1), where appropriate after taking advice from Personnel Services, and shall be confirmed in writing, giving the reasons for the suspension.(See Appendix C Model letters)

8.4 Dealing with Police Investigation, Criminal Activity or Conviction

8.4.1 These shall not be treated as automatic reasons for dismissal. The main consideration shall be whether the police investigation or offence is one that makes the employee unsuitable for their type of work. Accordingly criminal offences, whether on or off duty, which are likely to affect an employees work and/or the Council, will be investigated to determine the employee's ability to carry out the duties of their post and whether or not the allegation is sufficiently damaging to the well-being or reputation of the Council.

8.4.2 The first stage shall be to determine after considering the facts whether the conduct is sufficiently serious to warrant a Disciplinary Hearing. This will be based on the written report and conclusion of the person undertaking the investigation. Awaiting the outcome of any criminal investigation may not delay the Council's Hearing.

9. FORMAL STAGE - DISCIPLINARY PROCEDURE

The Procedure has been designed to provide a fair method of dealing with alleged breaches of Disciplinary Rules. It should not be viewed solely as a means of imposing sanctions but wherever appropriate to encourage the improvement of individual conduct.

9.1 The Disciplinary Hearing

9.1.1 The parties shall be advised of the procedure to be adopted at the Hearing (see Appendix D).

9.1.2 The hearing will be conducted by an employee/member panel with authority to act (see Annex 1).

9.1.3 When an employee is required to attend a Disciplinary Hearing he/she shall receive at least seven working days notice of the date of the Hearing unless an earlier date is mutually agreed.

9.1.4 When an employee is required to attend a Disciplinary Hearing there will be prior written notice outlining the reason(s) for the Hearing, indicating the action that could be taken, stating that witnesses may be called by either party and where possible all relevant evidence should be exchanged prior to the Hearing. The witnesses to be called and documentary disclosures apply to both management and the employee. See also Section 8.2

9.1.5 A formal request for a deferment of a hearing will not be unreasonably refused provided adequate notice is given and the reasons explained. The deferment will not normally exceed seven working days.

9.1.6 In the event of the authorised/unauthorised absence of the employee on the date of a Disciplinary Hearing, the Hearing shall be postponed and re-arranged within a reasonable timescale and where possible on a date agreed by all parties and all parties informed in writing. The letter sent should also explain that a decision may be taken on whether to proceed in his/her absence based on the information available, with his/her representative being provided with the opportunity to present the employee's case on his/her behalf and respond to the management case. Any written submission by the employee and/or his/her representative will be considered.

9.1.7 **Both parties** may call witnesses employed by the Council, and present documents in support of their case. Any documents to be presented and the names of witnesses to be called by **either party** must normally be circulated **5** working days in advance of the Hearing. Witnesses not employed by the

Council may also be called subject to their availability and willingness to attend the Disciplinary Hearing. The Chairman of the Hearing will receive the documents to be circulated and the names of witnesses to be called, from management and the employee and, will ensure that this information is exchanged between the parties.

- 9.1.8 At the Hearing, the events and circumstances of the alleged offence(s) shall be put to the employee. The employee or his/her representative will be allowed to question the person(s) giving evidence.
- 9.1.9 The employee or his/her representative shall be given the opportunity to state his/her case. Management will be allowed to question the employee and others giving evidence.
- 9.1.10 The person conducting the Hearing, and the Personnel Services representative may ask questions of any person(s) giving evidence.
- 9.1.11 If, after full and careful consideration of all the evidence, it is adjudged that the alleged breach of discipline is substantiated and that disciplinary action shall be taken, such action shall be determined in accordance with the principles and considerations set out under Disciplinary Action.
- 9.1.12 Whilst no official minutes are necessary, notes shall be completed for each level of the Disciplinary Procedure. The notes should contain the date the problem arose, the place, essential details of the discussion, including key comments made by witnesses and the decision made including the rationale behind it. All notes of proceedings, witness statements and records shall be kept confidential.
- 9.1.13 The employee shall be advised of the decision and rights of appeal in accordance with Section 10 of the Procedure at the conclusion of the Hearing or as soon as practicable thereafter. In any event, the decision shall be conveyed within 5 working days. This will be by the issue of a Disciplinary Notice setting out the reasons except for Recorded Oral Warnings, which will just be confirmed in writing. The employee's representative shall be given a copy of the Disciplinary Notice or Recorded Oral Warning issued.

9.2 Disciplinary Action

9.2.1 In reaching a decision, following a Hearing, it will be important to bear in mind the need to satisfy the test of reasonableness in all the circumstances of the particular case. The test will be on the balance of probabilities the employee did commit the alleged misconduct or gross

misconduct. This is the difference from the criminal law test of whether he or she was guilty of an offence beyond all reasonable doubt. Accordingly the disciplinary action should be based on:

- a) The evidence given at the Hearing
- b) The action is appropriate to the seriousness of the offence(s), or, in certain cases, the frequency with which offences are committed. (Taking into account that wherever possible the primary aim is to effect an improvement in the conduct and/or performance of the employee).
- c) Full consideration is given to the employee's circumstances, length of service, past conduct, health or any domestic, personal or social factors, which may be relevant.
- d) Any representation made by the employee or his or her representative in mitigation
- e) A consistent, fair and effective approach be maintained (including taking account of any precedent)
- f) And any other relevant factors

9.3 Forms of Disciplinary Action

9.3.1 After a Disciplinary Hearing and a conclusion has been reached about the allegations it will be necessary to decide on the appropriate penalty and this Procedure provides for the following forms of disciplinary action or a combination of them:

- a) Formal recorded oral warning
- b) Written warning, which in some circumstances may be a Final Written Warning
- c) Withholding of increments
- d) Suspension with or without pay – as an alternative to dismissal
- e) Suspension of sick pay
- f) Disciplinary transfer
- g) Demotion

- h) Dismissal with notice
- i) Summary dismissal in cases of gross misconduct

Note: In this context, Disciplinary Transfer or Demotion is without pay protection and is considered as an alternative to dismissal. Transfer may be to a similar level job or a lower level job but would not exclude:

- necessary
- the possibility of dismissal should further disciplinary action be necessary
 - a Warning or Final Written Warning also being given

It may also be appropriate in exceptional and extenuating circumstances, to take other measures. The employee shall be given a written explanation for any measures(s) imposed.

9.4 Disciplinary Action in Cases other than Gross Misconduct

Stage 1 - Oral Warning

9.4.1 In a case where a number of minor breaches of discipline have occurred or, on the first occasion a more serious individual offence has taken place, then after a Disciplinary Hearing the employee shall be warned by the Manager, Senior Manager or other person designated for this purpose (see Authority to Act Annex 1).

9.4.2 For minor offences this first warning shall normally be a formal Oral Warning. The employee will be advised, in writing, of the reason for this warning, that it is the first stage in the Disciplinary Procedure, of the right of appeal and that a copy will be kept on their personal file. Subject to satisfactory conduct and behaviour this warning will be considered spent after **six** months and disregarded for future disciplinary purposes, but will be retained on file as part of the employee's work history.

Stage 2 - Written Warning

9.4.3 If, however, the breach of discipline is regarded as more serious or there is a lack of improvement or there are further instance(s) of matters previously warned and the warning is still active, then after a Disciplinary Hearing, the Manager, Senior Manager or other person designated for this purpose (see Authority to Act Annex 1) shall issue a Written Warning.

9.4.4 The Disciplinary Notice shall set out the nature of the offence, the improvement or change in behaviour required, the timescale allowed for this and the right of appeal.

9.4.5 The Notice shall also inform the employee that a Final Written Warning may be considered if there is no sustained satisfactory improvement or change and of the likely consequences of a

further breach (es) of discipline which could be an offence of the same or a different nature.

- 9.4.6 A copy of the Notice will be placed on the employee's personal file. It will, subject to satisfactory conduct, behaviour or performance, be considered spent and disregarded after **twelve** months for future disciplinary purposes, but will be retained on file as part of the employee's work history.

