

Notice of Meeting



Personnel Committee

**Thursday, 11 January 2007 following the
conclusion of the Executive meeting**

In the Members' Boardroom, Market Street Offices

Date of Despatch of Agenda: 03 January 2007

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser, Policy Executive on (01635) 519045
e-mail: mfraser@westberks.gov.uk

Further information and Minutes are also available on the Council's website at www.westberks.gov.uk

Terms of Reference

That, in order to comply with the Regulations under the Local Government Act 2000, the Council appoint a Personnel Committee (reporting direct to Council) consisting of five Members with the following terms of reference:

- (i) “Powers to appoint staff at Head of Service level and above by means of an Appointments Panel.
(Note: The Appointments Panel shall be selected from a pool of relevant Members.)
- (ii) Powers to determine requests for the early release of pensions subject to the financial implications of each request being approved through the Executive decision making process.
- (iii) Powers to appoint Proper Officers.
- (iv) Powers to designate officers as Head of Paid Service, Monitoring Officer and Section 151 Officer.
- (v) That the list of exceptions to “Key Decisions” be extended to cover the following:**

Powers to agree the financial implications of requests for the early release of pensions, subject to the personnel aspects of each request being approved by the Personnel Committee

Extension of Terms of Reference of Personnel Committee

At Full Council on the 14th December 2006 it was agreed that the following additional items be added to the terms of reference of the Personnel Committee:

- (vi) to approve new and revised HR Policies.
- (vii) to approve new and revised HR procedures.

Scheme of Delegation

It was agreed that the power to approve new and revised HR policies and procedures be delegated to the Chief Executive. The Chief Executive may decide to refer particular HR policies and procedures to the Personnel Committee rather than exercise the delegation.

Agenda – Personnel Committee to be held on 11 January 2007 (continued)

To: Councillors Barbara Alexander, Phil Barnett, Paul Bryant, Denise Gaines, Quentin Webb

Agenda

Part I

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| 1. Apologies for Absence
To receive apologies for inability to attend the meeting (if any). | |
| 2. Minutes
To approve as a correct record the Minutes of the meeting of the Committee held on 30 November 2007. | 1 |
| 3. Declarations of Interest
To receive any declarations of Interest from Members. | |
| 4. West Berkshire Council Grievance Procedure
<i>Purpose: To ratify the interim Grievance Procedure.</i> | 2 |
| 5. West Berkshire Council Disciplinary Procedure
<i>Purpose: To ratify the interim Disciplinary Procedure.</i> | 20 |
| 6. Discretionary Compensation Regulation 2006 - Update
<i>Purpose: To update the Personnel Committee in advance of the paper that will be considered at the Executive on the 15th February 2007.</i> | Verbal |

Sue Curtis Davison
Head of Policy and Communication

PERSONNEL COMMITTEE
MINUTES OF THE MEETING HELD ON
30TH NOVEMBER 2006

Councillors: Barbara Alexander (P), Phil Barnett (P), Paul Bryant (P), Denise Gaines (P), Quentin Webb (P)

Also present: Robert O' Reilly, Moira Fraser

PART I

24. APOLOGIES.

There were no apologies for absence received.

25. MINUTES.

The Minutes of the meeting held on 07th September 2006 were approved as a true and correct record and signed by the Chairman.

26. DECLARATIONS OF INTEREST.

There were no interests declared.

27. EXCLUSION OF PRESS AND PUBLIC.

RESOLVED that members of the press and public be excluded from the meeting for the under-mentioned item of business on the grounds that it involves the likely disclosure of exempt information as contained in Paragraphs 1 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information)(Variation) Order 2006. Rule 9.10.4 of the Constitution also refers.

PART II

28. FUNDING FOR POSSIBLE EARLY RETIREMENT OF AN EMPLOYEE.

(Paragraph 1 - information relating to any individual)

The Committee considered an exempt report (Agenda Item5) concerning the award of augmented pensionable service to an employee who would be leaving the Council on the grounds of redundancy on the 31st March 2007. Robert o' Reilly provided Members with a summary of the interview between the employee and the Head of HR on the 25th August 2006. The Committee, noting that the cost would be met from the savings which resulted from the Senior Management Review, agreed to the Officer's recommendation.

RESOLVED that the Personnel Committee would exercise its discretion and pay the augmented years as set out in Appendix A of the report.

29. RESIDUAL PERSONNEL ISSUE - EARLY RELEASE OF PENSION.

(Paragraph 1 - information relating to an individual)

The Committee considered an exempt report (Agenda Item 6) concerning the early release of Preserved Pension Funds on the grounds of unemployment. The Committee felt that as there were no overwhelming compassionate reasons for unlocking the pension they would agree to the Officer's recommendation.

RESOLVED that the early release of pension on the grounds of unemployment be refused.

(The meeting commenced at 9.10nd closed at 9.23pm)

CHAIRMAN

Date of Signature:

Title of Report:	West Berkshire Council Grievance Procedure	Item 4
Report to be considered by:	Personnel Committee - 11 January 2007	
Forward Plan Ref:	N/a	

Corporate Plan Priority: D1 – Performance improvement
D4 – Stronger governance

The proposals contained in this report will help to achieve the above Corporate Plan priority by:
Enabling the Council to have employee relations procedures that comply with employment legislation and enable workplace issues to be managed effectively

Purpose of Report:

For Personnel Committee to ratify the Interim Grievance Procedure.

Recommended Action:

Personnel Committee to approve the Grievance procedure.

Reason for decision to be taken:

To enable WBC to operate employee relations procedures that are compliant with employment legislation.

List of other options considered:

To use previous procedure. Rejected as found to be unhelpful in communication with Managers and Unions.

Key background documentation:

- None

Portfolio Member:	Councillor Anthony Stansfeld
Tel. No.:	01488 658238
E-mail Address:	astansfeld@westberks.gov.uk

Contact Officer Details

Name:	Robert O'Reilly
Job Title:	Head of Human Resources
Tel. No.:	01635 519358
E-mail Address:	roreilly@westberks.gov.uk

Implications

Personnel: HR will ensure all (non school) staff are made aware of the changes.

Supporting Information

1. Background

- 1.1 The new Grievance procedure has been developed in partnership with Unions and managers and approved by Corporate Board.

Currently, Grievance Procedure is in use as an interim procedure, which has provided an opportunity to test how it works in practice. In addition, advice notes have been written, for both managers and employees, in response to consultation with managers.

The Human Resources team will run workshops to enable managers to become familiar with using the interim grievance procedure. Workshops will also be developed for other HR procedures, as they are agreed, and these will form part of an on-going programme for managers.

Appendices

Appendix A - Interim Grievance Procedure

Appendix B - Interim Managers Advice Notes on Grievance Procedure.

Appendix C - Interim Employee Advice Notes on Grievance Procedure.

Consultation Responses

Local Stakeholders: N/A

Officers Consulted: Focus group of Managers consulted 14th August 2006

Trade Union: Unison and GMB consulted 2nd June 2006.

Interim Grievance Procedure

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1. Introduction

1.1 The Council recognises the right of every employee to express a grievance and to be given a fair hearing. This formal grievance procedure exists to ensure fair and consistent handling of grievances.

2. Employees Covered by this Procedure

2.1 This procedure applies to all current employees of West Berkshire Council with certain exceptions, as follows:

2.2 This procedure does not apply to staff employed in schools; and other employees whose individual contracts specifically exempt them from this procedure. Separate procedures apply for these staff.

2.3 The Modified Grievance Procedure to be followed where a former employee of West Berkshire Council raises a grievance can be found at Appendix Two.

2.4 The Grievance Procedure does not apply when:

- The employee wishes to complain about an actual or threatened dismissal
- The employee raises a concern as a 'protected disclosure' such as whistle blowing in compliance with the public interest disclosure provisions of the 1996 Act
- The employee wishes to complain about action short of dismissal to which the Council's disciplinary procedure applies, unless the grievance is that this involved unlawful discrimination or is not genuinely on grounds of conduct

3. General Principles

3.1 The Grievance Procedure will be available to all West Berkshire Council employees (except as described in section two above) so that grievances can be properly considered.

3.2 A grievance is defined as 'a complaint by an employee about action which his/her employer has taken or is contemplating taking' (Dispute Resolution Regulations 2004).

3.3 Employees may wish to raise complaints about their employment. These can often be resolved informally by their immediate line manager. However, where an employee states in writing his/her wish to raise a formal grievance, this procedure must be followed.

3.4 A grievance may be raised by an employee personally, or on behalf of the employee by a Trade Union Representative.

3.5 An employee raising a grievance may be accompanied and/or represented by a Trade Union Representative or a work colleague at meetings held at any stage of this procedure.

3.6 Written records will be kept during the process and treated as confidential. Formal minutes will be given to the employee if taken.

3.7 Time limits may be altered by mutual agreement.

4. Step One - Registering a Grievance

- 4.1 If an employee decides that his/her grievance cannot be resolved informally, he/she should put their grievance into writing, with the help of a Trade Union Representative if desired.
- 4.2 The written grievance should be such that:
- the nature and extent of the grievance is clear
 - the resolution sought by the employee is clear
- 4.3 The employee should address his/her written grievance to the Head of Human Resources. The Head of Human Resources, acting on behalf of the Council, will identify a manager normally below Head of Service, to hear the grievance.
- 4.4 Under the Disability Discrimination Act 1995 employers are required to make reasonable adjustments which may include assisting employees to formulate a written grievance if they are unable to do so by themselves because of a disability.

