



Coxheath Parish Council

Disciplinary, Grievance & Capability Policies

General

1. These policies and procedures apply to all employees of Coxheath Parish Council (the "Council").
2. They do not form part of the terms and conditions of any employees' employment and it is not intended to have a contractual effect. However, it reflects the Council's current practices and employees are strongly encouraged to familiarise themselves with their content.
3. The Council reserves the right to vary or amend these policies and procedures as it considers appropriate and as the particular circumstances of a case reasonably require.
4. The Council reserves the right not to follow these policies and procedures in respect of employees still within their probationary periods.
5. Every effort will be made to ensure that any action taken under these policies and procedures will be fair and all employees will be given the opportunity to state their case and appeal against any decision they consider to be unjust.

DISCIPLINARY POLICY

1. Introduction

- 1.1. This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>).
- 1.2. It also takes account of the ACAS guide on discipline and grievances at work. https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf.
- 1.3. The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.
- 1.4. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 1.5. Informal coaching and supervision will be considered, where appropriate, to improve conduct and / or attendance in the first instance.

2. The Disciplinary Policy

- 2.1. The Council will fully investigate the facts of each case.
- 2.2. The Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used when performance management proves ineffective. For more information see ACAS "Performance Management" at <https://www.acas.org.uk/index.aspx?articleid=6608>.
- 2.3. Employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case.
- 2.4. Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.
- 2.5. Employees may be accompanied or represented by a companion – a workplace colleague, a trade union representative or a trade union official - at any investigatory, disciplinary or appeal meeting. The companion is permitted to address such meetings to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee,

address the meeting against the employee's wishes or prevent the employee from explaining their case. They do not have the right to question the disciplinary panel.

- 2.6. The Council will give employees reasonable notice of any meetings in this procedure. Employees must make all reasonable efforts to attend. If the employee or their companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within 5 working days of the original meeting date.
- 2.7. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions.
- 2.8. Any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council.
- 2.9. Information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee's disciplinary records will be held by the Council in accordance with the General Data Protection Regulation (GDPR).
- 2.10. Audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition.
- 2.11. Employees have the right to appeal against any disciplinary decision. The appeal decision is final.
- 2.12. If an employee who is already subject to the Council's disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure. However, the nature of the grievance will be examined before deciding.
- 2.13. If the subject of the grievance is independent of the disciplinary matter, the two can run side by side. If the subject of the grievance is about some element of the disciplinary proceeding, the circumstances will be investigated before deciding whether the disciplinary matter can go ahead.
- 2.14. Disciplinary action taken by the Council can include a written warning, final written warning or dismissal.
- 2.15. This procedure may be implemented at any stage if the employee's alleged misconduct warrants this.
- 2.16. Except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct.

- 2.17. If an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it.
- 2.18. The Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the consent of affected parties.

3. The Procedure

Informal Procedures.

- 3.1. Where minor concerns about conduct become apparent, it is the manager's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the manager.
- 3.2. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

Preliminary enquiries.

- 3.3. The Council may make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.
- 3.4. If the employee's manager believes there may be a disciplinary case to answer, the Council may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.

4. Misconduct

- 4.1. Misconduct is employee behaviour that can lead to the Council taking disciplinary action. The following list contains some examples of misconduct. The list is not exhaustive:
- unauthorised absence.
 - poor timekeeping.
 - misuse of the Council's resources and facilities including telephone, email and internet.
 - inappropriate behaviour.
 - refusal to follow reasonable instructions.
 - breach of health and safety rules.

5. Gross Misconduct

5.1. Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct: The list is not exhaustive:

- bullying, discrimination and harassment.
- incapacity at work because of alcohol or drugs.
- violent behaviour.
- fraud or theft.
- gross negligence.
- gross insubordination.
- serious breaches of Council policies and procedures e.g. the Health and Safety Policy, Equality and Diversity Policy, Information and Data Protection Policy and any policies regarding the use of information technology.
- serious and deliberate damage to property.
- use of the internet or email to access pornographic, obscene or offensive material.
- disclosure of confidential information.