Stage 3 - Final Written Warning

- 9.4.7 If the unsatisfactory conduct, behaviour or performance persists during the currency of a prior Warning(s) or in those circumstances where the offence is so serious that, although the employee has not received any previous warnings, repetition would justify the dismissal of the employee, then after a Disciplinary Hearing, a Final Written Warning shall be given. A Disciplinary Notice shall be issued by the Manager, Senior Manager or other person designated for this purpose (see Authority to Act Annex 1) giving the details of the complaint, state that a failure to improve or modify behaviour within a required timescale may lead to dismissal or some other action short of dismissal and refer to the right of appeal. It shall also emphasise that the warning is final and that any subsequent breach of discipline will also lead to dismissal or some other appropriate form of disciplinary action.

- 9.4.8 A copy of the Notice will be placed on the employee's personal file. It will, subject to satisfactory conduct, behaviour or performance, be considered spent and disregarded after **twelve** months (in exceptional cases the period may be longer) for future disciplinary purposes, but will be retained on file as part of the employee's work history.

Stage 4 - Dismissal or other Sanction

- 9.4.9 If after a Final Written Warning an employee persists in acts of indiscipline, misconduct or performance remains unsatisfactory the Final Written Warning shall be enacted subject to a Disciplinary Hearing and any mitigating circumstances being considered. This action shall be confirmed in writing, by the issue of a Disciplinary Notice by the Manager, Senior Manager or other person designated for this purpose (see Authority to Act Annex 1). The Notice shall give details of the reason for the dismissal, the date on which the contract of employment will terminate, the appropriate period of notice (or pay in lieu of notice) and information on the right of appeal including how to make the appeal and to whom.
- 9.4.10 The Manager, Senior Manager or other person designated for this purpose (see Authority to Act Annex 1) may, in exceptional circumstances, also consider as an alternative to dismissal Demotion and/or Disciplinary Transfer. If these alternatives are offered they will be conveyed in writing and be within the

range of options thought reasonable by the persons authorised to act at this level, taking account of the seriousness of the offence, the circumstances of the employee and the interests of the Council. Where the identified alternative is declined by the employee, dismissal will be effected.

Stage 4 - Disciplinary Action in Cases of Gross Misconduct

9.4.11 If the Members Panel, Director, Senior Manager or other person(s) designated to conduct the Hearing, (see Authority to Act Annex 1) is satisfied that the employee has committed an act of gross misconduct, (see Disciplinary Rules – Section 7.) he/she shall, subject to consideration of any mitigating circumstances, summarily dismiss the employee (i.e. without notice). This action shall be confirmed in writing, by the issue of a Disciplinary Notice by the Member Panel, Director, Senior Manager or other person(s) designated for this purpose (see Authority to Act Annex 1). The Notice shall give details of the reason for the dismissal, the date on which the contract of

employment terminates and information on the right of appeal including how to make the appeal and to whom.

9.5 Disciplinary Action against a Trade Union Representative

9.5.1 Although normal disciplinary standards apply to their conduct, behaviour and performance as employees, no disciplinary action shall be taken against an employee who is a recognised trade union official until there has been a discussion of the case by the authorised employee and, if appropriate, a representative from Personnel Services with a full-time trade union official or other appointed full-time official of the employee's trade union.

9.5.2 This does not prejudice management's right to suspend the employee on full pay pending investigation if it is considered appropriate, in accordance with Section 8.3 of this procedure.

10. APPEALS

10.1 Right of Appeal

10.1.1 An employee has the right of appeal against any disciplinary action. This right together with the procedure to be followed to initiate the appeal shall be set out in the Disciplinary Notice. For disciplinary action short of dismissal, this shall normally be to the employee's Director or his/her nominated employee. Notice of appeal against dismissal must be submitted to the Head of Personnel. An Appeal Hearing involves a full re-hearing of the case and new evidence can be submitted and taken into account.

10.2 Originating the Appeal

10.2.1 An appeal must be lodged in writing within five working days of the receipt of a Disciplinary Notice, using the appeal form available for this purpose. The letter of appeal should state the specific reasons for the appeal **and whether the appeal is against:**

- a) The finding that the employee committed or was involved in the offence; and/or
- b) The form of disciplinary action taken against him/her.**
- c) Perceived procedural irregularities

- 10.2.2 If the reason for the appeal is to present new evidence which has subsequently come to light, this should be stated and the information, shall be submitted with the appeal letter.

10.3 Appeal against Disciplinary Transfer or Dismissal

10.3.1 Appeals shall be heard by the appropriate Appeals Panel. The Appeal Hearing will normally be arranged to take place with the employee, and, where applicable, his/her representative, within 30 calendar days of the receipt of the Appeal and the employee shall be given notice at least seven working days in advance of the date, time, place, their right to be accompanied, the names of the employees/Members who will hear the Appeal, the action that could be taken, that witnesses may be called by either party and where possible all relevant evidence should be exchanged prior to the Hearing. The witnesses to be called and documentary disclosures apply to both management and the employee.

10.3.2 Any documents to be presented and the names of witnesses to be called by **either party** must normally be circulated **5** working days in advance of the Hearing. The Appeals Panel or their nominated representative will receive the documents to be circulated and the names of witnesses to be called from management and the employee, and will ensure that this information is exchanged between the parties.

10.3.3 The employee Appeals Panel will consist of a member of the Corporate Management Team (CMT) and two senior managers from the level of Head of Service and above. The Member Appeals Panel will consist of three Elected Members with three designated deputies. The Appeals Panel shall not hear any Appeal unless the three Members (or their deputies) are present throughout. The Head of Personnel or his/her nominated representative (not previously involved in the case) will be present to advise Members. (See Appendix F of the MAN on Disciplinary Procedures – Format for member appeals).

10.4 Appeals against other forms of Disciplinary Action

10.4.1 Appeals shall be heard by a Manager authorised to act (see “Authority to Act” Annex 1).

10.4.2 Within 30 calendar days of the receipt of an Appeal, a Senior Manager or Director or other person designated for this purpose (see “Authority to Act” Annex 1), shall arrange for and hold an Appeal Hearing, with the employee and where applicable his/her representative. The employee shall be given at least ten working days advance notice, in writing, of the arrangements for the Appeal Hearing, of the right to be accompanied and the name(s) of the person(s) who will hear

the Appeal, the action that could be taken, that witnesses may be called by either party and where possible all relevant evidence must be exchanged prior to the Hearing (see Appendix C of the MAN). The witnesses to be called and documentary disclosures apply to both management and the employee.

- 10.4.3 Any documents to be presented and the names of witnesses to be called by **either party** must normally be circulated **5** working days in advance of the Hearing. The Panel /person taking the Hearing will receive the documents to be circulated and the names of witnesses to be called, from management and the employee and, will ensure that this information is exchanged between the parties.

10.5 Deferment of Appeal Hearing

10.5.1 A formal request for a deferment of a Hearing will not be unreasonably refused provided adequate notice is given and the reasons explained. The deferment will not normally exceed seven working days.

10.5.2 In the event of the authorised/unauthorised absence of the employee on the date of an Appeal Hearing, the Hearing shall be postponed and re-arranged within a reasonable timescale and where possible on a date agreed by all parties and all parties informed in writing. The letter sent should also explain that a decision may be taken on whether to proceed in his/her absence based on the information available, with his/her representative being provided with the opportunity to present the employee's case on his/her behalf and respond to the management case. Any written submission by the employee and/or his/her representative will be considered.

10.6 The Appeal Hearing

10.6.1 The parties shall be advised of the procedure to be adopted at the Appeal Hearing (see Appendix D).

10.6.2 The procedure shall provide an opportunity for management to present, as appropriate, an account of the events and circumstances of the alleged breach (es) of discipline, the investigations undertaken, the statements made and the decisions reached at the Disciplinary Hearing.

10.6.3 The employee and/or their representative shall also be given the opportunity to state the employee's case.

10.6.4 Both parties may call witnesses, present documents in support of their case and can question the evidence presented. Witnesses not employed by the Council may also be called subject to their availability and willingness to attend the Appeal Hearing. Any documents to be presented must be circulated five working days in advance of the Hearing. Both parties must indicate in advance which, if any, witnesses they wish to call.

- 10.6.5 The Member Panel/Director/Manager hearing the Appeal will normally be accompanied by a representative from Personnel Services as an adviser.
- 10.6.6 Whilst no official minutes are necessary, notes shall be completed containing the essential details of the Hearing, including key comments made by witnesses and the decision made including the rationale behind it. All notes of proceedings, witness statements and records shall be kept confidential.
- 10.6.7 Unless varied by mutual agreement the detailed procedure for any Appeal Hearing shall be that set out in Appendix D / Appendix F to the MAN.

