



# Employment and Appeals Committee Agenda

Wyre Borough Council  
Date of Publication: 20 October 2023  
Please ask for: Marianne Unwin  
Democratic Services Officer  
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**Employment and Appeals Committee meeting on Monday, 30 October 2023 at 6.00 pm in the Committee Room 2 - Civic Centre**

**1. Apologies**

**2. Declarations of interest**

Members will disclose any pecuniary and any other significant interests they may have in relation to the matters to be considered at this meeting.

**3. Confirmation of minutes**

(Pages 3 - 6)

To approve as a correct record the Minutes of the meeting of the Employment and Appeals Committee held on Monday 10 July 2023.

**4. Policy Review**

(Pages 7 - 10)

Report of the Human Resources Manager to present to the Employment and Appeals Committee additions and amendments to Human Resource Policies.

- (a) Appeals against Dismissal Policy (Pages 11 - 18)
- (b) Disciplinary Policy and Procedure (Pages 19 - 48)
- (c) Chief Officer Disciplinary Policy and Procedure (Pages 49 - 60)
- (d) Protected Officer Disciplinary Policy and Procedure (Pages 61 - 72)
- (e) Grading Review and Appeals Policy and Procedure (Pages 73 - 86)
- (f) Time Off for Trade Union Duties (Pages 87 - 92)

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## Employment and Appeals Committee Minutes

The minutes of the Employment and Appeals Committee meeting of Wyre Borough Council held on Monday, 10 July 2023 at the Committee Room 2 - Civic Centre.

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### **Employment and Appeals Committee members present:**

Councillors Birch, Cartridge, Ibson and C Walker

### **Officers present:**

Jane Collier, Human Resources Manager and Deputy Monitoring Officer  
Olivia Cordingley, Human Resources Advisor  
Marianne Unwin, Democratic Services and Scrutiny Manager (Temporary)  
Marc Whittaker, Senior Human Resources Advisor

No members of the public or press attended the meeting.

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### **1 Election of Chair for the Municipal Year 2023/24**

Councillor Ibson was elected as the Chair of the Employment and Appeals Committee for the Municipal Year 2023/24.

### **2 Election of Vice Chair for the Municipal Year 2023/24**

Councillor Birch was elected as the Vice Chair of the Employment and Appeals Committee for the Municipal Year 2023/24.

### **3 Declarations of interest**

None.

### **4 Confirmation of Minutes**

The minutes of the meeting held on 20 February 2023 were confirmed as a correct record.

### **5 Introduction to the Employment and Appeals Committee**

Jane Collier, Human Resources Manager, welcomed the new members of the Employment and Appeals Committee and explained the committee's responsibilities.

Jane added that members may also be required to consider appeals against dismissal and that future training would be offered to members of the committee. This would also be open to other councillors to participate. She emphasised the importance of the committee's attendance at appeals panel training.

## **6 Policy Review**

The Human Resources Manager and Deputy Monitoring Officer, Jane Collier, submitted a report presenting four policies and procedures that had been amended.

Jane introduced the report and provided members with a brief overview of the policies. She stated that there would normally be a couple of additional policies for approval, but the consequences of Covid-19 had impacted the three-year policy review cycle.

### **6a Resolution Policy**

Jane introduced the policy and explained that there had been minor amendments made throughout this policy.

In response to a question regarding an employee raising a grievance, Jane explained that the Grievance Policy was replaced with the Resolution Policy. She added that this policy encouraged informal resolutions, in which the individual would attempt to resolve the issue before submitting a request for resolution. She also stated that the requirement for a formal resolution meeting was infrequent.

The Chair questioned the minor changes made to the policy. Jane explained that there were minor amendments made such as changes to titles. She added that at 6.2.2 of the policy it had been added that if the matter was considered as serious enough then a formal meeting would be carried out from the outset.

Jane responded to a question regarding the number of employees at Wyre Council.

### **6b Reservists Policy**

Jane introduced the policy and added that there was no amendments made.

The committee welcomed this policy. Jane assured members that this policy was in line with other local authorities.

### **6c Veteran Guaranteed Interview Scheme**

Jane introduced this policy. She added that Wyre Council was committed to supporting the armed forces.



In response to a question, Jane clarified that the policy was eligible for applicants whose most recent long term substantive employer was the Armed Forces.

Marc Whittaker, Senior Human Resources Advisor, reassured members that Human Resources liaised with the MOD's Career Transition Partnership (CTP) Right Job website and ensured that Wyre Council vacancies were listed on this website.

It was questioned whether this policy was available for Armed Forces civilians. Marc confirmed that this policy was for Armed Forces Personnel only.

Jane Collier responded to several questions and comments regarding the following topics:

- Recruitment issues and the use of social media for job vacancy advertisement
- Pay line
- Exit interviews
- Staff retention

#### 6d Social Media Policy

Jane introduced this policy and explained that this had also reviewed by the council's Communications Team.

Members asked questions regarding the following topics:

- Staff surveys
- Home/hybrid working
- Staff productivity
- The 4-day working week

## 7 Decision taken

The committee **approved** each of the following Human Resources policies and arrangements:

- Resolution Policy
- Reservists Policy
- Veteran Guaranteed Interview Scheme
- Social Media Policy

The meeting started at 6.01 pm and finished at 6.35 pm.

**Date of Publication:** 12.07.2023

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Report of:	Meeting	Date
Human Resources	Employment and Appeals Committee	30 October 2023

<b>Policy Review</b>
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**1. Purpose of report**

1.1 To present to the Panel additions and amendments to Human Resource Policies.

**2. Corporate priorities**

2.1 Ensure Policies and Procedures are under regular review in line with legislation, good practice and current practice.

**3. Recommendation**

3.1 That the Panel approve the policies and arrangements set out in Section 5.

**4. Background**

4.1 From time to time the Council needs to develop new policies and working arrangements to ensure we comply with statutory requirements and effectively manage our human resources.

4.2 The development of new policies and the review of existing policies will also be informed by employment best practice and the organisational needs of the Council.

**5. Key issues and proposals**

5.1 Appeals against Dismissal Policy	Reviewed
Disciplinary Policy & Procedure	Amended
Chief Officer Disciplinary Policy and Procedure	Amended
Protected Officer Disciplinary Policy and Procedure	Amended
Grading Review and Appeals Policy and Procedure	Reviewed

Time Off for Trade Union Duties

Reviewed

**5.2** The Appeals against Dismissal Policy and Procedure has been updated with only minor amendments.

**5.3** The Disciplinary, Chief Officer Disciplinary and Protected Officer Disciplinary Policies and Procedures have not undergone a full review as they have been through the full review process in the last two years. Consideration of these policies by the panel is sought purely in respect of the sections within each regarding suspension.

All three have had amendments made to the suspension section to include clarification that if someone on suspension who is certified as unfit owing to ill-health payments will be made in accordance with our sick pay provisions.

In addition the Chief Officer and Protected Officer policies set out that suspension would not normally be for more than 60 days, this has been added to the staff Disciplinary Policy to bring it in line with the others.

**5.4** The Grading Review and Appeals Policy and Procedure has been amended at 4.3 to include that appeals of joint positions must have a 100% agreement of all post holders in order to move forward with an appeal.

Section 4.3 also allows for the employee, line manager or Head of Service to be called into the review meeting to clarify points to the appeal hearing.

Other amendments throughout are minor.

**5.5** Time Off for Trade Union Duties amendment at section 2.3 from Head of Service to Director to ensure a consistent approach in granting time off for training.

Other amendments throughout are minor

<b>Financial, Legal and Climate Change implications</b>	
Finance	<i>There are no specific Finance issues associated to this report.</i>
Legal	<i>There are no specific Legal issues associated to this report. However failure to comply with appropriate legislation may expose the Council to litigation.</i>
Climate Change	<i>There are no specific Climate Change issues associated to this report.</i>

**Other risks/implications: checklist**

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	X
equality and diversity	X
health and safety	X

risks/implications	✓ / x
asset management	X
ICT	X
data protection	X

**Processing Personal Data**

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a ‘privacy impact assessment (PIA)’ is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a third party) a PIA will need to have been completed and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

report author	telephone no.	email	date
HR Manager	01253 887506	<a href="mailto:Jane.collier@wyre.gov.uk">Jane.collier@wyre.gov.uk</a>	October 2023

List of background papers:		
name of document	date	where available for inspection
None		

**List of appendices**

- Appendix 1 Appeals against Dismissal Policy
- Appendix 2 Disciplinary Policy & Procedure
- Appendix 3 Chief Officer Disciplinary Policy and Procedure
- Appendix 4 Protected Officer Disciplinary Policy and Procedure
- Appendix 5 Grading Review and Appeals Policy and Procedure
- Appendix 6 Time Off for Trade Union Duties

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# APPEALS AGAINST DISMISSAL PROCEDURE

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## 1. INTRODUCTION

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### 1.1 Introduction

Employees have the right to appeal against any decision to dismiss them. This policy sets out the process that will be followed in dealing with any such appeal.

1.2 This procedure sets out to ensure that decisions taken are fair and reasonable in all circumstances and that the appropriate process has been followed in reaching decisions.

1.3 The decision to dismiss may have been made in-line with the following policies:

Disciplinary Policy

Capability Policy

Redundancy Policy

Promoting Attendance and Managing Sickness Absence Policy

Probationary Policy

Any other relevant policies whereby dismissal may be the outcome.

In exceptional circumstances a dismissal may have been carried out that doesn't sit within any of the above policies e.g. Some other Substantial Reason Dismissals.

## 2. SCOPE

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2.1 This procedure applies to all employees of the council excluding officers employed under J.N.C. Conditions of Service for Chief Officers and for Chief Executives and Protected Officers.

2.2 This procedure does not apply to agency staff, external contractors or external consultants or staff

2.3 This procedure does **not** apply to appeals against actions or decisions other than dismissal made under relevant policies.

## 3. PRINCIPLES

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- 3.1 All employees have the right of appeal against a management decision to dismiss.
- 3.2 Confidentiality must be maintained throughout the appeal process by all those involved.
- 3.3 Employees have the right to be accompanied at an appeal hearing by a trade union representative or a work colleague. There is no right however to legal or family representation.
- 3.4 Elected members who sit on the Appeals Panel will attend an appropriate training course or demonstrate an appropriate level of competence.

## 4. PROCEDURE

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### 4.1 How to Appeal

An employee wishing to appeal against a dismissal made must submit in writing to the Human Resources Manager within 10 working days of receiving the letter confirming dismissal under the relevant policies.

4.2 An appeal may be made on the following grounds:

- A procedural error
- The decision was unfair and unreasonable
- That further new material information has come to light which, had it been known at the time of the hearing, may have affected the decision to dismiss. This must be information that was unavailable at the original hearing and is pertinent to the case.

4.3 The letter of appeal must set out the grounds of the appeal and should state whether the appeal is in respect of the whole decision or relates to only part of any finding or decision.

### 4.4 Arrangements for the Appeal Hearing

On receipt of the appeal, the Human Resources Manager will liaise with Democratic Services who will make arrangements with the Chair of the Employment Appeals Committee (or his/her deputy) to convene an Employment Appeals Panel, which will normally be within 20 working days.

- 4.5 The agreed paperwork will be circulated to the parties at least 5 working days in advance of the hearing which will include:
- Original letter of dismissal
  - Any relevant papers supporting the decision to dismissal
  - Letter of Appeal
  - Specific detail of what the employee wishes to appeal against
  - Any documentation submitted by the employee in support of their appeal.

4.6 The employee submitting the appeal will be responsible for informing Democratic Services of the names of any witnesses they may wish to call in support of their appeal. It will be the responsibility of the employee to notify the witnesses of the date, time and location of the hearing.

4.7 Any witnesses who are employees of Wyre Council that the employee submitting the appeal wishes to be available at the hearing will be responsible for informing their line manager of the request to attend an appeal hearing.

4.8 The panel will comprise of 3 members of the Employment Appeals Committee. A representative from Human Resources (or Independent Advisor) will be present to advise and support the panel.

4.9 The chair of the dismissal hearing (management representative) will attend and may also be supported by a representative from Human Resources.

#### 4.10 **Procedure for the Employment Appeals Hearing**

##### **Introduction**

The chair of the Employment Appeals Panel will introduce those present and explain their reason for attendance.

The chair of the Employment Appeals Panel will confirm that the hearing is an appeal against dismissal and will explain how it will be conducted.

#### 4.10 **Employee's Statement of Appeal**

The employee, or their representative will state their ground of appeal and desired outcomes. The employee will only be able to refer to and pursue the grounds specified in the letter of appeal and submitted documentation.

It is not expected that new evidence will be allowed at the appeal, unless there are mitigating circumstances as to why the information was not previously presented or available. A decision on whether to allow new evidence, will be at the discretion of the panel.

