



Employment and Appeals Committee Agenda

Wyre Borough Council
Date of Publication: 18 October 2019
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**Employment and Appeals Committee meeting
on Monday, 28 October 2019 at 6.00 pm in
Committee Room 2, Civic Centre, Poulton-Le-Fylde**

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 1 - 2)

To confirm as a correct record, the minutes of the previous meeting of the Employment and Appeals Committee.

4. Policy Review

(Pages 3 - 6)

Report of the Head of Business Support.

- (a) Domestic Abuse in the Workplace (Pages 7 - 14)
- (b) Equal Opportunities (Pages 15 - 22)
- (c) Extended Authorised Absence (Pages 23 - 30)
- (d) Preventing Illegal Working (Pages 31 - 40)

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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, 15 July 2019 at the Committee Room 2, Civic Centre, Poulton-Le-Fylde.

Employment and Appeals Committee members present:

Councillors R Amos, Armstrong, Lady D Atkins, Baxter, P Ellison, Fairbanks, George and Holden

Apologies for absence:

Councillor Le Marinel

Other councillors present:

Councillor I Amos

Officers present:

Liesl Hadgraft, Head of Business Support and Monitoring Officer
Duncan Jowitt, Democratic Services and Councillor Development Officer

No members of the public or press attended the meeting.

1 Election of Chairman and Vice Chairman

Councillor Rita Amos was elected as Chairman and Councillor Alice Collinson was elected as Vice Chairman.

2 Declarations of interest

The head of business support declared a personal but not significant interest in item 5e of the agenda in her role as Monitoring Officer as it was one of the "Protected Officer" posts.

3 Confirmation of Minutes

The minutes of the previous meeting held on 25 February 2019 were agreed as an accurate record by those who attended.

4 Policy Review

The head of business support submitted a report presenting five of the

council's existing human resources policies that had been reviewed and updated.

Members of the committee asked appropriate questions related to the content of the policies and the head of business support provided detailed and comprehensive responses.

Decision taken

The committee approved the following reviewed human resources policies:

- Retirement Policy and Procedure
- Flexible Retirement Policy
- Social Media Policy
- Employee Code of Conduct
- Disciplinary Policy and Procedure "Protected Officers"

The meeting started at 6.00 pm and finished at 6.39 pm.

Date of Publication: 17 July 2019



Report of:	Meeting	Date
Human Resources	Employment and Appeals Committee	28 October 2019

Policy Review

1. Purpose of report

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

2. Outcomes

2.1 The amendment to existing policies and procedures.

3. Recommendation/s

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	Domestic Abuse in the Workplace	Appendix 1	Reviewed
	Equal Opportunities	Appendix 2	Reviewed
	Extended Authorised Absence	Appendix 3	Reviewed
	Preventing Illegal Working	Appendix 4	Reviewed

5.2 The Domestic Abuse in the Workplace policy has been updated for readability and useability purposes. It has also updated to include a current

definition which is in line with that within the council's Safeguarding Adults Policy.

- 5.3 The Equal Opportunities policy has been amended to include examples for perceptive and associative discrimination.
- 5.4 The Extended Authorised Absence policy has been reviewed with only very minor amendments.
- 5.5 The Preventing Illegal Working policy has been updated to include the new online checking facility introduced by the Home Office in January 2019.

Financial and legal implications	
Finance	There are no specific Finance issues associated to this report.
Legal	There are no specific Legal issues associated to this report. However failure to comply with appropriate legislation may expose the Council to litigation.

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	risks/implications	✓ / x
community safety	x	asset management	x
equality and diversity	x	climate change	x
sustainability	x	ICT	x
health and safety	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
Head of Business Support	01253 887316	Liesl.hadgraft@wyre.gov.uk	October 2019

List of background papers:		
name of document	date	where available for inspection

List of appendices

- Appendix 1 Domestic Abuse in the Workplace
- Appendix 2 Equal Opportunities
- Appendix 3 Extended Authorised Absence
- Appendix 4 Preventing Illegal Working

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Domestic Abuse and the Implications in the Workplace Policy

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1. Policy Statement

- 1.1 Wyre Council recognises that domestic abuse is a widespread problem that can not be ignored and that everyone has the right to a life free from abuse in any form. The council has signed up to the White Ribbon campaign as a demonstration of its commitment to stop domestic violence.
- 1.2 The council is opposed to and does not tolerate domestic abuse. We are committed to ensuring that any employee who is the victim of domestic abuse has the right to raise the issue with their employer in the knowledge that they will receive appropriate support and assistance.
- 1.3 All employees have the right to raise the issue of domestic abuse with the council in the knowledge that the issue will be treated with sensitivity and confidentiality and that an effective support system will be available to them. The council may be an employee's first and only contact regarding a domestic abuse issue. It is therefore essential that employees who experience domestic abuse feel safe and supported in order that they can talk about their experiences.
- 1.4 Employees experiencing domestic abuse will be expected to take a responsible attitude towards ensuring their own health and safety and that of their colleagues when the abuse impacts upon the workplace.
- 1.5 The council acknowledges that while it is mainly women who experience domestic abuse this policy applies equally to men who need advice or support.

