

**Agenda Item No:**

**Report To:** Cabinet

**Date of Meeting:** 12<sup>th</sup> July 2018

**Report Title:** Personnel Policy Review

**Report Author & Job Title:** Joy Cross – HR Manager

**Portfolio Holder** Cllr. Pickering – Portfolio Holder for Human Resources and  
**Portfolio Holder for:** Customer Services



**Summary:** As part of a wider programme of personnel policy reviews Cabinet are asked to consider and advise upon three new personnel policies, which materially alter the existing policies.

The three new policy documents are

- Disciplinary Policy and Procedure
- Performance Management Policy and Procedure
- Welfare Support For Employees Policy

The above policies replace the following policy documents in the current Conditions of Service

- D4 Disciplinary procedure
- M1 Managing Poor Performance (Capability)
- W1 Welfare policy
- C2 Compassionate Leave

**Key Decision:** NO

**Significantly Affected Wards:** None specifically

**Recommendations:** **Cabinet are requested to:**

**Review and approve the following policy documents which form part of the Conditions of Service.**

- I. Disciplinary Policy and Procedure
- II. Performance Management Policy and Procedure
- III. Welfare Support For Employees Policy

**Policy Overview:**

- D4 Disciplinary procedure
- M1 Managing Poor Performance (Capability)
- W1 Welfare policy
- C2 Compassionate Leave

**Financial Implications:** None

<b>Legal Implications</b>	The policy documents form part of the contract of employment (contained with the Conditions of Service) and as such the Conditions of Service is referred to together with notable employment legislation and codes of practice <ul style="list-style-type: none"><li>• ACAS Code of Practice</li><li>• Employment Rights Act 1996</li><li>• Employment Relations Act 1999</li></ul>
<b>Equalities Impact Assessment</b>	See Attached
<b>Other Material Implications:</b>	None
<b>Exempt from Publication:</b>	<b>NO</b>
<b>Background Papers:</b>	<b>N/A</b>
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## **Report Title: Review of Personnel Policies – Disciplinary, Performance Management and Welfare Support**

### **Introduction and Background**

1. A review of six key Personnel Policies was initiated in late 2017. The review involved six key policy documents contained within the Conditions Of Service:
  - Disciplinary procedure,
  - Managing Poor Performance (Capability),
  - Welfare policy,
  - Grievance procedure,
  - Redundancy and Organisational change,
  - Sickness.
2. The purpose of the review was to respond to feedback and observations from across the organisation and, following meaningful consultation, produce a set of six frequently used personnel policies which;
  - Reflect the organisation's reputation as a forward-thinking employer that supports all employees across the organisation.
  - Provide an accurate reflection of the organisation's values and digital agenda.
  - Offer effective methodologies which aim to resolve situations.
  - Outline simple processes and self-help guides which reduce management and HR time and therefore the indirect costs incurred in adhering to policies and procedures.
  - Support best practice and emerging social trends.
  - Include recent changes in employment case law and changes on the horizon.
3. The review commenced and a meaningful consultation process has been followed as detailed below.
4. The proposed new policy documents are provided to the Cabinet for consideration as featured in Appendices 1-3
  - Appendix 1           Disciplinary Policy and Procedure
  - Appendix 1B       Disciplinary Procedure Flow Chart
  - Appendix 2           Performance Management Policy and Procedure
  - Appendix 2B       Performance Management Procedure Flow Chart
  - Appendix 3           Welfare Support For Employees Policy
5. It is not proposed to amend the policy documents that are applicable to the group of employees at ASPIRE who transferred to Ashford Borough Council from Commercial Services Ltd in October 2016. Amendments to contractual terms associated with a TUPE transfer are likely to be unlawful under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

### **Proposal / Summary of Changes**

Disciplinary Policy and Procedure & Performance Management Policy and Procedure

6. These two policy documents are very similar and so the changes are summarised collectively unless otherwise stated.
7. The *contents, introduction and principles* section of these two policy documents has been reduced in length owing to the repetition that was identified in these sections. A simplified introduction in each policy document provides an overview of the ethos behind the policy together with a summary of overarching principles.
8. The sections concerning the *Procedure relating to Statutory Officers (section 151 Officer, Head of Paid Service and Monitoring Officer)* has been replaced with a slightly expanded section to correctly incorporate the responsibilities of the Appointments Committee and the Investigations & Disciplinary Committee.
9. The *informal stage* of both procedures has been placed at the beginning of each policy and separated from the formal stages, in order to avoid confusion around the requirement for representation at this stage and the formality of the investigation. The informal stage has been expanded in the Disciplinary Policy and Procedure to mirror the standard setting process laid out in the informal stage of the Performance Management Policy and Procedure, this will enable conduct and performance issues to be managed in a consistent way. Line management responsibilities in this area have been more clearly allocated and explained.
10. Within the Disciplinary Policy and Procedure, the list of potential *gross misconduct* examples has been expanded.
11. Within the Disciplinary Policy and Procedure the section regarding *suspension* has been amended to reflect case law around the legality of suspension and when it is permissible.
12. The *Formal Hearing* section of both policies has been amended to provide an enhanced explanation of employee rights enabling the removal of the employee rights section of these policy documents, which was previously situated at the end of the policy documents and less visible to employees accessing the document.
13. The *sanctions* table has been amended in each policy document to remove the Second Written Warning Stage. This level of warning was very infrequently issued and represented an excessive stage to the process advocated by ACAS. In recognition of the removal of this formal stage the length of time over which a final written warning is live has been reduced from 18 months to 12 months. In order to enhance objectivity in this area, both policy documents require an Independent Head of Service to issue a dismissal sanction or sanction short of dismissal.
14. Time lines have been extended in each policy document enabling five working days for the organisation to send out written confirmation of formal sanctions, this is more practicable than previous deadlines.
15. A flow chart of both policy documents are provided at Appendices 1A and 1B to provide an overview of both procedures.

16. The Welfare Policy has been revised to operate as a *'go to' document* should an employee be experiencing difficult situations, inside or outside of work, and require support from their employer. In particular, the policy document seeks to support employees who are living or working with a chronic condition or serious illness affecting them individually or affecting their dependents.
17. References to flexible working arrangements such as job share and part time working have been removed from the policy, in light of its revised focus. The right to request Flexible Working is a statutory right for all employees with more than 26 weeks service and not an option only to be explored in a welfare situation. It should be noted that a future provision of a Flexible Working policy has been agreed to provide detail and guidance on the afore mentioned topics which have been removed from the current policy document.
18. The responsibilities regarding counselling arrangements have been revised to reflect reasonable professional boundaries and duties both for HR and line managers
19. Outdated or replicated sections have been removed from the policy document, namely redundancy counselling, a policy statement on AIDS and maternity exit interviews.
20. Additional sections have been added to the policy document such as Employee Assistance Programme, Role Specific Counselling Support, Time Off To Care For Dependents, Compassionate leave and Miscarriage, Still Birth and Neonatal Death.

## **Implications and Risk Assessment**

21. The main risks and implications of the course of action proposed are around introducing a policy document that is unlawful and an overall failure to consult with employees reading proposed changes to their contractual terms of employment (as detailed within the afore mentioned conditions of service).
22. The HR team have worked to ensure that the policy documents comply with key legislation in this area and the ACAS Code of Practice.
23. A meaningful consultation process has been followed with regard to this issue and is detailed below.