4.11 As part of their representation, the employee may call witnesses in support of their appeal.

- 4.12 The panel, the management representative and their relevant advisors may ask questions of the employee and any witnesses.
- 4.13 Whilst the employee's representative may assist the employee with the presentation of their case, the employee must answer questions asked of them by the panel, management representative and their relevant advisors.
- 4.15 **Presentation of the Management Representative**
- The management representative will provide a statement including the reasons for their decision to dismiss. As part of this witnesses may be called.
- 4.16 The employee, their representative, the panel and their relevant advisors may ask questions of the management representative and any witnesses. The HR Advisor to the management representative may contribute as required.
- 4.17 **Final Statements**
- The management representative and then the employee or their representative may sum up their case and make a final statement if they so wish.
- 4.18 **Adjournment**
- The employee, their representative, the management representative (including their HR Advisor) and any witness will then withdraw. The panel with their advisor will consider the evidence. If it is necessary to recall either party or witness in order to clear up any point of uncertainty on the evidence given, both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.
- 4.19 **Decision**
- The chair will, if possible, give a decision to the parties on the day of the hearing. On occasions, time constraints may make it necessary to adjourn the hearing for a longer period to properly consider the information provided. In this case, it will be agreed to re-adjourn the meeting at a later date or that the employee will be informed of the decision in writing.
- In any case, the decision made will be confirmed in writing within 5 working days of the hearing.
- 4.20 This is the final stage of the Council's internal process and the decision of the panel is final.

## 5. ELECTRONIC MEETING GUIDANCE

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5.1 Where the Chair decides that a meeting should take place using alternative arrangements (e.g. by telephone or video conference) that have been previously agreed then the following will apply:

- the usual notice and arrangements for issuing papers continues except where the Chair has exercised their right to waive the usual notice;
- all participants will receive clear instructions regarding how to access the meeting including where they can access support if they experience difficulty;
- all participants will be given advance notice of the meeting in line with current policy procedures so that they can declare if they have a disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed;
- all participants must attend the meeting with webcams enabled at all times;
- where there is a requirement for an adjournment / breakout for any participant this will be carried out either at a different physical location or separate independent virtual meeting;
- all participants will note and follow any instructions given on how to manage their participation at the meeting. For example confirming attendance, speaking through the Chair of the meeting, etc;
- all panel members will abide by their normal rules, procedures and code of conduct adopted by the Council in relation to holding hearings, giving particular regard to the duty to maintain confidentiality;
- the panel will contribute towards a safe and secure environment for the meeting by giving due regard to the Council policies relating to Data Protection and the appropriate use of ICT;
- a minute taker may be nominated to take notes of the meeting – but it will not ordinarily be recorded;
- under no circumstances can a recording take place without all parties being aware.

## 6. EQUALITY IMPACT ASSESSMENT AND MONITORING

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- 6.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

## 7. DATA PROTECTION

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- 7.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.



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# Disciplinary Policy and Procedure

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## 1. INTRODUCTION

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- 1.1 The Council and the trade unions attach great importance to establishing and maintaining good working relationships at all levels within the council by encouraging all employees to achieve and maintain acceptable standards of conduct and behaviour.
- 1.2 It is the council's belief that employees should be motivated by their sense of responsibility and involvement rather than by fear of disciplinary action. Disciplinary rules and procedures are nevertheless necessary to promote positive employee relations and fair, consistent treatment of employees, to help ensure that standards are upheld and to provide a fair method of dealing with alleged failures to observe the standards.
- 1.3 It is also recognised that discipline is necessary for the efficient and effective operation of the council and for the health and safety at work of all employees.
- 1.4 Whilst the disciplinary procedure provides a formal process for resolving alleged breaches, the council recognises that in many cases early intervention with the right word at the right time and in the right way may be all that is needed and will often be a more effective and satisfactory method of dealing with such situations.

## 2. AIMS

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- 2.1 The aims of this policy are:
- To encourage corrective rather than punitive action
  - To ensure the consistent and fair treatment of employees
  - To support standards of conduct and behaviour which ensure the efficient and effective operation of the council

## 3. SCOPE

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- 3.1 This procedure applies to all employees of the council excluding officers employed under J.N.C. Conditions of Service for Chief Officers and for Chief Executives which includes Protected Officers.
- 3.2 This procedure does **not** apply to agency staff, external contractors or external consultants.

## 4. ROLES AND RESPONSIBILITIES

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4.1 It is the responsibility of individual **Employees** to:

- Be aware of the Council's policy and procedure
- Maintain acceptable standards of performance and conduct.
- Comply with the Council's Code of Conduct at all times
- Carry out their role to the standards expected
- Understand the impact of their behaviour on colleagues and customers of the Council
- Clarify expectations, behaviours and procedures with their line manager if they are unsure about them
- Co-operate fully and promptly if they are asked to be involved in a disciplinary case, this may include giving evidence in an investigation
- Declare any conflict of interest that arises if they are involved in disciplinary matters.

4.2 It is the responsibility of **Managers** to:

- Seek advice from Human Resources in a timely manner
- Be able to demonstrate an appropriate level of competence to deal with disciplinary matters effectively
- Be responsible for setting and maintaining standards of performance
- Comply with the Council's policy and procedure
- Ensure employees understand the policy and procedure
- Ensure the policy and procedure are fairly and consistently applied
- Recognise where circumstances make it difficult from time to time for staff to comply fully with the Council's policy and procedure
- Assist, wherever possible, the employee to correct unacceptable behaviour
- Set a good example through their own conduct and behaviour
- Remain impartial when dealing with disciplinary issues

4.3 It is the responsibility of **Human Resources** to:

- Ensure provision of training, support and guidance for managers
- Regularly review and monitor the operation and effectiveness of the policy and procedure including any adverse impact
- Ensure compliance with legal obligations

## 5. GENERAL PRINCIPLES

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- 5.1 This policy and procedure is designed to encourage all employees to achieve and maintain satisfactory standards of conduct, and not purely as a means of imposing sanctions.
- 5.2 Standards of work and conduct required will be reiterated to ensure that employees are clear as to what is expected of them (this should also have been done at the outset of taking up employment).<sup>1</sup>
- 5.3 We are committed to the council's values of Working Collaboratively, One Team One Council and Working Smart (WOW).
- 5.4 All disciplinary proceedings will be dealt with confidentially and treated as an allegation subject to the outcome of any disciplinary hearing.
- 5.5 All disciplinary issues will be dealt with in a fair and timely manner and with clear decisions at all stages.
- 5.6 The Council reserves the right to implement the disciplinary procedure at any stage, if the employee's conduct warrants such action.
- 5.7 The Council's safeguarding policies must be referred to in circumstances where an allegation or incident is in relation to a child, young person or vulnerable adult.
- 5.8 Managers should consult Human Resources before a disciplinary investigation takes place. A representative from Human Resources will normally attend disciplinary hearings and where requested, disciplinary meetings. However, for avoidance of doubt, a disciplinary hearing held without a representative from Human Resources, shall not be regarded as being improperly conducted for the purposes of this procedure.
- 5.9 At all stages of the disciplinary procedure, except for the informal stage, an employee will have the right to be accompanied by an approved trade union representative or work colleague of their choice.
- 5.10 Electronic recordings should not be made of any meetings or hearings involved in the disciplinary process without the consent of those present.
- 5.11 An employee will not be dismissed for a first breach of discipline except in a case of gross misconduct, where the penalty will be summary dismissal without notice or pay in lieu of notice.
- 5.12 No disciplinary action will be taken against a trade union representative until circumstances have been discussed with a full time official of the trade union concerned.

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<sup>1</sup> See also the Wyre Borough Council Capability Procedure

- 5.13 Where disciplinary action is withdrawn or where the employee is cleared of any alleged misconduct, any written reference to the matter will be removed from the employee's personal file.
- 5.14 An employee may appeal against any disciplinary action imposed in accordance with this procedure.
- 5.15 The application of this policy and procedure will be non-discriminatory irrespective of an employee's age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation.
- 5.16 Meetings held under the Disciplinary policy and procedure will normally be carried out face to face. There may however be certain circumstances where consideration is given to meetings being carried out on-line and the Electronic Meeting guidance set out in appendix 5 should be followed.

## 6. DEFINITIONS

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- 6.1 **Misconduct**  
Examples of misconduct, which would normally justify the use of the Disciplinary Procedure has been attached as Appendix 1.
- 6.2 **Gross Misconduct**  
Examples of serious offences that constitute acts of gross misconduct and potentially could lead to an employee's dismissal have been attached as Appendix 1.
- Where misconduct is related to inappropriate conduct towards a child or vulnerable adult and it is perceived that the individual may pose a risk to children or vulnerable adults, details of the offence will be passed to the relevant external authorities by the Human Resources Team.
- Similarly, where the misconduct is of a very serious nature, e.g. theft, fraud, details of the offence will be passed to the HR Manager who in liaison with the Head of Governance & Business Support and Section 151 Officer may subsequently refer the matter on to external authorities, for example the police.
- 6.3 Neither of the two lists in Appendix 1 are exhaustive and one test that should be asked when determining if there is a potential for a misconduct allegation is - would a reasonable person be aware that disciplinary action would result from a certain act or omission?
- 6.4 **Conduct Outside of Work**  
The Council does not seek to dictate how employees conduct themselves in their personal lives outside work. However, unlawful, anti-social or other conduct by employees which may jeopardise the Council's reputation or position will be dealt with through the disciplinary procedure. Examples of such behaviours are listed in Appendix 1.

6.5 Staff are also reminded that whilst wearing their Wyre uniform or staff badge they are identifiable as a representative of the council even if they are not clocked into work at the time and should behave in an appropriate manner.

6.6 **Cases of Alleged Criminal Activity**

A disciplinary investigation may run in parallel to any external investigation if necessary (e.g. police, child protection etc.), but should not be held up by it, unless it is prejudicial to those investigations to proceed. Case law clearly indicates that it is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

## 7. PROCEDURE

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7.1 The Disciplinary Procedure comprises of the following stages, where applicable:

- Informal Stage (where appropriate)
  - Informal Resolution
- Formal Stages
  - Investigation (including suspension where necessary)
  - Hearing
  - Sanctions
    - Written Warning
    - Final Written Warning
    - Dismissal with Notice or Summary Dismissal
    - In exceptional circumstances, consideration may be given to some other disciplinary penalty as an alternative to dismissal such as demotion, transfer or loss of seniority/pay.
  - Appeal

No formal disciplinary proceedings will be taken against an employee until a case has been fully investigated. The investigation will be relative to the nature of the allegation.

7.2 At every stage of the formal procedure an employee will be advised of the nature of the allegation against them and will be given the opportunity to state their case before any decision is made.

7.3 At all formal stages of the procedure the Employee will have the right to be accompanied by a workplace colleague or approved trade union representative.

7.4 **Resignation during an investigation or before a Disciplinary**

If the employee resigns either during a disciplinary investigation or prior to a disciplinary hearing then the Council will reserve the right to continue with the investigation and/or hearing despite the resignation.

The results of any findings/decision will be held on the employee's personnel file and any appropriate actions taken in line with the Disciplinary Policy.

7.5

### **Criminal Conviction/Imprisonment**

An employee who receives a criminal conviction or imprisonment may be dismissed, however each case will be determined on its own merit. The Council's Disciplinary Policy, including undertaking an internal investigation will be followed on all occasions.

## **8. THE INFORMAL PROCEDURE – INFORMAL DISCUSSIONS**

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- 8.1 Minor offences or lapses by the employee, should in the first instance, be dealt with by an informal discussion between a supervisor/manager and the employee concerned.
- 8.2 Nothing in this procedure is intended to prevent the normal process of management and supervision whereby managers manage performance including: performance and development reviews and 1:1s, allocating work, monitoring performance, drawing attention to errors, poor quality and minor misconduct whilst also highlighting work that has been done well either through routine management or regular appraisal.
- Most cases of minor misconduct are best dealt with through such informal processes rather than through the formal disciplinary procedure.
- 8.3 The manager should discuss any problem with the employee at the earliest possible opportunity with the objective of encouraging and helping the employee to improve and stopping the matter from escalating. This may cover conduct, work performance, sickness or personal problems. It is an informal process designed to work through difficulties before they become so significant that disciplinary action may be necessary.
- 8.4 Clear goals need to be set and a review meeting scheduled to ensure improvement in behaviour/conduct is satisfactory within an agreed timeframe. Failure to improve behaviour or standards of performance within this timeframe may result in formal proceedings being invoked.
- 8.5 An informal written record of any discussion should be made, including date, outline of discussion, details of any agreed action, training or other support to be made available to the employee. Should the behaviour or conduct continue and move to Formal Disciplinary Procedure, these records will be important evidence.