2. Aims of the Policy

- 2.1 To demonstrate the Council's commitment to and support for any employee experiencing domestic abuse.
- 2.2 To provide advice about appropriate action to take should anyone be experiencing domestic abuse.
- 2.3 To publicise support for anyone experiencing domestic abuse.
- 2.4 To set out what the Council may do if an employee is found to be a perpetrator of domestic abuse.

3. Definition

- 3.1 The official Government definition of domestic violence and abuse is:

“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse:

- Psychological
- Physical
- Sexual
- Financial

- Emotional

Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is: an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.”

- 3.2 This definition includes honour based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.
- 3.3 The majority of domestic abuse is committed by men towards women. It can also involve men being abused by their female partners, abuse in same sex relationships, and by young people towards other family members, as well as the abuse of older people in families. Domestic abuse occurs irrespective of social class, racial, ethnic, cultural, religious or sexual relationships or identity.

4. Impact of Domestic Abuse in the Workplace

- 4.1 Employees experiencing domestic abuse may receive harassing or repeated calls, texts, unwelcome notes left on their cars or unplanned and unannounced visits at work.
- 4.2 They may also be stalked or physically assaulted while at or travelling to and from work. Colleagues may also be followed to or from work and/or be subject to questioning about the employees contact details or location.

5. Manager's Role

- 5.1 A manager may become aware or suspect that an employee is experiencing domestic abuse although the employee might not feel able to raise the issue with anyone. Managers should be alert to signals such as frequent absence from work, poor performance or a partner frequently making contact.

In these cases offering appropriate support may mean that the employee is able to deal with their situation more effectively. The issues surrounding domestic abuse can be complex and sensitive and if managers have concerns they should seek advice from Human Resources.

- 5.2 Managers must have a sensitive approach and ensure that employees are offered support if the issue of domestic abuse has been disclosed to them. Managers are advised:
 - a) To ensure privacy and confidentiality as far as possible;
 - b) To ensure a non-judgemental approach, taking the employee seriously and above all, listening and believing what they are told;
 - c) That an employee may wish to involve a third party i.e. a friend, rather than their line manager;

- d) That additional issues such as age, gender, sexuality, ethnicity, race and disability may also face the employee and managers should be aware of this;
- e) To support the employee in whatever they decide to do by exploring the support and options available to them.
- f) Ensure the employee has information regarding the Council's Employee Assistance Programme..
- g) Refer to Occupational Health and signpost to other external agencies as appropriate.

5.3 Managers must maintain a secure environment for all employees. In cases of domestic abuse the Council's risk assessment procedure should be followed and an individual risk assessment carried out as appropriate To ensure a secure environment it may be necessary to consider, with the employee concerned, the possibility of informing colleagues of any potential risk.

5.4 Colleagues should always be reminded of the confidentiality of the issue and information should only be disclosed with the express permission of the employee concerned.

5.5 Additional courses of action could include:

- a) reminding reception and switchboard staff in particular, but all employees in general, that personal details of employees are not to be divulged;
- b) changing work times and patterns, along with office layout to ensure the employee is not visible through the windows or front reception points;
- c) offering changes in specific duties e.g. removal from reception duties, or redeployment to another post if changes cannot be easily made;
- d) agreeing what to tell colleagues and advising them what response they should give if the abuser telephones or calls at the work place;
- e) reviewing systems for recording whereabouts of employees during the working day and minimising the risks to lone workers from outside visits/meetings;
- f) recording all incidents of violence or threatening behaviour via the Council's Incident Reporting Procedure. Incidents can include persistent phone calls, emails or visits by the alleged perpetrator. Details of witnesses to incidents should also be recorded. If legal proceedings follow, the records could be used as evidence;
- g) considering offering paid or unpaid leave or any other flexible working options for employees experiencing domestic abuse in accordance with the Council's Flexible Working and Work Life Balance Policy;
- h) changing payment arrangements, and/or contact details;
- i) encouraging staff to seek advice of the professionals and providing advice on useful contacts;
- j) referral, with employee's consent, to appropriate counselling services.

- 5.6 Attendance at court may be necessary if criminal charges are brought. Leave will be granted in accordance with the Council's Leave and Work Life Balance Policy.

6. Confidentiality

- 6.1 Managers will reassure employees of confidentiality as far as is practicable and will not share with other members of staff without their permission.
- 6.2 There are, however, some circumstances in which confidentiality cannot be assured. These occur when there are concerns about children or vulnerable adults or where the council needs to act to protect the safety of employees.
- 6.3 In such cases specialist advice will be sought and the employee will be advised as to why the breach is required seeking their agreement where possible.

