

Report to: Personnel Committee



Date of Meeting 28th November 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Incorporation of Chief Executive/Chief Officer Model Procedures into Council HR Policy

Report summary:

This report proposes changes to relevant HR policy and consequential changes to the Constitution to reflect the model procedures set out in the Joint Negotiating Committee for Chief Officer and Chief Executive conditions of service handbooks, reflecting the recommendations of the East of England Local Government Association's Learning Review.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Committee:

- Approve changes to the HR policies and procedures, as set out in this report
- Recommend to Council consequential amendments throughout the Constitution, as set out in this report.

Reason for recommendation:

To action the recommendations of the East of England LGA's learning review.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

If choosing High or Medium level outline the equality considerations here, which should include any particular adverse impact on people with protected characteristics and actions to mitigate these. Link to an equalities impact assessment form using the [equalities form template](#).

Climate change Low Impact

Risk: Low Risk; Click here to enter text on risk considerations relating to your report.

Links to background information East of England Local Government Association - Learning Review (Part B) [Agenda for Personnel Committee on Tuesday, 22nd March, 2022, 10.00 am - East Devon](#)

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Report in full

1. This report proposes changes to various HR policies and consequential changes to the Constitution following the review recommended by the East of England Local Government Association (EELGA) Learning Review.
2. The Learning Review recommended that the Council:
 - a. Enshrine the Chief Executive/Chief Officer Model Procedure for discipline and grievance into the Council's policy (alongside establishing a standing committee for employment matters, which has already been actioned through the introduction of the Personnel Committee) (Recommendation 7.13)
 - b. Have clear processes in place within the Council's Redundancy Policy for dealing with senior manager redundancies (Recommendation 7.14)
 - c. Ensure that ill health cases are dealt with in accordance with relevant policy (Recommendation 7.15).
3. As set out in the Reward Review and Monitoring Officer recruitment reports, changes have also been made to the Strategic Lead and Service Lead job titles, to Director and Assistant Director, following recent recruitment agency feedback, and this is also reflected in the proposed Constitution and HR policy changes.
4. The internal policy review highlighted the need for consequential amendments throughout the Constitution to Strategic Lead/Service Lead job titles to reflect the above and any other consequential changes required to align with the Model Procedures reflected in the proposed HR policy changes. The changes are set out at Appendix 1 and apply to Article 11 Officers (Management Structure), Part 3 Section 2 – Terms of Reference and delegated powers of Committees (Personnel Committee) and Part 4.8 Officer Employment Procedure Rules (Discipline, Dismissal and Redundancy provisions).

5. The following HR policies have been reviewed and updated so that they align with the recommendations and relevant paragraphs of the Joint Negotiating Committee (JNC) for Chief Executive's Conditions of Service Handbook Model Procedure (which also applies to the JNC for Chief Officers terms and conditions), and which will apply to the Council's Chief Executive and Directors. The policies are detailed at Appendices 2-8:
 - a. **Disciplinary Policy and Procedure (existing general policy)** - Updated to clarify of levels of responsibility within the Disciplinary Policy and Procedure to take account of the Chief Officer Model Procedure.
 - b. **Absence management policy (existing general policy)** - Updated to apply to all Chief Officers and clarification of levels of responsibility within the Policy and Procedure to take account of Chief Officer Model Procedure.
 - c. **Disciplinary Procedure for Chief Officers (NEW)** - New procedure which reflects the Chief Executive's Handbook Model Procedure and will apply to misconduct, capability related to performance issues, capability related to sickness absence (long term or frequent intermittent absence, apart from permanent ill health which may be through mutual termination rather than dismissal), some other substantial reason dismissals and failure to renew a fixed term contract where the authority has undertaken to renew such a contract.
 - d. **Grievance policy (existing general policy)** - Clarifies how the Grievance Procedure can be used when there are officer allegations of member unacceptable behaviour and how this is separate from the Member Code of Conduct. Clarification of levels of responsibility within the Policy and Procedure to take account of the Chief Officer Model Procedures. Clarifies arrangements where staff raise grievances against the Chief Executive.
 - e. **Bullying and Harassment policy (existing general policy)** - Renamed to provide broader reference to unacceptable behaviour. Inclusion of reference to Member and Officer Codes of Conduct and Protocol for Relationships between Members and Officers (Part 5 of Constitution) to clarify how they link to HR policy. Clarifies how each individual (employee, member, volunteer and contractor) should deal with allegations of unacceptable behaviour (i.e. through Grievance, Constitution or Complaints procedures).
 - f. **Chief Executive Grievance Procedure (NEW)** - Clarifies arrangements if the Chief Executive wishes to raise a grievance
 - g. **Redundancy Policy and Procedure (existing general policy)** - Reflects Chief Officer Handbook which states that Chief Officer redundancy consultation should be for a minimum of 28 days and clarifies who will make Chief Officer redundancy and redundancy appeal decisions.
6. In addition, changes have been identified to the Dealing with Unsatisfactory Performance Policy and Procedure but the policy is due a wider review which is being undertaken by HR and therefore this document will be provided to a future Personnel Committee.
7. Unison have been consulted on the proposed changes as outlined above.