## 9. THE FORMAL PROCEDURE

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### 9.1 **Advice from Human Resources**

To ensure compliance with the law, fairness and consistency, managers must consult with a Human Resources Advisor before embarking on the formal procedure or considering any disciplinary action.

### 9.2 **Right to be accompanied**

9.2.1 At all stages of the formal procedure the employee has the right to be accompanied by a recognised trade union representative or work colleague.

9.2.2 For the purpose of this policy, the right of representation includes meetings which could result in:

- A formal warning being issued
- The confirmation of a warning or some other disciplinary action (such as an appeal hearing)

and,

- Meetings held as part of the investigation process

It should be noted that the right to be accompanied does not extend to meetings held to inform of an impending issue or to suspend. However, the council will not refuse a reasonable request to be accompanied at such meetings.

It is the employee's responsibility to arrange to be accompanied.

9.2.3 The chosen representative is able to contribute to and ask questions at the hearing, however the chairperson is entitled to expect the employee and not the representative to answer any questions asked.

9.2.4 If the chosen representative is not available at the proposed time of the meeting, the employee may request an alternative time and date so long as it is reasonable and falls within five working days of the original date. This alternative date must have regard to the availability of the other employees involved in the hearing and may be extended by mutual agreement.

9.2.5 There is no entitlement to external representation, legal or otherwise.

### 9.3 **Investigation of alleged misconduct/gross misconduct**

When an allegation/s is made which is considered to be more serious than can be dealt with by an informal discussion between the manager and the employee, an investigation must be carried out before any disciplinary action is taken.



### 9.3.1 Investigating Officer

The employee's immediate manager/supervisor will normally be designated as the investigating officer. There will be times when depending on the seriousness of the allegation or if the immediate manager has an involvement an alternative investigating officer will be designated by the HR Manager in liaison with the relevant HOS/Director.

If a financial irregularity is alleged, or the allegation involves the loss or suspected loss of assets, the theft or malicious alteration of data or the investigation requires observation of the employee, the investigation will be carried out by Internal Audit.

### 9.3.2 Police Involvement

At any stage during the investigatory process the Investigating Officer, having consulted with the HR Manager can recommend that the police should be involved e.g. if the possession of illegal drugs is involved or in the event of claims of abuse, theft or fraud. In the case of theft or fraud, the Audit Section will need to be involved from the outset.

The involvement of the police should not be viewed as a reason to suspend the internal process of the investigation unless the internal investigation would prejudice the police investigation. Usually, the police investigation will run parallel to the internal investigation but by definition, the results of any police investigation may take some considerable time to be made known. In view of this, the internal investigation should continue in the normal manner with the emphasis on fairness and equality<sup>2</sup>, and any recommendation made as a consequence of the internal investigation may be made without waiting for the results of the police investigation.

### 9.3.3 Investigation Process

Once the investigating officer has been nominated, the employee will be issued with a letter confirming that an allegation has been made against them including details of the allegation, that there is to be an investigation and who the investigating officer is.

In the majority of cases such written confirmation will be issued at the commencement of an investigation but in some cases e.g. potential fraud (or where evidence is behaviour based and evidence needs to be collected before the person is informed e.g. attendance), it may be appropriate not to inform the employee until later in the investigation process. In addition there may be occasions where the allegations are less serious in nature and warrant a less formal approach whilst still falling within the parameters of the formal procedure.

Internal Audit must be contacted for advice should it be considered necessary to search the personal property of an employee. Searches of personal property such as coats, bags, briefcases etc. may only be undertaken by Internal Audit

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<sup>2</sup> Equal treatment of staff regardless of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation



and only in the employee's presence. Desks, cupboards, filing cabinets and work vehicles are not considered to be personal property.

Internet and email monitoring and control software has been installed and the investigating officer may, in the course of the investigation, monitor usage and inspect the contents of emails and files.

During the process of the investigation, it will normally be necessary to interview the employee(s) in question. This should be done as soon as reasonably practicable but in any event should normally take place within 10 working days of the investigation commencing. Where either party wished to extend this time limit a request should be made in writing stating the reasons for the delay. Where sickness is the reason for a request by the employee, this must be accompanied by a medical certificate. However, it is not expected that any extension will exceed a further 20 working days and the investigation may have to continue and conclude in an employee's absence if they are unable to attend.

Detailed records must be kept of any interviews held and witnesses interviewed must sign any statement given and recognise that they could be used at a subsequent hearing.

The Investigating Officer will investigate the matter, interview witnesses and gather documentary evidence as appropriate. They will then prepare a report for submission to Human Resources giving the outcome of the investigation and make one of the following recommendations:

That no further action to be taken: or

That Informal Action may be required: e.g. counselling, keeping under review, management action, training etc: or

That disciplinary hearing should be held.

If as a result of the investigation, a disciplinary hearing is deemed appropriate, the investigating officer will be required to present the report at the hearing.

If a disciplinary hearing is not deemed necessary the employee must be informed of this in writing within **5 working days** of the conclusion of the investigation. If currently under suspension, appropriate arrangements will be made for the employee to return to the workplace.

Officers involved in the disciplinary investigation must not lead any subsequent disciplinary hearing. They may, however, be involved in any suspension and it may be appropriate for them to either present or assist in the presentation of management's case at any disciplinary hearing.

9.3.4 The Council's Occupational Health Advisor will be consulted if at any stage in the investigation there may be a medical issue.

#### 9.4 **Suspension**

The Council may decide to suspend an employee from work pending the investigation. The decision to suspend must be made in liaison with a member of the Management Team and Human Resources.

Suspension is most likely to be appropriate where the continued presence of the individual at work would pose a risk to themselves or others or where the

employee would have an opportunity to frustrate the investigation by destroying or compromising evidence.

An alternative to suspension such as requesting the employee to undertake alternative duties which remove them from their normal workplace or to work from home whilst the investigation is conducted may also be considered.

Suspension or temporary redeployment does not constitute disciplinary action or indicate belief in the employee's guilt and must never be taken as an assumption of guilt. Rather it is a mechanism to allow breathing space for a fair investigation to take place to establish whether or not there is a case to answer.

Once the investigation is completed the employee will either return to work with an unblemished record or will be required to attend a disciplinary hearing.

#### 9.4.1

### Suspending an Employee

Where it is deemed necessary for an employee to be suspended from duty, the relevant Corporate Director must meet with the employee as quickly as possible to explain:

- What is being alleged.
- Why it is necessary for the employee to be suspended or temporarily redeployed.
- That the employee will be on full contractual pay for the duration of the suspension.
- That there is no presumption of guilt.
- That an investigation will take place and the employee will have the full opportunity to put his/her case forward.
- That the employee must be available for contact by the manager or investigating officer and to attend meetings as part of the investigation process.
- That whilst suspended the employee should not return to the work premises or have any contact with colleagues with the exception of an agreed liaison officer.
- The employee's right to be accompanied at any further meetings.
- Details of the Council's Employee Support Programme and encourage the employee to make use of it.

The employee will be asked to hand over their ID card and any other equipment belonging to the Council.

Arrangements for contacting the employee and the telephone number to be used must also be agreed. If appropriate a liaison officer will be nominated.

A letter, confirming the suspension and the reason(s) for the suspension, will be sent to the employee within **2 working days** from the date of the suspension.

Should formal disciplinary proceedings be warranted it should be noted that those managers involved in the suspension process are not able to chair the disciplinary hearing or conduct the investigation.

## 9.4.2

**Contact During Suspension**

Contact with the employee during the period of suspension should be made within **10 working days** from the date of suspension and at regular intervals thereafter. The purpose of contact during suspension is to:

- facilitate investigatory meetings;
- keep the employee informed of the progress of the investigation in terms of it's likely time of conclusion
- inform the employee of the consequences of the conclusions of the investigation and to inform them of any subsequent action.

Every effort must be made to conclude a disciplinary investigation as quickly as possible from the date the suspension commences.

## 9.4.3

The period of suspension should last for no longer than 60 days unless there are exceptional circumstances.

## 9.4.4

**Pay during Period of Suspension**

Employees will normally continue to receive full pay during a period of suspension. However, if certified as unfit to attend for work, owing to ill-health payments will be made in accordance with normal sick pay provisions as set out in their Statement of Particular.

## 10. DISCIPLINARY HEARINGS

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## 10.1

If the Service Manager/Director accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.

Disciplinary hearings will normally be held no more than 10 working days after completion of the investigation.

## 10.2

The intention of the Hearing is to give the employee every opportunity of stating their case and to allow management to consider all relevant information before making a final decision. Guidance on the conduct of a disciplinary hearing has been attached as Appendix 3.

- 10.3 The employee will be notified in writing at least 5 days working days before the Hearing takes place, this notice may be extended to allow an employee to be represented provided that the extended period is for no longer than 5 working days.
- The notification will include:
- notification that there will be a Hearing held under the Councils disciplinary procedure
  - the reason for the Hearing
  - the date, time and place of the Hearing
  - the right of the employee to be accompanied
  - who is expected to be conducting the Hearing and other attendees
  - supporting documentary evidence and witness statements
- 10.4 Documents which the employee wishes to be considered and details of any witnesses s/he intends to call at the hearing must be provided to Human Resources at least 3 working days before the hearing.
- All parties must respect the need for confidentiality, at all times, in relation to any information exchanged.
- 10.5 Every effort is made to arrange the timing of a hearing, such that it is suitable for all involved parties. However, it should be noted that where an employee is persistently unable or unwilling to attend a disciplinary meeting, the Council will have no option than to make a decision based on the evidence available.
- Sickness may be a reason given for non-attendance but is only valid if the employee is genuinely too ill to attend a formal meeting or disciplinary hearing. An employee may be too sick to work but fit enough to attend such a meeting. An occupational health referral must take place if the employee is certificated as sick by their general practitioner or specialist to enable consideration of their fitness to attend a meeting.
- A hearing can take place in the employee's absence or the employee can nominate a representative to attend on their behalf.
- 10.6 All disciplinary hearings will be conducted on the basis that there is no presumption of guilt.
- 10.7 A member of Human Resources will normally be present at Hearings to advise the chair of the hearing and ensure a fair and impartial process.
- 10.8 Once all of the evidence has been provided to the manager conducting the hearing, it will ordinarily be adjourned whilst a decision is reached.
- 10.9 The outcome of the Hearing will be conveyed as soon as possible. If it is not possible to confirm the outcome on the same day, the employee will be given an anticipated time scale for confirmation of the outcome and a subsequent meeting will be arranged to convey the decision. The decision will then be confirmed in writing within 5 working days of the hearing decision and be copied to the employee's representative if requested.

- 10.10 A copy of the letter must be placed on the employee's personal file. It forms part of the employee's employment record and must not be removed from the file once the warning is spent.

## 11. SANCTIONS

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- 11.1 The Disciplinary process can be instigated at any stage dependant on the seriousness of the alleged conduct.

11.2 **Written Warning**

A written warning may be given where:

- Informal attempts to resolve the matter have failed, or
- The matter is considered to be too serious to be resolved by informal processes

A written warning may be issued by a line manager.

The employee will be provided with written reason(s) of the decision within 5 working days of the hearing. A Written Warning will normally remain in force for disciplinary purposes for a period of 12 months from the date the warning was issued. However, a historical note of the Written Warning will remain on an employee's personal file.

The employee has the right of appeal against a Written Warning.

11.3 **Final Written Warning**

A final written warning may be given where:

- The employee's conduct has not improved as a result of previous written warning(s), that warning is still in force and he/she has committed a further offence requiring disciplinary action.
- No previous warning is in force but the employee has committed an offence which is serious but does not warrant dismissal.

A final written warning may be issued by a Head of Service.

The employee will be provided with written reason(s) of the decision within 5 working days of the hearing. A Final Written Warning will normally remain in force for disciplinary purposes for a period of 2 years from the date the warning was issued. However a historical note of the Final Written Warning will remain on the employee's personal file.

The employee has the right of appeal against a Final Written Warning.

11.4 **Dismissal**

If an employee's conduct or performance is still unsatisfactory or the case warrants it, dismissal will normally result. Only the Corporate Directors or Chief Executive can take the decision to dismiss after full discussion and

consideration of the case. The employee will be provided, within **5 working days** of the decision with written reasons for dismissal and confirmation of the date on which employment was/will be terminated, as well as to their right of appeal.

11.5

### Live Warning Periods

During the warning period the employee's conduct may be taken into consideration when making further conduct/disciplinary or other employment decisions e.g. promotion, internal recruitment.

11.6

### Spent Warning

Although disregarded for sequential disciplinary purposes, a record of spent warnings will be kept permanently on the employee's personal file as part of his/her employment record.