7. Safety

- 7.1 The council will prioritise the safety of employees if they make it known that they are experiencing domestic abuse.
- 7.2 When an employee discloses domestic abuse a risk assessment will be carried out taking into consideration the specific circumstances. This will help identify what actions can be taken to increase their personal safety at work and at home as well as address any risks there may be to colleagues.
- 7.3 The council will remind staff of the importance of not divulging personal details of other employees, such as addresses, telephone numbers or shift patterns/location.

8. The Council's Approach to Employees who are Alleged or Actual Perpetrators of Domestic Abuse

- 8.1 Employees should be aware that domestic abuse is a serious matter that can lead to criminal convictions.

8.2 **Conduct at Work**

Perpetrators of domestic abuse might use workplace resources such as telephone, fax or email to threaten, harass or abuse their current or former partners, and may involve other colleagues who may or may not be aware of their motives in assisting them.

Such abuse requires an effective employer response because it could be damaging and potentially dangerous for those being abused, as well as possibly bringing the Council into disrepute if the abuse is allowed to continue.

Similarly, proven harassment and intimidation of Council employees by their partner or ex-partner who also works for the Council will be viewed seriously and may lead to disciplinary action being taken.

8.3 **Conduct Outside of Work**

Conduct outside of work (whether or not it leads to police action/a criminal conviction) can also lead to disciplinary action against an employee because of its employment

implications and because it undermines the confidence the Council (as an employer) has in the employee.

8.4 **Taking Action**

Acts of verbal or physical abuse by our employees on or off duty are unacceptable and impact not only on our employment relationship with those employees, but also damages the reputation and good standing of the council.

Under our normal disciplinary procedure, acts of harassment or bullying of fellow employees, clients, customers, suppliers or members of the public visiting the organisation, violent, threatening or abusive behaviour is considered to be gross misconduct and will lead to formal investigation that can lead to dismissal.

Employees should also be aware that conduct outside of work could lead to disciplinary action being taken because of its impact on the employment relationship and the reputation of the council.

We also recognise that perpetrators of domestic abuse may wish to seek help and support voluntarily. We commend staff accepting accountability for their actions and we commit to providing them with access, when appropriate, to specific support or counselling services e.g. domestic abuse perpetrator training or anger management training.

9. Equality Impact Assessment and Monitoring

- 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

- 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 Act requirements.

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Equal Opportunities Policy

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1. Our Commitment

- 1.1 The Council is committed to providing equal opportunities in employment and to eliminating unlawful discrimination in employment or to customers.
- 1.2 This policy is intended to assist the Council to put this commitment into practice. Compliance with this policy should also ensure that employees do not commit acts of unlawful discrimination.
- 1.3 Striving to ensure that the work environment is free from harassment and bullying and that everyone is treated with dignity and respect is an important aspect of ensuring equal opportunities in employment. The Council has a separate Dignity at Work Policy, which deals with those issues.

2. The Law

- 2.1 The Equality Act 2010 sets out protected characteristics that qualify for protection from discrimination, these are as follows:
 - Age
 - Disability
 - Gender reassignment
 - Marriage and civil partnership
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation

It is unlawful to discriminate directly or indirectly in recruitment or employment on grounds of these protected characteristics.

- 2.2 It is unlawful to treat someone less favourably on grounds of disability or age, unless the less favourable treatment can be justified.
- 2.3 Discrimination after employment may also be unlawful, e.g. in refusing to give a reference or in the form of reference given.
- 2.4 It is unlawful to discriminate directly or indirectly in the provision of goods, facilities or services to customers on grounds of the protected characteristics.
- 2.5 It is unlawful to discriminate, without justification, on grounds of disability or to fail to make reasonable adjustments to overcome barriers to using services caused by disability. The duty to make reasonable adjustments includes the removal, adaptation or alteration of physical features, if the physical features make it impossible or unreasonably difficult for disabled people to make use of services.
- 2.6 It is unlawful to victimise someone because he or she has alleged unlawful discrimination or supported someone to make a complaint or given evidence in relation to a complaint.
- 2.7 Some types of harassment or bullying will be unlawful discrimination.

3. Types of Unlawful Discrimination

- 3.1 **Direct discrimination** occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (perceptive discrimination), or because they associate with someone who has a protected characteristic (associative discrimination).

An example of direct sex discrimination would be refusing to employ a woman because she was pregnant.

Unlike the other forms of discrimination, direct discrimination on the grounds of age can be justified if it can be shown that the discriminatory treatment is a proportionate means of achieving a legitimate aim.