5. Step Two – The Grievance Hearing

- 5.1 The appropriate manager identified by the Head of Human Resources will arrange a Grievance Hearing to discuss the matter with the aggrieved employee. The Hearing will take place no later than 20 working days after receipt of the written grievance by the Head of HR. The manager will inform the employee of his/her right to be accompanied and/or represented by a Trade Union Representative or work colleague.
- 5.2 The employee will be allowed to state his/her grievance at the meeting, and to explain the resolution sought.
- 5.3 Where appropriate the manager may adjourn the Hearing in order to investigate the matter further. The manager may appoint an Investigating Officer, not connected to the issue, to carry out the investigation.
- 5.4 The manager will respond to the employee's grievance in writing, within 5 working days of the Hearing or the reconvened Hearing where there has been an adjournment. The response will inform the employee of his/her right to appeal if the resolution sought by the employee has not been granted.

6. Step Three - Appeal

- 6.1 Where the employee is dissatisfied with the outcome of Grievance Hearing he/she may appeal. The employee must register his/her appeal by writing to the Head of Human Resources within 5 working days of receiving the written outcome of the Grievance Hearing (Or reconvened Hearing where there has been an adjournment.)
- 6.2 The Head of Human Resources, acting on behalf of the Council, will arrange for the appeal to be heard by one or more of the following (Up to a maximum of a panel of three) who have not previously been involved in the grievance:
- A Head of Service
 - A Corporate Director

- The Chief Executive
 - Member(s) of the Council
- 6.3 This officer or elected member hearing (Or chairing a panel) will arrange an Appeal and will inform the employee of his/her right to be accompanied and/or represented by a Trade Union Representative or work colleague.
- 6.4 At the Appeal the employee will be able to explain why he/she remains aggrieved and how he/she believes the grievance should be resolved.
- 6.5 The manager who heard the Grievance Hearing at Step Two will normally attend the Appeal to explain his/her decision to the officer, elected member or panel hearing the Appeal.
- 6.6 Where appropriate the officer/elected member/panel hearing the appeal may adjourn to investigate the matter further
- 6.7 The officer/elected member/panel hearing the Appeal will notify the employee of the decision in writing, within 5 working days of the Appeal or the reconvened Appeal where there has been an adjournment. This decision will be final.

Suggested Format for Registering a Grievance

To: The Head of Human Resources, West Berkshire Council, Market Street, Newbury. RG14 5LD.

I wish to register a grievance under the Council's Grievance Procedure.

The cause of my grievance is: (This should set out clearly the nature and extent of the problem and include any relevant details)

I have taken the following informal steps to resolve the problem or grievance before invoking the formal grievance procedure:

I believe that my grievance could be resolved in the following way:

NB: You may ask your Trade Union Representative to help you to complete this pro-forma. You may have your trade union representative or work colleague with you during any meetings related to your grievance.

Signed

Print Name:.....

Job Title:.....

Place of Work:.....

Name of Line Manager:.....

Name of Trade Union Representative (Where applicable):.....

Appendix 2

Modified Grievance Procedure for Former Employees

This process will apply in circumstances where employment has ended within the previous three months and either:

- West Berkshire Council was not aware of the grievance before the employment ended

or

- If the Council was aware, the grievance procedure had not started or had not been completed by the time the employment ended (although not deliberately delayed until the last day of employment has passed);

and

- The aggrieved and West Berkshire Council must have agreed that the modified, rather than the standard Grievance Procedure shall apply

Step 1

- The aggrieved should write to the Head of Human Resources to register his/her grievance within three months of leaving the Council. There is a suggested format of a statement of grievance at Appendix 1 that the aggrieved can follow if they wish.
- The Head of Human Resources, acting on behalf of the Council, will identify a suitable senior manager to handle the grievance.

Step 2

- The manager will provide a written response to the grievance normally within 20 days of receipt of the grievance. This decision will be final.

Interim Grievance Procedure – Management Advice

1. Overview

1.1 These advice notes have been produced to provide you with some guidance in using the grievance procedure. If you require further clarification or advice please contact Human Resources.

1.2 The grievance procedure does not apply to the following types of grievance:

- **Group complaints or grievances** - these are dealt with under employee relations arrangements agreed between the Council and its recognised trade unions.
- **Grievances related directly to matters being dealt with under disciplinary procedures** – these will normally be considered as part of the disciplinary process.
- **Grievances related directly to matters being dealt with under capability procedures** – these will normally be considered as part of the capability process.
- **Grievance related to selection for redundancy** – employees may appeal against selection for redundancy under the redundancy procedure

2. General Principles

2.1 Always attempt to resolve complaints informally before they turn into formal grievances. (See section 2 below for further details)

2.2 If any disability or language issues affect the employee or his/her representative address these so that he/she/they can take part in the procedure.

2.3 If English is an additional language, explain the contents of any letters orally to the employee.

2.4 The time limits within the grievance procedure may be altered by mutual agreement.

2.5 Only disclose information about the grievance to those that have a justifiable reason to know. Ensure that written records relating to the grievance are kept securely. The employee should be given a copy of any formal minutes taken at hearings held under the grievance procedure.

3. Informal Complaints

3.1 You should always encourage two-way communication with employees in day to day management, and by holding regular 1 to 1 supervision meetings and appraisals. This will enable employees to raise concerns at an early stage before they become more serious. If an employee raises an informal complaint you should:

(1) Take their complaint seriously.

(2) Meet the employee, normally within 5 working days of being informed of the complaint. Meet in private and ensure that there will be no interruptions.

(3) Discuss the issues with the employee, ask questions to gain a full understanding.

(4) Ask the employee how he/she would like to see the matter resolved.

- (5) Where you need more time to investigate the issues, explain this to the employee and let him/her know when you anticipate being able to respond to his/her concern.
- (6) Ask the employee if there is anything that he/she thinks should be included in the investigation.
- (7) Meet with the employee to inform him/her of your response. Discuss the reasons for your response with the employee.
- (8) Ensure any action required as a result of your decision is carried out.
- (9) Keep a brief record of the complaint and the reasons for your response.
- (10) Monitor the resolution of the complaint through 1 to 1s and day to day management.

4. Formal Grievances

4.1 If an employee decides that his/her grievance can not be handled informally, or where he/she has tried an informal approach but still remains aggrieved he/she may raise the grievance formally by writing to the Head of Human Resources, as described in the grievance procedure (Section 3).

5. Hearing a Formal Grievance

5.1 If you are chairing the hearing you should arrange to hold it at a mutually convenient time, within 20 working days of the date on which the Head of Human Resources received the written grievance. When arranging the hearing you should:

- (1) Book a room that will be private and free from interruptions.
- (2) Allow for the hearing to last long enough for the employee to fully explain his/her grievance and how he/she would like to see it resolved.
- (3) Write to the employee to confirm the date, time and venue of the hearing, reminding the employee of his/her right to be accompanied by a trade union representative or work colleague.

5.2 For consistency the Head of Human Resources will advise you if there have been any similar grievances in the past and how they were resolved.

6. At the Hearing

6.1 The purpose of the hearing is to allow the employee to fully explain his/her grievance and the resolution that he/she would like to see. Often the hearing may need to be adjourned to allow further investigation before a decision can be made.

6.2 A representative of Human Resources will attend the hearing to advise you on procedural matters.

6.3 At the hearing you should:

- (1) Introduce those present and where appropriate explain their role at the hearing.
- (2) Explain the purpose of the hearing
- (3) Ask the employee to explain his/her grievance, providing supporting evidence where appropriate – remember that he/she may be upset and within reason need to let off steam.
- (4) Ask the employee how he/she would like his/her grievance to be resolved.
- (5) Ask questions to gain clarification where necessary.
- (6) Summarise the issues discussed.
- (7) Take notes – you may prefer to arrange for someone else to do this.
- (8) Decide whether an adjournment is appropriate – either to investigate the matter further or to consider the options and possible implications of any decision. If you decide to adjourn the hearing explain the reasons for this to the employee. Explain when the hearing is likely to be reconvened.
- (9) Ask the employee if there is anything that he/she thinks should be included in the investigation.
- (10) Where the hearing is adjourned pending investigation it may be necessary to appoint an Investigating Officer, or you may wish to do the investigation yourself. This will depend upon the amount and complexity of investigation that needs to take place. You should keep records of any investigation that you carry out.
- (11) It is important to consider the grievance carefully, however, if you are able to answer the grievance at the hearing explain your decision to the employee, and that you will confirm this decision in writing within 5 working days of the hearing. Where the resolution sought by the employee has not been granted inform the employee that he/she may appeal against your decision by writing to the Head of Human Resources within 5 working days of receiving written confirmation of the grievance hearing decision. Include a copy of any formal minutes taken at the hearing.
- (12) Where the employee's grievance amounts to an allegation of bullying/harassment/discrimination you should take the following action in response to the employee's grievance:
 - Explain to the employee that his/her grievance amounts to an allegation of misconduct
 - Explain that in response to his/her grievance you intend to conduct an investigation under the disciplinary procedure.
 - Ask the employee if he/she is satisfied with this approach to their grievance. If so this is the remedy to the grievance.
 - Confirm this decision in writing within 5 working days of the hearing. Where the employee was not satisfied with this approach to their grievance inform him/her that he/she may appeal against your decision by writing to the Head of Human Resources within 5 working days of receiving written confirmation of the grievance hearing decision. Include a copy of any formal minutes taken at the hearing.
 - If, having completed a preliminary investigation, you decide that it is appropriate to do so you should instigate a formal investigation. (Refer to the disciplinary procedure and seek advice from Human Resources.)