## 12. APPEALS

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12.1

At all stages employees have the right of appeal to the next level of management. For appeals against dismissal, see The Appeals against Dismissal Policy and Procedure.

An employee may choose to appeal because;

- They think the finding or penalty is unfair
- New evidence comes to light
- They think the disciplinary procedure was not used correctly.

The employee should make any appeal in writing to the HR Manager, within **10** working days of receipt of the penalty. The employee must state the specific reasons for their appeal. An appeal hearing will be convened within **20** working days of receipt with all information relating to the appeal being available at least **5 working days** before the hearing is held.

During a pandemic it may be necessary to extend this period to a reasonable length as deemed appropriate by the Chair of the Appeal Hearing.

In the event of the Chair upholding an appeal, any reference to the sanction will be deleted from an employee's file with immediate effect.

In the event that the Chair vary the disciplinary sanction then the timescales for keeping information on the employee's file will be adjusted to be in accordance with the Chair's decision.

The decision at the appeal is final.

## 14. EQUALITY IMPACT ASSESSMENT AND MONITORING

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14.1

The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess

whether any differences have an adverse impact on a particular group, such that further action would be required.

## 15. DATA PROTECTION

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- 15.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.

## Appendix 1

# GUIDANCE NOTE ON EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT EITHER DURING OR OUTSIDE WORK.

## Misconduct

The following are examples of misconduct, which would normally justify the use of the Disciplinary Procedure. The list is neither exhaustive nor exclusive and, depending on the precise circumstances, any act listed below may be considered so serious as to be regarded as Gross Misconduct:

- Unjustified refusal of a lawful and reasonable instruction.
- Lateness, unauthorised absences, failure to notify sickness absence.
- Insubordination or verbal assault whilst at work.
- Personal misconduct outside of work, sufficiently serious to affect an employee's position at work.
- Threat of violence.
- Unauthorised use of the Council's resources, or information gained during the course of one's employment.
- Negligence in job performance (other than capability).
- Negligence in carrying out duties in accordance with relevant policies and procedures.
- Unacceptable standards of personal conduct.
- Intentional disregard of legitimate instructions from a line manager/senior officer
- Failure to observe safe working practices at work, including failure to wear personal protection equipment (PPE).
- Breach of smoking policy
- Failure to co-operate with disciplinary cases, including withholding of information known to be pertinent to the case
- Criminal conduct
- Making vexatious complaints or grievances
- Failure to adhere to the Councils Code of Conduct
- Misuse or unauthorised use of Council resources for example; vehicles, equipment or facilities
- Conduct in the workplace that has a negative impact on work, colleagues or service delivery. (for example poor personal hygiene)
- Purporting to represent the views of the Council on social networking sites without prior approval or authorisation
- Failing to act when acts of discrimination are witnessed

## Gross Misconduct

The following are examples of serious offences that constitute acts of gross misconduct and potentially could lead to an employee's dismissal. This list is neither exhaustive nor exclusive:



If an employee commits an act of gross misconduct the Council has the right to dismiss the employee without serving them with their contractual notice, subject to a formal investigation and hearing.

- Theft or incitement to steal, attempted theft, fraud or fraudulent falsification of accounts, or other official records including abuse of the flexi time system, ie. swiping in or out for someone else.
- Providing false and misleading information, eg. on application forms, medical questionnaires or examination, at an accident investigation or at a disciplinary investigation.
- Wilful and deliberate damage to the authority's assets or to another employee's property.
- Incitement to or use of physical violence to anyone at all on the authority's premises or whilst on authority business, sufficiently serious to affect an employee's position at work.
- Bringing firearms or offensive weapons on authority premises.
- Accepting gifts or bribes for personal gain and hospitality, outside Wyre Council policy.
- Disclosure of confidential information.
- Grossly offensive behaviour, harassment and bullying.
- Being incapable of work, or of working safely due to the influence of alcohol, or drugs\*.
- Negligent or wilful failure to comply with legal requirements of the Council's various policies and procedures such as Health and Safety rules, Equal Opportunities, Safeguarding or the Data Protection Act, or any other legal or statutory requirement.
- Serious neglect of duty and responsibility associated with the post.
- Criminal offence bringing the Council into disrepute.
- Gross insubordination.
- Gross neglect of health and safety rules.
- Accessing material on the Internet of an 'inappropriate nature such as sites containing pornographic, sexist, racist, indecent, rude, obscene, political or violent material.
- Bringing the Council into serious disrepute.
- Deliberate falsification of Council documents.
- Serious breach of safety regulations endangering oneself and/or others.
- Criminal offences which are related to, or impact on an employee's ability to fulfil the terms of their contract, or are incompatible with an employee's role, or have the potential to damage the reputation of the Council.
- Discrimination against Council employees or members of the public in breach of the Council's equality and diversity policies.
- Corrupt or improper practice involving children or vulnerable adults.
- Using social network sites to make derogatory comments about other organisations or individuals in relation to their employment/work activity.
- The posting of photographs on social networking sites, or the distribution of photographs, that could bring the Council and/or its officers into disrepute and/or harm.
- Serious breach of the Council's ICT or Data Protection policy.
- Significant loss of public money or property for which the employee is responsible.
- Negligence whilst carrying out duties on behalf of the Council.
- Wilful neglect to obtain/retain the professional qualifications or membership as required by the job description.
- Failure to disclose any caution or conviction as required under the Rehabilitation of Offenders Act.
- Supplying and/or trafficking or drugs, money laundering activities, or the sale or distribution of illegal substances or products.
- Serious negligence which causes unacceptable loss, damage or injury, or acting in a manner dangerous to others.

- Unauthorised entry to computer records and deliberate misuse of the Council's computer resources and telephone services.
- Serious breach of any of the Council policies and procedures such as Financial Regulations or Financial Procedure Rules.
- Fraudulent claims made within job applications particularly in relation to qualifications, experience or job history.

\*Please note - In certain cases drugs prescribed by a doctor or purchased from a chemist can induce drowsiness and will include the advice not to operate machinery. Employees must inform their line manager if they have taken such medicine and would normally be required to operate machinery or drive a vehicle during the course of their work.

## Appendix 2

### FREQUENTLY ASKED QUESTIONS – PAID SUSPENSION

**Q. When is paid suspension used?**

**A.** Paid suspension is not considered a disciplinary sanction but a neutral act enabling a full investigation to be carried out. It is normally used where a particularly serious allegation is made, where relationships have broken down or where it would be impossible for a full investigation to be completed if the employee was still in the workplace.

Suspension will not be undertaken without obtaining advice from Human Resources and must be authorised by a member of Corporate Management Team.

**Q. How should I be notified of my suspension?**

**A.** Normally you will be notified by your Corporate Director:

- Verbally - if it is practical or possible for you to be informed in this way;
- By telephone - if it is not possible to meet with you in person;
- By letter - if it is not possible to meet with you or contact you by telephone.

Regardless of how you are informed of your suspension you will be issued with a suspension letter outlining the reasons for your suspension and any terms you must abide by during the period of the suspension.

**Q. Will I be paid if I have been suspended?**

**A.** You will normally continue to receive full pay during your suspension. However, if you are certified as unfit to attend for work, owing to ill-health or you are on maternity leave, your payments will be made in accordance with your conditions of service.

**Q. Will continuous service be affected by suspension?**

**A.** Suspension does not affect your employment rights. For the purposes of calculating continuous service in relation to benefits such as sickness, maternity, redundancy, pensions etc. the period of suspension counts as normal employment

**Q. Do I have to stay at home during my normal working hours in case I am called back to work?**

**A.** You are required to make yourself available to your employer at reasonable notice (e.g. for a meeting or interview). Normally this would mean you should be prepared to report to work on the day following the request for you to report to work. However, you could be asked to return on the same day as the request is made, which would not be unreasonable if the request was made early in the day for an afternoon meeting and a representative was also available.

**Q. What happens if I wish to make a trip away from home during the period of suspension?**

**A.** Annual leave arrangements still apply during suspension, therefore if you wish to make a trip away from home, which would make you unavailable to attend work as described above, you will need to seek authorisation for annual leave from your line manager in the normal way.

Given that suspension is not a disciplinary penalty, annual leave which has been arranged prior to suspension will be honoured other than in exceptional circumstances, where the matter will be discussed with you.

You will need to clear any request in advance, including confirming pre-arranged leave, with your line manager. They will need to consider the likelihood of your being required to attend work during the time requested.

**Q. Am I allowed access to my workplace and colleagues during suspension?**

**A.** The council does not wish to impede you in preparing your case. If you wish to visit your workplace during the suspension period you must first obtain the permission of your line manager or other nominated manager. S/he will need to be satisfied that there are reasonable grounds for your request and that your visit will not interfere with any related investigation.

Whilst the council cannot prevent you from meeting with colleagues outside normal working hours if you intend discussing the matters relating to your suspension, please be aware that this may place your colleagues in a difficult position. In any event, they may choose not to discuss it with you. You should, therefore approach them sensitively.

**Q. What assistance is there for employees on paid suspension?**

**A.** If you are a member of a trade union you are advised to seek advice from your trade union representative.

Your manager, or another nominated person if this is not appropriate, will keep in contact with you to both advise you of progress regarding the investigation and keep you updated with any development in connection with your job. You will also have access to the council's Employee Assistance Programme which provides counselling support and advice to staff.

**Q. How long can the suspension last?**

**A.** There are no specified time limits. However, suspension will be for as short a period as possible and it is not expected to last any longer than 60 days.

Where a suspended employee is the subject of external investigations, police enquiries or charged with a criminal offence, the length of the suspension may be prolonged pending the outcome of police enquiries or legal proceedings.

Where the investigation is subject to a delay your line manager (or other nominated manager) will write to inform you of the delay and the reason for it.

**Q. How will I know when the suspension has ended?**

**A.** Normally, suspension ends when, following the completion of the investigation, a decision is taken.

This decision may be:

- to take no action and end the suspension;
- to proceed with formal disciplinary action;
- to take some other form of action.

In any event you will be notified in writing of the decision.

Where disciplinary action is taken, the suspension will normally continue until the hearing takes place, and it will be decided at the hearing when the suspension will end.

You will remain suspended until informed otherwise by your Head of Service or Human Resources.

**Q. How can I return to work after being suspended?**

**A.** Paid suspension is not a disciplinary penalty. Employees can return to work successfully after being suspended and will receive support from both their manager and HR advisor in this event

## Appendix 3

### **GUIDANCE ON THE CONDUCT OF A DISCIPLINARY HEARING**

The following guidance is to be used by all officers involved in the planning and/or Hearing of a disciplinary case and is designed to assist in ensuring a fair and consistent approach to the administration of all disciplinary hearings.

#### **The Venue**

It is imperative that the chosen venue is private and offers suitable access to all those present or who may be called as witnesses during the proceedings.

#### **Disciplinary Hearing – Order of Proceedings**

The manager chairing the hearing must be authorised to give the potential sanction proportionate to the alleged misconduct.

At the start of the hearing the chair will outline the order of proceedings, introduce all who are present and explain the reason for their attendance. They will also confirm that the hearing is a disciplinary hearing to consider whether disciplinary action should be taken.

#### **The Management Case**

The chair must outline the allegations against the employee.

The investigating officer will then present the management case and in doing so will refer to the investigation report, any witness statements and may call any necessary witnesses to give evidence and question them.

The employee and/or their representative may ask questions of any witnesses and the investigating officer.

The chair of the hearing and the advisor from Human Resources may ask questions of the investigating officer and/or the witnesses at any time.

Witnesses will be called as required and will leave as soon as they have answered all the questions put to them. They will not stay in the room for the course of the hearing.

#### **The Employee's Case**

The employee or his/her companion will then present the employee's case, including calling any witnesses one at a time and questioning them.

The investigating officer, the chair and the advisor from Human Resources may ask questions of the employee and/or the witnesses at any time.

#### **Summing Up**

The chair of the hearing will then ask the investigating officer to sum up their case. No new evidence may be submitted at this stage.

The employee or his/her companion will then be asked to sum up his/her case and put forward any mitigating circumstances. No new evidence may be submitted at this stage.

If at any time it appears that further investigation is required or further evidence needed the chair has the right to adjourn the hearing to allow this to happen.

The chair has the discretion to determine any issues relating to the admissibility of evidence and is entitled to rule on behaviour by any party within the hearing.

### Adjournment

The hearing will then be adjourned and the investigating officer, the employee and their representative (if appropriate), will then withdraw.

The chair will then consider the decision with advice from the Human Resources representative. If it is necessary to recall one or other of the parties to clarify a piece of evidence already given, both parties are to return notwithstanding that only one is concerned with the point giving rise to doubt.