10.7 Appeal Decision

10.7.1 The appeal decision shall be given at the conclusion of the Hearing or as soon as practicable thereafter. Under normal circumstances the decision will be given orally at the conclusion of the Hearing, but if this is not possible then the employee will be given an explanation of the reason(s). In any event the appeal decision shall be given or confirmed in writing within five working days.

10.7.2 The person or Appeal Panel hearing the Appeal has the power to remove, decrease or confirm the penalty imposed at the Disciplinary Hearing.

10.7.3 Where an appeal decision confirms a dismissal, the date of the dismissal will be the date originally notified to the employee, providing that notification complies with employment legislation. There will be no liability to pay the employee for the period between the dismissal and the disposal of the Appeal.

10.7.4 There is no further right of Appeal.

11. DISCIPLINARY RECORDS

11.1 Any record of disciplinary action taken and appeal hearing against an employee shall be carefully safeguarded and treated as confidential. They shall be retained in accordance with the Procedure and the Data Protection Act 1998, which requires the release of certain data to employees on their request. Information pertaining to witnesses and third parties may be withheld to protect them.

11.2 Records shall be kept detailing the nature of the breach of disciplinary rules or unsatisfactory performance, the employee's defence and/or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments.

11.3 Except in special circumstances or in the case of Recorded Oral Warnings, disciplinary action will be disregarded after twelve months if the employee's conduct, behaviour and performance have been completely acceptable. Where the circumstances warrant it the

Disciplinary Notice may direct that a warning is effective for a longer period but Disciplinary Notices will not normally be "open ended".

11.4 Where the employee's conduct, behaviour and performance has not been completely acceptable at the end of the stated time period then the period may be extended. The decision to extend the time period will be taken after interviewing the employee and confirmed in writing, with a copy on the employee's personal file. The employee may appeal against the decision within five working days of the receipt of the letter to the employee's Director or their nominated employee.

11.5 Employees can access their personal file and see information relating to this Procedure by writing to Personnel Services who will make it available within 3 days of receipt of the request. Arrangements will be made for the employee to see the File information in the presence of a third party. The employee side representative can only see the File information in the presence of the employee.

12. AMENDMENT TO TIME LIMITS

12.1 The parties involved in a particular disciplinary matter may, on occasion and by mutual agreement, modify the time limits referred to in this procedure.

13. REVIEW OF PROCEDURE

13.1 The procedure will be reviewed from time to time in the light of any developments in employment legislation or good employee relations practice and, if necessary, revised in order to ensure its continuing relevance and effectiveness.

13.2 Any amendments and additional rules imposing new obligations shall only be introduced after reasonable notice has been given to all employees and after joint consultation with the recognised trade unions.

CAPABILITY PROCEDURE

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CAPABILITY PROCEDURE

1. INTRODUCTION

- 1.1** It is in the interests of employees, the Council and the Community that employees are capable of performing their jobs to a satisfactory standard as defined by management.
- 1.2** Employees have a contractual responsibility to perform to a satisfactory level and should be given every help and encouragement to do so. Employers have a responsibility for setting realistic and measurable standards of performance and for explaining these standards carefully to employees.

2. PURPOSE

- 2.1** The Capability Procedure has been drawn up to identify the reasons for inadequate work performance by employees, and to help them achieve the appropriate level of performance required for their posts within a reasonable timescale. The aim of the Procedure is to help and support employees whose performance is impaired through lack of capability due to skill or aptitude, sickness, ill health and acquired disability or any other reason not connected to misconduct. Accordingly the focus will be to:
- a) Help and encourage employees to achieve and maintain a satisfactory level of performance.
 - b) Indicate to an employee that their current standard of work is not at an acceptable level.
 - c) Provide the required training and support to enable the employee to achieve the desired level of performance.
 - d) Provide a framework to enable employees to be treated fairly and consistently, Council-wide.
- 2.2** A failure to deal with poor performance can affect other employees who may become disillusioned and dissatisfied if they see an incompetent colleague 'getting away with it'. This may lead to their own work standards declining or they may look for other employment where they think their work will be more appreciated. Thus the Council's efficiency, productivity and quality of service can quickly suffer.
- 2.3** In **all** cases where management genuinely believes that, after investigation, an employee's performance is inadequate; the primary objective should be to

get them to improve to the standard required, with dismissal as very much the last resort. Only if discussions, training, counselling and warnings fail to produce the desired improvement should dismissal for lack of capability be the remedy. However, a distinction must be drawn between innate incompetence and lack of performance, which is attributable to a wilful refusal to work satisfactorily. The latter is a matter of **conduct** and can be dealt with in accordance with the Council's Disciplinary Rules and Procedure (see MAN 4.8).

- 2.4 This Procedure sets out the arrangements to be followed to enable both managers and employees to have the benefit of a clear, systematic and sympathetic process designed to improve and maintain performance levels.

3. PRINCIPLES

- 3.1 **The Procedure has been designed to comply with the requirements of the Employment Relations Act 1999, the Employment Rights Act 1996, the Employment Rights (Dispute Resolution) Act 1998 and generally in accordance with the good practice guidelines of the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures and the ACAS Advisory Handbook Discipline at Work.**
- 3.2 The Procedure has been drawn up in discussion with the trade unions recognised by the Council.
- 3.3 The Procedure will be applied in a none discriminatory way, irrespective of an employee's age, disability, gender, martial status, race, religion and sexual orientation.
- 3.4 No action will be taken against an employee under this Procedure until the case has been fully investigated.
- 3.5 No employee will be dismissed on grounds of capability without application of this Procedure and subsequently the Disciplinary Procedure. The only exception to this is irredeemable incapability (see Section 14) where an

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employee commits a significant single error and the actual or potential consequences of that error are, or could be, extremely serious, and warnings may not be appropriate.

- 3.6 At every step in the Procedure the employee will be treated fairly, be advised of the nature of the shortcoming and will be given the opportunity to state their views before any decision is made.
- 3.7 At all formal steps of the Capability Procedure, an employee will have the right to accompanied by an employee side representative or work colleague of their choice but by no one else.
- 3.8 Capability issues will be handled sensitively and treated as confidentially as possible, so that only those who need to know will be involved.
- 3.9 Issues involving health and disability will be handled with particular sensitivity.
- 3.10 **Employees should be willing to do everything they can, with the Council's help, to overcome capability issues. An employee will always be given a clear insight into the nature of the problem, consulted appropriately and allowed an opportunity to put their case.**
- 3.11 Timescales will be set for performance to improve and a review date set to assess whether the performance required has been achieved.
- 3.12 Employees will be advised that failure to improve within the specified timescale having taken all reasonable measures, including where appropriate and available offers of redeployment, could lead to invoking the Disciplinary Procedure and ultimately dismissal.
- 3.13 An employee will have the right of appeal against any formal action under Step 3 of this Procedure.
- 3.14 Once an employee has been notified of the date of a Formal Meeting under this Procedure, they may not register a grievance under the Grievance Procedure on any issue connected with work performance. The matter should be taken up at the Formal Meeting, the Appeal Hearing or both as part of their case.
- 3.15 Only designated employees/Members will implement the Capability Procedure and take action in accordance with 'Authority to Act'. (See Annex

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1). Such employees will have a copy of the Capability Procedure and will have received guidance on how to apply it.

3.16 Throughout this Procedure, it is assumed that the employee receives any letter confirming a decision after a meeting or Hearing on the second working day after it was sent.

3.17 Personnel Services will be available for advice and support at every step of the Procedure and will monitor and advise on its consistent application.

4. SCOPE OF THE PROCEDURE

The Procedure applies to all permanent employees of the Council with exception of:

- a) The Chief Executive, and any other employees specifically excluded by legislation.
- b) Employees serving a probationary period. Such employees will be dealt with under the Council's established Procedure for Assessment during Probation (see MAN 2.8).
- c) Employees on short-term contracts of less than one year
- d) Cases of redundancy
- e) Employees working on a casual basis, subject to any one period of continuous employment not exceeding one year
- f) A separate Disciplinary Procedure (see MAN 4.8) is available for handling misconduct. Some elements of unacceptable work performance will be dealt with under the Disciplinary Procedure. This will include unsatisfactory performance resulting wholly or mainly from carelessness, laziness, negligence, lack of application or unacceptable quality or quantity of work output or other wilful acts.