7. At the reconvened hearing (If you adjourned the first hearing)

- 7.1 Introduce those present and where appropriate explain their role at the reconvened hearing.
- 7.2 Summarise the main issues raised at the initial hearing and explain that the investigation is now complete.
- 7.3 Explain the findings of the investigation.
- 7.4 Ask the employee if he/she has any questions about the investigation and ask him/her to comment upon the findings of the investigation.
- 7.5 Having listened to the employee's response, consider whether there are any further issues that need to be investigated. If necessary adjourn the meeting again.
- 7.6 Write to the employee to inform him/her of your decision within 5 working days of the hearing. (Human Resources have a letter template that should be used as the basis of this letter). Include a copy of any formal minutes taken at the reconvened hearing.
- 7.7 As manager hearing the grievance you are also responsible for planning how the resolution will be implemented. This may involve talking to the employee to agree how relevant people should be notified of the outcome of the hearing, and discussing the resolution with appropriate managers within the employee's service area.
- 7.8 Where the resolution sought by the employee has not been granted inform the employee that they may appeal against your decision by writing to the Head of Human Resources within 5 working days of receiving written confirmation of your decision.

8. Appeals

- 8.1 The purpose of the appeal is to allow the employee to explain why they are not satisfied with the decision made by the manager who held the grievance hearing, and to allow the employee to explain how they would like the grievance to be resolved. The manager who heard the grievance hearing will attend the appeal to explain the reasons for his/her decision at the earlier stage.
- 8.2 The person/panel hearing the appeal will then decide whether to uphold the previous decision or to resolve the grievance in some other way.
- 8.3 If you are due to hear an appeal Human Resources will liaise with you and others attending the appeal to arrange the hearing. The employee will be informed in writing of the date, time and location of the appeal, and reminded of his/her right to be accompanied by a work colleague or a trade union representative.
- 8.4 A representative of Human Resources will attend the appeal to advise you on procedural issues.

9. At the appeal hearing:

- 9.1 If you are hearing an appeal, either alone or as the chair of a panel you should:
 - (1) Introduce those present, and explain their role.
 - (2) Explain the purpose of the appeal and outline the agenda.

- (3) Ask the employee to explain why he/she is not satisfied with the response to his/her grievance following the grievance hearing, and ask him/her to explain how he/she would like to see it resolved.
- (4) You may question the employee, as may any other members of a panel and the representative of Human Resources.
- (5) Ask the manager who heard the grievance hearing to explain his/her response to the grievance.
- (6) You may ask the manager questions, as may other members of a panel, the representative of Human Resources, the employee and/or his/her representative.
- (7) If you believe that further investigation should be carried out, you should explain this to the employee and adjourn the appeal hearing. Inform the employee when the appeal hearing is likely to reconvene.
- (8) When the appeal hearing is reconvened you should explain the findings of the investigation and ask the employee and the manager that heard the grievance hearing to comment upon this.
- (9) If necessary you should adjourn the appeal hearing again whilst you/the panel reach a decision.
- (10) When a decision has been reached you should inform the employee of your/the panel's decision, and that this decision is final. This should be confirmed to the employee in writing within five working days of the appeal hearing (Or reconvened hearing where there has been an adjournment). Human Resources have a template that can be used as a basis for this letter. Enclose a copy of any formal minutes taken during the appeal hearing.
- (11) The Chair of the appeal hearing is also responsible for planning how the resolution will be implemented. This may involve talking to the employee to agree how relevant people should be notified of the outcome of the hearing, and discussing the resolution with appropriate managers within the employee's service area.

10. The Employee's Representative

10.1 At all stages of the formal process the employee will have the right to be accompanied by a representative who may be a relevant trade union representative or work colleague.

10.2 The representative may confer with the employee during the hearing/appeal hearing, explain the employee's case, ask questions, sum up and respond to views expressed at the hearing so long as the employee is happy for him/her to do so. However the employee's representative has no right to answer questions on the employee's behalf except in exceptional circumstances.

11. The Modified Grievance Procedure for Former Employees

11.1 The modified grievance procedure can only be used for ex-employees and only in certain limited circumstances. These are explained in appendix two of the grievance procedure.

11.2 The aggrieved former employee and West Berkshire Council must agree that the modified grievance procedure can be used.

11.3 The modified grievance procedure will rarely be used. If you are involved in using the modified grievance procedure you can seek further advice from Human Resources.

12. Written Records

12.1 You should keep written records at all stages of the grievance procedure. At the end of the case you should forward these to HR. Your written records should include:

- (1) A copy of the employee's written grievance
- (2) A copy of the decision communicated to the employee in writing
- (3) A copy of any investigation reports
- (4) A copy of notes made at any grievance hearing/appeal hearing

12.2 Records will be treated as confidential and be kept in accordance with the Data Protection Act 1998.

Interim Grievance Procedure – Advice for Employees

1. Overview

- 1.1 These advice notes have been produced to provide you with some guidance in using the Grievance Procedure. If you require clarification of any point please approach your line manager, or Human Resources.
- 1.2 The grievance procedure does not apply to the following types of grievance:
- **Group complaints or grievances** - these are dealt with under employee relations arrangements agreed between the Council and its recognised trade unions.
 - **Grievances related directly to matters being dealt with under disciplinary procedures** – these will normally be considered as part of the disciplinary process.
 - **Grievances related directly to matters being dealt with under capability procedures** – these will normally be considered as part of the capability process.
 - **Grievance related to selection for redundancy** – you may appeal against selection for redundancy under the redundancy procedure

2. General Principles

- 2.1 Wherever possible you should attempt to resolve your concerns informally in the first instance. You should discuss this with your line manager (See section 2 below for further details).
- 2.2 You have the right to be accompanied by a work colleague or trade union representative at all formal meetings held under the grievance procedure (See section 8 below for further details).
- 2.3 The time limits within the grievance procedure may be altered by mutual agreement.
- 2.4 You will be given copies of any formal minutes taken during hearings.

3. Raising your concern informally

- 3.1 If you have concerns about your employment you should raise these with your line manager. Your one to one supervision meetings provide a good opportunity to do this, or you could ask your manager for a separate meeting. If your concern is about your line manager try to raise your concerns with him/her in person in the first instance if possible. If you do not feel able to do this you should contact your manager's line manager, or a member of Human Resources.
- 3.2 At the meeting explain as clearly as possible what your concern is, giving details of dates and events if possible. Explain whether you have taken any action to try to resolve the problem. Explain how you would like to see your concern resolved.
- 3.3 Your manager may need to investigate the matter further before he/she can respond to your concern. He/she may ask you whether there is anything that should be included in the investigation.
- 3.4 Once the investigation is complete your manager will meet with you to explain how they will handle your concern, and the reasons for this.

4. Formal Grievances

- 4.1 If you believe that your concern can not be handled informally, or where you have tried an informal approach but still remain dissatisfied, you may raise your concern formally using the grievance procedure. To do so you should write to the Head of Human Resources, as described in section three of the grievance procedure.
- 4.2 You can also find a form at appendix one of the procedure that you can use to raise your grievance formally. You should:
- Fill out the form as fully as possible, you can add extra pages if you need more space.
 - If you are a member of a trade union you may want to ask a trade union representative to help you complete the form.
 - Include all relevant details – describe incidents or behaviour, with dates and give details of any witnesses where possible.
 - Describe anything that you have done to try to resolve the grievance informally.
 - Explain clearly how you would like the grievance resolved – what needs to happen or stop happening?
- 4.3 The Head of Human Resources will identify who will handle your grievance. Please note if your grievance amounts to an allegation of bullying, harassment and/or discrimination it will normally need to be investigated under the disciplinary procedure.
- 4.4 The person handling your grievance will contact you to arrange a mutually convenient time for a grievance hearing to be held. This will normally be within 20 working days of the date on which the Head of Human Resources received your written grievance. You will receive a letter confirming the details of the hearing.

5. The Grievance Hearing

- 5.1 The purpose of the hearing is to allow you to fully explain your grievance and how you would like to see it resolved.
- 5.2 You have the right to be accompanied at the hearing by a trade union representative or a work colleague. This person is referred to as the 'employee's representative' in these advice notes, and in the grievance procedure. You should tell the person hearing your grievance the name of your representative before the hearing. (Further details of the role of your representative can be found in section 9 below.)
- 5.3 A representative of Human Resources may be present at the hearing to advise the person hearing the grievance on procedural matters. There may also be someone present to take notes.
- 5.4 At the hearing the person hearing the grievance will:
- Introduce those at the hearing and explain why they are present.
 - Explain the purpose of the hearing.
 - Ask you to explain your grievance and to provide supporting evidence where possible.
 - Ask you how you would like your grievance to be resolved.
 - He/she and/or the representative of Human Resources may ask you questions to gain a full understanding.