## **Equalities Impact Assessment**

24. Members are referred to the attached assessment at Appendix Four.

## **Consultation Planned or Undertaken**

25. As the three policy documents form part of our Conditions of Services, these policies are contractual and therefore employees must be consulted regarding any proposed changes. Additionally as the proposed changes are significant they must be referred to by Cabinet and approved.

26. The HR Manager and HR Officers have facilitated twelve focus groups with employees, managers, staff-side JCC representatives and Unison executive.
27. During these focus groups discussions were held regarding;
- Positive elements of the policy or positive experiences related to the policy,
  - Negative elements to the policy or negative experiences caused by the policy,
  - Important procedural points to gain feedback on,
  - Changes in caselaw, HR or social trends to gain feedback on.
28. Feedback from these focus groups was collated and used by the HR Manager and HR Officers in the creation of the first drafts of the policy documents.
29. First drafts were submitted to the Unison executive who provided specific feedback that was discussed with the HR Manager.
30. Second drafts were created and sent to the Unison executive and, for the disciplinary and performance management policies, to the Unison full-time Regional Officer.
31. Feedback from Unison was discussed with the HR Manager and third drafts were created (Appendices 1-3).
32. The latest drafts of the three policy documents were provided to JCC for consideration on 26<sup>th</sup> April 2018.
33. Comments from the JCC were broadly supportive and included the following questions;
- a. TUPE transfer processes in relation to the terms and conditions relating to the Aspire staff. Changes to terms and conditions solely due to a TUPE transfer would arguably be unlawful and therefore are not proposed.
  - b. Counselling for staff who had been made redundant was not referred to in the Welfare policy; specific support in these circumstances is referenced and will be detailed with the relevant redundancy policy.
  - c. No detailed explanation about parental leave in the policy, but employees' rights under shared parental leave are covered in the Parental Leave policy.
  - d. Job share and part time working arrangements have been removed from the Welfare Policy but will feature in the soon to be revised Flexible Working policy.
34. Full details of these discussions can be reviewed in the minutes that are available from this meeting.

### **Other Options Considered**

35. Other options available rather than proceed with the above detailed proposals are to either continue with the current policy documents or accept a first or second draft of the policy documents as presented to Unison.

36. The current policy documents are recognised by employees, managers and Unison as requiring an update; and a recent audit from the Mid Kent Audit Partnership concurred with this view point.
37. Earlier drafts of the proposed policy documents would not be acceptable to Unison.

### **Reasons for Supporting Option Recommended**

38. The proposed policy documents have been produced following consultation across the organisation and specifically with Unison.

### **Next Steps in Process**

39. If approved by Cabinet the policy documents will be amended within the Conditions of Service and communicated to employees.

### **Conclusion**

40. The proposed policy documents have been produced following thorough consultation across the organisation and represent a transparent, fair and consistent set of procedures, supporting employees and the organisation equally.

### **Portfolio Holder's Views**

41. A review has been carried out on the attached policy documents involving meaningful consultations with all appropriate bodies within our organisation. The aim is to ensure we continue to update ourselves to meet changing demands and needs of the organisation. I am grateful that all parties see the advantages of such changes to these areas.

### **Contact and Email**

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## **Disciplinary Policy and Procedure**

### **1. Introduction**

- 1.1 This policy and procedure has been agreed between Ashford Borough Council and the trade union recognised by the Council for collective bargaining and negotiation purposes, namely Unison.
- 1.2 The aim of this policy and procedure is to help and encourage all employees to achieve and maintain acceptable standards of conduct enabling the Council to function efficiently and effectively. The policy and procedure gives regard to the requirements of natural justice and ensuring that formal action is considered and applied fairly, consistently and equitably to all employees. It should not be viewed primarily as a means of imposing sanctions. It follows the general principles outlined in the revised ACAS code of practice on Disciplinary and Grievance procedures.
- 1.3 The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues.
- 1.4 Employees will not be dismissed for a first breach of discipline except in the case of gross misconduct, when the sanction will normally be dismissal without notice and without pay in lieu of notice.
- 1.5 No disciplinary action for misconduct may be undertaken outside of this policy and procedure.
- 1.6 The Council recognises that, although it is not our intention, action taken in accordance with this policy can impact employees wellbeing. Employees and managers are encouraged to seek confidential support via their trade union representative (if a member) and/or the Council's Employee Assistance Programme provider, details are available from HR and the intranet.
- 1.7 Although normal disciplinary standards should apply to the conduct of Unison officials as employees, disciplinary action can be misconstrued as an attack on the union. In order to avoid such problems, formal disciplinary action should not be taken against a Unison representative until the circumstances of the case have been discussed with the Head of HR and Customer Services and Unison's full-time Regional Officer.

- 1.8 The Human Resources Manager should ensure that advice is appropriate and given by an appropriately experienced Human Resources professional
- 1.9 For specific issues of poor performance the Council's Performance Management Policy and Procedures must be followed.
- 1.10 Similarly, issues relating to ill-health should be dealt with under the Council's Sickness Policy.

## **2 Constitutional and Regulatory Procedure Rules Relating to Staff**

- 2.1 The dismissal of or taking disciplinary action against the Head of Paid Service, Monitoring Officer or Section 151 Officer must follow The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and be in accordance with the General Procedure Rule of the Constitution relating to Disciplinary Action Against The Head Of The Authority's Paid Service, The Monitoring Officer, and/or The Chief Finance (151) Officer and with the full involvement of the Investigation & Disciplinary Committee.

## **3. Misconduct**

- 3.1 Examples of misconduct that may lead to action under this procedure include, but are not limited to:

- refusal or deliberate failure to follow reasonable management instruction;
- breach of Council policies or procedures;
- use of abusive language/behaviour;
- discrimination, harassment or victimisation;
- persistent poor time keeping or unauthorised absence;
- misuse or careless use of Council equipment and / or facilities;
- insufficient regard for the safety of others;
- dishonesty;
- wilful misuse of information;

## **4. Gross Misconduct**

- 4.1 Gross misconduct is misconduct of such nature that due to its seriousness or significant consequences, the Council cannot reasonably allow the continued presence of the employee at the place of work and may lead to summary dismissal (dismissal without notice) for a first offence.

- 4.2 Examples of actions likely to be treated as gross misconduct include, but are not limited to:

- theft or unauthorised possession of property belonging to the Council, members of the public or staff;
- fraud, deliberate falsification of records;
- corrupt practices;
- persistent or substantial failure to follow Council policies, procedures, regulations

- and documented processes;
- gross negligence or incompetence;
- submission of false references/information or failure to disclose relevant information when requested in connection with an application for appointment with the Council;
- disorderly or indecent conduct, fighting at work or threatening physical violence;
- drunkenness or use of or being under the influence of illegal drugs or alcohol on duty, including possession;
- non-negative test result for misused substances, illegal drugs or alcohol for employees in designated safety critical posts and within with cause investigations;
- deliberate damage to Council property or that of other agencies or employees;
- breaching statutory provisions which would render the Council or its employees liable to prosecution;
- serious breach of health and safety rules;
- serious breach of confidence/confidential information;
- serious or persistent acts of harassment and/or bullying;
- failure to act to prevent, or to incite, or actual acts of, discrimination.
- bringing the Council into disrepute.