The latter steps of the Capability Procedure do, however, make use of the Disciplinary Procedure.

5. AUTHORITY TO ACT

5.1 Only those so authorised may act in the implementation of this Procedure. A schedule of "Authority to Act" is attached at Annex 1.

5.2 A designated employee with “Authority to Act” (Annex 1) shall present the management case at an appeal against the decision they have taken.

6. GENERAL RESPONSIBILITIES

6.1 **It is the responsibility of Directors and all Managers and Supervisors to ensure that proper standards of work performance are achieved by employee(s) for whom they are responsible.**

6.2 **Directors and Managers are responsible for ensuring that all employees including those whose first language is not English or have a disability or impairment understand the Council’s Capability Procedure. They shall also ensure that the Procedure is correctly applied within their services.**

6.3 **It is the responsibility of Directors and Managers to ensure that all notifications are made in accordance with this procedure and that appropriate records are kept of all investigations, meetings, considerations and decisions.**

6.4 The Chief Executive, Directors and Heads of Service, in consultation with Personnel Services as appropriate, will authorise Managers to act in accordance with this Procedure.

6.5 **Managers who apply the Capability Procedure should be familiar with it and appropriately experienced in performance issues. Where appropriate arrangements for familiarisation training in the use and operation of the Procedure will be initiated by Personnel Services and Directorate Training Co-ordinators.**

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- 6.6** Personnel Services will make the necessary arrangements for Disciplinary and Appeal Hearings, which involve Elected Members. They will also provide any advice necessary to Members.
- 6.7** It is the responsibility of Personnel Services to provide overall guidance and advice, as required, in the implementation of the Procedure and to monitor consistency of application throughout the Authority.

7. DEFINING THE TERM 'CAPABILITY' ,

- 7.1** 'Capability' in the Employment Rights Act 1996 is defined as an employee's 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'. Management need to take different approaches for the various issues, which can arise under this definition. The framework in Sections 10 to 19 gives details.
- 7.2** Lack of capability or loss of capability (as distinct from unwillingness) can arise for various reasons. Examples are:
- a) Stress for any reason
 - b) Ill Health and persistent short-term sickness absence effects on work performance.

- c) Promotion beyond ability
- d) Appointment to a job that is inappropriate for the individual's skills or experience.
- e) Change resulting from physical or mental ill health (acquired disability).
- f) Development in job demands over the years or changes brought about by outside influences, such as new technology, or new work methods or legislation.
- g) The employee becoming a danger to themselves or others.

8. INDICATORS OF POOR PERFORMANCE

8.1 These may include:

- a) Failure to meet a specific standard or level of performance or work output**
- b) Failure to meet pre-set targets or deadlines
- c) Failure to meet specified core competencies
- d) A supervisor or manager's observation of instances of unsatisfactory performance
- e) Complaint(s) or criticism(s) of the employee's work

9. MEASURING ACCEPTABLE STANDARDS OF CAPABILITY

9.1 The standard of work performed will be assessed by a variety of techniques. These include:

- a) Day to day management and regular supervision discussions with the immediate manager/supervisor.
- b) Performance and Development - annual interviews and, between these, regular assessments of progress against targets jointly agreed with the immediate manager.

-
- c) Assessment of the employee's performance against the job description and the person specification for the post.
 - d) Assessment of the employee's performance against acceptable measures of quality and work output
 - e) Appointment support procedures for employees, outside the probationary period, who join the Council from another local authority or who move between jobs or Directorates within the Council.

10. DISABILITY ISSUES

10.1 Employment legislation provides for protection against disability discrimination. Many employees lose capability because of 'acquired disability' during the course of their working lives. Employers have a duty to make 'reasonable adjustments' if a work arrangement or physical feature places a disabled employee at a substantial disadvantage compared to an employee who is not disabled.

10.2 A manager will need to clarify whether the employee falls into the definition of a disabled person under legislation and good practice. They should consult the employee and also ask for advice from Personnel Services. This process may take a number of meetings/consultations and trying to set time limits is not appropriate. Managers should, nevertheless, endeavour to resolve an employee's situation without undue delay. This may include considering any adjustments, which may overcome the situation and/or providing instructions and information on standards and targets in alternative formats. See MAN Disability Act 1995 – Employee Issues.

11. INCAPABILITY THROUGH SICKNESS, ILL-HEALTH OR INJURY

Impaired work performance may result from periods of sickness, ill health or injury. Such circumstances will have been identified during the application of the Council's established MAN for Sickness Absence Procedure. The Sickness Absence Procedure details the steps to take, which involve informal interviews, the

seeking of medical reports and advice from Occupational Health.

11.1 Repeated Short Term and Long Term Absence

- 11.1.1 A medical report provided by Occupational Health (see MAN 5.7 e & f) will establish whether there is an underlying health problem, which may affect work performance. Where this is the case the Formal Steps of the Capability Procedure should be followed, otherwise refer to MAN Sickness Absence Procedure. If the employee is unable to cope with the full demands of the post then it may be appropriate to go direct to Step 3 otherwise the starting point should be Step 1.

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11.2 Termination due to incapability on medical grounds.

- 11.2.1 If it is established that for medical reasons the employee will be permanently unfit until normal retirement age of 65 for the post or 'comparable employment' a meeting under Step 3 of the Capability Procedure should be arranged.

12. MEASURES TO HELP OVERCOME SHORTCOMIN GS

12.1 Depending on the nature of the unacceptable/unsatisfactory performance, a number of different measures can be used to help an employee to improve if the problem is one of skill or aptitude. These include:

- a) Informal counselling

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- b) Change to work practices within the terms of the employee's job description
- c) Changes to working hours or providing new patterns of work
- d) Additional training/retraining – either internally and/or from external sources
- e) Increased supervisory support
- f) Coaching or mentoring by suitably experienced personnel
- g) Provision of independent occupational advice and support
- h) Reviewing work targets
- i) Reasonable adjustments to the working environment and work arrangements
- j) More regular performance reviews
- k) Consideration for redeployment to more suitable alternative work

13. PROCEDURE FOR DEALING WITH A LACK OF CAPABILITY

When it becomes apparent that an employee's capability to perform the duties required is in question, the following steps should be followed.

13.1 INFORMAL STEP

For employees whose incapability arises due to sickness, ill health or injury the initial steps to be followed will be as set out in the Council's established MAN for Sickness Absence and not the Informal Step under this Procedure.

13.1 Investigation

13.1.1 If an employee's performance is considered not to be satisfactory, there will be reasonable investigation to determine the reasons.

The investigation will include at least one informal meeting with the employee to:

- a) To check that they are clear about their duties and responsibilities and that these are set out accurately in the current job description.

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- b) **To ensure they are clear about the required standards of work performance and targets/goals for work performance at individual and, where appropriate, at team level.**
 - c) To clarify that the employee has been assisted in identifying training needs so that any gaps between current and required competence have been identified and if a plan exists on how these training needs can be met.
 - d) To check if the employee has received a copy of their training plan and that records have been maintained of any training/development activities undertaken.
 - e) To review whether any shortfall in performance is due to unreasonable expectations or as a lack of proper explanation on the part of management.
 - f) To allow the employee to explain deficiencies in performance.
- 13.1.2 The investigation will be sufficient to establish whether failure to perform at a satisfactory level is attributable to a lack of capability, ill health or acquired disability (see Section Definition 7) or to misconduct (see Section 4 para 4.6)
- 13.1.3 If action is considered appropriate, following investigation, then where it cannot be dealt with informally, the appropriate procedure will be invoked.

13.2 Initial action

13.2.1 The day-to-day supervision of employees and monitoring of their performance is part of the normal management process within the Council. Accordingly where there is minor case of poor or unsatisfactory performance or an instance of inappropriate action, the supervisor/manager should point it out to the employee as soon as possible and remind them in a constructive and positive manner, of the standard required.