- Where the person hearing the grievance believes that an investigation is necessary, they may ask you whether there is anything that you think needs to be included in the investigation. He/she will indicate when the hearing is likely to be reconvened.
- 5.5 When you are explaining your grievance take your time and try to remain calm. Explain what has happened or failed to happen, giving details of any dates and witnesses, and providing copies of any supporting documentary evidence as appropriate.
- 5.6 Clearly explain how you would like the grievance resolved.
- 6. The reconvened hearing (Where the first hearing was adjourned)**
- 6.1 The person hearing your grievance will:
- Introduce those present and, where appropriate, explain their role at the reconvened hearing.
 - Summarise the main issues raised at the initial hearing.
 - Explain the findings of the investigation.
 - Ask you if you have any questions about the investigation, and to comment upon it.
 - Having listened to your comments the person chairing the reconvened hearing will decide whether any further investigation should be carried out.
- 7. Receiving the decision:**
- 7.1 The person hearing your grievance will need to consider how it is best resolved. He /she will take into account how you would like the grievance resolved, the facts from any investigation, and the wider implications of possible resolutions.
- 7.2 The person hearing your grievance will write to you with his/her decision, normally within five working days of the hearing/reconvened hearing. You will have the right to appeal this decision by writing to the Head of Human Resources within 5 working days of receiving written confirmation of the grievance hearing decision (Section 5 of the grievance procedure).
- 8. Appeals**
- 8.1 The purpose of the appeal is to allow you to explain why you are not satisfied with outcome of the grievance hearing, and so that you can explain how you would like your grievance resolved. The person who heard your grievance will attend the appeal to explain the reasons for his/her decision at the earlier stage. A representative of Human Resources may attend to advise the person/panel hearing the appeal on procedural matters.
- 8.2 You will be informed in writing of the date, time and location of the appeal hearing, and the names of the person/people hearing the appeal.
- 8.3 You will be entitled to be accompanied at the appeal by a trade union representative or work colleague.
- 8.4 At the hearing the person/chair of the panel hearing the appeal will:
- Introduce those present and explain their role.
 - Explain the purpose of the appeal and the agenda for the appeal hearing.

- Ask you to explain why you are not satisfied with the response to your grievance, and ask you to explain why you would like to see it resolved.
 - Ask the person who heard your grievance to explain why they reached their decision.
- 8.5 After you have explained why you are dissatisfied with the resolution, you may be asked questions by the person/panel hearing the appeal and/or the representative of Human Resources.
- 8.6 After the manager who heard your grievance at the earlier stage has explained their decision you and/or your representative may ask him/her questions. He/she may also be asked questions by the person/panel hearing the appeal and/or the representative of Human Resources.
- 8.7 If the person/panel hearing the appeal believe further investigation is required he/she/they may adjourn the appeal hearing whilst this is carried out. The outcome will be discussed at a reconvened appeal hearing.
- 8.8 The person/panel hearing the appeal will then decide whether to uphold the previous decision or to resolve the grievance in some other way. He/she/they will inform you of the decision in writing within 5 working days of the appeal hearing/reconvened appeal hearing. This decision is final.

9. The employee's representative

- 9.1 Your representative can not be someone whose presence would prejudice the meeting or who might have a conflict of interest.
- 9.2 With your agreement your representative may:
- Confer with you during hearings
 - Explain your case
 - Ask questions
 - Sum up
 - Respond to views

However he/she may not answer questions on your behalf, except in exceptional circumstances.

10. The modified grievance procedure

- 10.1 The modified grievance procedure can only be used if you have left the organisation, and only in certain limited circumstances. This is described in appendix two of the grievance procedure.

Title of Report:	West Berkshire Council Disciplinary Procedure	Item 5
Report to be considered by:	Personnel Committee on 11 th January 2007	
Forward Plan Ref:	N/a	

Corporate Plan Priority:	D1 – Performance improvement D4 – Stronger governance
The proposals contained in this report will help to achieve the above Corporate Plan priority by: <i>Enabling the Council to have employee relations procedures that comply with employment legislation and enable workplace issues to be managed effectively</i>	

Purpose of Report:

For Personnel Committee to ratify the Interim Disciplinary Procedure.

Recommended Action:

Personnel Committee to approve the Disciplinary procedure.

Reason for decision to be taken:

To enable WBC to operate employee relations procedures that are compliant with employment legislation.

List of other options considered:

To use previous procedure. Rejected as found to be unhelpful in communication with Managers and Unions.

Key background documentation:

- None

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Implications

Personnel:

HR will ensure all (non school) staff are made aware of the changes.

Supporting Information

1. Background

- 1.1 The new Disciplinary procedure has been developed in partnership with Unions and managers and approved by Corporate Board.

Currently the Disciplinary Procedure is in use as an interim procedure, which has provided an opportunity to test how it works in practice. In addition, advice notes have been written, for both managers and employees, in response to consultation with managers.

During November and December 2006, the Human Resources team ran workshops, to enable managers to become familiar with using the interim disciplinary procedure. The workshops have proved very successful, with over 40 line managers attending, and the feedback has been extremely positive. Workshops will also be developed for other HR procedures, as they are agreed, and these will form part of an on-going programme for managers.

Appendices

Appendix A - Interim Disciplinary Procedure
Appendix B - Interim Managers Advice Notes
Appendix C - Interim Employee Advice Notes

Consultation Responses

Local Stakeholders: N/A
Officers Consulted: Focus group of Managers consulted 14th August 2006
Trade Union: Unison and GMB consulted 2nd June 2006.

Interim Disciplinary Procedure

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1. Purpose and scope

1.1 The Disciplinary Procedure applies to permanent employees and temporary employees of West Berkshire Council. It is designed to help and encourage employees to achieve and maintain standards of conduct and aims to ensure fairness, equity and consistency in the management of employees.

1.2 This procedure does not apply to the following employees:

- (1) The Chief Executive, the Section 151 Officer or the Monitoring Officer who are subject to Statutory Regulations (Seek further information from the Head of Human Resources)
- (2) Those within their probationary period (for further details of the procedures applicable to probationers, contact Human Resources)
- (3) School based staff. These employees are covered by a separate procedure.

1.3 If an employee resigns and formal proceedings are being considered or have commenced, the proceedings may continue to an appropriate conclusion, at the discretion of management.

2. What is misconduct?

2.1 Misconduct involves an employee breaking specific rules about behaviour or conduct. It is conduct that falls below expected standards. There may be occasions when negligent conduct amounts to misconduct.

2.2 Examples of misconduct include:

- Misuse of West Berkshire Council facilities such as email and Internet
- Poor time keeping
- Unauthorised absences
- Offensive language
- Disregarding reasonable management instructions
- Persistent lack of attention or care
- Minor breach of health and safety rules

2.3 Gross misconduct is very serious misconduct that will repudiate the contract of employment and will normally lead to dismissal without notice or pay in lieu of notice. Examples of gross misconduct include:

- Theft or fraud
- Physical violence, bullying or harassment
- Deliberate damage to property
- Serious misuse of the Council's property
- Damaging the reputation of the Council
- Accessing internet sites containing pornographic, offensive or obscene material
- Unlawful discrimination
- Serious incapability at work brought on by alcohol
- Being under the influence or being in possession of illegal drugs at work
- Causing loss, damage or injury through serious negligence
- Serious breach of health and safety rules
- Serious breach of confidentiality
- A criminal conviction that seriously undermines the Council's confidence in the employee and/or undermines the employee's ability to undertake their work

- Behaviour that puts other people at risk of serious harm

2.4 The examples listed above are not exhaustive. Further information about unacceptable behaviour can be found in the West Berkshire Council Code of Conduct.

2.5 Note: separate procedures exist for dealing with capability (under performance) which is not caused by wilful misconduct, and for dealing with ill health.

3. Principles

3.1 Managers will try to resolve issues of minor misconduct informally, however where this approach has been tried and has not worked, or where the misconduct is more serious, formal disciplinary action will be considered.

3.2 Allegations of misconduct will normally be investigated before any disciplinary action is taken. Exceptionally, the circumstances may be such that an investigation is not required for example where the employee admits to the misconduct.

3.3 The employee will be advised of the nature of the complaint against him/her; given the opportunity to state his/her case and present relevant evidence at a disciplinary hearing before any decision is made.

3.4 At all stages of the formal process the employee will have the right to be accompanied by a representative who may be a relevant trade union representative or work colleague.

3.5 Employees will not generally be dismissed for a first incident of misconduct except in the case of gross misconduct. Dismissal for gross misconduct will be without notice or pay in lieu of notice.

3.6 No formal action will be taken against a trade union representative until, having consulted the employee concerned, the circumstances of the case have been notified to a regional officer of the trade union concerned.

3.7 If there are any disability issues or language issues affecting the employee or his/her representative these will be reasonably addressed so that any formal proceedings can take place fairly.

3.8 Information relating to formal proceedings will be kept confidential as appropriate.

3.9 West Berkshire Council Social Care employees who are registered with the General Social Care Council (GSCC) must abide by the GSCC Codes of Practice. Therefore any formal disciplinary action taken under this procedure for alleged breaches of the GSCC Code of Practice will be reported to the GSCC. This may result in termination of the registration which could result in summary dismissal if registration is an essential requirement of the post.

3.10 The time-scales within this procedure may be amended by mutual consent.

4. Authority to take action under this procedure

4.1 A schedule of those authorised to take action under this procedure is given at Appendix 1.

5. Informing the employee of the allegations

5.1 In cases of alleged misconduct a meeting will normally be held to inform the employee of the allegations and that an investigation will be conducted.