## **5. Criminal Offences outside work**

- 5.1 Criminal offences outside of work should not be treated as automatic reasons for dismissal, regardless of whether the offence has any relevance to the duties of the individual as an employee. Consideration will be given to what effect the charge or conviction has on the employee's suitability and ability to carry out their role and their relationship with the Council, work colleagues and customers.

## **6. *Informal stage***

- 6.1 Managers will make every effort to resolve minor cases of misconduct through informal discussions. Only where this fails to bring about the desired improvement or the act of misconduct is more serious should the matter be considered in accordance with the formal stages of this procedure.
- 6.2 If it becomes clear during the course of an informal discussion that the act of misconduct could be more serious, the manager should adjourn the meeting to consult a Human Resources professional with a view to undertaking a full investigation.
- 6.3 Managers must ensure that informal discussions are held with the objective of encouraging and helping the employee to improve. Where conduct is below the standard expected, a line manager should meet with the employee and have an informal discussion leading into a standard setting meeting. Further information regarding conducting standard setting meetings can be found on the Human Resources section of the intranet. At the meeting the employee should be given the opportunity to contribute fully and the following matters should be discussed and agreed:

- the areas of misconduct that are a cause for concern;
- any other circumstances to be taken into account e.g. personal issues or ill health;
- the expected standards of conduct;
- the ongoing support that will be made available i.e. advice, guidance and appropriate training;
- the improvement targets that will be set to determine that the required standard of conduct has been achieved;
- arrangements for the monitoring or assessment of improvements;
- the period for improvement and a date to review;
- that failure to reach and sustain the required standards may lead to formal action under this procedure.

6.4 A record of the points raised and actions arising from the standard setting meeting will be confirmed in writing to the employee in the form of a file note or letter and a copy will be placed on the employee's personal file.

## **7. Representation**

7.1 Employees have the right to be accompanied by a workplace colleague or trade union official (if they are a member) at all stages of the formal procedure.

7.2 The right to be accompanied does not extend to the informal stages of this policy. At the informal stage issues may be best resolved directly by the employee and their manager. However an employee should be accompanied in the informal stage if associated meetings are held with more than one manager.

7.3 The right to be accompanied does not extend to the investigation stage of this policy. Managers must not allow an investigation into the facts surrounding a disciplinary case to extend into a disciplinary hearing. At the investigation stage all reasonable requests to be accompanied will be accommodated and investigating managers should offer the opportunity for employees to be accompanied when they consider it could be helpful to the investigation.

7.4 In the most serious cases employees may request a Unison full-time officer to attend (if they are a member). Disciplinary hearings will not be unduly delayed due to the non-availability of a representative. Any proposal to postpone a hearing to an alternative time due to non-availability of a representative must be both reasonable and the proposed time must not be more than ten working days after the date originally proposed.

7.5 The role of the representative is to support the employee in the preparation of their case. This may be in gathering information, providing moral support and asking questions on the employee's behalf. At a formal hearing the representative may either present the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing, or support the employee whilst s/he presents the case. The representative does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.

7.6 The statutory right to be accompanied applies specifically to hearings which could result in the administration of a formal warning, dismissal or other action short of a dismissal.

## **8. *Investigations***

8.1 Prior to any formal action being taken an investigation must be undertaken, appropriately supported by a Human Resources professional. Guidance on conducting investigations can be found on the Human Resources section of the intranet.

8.2 When an investigation is to be undertaken, the employee concerned should be notified at the earliest opportunity with sufficient detail so that the purpose of the investigation can be understood. A copy of this procedure should also be provided.

8.3 Where there are allegations of fraud the Head of HR and Customer Services and the Head of Audit Partnership must be informed before the employee or other witnesses are approached concerning the allegation.

8.4 Investigations will normally be carried out by the immediate line manager. However it may be necessary in more complex and serious cases of alleged misconduct or gross misconduct for the required investigation to be conducted by a more senior manager, or a manager who is as independent of the facts as possible.

8.5 The investigation should concentrate on establishing facts promptly before recollections fade and, where appropriate, obtain written statements from any available witnesses and collect any evidence. A record must be kept of all such evidence. The investigation must be conducted without undue delay and should normally have been completed within 28 days from the date when the issue is brought to the manager's attention.

8.6 Investigations will normally involve interviews with the employee concerned and any other relevant parties. In some instances it will be necessary to conduct multiple meetings with individuals.

8.7 Having investigated all the facts the investigating manager, with appropriate support from HR, should decide:

- a. that there is no case to answer;
- b. to arrange informal action;
- c. to arrange for the matter to be considered within a formal hearing.

Employees should be notified accordingly.

## **9. *Suspension***

9.1 In certain circumstances, for example, in cases involving gross misconduct, where an employee may impede an investigation or interfere with witnesses or evidence; or where it is considered there are risks to the Council's property or

responsibilities to other parties; consideration should be given to a period of suspension with pay whilst an unhindered investigation is conducted.

- 9.2 Such a suspension should only be imposed after careful consideration; be as brief as possible and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered a disciplinary action.
- 9.3 In such circumstances, managers should always consider alternatives to suspension for example: working from home; amended duties or temporary redeployment.
- 9.4 Suspension should not take place prior to an employee being able to first respond to the circumstances being investigated.
- 9.5 The authority to suspend an employee is with the relevant Head of Service in consultation with HR.

## **Formal Stage**

### **10. Formal Hearings**

- 10.1 Before a decision is reached or any disciplinary sanction issued there must be a disciplinary hearing at which the employee has the opportunity to state their case and to answer the allegations that have been made. Wherever possible the hearing should be arranged at a mutually convenient time. The employee must be advised of any rights under this procedure including the right to be accompanied.
- 10.2 Prior to the hearing the manager will prepare a written report which will be the management's statement of case. The report will give details of the areas of concern and the action which has been taken to rectify the shortcomings. The report will also include any supporting documentation.
- 10.3 The investigating manager, with appropriate support from HR, will write to the employee requiring them to attend a formal hearing. The letter will state precisely the purpose of the hearing, include the management's statement of case, names of any witnesses and remind the employee of their right to be accompanied by a workplace colleague or trade union official (where they are a member). The letter must state that the employee has the right to present evidence and bring witnesses to support their case and give the employee at least 7 days' notice of the hearing.
- 10.4 Employees should submit any documentation to the investigating manager and chair prior to, and where possible 3 working days in advance of, the hearing.
- 10.5 Details of proposed witnesses should be communicated to both parties in advance of the hearing. Witnesses should be used where relevant and should only be present at the hearing to give evidence and be questioned.

- 10.6 Wherever possible the chair should not have any detailed knowledge of the case so that they can hear the case impartially.
- 10.7 At the hearing the chair will invite both parties to present their case, call any witnesses and ask and answer any questions related to the disciplinary matter including information presented by witnesses. The employee will also have the opportunity to give any mitigating circumstances where appropriate. Further guidance regarding the format of formal hearings can be found on the Human Resources section of the intranet.
- 10.8 The chair will adjourn the meeting to consider the evidence that has been presented and, with appropriate support from HR, will determine what action needs to be taken. The hearing will be re-convened to inform the employee of their decision including details of the duration of any sanction and their right to appeal.