6. Suspension

- 6.1. If allegations of gross misconduct or serious misconduct are made, the Council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.
- 6.2. While on suspension, the employee is required to be available during normal hours of work in the event that the Council needs to make contact. The employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or Councillor.
- 6.3. The employee must not attend work. The Council will make arrangements for the employee to access any information or documents required to respond to any allegations.

7. Unsatisfactory Work Performance

- 7.1. The following list contains some examples of unsatisfactory work performance. The list is not exhaustive.
- inadequate application of management instructions/office procedures.
 - inadequate IT skills.
 - unsatisfactory management of staff.
 - unsatisfactory communication skills.

8. Disciplinary Investigation

- 8.1. A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.
- 8.2. If a formal disciplinary investigation is required, the Council's Staffing Committee will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a Councillor. If the Staffing Committee considers that there are no Councillors who are independent (for example, because they all have direct involvement in the allegations about the employee), it will appoint someone from outside the Council. The Investigator will be appointed as soon as possible after the allegations have been made. The Staffing Committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:
- The allegations or events that the investigation is required to examine.
 - How the findings should be presented. For example, an investigator will often be required to present the findings in the form of a written report with a recommendation.
 - That the findings should be reported to the Staffing Committee.
 - Who to contact for further direction if unexpected issues arise or advice is needed.
- 8.3. The Investigator will be asked to submit their findings within 20 working days of appointment where possible. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary, and the Council may decide to commence disciplinary proceedings at the next stage - the disciplinary meeting (see section 9).
- 8.4. The Staffing Committee will notify the employee in writing of the alleged misconduct and details of the person undertaking the investigation. The employee may be asked to meet an investigator as part of the disciplinary investigation. The employee will be given sufficient notice of the meeting with the Investigator so that they have reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the Council's disciplinary procedure. The Council will also inform the employee that when they meet with the Investigator, they will have the opportunity to comment on the allegations of misconduct.
- 8.5. Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.
- 8.6. If there are other persons (e.g. employees, Councillors, members of the public or the Council's contractors) who can provide relevant information, the

Investigator should try to obtain it from them in advance of the meeting with the employee.

- 8.7. The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Staffing Committee whether or not disciplinary action should be considered under the policy.
- 8.8. The Investigator's report will contain their recommendations and the findings on which they were based. They will recommend either:
- the employee has no case to answer and there should no further action under the Council's disciplinary procedure.
 - the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally or
 - the employee has a case to answer, and a formal hearing should be convened under the Council's disciplinary procedure.
- 8.9. The Investigator will submit the report to the Staffing Committee which will decide whether further action will be taken.
- 8.10. If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

9. The Disciplinary Meeting

- 9.1. If the Staffing Committee decides that there is a case to answer, it will appoint a Staffing sub-committee of 3 Councillors, to formally hear the allegations. The Staffing sub-committee will appoint a Chair from one of its members. The Investigator shall not sit on the sub-committee.
- 9.2. No Councillor with direct involvement in the matter shall be appointed to the sub-committee. The employee will be invited, in writing, to attend a disciplinary meeting. The sub-committee's letter will confirm the following:
- the names of its Chair and other two Councillors.
 - details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting.
 - a copy of the information provided to the sub-committee which may include the investigation report, supporting evidence and a copy of the Council's disciplinary procedure.
 - the time and place for the meeting. The employee will be given reasonable notice of the hearing so that they have sufficient time to prepare for it.

- that witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of their witnesses' names at least 2 working days before the meeting.
 - that the employee may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.
 - an invitation for the employee to request any adjustments or access arrangements to be made for the hearing (for example where a person has a health condition).
- 9.3. The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:
- the Chair will introduce the members of the sub-committee to the employee and explain the arrangements for the hearing.
 - the Chair will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation).
 - the Chair will invite the employee to present their account.
 - the employee (or the companion) will set out their case and present evidence (including any witnesses and/or witness statements).
 - any member of the sub-committee and the employee (or the companion) may question the Investigator and any witness, if present.
 - the employee (or companion) will have the opportunity to sum up.
- 9.4. The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further investigated by the sub-committee.
- 9.5. The Chair will provide the employee with the sub-committee's decision with reasons, in writing, within 5 working days of the meeting or any adjourned meeting, if held. The Chair will also notify the employee of the right to appeal the decision.