The chair and HR representative will review all the evidence before a decision is reached. In arriving at a decision, they will bear in mind the need to act reasonably in all circumstances. If the employee is found to have committed an offence, before imposing a disciplinary sanction, the following will be considered:

- the gravity of the offence;
- the penalty imposed in similar cases in the past (although each case must be considered on its own merits);
- any special or mitigating circumstances (e.g. health or domestic problems, provocation); and
- whether the proposed penalty is reasonable in all the circumstances.

The chair may decide to:

- exonerate the employee
- not to proceed with any disciplinary action, but rather to set down the required standard of behaviour or conduct of the employee together with dates upon which a review will be performed
- to issue a warning
- to recommend dismissal.

Once a decision has been reached, the hearing will reconvene and the decision is announced. If time and circumstances do not allow this to be on the same day as the hearing an alternative time and date will be agreed.

### The Decision

Once the chair has reached a decision the hearing will reconvene. The employee and his/her companion will be told the decision in a statement which should:

- Summarise why the hearing was called by stating the allegation/s.
- Briefly summarise the evidence the chair looked at in respect of each of the allegations, and whether or not the allegation was found to be substantiated.
- Include a reference to any mitigating circumstances.
- Give the decision i.e. no case to answer/first written warning/final written warning/dismissal with notice/summary dismissal.
- Where a warning has been issued state the length of time a warning will remain in effect, what actions or improvements the employee needs to achieve, together with the timescale for achieving these, that the employee's conduct will be monitored throughout the life of the warning, and that any further misconduct may result in further disciplinary action being taken.
- If the employee is to return to work, state what arrangements are to be made. This is particularly important in cases where the employee has been suspended. State what support is to be given to the employee.
- In dismissal cases state whether or not this is summary dismissal. (Summary dismissal is for gross misconduct and is without notice or pay in lieu of notice).
- In cases of summary dismissal, state that the dismissal takes place with immediate effect, and what arrangements are to be made for the employee to leave the premises and to collect any personal effects.
- In cases of professional misconduct, or criminal activity, state the intention to supply details of the outcome of the disciplinary hearing to an appropriate professional body, or to the Police.
- State that the employee has a right of appeal, and should he/she wish to do so, must exercise this within 10 working days of receipt of the decision letter, in writing, and send it to the Head of Business Support.

This statement will form the substance of a decision letter which must be sent to the employee within 5 working days of the hearing decision, and be copied to the employee's representative if requested.

A copy of the letter must be placed on the employee's personal file. It forms part of the employee's employment record and must not be removed from the file once the warning is spent.



## Appendix 4

# DISCIPLINARY PROCEDURE

## Frequently Asked Questions

**Q. What is the difference between an investigatory meeting and a disciplinary hearing?**

**A.** Essentially, the purpose of an investigatory meeting is to establish what happened, while the purpose of a disciplinary hearing is to decide what to do about it.

**Q. Can the Council invite an employee to an investigatory interview or disciplinary hearing if they are on sick leave?**

**A.** Where an employee who is subject to disciplinary proceedings is absent due to a short-term illness, the most appropriate course of action is likely to be for the Council to postpone the interview/hearing until the employee is well enough to attend. If the employee is on long-term sickness absence, the Council will balance the need to avoid unreasonable delay in the process with the importance of allowing the employee to put their case before it makes a decision. The Council will take steps to determine whether or not the employee is well enough to attend a disciplinary hearing, even though they are not fit for work. If necessary, the employee may be required to attend an appointment with the Councils Occupational Health provider to determine their suitability to attend the disciplinary hearing. The Council will obtain medical evidence focused on the employee's ability to take part in a disciplinary hearing, and take into account any medical advice.

**Q. What happens if the union representative/work colleague is not available at the proposed time of the meeting?**

**A.** If the companion is not available at the proposed hearing time and the employee suggests another time that is reasonable and falls within five working days of the original time, the hearing will, wherever possible, be postponed until the new time proposed by the employee.

**Q. Can the Council reject an employee's choice of companion for the disciplinary meeting?**

**A.** Under section 10 of the Employment Relations Act 1999, employees have the right to be accompanied at a disciplinary or grievance hearing if their request to be accompanied is reasonable. Therefore, the Council can reject an employee's choice of companion if it is unreasonable for him or her to request to be accompanied by that person. This may be the case, for example, if the companion is involved in the proceedings, or because he or she will not be available for a meeting for a substantial length of time.

**Q. Is an employee allowed paid time away from their job to accompany a colleague to a disciplinary or grievance meeting?**

**A.** Yes. An employee is permitted to take a reasonable amount of paid time off during their working hours to accompany a colleague to a disciplinary or grievance hearing. The accompanying employee should advise their line manager when they are due to be absent.

**Q. Can the Council dismiss an employee on the grounds of a criminal act that happened outside of the workplace?**

**A.** It is permissible to dismiss an employee on the grounds of a criminal act that happened outside of the workplace if it thought likely to affect the continued employment relationship, the ability of the employee to do their job, brings the reputation of the Council into disrepute or frustrates the contract.

**Q. What can the Council do if an employee posts derogatory remarks, including comments that may be construed as bullying, or photographs on a social networking site, or circulates inappropriate photographs and comments by any other means?**

**A.** It is recognised that the use of social networking is widespread and an effective means of keeping in contact with friends, family and often with colleagues. When used appropriately there is no problem, but employees should be aware that whilst they may feel a need to express their thoughts and frustrations about work they should be careful to avoid statements or comments that may be defamatory to colleagues or otherwise damaging to the reputation of the Council. Any bullying, harassment, victimisation or threats towards colleagues either face to face or via social networking sites may be classed as gross misconduct and be dealt with accordingly under the scope of the disciplinary policy. Similarly any content or material that is likely to bring the Council into disrepute may also be subject to a disciplinary process.

## ELECTRONIC MEETING GUIDANCE

Where the Chair decides that a meeting should take place using alternative arrangements (e.g. by telephone or video conference) that have been previously agreed then the following will apply:

- the usual notice and arrangements for issuing papers continues except where the Chair has exercised their right to waive the usual notice;
- all participants will receive clear instructions regarding how to access the meeting including where they can access support if they experience difficulty;
- all participants will be given advance notice of the meeting in line with current policy procedures so that they can declare if they have a disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed;
- all participants must attend the meeting with webcams enabled at all times;
- where there is a requirement for an adjournment / breakout for any participant this will be carried out either at a different physical location or separate independent virtual meeting;
- all participants will note and follow any instructions given on how to manage their participation at the meeting. For example confirming attendance, speaking through the Chair of the meeting, etc;
- all panel members will abide by their normal rules, procedures and code of conduct adopted by the Council in relation to holding hearings, giving particular regard to the duty to maintain confidentiality;
- the panel will contribute towards a safe and secure environment for the meeting by giving due regard to the Council policies relating to Data Protection and the appropriate use of ICT;
- a minute taker may be nominated to take notes of the meeting – but it will not ordinarily be recorded;
- under no circumstances can a recording take place without all parties being aware.

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**Together**  
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# Chief Officers Disciplinary Policy and Procedure

(Excluding Protected Officers)

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## 1. AIMS

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- 1.1 The objective of this procedure is to encourage Chief Officers to achieve and maintain appropriate and high standards of behaviour in line with the Staff Code of Conduct and to provide a fair and consistent method of dealing with allegations of misconduct.

## 2. SCOPE

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- 2.1 The procedure applies to Chief Officers employed under Joint Negotiating Committee for Chief Officers of Local Authorities Conditions of Service.
- 2.2 It does not apply to the Chief Executive, the Monitoring Officer or Section 151 Officer who will be subject to a separate disciplinary procedure.

## 3. GENERAL GUIDELINES AND PRINCIPLES

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- 3.1 In general, informal conciliation is to be preferred if it can bring about a mutually agreed solution to the problems that have arisen.
- 3.2 Any officer within the scope of this policy has the right to be accompanied by a trade union representative or work colleague at any stage of the procedure. They and/or their representative have the right to put their side of the case and to call witnesses.
- 3.3 The procedure:
- a. specifies who has the authority to take disciplinary actions
  - b. ensures that action is not taken without careful investigation
  - c. provides a right of appeal
  - d. gives clear details of time scales and any deadlines associated with the various stages of the procedure.
- 3.4 The Human Resources Manager should be informed of all disciplinary concerns in order to provide advice on the employment and legal implications and attend and be involved in any part of the process as appropriate.
- 3.5 If the officer concerned is a trade union steward or representative, the Council will inform the regional office of the trade union concerned prior to commencement under this procedure.
- 3.6 At all stages in the procedure confidentiality must be respected by all the parties involved.
- 3.7 No officer will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.

- 3.8 The application of this policy and procedure will be non-discriminatory irrespective of an employee's age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation.

## 4. PROCEDURE

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- 4.1 **Pre-Hearing Action/Preliminary Investigation**
- 4.1.1 If the problem cannot be resolved by informal conciliation, a preliminary investigation will take place to determine if a question of discipline exists.
- 4.1.2 The Chief Executive may determine whether or not to suspend the officer (See Section 4.2).
- 4.1.3 Any investigation regarding alleged misconduct by a Chief Officer will be undertaken by an investigating officer appointed by the Chief Executive.
- 4.1.4 The Investigating Officer will notify the officer concerned of the allegations which are being investigated and that they will be given the opportunity to make representations on their behalf.
- 4.1.5 The Investigating Officer may inspect any documents relating to the conduct of the officer which are in the possession of the council or which the council has power to authorise them to inspect.
- 4.1.6 The Investigating Officer may require any employee to attend an interview as part of the investigation to answer questions concerning the conduct of the officer concerned
- 4.1.7 The Investigating Officer will interview the officer concerned giving at least 5 working days' notice in writing of the requirement for them to attend any investigative meeting. The letter should also give them an appropriate amount of information about the allegations and their right to be accompanied by a trade union representative or work colleague at the interview.
- 4.1.8 The Investigating Officer will produce a report for the Chief Executive. This report will:
- a. state whether (and if so the extent to which) the evidence they have obtained supports any allegation of misconduct against the officer; and
  - b. recommend whether it is appropriate for disciplinary action to be taken against the officer.



4.1.9 Where disciplinary action is recommended human resources will arrange a disciplinary hearing with the Chief Executive as the Hearing Officer.

## 4.2 Suspension

4.2.1 Where there is enough evidence to suggest that the officer may be guilty of gross misconduct or where the officer's continuing presence at work compromises the investigation or impairs the efficient exercise of the council's functions, the officer will be suspended from duty.

4.2.2 Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible. (See section 8)

4.2.3 A Chief Officer can only be suspended on the authority of the Chief Executive. An officer will be informed in writing at the earliest opportunity stating the reasons for the suspension, who they may contact within the council while they are suspended and that suspension will be on full pay and should last no longer than 60 days (unless there are exceptional circumstances).

4.2.4 It will be made clear to the officer that suspension is not a disciplinary penalty and that it will not prejudice any future disciplinary hearing.

4.2.5 The Investigating Officer may recommend

- a. that the Council terminates any suspension of the officer;
- b. that any such suspension must continue after the expiry of 60 days.

## 4.2.6 Pay during Period of Suspension

Chief Officers will normally continue to receive full pay during a period of suspension. However, if certified as unfit to attend for work, owing to ill-health payments will be made in accordance with normal sick pay provisions as set out in their Statement of Particulars.

## 4.3 Cases Involving Child Protection, Vulnerable Adults, Financial Irregularities, or Wider Issues for the Council

4.3.1 Any complaint involving allegations relating to child protection issues or vulnerable adults must be discussed with the designated Local Authority Designated Officer (LADO) at Lancashire County Council.

- 4.3.2 In accordance with the Financial Regulations and Financial Procedure Rules the Head of Governance & Business Support must be notified of any suspected fraud, theft, irregularity, improper use or misappropriation of the authority's property or resources. The Head of Governance & Business Support will undertake all such investigations as are considered necessary, including notifying and liaising with the police where criminal offences are suspected. The results of the investigations will form part of any action taken under this Disciplinary Procedure.

## 5. DISCIPLINARY HEARING

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- 5.1 If the Chief Executive accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.
- 5.2 The officer must receive formal notice of a disciplinary hearing. The letter must give at least 5 working days' notice of the hearing and will include:
- a. confirmation that the Chief Executive will act as the Hearing Officer
  - b. the date, time and location of the hearing;
  - c. the investigation report, which will include details of the allegations;
  - d. any other supporting evidence and any witnesses that will be called;
  - e. that the officer will have the opportunity to state their case and call and/or question any witnesses;
  - f. that the employee will have the right to invite a trade union representative or work colleague to represent them;
  - g. any previous warnings that could be taken into account when deciding the level of any disciplinary action;
  - h. That, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
  - i. The right to submit a written statement to the Hearing Officer.
  - j. A request that any documents which the officer wishes to be considered and details of any witnesses s/he intends to call are provided to Human Resources at least 3 working days before the hearing.
- 5.3 A member of the Human Resources team or an appropriate independent employment specialist will attend with the Hearing Officer.
- 5.4 A model conduct of the disciplinary hearing is shown in section 9.