## 11. Sanctions

11.1 Within a formal hearing sanctions may be awarded as follows:

Stage	Description	Duration*	Chaired by
Level 1	First warning	6 months	Senior manager
Level 2	Final warning	12 Months	Head of Service
Level 3	Dismissal or other sanction short of dismissal		Independent Head of Service

\*this indicates the duration that the warning will remain current for disciplinary purposes

- 11.2 The manager listed in the fourth column indicates the minimum level of authority to issue the warning shown in the second column. Managers more senior to those identified, including the Chief Executive and Directors may also issue the sanctions specified.
- 11.3 Depending upon the facts of the case any level of sanction may be issued i.e. a final warning does not always have to be issued following a first warning if the facts of the case warrant a higher level of sanction. If an employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final warning or dismissal.
- 11.4 All warnings should be confirmed in writing within 5 working days of the hearing and set out the nature of the misconduct and the change in behaviour or improvement in conduct required (with timescale). The chair should make recommendations for any necessary training and support to be agreed and implemented by the line manager and employee. The employee should be informed how long the warning will remain current, the consequences of further misconduct, or failure to improve, within the set period together with information on the right of appeal.
- 11.5 At the end of the period, if there have been no further substantiated complaints, written records of previous warnings will be deemed to have lapsed and will be

disregarded for disciplinary purposes.

- 11.6 Where there is a failure to improve or change behaviour within the duration of a prior warning the employee will be required to attend a further hearing in accordance with this procedure.
- 11.7 In cases of gross misconduct or where an employee's conduct has failed to improve the final step might be dismissal or another sanction short of dismissal such as disciplinary transfer, demotion or loss of seniority. This should be confirmed in writing within 5 working days and set out the reasons for dismissal, the date on which the employee's contract terminates, the appropriate period of notice (or pay in lieu of notice) and information on the right of appeal.

## **12. Appeals**

- 12.1 Individuals may appeal against any form of formal disciplinary action, but must do so in writing, within 21 days of the date of the letter confirming the outcome. Letters of appeal should be sent to the Head of HR and Customer Services, stating clearly the grounds for appeal. Appellants must be advised to consult with their trade union (if a member) or workplace colleague.
- 12.2 Individuals may choose to raise appeals on a number of grounds which could include the perceived unfairness of the judgement, the severity of the penalty, new evidence coming to light or procedural irregularities.
- 12.3 Appeals against warnings will be chaired by an independent Head of Service and wherever possible the manager hearing the appeal will not have been previously involved in the case.
- 12.4 Appeals will be heard without unreasonable delay and normally within one month of the original hearing. The employee should receive written confirmation of the arrangements at least 7 days in advance of the hearing.
- 12.5 Employees should submit any documentation to the chair prior to, and where possible 3 working days in advance of, the hearing.
- 12.6 Witnesses should be used where relevant and should only be present at the appeal hearing to give evidence and be questioned. Details of proposed witnesses should be communicated to both parties in advance of the hearing.
- 12.7 At the hearing the chair will invite both parties to present their case, call any witnesses and ask and answer any questions related to the disciplinary matter including information presented by witnesses. Further guidance regarding the format of formal hearings can be found on the Human Resources section of the intranet.
- 12.8 The chair will adjourn the meeting to consider the appeal evidence that has been presented and, with appropriate support from HR, will determine what action needs to be taken. The hearing will be re-convened to inform the employee of their decision.

12.9 In cases of dismissal or other sanctions short of dismissal where the appeal is to be heard by the Appeals Committee, a meeting of the Appeals Committee will be arranged in accordance with the Council's normal procedure as soon as is practicable. Further information regarding the Appeals Committee can be found on the Human Resources section of the intranet.

### **13. Formal Records**

13.1 Records must be kept detailing the nature of any breach of disciplinary rules or unsatisfactory conduct, the employee's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be kept confidential and retained in accordance with the disciplinary procedure and the General Data Protection Regulations.

13.2 Copies of any meeting records should be given to the individual concerned in a timely manner although in certain circumstances some information may be withheld, for example to protect a witness.

13.3 Formal warnings will be recorded on an individual's personal file on the basis of the following:

- First           6 months
- Final           12 months

13.4 At the end of the period, if there have been no further substantiated complaints against the staff, written records of previous warnings will be deemed to have lapsed and will be disregarded for the purposes of this policy.

*Reviewed April 2018*

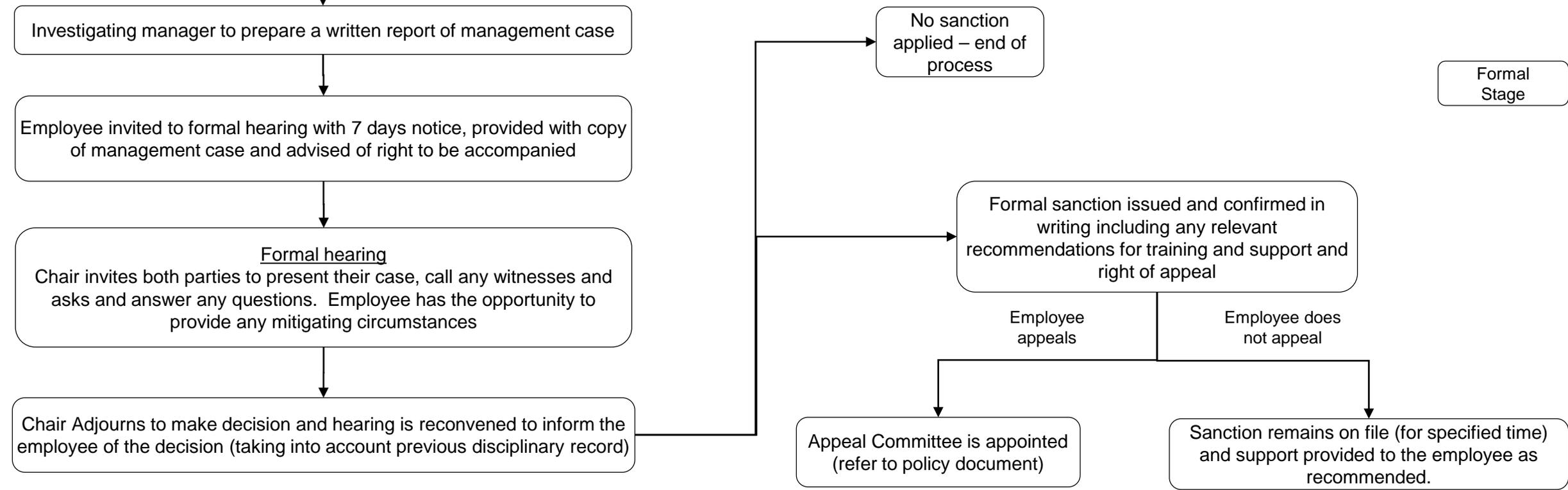
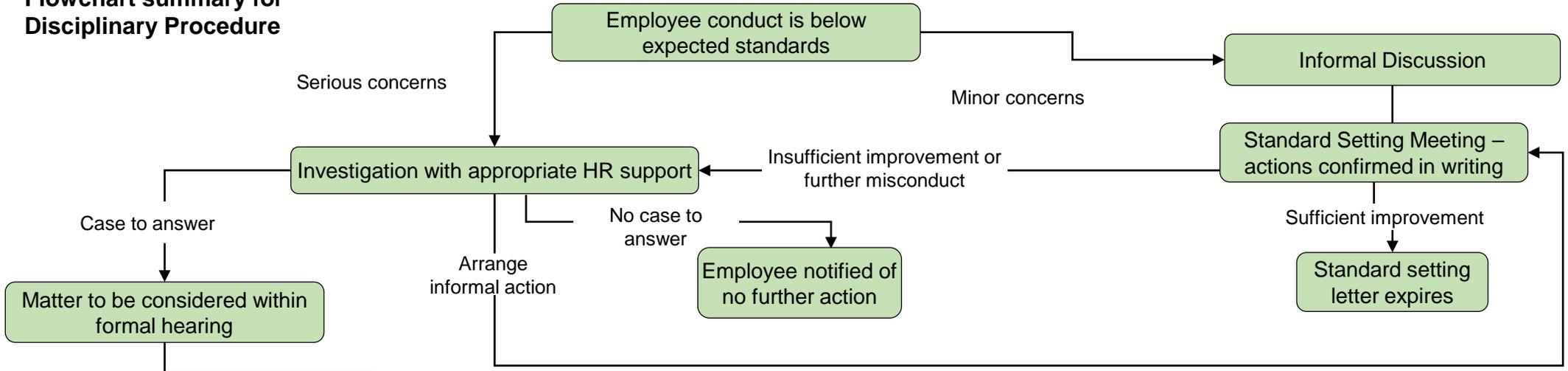
# Flowchart summary for Disciplinary Procedure