6. Investigation

6.1 Generally no disciplinary action will be taken against an employee until a reasonable investigation to establish the facts of the case, has taken place.

6.2 The purpose of the investigation is to:

- Establish the facts whilst they are still clear in the minds of those involved.
- Decide what further action to take.

7. Suspension

7.1 Individuals should only be suspended in serious cases where an allegation of potential gross misconduct is being investigated or for an allegation of misconduct where there is a danger that the alleged misconduct may be committed again.

7.2 When an allegation of gross misconduct has been made suspension should not be automatic; a preliminary investigation may be carried out to determine whether the allegation is potentially gross misconduct. This preliminary investigation should be as short as possible and not normally longer than two working days. If appropriate the employee may be asked to work at home or be temporarily re-deployed during this period. Where an employee objects to a preliminary investigation he/she will normally be suspended on full pay and a full investigation will commence.

7.3 Only authorised officers may suspend employees. Those authorised to suspend are as follows:

- The Chief Executive has the authority to suspend a Corporate Director
- The Chief Executive or a Corporate Director has the authority to suspend a Head of Service
- A Head of Service has the authority to suspend an employee not covered by the previous two bullet points
- In the absence of the above-mentioned authorised person, the person deputising has the authority to suspend.

7.4 If, having considered the above, suspension is considered to be the appropriate course of action, the authorised officer, after having consulted with Human Resources, will suspend the individual.

7.5 The individual will be suspended on full contractual pay. Suspension should be for the minimum period necessary and will be kept under review.

7.6 If, on completion of the investigation the authorised officer believes it to be appropriate, having regard to the above provisions, the period of suspension on full contractual pay may be extended until a Disciplinary Hearing has been held and a decision communicated to the employee.

7.7 If an individual is suspended the authorised officer will normally write to the employee stating:

7.8 The reasons why the individual has been suspended

7.9 Why they consider the suspension to be appropriate

7.10 A decision to suspend is not the imposition of a penalty and does not predetermine the outcome of the investigation.

7.11 Where appropriate, suspended employees may be asked to return property belonging to the Council and to refrain from contacting other employees without first speaking to their Line Manager

7.12 A suspended employee must make themselves available for interviews under the procedure and must not take alternative employment while the contract of employment still applies.

NOTE:

There is a statutory requirement on providers of social care, to refer care workers who have been suspended on the grounds of harm they have allegedly caused to vulnerable adults or children, but before decisions have been made to dismiss them or permanently transfer them to a non-care position, to the Secretary of State for possible inclusion on the Protection of Vulnerable Adults (POVA) and/or Protection of Children Act (POCA) lists. In cases of allegations of harming or placing at risk of harm a vulnerable adult for a member of staff working in Domiciliary Care or Residential Care, please refer to the POVA Management Guidance notes. In cases of allegations of harming or placing at risk of harm a child refer to the POCA Management Guidance Notes.

Allegations of Child Abuse

Where the allegations are of child abuse and the alleged behaviour might be criminal, involve harm to a child or put a child at risk of harm, the Head of Education Service at the Local Authority must be notified immediately and where appropriate a strategy meeting attended by appropriate Local Authority officers, the police, social care and the employee's line manager will be convened.

8. The disciplinary hearing

8.1 Following the investigation, a disciplinary hearing may be convened. The disciplinary hearing will decide what, if any, action should be taken in respect of the alleged misconduct.

8.2 The employee will normally be given 10 working days notice in writing of a disciplinary hearing. The manager/chair of the panel holding the disciplinary hearing will write to the employee to confirm the allegations against him/her, and inform him/her of the date, time and venue for the disciplinary hearing. This notification will remind the employee of his/her right to be accompanied by a trade union representative or a work colleague. The employee will be given copies of documents that will be used to support management's case at the hearing.

8.3 The employee will be informed if the outcome of the hearing could be dismissal (normally where the employee has been suspended for alleged gross misconduct or is subject to a final written warning that has not expired).

8.4 The employee will be expected to provide the manager/chair hearing the case with a copy of the documents that he/she will be relying upon and the names of any witnesses that he/she will be calling at the hearing at least 5 working days before the hearing. In exceptional circumstances an alternative time-scale may be agreed.

8.5 At the hearing each side will be entitled to present their case, and call witnesses. Each party will be able to ask questions and comment on the case presented by the other side.

8.6 The hearing will normally be adjourned whilst the manager/panel hearing the case reaches a decision.

9. Decision of the manager/ panel

9.1 Following the hearing a decision will be made on whether disciplinary action is justified or not. The employee will be notified in writing of the outcome, normally within 5 working days.

9.2 Where an employee is found to have committed misconduct the following actions may be taken:

(1) First written warning

The warning will:

- set out the nature of the misconduct;
- the improvement that is required;
- inform the employee that failure to improve, or any repetition, within the specified timescale could lead to more serious formal action being taken, including dismissal, and
- refer to the right to raise an appeal within 5 working days of notification of the outcome of the hearing

A note of the first warning will be kept on the personal file. The warning will normally be disregarded for disciplinary purposes after 12 months. (For further information see the section 'Disregarded warnings and indefinite warnings'.)

(2) Final written warning

Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is very serious (but does not warrant dismissal), the employee should normally be issued with a final written warning, The final written warning will:

- give details of, and grounds for, the complaint.
- state that failure to improve or modify behaviour may lead to dismissal or to some other penalty, and
- refer to the right to raise an appeal within 5 working days of notification of the outcome of the Hearing.

A copy of this final written warning will be kept on the personal file. This will normally be disregarded for disciplinary purposes after 2 years. (For further information see the section 'Disregarded warnings and indefinite warnings'.)

10. Dismissal

10.1 If conduct still fails to improve, the final stage in the procedure is dismissal. Dismissal will also result if the misconduct is so serious that it is appropriate to dismiss even though this was a first offence (gross misconduct). In cases of gross misconduct the employee will be liable to summary dismissal, without notice or pay in lieu of notice. See section two 'What is Misconduct', above, for further details.

10.2 The person chairing the hearing will write to the employee, within 5 working days of the decision giving reasons for dismissal, the date of which employment is terminated and to advise the employee of their right to appeal. If the employee has **not** been dismissed for gross misconduct he/she will be given the appropriate period of notice or pay in lieu of notice.

NOTE:

If dismissing a member of staff working in the provision of social care services to children or vulnerable adults, and where dismissal has occurred on grounds of misconduct which harmed, or placed at risk of harm, a child or vulnerable adult there is a statutory requirement for the Council to apply the provision of the Protection of Children Act and/or the Protection of Vulnerable Adults and/or List 99 Scheme.

Where a teacher, who is employed directly by West Berkshire Council, is dismissed the details of the case must be referred to the Teachers Misconduct Team at the DfES. Further advice can be obtained from Human Resources.

11. Disregarded warnings and indefinite warnings

11.1 Warnings will normally be disregarded after 12 months in the case of a first written warning, and two years in the case of a final written warning. However where statutory regulations apply (For example where the employee works with children and/or vulnerable adults) warnings will stay live indefinitely, or as required by the regulations.

12. Disciplinary appeals

12.1 An employee is entitled to appeal against the formal decision taken by the disciplinary hearing.

12.2 The appeal must be made in writing, addressed to the Head of Human Resources, stating the grounds for the appeal, within 5 working days of being advised of the decision of the disciplinary hearing.

12.3 The disciplinary appeal will be heard as soon as possible and not normally later than 6 weeks after being received.

12.4 The employee will normally be given 10 working days notice, in writing, of the date of the disciplinary appeal hearing. This notification will give the name of the person chairing the hearing, the names of panel members, and the name of the representative of Human Resources who will advise the panel on procedural matters. It will remind the employee of his/her right to be accompanied at the hearing by a trade union representative or work colleague.

12.5 Both parties must indicate at least 5 days in advance of the disciplinary appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed.

12.6 The manager/chair who dealt with the disciplinary hearing will attend the appeal and may be accompanied by a representative of Human Resources. The employee will attend the appeal and has the right to be accompanied by a work colleague or a trade union representative.

12.7 The employee will be able to present evidence that is directly relevant to the grounds of the appeal. Management will have the opportunity to respond.

12.8 The hearing will review the earlier decision, taking into account the grounds of appeal. The appeal can overturn the earlier decision, confirm it or impose a lesser sanction.

12.9 The employee will be informed of the disciplinary appeal decision in writing normally within 5 working days

Appendix 1
Authority to Act

Interim Disciplinary Procedure

Disciplinary Investigation/Action Concerning	Investigate the allegations	Chair the Hearing	Chair the Appeal
Corporate Director (Excluding those mentioned in section one of the procedure)	The Head of Human Resources	The Chief Executive	Panel of 3 Members

Disciplinary Investigation/Action Concerning	Investigate the allegations	Chair the Hearing (Except where the Employee was dismissed)	Chair the Hearing where the allegation is one of Gross Misconduct, or the employee already has a live final written warning	Chair the Appeal, where the Employee has been dismissed.
Head of Service	Head of Service, authorised by the Corporate Director	A Corporate Director not previously involved in the case	The Chief Executive or a Corporate Director not previously involved in the case	Panel of 3 members
All employees except those listed above	An officer authorised by the Head of Service	A Manager authorised by the Corporate Director. Wherever possible the manager hearing the appeal will be senior to the officer who chaired the Disciplinary Hearing, with no previous involvement in the case.	A Head of Service	A Head of Service not previously involved in the case, a Corporate Director, a Member

Interim Disciplinary Procedure – Management Advice

1. Overview

1.1 These advice notes have been produced to provide you with some guidance in using the disciplinary procedure. If you require further clarification or advice please contact Human Resources.