13.3 Informal Meeting

13.3.1 When there is a persistent or more serious problem of unacceptable performance, or if the employee has not responded to previous advice, training or coaching, a supervisor or manager will meet the employee and draw attention to the identified shortcomings in performance. The employee will be given the opportunity to respond and the possible reasons for it explored. There will be no right of representation at such a meeting, except in circumstances described in the Capability Management Advice Note at Section 4 point 4.1.7.

13.3.2 The employee will be informed of the work standard expected within a specified time scale and left in no doubt that if there is insufficient improvement or a further lapse in performance, the formal steps of the Capability Procedure will apply. Consideration should be given to whether offering either or a combination of training, coaching or counselling, might improve performance and, if an action plan is appropriate.

13.3.3 A brief note of the discussion(s) will be kept for reference purposes. This can be a diary record. Where, however, it is considered appropriate for the employee to receive written confirmation of the

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outcome to confirm the advice and clear instruction given a copy of this note must be appended to the employee's personal file. These papers on the personal file are not part of the employee's formal record and should not be confused with action taken under the formal part of this Procedure.

- 13.3.4 It is expected in the majority of cases, the matter will be resolved at this step, without reference to the formal Procedure.
- 13.3.5 If the required improvement is insufficient or a further instance of unsatisfactory performance occurs, the formal step of the Capability Procedure will apply.
- 13.3.6 The Investigation and this Informal Step do not form part of the formal Procedure.

FORMAL CAPABILITY PROCEDURE

13.4 Step 1 - Initial Formal Meeting

- 13.4.1 The supervisor/manager will inform the employee orally and in writing of the requirement to hold an Initial Formal Meeting. The employee shall be notified, in writing, of:
 - a) The date, time and place of the Meeting.
 - b) The Step of the Capability Procedure under which the Meeting will be held.
 - c) An indication of the shortcomings to be discussed.
 - d) The right to be accompanied by an employee side representative or a work colleague of their choice.
 - e) The name of the manager (see 'Authority to Act Annex 1) who will conduct the meeting and of any other personnel who will be present.
 - f) Copies of any documents to be used at the meeting.
 - g) A copy of the Capability Procedure.

13.4.2 A minimum period of 5 working days notice should normally be provided of the meeting date, unless an earlier date is mutually agreed.

13.4.3 At the Meeting the discussion should be full and wide-ranging in an atmosphere of support. The employee's shortcomings in performance must be identified clearly and openly and an assessment made of the elements of work which cannot be performed adequately. The discussion at the meeting will include: -

- a) The standards expected of the employee and the extent to which the employee's performance is deficient, giving details and specific objective criteria.
- b) Any documentary evidence must be discussed.
- c) Medical advice from Occupational Health (sickness and ill health cases only)
- d) The employee's views and reaction and any reasons for the shortcomings considered and explored. Any mitigating circumstances taken into account.
- e) Confirm that any informal measures have failed to improve performance to the level required and that the problem is due to lack of skills or abilities.
- f) The improvements in performance required including specific, measurable, agreed, realistic and timed targets where appropriate.
- g) The establishment of a review period during which the improvements required can reasonably be expected to be achieved, arrangements for monitoring the employee's performance during the review period and the date for a Formal Review Meeting at Step 2 or 3.
- h) Any measures, which can be taken during the Review Period to assist the employee in achieving the required improvement (such as training or re-training, direct supervision by an employee competent and experienced in the work, adjustments in work organisation etc). See Section 12 Measures to Help Overcome Shortcomings.

- i) The action plan should normally be agreed with the employee. Where this is not possible the reasons must be recorded and Personnel Services notified.
- j) The employee must be left in no doubt that an improvement is expected within the time period set and failing this the Review Period may be extended and/or consideration given to the termination of his/her employment.

13.4.4 In considering the duration of the Review Period it is appropriate to take into account the following:

- a) The nature, complexity and specialism of the employee's post.
- b) The employee's length of employment.
- c) The employee's past performance.
- d) The extent to which the employee's work falls below standard.

13.4.5 During the Review Period, the employee's performance should be monitored by the immediate supervisor/manager as frequently as appropriate, e.g. weekly/monthly, bearing in mind such factors as the nature of the employee's duties, the extent of improvement sought and the length of the Review Period. The timescale will include a Formal Review Meeting.

13.4.6 A confirmatory letter containing the main points of the Initial Formal Meeting, including the steps that have been agreed to be taken to enable the employee to improve must be sent within 5 working days of the meeting. An employee who disagrees with the outcome of the meeting may write to the manager, within 5 working days of receipt of the letter setting out the objections. Should the matter need to be considered further it can form part of the documentation for Step 2.

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- 13.4.7 If within two years of the satisfactory ending of a Step1 Review Period an employee's performance again becomes significantly unsatisfactory, Step 2 may be invoked immediately.

13.5 Step 2 – Formal Review Meeting

13.5.1 At the end of the Step 1 Review Period (or earlier if it becomes/is clear that the employee's performance remains unsatisfactory), the employee should be requested, in writing, to attend a Step 2 Formal Meeting to review their performance under Step 1.

- 13.5.2 The notification for the meeting and the format to be followed will be similar to that for Step 1, with the addition that their suitability for continued employment in their current post would be assessed.

- 13.5.3 At the Meeting the discussion should again be full and wide-ranging in an atmosphere of support and in addition to the relevant matters listed under Step 1 include:

- The extent to which the employee's performance has improved and whether it has been sustained. Any shortfall against target must be identified clearly and openly and an assessment made of the elements of work which cannot be performed adequately.
- The results of the monitoring process considered and reviewed objectively against the targets set at the Initial Formal Meeting.
- The employee will be invited to give their opinion on progress made, the support and training made available and any other options they would like to have considered.

a) Possible Outcomes

- i. Satisfactory Performance

If performance has improved to a satisfactory level this should be clarified and confirmed in writing and recorded on the employee's personal file. The letter must be sent within 5

working days of the meeting. The matter will be disregarded in any future capability situation unless there is a recurrence in the poor performance within 2 calendar years of the Formal Review Meeting.

ii. Unsatisfactory Performance

If, however, the required improvement in performance has not been achieved during the Step 1 Review Period (or earlier if supported by overwhelming evidence), the senior manager will decide whether to give the employee further opportunity to improve.

The employee must be left in no doubt that an improvement is expected during a Final Review Period and failing this a Disciplinary Hearing at Stage 4 of the Council's Disciplinary Procedure (see MAN 4.8) will be convened and that their employment may be terminated subject to considering suitable alternative employment.

It may, in any event, be appropriate to consider alternative employment for the employee at this stage under the Council's established MAN for Redeployment Procedure. Notes of all alternative employment options considered must be kept and copied to the employee.

The action plan for the Final Review Period should normally be agreed with the employee. Where this is not possible the reasons must be recorded and Personnel Services notified.

A confirmatory letter containing all of these issues must be sent within 5 working days of the meeting. An employee who disagrees with the outcome of the meeting may write to the manager, within 5 working days of receipt of the letter setting out the objections. Should the matter need to be considered further it can form part of the documentation for Step 3.

iii. Redeployment/Dismissal

If there has been insufficient improvement after the review period agreed at the Initial Formal Meeting (or earlier if supported by overwhelming evidence) or if it is clear that no further improvement

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can be achieved, the senior manager will inform the employee that the Council's established Redeployment Procedure will begin and a Step 3 Final Review Meeting held under Stage 4 of the Council's Disciplinary Procedure will be convened. Notes of all alternative employment options considered must be kept and copied to the employee.

A confirmatory letter containing all of these issues must be sent within 5 working days of the meeting. An employee who disagrees with the outcome of the meeting may write to the manager, within 5 working days of receipt of the letter setting out the objections. Should the matter need to be considered further it can form part of the documentation for Stage 4 of the Disciplinary Procedure.

13.6 Step 3 - Final Review Meeting

13.6.1 At the end of the Step 2 Final Review Period or earlier if it becomes/is clear that the employee's performance remains unsatisfactory, the employee should be requested, in writing, to attend a Final Review Meeting to review their performance under Step 2. The meeting will be convened in accordance with the Disciplinary Procedure and follow the same format as for a Stage 4 Disciplinary Hearing, conducted in accordance with Appendix D of the MAN on Disciplinary Procedure. This will embrace the areas identified in Steps 1 and 2, with the addition that the employee's suitability for continued employment in their current post will be assessed and dismissal could result. A minimum period of 7 working days notice should normally be provided. The meeting should be held by a manager with delegated authority for dismissal (see 'Authority to Act' Annex 1) who will be accompanied by a representative from Personnel Services, both of whom must not have been previously involved in the case.