Financial implications:

There are no direct financial implications identified

Legal implications:

The Personnel Committee can approve the policies but the related changes to the Constitution must be approved by Council. The policies have been revised to take on board the recommendations from the EELGA Learning Review and updated Joint Negotiating Committee for Chief Officer and Chief Executive conditions of service handbooks and the amendments / policy wording appears reasonable. There are no other legal implications requiring comment.

Appendix 1 – Proposed Constitutional Changes

(Proposed changes shown in red)

11 Article 11: Officers

11.1 Management Structure

11.1.1 The Council will employ such officers as it considers necessary to carry out its functions.

11.1.2 The Council will appoint persons for the following posts, who will be designated Chief Officers:

Post	Functions and areas of responsibility
Chief Executive	Overall corporate management and operational responsibility (including overall management responsibility for all officers). Provision of professional advice to all parties in the decision making process. Representing the Council on partnership and external bodies (as required by statute or the Council). Acting as the Council's Electoral Registration Officer, Returning Officer and Acting Returning Officer for all relevant electoral purposes
Director of Governance and Licensing	Services include Legal, Democratic Services, Licensing and Information & Complaints
Director of Finance	Services include Accountancy and Audit, Benefits, Revenue Collection. Responsible for asset management, car parking and major projects
Director of Housing, Health and Environment	Services include Housing, Environmental Health, StreetScene and Countryside and Leisure.

11.1.3 In addition to the above the Council may appoint one or more further **Directors** or equivalent to assist the Chief Officers; together with the Chief Officers this shall be the Senior Management Team.

11.1.4 All other staff will be appointed by a Chief Officer or by one of their managers.

11.1.5 **Head of Paid Service, Monitoring Officer and Chief Financial Officer** – The Council will designate the following posts to assume the appropriate statutory responsibilities **and these post holders shall be referred to as the Statutory Officers:**

Post	Statutory Designation
Chief Executive	Head of Paid Service
Director of Governance and Licensing	Monitoring Officer
Director of Finance	Chief Finance Officer (S.151 Officer)

1.1.6 Structure. The Head of Paid Service will determine and publicise (within this Constitution) a description of the overall departmental structure of the Council showing the management structure and deployment of officers. This will be set out at Part 7 of this Constitution.

Part 3 Section 2 – Terms of Reference and delegated powers of Committees

2.10. Personnel Committee

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2.10.10. Investigating and Disciplinary Sub Committee (IDC)

2.10.11. Membership: 5 Councillors drawn from the membership of the Personnel Committee (subject to the rules relating to political balance / proportionality) none of whom shall have sat on any Grievance Sub Committee relating to the same matter and which shall include at least one member of the Cabinet (which may not be the Leader). Substitute members can be used when necessary.

2.10.12. Quorum: 5

2.10.13. Terms of Reference: To consider disciplinary matters (including the authority to suspend) in relation to Chief Officers which are recommended to be dealt with by this Committee in the relevant Conditions of Service and **the Council's Disciplinary Procedure for Statutory and Chief Officers** ~~any model procedures contained therein~~. The Committee will have detailed regard to the Officer Employment Procedure Rules contained in the Constitution. **The Committee will also consider and, in the absence of any appeal, recommend to Full Council any decisions regarding redundancy of Chief Officers.**

2.10.14. Employment Appeals Sub Committee

2.10.15. Membership: 5 Councillors drawn from the membership of the Personnel Committee (subject to the rules relating to political balance / proportionality) none of whom shall have sat on any Investigating and Disciplinary Committee or Grievance Sub Committee relating to the same matter and which shall include at least one member of the Cabinet (which may not be the Leader). Substitute members can be used when necessary.