This means that:

- there must be a genuine business need behind the measure (such as health and safety reasons or training requirements);
- the measure must, in practice, demonstrably contribute to the achievement of that business aim;
- the measure must be appropriate, when the importance of the business aim is weighed up against the discriminatory effects; and
- there must not be another, less discriminatory, way of achieving the same aim.

Perceptive and associative discrimination are both forms of direct discrimination (see below).

- 3.2 **Perceptive discrimination** is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

An example of perceptive discrimination would be rejecting a male applicant for a job on the basis that it is wrongly thought that the applicant was gay because he came across as camp during the interview.

- 3.3 **Associative discrimination** is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

An example of associative discrimination would be withdrawing an offer of a role to a job applicant after discovering they have a disabled daughter who requires intense care and attention.

- 3.4 **Indirect discrimination** is where a provision, criterion or practice is applied which is such that it would be to the detriment of a considerably larger proportion of the relevant group to which the individual belongs than to others, which is not objectively justifiable and which is to the individual's detriment.

An example of indirect sex discrimination could be requiring everyone to work full time unless there is a good reason, unrelated to sex, as to why the particular job has to be done on a full-time basis, since requiring everyone to work full time will normally adversely affect a higher proportion of women than men.

- 3.5 **Failure to make reasonable adjustments** is where arrangements disadvantage an individual because of a disability and reasonable adjustments are not made to overcome the disadvantage.
- 3.6 **Harassment** is “unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”.
- 3.7 **Harassment by a Third Party** - employers are liable for harassment if they fail to protect employees from persistent harassment by third parties, for example contractors, members of the public, service users.
- 3.8 **Victimisation** is where someone is treated less favourably than others because he or she has alleged unlawful discrimination or supported someone to make a complaint or given evidence in relation to a complaint.

4. Equal Opportunities in Employment

- 4.1 The Council is committed to the elimination of unlawful discrimination in all aspects of employment including recruitment, promotion, opportunities for training, pay and benefits, discipline and selection for redundancy.
- 4.2 Person and job specifications will be limited to those requirements that are necessary for the effective performance of the job. Candidates for employment or promotion will be assessed objectively against the requirements for the job, taking account of any reasonable adjustments that may be required for candidates with a disability. Disability and personal or home commitments will not form the basis of employment decisions except where necessary.
- 4.3 Questions asked as part of the selection process relating to the health of candidates will be limited to those that have been identified as being intrinsic to the role. This will be done through risk assessment with the advice of Occupational Health as appropriate.
- 4.4 The Council will consider any possible indirectly discriminatory effect of its standard working practices, when considering requests for variations to these standard working practices. This may include the number of hours to be worked, the times at which these are to be worked and the place at which work is to be done. The Council will refuse such requests for variations only if the Council considers it has good reasons, unrelated to any prohibited ground of discrimination, for doing so. The Council will comply with its obligations in relation to statutory requests for contract variations. The Council will also make reasonable adjustments to its standard working practices to overcome barriers caused by disability.
- 4.5 The Council will monitor the ethnic, gender and age composition of the existing workforce and of applicants for jobs, and the number of people with disabilities within these groups, and will consider and take any appropriate action to address any problems, which may be identified as a result of the monitoring process.
- 4.6 The Council cannot lawfully discriminate in the selection of employees for recruitment or promotion, but the Council may use appropriate lawful methods, including lawful positive action, to address the under-representation of any group which the Council identifies as such in particular types of job.

5. Dignity at Work

- 5.1 The Council has a separate dignity at work policy concerning issues of bullying and harassment on any ground, and how complaints of this type will be dealt with.

6. Customers, suppliers and other people not employed by the Council

- 6.1 The Council will not unlawfully discriminate against customers using or seeking to use facilities or services provided by the Council.
- 6.2 Employees should report any bullying or harassment by customers, suppliers, visitors or others to their manager who will take appropriate action.

7. Training

- 7.1 The Council will provide training in equal opportunities to managers and others likely to be involved in recruitment or other decisions concerning staff.

8. Employees' Responsibilities

- 8.1 Every employee is required to assist the Council to meet its commitment to provide equal opportunities in employment and the elimination of unlawful discrimination.
- 8.2 Employees can be held personally liable as well as, or instead of, the Council for any act of unlawful discrimination. Employees who commit serious acts of harassment may be guilty of a criminal offence.
- 8.3 Acts of discrimination, harassment, bullying or victimisation against employees or customers are disciplinary offences and will be dealt with under the Council's disciplinary procedure. Discrimination, harassment, bullying or victimisation may constitute gross misconduct and could lead to dismissal without notice.