2. Scope of the disciplinary procedure

2.1 Wherever possible you should try to resolve minor issues of misconduct informally. Where you have tried an informal approach and it has not worked, or where the misconduct is more serious you should use the formal disciplinary procedure.

2.2 The disciplinary procedure should be used to encourage employees to improve their conduct, not simply to punish misconduct.

2.3 The disciplinary procedure should not be used to handle issues of performance or ill-health capability – i.e. issues about the employee's ability to do his/her job due to skill or aptitude or due to their health. Separate procedures exist for this, please contact Human Resources for further information.

3. What is misconduct?

3.1 Examples of misconduct and gross misconduct can be found within section two of the disciplinary procedure. These lists are not exhaustive.

3.2 Gross misconduct is very serious misconduct that will repudiate the contract of employment and that will normally justify dismissal without notice or pay in lieu of notice (Summary dismissal).

4. Induction and explaining standards

4.1 Whilst it is important to deal with misconduct when it happens it is best to try to prevent problems occurring in the first place. It is important to make sure that employees know what is expected of them.

4.2 Ensure that the employees who report to you understand workplace rules. Rules exist:

- Within Corporate documentation such as the ICT Policy
- In relation to specific resources, situations or equipment e.g. the ICT Policy, health and safety regulations
- Rules specific to the service area, team or type of work being done by the employee

4.3 Induction is an important part of helping an employee settle into the Council and to understand what is expected of them. Providing all employees with a thorough induction enables you to explain the rules and standards of conduct as early as possible in employment. You should ensure that each new employee completes:

- Individual job related induction
- Corporate induction
- The service induction checklist

4.4 Develop open communication with the employees that report to you to make it easier to address minor issues early on. Holding regular one to one supervision meetings with each member of your team provides an opportunity for you to develop a positive working relationship, and to check understanding of standards, explain new or changed standards and objectives.

5. Dealing with misconduct informally

5.1 You should monitor and evaluate work performance, conduct and attendance of all the employees that you line manage through normal day to day management.

5.2 One to one meetings also provide an opportunity to resolve minor concerns about an employee's conduct informally.

5.3 If you need to discuss minor misconduct informally with an employee, either at a one to one, or at a separate meeting you should take the following action:

5.3.1 Ensure that you are acting consistently – check that other employees in the team are not falling short of the required standards or behaviour. If they are you will need to address the issue more widely – it may be best to communicate the required standards to all employees and start monitoring individual behaviour from then on.

5.3.2 Ensure that you hold the meeting somewhere that is private and free from interruptions.

5.3.3 If you have called a separate meeting, rather than a one to one where overall conduct and performance will also be discussed, explain to the employee that it is an informal meeting, and does not form part of the formal disciplinary procedure.

5.3.4 Clearly explain your concerns about the employee's conduct.

5.3.5 Allow the employee to respond to your concerns and ask him/her to explain why he/she is not meeting the required standards of behaviour. If necessary you may need to adjourn the meeting whilst you investigate what the employee has told you.

5.3.6 Where an improvement in conduct is required you should explain what is needed and explore any reasonable support that would help the employee achieve this, for example:

- Does the employee understand the standards and procedures? If not how can this understanding be achieved e.g. through explanation, job shadowing etc.
- Has the employee had the required training?
- Are there any external factors affecting the employee's ability to meet the required standards – e.g. reliance on public transport, looking after dependants – consider whether anything can reasonably be done to support the employee e.g. flexible working on a temporary or permanent basis

5.3.7 Take care that the meeting does not turn into a formal disciplinary meeting. If it become clear that the issue is more serious end the meeting and tell the employee that the matter will be considered under the formal disciplinary procedure.

5.3.8 Following the meeting write to the employee to confirm the action points arising from the meeting.

- 5.4 Ensure any agreed support is organised and implemented.
- 5.5 Review progress regularly at one to one supervision meetings and/or other specified review meetings.
- 6. Dealing with misconduct formally**
- 6.1 You should contact Human Resources to discuss the matter before commencing the formal disciplinary procedure.
- 6.2 Appendix one of the disciplinary procedure shows who is authorised to act under the procedure.
- 6.3 **Note 1** : Where there has been an allegation that may potentially be an allegation of gross misconduct also refer to **section seven below**.
- 6.4 **Note 2**: Where allegations have been made about a trade union representative no formal disciplinary action should be taken until the circumstances of the case have been notified to a regional officer of the trade union concerned by HR.
- 6.5 You firstly need to meet with the employee to inform him/her of the allegations against him/her. This meeting should take place as soon as possible after the allegations have been made.
- 6.6 Before the meeting you should inform the employee that allegations of misconduct that have been made against him/her and that a meeting will be held to inform him/her of these allegations. The employee should be informed that he/she has the right to be accompanied at the meeting by a trade union representative or a work colleague.
- 6.7 At the meeting to inform the employee of the allegations you should take the following action:
- Introduce those present at the meeting
 - Explain the purpose of the meeting
 - Explain the allegations that have been made. If the allegation amounts to gross misconduct explain this and that if substantiated it may lead to summary dismissal without notice or pay in lieu of notice.
 - Explain that an investigation will be carried out, and who will do the investigation.
 - Tell the employee that the investigating officer will meet with him/her as part of the investigation, and that he/she has the right to be accompanied by a trade union representative or a work colleague. In exceptional circumstances the employee may be allowed to be accompanied by an alternative representative.
 - Tell the employee that once the investigation is complete a decision will be made about whether or not the allegations should be considered at a disciplinary hearing.
 - The employee may not wish to give a detailed response to the allegations in this meeting. The employee may give their initial reaction to the allegations, and give their full response during the investigation.
 - Explain that confidentiality must be maintained and that the employee should not discuss the allegations or the investigation with his/her work colleagues.
 - Unless the employee is being suspended he/she should be told that he/she is required to continue in his/her role during the investigation and that he/she should make him/herself available for investigative meetings.

- Give the employee a copy of the disciplinary procedure and a letter explaining the allegations and that an investigation will be carried out.

7. Allegations of gross misconduct

7.1 Where an allegation of potential gross misconduct has been made suspension should not be automatic; a preliminary investigation may need to be undertaken, with advice and support from Human Resources.

7.2 The preliminary investigation must be as short as possible, and will not normally take more than two working days. It will be sufficient to determine whether the allegations amount to potential gross misconduct and to check that there has not been a case of mistaken identity.

- Meet the employee to inform the employee of the allegations. Explain that the allegations may constitute gross misconduct and that a preliminary investigation is to be carried out. Where appropriate you may ask the employee to work at home, or in another area whilst this is done. This conversation may need to take place by telephone where the employee is about to go to work from home.
- Explain that if at the end of the preliminary investigation, the allegation amounts to potential gross misconduct the employee will be suspended on full pay during a full investigation.
- Explain that confidentiality must be maintained and the employee should not discuss the allegations or preliminary investigation with his/her work colleagues.

7.3 Once the preliminary investigation is complete the employee should be informed of its findings.

- If there is no case to answer the employee should be informed of this.
- If the allegations amount to gross misconduct, the employee must be informed of the allegations and he/she should normally be suspended. The authorised officer should meet with the employee as described in section eight.
- If allegations remain, but these do not constitute gross misconduct the employee should be informed and should also be informed of the investigation as described in section six above.

8. Suspension

8.1 An employee should normally only be suspended in serious cases where an allegation of potential gross misconduct is being investigated.

8.2 Section 7.3 of the disciplinary procedure explains who has the authority to suspend an employee.

8.3 A preliminary investigation may be carried out as explained in section seven above before an employee is suspended. If the employee objects to a preliminary investigation he/she will normally be suspended on full pay and an investigation will commence.

8.4 Where an employee is suspended a meeting will be held with the employee to explain this. The employee is entitled to be accompanied at the meeting by their representative.

8.5 Whilst suspended the employee will be on full contractual pay. Suspension should be for the minimum period necessary and be kept under review.

8.6 If you are the officer authorised to suspend an employee you should take the following action at the meeting:

- Introduce those present at the meeting.
- Explain that the purpose of the meeting is to explain the allegations that have been made against the employee and to suspend him/her on full pay pending a full investigation.
- Outline the allegations that have been made against the employee.
- Where there has been a preliminary investigation explain that this has confirmed that the allegations are allegations of potential gross misconduct and that if these are substantiated may lead to summary dismissal without notice or pay in lieu of notice.
- Explain to the employee that he/she is suspended on full pay whilst a full investigation is carried out.
- Explain who will do the investigation.
- Tell the employee that the investigating officer will meet with him/her as part of the investigation, and that he/she has the right to be accompanied by a trade union representative or a work colleague. In exceptional circumstances the employee may be allowed to be accompanied by an alternative representative.
- Tell the employee that once the full investigation is complete the allegations may be considered at a disciplinary hearing.
- The employee may not wish to give a detailed response to the allegations in this meeting. The employee may give their initial reaction to the allegations, and give their full response during the investigation.
- Explain that confidentiality must be maintained and that the employee should not discuss the allegations or the investigation with his/her work colleagues.
- Tell the employee that he/she should make him/herself available for investigative meetings.
- Give the employee a copy of the disciplinary procedure and a letter explaining the allegations and that an investigation will be carried out.