- 5.5 The Hearing Officer will be required to reach a decision and –
- a. may exonerate the officer; or
  - b. state their opinion as to whether (and if so the extent to which) the evidence they have obtained supports any allegation of misconduct against the officer;
  - c. determine the disciplinary sanction if any (see Section 6)

## 6. SANCTIONS

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- 6.1 If, following an investigation and disciplinary hearing, disciplinary action is deemed necessary, the following options are available:

### 6.2 Written Warning

A written warning may be given where:

- a. Informal attempts to resolve the matter have failed, or
- b. the matter is considered to be too serious to be resolved by informal processes.

### 6.3 Final Written Warning

A final written warning may be given where:

- a. The officer's conduct has not improved as a result of previous written warning(s), that warning is still in force and he/she has committed a further offence requiring disciplinary action.
- b. No previous warning is in force but the officer has committed an offence, which is serious but does not warrant dismissal.

### 6.4 Time limits for warnings

Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- a. written warnings – 12 months
- b. final written warnings – normally 24 months

- 6.5 Depending upon the nature of the misconduct, a final written warning may remain in force for a period of greater than 24 months. In this event the officer must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period. In exceptional circumstances (for example abuse against children and vulnerable adults), the written warning may be extended for as long as the officer concerned is employed in their current job or a similar job. If an officer considers that the extended time period is unreasonable, they may appeal to the Employment and Appeals Committee.

6.6

**Dismissal**

If, following an investigation and disciplinary hearing, the Hearing Officer is satisfied that the officer is guilty of gross misconduct, the officer will be dismissed without notice or pay in lieu of notice. OR

If, while a final written warning is still in force, the officer's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, the Hearing Officer will normally dismiss the officer with notice or pay in lieu of notice.

6.7

**Written confirmation of sanctions**

The officer will receive written confirmation of the Hearing Officer's decision, together with:

- a. full details of the sanction
- b. the reason for the sanction;
- c. whether it is a written warning, final warning or dismissal;
- d. their right of appeal (see section 7);
- e. that a note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- f. that further misconduct may lead to further disciplinary action which could include dismissal;
- g. that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

**7. APPEALS**

7.1

An officer who wants to appeal against a dismissal or any other level of formal disciplinary sanction should inform the Head of Governance & Business Support within ten working days of being told the decision in writing. The officer must explain the grounds for the appeal, specifying whether it relates to the facts of the matter, the level of sanction imposed or the way the procedure was followed.

7.2

All appeals will be considered by a panel of three members of the Employment and Appeals Committee.

7.3

The purpose of an appeal is:

- a. to review the decision taken;
- b. to consider whether the procedure has been followed correctly.

- 7.4 An appeal is not a re-hearing of the disciplinary hearing, but a review of the decision. The outcomes open to the appeal committee are to:
- a. uphold the appeal;
  - b. reject the appeal in full;
  - c. reject the appeal in part and impose a lower level of warning;
  - d. in exceptional circumstances, reject the appeal and impose a higher level of warning up to and including a final written warning.

## 8. HANDLING GROSS MISCONDUCT

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- 8.1 Some of the offences which may be regarded as gross misconduct are (this list is not exhaustive).
- a. Theft or incitement to steal, unauthorised use or removal of the council's, a service user's, a client's or a fellow employee's property, fraud or fraudulent falsification of accounts or other official records.
  - b. Falsification of time-sheets, expenses claims or other records, providing false and misleading information.
  - c. Fighting or physical assault.
  - d. Harassment or discrimination on the grounds of race, gender, sexuality, disability, age or religious belief, or other grossly offensive behaviour.
  - e. Deliberate damage to council or a fellow employee's property.
  - f. Accepting gifts or bribes for personal gain.
  - g. Inability to carry out normal work through being under the influence of alcohol or other drugs (medically prescribed drugs may be an exception).
  - h. Negligent or wilful failure to comply with legal requirements and council policies and procedures.
  - i. Serious negligence causing unacceptable loss, damage or injury.
  - j. A serious breach of the Code of Conduct.
  - k. Misuse of an employee's official position for personal gain, or for the inappropriate benefit of a friend, colleague or member of the employee's family.
  - l. Serious neglect of duty and responsibility associated with the post.
  - m. Abuse of a service user.
  - n. Non-disclosure of criminal convictions, cautions, and bans e.g. from driving that have occurred during the employees employment with the council.
  - o. Bringing the council into serious disrepute.
  - p. Criminal offences, which relate to, or affect the employee's ability to fulfil the terms of their contract, or have the potential to damage the reputation of the council.
  - q. Serious breach of the council's ICT or Data protection policy.

## 9. ORDER OF CONDUCT OF DISCIPLINARY HEARING

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- 9.1 The Hearing Officer will begin the formal hearing by
- a. introducing the people present
  - b. explaining the purpose of the meeting
  - c. checking any arrangements for representation
  - d. outlining the format to be followed
- 9.2 The Investigating Officer presents the case from their investigation, referring to any documents and witnesses.
- If they call a witness -
- a. they will question the witness
  - b. the employee or their representative may question the witness
  - c. the Hearing Officer and his advisor may ask questions of the witness
- 9.3 The Officer or their representative can then question the Investigating Officer.
- 9.4 The Hearing Officer and his advisor may question the Investigating Officer.
- 9.5 The Officer or their representative presents the officer's response - which will include any mitigation, referring to documents and witnesses where appropriate.
- If the officer or their representative calls a witness -
- a. They will question the witness
  - b. The Investigating Officer may question the witness
  - c. The Hearing Officer and their advisor may ask questions of the witness
- 9.6 The Investigating Officer questions the officer or their representative on their response to case.
- 9.7 The Hearing Officer and their advisor may question the officer or their representative.
- 9.8 Summing up by each side. The Investigating Officer sums up case first. The Officer/representative sums up last. New evidence should not be introduced during summing up, however the Hearing Officer reserves the right to seek further information where it appears that there may be new evidence that could affect the outcome of his decision.
- 9.9 The Hearing Officer and their advisor adjourn to consider and decide on whether the allegations are substantiated and (taking into account any current warning) on any consequent action.
- 9.10 The employee is recalled and informed of the decision, the rationale for making that decision, the right of appeal and that written confirmation will follow.

## 10. EQUALITY IMPACT ASSESSMENT AND MONITORING

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- 10.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required

## 11. DATA PROTECTION

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- 11.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.
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**Together**  
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**Disciplinary Policy and  
Procedure  
“Protected Officers”**

**(Chief Executive, Chief Finance Officer  
and Monitoring Officer)**

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## 1. INTRODUCTION

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- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 introduced specific regulations that make distinctive provisions for certain protections to be in place in the event of disciplinary action being considered against a Local Authority Chief Executive, Chief Finance Officer or Monitoring Officer. These officers will be referred to as the 'Protected Officers'.
- 1.2 This formal procedure reflects the requirements of these Regulations and the model procedures within the JNC handbooks for Chief Executives (updated October 2016).
- 1.3 Where an allegation is made relating to the conduct or capability of a protected officer or there is some other substantial issue that requires investigation and where this may potentially lead to dismissal, the matter will be considered as set out below by the Senior Officer's Disciplinary Committee (the Committee). If a recommendation to dismiss has been made it will also be considered by the Independent Panel, comprising of at least two Independent Persons (see 5.3), prior to a final decision by Full Council. This includes situations of significant sickness absence where the next stage may be termination of employment (other than formal ill health retirements).

## 2. GENERAL GUIDELINES AND PRINCIPLES

---

- 2.1 The definition of disciplinary action as set out in the Local Authorities (Standing Orders) (England) Regulations 2001 as amended includes other reasons for dismissal such as capability or some other substantial reason including a breakdown in trust and confidence between the chief executive and the authority or situations of significant sickness absence (other than formal ill health retirements).
- 2.2 In general, informal conciliation is to be preferred if it can bring about a mutually agreed solution to the problems that have arisen. Where potential disciplinary problems (either conduct or performance) are identified then either of the parties may wish to approach the appropriate JNC Side Secretary. The Joint Secretaries are available at any stage in the proceedings to facilitate discussions between the parties and act as impartial conciliators.
- 2.3 Any officer within the scope of this policy has the right to be accompanied by a trade union representative or work colleague at any formal stage of the procedure. They and/or their representative have the right to put their side of the case and to call witnesses.

- 2.4 The Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) provide that the dismissal of a chief executive or protected officer in cases of disciplinary action (as defined by the regulations) may only take place if the proposal to dismiss is approved by way of a vote at a meeting of the authority, after they have taken into account:
- any advice, views or recommendations of a panel (the Independent Panel)
  - the conclusions of any investigation into the proposed dismissal and
  - any representations from the protected officer concerned
- 2.5 The procedure:
- specifies who has the authority to take disciplinary actions
  - ensures that action is not taken without careful investigation
  - gives clear details of time scales and any deadlines associated with the various stages of the procedure.
- 2.6 The HR Manager should be informed of all disciplinary concerns raised in respect of the Protected Officers. North West Employer Organisations will be the Council's main point of contact for advice and guidance on the employment and legal implications of dealing with the complaint. They will also attend and be involved in any part of the process as appropriate.
- 2.7 If the officer concerned is a trade union steward or representative, the Council will inform the regional office of the trade union concerned prior to commencement under this procedure.
- 2.8 At all stages in the procedure confidentiality must be respected by all the parties involved.
- 2.9 No officer will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.
- 2.10 The application of this policy and procedure will be non-discriminatory irrespective of an employee's age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation.

### 3. FORMAL PROCEDURE

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- 3.1 **Preliminary Investigation**
- 3.1.1 The Committee will, as soon as is practicable inform the protected officer in writing of the allegations or other issues under investigation and provide him/her with any evidence that the Committee is to consider and his/her right to present oral evidence.

- 3.1.2 The protected officer will be invited to put forward written representations and any evidence including any written evidence from witnesses. The Committee will also provide the opportunity for the protected officer to make oral representations. At this initial point in the procedure, it is not anticipated that witnesses will be called; the discretion to do so lies solely with the Committee.
- 3.1.3 The Committee will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the protected officer before taking further action.
- 3.1.4 The Committee will decide whether
- the issue requires no further formal action under this procedure or
  - the issue should be referred to an Independent Investigator.
- 3.1.5 The Committee will inform the protected officer of its decision without delay.
- 3.2 **Suspension**
- 3.2.1 Where there is enough evidence to suggest that the protected officer may be guilty of gross misconduct or where the officer's continuing presence at work compromises the investigation or impairs the efficient exercise of the Council's functions, the officer will be suspended from duty.
- 3.2.2 The decision to suspend will be made by the Committee having taken into consideration appropriate employment/HR advice. This will normally be carried out in person with the protected officer either by the full Committee or individually by the Committee Chair who ultimately has the delegated power to suspend. In certain circumstances however it may be that the protected officer is informed in writing of the decision to suspend.
- 3.2.3 The protected officer will receive confirmation of the suspension in writing at the earliest opportunity stating the reasons for the suspension, who they may contact within the Council while they are suspended and that suspension will be on full pay and should last no longer than 2 months (unless there are exceptional circumstances).
- 3.2.4 It will be made clear to the officer that suspension is not a disciplinary penalty and that it will not prejudice any future disciplinary hearing.
- 3.2.5 During the course of the investigation, the Independent Investigating Officer may need to review the suspension and recommend:
- that the Council terminates any suspension of the officer;
  - that any such suspension must continue after the expiry of 2 months.
- 3.2.6 **Pay during Period of Suspension**
- Protected Officers will normally continue to receive full pay during a period of suspension. However, if certified as unfit to attend for work, owing to ill-health payments will be made in accordance with normal sick pay provisions as set out in their Statement of Particulars.



### 3.3 Appointment of an Independent Investigator

3.3.1 Cases will vary in complexity but the threshold test for the Committee in deciding whether to appoint an Independent Investigator is to consider the allegation or matter and assess whether:

- if it were to be proved, it would be such as to lead to the dismissal or other action which would be recorded on the protected officer's personal file and
- there is evidence in support of the allegation sufficient to require further investigation.

3.3.2 The Committee select the Independent Investigator from a list maintained by the National Joint Secretaries.

### 3.4 The Independent Investigation

3.4.1 Once appointed it will be the responsibility of the Independent Investigator to:

- investigate the issue/allegation
- prepare a report stating in his/her opinion whether the evidence he/she has obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason
- recommend any disciplinary action (if appropriate) or range of actions which appear to him/her to be appropriate for the authority to take against the protected officer.