9. Grievances

- 9.1 If a member of staff considers that they may have been unlawfully discriminated against, they may use the Council's grievance procedure to make a complaint. If the complaint involves bullying or harassment, the grievance procedure is modified as set out in the dignity at work policy.
- 9.2 The Council will take any complaint seriously and will seek to resolve any grievance, which it upholds. Employees will not be penalised for raising a grievance, even if the grievance is not upheld, unless the complaint is both untrue and made in bad faith.
- 9.3 Use of the Council's grievance procedure does not affect employees' right to make a complaint to an employment tribunal. Complaints to an employment tribunal must normally be made within three months of the act of discrimination complained of taking place.

10. Equality Impact Assessment and Monitoring

- 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

- 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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Extended Authorised Absence (EAA) Policy

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Wyre Council Extended Authorised Absence (EAA) Policy

1. Introduction

- 1.1 The Council is committed to equality of opportunity in employment for all staff and to developing work practices and human resource policies that support work-life balance. The Council has developed an EAA scheme to enable employees to take extended periods of unpaid time away from work and to help employees strike a balance between paid work and personal life.
- 1.2 The aims of the EAA Scheme are to attract and retain staff by demonstrating a commitment to their long-term career and personal development, to reduce the number of leavers and resulting recruitment and training costs, to support the Council's Equal Opportunities Policy and to contribute to work-life balance.

2. Details of the Scheme

- 2.1 All periods of EAA are unpaid.
- 2.2 A request for EAA would not normally be considered from an employee who has less than 12 months continuous service.
- 2.3 All requests for EAA will be subject to operational requirements. Consideration will be given to the following issues:
- The technical skills of the employee and the range of similar skills within the Council.
 - The knowledge of the employee and the availability of similar knowledge within the Council.
 - The investment in training and development that has been made by the Council to develop the employee's competence within his/her post.
 - The impact on service delivery and the workload of other employees.
 - The ability/need to recruit a temporary appointment to cover the period of absence and the cost involved.
 - The likely benefits to be realised by the employee and the Council
 - Whether the absence could assist in a career progression opportunity for another member of staff
- 2.4 Employees may apply for a period of EAA of between three months and two years depending on their individual needs. The maximum of two years ensures that Wyre as a council does not find itself at a disadvantage covering roles with limited resources.

- 2.5 A period of EAA may be taken in addition to Maternity Leave, Adoption Leave or Parental Leave or other statutory entitlements that may be available (see appropriate policies).
- 2.6 An employee may seek to take more than one EAA period, but there must be at least three years between each period.

3. Reasons for Taking an EAA

- 3.1 EAA could be taken for any of the reasons listed below, or simply to have a break from paid employment. Possible reasons for a period of EAA could include:

Childcare responsibilities
Caring responsibilities
Travel
Study
To pursue a personal interest
To undertake Territorial Army activities

- 3.2 In certain circumstances EAA may not be the most appropriate arrangement for an employee. Human Resources will ensure that the individual concerned is advised of any suitable alternatives and that these options are fully discussed before any final decisions are made. These alternatives could include: special leave, maternity leave, adoption leave, parental leave, or flexible working.

4. Conditions of Service During a Period of EAA

4.1 Duration

The duration of the EAA will be clearly specified and agreed before commencement of the break, and an employee will not be entitled to return to work before the expected end of the period. However the Council will consider requests to return earlier than previously agreed.

4.2 Service Accrual

The period of the EAA will not be regarded as a break in service in relation to continuity of employment for the purposes of calculation of notice periods and redundancy payments.

However:

The period of EAA will not count as qualifying service for the following:

- incremental progression
- calculation of increased annual leave entitlement
- calculation of increased sick pay entitlement
- long service award

4.3 **Pay and Benefits**

All periods of EAA are unpaid.

The period of EAA is therefore not subject to the sickness absence scheme nor counted for sick pay purposes or occupational maternity pay / adoption leave pay or paternity pay.

There is no entitlement to contractual or statutory annual leave or bank holidays during a career break. There will be no accrual of annual leave during the period of the EAA.

All annual leave, bank holiday entitlement, flexi, TOIL etc. accrued should be taken prior to commencement of the Career Break. No payment in lieu of outstanding leave will be made and no "carry over" of leave allowed unless the employee has been unable to take it because of operational reasons. Any annual leave that has been taken but yet not accrued by the employee will be deducted from the employee's last payment of their salary.

4.4 **Local Government Pension Scheme**

Whilst you are on a period of EAA you will not accrue benefits in the pension scheme which will affect the amount you are entitled to on retirement. Therefore you have the option to pay Additional Pension Contributions (APCs) when you return to work to cover any 'lost' pension.

If you elect to buy back all of your lost pension within 30 days of returning to work then the cost of the contract will be split with the Council paying 2/3rds of the cost. However if your election is received after 30 days of returning to work, or if you elect to purchase some, but not all, of your lost pension you must fund 100% of the APC yourself.

Further information on buying back of lost pension can be attained from Human Resources.