13.6.2 The outcome of the Final Review Period must be discussed with the employee.

13.6.3 In situations of sickness absence and ill health the medical opinion should be explained, the full facts of the case assessed and the implications of the employee's health/absence on their capability to continue in employment discussed.

a) Possible Outcomes

i. Satisfactory Performance

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If performance has improved to a satisfactory level, this should be clarified and confirmed in writing and recorded on the employee's personal file. The letter must be sent within 5 working days of the meeting. The employee's performance will continue to be monitored in accordance with normal management practice. If within two years of the satisfactory ending of a Step 3 Final Review Meeting an employee's performance again becomes significantly unsatisfactory, Step 3 may be invoked immediately.

ii. Unsatisfactory Performance

If, however, the required improvement in performance has not been achieved during the Final Review Period, or alternative work has not been found or a reasonable offer of alternative work has been refused or Occupational Health (see MAN 5.7e & f) advise that the employee is not physically or mentally fit to undertake the duties required, then subject to consideration of any submissions made by, or on behalf of the employee, they shall be advised that they cannot remain in the present post, but that where appropriate, before being given formal notice of termination, further consideration will be given to the possibility of:

- a. Altering the level of the employee's duties and responsibilities either on a permanent or temporary basis and reflecting the lower level of post in the post grade; or
- b. Re-deployment to suitable alternative employment at the substantive grade for the post. This will also take account of the current impact of the employee's ill health or acquired disability on their abilities and the future prognosis.
- c. Providing a further period for review where there is a realistic possibility that this will enable the employee to meet the required standards.

The employee's views must be sought and recorded. The outcome of the meeting shall be confirmed in writing within 7 working days together with any revised terms and conditions of employment. Redeployment is normally without pay and conditions of service protection.

iii. Termination of Employment

If the designated manager has a genuine belief that there are no reasonable alternatives the employee's employment shall be

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terminated on grounds of capability due to lack of skills/abilities and formal notice given in writing in accordance with the contract of employment or payment in lieu of notice. The letter of termination will contain the effective date of termination, the reason for dismissal and the right of appeal. During the notice period, the employee should be made aware of, and given the opportunity to apply for any vacancies, which arise that are considered suitable.

If, for safety reasons, it would be inappropriate for the employee to remain at work while alternative employment is under consideration, or during notice of termination, they may be suspended on full pay or be given pay in lieu of notice. All arrangements shall be confirmed in writing as soon as possible.

14. IRREDEEMABLE INCAPABILITY (GROSS INCAPABILITY)

- 14.1 In the most exceptional cases, where it can be clearly demonstrated that there is no possibility whatsoever that the employee can respond to formal warnings and achieve acceptable levels of performance, or where the lack of capability creates an immediate danger to other employees or the public, the employee shall be called to a Disciplinary Hearing under the Disciplinary Procedure, Stage 4. The meeting will be convened in accordance with the Disciplinary Procedure and follow the same format as a Disciplinary Hearing.
- 14.2 Consideration should also be given to suspending the employee, on full pay, until the meeting can be held. The decision to suspend should be based on the criteria in the Disciplinary Procedure at Section 8, paragraph 8.3. The meeting shall proceed as if the employee had unsatisfactorily completed a Final Review Period.

15. DEFERMENT OF A MEETING

- 15.1 A formal request for a deferment of a Meeting will not be unreasonably refused provided adequate notice is given and the reasons explained. The deferment will not normally exceed five working days and will be re-arranged on a mutually acceptable date. Where a re-arranged date cannot be mutually agreed, management will set the meeting date and advise the employee that the matter will be decided in their absence. The employee's representative will be given a reasonable opportunity to present the employee's case and respond to the management case. Any written submission by the employee and/or their representative will be considered.
- 15.2 In the event of the authorised/unauthorised absence of the employee on the date of a Meeting it will be postponed and re-arranged within a reasonable timescale, normally five working days, and where possible on a date agreed

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by all parties and all parties informed in writing. The letter sent should also explain that a decision may be taken on whether to proceed in the employee's absence based on the information available, with their representative being provided with the opportunity to present the employee's case and respond to the management case. Any written submission by the employee and/or their representative will be considered.

16. REDEPLOYMENT PROCEDURE

16.1 The designated manager, in consultation with Personnel Services, is responsible for seeking suitable alternative employment within the Council in accordance with the Council's established MAN for Redeployment Policy. Offers of alternative employment should be discussed with the employee and where applicable, their representative. The offer of alternative employment must be made to the employee in writing, stipulating the main terms and conditions, and may include a trial period.

16.2 If, within a reasonable period (usually not less than six weeks) the Council is unable to offer the employee suitable alternative employment, or if the employee declines to accept a job that management considers appropriate, a further meeting will be arranged.

NOTE: When an employee's duties are reduced or the employee is redeployed there will normally be no pay protection.

17. PROVISION APPLYING TO TRADE UNION REPRESENTATIVES

17.1 Although normal capability standards apply to their work performance as employees, no formal capability action shall be taken against an employee who is a recognised trade union official until a full-time trade union official or other appointed full-time official of the employee's trade union has been informed of the circumstances by the manager and/or, if appropriate, a representative from Personnel Services.

18. APPEAL HEARING

18.1 An employee shall have the right to appeal against the formal decision made under Stage 4 of the Disciplinary Procedure. * The employee shall be advised of the right of appeal at the conclusion of the meeting and then in writing, with clear advice on how to appeal, the time limits and the appeal procedure.

18.2 The appeal must be lodged in writing within 5 working days of the receipt of a Capability Decision and state the grounds and scope of the appeal. For action short of dismissal, this shall normally be to the employee's Director or

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their nominated employee. Notice of appeal against dismissal must be submitted to the Head of Personnel.

18.3 Appeals against dismissal on capability grounds will be heard by a Members Appeals Panel.

18.4 The procedure for hearing an appeal shall be as set out in the Disciplinary Procedure Section 10 paragraphs 10.3 to 10.7. Appendix D sets out the format to be adopted at the Appeal Hearing.

***NOTE:** Invoking the Disciplinary Procedure Stage 4 will normally occur at Step 3 – Final Review Meeting of this Procedure.

19. CAPABILITY RECORDS

19.1 Any record of capability and disciplinary action taken and Appeal Hearing against an employee shall be carefully safeguarded and treated as confidential. They shall be retained in accordance with the Procedure and the Data Protection Act 1998, which requires the release of certain data to employees on their request. Records shall be kept detailing the nature of the circumstances, the employee's responses and/or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments.

19.2 Where an employee's work and performance have been completely acceptable for a period of two continuous years any action taken under this Procedure will be disregarded.

19.3 Employees can access their personal file and see information relating to this Procedure by writing to Personnel Services who will make it available within 3 days of receipt of the request. Arrangements will be made for the employee to see the File information in the presence of a third party. The employee side representative can only see the File information in the presence of the employee.

20. REVIEW OF THE PROCEDURE

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- 20.1 The Procedure will be reviewed from time to time in the light of any developments in employment legislation or good employee relations practice and, if necessary, revised in order to ensure its continuing relevance and effectiveness.
- 20.2 Any amendments and additional rules imposing new obligations shall only be introduced after reasonable notice has been given to all employees and after joint consultation with the recognised trade unions.

GRIEVANCE PROCEDURE

1. INTRODUCTION

- 1.1 The Council recognises that from time to time employees may wish to raise a complaint or grievance about their employment and to seek redress. In this respect the Council's policy is to encourage free communication between employees and their supervisor/manager to ensure that questions and problems arising during the course of their employment can be discussed and, where possible, resolved quickly to the satisfaction of all concerned.
- 1.2 This formal Grievance procedure exists to ensure fair, prompt, effective and consistent handling of all individual or collective grievances.