3.4.2 Where disciplinary action is recommended the HR Manager will arrange a hearing with the Committee.

### 3.5 Cases Involving Child Protection, Vulnerable Adults or Financial Irregularities, or Wider Issues for the Council

3.5.1 Any complaint involving allegations relating to child protection issues or vulnerable adults must be discussed with the Local Authority Designated Officer for children's social care and adult's social care, as appropriate at Lancashire County Council.

3.5.2 In accordance with the Financial Regulations and Financial Procedure Rules the Chief Internal Auditor must be notified of any suspected fraud, theft, irregularity, improper use or misappropriation of the authority's property or resources.

## 4. DISCIPLINARY HEARING

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4.1 If the Committee accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.

- 4.2 The officer must receive formal notice of a disciplinary hearing. The letter must give at least 5 working days' notice of the hearing and will include:
- confirmation that the Committee will act as the Hearing Panel;
  - the date, time and location of the hearing;
  - the investigation report, which will include details of the allegations;
  - any other supporting evidence and any witnesses that will be called;
  - the fact that the officer will have the opportunity to state their case and call and/or question any witnesses;
  - the protected officer's right of representation by a trade union representative or work colleague;
  - any previous warnings that could be taken into account when deciding the level of any disciplinary action;
  - the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
  - the right to submit a written statement to the Hearing Panel.
  - a request that any documents which the officer wishes to be considered and details of any witnesses s/he intends to call are provided to the HR Manager at least 3 working days before the hearing for distribution to the panel.
- 4.3 An appropriate independent employment specialist will attend with the Hearing Panel.
- 4.4 A model order of conduct for the disciplinary hearing is shown in section 8.
- 4.5 The Committee, having considered all associated factors may:
- Take no further action
  - Recommend informal resolution or other appropriate procedures
  - Refer back to the Independent Investigator for further investigation and report
  - Take disciplinary action against the protected officer short of dismissal
  - Propose dismissal of the protected officer to the Council.
- 4.6 If, following an investigation and disciplinary hearing, disciplinary action is required, the following options are available:
- Written Warning
  - Final Written Warning
  - Dismissal, and dismissal with offer of re-engagement

## 5. WHERE DISMISSAL IS PROPOSED

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- 5.1 Where the Committee proposes dismissal, the Regulations require that before notice of dismissal is issued:
- an opportunity has to be given to the executive (Cabinet) to object, and
  - the council must approve the dismissal.
- 5.2 **Executive Objections Procedure**
- 5.2.1 The Monitoring Officer will appoint a 'Proper Officer' to liaise with the Cabinet. If the Monitoring Officer is the one subject to disciplinary proceedings a Proper Officer will be appointed by the Corporate Management Team in liaison with Human Resources.
- 5.2.2 The Committee will inform the Proper Officer that it is proposing to the council that the protected officer be dismissed and that the executive objections procedure should commence.
- 5.2.3 The Proper Officer will notify all members of the executive of:
- The fact that the Committee is proposing to the council that it dismisses the protected officer
  - Any other particulars relevant to the dismissal
  - The period by which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Executive to the Proper Officer
- 5.2.4 At the end of this period the Proper Officer will inform the Committee either:
- That the Leader has notified him/her that no members of the Executive have any objection to the dismissal
  - That an objection or objections have been received and provide details.
- 5.2.5 The Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the Committee will act accordingly and may commission further investigation by the Independent Investigator and report if required.
- 5.2.6 Having satisfied itself that there are no material and well-founded objections to the proposal to dismiss, the Committee will inform the protected officer of the decision and put that proposal to the Independent Panel along with the Independent Investigator's report and any other necessary material.
- 5.3 **The role of the Independent Panel**
- 5.3.1 Where the Committee is proposing dismissal, this proposal needs to go before the Independent Panel which must be appointed at least 20 days before the meeting of Full Council at which the recommendation for dismissal is to be considered.



- 5.3.2 The Independent Panel should comprise of at least two independent persons appointed by the Council in accordance with Regulations made under Section 28(7) of the Localism Act 2011.
- 5.4 **The role of Full Council**
- 5.4.1 The Council will consider the proposal that the protected officer should be dismissed and must take into account:
- Any advice, views or recommendations of the Independent Panel
  - The conclusions of the investigations into the proposed dismissal
  - Any representations from the protected officer
- 5.4.2 The protected officer will have the opportunity to appear before Full Council and put his or her case forward before a decision is taken. They will have the right of representation at this meeting.
- 5.4.3 The Council is at liberty to reject the proposal to dismiss. It can then decide on the appropriate course of action which could include substituting a lesser sanction or referring back to the Committee to determine that sanction.
- 5.4.4 It should be noted that the Council's decision is the final stage in the process and in effect constitutes the appeal stage as well.

## 6. APPEALS

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- 6.1 **Appeals against dismissal**
- Where the Committee has made a proposal to dismiss; the hearing by Full Council will also fulfil the appeal function.
- 6.2 **Appeals against action short of dismissal**
- If the Committee takes action short of dismissal, the protected officer may appeal to the Council's Employment and Appeals Committee. They will consider the report of the Independent Investigator and any other relevant information. The protected officer will have the opportunity to appear at the meeting and state his/her case.
- 6.3 The decision of the Appeals Committee will be final.

## 7. EXAMPLES OF GROSS MISCONDUCT

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7.1 Some of the offences which may be regarded as gross misconduct are (this list is not exhaustive):

- theft, unauthorised use or removal of the council's, a service user's, a client's or a fellow employee's property;
- falsification of time-sheets, expenses claims or other records;
- fighting or physical assault;
- sexual or racial harassment;
- harassment or discrimination on the grounds of race, gender, sexuality, disability, age or religious belief;
- deliberate damage to council or a fellow employee's property;
- accepting gifts or bribes for personal gain;
- inability to carry out normal work through being under the influence of alcohol or other drugs (medically prescribed drugs may be an exception);
- negligent or wilful failure to comply with legal requirements and council policies and procedures;
- deliberate disregard for safety rules;
- serious negligence causing unacceptable loss, damage or injury;
- a serious breach of the Code of Conduct;
- misuse of an employee's official position for personal gain, or for the inappropriate benefit of a friend, colleague or member of the employee's family;
- serious neglect of duty and responsibility associated with the post;
- failure to comply with a reasonable management instruction, despite being warned of the consequences;
- abuse of a service user;
- Non-disclosure of criminal convictions, cautions, and bans e.g. from driving that have occurred during the employees employment with the council;
- bringing the council into serious disrepute;
- criminal offences, which relate to, or affect the employee's ability to fulfil the terms of their contract, or have the potential to damage the reputation of the council.

## 8. ORDER OF CONDUCT OF DISCIPLINARY HEARING

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- 8.1 The Hearing Panel Chairman will begin the formal hearing by
- introducing the people present
  - explaining the purpose of the meeting
  - checking any arrangements for representation
  - outlining the format to be followed
- 8.2 The Independent Investigating Officer presents the case from their investigation, referring to any documents and witnesses.
- If they call a witness -
- they will question the witness
  - the employee or their representative may question the witness
  - the Hearing Panel and their advisor may ask questions of the witness
- 8.3 The Officer or their representative can then question the Independent Investigating Officer.
- 8.4 The Hearing Panel and their advisor may question the Independent Investigating Officer.
- 8.5 The Officer or their representative presents the officer's response - which will include any mitigation, referring to documents and witnesses where appropriate.
- 8.6 If the officer or their representative calls a witness -
- They will question the witness
  - The Independent Investigating Officer may question the witness
  - The Hearing Panel and their advisor may ask questions of the witness
- 8.7 The Independent Investigating Officer questions the officer or their representative on their response to case.
- 8.8 The Hearing Panel and their advisor may question the officer or their representative.
- 8.9 Summing up by each side. The Independent Investigating Officer sums up the case first. The Officer/representative sums up last. New evidence should not be introduced during summing up. However, the Hearing Panel reserves the right to seek further information where it appears that there may be new evidence that could affect the outcome of that decision.
- 8.10 The Hearing Panel and their advisor adjourn to consider and decide on whether the allegations are substantiated and (taking into account any current warning) on any consequent action.
- 8.11 All parties are recalled and informed of the decision, the rationale for making that decision and that written confirmation will follow.

- 8.12 Where the decision is to issue a sanction short of dismissal, the officer will also be informed of their right of appeal.
- 8.13 Where the decision is to recommend dismissal or dismissal with an offer of re-engagement the matter will be referred to Full Council and action will continue as 5.4 above.

## 9. EQUALITY IMPACT ASSESSMENT AND MONITORING

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- 9.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

## 10. DATA PROTECTION

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- 10.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.

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# Grading Review and Appeal Procedure

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## 1. STATEMENT OF INTENT

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- 1.1 Wyre Council is committed to ensuring that all staff are rewarded fairly in relation to the roles to which they are appointed. The current economic climate and in particular the reduction in funding from Central Government means that staffing reviews are now more frequently undertaken. Consequently, roles change in relation to complexity, level of duties, accountabilities and responsibilities. Such changes ultimately require a review of the grade for the post.

## 2. PURPOSE AND SCOPE

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- 2.1 This document sets out the process that should be followed when:
- a new post is created;
  - a staffing review identifies that a post has changed significantly;
  - a post holder has taken on additional responsibilities over a period of time;
  - it is believed that an equivalent job is more highly graded;
  - an existing employee is dissatisfied with their grade.

Managers should identify significant changes in job roles and not allow employees to reduce or take on additional responsibilities without considering the impact on the grading of the post.

The document applies to all Wyre Council employees engaged on National Joint Council for Local Government Services [Green Book] conditions of service and/or whose jobs have been evaluated using the GLPC Job Evaluation Scheme.

## 3. THE EVALUATION PROCEDURE

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- 3.1 Changes to staffing resources are documented and approved using the Officer Delegation Report (ODR). The Head of Service will complete the ODR in consultation with the Corporate Director and produce job descriptions and person specifications for the new or amended positions.
- 3.2 Management will ultimately determine the duties and responsibilities of posts. However where changes are being made to the post of an existing employee, the manager will formally consult with the post holder regarding the content of the revised job description.

3.3 Where the proposals create a new position or affect the duties and responsibilities of an existing post the ODR and the supporting documentation should be forwarded to the Human Resources Advisor with responsibility for job evaluation to provide an initial assessment and instigate a formal job evaluation of the role by a Job Evaluation Panel.

3.4 The Job Evaluation Panel should be comprised of at least two trained staff including a trained Trade Union Official and a member of Human Resources. For new positions the panel should be comprised of a minimum of three trained staff. Where possible, and when deemed appropriate by the Human Resources Manager this will include one trained Trade Union Official, the Human Resources Manager (or representative) and a nominated HR Advisor as a chairperson. Whilst union representation will be sought in the first instance, where there is deemed to be a conflict of interest, unequal representation across council services or a lack of trained trade union officials to move the evaluation forward swiftly, a trained member of staff can be used in place of a trained union official. The trained member of staff would be someone who was independent of the job evaluation process. This decision rests with the Human Resources Manager or a Corporate Director where the Human Resources Manager is unavailable or the conflict of interest relates to them.

Once the initial JE Assessment is validated and the ODR is approved the JE Assessment will stand for a period of 12 months from the date of appointment to the new/amended post. If after 12 months the employee is dissatisfied with their job evaluation the employee has the right to request a review.

3.5 The 12 month review is a formal procedure that allows for the 'testing' of a new job description and initial job evaluation assessment. The post holder is given the opportunity to draw on the 12 months experience of working in the post and put forward any additional information to support the application. The application for review should be made no later than 20 working days after the end of the 12 month period

## 4. REQUEST FOR REVIEW

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4.1 An employee who is dissatisfied with their job evaluation may ask for a review on one or more of the following grounds:

- a review is requested by an existing employee after 12 months in post;
- an existing employee is dissatisfied with their grade;
- it is believed that an equivalent job is more highly graded;
- the job has changed significantly since the initial evaluation.



It should be noted that:

- an increase in the volume of work undertaken by the post holder would not necessarily result in an increase in the job size sufficient to warrant re-grading;
- it will not be appropriate to consider individual factor elements identified as part of the review in isolation, all other factor levels will also be re-evaluated;
- this procedure could lead to a re-evaluation that results in an increase or decrease in salary.

4.2 The application should be submitted to the Human Resources Manager on the appropriate form (see Appendix 1 of this document). The form mirrors the factors used in the GLPC Job Evaluation process and each request should clearly state the basis for the request and provide as much information as possible to support the application.