ASHFORD  
BOROUGH COUNCIL

Informal Stage

Formal Stage





## **Performance Management Policy and Procedure**

### **1 Introduction**

- 1.1 This policy and procedure has been agreed between Ashford Borough Council and the trade union recognised by the Council for collective bargaining and negotiation purposes, namely Unison.
- 1.2 The purpose of this policy and procedure is to help and encourage all employees to achieve and maintain acceptable standards of work performance enabling the Council to function efficiently and effectively. The policy and procedure give regard to the requirements of natural justice and ensuring that formal action is considered and applied fairly, consistently and equitably to all employees. It should not be viewed primarily as a means of imposing sanctions. It follows the general principles outlined in the revised ACAS code of practice on Disciplinary and Grievance procedures.
- 1.3 Employees have a contractual responsibility to perform to a satisfactory level and should be given help and encouragement to do so. Whilst staff may underperform for a number of reasons, it is also necessary for the Council to recognise its responsibilities towards the rest of the team and the impact that an underperforming individual has on their colleagues' wellbeing and the effectiveness of their work outputs.
- 1.4 Managers have a responsibility for setting and monitoring realistic standards of performance and for providing guidance and support regarding these standards.
- 1.5 The formal measurement of performance standards is ordinarily achieved through the Council's appraisal process but can take place via other agreed methodologies.
- 1.6 Where employees are not meeting the expected standards, action should be taken in accordance with this procedure.
- 1.7 This procedure does not apply to inadequate performance believed to be attributable to a wilful disinclination by the employee to carry out their duties efficiently or effectively. This should be dealt with through the Council's Disciplinary Policy and Procedure.
- 1.8 Similarly, issues relating to ill-health should be dealt with under the Council's Sickness Policy.

- 1.9 An employee should not be dismissed because of a failure to perform to the required standard unless warnings and an opportunity to improve together with reasonable targets and timescales have been given. However, where an employee commits a single error due to negligence or incompetence and the actual or potential consequences of that error are, or could be, extremely serious and amount to gross misconduct, procedural warnings may not be appropriate. In such circumstances action may be taken in accordance with the Council's Disciplinary Policy and Procedure.
- 1.10 The Council recognises that, although it is not our intention, action taken in accordance with this policy can impact on employee wellbeing. Employees and managers are encouraged to seek confidential support via their trade union representative (if a member) and/or the Council's Employee Assistance Programme provider, details are available from HR and the intranet.
- 1.11 Although normal disciplinary standards should apply to the conduct of Unison officials as employees, disciplinary action can be misconstrued as an attack on the union. In order to avoid such problems, formal disciplinary action should not be taken against a Unison representative until the circumstances of the case have been discussed with the Head of HR and Customer Services and Unison's full-time Regional Officer.
- 1.12 No formal action for poor performance may be undertaken outside of this policy and procedure.
- 1.13 The Human Resources Manager should ensure that advice is appropriate and given by an appropriately experienced Human Resources professional.

## **2 Constitutional and Regulatory Procedure Rules Relating to Staff**

- 2.1 The dismissal of or taking disciplinary action against the Head of Paid Service, Monitoring Officer or Section 151 Officer must follow The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and be in accordance with the General Procedure Rule of the Constitution relating to Disciplinary Action Against The Head Of The Authority's Paid Service, The Monitoring Officer, and/or The Chief Finance (151) Officer and with the full involvement of the Investigation & Disciplinary Committee.

## **3 Informal Stage**

- 3.1 When a performance issue is identified, it is essential that it is raised informally so that additional support or training needs can be identified.
- 3.2 When an employee's performance falls below the standard expected, line managers should meet with the employee and have an informal discussion leading into a standard setting meeting. Further information regarding conducting standard setting meetings can be found on the Human Resources section of the intranet. At the meeting the employee should be given the opportunity to contribute fully and the following matters should be discussed and agreed:

- the areas of performance that are a cause for concern;
- any other circumstances to be taken into account e.g. personal issues or ill health, change of job standards, poor induction, lack of training etc;
- the expected standards of performance;
- the ongoing support that will be made available i.e. advice, guidance and appropriate training;
- the improvement targets that will be set to determine that the required standard of performance has been achieved;
- arrangements for the monitoring or assessment of improvements;
- the period for improvement and a date to review;
- that failure to reach and sustain the required standards may lead to formal action under the procedure.

3.3 A record of the points raised and actions arising from the standard setting meeting will be confirmed in writing to the employee in the form of a file note or letter and a copy will be placed on the employee's personal file.

3.4 The period set for reviewing performance needs to be sufficiently long to allow for improvement, depending on the area of performance, training required, etc. but should normally be for a maximum of 3 months. The length of the review period should also take into consideration employee's individual circumstances such as length of service, health, previous performance and changes in the workplace.

3.5 Throughout the period for improvement regular meetings should take place between the line manager and employee. At the end of the period a review meeting should take place to assess the level of improvement that the employee has made. Possible outcomes include:

<b>Improvement level</b>	<b>Action</b>
Sufficient improvement achieved	Procedure ceases (some monitoring continues i.e. appraisals and one-to-ones)
Some improvement	Consider extending improvement target date
Insufficient or no improvement	Consider formal stage

#### **4 Representation**

4.1 Employees have the right to be accompanied by a workplace colleague or trade union official (if they are a member) at all stages of the formal procedure.

4.2 The right to be accompanied does not extend to the informal stages of this policy. At the informal stage issues may be best resolved directly by the employee and their manager. However an employee should be accompanied in the informal stage if associated meetings are held with more than one manager.

4.3 The right to be accompanied does not extend to the investigation stage of this policy. Managers must not allow an investigation into the facts surrounding a disciplinary case to extend into a disciplinary hearing. At the investigation stage all reasonable requests to be accompanied will be accommodated and

investigating managers should offer the opportunity for employees to be accompanied when they consider it could be helpful to the investigation.