2. PURPOSE

- 2.1 The object of this Procedure is to provide a means for dealing promptly and satisfactorily with any grievance which an employee or group of employees may have in the course of, and related to their employment with the Council.
- 2.2 The aim is to settle grievances fairly and as near as possible to the point of origin through informal discussion. An employee(s) who has a grievance is likely to be demotivated and unhappy at work. The Council wish to promote a working environment in which any employee feels comfortable in raising a grievance and without fear of prejudicing their employment prospects in any way. The Council, therefore, encourages employees to seek resolution of any problems through the informal process, and in most instances, an informal discussion with the employee's supervisor or manager often results in an immediate solution and may make it unnecessary to use the formal Grievance Procedure. Advice is also available from Personnel Services.
- 2.3 Where it is not possible to resolve the matter through informal discussion this Procedure enables individual employees, or a group of employees with a collective grievance to progress the matter in a formal way. The Procedure has been designed to be easy to follow, rapid in operation and time bound.

3. PRINCIPLES

- 3.1 **The Procedure has been designed to comply with the requirements of the Employment Relations Act 1999, the Employment Rights Act 1996, and generally in accordance with the good practice guidelines of the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures and the ACAS Advisory Handbook Discipline at Work.**
- 3.2 It is the spirit and intention of this Procedure that all grievances be dealt with and resolved as quickly as possible after they arise. Application of the Procedure shall be in the spirit of goodwill and intention commensurate with the common objective of good employee relations. It aims to provide a process to resolve employee complaints at the lowest level possible, within stated time limits and with the minimum disruption to service delivery.

- 3.2.1 The Procedure has been drawn up in discussion with the trade unions recognised by the Council.
- 3.2.2 The Procedure will be applied in a none discriminatory way, irrespective of an employee's age, disability, gender, marital status, race, religion and sexual orientation.
- 3.2.3 All grievance matters should, whenever possible, be dealt with informally in a friendly and supportive manner with amicable resolution the aim, but treated seriously.

3.2.4 All employees have the right to express a grievance relating to their employment, to be assured that their grievance will be examined carefully, listen too and given the opportunity to seek redress.

- 3.2.5 An employee has a right to express a grievance relating to a Member of Council and seek redress.
- 3.2.6 No action will be taken under this Procedure until the problem or cause for complaint has been fully investigated. Every effort will be made to deal with the matter as speedily as possible and decisions will be confirmed within the stated time period.
- 3.2.7 Registration of a grievance will not prevent a manager from subsequently initiating disciplinary action against an employee.
- 3.2.8 Whilst a grievance is being considered, at whatever Stage, employees and Members will continue to work normally until the problem is resolved or the Procedure is fully exhausted.
- 3.2.9 At all formal Stages of the Grievance Procedure, an employee will have the right to accompanied by an accredited employee side representative or work colleague of their choice but by no one else.
- 3.2.10 Grievance issues will be handled sensitively and treated as confidentially as possible, so that only those who need to know will be involved.

3.2.11 Notes will be completed for each level of the Procedure. The notes should include the date(s) the problem arose, the Directorate, the exact nature of the grievance, essential details of the discussion and the decision made.

- 3.2.12 Employees cannot raise questions unrelated to their employment. Members should similarly restrict themselves to matters related to Council business and their elected roles.
- 3.2.13 Only designated employees/Members will implement the Grievance Procedure and take action in accordance with the level authorised. (see Authority to Act Annex (i)). Such employees will have a copy of the Grievance Procedure and will have received guidance on how to apply it.
- 3.2.14 Throughout this Procedure, it is assumed that the employee receives any letter confirming a decision after a meeting or Hearing on the second working day after it was sent.

3.2.15 Personnel Services will be available for advice and support at every step of the Procedure and will monitor and advise on its consistent application.

4. SCOPE

4.1 The Procedure applies to all permanent employees of the Council, and shall be followed in respect of all grievances of individual employees, or where a representative expresses a grievance shared by or on behalf of a group of employees with exception of:

- a. Grievances related directly to matters being dealt with, or more appropriate for progressing, under the Council's established MAN for Disciplinary or Capability Procedures.
- b. Grievances related to redundancy. Matters related to redundancy should be dealt with under the Council's established MAN for Redundancy Procedure.
- c. Matters relating to the pay and grading of the job. Personal applications for the re-grading of a post and appeals as to salary grading are dealt with under the "Process for Grading Appeals" contained within Appendix B of the MAN on Job Evaluation - Job Grading Appeals;
- d. Matters arising from the introduction or operation of incentive bonus schemes and other productivity agreements – reference should be made to the procedure set out in the specification applying to such schemes and agreements.
- e. Matters outside the direct control and/or influence of the Council, e.g. Income Tax, National Insurance, etc; and
- f. Grievances against Council Policies, which have been determined/approved by a Committee(s), and/or the Council
- g. An attempt, within six months of a particular grievance being determined, to restart the procedure unless any action decided upon by management to redress that grievance has not been implemented.

5. AUTHORITY TO ACT

5.1 Only those so authorised may act in the implementation of this Procedure. A schedule of "Authority to Act" is attached at Annex (i).

5.2 A designated employee with "Authority to Act" (see Annex (i)) shall present the management position when an employee(s) requests reconsideration of their case at the next Stage in the Procedure.

6. GENERAL RESPONSIBILITIES

6.1 It is the responsibility of Directors and all Managers and Supervisors to ensure the fair and reasonable implementation of Grievance Procedure.

6.2 Directors and Managers are responsible for ensuring that all employees including those whose first language is not English or have a disability or impairment are aware of the Council's Grievance Procedure. They shall also ensure that the Procedure is correctly applied within their services.

6.3 It is the responsibility of Directors and Managers to ensure that all notifications and decisions are made in accordance with the requirements of this Procedure and that appropriate records are kept of all investigations, meetings, considerations and decisions.

6.4 Designated employees with 'Authority to Act' under this Procedure are listed at Annex (i).

6.5 Designated employees who apply the Grievance Procedure should be familiar with it and appropriately qualified through managerial experience. Where appropriate arrangements for familiarisation training in the use and operation of the Procedure will be initiated by Personnel Services and Directorate Training Co-ordinators.

6.6 Personnel Services will make the necessary arrangements for Hearings which involve a Panel of Directors or a Panel of Elected Members. They will also provide any advice necessary to the Panels. (See procedure for Member Appeals on employment related issues).

6.7 It is the responsibility of Personnel Services to provide overall guidance and advice, as required, in the implementation of the Procedure and to monitor consistency of application throughout the Authority.

7. DEFINITION OF A GRIEVANCE

7.1 "A real or imaginary wrong causing resentment and regarded as grounds for complaint. A feeling of resentment or injustice at having been unfairly treated". (Collins Dictionary).

Examples may include:

- a. unfair criticism
- b. employee passed over for promotion without sufficient explanation
- c. working relationships

- d. organisational change
- e. new working practices
- f. the perception that one employee is being specifically treated or is not pulling their weight and Management are not doing anything about it
- g. unequitable access to training and development.
- h. complaints of sexual/racial harassment must, in all cases, be immediately notified to Personnel Services

The above list is not meant to be definitive or exhaustive.

8. PROCEDURE FOR DEALING WITH A GRIEVANCE

INFORMAL BASIS

An employee or group of employees who wishes/wish to raise any matter in which they are directly concerned, will in the first instance, discuss it with their immediate supervisor prior to the formal procedure being implemented. The issue raised should be dealt with as quickly as is practicable. If the matter is not dealt with satisfactory on this basis then the formal procedure should be entered into. The application of the Council's MAN Mediation Scheme may be applicable.

FORMAL GRIEVANCE PROCEDURE

The employee(s) has the right to be accompanied by an employee side representative or a work colleague of their choice at any Stage and the right to call witnesses and/or present documentary evidence at the Hearing.

For employees not reporting directly to a member of CMT the procedure will be as follows:

8.1 Stage 1 – Referral to immediate Supervisor or Manager

8.1.1 Once an employee(s) has decided that resolution of their problem or cause for complaint relating to their employment cannot be achieved through informal discussion, they should in the first instance raise the matter with their immediate supervisor/line manager in writing on the Form provided at Annex (ii) and indicate that they are submitting a formal grievance under the terms of this Procedure. If the grievance is against the immediate supervisor/manager the employee(s) may raise the grievance direct at Stage 2. (see 8.2.2 Stage 2) If the matter affects a group of employees they may be represented by a representative of them all.

8.1.2 Where the grievance relates to a matter outside the immediate control of the immediate supervisor/manager, the supervisor/manager will raise the matter with a more senior manager in the appropriate Directorate.