4.3 On receipt of the request for review, the Human Resources Advisor responsible for Job Evaluation will review the application and meet with the employee and/or Head of Service to ensure that the information provided is accurate and complete.

It may also be necessary to meet with other job holders if the post is a generic position. Evaluation of generic positions must have a 100% agreement of all post holders for the evaluation to be complete and all signatures must be obtained on the request for regrade form by a nominated representative of that group.

Human Resources will arrange for an appeal hearing within 10 working days of receiving the application and will be responsible for presenting the application and all related information to the Job Evaluation Panel for a review of the position.

If required, the panel may call on the employee, line manager or Head of Service to attend briefly to clarify points within the appeal.

4.4 New or changed posts (i.e. an application made following a 12 month review period): if successful the agreed effective date will be the date that the employee was appointed to the role.

4.5 All other posts: If successful the agreed effective date will be the date that the employee submits their application to the Human Resources Manager.

4.6 If no agreement is reached the post holder will be advised in writing of the decision that the post will not be re-graded. The post holder has the right of formal appeal in accordance with the procedure described below. The application for appeal should be made in writing to the Human Resources Manager within 10 working days from the date on the regrading request outcome letter.

## 5. HEARING THE APPEAL

5.1 All appeals received will be referred to a Grading Appeals Panel and will be heard within 20 working days.

5.2 Due to the size of the Authority it will not be possible to restrict the panel members to those who have had no earlier involvement in the job evaluation process. The Grading Appeals Panel will therefore comprise of a minimum of five trained staff which should include a Corporate Director, Head of Service and Trade Union Official that have not been previously involved with the evaluation and a HR Advisor and Trade Union representative from the original job evaluation panel.

Where there is deemed a conflict of interest, unequal representation across council services or a lack of trained Trade Union officials to move the evaluation forward swiftly, a trained member of staff can be used in place of a trained union official. This decision will be made by the Corporate Director hearing the appeal.

5.3 The employee must be given at least 5 working days' notice of the time and date of the appeal hearing and if they wish, their representative has the right to attend the meeting and present their case. A management representative from the applicant's service area may also be present.

During a pandemic it may be necessary to extend this period to a reasonable length as deemed appropriate by the Corporate Director hearing the appeal.

5.4 After presenting the case the employee, their representative and the management representative will leave the room to allow the Grading Appeals Panel to consult and re-evaluate with the advisors and consider their decision.

5.5 The Grading Appeals Panel will:

- check whether the applicant satisfies one or more of the grounds for appeal - appeals which do not meet one of the grounds for appeal will be rejected and employees will be advised giving reasons for the rejection;
- consider the original evaluation, the job description and all the representations made in respect of the application;
- ascertain whether or not the issue is one that has been subject to a local convention, or one that has been dealt with as part of the moderation or evaluation process previously. In such a case the advisors to the hearing should identify the convention and advise the panel accordingly.
- determine whether or not to uphold the original evaluation or to make changes to the factor levels for the post.

This determination could result in an increase or decrease in the grade of the post.

5.6 The decision of the Grading Appeals Panel will be reached by a majority vote and there is no further right of appeal.

5.7 The employee will be notified by Human Resources of the outcome of their appeal within 5 working days.

HR will inform the employee, their Head of Service and Director of the outcome and any change to the grade. HR will also inform the Head of Finance and S151 Officer of any changes to the grade.

## 6. EQUALITY IMPACT ASSESSMENT AND MONITORING

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6.1 The operation of this policy will be monitored for its impact on different equality groups in line with the Equality Act 2010. This will enable the council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

## 7. DATA PROTECTION

---

1.1 In implementing this policy, the council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.



REQUEST FOR REVIEW

Name: ..... Contact Details: .....

Post Title: ..... Grade: .....

Directorate: ..... Service: .....

Is this job covered by a generic job description? Yes [ ] No [ ]  
(i.e. Are there other people doing the job covered by this job description)

If so, is this a group application? Yes [ ] No [ ]

If so, please name all those who are submitting this appeal / re-grading request: [Please continue on another sheet if required]

.....  
.....

\_\_\_\_\_

I wish to appeal as the job evaluation scheme has been wrongly applied to my post.	
I wish to appeal because the job information provided at the evaluation stage was not complete.	
I wish to appeal as I believe that an equivalent job is more highly graded.	
I wish to apply for a re-grading because my post has changed significantly since the initial job evaluation.	

**APPEAL / RE-GRADING EVIDENCE** – In order for the Job Evaluation panel to assess each area fully, information and examples supporting the application must be provided for ALL factor levels. This ensures that the panel use the most up to date information with regard to your current role and responsibilities when assessing your regrade application. Incomplete forms will be returned unassessed.

It is the responsibility of the post holder to supply all relevant information to assist the grading process. It is important to understand that scores may decrease as well as increase as part of the process.

Where a particular task or activity is referenced, please indicate the frequency this is undertaken, for example; three times a week I'm required to use a ride on mower for more than 2 hours or 20% of my week is spent driving to/from sites across the borough.

Additional information such as appendices must be clearly referenced to the appropriate factor(s).

<i>Factor Level</i>	Please include all relevant evidence.
<b>Supervision and Management of People</b>	
<b>Creativity and Innovation</b>	

<b>Contacts and Relationships</b>	
<b>Decisions – Discretion</b>	
<b>Decisions – Consequences</b>	
<b><i>Factor Level</i></b>	<b>Please include all relevant evidence.</b>
<b>Resources</b> cash plant/equipment	

stocks/materials data systems buildings	
<b>Work Environment</b> Work Demands	
<b>Work Environment</b> Physical Demands	
<b>Work Environment</b> Working Conditions	
<b>Work Environment</b> Work Context	

<b>Knowledge and Skills</b>	

I / we have also enclosed additional information in support of my/our application / appeal and give the following explanation as to why I/we think it should be included.

<b>Description of Additional Information.</b>

Employee(s) Signature: ..... Date: .....  
 .....  
 .....  
 .....

---

For Office Use Only



**Head of Service Report.** You should include your own observations on the evidence provided and confirm that the information is accurate and complete. Please also state whether there are any other factors that should be taken into consideration as part of the process.

Signed: ..... Date: .....  
Head of Service.

The completed form should then be forwarded to the Human Resources Manager.

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# Time Off for Trade Union Duties

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## 1. INTRODUCTION

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1.1 Wyre Council values the importance of positive working relations between Elected Members, managers and employees in the delivery of Council Services.

1.3 Trade Union representatives have a statutory right to time off, both paid and unpaid, for trade union duties, activities and training. It is for the Council to determine the appropriate level of time off (paid and/or unpaid) that will be granted to Trade Union representatives in accordance with this Policy.

The provisions within this Policy comply with the relevant statutory provisions for time off for trade union activities and with the guidance contained in the ACAS Code of Practice on Time Off for Trade Union Duties and Activities.

The amount of time off is determined by the nature of activities, operational demands and whether or not the representative belongs to a recognised trade union.

1.4 Within this Policy, the term "Trade Union Representative" is intended to cover: Trade Union Officials, Trade Union Shop Stewards, Trade Union Representatives and, where appropriate, Union Learning Representatives and/or Safety Representatives.

1.5 A trade union is "recognised" by an employer when it negotiates agreements with employers on pay and other terms and conditions of employment on behalf of a group of workers. This process is known as 'collective bargaining'.

A trade union may seek recognition in an organisation by voluntary or statutory means. Wyre Council have formally 'recognised' the following unions: Unison, GMB and Unite.

Where a non-recognised Trade Union wishes to be recognised by the Council for collective bargaining and representation purposes, they must make a written application to the Head of Business Support.

## 2. TIME OFF FOR TRADE UNION DUTIES

---

2.1 Wyre Council will grant union representatives reasonable time off with pay during working hours to undertake the following duties:

1. Negotiation in connection with matters for which the trade union is recognised for collective bargaining purposes i.e.
  - terms and conditions of employment, e.g. pay, working hours, holidays, pensions, sickness absence arrangements, notice periods, training, learning, equality and diversity;
  - physical conditions in the workplace, e.g. workplace environment and

- operation of equipment or machinery;
- allocation of work or duties, including flexible working arrangements, work-life balance issues, job evaluation and grading;
- appointment (or failure to appoint) and termination or suspension of employment or the duties of employment of one or more workers (e.g. recruitment and selection policies, redundancy and dismissal arrangements);
- disciplinary matters, e.g. disciplinary procedures, including representing or accompanying workers during the disciplinary process and acting as a witness before agreed appeal bodies or tribunals;
- trade union membership (i.e. representational arrangements, any union involvement in the introduction of new workers);
- procedures for negotiation and consultation e.g. collective bargaining, grievance procedures and joint consultation arrangements.

2. Obtaining information from, and consulting with Wyre Council on redundancy (as identified under s.188 of TULR(C)A).

3. Receiving information from, and consulting with Wyre Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

2.2 Trade union representatives are statutorily entitled to take a reasonable amount of paid time off to accompany a worker at a disciplinary or grievance hearing regardless of whether they belong to a union that has been recognised by Wyre Council.

They must however have been certified by their union as being capable of acting as a worker's companion.

2.3 The Council recognises that on their appointment, trade union representatives need to be suitably trained to undertake their role, and therefore will support the principle of representatives undertaking training that provides the relevant skills and knowledge for their particular role.

Consideration will therefore be given to providing reasonable time off with pay for Trade Union Representatives to undergo training in employee relations and health and safety matters which are relevant to the carrying out of their duties; such training will be approved by the Trade Union Congress or by the independent trade union of which they are an official.

Requests for time off to attend trade union training courses should be made to the relevant Corporate Director. Details of the request should include the course title, the name of the provider, course syllabus and timing and duration of the training, location etc.



- 2.4 Time off may also be considered for trade union representatives and trade union members to represent the union at meetings and activities that are not directly related to employee relations between the Council and its employees. Consideration of any request for time off for such purposes will take into account the operational requirements of the service in relation to the employee's job.

Paid time off for delegates to attend other meetings / conferences will be at Management discretion and those wishing to attend should apply to their Corporate Director.

- 2.5 Every employee who is a member of a recognised trade union is entitled to have reasonable time off during working hours in order to take part in trade union activities.

Trade union activities for members may include:

- Attending work place meetings to discuss and vote on the outcome of negotiations with the employer
- Meeting trade union officials to discuss issues relevant to the workplace
- Voting in union elections
- Meeting with Trade Union Learning Representatives.

Where trade union representatives intend holding meetings with their members these should, unless there are exceptional circumstances be agreed by the relevant Head of Service and take place immediately before or at the end of normal working hours / shifts or during meal or other break times, to ensure that disruption to services are minimised.

Paid time off for Trade Union Members in these circumstances will be at the discretion of the relevant Corporate Director and will normally be in relation to choosing trade union representatives or giving and receiving information and /or consultation on Wyre Council matters.

Branch officials should always consult with Human Resources in such cases.

- 2.6 There is no right to time off for Trade Union activities which themselves consist of industrial action or any other action being taken in the furtherance of a trade dispute.

Examples would include attending a strike, rally or a demonstration during working hours. However, where a Trade Union Representative is not taking part in industrial action, but undertaking duties connected with the dispute e.g. attendance at related meetings with the Council about the dispute including discussions about exemptions, normal arrangements for time off with pay as outlined in this Policy will apply.

### 3. PROCEDURES FOR REQUESTING TIME OFF

---

- 3.1 In order to minimise disruption to Wyre Council business, line management should be notified of all scheduled trade union meetings. All meetings should be diarised and other than in exceptional / emergency circumstances, requests for paid / unpaid time off should be made in advance.
- 3.2 Requests for time off for extended periods such as training should be made in writing to the relevant Corporate Director using the pro forma 'Request for Time off for Trade Union Duties and Activities'.

All requests for time off will be considered on an individual basis with due regard to efficient running of the service. Managers must ensure that all requests are dealt with promptly.

N.B. Corporate Director may, if they wish, delegate authorisation of requests for time off to an appropriate level of line management within their Service Area, to enable requests to be determined as quickly as possible.

All trade union representatives are required to keep a record of all time off taken during office/ working hours using the 'Log of Time off for Trade Union Duties and Activities'. This information should be sent to Human Resources on a quarterly basis so that the data can be collated and published in accordance with the Code of Practice on Data Transparency.

- 3.3 Both parties must accept the need to be flexible and the determination of reasonableness will ultimately depend on the needs of the business at the time of the request. However, managers will give consideration to the nature and timing of the request, the amount of time off previously granted or planned for the future, and the number of representatives or members seeking time off within a given period.

### 4. EQUALITY IMPACT ASSESSMENT AND MONITORING

---

- 4.1 The operation of this policy will be monitored for its impact on different equality groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

### 5. DATA PROTECTION

---

- 5.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.