Employees on authorised leave of absence from the Pension Scheme will remain eligible for death-in-service benefits

4.5 **Other Conditions**

- Employees who are required to maintain professional registration will be expected to meet the cost of re-registering on return to work.
- An employee must obtain consent from the Council if they are undertaking paid work for another organisation during EAA. Such consent will not be unreasonably withheld and the requirement is primarily designed to avoid any conflict of interest.
- Employees can continue membership of a trade union and would still be subject to the benefits of membership, providing that subscriptions are kept up to date. The employee would have to make their own arrangements to pay the trade union subscriptions.
- Employees will need to relinquish the Council's property i.e. mobile telephones, laptops, keys, protective clothing etc. prior to an employee commencing their EAA.

- Employees will continue to be subject to, and will abide by Wyre Council's policies and code of conduct during the period of their EAA.
- Contact details and emergency contact information must be kept up to date during the EAA.

5. Keeping in Contact

- 5.1 The employee's Line Manager shall ensure that contact is maintained with employees who are taking EAA. This may include, for example, provision of information through email or inviting them to seminars, training sessions or social events that the Council may organise.
- 5.2 It is particularly important that employees are invited, where practicable, to any training which may be connected with the introduction of new courses, systems or procedures and are kept up-to-date with information on changes which may affect them, such as pay awards, Directorate or section reorganisations or new legislation. Any time spent on such training will be compensated for by the equivalent time off when the employee returns to work.
- 5.3 In addition, employees taking an EAA are encouraged to keep in contact with their section/team during the EAA.

6. Organisational Changes During EAA

- 6.1 If organisational changes occur, the Council will ensure that employees taking an EAA are involved in any consultations or other appropriate procedures as far as possible on the same basis as all other affected employees.
- 6.2 Where an employee's post is likely to become subject to redundancy during the EAA the Council will inform the employee as required by statute and the Council's procedures. It is the employee's responsibility to ensure that the Council has up to date contact details, and is available for consultation.

7. Returning to Work

- 7.1 The actual date of return will be subject to mutual agreement between the employee and the relevant Head of Service or Service Director.
- 7.2 In order to ensure the effectiveness of the EAA Policy, the Council will seek, as far as possible, to place an employee returning from EAA in his/her former job or suitable alternative employment.
- 7.3 Line managers will consider whether it is necessary to arrange for a special period of induction, retraining or re-familiarisation on return to work.
- 7.4 Failure to return at the agreed end date of the EAA will be subject to the provisions of the relevant policy and could result in the termination of the employee's contract of employment.

- 7.5 A request from an employee who wishes to return to work prematurely will be considered, taking into account the reasons, any relevant business considerations and the need to be fair and equitable in the treatment of any temporary replacement.

8. Salary on Return to Work

- 8.1 At the end of EAA, an employee will return to their previous salary uplifted for any agreed pay awards.

9. Resignation During EAA

- 9.1 If an employee decides to resign during EAA, they must submit a written statement of resignation to the Head of Business Support. The contract of employment will normally cease from the date when the resignation is received, i.e. it is not expected that a notice period will be worked.

10. Application Procedure

Employees who wish to take EAA should follow the procedures detailed below:

- 10.1 Apply to his/her Head of Service or Service Director at least three months in advance of the proposed start date of the period of EAA, using the EAA Application Form and forward a copy of the form to the Human Resources team.
- 10.2 A representative of the Human Resources team will arrange to meet with the employee and his/her line manager in order to clarify any aspect that may need resolution.
- 10.3 The Head of Service/ Service Director will consider the request in consultation with a representative of the Human Resources team and the Line Manager and they may decide to approve or refuse the request.
- 10.4 EAA may be refused for operational or financial reasons. If the application is refused, the Head of Service or Service Director will provide reasons for the refusal in writing to the applicant.
- 10.5 If the employee concerned is dissatisfied with the decision, they should follow the procedure laid out below (refusal of EEA).
- 10.6 The date for commencement and termination of the EAA will be by mutual agreement between the employee and their Head of Service or Service Director and will need to take into account outstanding work activities and arrangements for temporary staffing.
- 10.7 Before the EAA commences the relevant line manager should carry out a pre-break interview. The interviews should cover areas of mutual interest including:
- Mechanisms for keeping in touch.
 - Name of contact person.
 - Arrangements for any periods of work/training.
 - Arrangements for returning to work.
 - Pension.

- 10.8 A written record of the pre-break interview should be forwarded to the Human Resources team for entry on to the employee's personnel file.
- 10.9 On returning to work, after completion of the EAA, the employee should be welcomed back by the line manager with a re-entry interview. The interview should cover areas of mutual interest such as:
- Changes within the section/team and Council.
 - Employee's salary, working pattern, pro rata holiday entitlement etc.