10. Disciplinary action

- 10.1. If the sub-committee decides that there should be disciplinary action, it may be any of the following:

First Written Warning

- 10.2. If the employee's conduct has fallen beneath acceptable standards and is the first instance of the misconduct which is not sufficiently serious to warrant a final written warning, a first written warning will be issued. A first written warning will set out:

- the reason for the written warning, the improvement required (if appropriate) and the time period for improvement.
- that further misconduct/failure to improve will result in more serious disciplinary action.
- the employee's right of appeal.
- that a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Final written warning

10.3. If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. A final written warning will set out:

- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement.
- that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal.
- the employee's right of appeal.
- that a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Dismissal

10.4. The Council may dismiss:

- for gross misconduct
- if there is no improvement within the specified time period, in the conduct which has been the subject of a final written warning.
- if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.

10.5. The Council will consider very carefully a decision to dismiss. If an employee is dismissed, they will receive a written statement of the reasons for their dismissal, the date on which the employment will end and details of their right of appeal. If the sub-committee decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

11. The Appeal

- 11.1. An employee who is the subject of disciplinary action will be notified of the right of appeal. Their written notice of appeal must be received by the Council within 5 working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal, which include:
- a failure by the Council to follow its disciplinary policy.
 - the sub-committee's disciplinary decision was not supported by the evidence.
 - the disciplinary action was too severe in the circumstances of the case.
 - new evidence has come to light since the disciplinary meeting.
- 11.2. Where possible, the appeal will be heard by a panel of 3 members of the Staffing Committee who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the Staffing Committee who have not previously been involved. If so, the appeal panel will be a committee of 3 members of the Council who may include members of the Staffing Committee. The appeal panel will appoint a Chair from one of its members.
- 11.3. The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that they may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.
- 11.4. At the appeal meeting, the Chair will:
- introduce the panel members to the employee.
 - explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the disciplinary decision.
 - explain the action that the appeal panel may take.
 - The employee will be asked to explain the grounds for appeal.
- 11.5. The Chair will inform the employee that they will receive the decision and the panel's reasons, in writing, usually within 5 working days of the appeal hearing.
- 11.6. The appeal panel may decide to uphold the disciplinary decision of the Staffing Committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.
- 11.7. If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved. The appeal panel's decision is final.

GRIEVANCE POLICY

1. Introduction

- 1.1. This policy is based on and complies with the 2015 ACAS Code of Practice (<https://www.acas.org.uk/index.aspx?articleid=2174>).
- 1.2. It also takes account of the ACAS guide on discipline and grievances at work. https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf.
- 1.3. It also takes into account relevant law affecting Councils.
- 1.4. It aims to encourage and maintain good relationships between the Council and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 1.5. Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally with their line manager.

2. The Grievance Policy

- 2.1. Employees may be accompanied or represented at a grievance meeting or appeal by a companion – a workplace colleague, a trade union representative or a trade union official – at any investigatory, grievance or appeal meeting. The companion is permitted to address such meetings, to present the employee's case and to confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining their case. They do not have the right to question the disciplinary panel.
- 2.2. The Council will give employees reasonable notice of any meetings in this procedure. Employees must make all reasonable efforts to attend. If the employee or their companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within 5 working days of the original meeting date.
- 2.3. Any changes to specified time limits must be agreed by the employee and the Council.
- 2.4. An employee has the right to appeal against the decision about their grievance. The appeal decision is final.