2.10.16. Quorum: 5

2.10.17 Terms of Reference: To determine appeals from the Chief Officers against any decision of the Investigating and Disciplinary Committee involving disciplinary sanctions amounting to less than dismissal. **To determine redundancy decisions following an appeal from the decision of the Investigating and Disciplinary Committee with the decision then recommended to Full Council for approval. To consider any appeal by the Head of Paid Service in relation to a grievance following a decision of the Grievance Sub Committee in accordance with Stage 2 of the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives.**

2.10.18. Grievance Sub Committee

2.10.19. Membership: 5 Councillors drawn from the membership of the Personnel Committee (subject to the rules relating to political balance / proportionality).

2.10 .20. Quorum: 3

2.10.21. Terms of Reference: To determine grievances by / against the Head of Paid Service that cannot be resolved informally in accordance with Stage 1 of the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives.

Part 4.8 Officer Employment Procedure Rules

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5. Disciplinary action

5.1 ~~Disciplinary action against Chief Officers will be in accordance with the Council's Disciplinary Procedure for Statutory and Chief Officers, which reflect the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives and Chief Officers.~~

~~Suspension - The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.~~

~~5.2 Any decision to dismiss the Head of Paid Service, Monitoring Officer or Chief Finance Officer shall be taken by Full Council only following consideration of any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.~~

5.2 Councillors will not be involved in the disciplinary action against any officer other than Chief Officers.

6. Dismissal

6.1 Other than as specified in the Scheme of Delegations to officers Councillors will not be involved in the dismissal of any officer other than a Chief Officer.

7. Redundancy of Chief Officers

7.1 In the event that the situation arises where any of the Chief Officers are recommended to be made redundant then only Full Council may approve the redundancy.

~~NOTE: Rules 5.1 to 5.3 are a summary of Article 7, Part II of Schedule 1 and Schedule 3 of the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) to which detailed reference should be made when appropriate and any complaint and subsequent disciplinary action will have regard to the Conditions of Service and / or model procedures appropriate to the Chief Officer concerned and the ACAS Disciplinary and Grievance Procedures~~

Appendix 2 – Disciplinary Policy and Procedure

(Proposed changes shown in red)



Disciplinary policy and procedure

1. This policy and procedure will be used in all cases where conduct is such as to warrant disciplinary action. Issues relating to performance will be dealt with using the Dealing with Unsatisfactory Performance Policy.
2. The Council expects conduct from you which is of the highest standard so that public confidence remains high. The Council expects you to contribute positively, consistently and to the best of your abilities. In turn, East Devon District Council strives to provide a supportive environment where contributions are valued and recognised and where you can reach your full potential.
3. This policy sets out the means by which rules are observed and standards are maintained and should be used primarily to help and encourage employees to improve rather than just as a way of imposing punishment. It provides a method of dealing with any apparent shortcomings in conduct and can help an employee to become effective again.
4. This policy and procedure will be applied fairly, effectively and consistently to all staff regardless of service or length of service. It applies to all employees working for the Council with the exception of **Chief Officers, who are covered by a separate policy.**

5. Terms Explained

- Conduct – an employee's actions/behaviour in the workplace.
- Disciplinary action – formal action against an employee such as issuing a first written warning for misconduct or dismissing someone for gross misconduct.
- Gross misconduct – acts which are so serious as to justify possible dismissal without notice.
- Natural justice – refers to the basic principles of fair treatment.
- Reasonable adjustments – a way of preventing discrimination against employees with disabilities by making changes to ensure that they are not at a disadvantage.
- Improvement note – in cases of less serious misconduct an employee should be given an improvement note setting out, the standard/improvement that is required, the timescale for achieving this improvement, a review date and any support the employer will provide to assist the employee.

6. What is the council's policy?

- 6.1. East Devon District Council recognises that good training helps managers achieve positive outcomes and will provide training and guidance to managers and team leaders to make sure that they understand policy and procedure. This will be delivered through our programme of mandatory training for manager and through Managers Guidance documents as well as coaching and advice from Human Resources (HR).
- 6.2. HR must be consulted at all stages of the Disciplinary Procedure. HR is responsible for maintaining consistency and fairness within the procedures on behalf of the Council.