11. Refusal of EAA

- 11.1 Staff who feel that they have been unreasonably refused EAA or who feel that they have been victimised for requesting one should, in the first instance, raise the matter with their Head of Service or Service Director and inform the Head of Business Support. They can also consult with their trade union and have the right to raise the matter through the grievance procedure.
- 11.2 The Head of Business Support shall record all complaints. All applications, agreements and refusals shall be monitored, with the aim of bringing about consistency between Directorates/Sections in the way that policies related to work-life balance are implemented throughout the Council.
- 11.3 None of the conditions within this policy affect an employee's right to benefit from any contractual or statutory rights that may govern the entitlement to other forms of leave/absence (paid or unpaid). Any advice or guidance required on these matters can be gained from the Human Resources team.

12. Equality Impact Assessment and Monitoring

- 12.1 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.

13. Data Protection

- 13.1 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.



Preventing Illegal Working Policy and Procedure

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1. Introduction

- 1.1 The Council has a statutory duty to prevent illegal working by carrying out prescribed document checks on all potential and current employees in order to confirm that they have the right to work in the UK.

All checks should be carried out before the employment commences. If it is found that an employee has a time limit on their stay in the UK then these checks must be repeated at least once every 12 months to ensure that there is a continuing right to work here. Additionally if there's a restriction on the type of work they can do and, or, the amount of hours they can work, then we must not employ them in breach of these restrictions.

Failure to carry out such checks could result in a fine of up to £20,000 for each employee found to be working illegally. Furthermore the penalty for knowingly employing someone illegally is up to 2 years in prison plus an unlimited fine.

- 1.2 The Home Office have produced a comprehensive guide for employers and provided that the Council follows this and can demonstrate that all the required document checks are carried out then it will have a legal excuse (known as a statutory excuse) against payment of a civil penalty if it was found to be employing an illegal worker.

2. Who is entitled to work in the UK

- 2.1 There are work restrictions on nationals from certain countries, these could be a restriction on the type of work they can do and, or, the amount of hours they can work.

Swiss Nationals and nationals from the following European Economic Area (EEA) can work in the UK without restriction:

Austria	Greece	Netherlands
Belgium	Hungary	Norway
Bulgaria	Iceland	Poland
Cyprus	Ireland	Portugal
Czech Republic	Italy	Romania
Denmark	Latvia	Slovakia
Estonia	Liechtenstein	Slovenia
Finland	Lithuania	Spain
France	Luxembourg	Sweden
Germany	Malta	

- 2.2 Their immediate family members are also able to work freely in the UK while their adult EEA family members are legally residing and working here.
- 2.3 The Council will always ask for, check and take copies of acceptable documents to confirm immigration status of **all** prospective employees.
- 2.4 **Asylum seekers**

Asylum seekers do not normally have the right to work here and may only be lawfully employed if the Home Office lift restrictions on them taking employment.

2.5 **Students**

Not all international students (those from outside the EEA) are entitled to work while they are in the UK, but some are allowed to take limited employment providing the conditions of their permission to study permit this.

2.6 Where a student does have a limited right to work, the working hours that they may undertake depend on when they applied for permission to come to or stay in the UK, the type of course they are studying and the type of educational provider with whom they are studying.

2.7 **Applications for employment from persons other than those allowed to work in the UK without restrictions (see paragraph 2.1) will only be considered following consultation with the Home Office.**

3. **Checking that a person is entitled to work in the UK**

3.1 **Online Checks**

Historically employers have had to carry out physical checks of documentation (as set out below) however since January 2019 an online facility has been available which requires applicants to confirm their right to work with the home office online before providing their new employer with an access code.

There may be circumstances where an online check is not possible due to the person's immigration status and a manual check will therefore be required.

Currently the online checking service supports checks in respect of those who hold:

- A biometric residence permit;
- A biometric residence card; or
- Status issued under the EU Settlement Scheme (alternatively, these individuals continue to be able to demonstrate their right to work by presenting their EU passport or ID card until the end of the planned implementation period).

3.1.1 **Step 1**

The service works on the basis of the individual sharing their Home Office right to work record by providing a 'share code'.

The employer's part of the service – 'View a job applicant's right to work details' - is then accessed using the share code and the individual's date of birth.

3.1.2 **Step 2**

Check that the photograph on the online right to work check is of the individual presenting themselves for work.

Check confirmation that they have the right to work and are not subject to a condition preventing them from doing the work in question.

3.1.3 **Step 3**

The 'profile' page confirming the individual's right to work will need to be retained and stored securely.

3.2 **Manual Checks**

3.2.1 **What documents are acceptable?**

The documents that are acceptable for proving someone has the right to work in the UK are split into two lists. These lists are called List A and List B. (See Appendix 1)

Any of the documents, or specified combinations of documents, described in List A show that the holder has an **on-going** right to work in the UK.