- 4.4 In the most serious cases employees may request a Unison full-time officer to attend (if they are a member). Disciplinary hearings will not be unduly delayed due to the non-availability of a representative. Any proposal to postpone a hearing to an alternative time due to non-availability of a representative must be both reasonable and the proposed time must not be more than ten working days after the date originally proposed.
- 4.5 The role of the representative is to support the employee in the preparation of their case. This may be in gathering information, providing moral support and asking questions on the employee's behalf. At a formal hearing the representative may either present the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing, or support the employee whilst s/he presents the case. The representative does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.
- 4.6 The statutory right to be accompanied applies specifically to hearings which could result in the administration of a formal warning, dismissal or other action short of a dismissal (e.g. suspension without pay, demotion, etc.) or confirmation of a warning issued.

## **5 Investigations**

- 5.1 Prior to any formal action being taken an appropriate investigation must be undertaken, appropriately supported by a Human Resources professional. Guidance on conducting investigations can be found on the Human Resources section of the intranet.
- 5.2 The investigation should consider all of the evidence available including the actions that have been taken in accordance with the informal stage of this procedure.
- 5.3 When an investigation is to be undertaken, the employee concerned should be notified at the earliest opportunity with sufficient detail so that the purpose of the investigation can be understood. A copy of this procedure should also be provided.
- 5.4 Investigations will normally be carried out by the immediate line manager, however it may be necessary in more complex and serious cases of alleged poor performance for the required investigation to be conducted by a more senior manager or a manager who is as independent of the facts as necessary.
- 5.5 The investigation should concentrate on establishing facts and be conducted without undue delay and should normally have been completed within 28 days from the date when the employee concerned is notified.

- 5.6 Having investigated all the facts the investigating manager, with appropriate support from HR, should decide;
- a. that there is no case to answer;
  - b. to arrange informal action;
  - c. to arrange for the matter to be considered within a formal hearing.
- Employees should be notified accordingly.

## **Formal Stage**

### **6 Formal hearings**

- 6.1 Where an investigation finds that an employee has failed to improve their performance to the standard required then the employee will be required to attend a formal hearing to establish as comprehensively as possible:
- The nature of the unsatisfactory performance and the effect in the workplace.
  - The steps being taken to rectify the situation, their likely duration, and further options including alternative duties.
  - Any other circumstances to be taken into account e.g. personal issues, ill health, change of job standards, lack of training, poor induction etc.
- 6.2 The investigating manager, with appropriate support from HR, will write to the employee requiring them to attend a formal hearing. The letter will state precisely the purpose of the hearing, include the management's statement of case, names of any witnesses that will be called and remind the employee of their right to be accompanied by a workplace colleague or trade union official (if they are a member). The letter must state that the employee has the right to present evidence and bring witnesses to support their case and give the employee at least 7 day's notice of the hearing.
- 6.3 Employees should submit any documentation to the investigating manager and chair prior to, and where possible 3 working days in advance of, the hearing.
- 6.4 Details of proposed witnesses should be communicated to both parties in advance of the hearing. Witnesses should be used where relevant and should only be present at the hearing to give evidence and be questioned.
- 6.5 Wherever possible the chair should not have any detailed knowledge of the case so that they can hear the case impartially.
- 6.6 At the hearing the chair will invite both parties to present their case, call any witnesses and ask and answer any questions related to the disciplinary matter including information presented by witnesses. The employee will also have the opportunity to give any mitigating circumstances where appropriate. Further guidance regarding the format of formal hearings can be found on the Human Resources section of the intranet.
- 6.7 The chair will adjourn the meeting to consider the evidence that has been presented and, with appropriate support from HR, will determine what action

needs to be taken. The hearing will be re-convened to inform the employee of their decision including details of the duration of any sanction and their right to appeal.

## 7 Sanctions

7.1 Within a formal hearing sanctions may be awarded as follows:

Stage	Description	Duration*	Chaired by
Level 1	First warning	6 months	Senior manager
Level 2	Final warning	12 months	Head of Service
Level 3	Dismissal or other sanction short of dismissal		Independent Head of Service

\*this indicates the duration that the warning will remain current

7.2 The manager listed in the fourth column indicates the minimum level of authority to issue the warning shown in the second column. Managers more senior to those identified, including the Chief Executive and Directors may issue the sanctions specified.

7.3 Depending upon the facts of the case any level of sanction may be issued i.e. a first warning does not always have to be issued prior to a final warning if the facts of the case warrant a higher level of sanction. If an employee's poor performance is sufficiently serious, it may be appropriate to move directly to a final warning or dismissal.

7.4 All warnings should be confirmed in writing within 5 working days of the hearing and set out the nature of the poor performance and the change in behaviour or improvement in performance required (with timescale). The employee should be informed how long the warning will remain current, the consequences of further poor performance, or failure to improve, within the set period together with information on the right of appeal.

7.5 At the end of the period, if there have been no further substantiated complaints, written records of the warning will be deemed to have lapsed and disregarded for the purposes of this Policy and Procedure.

7.6 Where there is a failure to improve performance within the duration of a prior warning the employee will be required to attend a further hearing in accordance with this procedure.

7.7 Where an employee's performance has failed to improve an appropriate sanction may be dismissal or another sanction short of dismissal such as transfer, demotion or loss of seniority. This should be confirmed in writing within 5 working days and set out the reasons for dismissal, the date on which the employee's contract terminates, the appropriate period of notice (or pay in lieu of notice) and information on the right of appeal.

- 7.8 Where a first written warning or final written warning has been issued an accompanying Performance Improvement Plan will be issued to the employee and the manager outlining the levels of support and training that the manager is expected to provide and the levels of performance that the employee is expected to achieve within a reasonable timeframe, for example three months. Should the employee not achieve the expected levels of performance within the agreed period the employee will be required to attend a further hearing in accordance with the procedure. For further details on Performance Improvement Plans please see the HR section of the intranet.
- 7.9 At any point during the formal procedure, if management considers that it would be appropriate to do so they may discuss the option of alternative employment with the employee. Additionally and only as an alternative to dismissal the employee may be formally offered alternative employment; this should be done in writing explaining why the offer is being made and the consequences should the employee refuse to accept.

## **8 Appeals**

- 8.1 Individuals may appeal against any form of formal disciplinary action, but must do so in writing, within 21 days of the date of the letter confirming the outcome. Letters of appeal should be sent to the Head of HR and Customer Services, stating clearly the grounds for appeal. HR will advise appellants to consult with their trade union (if a member).
- 8.2 Individuals may choose to raise appeals on a number of grounds which could include the perceived unfairness of the judgement, the severity of the penalty, new evidence coming to light or procedural irregularities.
- 8.3 Appeals against warnings will be chaired by an independent Head of Service and wherever possible the manager hearing the appeal will not have been previously involved in the case.
- 8.4 Appeals will be heard without unreasonable delay and normally within one month of the original hearing. The employee should receive written confirmation of the arrangements at least 7 days in advance of the hearing.
- 8.5 Employees should submit any documentation to the chair prior to, and where possible 3 working days in advance of, the hearing.
- 8.6 Details of proposed witnesses should be communicated to both parties in advance of the hearing. Witnesses should be used where relevant and should only be present at the appeal hearing to give evidence and be questioned.
- 8.7 At the hearing the chair will invite both parties to present their case, call any witnesses and ask and answer any questions related to the disciplinary matter including information presented by witnesses. Further guidance regarding the format of formal hearings can be found on the Human Resources section of the intranet.