- 2.5. Information about an employee's grievance will be restricted to those involved in the grievance process. A record of the reason for the grievance and action taken is confidential to the employee. The employee's grievance records will be held by the Council in accordance with the General Data Protection Regulation (GDPR).
- 2.6. Audio or video recordings of the proceedings at any stage of the grievance procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition.
- 2.7. If an employee who is already subject to a disciplinary process raises a grievance, the grievance will normally be heard after completion of the disciplinary procedure. However, the nature of the grievance will be examined before deciding.
- 2.8. If the subject of the grievance is independent of the disciplinary matter, the two can run side by side. If the subject of the grievance is about some element of the disciplinary proceeding, the circumstances will be investigated before deciding whether the disciplinary matter can go ahead.
- 2.9. If a grievance is not upheld, no disciplinary action will be taken against an employee if they raised the grievance in good faith.
- 2.10. The Council may consider mediation at any stage of the grievance procedure where appropriate, (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process which requires the consent of affected parties.
- 2.11. Employees can use the informal stage of the Council's grievance procedure (section 3) to deal with all grievance issues, including a complaint about a Councillor.
- 2.12. Employees cannot use the formal stages of the Council's grievance procedure for a Code of Conduct complaint about a Councillor. If the complaint about the Councillor is not resolved at the informal stage, the employee can contact the Monitoring Officer of Maidstone Borough Council who will inform the employee whether or not the complaint can be dealt with under the Code of Conduct. If it does not concern the Code of Conduct, the employee can make a formal complaint under the Council's Grievance Procedure (see section 4).
- 2.13. The Council may engage external investigators, grievance or appeal panels for the purposes of the process.
- 2.14. If the grievance is a Code of Conduct complaint against a Councillor, the employee cannot proceed with it beyond the informal stage of the Council's grievance procedure. However, whatever the complaint, the Council has a duty of care to its employees. It must take all reasonable steps to ensure employees have a safe working environment, for example by undertaking risk assessments, by ensuring staff and Councillors are properly trained and by protecting staff from bullying, harassment and all forms of discrimination.

- 2.15. If an employee considers that the grievance concerns their safety within the working environment, whether or not it also concerns a complaint against a Councillor, the employee should raise these safety concerns with their Line Manager, (the Chair of the Staffing Committee), at the informal stage of the grievance procedure. The Council will consider whether it should take further action in this matter in accordance with any of its employment policies (for example its Health and Safety policy or its Dignity at Work policy) and in accordance with the Code of Conduct regime.

3. Informal grievance procedure

- 3.1. The Council and its employees benefit if grievances are resolved informally and as quickly as possible. As soon as a problem arises, the employee should raise it with their Line Manager to see if an informal solution is possible. Both should try to resolve the matter at this stage.
- 3.2. If the employee does not want to discuss the grievance with their Line Manager (for example, because it concerns the Line Manager), the employee should contact another member of the Staffing Committee.
- 3.3. If the employee's complaint is about a Councillor, it may be appropriate to involve that Councillor at the informal stage. This will require both the employee's and the Councillor's consent.

4. Formal grievance procedure

- 4.1. If it is not possible to resolve the grievance informally and the employee's complaint is not one that should be dealt with as a Code of Conduct complaint (see above), the employee may submit a formal grievance. It should be submitted in writing to the Chair of the Staffing Committee.
- 4.2. The Staffing Committee will appoint a sub-committee of 3 members to hear the grievance.
- 4.3. The sub-committee will appoint a Chair from one of its members. No Councillor with direct involvement in the matter shall be appointed to the sub-committee.

5. Investigation

- 5.1. If the sub-committee decides that it is appropriate, (e.g. if the grievance is complex), it may appoint an Investigator to carry out an investigation before the grievance meeting to establish the facts of the case. The Investigator may be an appropriate employee, Councillor or external party. The investigation may include interviews (e.g. the employee submitting the grievance, other employees, Councillors or members of the public).
- 5.2. The Investigator will summarise their findings (usually within an investigation report) and present their findings to the sub-committee.