8.1.3. The immediate supervisor/line manager will investigate the matter, have a meeting with the employee (accompanied by their trade union representative or work colleague if requested), endeavour to resolve the matter and reply in writing using the Form as soon as possible and, in any case, within five working days.*

8.1.4. If the matter is not resolved at Stage 1, the employee and/or their representative shall apply in writing, using the Form, within five working days* of receipt of the decision, for it to be referred to Stage 2. The reasons for continuing to be aggrieved should be clearly stated. The immediate supervisor/line manager will forward the form to an employee authorised to act (see Authority to Act Annex (i)).

8.1.5. Copies of the Form are available from the Directorate Personnel Contact or Personnel Services or on Forest Net.

8.2 Stage 2 – Referral to the Manager of the person who has dealt with Stage 1

8.2.1. If the employee(s) has requested that the matter be referred to Stage 2, the grievance will be heard by an employee authorised to act (see Authority to Act Annex (i)). This Stage of the Procedure will take place within ten working days* of the request being received. The parties involved at Stage 1 will attend and the employee's Employee Side Representative (if not already involved) and the appropriate Personnel Representative may also be invited.

8.2.2. If the grievance is directly related to the employee's immediate supervisor/manager and it has not been possible to resolve the matter through informal discussion with that supervisor/manager then it should be referred direct to this Stage.

8.2.3. Within five working days* of the hearing the authorised employee# with the help of the Personnel Representative, if appropriate, will confirm their decision in writing using the Form.

8.2.4. If the decision does not resolve the matter, the employee and/or their representative shall apply in writing using the Form to Personnel Services within five working days* of the decision for it to proceed to Stage 3.

8.3 Stage 3 – Referral to the Directorate CMT Member

- 8.3.1. If the employee(s) has requested that the matter be referred to Stage 3, the grievance will be heard by the employee(s) CMT Member. This Stage will normally be arranged to take place within ten working days* of receipt of the request of the employee. The parties who were involved at Stage 2 will attend.
- 8.3.2 No new material may be introduced by either party at this Stage.
- 8.3.3. The CMT Member with the help of the Personnel Representative, if appropriate, will confirm their decision in writing within five working days* of the Hearing.
- 8.3.4. The decision at Stage 3 is final and exhausts the Grievance Procedure.

8.4 Employees reporting directly to a CMT Member

In the case of an employee who reports directly to a CMT Member the Grievance Procedure will be followed with the following amendments:

INFORMAL

- 8.4.1 An employee or group of employees who wishes/wish to raise any matter in which they are directly concerned, will in the first instance, discuss it with their immediate supervisor prior to the formal procedure being implemented. The issue raised should be dealt with as quickly as is practicable. If the matter is not dealt with satisfactorily on this basis then the formal procedure should be entered into.

FORMAL

- 8.4.2. Stage 1 The CMT Member will be treated as the immediate Supervisor.
- Stage 2 If the grievance is not resolved then a Panel of CMT Members^ not previously involved will be convened within ten working days* to hear the grievance.
- The panel~ will give their decision in writing within five working days* of the Hearing.
- Stage 3 If the grievance is not resolved then the Chief Executive will hear the grievance.
- The Chief Executive will confirm his/her decision in writing within five working days* of the Hearing.

The Chief Executive's decision will be final.

- N.B. If the Chief Executive has previously been involved the grievance will be heard by a Member Panel.

8.5 Grievance by a CMT Member

In the case of a CMT Member the Grievance Procedure will be followed with the following amendments:

INFORMAL

- 8.5.1 A CMT Member who wishes to raise any matter in which they are directly concerned, will in the first instance, discuss it with the Chief Executive prior to the formal procedure being implemented. The issue raised should be dealt with as quickly as is practicable. If the matter is not dealt with satisfactorily on this basis then the formal procedure should be entered into.

FORMAL

- 8.5.2 Stage 1 The Chief Executive will be treated as the immediate Supervisor.
- Stage 2 If the grievance is not resolved then a Member Panel~ will be convened within fifteen working days* of receipt of the request by the CMT Member hear the grievance. The CMT Member will be notified in writing of the arrangements.
- The Panel~ will confirm their decision in writing within five working days of the Hearing.
- The Panel's~ decision will be final. (i.e. there is no Stage 3)

8.6 Grievance by the Chief Executive

In the case of the Chief Executive the Grievance Procedure will be followed with the following amendments

INFORMAL

- 8.6.1 The Chief Executive who wishes to raise any matter in which he/she is directly concerned, will in the first instance, discuss it with the Leader of the Council prior to the formal procedure being implemented. The issue raised should be dealt with as quickly as is practicable. If the matter is not dealt with satisfactory on this basis then the formal procedure should be entered into.

FORMAL

- 8.6.2 Stage 1 The Leader of the Council will be treated as the immediate supervisor.
- Stage 2 If the grievance is not resolved then a Member Panel~ will be convened within fifteen working days* of receipt of the request by the Chief Executive to hear the grievance. The Chief Executive will be notified in writing of the arrangements.
- The Panel~ will give their decision in writing within five working days* of the Hearing.
- The Panel's~ decision will be final. (i.e. there is no Stage 3)

8.7 Member Panel ~

- 8.7.1 The Member Panel will consist of up to 3 members with designated deputies, and shall be drawn from the Appeals Panel. The Panel shall not hear an appeal unless the 3 members (or their deputies) are present throughout. The Head of**

Personnel or their nominated representative (not previously involved in the case) will be present to advise Members.

8.8 Procedure For Grievances Involving Members of the Council

8.8.1 Grievance taken by an employee against a Member

- a. The matter should be raised in the first instance with the appropriate CMT Member.
- b. The CMT Member and the employee will discuss the issue with the Chief Executive.
- c. The Chief Executive will discuss the matter with the appropriate Group Leader. Attempt will be made to resolve the matter satisfactorily on an informal basis within ten working days*.
- d. If the matter is resolved satisfactorily, the Chief Executive will inform the CMT Member and employee. The matter will stop here with no further action taken.
- e. If the matter is not resolved, the Chief Executive will advise the CMT Member and employee. If the employee wishes to pursue the matter he/she must give written notice to the Chief Executive within five working days* requesting the grievance to be heard by a Member Panel~.
- f. The Panel~ Hearing will normally be arranged to take place within fifteen working days* of receipt of the request of the employee.
- g. The employee and the Member involved shall have the right to be accompanied by an accredited employee side representative/trade union official or work/member

colleague of their choice but by no one else. The CMT Member or their nominated representative will have the right to be present, but not to participate.

- h. The Panel~ will give their decision in writing within five working days* of the Hearing.
- i. The Panel's~ decision will be final.
- j. If an employee leaves the Council during the course of a grievance being taken through this procedure, the grievance may continue subject to the agreement of both parties.

9. FORMAT FOR THE CONDUCT OF GRIEVANCE HEARING

9.1 See Annex (iv) for the procedure to be followed in conducting a Grievance Hearing at Stages 2 and 3.

10. NOTES

* **Unless otherwise agreed by all parties concerned or the reason for the delay is explained and the employee(s) are told when a response can be expected.**

~ Panel to consist of three Members from the Appeals Panel

Each Directorate shall nominate appropriate employees to hear a Grievance

^ Panel to consist of two independent CMT Members.

11. GRIEVANCE RECORDS

11.1 Records should be kept on the personal file of the employee who raised the grievance only, detailing the nature of the grievance raised, the management response, any action taken and the reasons for it. These records shall be carefully safeguarded and treated as confidential. They shall be retained in accordance with this procedure and the Data Protection Act 1998, which requires the release of certain data to employees on their request.

11.2 Employees can access their personal file and see information relating to this Procedure by writing to Personnel Services who will make it available within 3 days of receipt of the request. Arrangements will be made for the employee to see the File information in the presence of a third party. The employee side representative can only see the File information in the presence of the employee.

12. REVIEW OF PROCEDURE

- 12.1 The Procedure will be reviewed from time to time in the light of any developments in employment legislation or good employee relations practice and, if necessary, revised in order to ensure its continuing relevance and effectiveness.
- 12.2 Any amendments and additions imposing new obligations shall only be introduced after reasonable notice has been given to all employees and after joint consultation with the recognised trade unions.