- 8.8 The chair will adjourn the meeting to consider the appeal evidence that has been presented and, with appropriate support from HR, will determine what action needs to be taken. The hearing will be re-convened to inform the employee of their decision.
- 8.9 In cases of dismissal or other sanctions short of dismissal where the appeal is to be heard by the Appeals Committee, a meeting of the Appeals Committee will be arranged in accordance with the Council's normal procedure as soon as is practicable. Further information regarding the Appeals Committee can be found on the Human Resources section of the intranet

## **9. Formal Records**

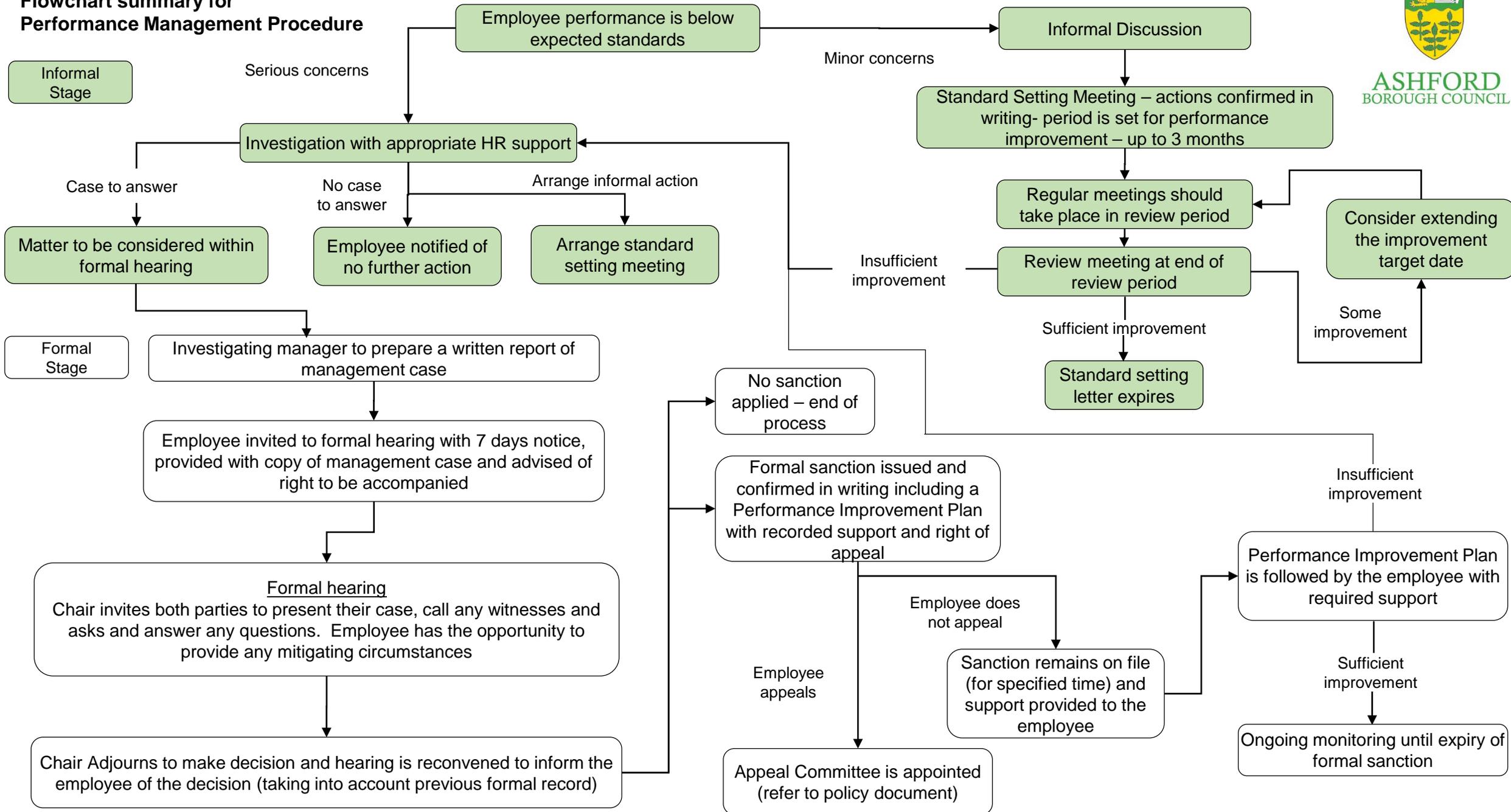
- 8.10 Formal records must be kept detailing the nature of any breach of organisational rules or unsatisfactory performance, the employee's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be kept confidential and retained in accordance with the disciplinary procedure and the General Data Protection Regulations.
- 8.11 Copies of any meeting records should be given to the individual concerned in a timely manner although in certain circumstances some information may be withheld, for example to protect a witness.
- 8.12 Formal warnings will be recorded on an individual's personal file on the basis of the following:
- First                      6 months
  - Final                      12 months
- 8.13 At the end of the period, if there have been no further substantiated complaints against the staff, written records of previous warnings will be deemed to have lapsed and will be disregarded for the purposes of this policy.

*Reviewed April 2018*

# Flowchart summary for Performance Management Procedure



ASHFORD  
BOROUGH COUNCIL





## **Welfare Support for Employees**

### **Introduction**

The Council recognises that at times all employees can experience situations when life and work can be difficult and wishes to provide appropriate support to employees during tough periods. In particular the Council would like to support employees who are living and/or working with a chronic condition or serious illness, affecting them individually or affecting their dependents.

This policy document highlights the numerous welfare provisions which the Council offers to its employees to assist them practically, emotionally and psychologically.

It should be noted that the Council takes its duty of care as an employer seriously and this is also reflected within the health and safety provisions made for employees.

### **Compassionate Leave**

There may be circumstances when a member of staff requires leave of absence on an unplanned or unexpected basis such as bereavement or sudden/serious medical emergency involving a close relative or partner.

Where the provisions of the policies relating to parental leave and time off for dependents are not applicable, the employee may submit a request to their Head of Service via their manager.

Heads of Service have the discretion to grant up to five days paid Compassionate Leave; any leave granted in addition to this will be dependent upon the circumstances and may be paid or unpaid. Decision are made on the merits of the employee's circumstances, including any religious or cultural needs. Where Compassionate Leave is not granted an employee can request that the Head Of HR and Customer Services review the decision taken by the relevant Head Of Service to ensure that discretion has been applied fairly and consistently; there is not a formal appeal process in this regard.

### **Counselling Support – Line Managers**

All line managers are responsible for supporting their employee's health, safety and welfare whilst they are at work. Supportive managers will have an appropriate level of understanding regarding any challenges that an employee is experiencing, inside and outside of work, in order to reasonably support them.

Sometimes it is clear when there is something wrong but it is not always obvious. These are a few examples of when a line manager needs to be alert for possible problems:

- uncharacteristic behaviour;
- frequent absences;
- deterioration in performance;
- loss of confidence;
- persistent lateness;
- undue stress or anxiety;
- self neglect.

It is important to note that counselling support is a professional area and one which, in the main, most line managers are not qualified to provide. Instead the role of a line manager is to recognise when an employee may be having a tough time inside or outside of work, handle this matter sensitively and confidentially, seek advice and guidance from HR and/or signpost the employee to the Council's employee assistance programme.