6. Notification

6.1. Within 10 working days of the Council receiving the employee's grievance (this may be longer if there is an investigation), the employee will normally be asked, in writing, to attend a grievance meeting. The written notification will include the following:

- the names of its Chair and other members.
- the date, time and place for the meeting. The employee will be given reasonable notice of the meeting which will normally be within 20 working days of when the Council received the grievance.
- the employee's right to be accompanied by a workplace colleague, a trade union representative or a trade union official.
- a copy of the Council's Grievance policy.
- confirmation that, if necessary, witnesses may attend (or submit witness statements) on the employee's behalf and that the employee should provide the names of their witnesses as soon as possible before the meeting.
- confirmation that the employee will provide the Council with any supporting evidence in advance of the meeting, usually with at least two working days' notice.
- findings of the investigation if there has been an investigation.
- an invitation for the employee to request any adjustments or access arrangements to be made for the hearing (for example where a person has a health condition).

7. The Grievance Meeting

7.1. At the grievance meeting:

- the Chair will introduce the members of the sub-committee to the employee.
- the employee (or companion) will set out the grievance and present the evidence.
- the Chair will ask the employee questions about the information presented and will want to understand what action they want the Council to take.
- any member of the sub-committee and the employee (or the companion) may question any witness.
- the employee (or companion) will have the opportunity to sum up the case.

- a grievance meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.
- 7.2. The Chair will provide the employee with the sub-committee's decision, in writing, usually within 5 working days of the meeting though may be longer e.g. where further investigations are required. The letter will notify the employee of the action, if any, that the Council will take and of the employee's right to appeal.

8. The Appeal

- 8.1. If an employee decides that their grievance has not been satisfactorily resolved by the sub-committee, they may submit a written appeal to the Staffing Committee. An appeal must be received by the Council within 5 working days of the employee receiving the sub-committee's decision and must specify the grounds of appeal.
- 8.2. Appeals may be raised on a number of grounds, e.g.:
- a failure by the Council to follow its grievance policy.
 - the decision was not supported by the evidence.
 - the action proposed by the sub-committee was inadequate/inappropriate.
 - new evidence has come to light since the grievance meeting.
- 8.3. The appeal will be heard by a panel of 3 members of the Staffing Committee who have not previously been involved in the case. There may be insufficient members of the Staffing Committee who have not previously been involved. If so, the appeal panel will be a Committee of three Council members who may include members of the Staffing Committee. The Council may engage external parties if there are insufficient Councillors to form the panel. The appeal panel will appoint a Chair from one of its members.
- 8.4. The employee will be notified, in writing, usually within 10 working days of receipt of the appeal of the time, date and place of the appeal meeting. The meeting will normally take place within 20 working days of the Council's receipt of the appeal. The employee will be advised that they may be accompanied by a workplace colleague, a trade union representative or a trade union official.
- 8.5. At the appeal meeting, the Chair will:
- introduce the panel members to the employee.
 - explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the staffing sub-committee.
 - explain the action that the appeal panel may take.
- 8.6. The employee (or companion) will be asked to explain the grounds of appeal.

- 8.7. The Chair will inform the employee that they will receive the decision and the panel's reasons, in writing, and when they are likely to receive the letter. This may be within 10 working days of the appeal meeting however will be longer where further investigations are required.
- 8.8. The appeal panel may decide to uphold the decision of the Staffing Committee or substitute its own decision.
- 8.9. The decision of the appeal panel is final.

CAPABILITY POLICY

1. Introduction

- 1.1. This procedure is designed to help and encourage employees to achieve and maintain standards of job performance which are acceptable to the Council. The aim is to ensure consistent and fair treatment for all.
- 1.2. This document is not to be used during the probationary period.
- 1.3. This document:
 - 1.3.1. Supports both the Council and employees to bring about positive changes in work performance and attitude, when needed, and
 - 1.3.2. Explains how the Council will deal with instances of performance that fall below their standards, in a fair and consistent way.