Any of the documents, or specified combinations of documents, described in List B show that the holder has a right to work in the UK for a **limited period of time**. If the checks are made correctly, this will establish a time-limited excuse. They must then be checked again at least every 12 months if the Council is to be protected from prosecution and penalties.

3.2.2 **Step 1 – Documents to be produced**

All prospective employees (or existing employees, if you are carrying out repeat checks) must be asked to provide one of the single documents, or specified combinations of documents from **List A** or **List B** (see Appendix 1).

Only original documents are to be accepted.

If a new or existing employee is only able to provide documents from List B, these documents must be checked again at least once every twelve months

3.2.3 **Step 2 – Examination of documents**

The Council is required to take all reasonable steps to ensure the validity of the documents produced and that they correspond in every way to the person to be employed. This should be done by:

- checking that photographs are consistent with the appearance of the person; and
- checking that dates of birth listed are consistent across documents and that you are satisfied that these match up with the appearance of the person; and
- checking that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- checking any UK government endorsements (Biometric Residence Permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; and
- satisfying yourself that the documents are genuine, have not been tampered with and belong to the holder; and

- asking for a further document in explanation if you are given two documents which have different names. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.

These documents should also specify that the prospective employee (or an existing employee undertaking a re-check) is allowed to undertake the post.

3.2.4 **Step 3 – Record of documents**

All relevant pages of the document should be photocopied or scanned. Copies of passport or other travel documents must include:

- the document’s front cover and any page containing the holder’s personal details particularly those providing details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details; and
- any page containing UK Government endorsements indicating that the holder has an entitlement to be in the UK and is entitled to undertake the work in question.

Other documents should be copied in their entirety.

- 3.2.5 A record should then be kept of every document that has been copied. The officer who has checked and copied the document should sign and date the copy to confirm that they have checked the original document.

3.3 **Retention**

All copies of the documents taken for manual checks or the ‘profile’ page for online checks should be kept securely in the employee’s HR file for the duration of the employment and for a further two years after the employment has ceased. This will enable the Home Office to determine the Council’s liability if they detect anyone who is employed illegally.

3.4 **Required documentation not produced prior to recruitment**

The Council will refuse to employ any person who fails to produce evidence of their entitlement to work in the UK.

3.5 **Carrying out repeat checks**

If the potential employee provides a document or documents, from List A, this will establish an” excuse” for the duration of their employment.

If the employee presents a document from List B, this is likely to indicate that they only have limited leave to be in the UK. To comply with the regulations and avoid penalty, follow-up checks must be made by repeating steps 1 to 3 **at least once every 6 months** until the individual provides documents indicating that they can remain permanently in the UK.

Document Type	Excuse Type	Frequency of Checks
List A	Continuous	Before employment starts only.
List B - Group 1	Time-limited	Before employment starts and again when permission (as set out in the document checked) expires.

List B – Group 2	Time-limited	Before employment starts and again after six months (as set out in the Positive Verification Notice).
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- 3.6 If the required documentation is not produced, or it is found that the employee is no longer allowed to work or carry out the work in question in the UK the Council must terminate the contract of employment on expiry of the document confirming the right to work.

This action will only be taken in consultation with Human Resources.

4. Transfer of Undertakings (Protection of Employment)

- 4.1 Employees who are acquired as a result of a Transfer of Undertakings (Protection of Employment) transfer will be required to provide the documents as outlined above. The Council will have 60 days from the date of transfer to check and copy the relevant documentation.

5. Avoiding Discrimination

- 5.1 It is important that the Council adopt procedures which protect us from prosecution, but equally important to ensure that these procedures do not fall foul of the Race Discrimination Laws. The Human Resource team will ensure that there are no discriminatory practices and all potential employees will be treated in the same way and be required to provide documentation as outlined in this procedure before they start work.

This will ensure that we have complied with the changes and have a valid defence against payment of a civil penalty if it is found that an employee is not legally allowed to work in the UK.

6. Equality Impact Assessment and Monitoring

- 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

- 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.

Documents that show an ongoing right to work

All prospective employees (or existing employees, if you are carrying out repeat checks) must be asked to provide one of the single documents, or specified combinations of documents from **List A** or **List B**

However documents included on list B show a right to work for up to 12 months only. Follow up checks will therefore be required at least once every 12 months to ensure legal employment.

List A

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. A **current** passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
7. An **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
8. A **full** birth or adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

10. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

List B

Group 1 – Documents where a time-limited statutory excuse lasts until the expiry date of leave

1. A **current** passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question.
2. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.
3. A current Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
4. A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

Group 2 – Documents where a time-limited statutory excuse lasts for 6 months.

1. A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is **less than 6 months** old **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
2. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
3. A **Positive Verification Notice** issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

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