### **Counselling Support – HR Support**

HR professionals are experienced in listening to and understanding a situation in a confidential and compassionate manner. HR will provide specific support to line managers and employees and this may involve welfare discussions, guidance regarding applicable policies and procedures and signposting to our Employee Assistance Programme. HR are also able to signpost individuals to appropriate external organisations for additional support. e.g. Alzheimer's Society, Relate, Cruse & Age UK.

### **Employee Assistance Programme**

The Council offers a confidential and comprehensive employee assistance programme to its employees. Employees can access information and counselling over the telephone and face to face to gain advice and support in times of difficulty. Full information regarding the provisions of the Council's employee assistance services can be found on the HR section of the intranet.

### **Role Specific Counselling Support**

It is the responsibility of the manager to recognise when an employee may be affected by a particular event or the nature of their ongoing work and to discuss this matter with HR in order to determine appropriate support.

In some circumstances the Council will consider the provision of role specific counselling support on an ongoing basis to provide the employee with regular, specific support.

### **Time off to Care for Dependents**

Employees are entitled to take unpaid time off work to care for dependents. There is no service qualification.

### *Dependents*

- A dependent is the partner, child or parent of the employee or someone who lives with the employee as part of their family
- It does not include tenants or lodgers living in the family home or someone who lives in the household as an employee, for example, a live-in housekeeper.
- In cases of illness, injury or where care arrangements break down, a dependent may also be someone who reasonably relies on the employee for assistance.
- This may be where the employee is the primary carer or is the only person who can help in an emergency.

### *Relevant Circumstances*

An employee is entitled to take a reasonable amount of time off work during their normal working hours in order to take action which is necessary:-

- to provide assistance on an occasion when a dependent falls ill, gives birth, or is injured or assaulted
- to make arrangements for the provision of care for a dependent who is ill or injured
- in consequence of the death of a dependent to make arrangements for a funeral or attend a funeral
- because of an unexpected disruption or termination of arrangements for the care of a dependent
- to deal with an incident which involves the child of the member of staff and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for them

### *Time Off*

There is no set limit to the amount of time off which can be taken. In most cases, the amount of leave will be one or two days at the most, but this will depend on the individual circumstances, although an employee may be able to take a longer period of leave under other arrangements such as paternity leave or parental leave. Annual leave may also been used under certain circumstances to help out.

### *Notice*

The employee should advise their manager of their absence as soon as practically possible, explaining the circumstances and the expected duration of time away from work.

## **Redundancy Support**

Where an employee is to leave the Council for reason of redundancy, the Council will provide tailored support to the employee.

## **Ill health retirement**

In cases of long-term sickness, eligible employees may be assessed as to whether they meet the criteria for ill health retirement under the Local Government Pension Scheme.

Full details can be found in the Sickness & Attendance Management Policy.

## **Miscarriage, stillbirth & neonatal death: rights and support for parents who have suffered the loss of a baby before, during or shortly after birth**

### *Miscarriage*

If a baby is stillborn before the end of the 24<sup>th</sup> week of pregnancy it is treated as a miscarriage and the employee cannot qualify for Maternity Leave or pay.

Requests for Compassionate Leave will be sensitively considered.

Where the employee is not medically fit for work their absence is treated as sickness absence and the terms of the Sickness & Attendance Management policy will apply.

### *Stillbirth*

If a baby is stillborn after the end of the 24<sup>th</sup> week of pregnancy an employee is entitled to Maternity Leave and any maternity pay that they qualify for. Maternity Leave will commence with effect from the day after the date of stillbirth, as stated on the certificate of stillbirth issued by a medical professional.

The partner will also be entitled to paternity leave and pay if they meet the normal qualifying conditions.

### *Shared Parental Leave*

If either parent had already given notice to take shared parental leave they may still take the leave that has been booked.

### *Neonatal Death*

A neonatal death is where a baby passes away within the first 28 days of their life. If Maternity Leave had not already commenced it will do so with effect from the day after the baby was born.

## **Death in service: Support for dependents**

In the event that an employee dies whilst employed by the Council, support will be offered to their immediate family.

HR will make contact with their next of kin to express condolences and to ascertain the nature of support required.

HR will also ensure that the next of kin are aware of their entitlements under the Local Government Pension Scheme, and will make the initial contact with Kent County Council on their behalf.

## **Confidentiality**

All information about an employee's welfare is confidential and must be treated with sensitivity. Everyone involved in supporting the employee has a responsibility to maintain confidentiality.

*Reviewed April 2018*

# Equality Impact Assessment

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1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

## Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
  - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

## Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership\*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

\*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

## Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
  - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
  - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

**Case law principles**

9. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a

policy, for example, is being developed and agreed but also when it is implemented.

- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

<b>Lead officer:</b>	Joy Cross – HR Manager
<b>Decision maker:</b>	Cabinet
<b>Decision:</b> <ul style="list-style-type: none"> <li>• Policy, project, service, contract</li> <li>• Review, change, new, stop</li> </ul>	Revised personnel policy documents which form part of the conditions of service.
<b>Date of decision:</b> The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	April 2018
<b>Summary of the proposed decision:</b> <ul style="list-style-type: none"> <li>• Aims and objectives</li> <li>• Key actions</li> <li>• Expected outcomes</li> <li>• Who will be affected and how?</li> <li>• How many people will be affected?</li> </ul>	Proposed new policy documents for Disciplinary, Performance Management and Welfare Support which will be applicable to all Ashford Borough Council Employees
<b>Information and research:</b> <ul style="list-style-type: none"> <li>• Outline the information and research that has informed the decision.</li> <li>• Include sources and key findings.</li> </ul>	12 focus groups, caselaw research, best practice guidance, consultation with employees, managers, Unison and staff side. Negotiation with Unison involving their regional office.
<b>Consultation:</b> <ul style="list-style-type: none"> <li>• What specific consultation has occurred on this decision?</li> <li>• What were the results of the consultation?</li> <li>• Did the consultation analysis reveal any difference in views across the protected characteristics?</li> <li>• What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?</li> </ul>	<p>Consultation was undertaken as detailed above which resulted in three drafts of the proposed policies being produced and discussed.</p> <p>The policy documents comply with UK employment law and one policy document aims to support employees experiencing physical or mental ill health.</p>

**Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.**

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

<b>Protected characteristic</b>	<b>Relevance to Decision</b> High/Medium/Low/None	<b>Impact of Decision</b> <b>Positive</b> (Major/Minor) <b>Negative</b> (Major/Minor) <b>Neutral</b>
<u>AGE</u> Elderly	None	Neutral
Middle age	None	Neutral
Young adult	None	Neutral
Children	None	Neutral
<u>DISABILITY</u> Physical	None	Neutral
Mental	None	Neutral
Sensory	None	Neutral
<u>GENDER RE-ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	None	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral

<b>Mitigating negative impact:</b> Where any negative impact has been identified, outline the measures taken to mitigate against it.	n/a
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**Is the decision relevant to the aims of the equality duty?**

Guidance on the aims can be found in the EHRC's [Essential Guide](#), alongside fuller [PSED Technical Guidance](#).

Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	n/a
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	n/a
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	n/a

**Conclusion:**

- Consider how due regard has been had to the equality duty, from start to finish.
- There should be no unlawful discrimination arising from the decision (see guidance above).
- Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.
- How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?

Due regard has been paid to equality through the drafting of documentation by qualified HR professionals trained in equality issues and review of relevant employment case law.

Via consultation with affected employees.

*The council's revised policy register will assist services to meet this*

**EIA completion date:**

10.04.18