2. Principles

- 2.1. Informal coaching and supervision will be considered to improve performance.
- 2.2. No formal warnings will be given until the causes of poor performance have been considered
- 2.3. For formal warnings employees will be advised of the nature of the poor performance and will be given the opportunity to state their case at a formal performance improvement meeting before any decision is made.
- 2.4. Employees will be provided, where appropriate, with written copies of examples of poor performance in advance of a formal performance improvement meeting.
- 2.5. At all formal stages of the procedure, employees may be accompanied or represented by a companion – a workplace colleague, trade union representative or trade union official. The companion is permitted to address such meetings to put the employees' case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or present the employee from explaining their case. They do not have the right to question the disciplinary panel.
- 2.6. Employees will have the right to appeal against any formal warnings issued.
- 2.7. Where an employee is struggling to meet work performance standards and requires support and encouragement, treating the issue as a capability concern can allow for a more positive outcome.
- 2.8. Where poor performance is believed to be the result of deliberate negligence, or where serious errors have been made to the detriment of the Council, they may decide to use the disciplinary procedure instead.

3. Informal Feedback

- 3.1. Before this procedure is engaged, employees will receive feedback setting out the concerns about their performance and how it must improve. This procedure is designed to be used when such informal discussions do not lead to an improvement in performance to an acceptable level.

4. Process

- 4.1. Where informal discussions have not led to an improvement in performance, the Council will follow the following procedure:

First stage of formal procedure – first written warning

- 4.2. Employees will be invited to a formal meeting during which their performance will be discussed. The letter inviting them to attend will give examples of what the Council considers to be poor performance; and advise them of their right to be accompanied at the meeting.
- 4.3. At the meeting, they will be given the opportunity to respond; the causes of the poor performance will be considered; and where training and development is appropriate this will be considered.
- 4.4. Having listened to their response, they may be issued with a first written warning for unsatisfactory performance if their performance does not meet acceptable standards. This will set out:
- 4.4.1. The performance problem.
 - 4.4.2. The improvement that is required.
 - 4.4.3. The timescales.
 - 4.4.4. Any help that may be given.
 - 4.4.5. The right of appeal.
 - 4.4.6. You will be advised that it constitutes the first stage of the formal procedure.
 - 4.4.7. That the warning will remain on your file for 12 months.
- 4.5. A record of the warning will be kept on their file.
- 4.6. If their performance improves to an acceptable level following the first meeting, the Council will meet with them to confirm that their performance is now satisfactory. This will be confirmed in writing to them.
- 4.7. Providing that satisfactory improvement is sustained, the warning will be disregarded after 12 months. However, the warning will be considered again if the poor performance re-starts.

Second stage of formal procedure – formal written warning

- 4.8. If the concerns about their performance continue, they will be invited to a second formal meeting during which their performance will be discussed. The letter inviting them to attend will give examples of what the Council considers to

be poor performance; and advise them of their right to be accompanied at the meeting.

- 4.9. At the meeting, they will discuss the progress made following the first meeting and the employee will be given the opportunity to respond; and where training and development is appropriate this will be considered.
- 4.10. Having listened to the employee's response, if their performance hasn't improved to a satisfactory level, they may be issued with a final written warning for unsatisfactory performance. This will set out:
 - 4.10.1. The performance problem.
 - 4.10.2. The improvement that is required.
 - 4.10.3. The timescale.
 - 4.10.4. Any help that may be given.
 - 4.10.5. Th right of appeal.
 - 4.10.6. That the warning will remain on their file for 12 months.
 - 4.10.7. Advise them that it constitutes the final written warning and will also warn that failure to improve may lead to dismissal.
- 4.11. A record of the warning will be kept on their file.
- 4.12. If their performance improves to acceptable level following the second meeting, the Council will meet with them to confirm that their performance is now satisfactory. This will be confirmed in writing to them.
- 4.13. Providing that satisfactory improvement is sustained, the warning will be disregarded after 12 months for the purposes of providing an employment reference. However, the warning will be considered again if the poor performance re-starts.