9. Investigation

- 9.1 If you are the investigating officer or a key witness to the misconduct you will not normally chair the disciplinary hearing.
- 9.2 Advice on conducting an investigation can be sought from Human Resources.
- 9.3 Once the investigation is complete the investigating officer will recommend whether the matter should be dropped, it should be dealt with informally or it should be considered at a disciplinary hearing.

10. Financial Investigations

- 10.1 Where an allegation of misconduct has financial implications, such as theft, fraud, misuse of the Council's assets, falsification of timesheets you must inform the Head of Service, the Head of Human Resources and the officer in charge of internal audit. The officer responsible for internal audit may lead a financial investigation. You can obtain further information from the Anti Fraud and Corruption Policy (Available from internal audit).

11. Where the employee is charged with a criminal offence

- 11.1 If an employee is charged with a criminal offence there may be grounds for disciplinary action. You should seek further advice from the Head Human Resources before starting an investigation.

12. The disciplinary hearing

12.1 The purpose of the disciplinary hearing is to consider whether on the balance of probabilities the employee committed the alleged misconduct, and if so what if any disciplinary action should be taken.

12.2 If you are chairing a disciplinary hearing you should liaise with Human Resources to arrange the hearing and for a letter to be sent to the employee, giving him/her ten working days notice of the disciplinary hearing. This letter should contain the following information:

- The allegations.
- Remind the employee of his/her right to be accompanied at the hearing by a trade union representative or work colleague. In exceptional circumstances the employee may be allowed to be accompanied by an alternative representative.
- The name of the chair of the hearing.
- Details of the date, time and location of the hearing.
- Copies of any documents that management will refer to during the hearing and the names of any witnesses that will be called
- Ask the employee to provide copies of documents that the employee will refer to during the hearing, and names of any witnesses that he/she will call no later than five working days before the hearing. This time-scale can be altered in exceptional circumstances.
- Inform the employee if it is possible that the hearing may result in dismissal.

12.3 The hearing will normally be attended by:

- The employee and their representative
- The person chairing the hearing
- The investigating officer with HR support if required
- A representative of Human Resources who will advise the person chairing the hearing on procedural matters
- A note taker
- Witnesses will be called where required.

12.4 As chair of the hearing you should:

- Remain objective and do not prejudge the case. Listen carefully to the evidence put forward by both sides before reaching a decision.
- Introduce those present and explain their role at the hearing
- Check that all those present have received the relevant documentation.
- Explain the purpose of the hearing and confirm the allegations against the employee
- Where the allegations are of gross misconduct you should explain this, and that if substantiated may lead to dismissal without notice or pay in lieu of notice
- Ask the investigating officer to present the management case. After the Investigating Officer has finished the employee, and/or their representative, may comment on what they have said and ask questions. You, and/or the representative of Human Resources, may also ask the investigating officer questions. Witnesses may be called individually as required and may be questioned by both sides, you and/or the representative of Human Resources. Witnesses should remain available throughout the hearing in case they need to be recalled.
- Ask the employee to present his/her case. After the employee, or his/her representative, has finished, the management side may comment upon what has been said and ask questions. You, and/or the representative of Human Resources, may also ask questions. Witnesses may be called

individually as required and may be questioned by both sides, you and/or the representative of Human Resources.

- If the employee or a witness becomes distressed allow them time to compose themselves. Call a short adjournment if necessary.
- Once all the evidence has been heard ask both sides to sum up their cases, starting with the investigating officer. Depending upon how complex the case is there may need to be a short adjournment so that both sides can consider how to sum up.
- Ask both sides to leave the hearing while you consider your decision, with procedural advice from the representative of Human Resources.
- Where you reach the decision that the employee has committed misconduct you must decide upon an appropriate course of action. You may decide that the issue is best handled informally, or that a first or final written warning is appropriate. An employee can only be dismissed if they are found to have committed gross misconduct, or if they are subject to a live final written warning.
- In reaching your decision it is important to consider what action has been taken in similar cases in the past. You should also consider the individual circumstances of the case and any mitigating circumstances.
- Consider whether the proposed disciplinary action is reasonable and proportionate. The proposed disciplinary action should be consistent with other similar cases in the council. Your HR procedural adviser will advise you.
- Once you have reached a decision ask both sides to return and communicate your decision. There is no further verbal discussion. You should then close the meeting.
- Confirm your decision to the employee in writing, normally within 5 working days of the disciplinary hearing.
- If your decision is summary dismissal (dismissal without notice or pay in lieu of notice) for gross misconduct inform payroll immediately following the hearing.

13. Appeals

- 13.1 An employee is entitled to appeal against the outcome of the disciplinary hearing. If he/she wishes to do so he/she should write to the Head of Human Resources within 5 working days of being advised of the outcome of the disciplinary hearing, stating his/her grounds for appeal.
- 13.2 The appeal hearing will be heard as soon as possible, normally within 6 weeks of the appeal being received.
- 13.3 The appeal can confirm the decision of the disciplinary hearing, impose a lesser sanction or decide that no sanction is required. The appeal decision is final.
- 13.4 Human Resources will liaise with the members of the appeal panel to arrange a date and time for the hearing.
- 13.5 The employee will normally be given 10 working days notice of the appeal. Both the employee and management must indicate no later than 5 working days before the hearing, which, if any, witnesses they will call, and provide copies of documents that they will refer to at the appeal.
- 13.6 The following people will normally attend the appeal:
- The employee
 - The employee's representative
 - The appeal panel

- A representative of Human Resources to advise the panel on procedural issues
- The Chair of the disciplinary hearing, who will present the management case. (Referred to as 'the management side' below)
- The representative of Human Resources who advised the disciplinary hearing may be present to support the Chair of the disciplinary hearing.
- Witnesses
- A note taker
- The investigating officer may be called as a witness

13.7 The appeal will normally take place in the following way:

- The appeal panel will appoint a Chair
- The Chair will introduce those present and explain the purpose of the hearing.
- The employee will be asked to state the grounds for their appeal and to present his/her case. This can either be done in person, or can be presented by the employee's representative. The employee can call witnesses.
- The management side will be allowed to question the employee and/or the witnesses immediately after each has presented their evidence.
- The panel members and/or HR adviser will be allowed to question the employee and/or the witnesses after each has presented their evidence and been questioned by the management side.
- The witnesses must remain available in case they need to be recalled.
- The management side will present the management case and may call witnesses.
- The employee and/or his/her representative will be allowed to ask the management side and/or the witnesses questions immediately after each has presented their evidence.
- The panel members and/or HR adviser will be allowed to question the management representative and/or the witnesses after each has presented their evidence and been questioned by the employee and/or their representative.
- The witnesses must remain available in case they need to be recalled.
- The management representative and the employee will be allowed to summarise their cases, starting with the employee.
- Both sides will be asked to leave whilst the panel considers the evidence.
- If either side is recalled to provide further information or clarification, the other side must also be recalled to hear and question it.
- The appeal decision will be given to both sides verbally after the appeal, and confirmed in writing normally no more than 5 working days after the appeal hearing.

14. **Written records**

14.1 You should keep written records at all stages of the disciplinary procedure. At the end of the case you should give these to the representative of HR. Your written records should include:

- A copy of the letter sent to the employee outlining the allegations.
- A copy of any investigation reports
- A copy of the decision communicated to the employee in writing following the disciplinary hearing and any appeal
- A copy of notes made at any disciplinary hearing/appeal hearing

14.2 Records will be treated as confidential and be kept in accordance with the Data Protection Act 1998.

15. The employee's representative

- 15.1 At all stages of the formal process the employee will have the right to be accompanied by a representative who may be a relevant trade union representative or a work colleague. In exceptional circumstances the employee may be allowed to be accompanied by an alternative representative.
- 15.2 The representative may confer with the employee during the hearing/appeal hearing, explain the employee's case, ask questions, sum up and respond to views expressed at the hearing so long as the employee is happy for him/her to do so. However the employee's representative has no right to answer questions on the employee's behalf except in exceptional circumstances.

Interim Disciplinary Procedure – Advice for Employees

1. Overview

- 1.1 These advice notes have been produced to provide you with some guidance about the disciplinary procedure. If you require further clarification of any point please contact your line manager, Human Resources or your Trade Union.

2. Scope

- 2.1 Wherever possible your manager will try to resolve minor issues of misconduct informally. Where an informal approach has been tried and it has not worked, or where the misconduct is more serious the formal disciplinary procedure will be used. You can obtain a copy of the disciplinary procedure from the Intranet, or from your line manager.
- 2.2 The disciplinary procedure aims to encourage employees to improve their conduct, not simply to punish misconduct.
- 2.3 The disciplinary procedure should not be used to handle issues of performance or ill-health capability - that is issues about your ability to do your job due to skill or aptitude or due to your health.

3. What is misconduct?

- 3.1 Examples of misconduct and gross misconduct can be found within section two of the disciplinary procedure. These lists are not exhaustive.
- 3.2 Gross misconduct is very serious misconduct that will repudiate the contract of employment and that will normally justify dismissal without notice or pay in lieu of notice (Summary dismissal).

4. Induction and explaining standards

- 4.1 Whilst it is important that misconduct is dealt with when it happens it is best to try to prevent problems occurring in the first place. It is important that you are aware of work place rules, and what is expected of you.
- 4.2 Rules exist:
- Within Corporate documentation such as the ICT Policy.
 - In relation to specific resources, situations or equipment e.g. the ICT Policy, health and safety regulations.
 - Rules specific to the service area, team or type of work that you do
- 4.3 You will have been made aware of workplace rules and procedures during your induction and in the course of your employment. It is important that you make yourself familiar with these. Ask your manager for further clarification if necessary.

5. Dealing with misconduct informally

- 5.1 Your manager will monitor and evaluate the work performance, conduct and attendance of all the employees that he/she supervises thorough normal day to day management.

- 5.2 If your manager needs to discuss minor misconduct informally with you, he/she will do this privately either at one to one supervision meeting, or at a separate meeting. Your manager will explain their concerns about your conduct. You will be asked to respond to these concerns and you will be given the opportunity to explain why you are not meeting the required standards of behaviour.
- 5.3 Your manager will explain the improvements that are required and will explore any reasonable support available that would help you achieve this. He/she will confirm certain points in writing.
- 5.4 Informal meetings are not part of the formal disciplinary process. If it become clear during the meeting that the issue is more serious your manager will end the meeting and the matter will be considered under the formal disciplinary procedure.

6. Dealing with misconduct formally

- 6.1 Where an informal approach has been tried and has not worked, or where the alleged misconduct is more serious, the formal disciplinary procedure will be used.
- 6.2 Your manager will inform you of the allegations that have been made against you. This should take place as soon as possible after the allegations have been made. (**Note:** Where the allegations are of potential gross misconduct follow section seven below.)
- 6.3 You have the right to be accompanied at the meeting by a trade union representative or a work colleague. In exceptional circumstances you may be allowed to bring an alternative representative.
- 6.4 You will also be told who will investigate the allegations.
- 6.5 You may not wish to give a detailed response to the allegations in this meeting. You may wish to give your initial reaction to the allegations, and give your full response during the investigation.
- 6.6 You will be given a copy of the disciplinary procedure and a letter explaining the allegations and that an investigation will be carried out.

7. Allegations of gross misconduct

- 7.1 Where an allegation of potential gross misconduct has been made a preliminary investigation may be carried out. Your manager may need to inform you of this by telephone where you are about to go to work from home.
- 7.2 The preliminary investigation will be as short as possible, and will not normally take more than two working days. It will be sufficient to determine whether the allegations amount to potential gross misconduct and to check that there has not been a case of mistaken identity.
- 7.3 You may be asked to work at home, or in another area whilst this is done.
- 7.4 Once the preliminary investigation is complete you will be informed of its findings:
- If there is no case to answer you will be informed of this.
 - If the allegations amount to potential gross misconduct you will normally be suspended on full pay. The authorised officer will meet with you as described below in section eight.
 - If allegations remain, but these do not constitute gross misconduct you will be informed and will also be informed of the investigation as described in section six above.

7.5 If you object to a preliminary investigation being carried out you will normally be suspended and a full investigation will commence.

8. Suspension

8.1 Employees are normally only suspended in serious cases where an allegation of potential gross misconduct is being investigated. Suspension is on full contractual pay.

8.2 If you are suspended you be informed of this at a meeting. You are entitled to be accompanied at the meeting by your representative. The allegations against you will be stated and you will be given information about how the investigation that will be carried out.

8.3 You may not wish to give a detailed response to the allegations in this meeting. You may wish to give your initial reaction to the allegations, and give your full response during the investigation.

8.4 You will be given a copy of the disciplinary procedure and a letter explaining the allegations and that an investigation will be carried out.

9. Investigation

9.1 The Investigating Officer will meet with you at least once as part of the investigation. You should make yourself available for investigation meetings. You are entitled to be accompanied by your representative.

9.2 Once the investigation is complete the investigating officer will compile a report and recommend whether the matter should be dropped, it should be dealt with informally or should be considered at a disciplinary hearing.

10. Financial Investigations

10.1 Where an allegation of misconduct has financial implications, such as theft, fraud, misuse of the Council's assets, falsification of timesheets the officer responsible for internal audit may lead a financial investigation.

11. Being charged with a criminal offence

11.1 If you are charged with a criminal offence there may be grounds for disciplinary action. This will depend upon the nature of the offence and the type of job you do. You should inform the Head of Human Resources if you are charged with a criminal offence.

12. The disciplinary hearing

12.1 The purpose of the disciplinary hearing is to consider whether on the balance of probabilities you committed the alleged misconduct, and if so what disciplinary action should be taken.

12.2 You will be sent a letter, giving you ten working days notice of the disciplinary hearing. You will also be sent copies of any documents that management will refer to during the hearing and the names of any witnesses that will be called

12.3 You will be required to provide copies of documents that you will refer to during the hearing, and names of any witnesses that you will call no later than five working days before the hearing. This time-scale can be altered in exceptional circumstances.

- 12.4 You have the right to be accompanied at the hearing by your representative.
- 12.5 The hearing will normally be attended by:
- You
 - Your representative
 - The person chairing the hearing ('the Chair')
 - The investigating officer and his/her HR support if required
 - A representative of Human Resources who will advise the Chair on procedural matters
 - A note taker
 - Witnesses will be called where required.
- 12.6 At the hearing the investigating officer will present the management case. After the investigating officer has finished you, and/or your representative may comment on what he/she has said and ask questions. The Chair and/or Human Resources may also ask the investigating officer questions.
- 12.7 Witnesses may be called individually as required as part of the management case and may be questioned by both sides, the manager chairing the hearing and/or the representative of Human Resources.
- 12.8 You will then be asked to present your case. You may do this, or you may ask your representative to do this. Once you have finished management may comment upon what has been said and ask questions. The Chair and/or the representative of Human Resources may also ask questions.
- 12.9 Witnesses may be called individually as required as part of your case and may be questioned by both sides, the Chair and/or the representative of Human Resources.
- 12.10 Once all the evidence has been heard the Chair will ask both sides to sum up their cases. Depending upon how complex the case is there may need to be a short adjournment so that both sides can consider how to sum up.
- 12.11 The Chair will ask both sides to leave the hearing while he/she considers his/her decision, with procedural advice from the representative of Human Resources.
- 12.12 Once the Chair has reached a decision he/she will ask both sides to return to hear the decision.
- 12.13 The Chair will confirm the decision to you in writing, normally within 5 working days of the disciplinary hearing.
- 13. Appeals**
- 13.1 You are entitled to appeal against the outcome of the disciplinary hearing. If you wish to do so you should write to the Head of Human Resources within 5 working days of being advised of the outcome of the disciplinary hearing, stating your grounds for appeal.
- 13.2 The appeal hearing will be heard as soon as possible, normally within 6 weeks of the appeal being received.
- 13.3 The appeal can confirm the decision of the disciplinary hearing, impose a lesser sanction or decide that no sanction is required. The appeal decision is final.

- 13.4 You will normally be given 10 working days notice of the appeal. You must indicate no later than 5 working days before the hearing, which, if any, witnesses you will call, and provide copies of documents that you will refer to at the appeal. Management will do the same.
- 13.5 The following people will normally attend the appeal:
- You
 - Your representative
 - The appeal panel
 - A representative of Human Resources to advise the panel on procedural issues
 - The Chair of the disciplinary hearing
 - Witnesses
 - A note taker
 - The representative of Human Resources who advised the disciplinary hearing may be present
 - The investigating officer may be present
- 13.6 At the Appeal you will be asked to state the grounds for your appeal and to present your case. You can either do this yourself, or can be presented by your representative. You will be able to call witnesses.
- 13.7 Management will be allowed to question you and/or the witnesses immediately after each has presented his/her evidence.
- 13.8 The panel members and/or HR adviser will be allowed to question you and/or the witnesses after each has presented his/her evidence and been questioned by management.
- 13.9 The management representative will present the management case and call witnesses.
- 13.10 You and/or your representative will be allowed to ask the management representative and/or the witnesses questions immediately after each has presented his/her evidence.
- 13.11 The panel members and/or HR adviser will be allowed to question the management representative and/or the witnesses after each has presented his/her evidence and been questioned by the employee and/or their representative.
- 13.12 Both sides will be allowed to summarise their cases.
- 13.13 Both sides will be asked to leave whilst the panel considers the evidence.
- 13.14 If either side is recalled to provide further information or clarification, the other side must also be recalled to hear and question it.
- 13.15 The appeal decision will be given to both sides verbally after the appeal, and confirmed in writing normally no more than 5 working days after the appeal hearing.
- 14. Written records**
- 14.1 Records will be kept of all stages of the disciplinary procedure. These will be treated as confidential and be kept in accordance with the Data Protection Act 1998.

15. Your representative

- 15.1 At all stages of the formal process you will have the right to be accompanied by a representative who may be a relevant trade union representative or a work colleague. In exceptional circumstances you may be allowed to be accompanied by an alternative representative.
- 15.2 The representative may confer with you during the hearing/appeal hearing, explain your case, ask questions, sum up and respond to views expressed at the hearing so long as you are happy for him/her to do so. However your representative has no right to answer questions on your behalf except in exceptional circumstances, where the Chair of the disciplinary hearing/appeal permits him/her to do so.