Final stage of formal procedure – dismissal

- 4.14. If the concerns about the employee's performance continue, they will be invited to a formal meeting during which their performance will be discussed. The letter inviting them to attend will give examples of what the Council considers to be poor performance; and advise them of their right to be accompanied at the meeting. The letter will also advise them that dismissal may be considered.
- 4.15. At the meeting, they will discuss the progress made following the second meeting and the employee will be given the opportunity to respond. Having listened to their response, if their performance hasn't improved to a satisfactory level, dismissal will be considered, or where appropriate redeployment to an alternative role.
- 4.16. Any offer to redeploy they will be entirely at the Council's discretion. Such an offer will be made only where there is a vacancy that the Council is confident, they would be able to perform to a satisfactory level. The alternative job may be on different terms of employment. It will normally be offered only as an alternative to dismissal in circumstances in which the Council are satisfied that

they should no longer be allowed to continue to work in their current role. While they will be free to refuse any offer of redeployment, the only alternative available will usually be dismissal.

- 4.17. If the Council believes that there is no alternative role available and suitable for the employee, but that they have not met an acceptable standard of performance, they may decide to dismiss. Any dismissal will be with full notice or payment in lieu of notice.
- 4.18. If the decision to dismiss is taken, the employee will be provided in writing with:
 - 4.18.1. Reasons for dismissal.
 - 4.18.2. The date on which the employment will terminate.
 - 4.18.3. The right of appeal.

5. Appeals

- 5.1. If the employee wishes to appeal against a formal warning or dismissal, they must do so by writing to the Clerk within five working days. The Clerk will arrange for an appeal meeting to take place. Wherever possible, the appeal will be heard by a sub-committee made up of Councillors who have not previously been involved in the matter.
- 5.2. The employee may be accompanied or represented by a companion – a work colleague, trade union representative or trade union official. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining their case. They do not have the right to question the disciplinary panel.
- 5.3. At the appeal hearing, the decision to impose the sanction will be reviewed and the employee will be entitled to make representations about the appropriateness of that decision.
- 5.4. The outcome of the appeal will be confirmed to the employee in writing, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

6. Rescheduled meetings

- 6.1. If the employee fails to attend a scheduled Performance Improvement Meeting without satisfactory reason, the Council will reschedule the meeting. They will advise the employee that if they do not attend the rescheduled meeting without a satisfactory reason, they reserve the right to make a decision in their absence. The Council will however confirm that if they do not wish to attend the hearing, they may send written representations, join the hearing by telephone or send a representative on their behalf.

7. Right to be accompanied

- 7.1. You have the right to be accompanied by a work colleague or a Trade Union representative to all formal meetings in this procedure. The Council will also consider requests to be accompanied to any investigation meetings.
- 7.2. A work colleague will be allowed time off to accompany you to the meeting and the council will support any work colleague who agrees to be a companion. A companion must feel able to agree to the request on the basis that they will not be treated to any detriment if they accept. However, the companion can decline a request.
- 7.3. It is your responsibility to ensure your companion is aware of the meeting arrangements and that they have any documentation in good time. If your chosen companion is not available at the time proposed for the meeting, you must provide us with alternative dates that you are both able to meet. These dates must be within the following five working days unless the Council can agree to alternative arrangements.
- 7.4. If you and your representative are unable to meet with the Council within a reasonable time, we will discuss alternative arrangements to enable you respond to the concerns. If we are unable to meet with you personally, this may mean that the council considers the concerns in your absence with your companion attending on your behalf or considering a written response.

8. Confidentiality and data protection

- 8.1. We aim to deal with performance improvement matters sensitively and with respect for the privacy of the individuals involved. All staff must treat as confidential any information communicated to them in connection with a performance improvement matter.
- 8.2. A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an additional person arranged by the Council to take notes.
- 8.3. The Council processes any personal data collected during the performance improvement procedure in accordance with its data protection policy and privacy notice as issued to our employees. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the performance improvement procedure.
- 8.4. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the organisation's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the disciplinary procedure.
- 8.5. This is a non-contractual procedure which will be reviewed from time to time.