7. Levels of responsibility within the Disciplinary Policy and Procedure

7.1. The following framework applies within the disciplinary process:

Level of employee	Level of actioning officer	Level of appeal's officer
Staff	Line manager or a more senior manager	Assistant Director/Director or senior manager above level of actioning officer
Assistant Director,	Director	Chief Executive

7.2. Wherever possible, Disciplinary Officers should not act as decision maker in more than one of the disciplinary stages to ensure fairness and objectivity. If a Disciplinary Officer has been involved in prior warnings as decision maker, he or she should not be involved in the dismissal procedure.

7.3. HR will be involved at all levels of the procedure and will advise the officer taking formal action of any 'live' warnings.

8. Rules and standards

8.1. If you breach any of the Council's Code of Conduct, disciplinary rules, or commit some other act of misconduct or gross misconduct, you will be liable to face disciplinary action. This includes misconduct or gross misconduct, which although not necessarily actually specified in this policy, may be regarded as misconduct or gross misconduct.

8.2. The rules and standards given below are not intended to be exhaustive, exclusive or restrictive and each case will be considered on an individual basis, given all the circumstances.

9. Misconduct

9.1. Examples, which may constitute misconduct, are detailed below. Please note that these are examples of conduct which will not normally result in dismissal unless more serious action is warranted or other live disciplinary action has already been taken:

- evidence of negligence or inadequate attention to the requirements of the job
- poor timekeeping
- misuse of working time
- breaches of the Council's specific rules, for example, its Financial Regulations, Financial Operating Procedures and/or Contract Standing Orders, Code of Conduct
- unacceptable personal appearance and/or hygiene
- misuse of or damage to Council property
- unauthorised employment (for example engaging in employment when off duty which conflicts with or is detrimental to the interests of the Council)
- unacceptable behaviour including rudeness or behaviour which undermines the decisions of senior managers (Please also refer to Acceptable Behaviour Policy and the Behaviour Framework)
- conduct likely to injure the image and standing of the Council
- failure to comply with a reasonable instruction from a manager or team leader
- where you commit an act of misconduct outside the place of work and working hours which will affect your work, or colleagues in their work or the standing of the Council.

10. Gross Misconduct

10.1. Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and the employee thus justifying summary dismissal. Acts which constitute gross misconduct must be very serious. The examples below may constitute gross misconduct and they include misconduct of such a nature that, in the light of your action, the Council cannot allow you to continue at work and sees no alternative to dismissal on the grounds of gross misconduct. Any of the examples of misconduct given above, could also constitute gross misconduct if serious enough:

- dishonesty, theft, fraud (including bribery and other corruption) and unauthorised possession or removal of Council products or property or those of an employee, client, customer or visitor incapacity through drink or illegal drugs
- deliberate falsification of job application forms, sickness certificates, time records or claims for financial reimbursement, and misuse of Council employment benefits
- abuse of flexitime or flexible/preferred working hours arrangements
- reporting absent for a false reason or unauthorised absence
- engaging in any activity which could prejudice recovery while absent on the grounds of sickness
- deliberately or negligently causing damage to Council property, equipment, materials, information or IT systems
- serious abuse or misuse of Council property, equipment, materials, information, IT systems including their use to carry out work for third parties on a personal basis without permission, breach of security or unauthorised access
- wilfully or negligently causing harm or injury to another employee, client, customer or visitor, physical violence, assault, fighting, bullying or grossly offensive, aggressive or abusive behaviour or language
- wilful refusal to obey a reasonable management instruction or serious insubordination
- discriminating against, harassing, bullying or victimising another employee, client, customer or visitor on the grounds of age, race, sex, sexual orientation, gender reassignment, religion or belief, marriage and civil partnership,, disability or pregnancy and maternity
- cases of deliberate, careless or negligent omission or non-compliance with health and safety procedures and practices, which endanger others or self
- smoking / vaping in Council vehicles or on Council premises other than in designated outside smoking areas
- logging onto sexually explicit websites, downloading or circulating pornographic or other offensive, illegal or obscene material or using the email or internet for gambling or illegal activities or sending offensive emails to work colleagues (in the latter case, including from the employee's home computer in their own time)
- engaging in sexual activity on Council premises at any time
- bringing illegal drugs or other illegal substances, items or weapons onto Council premises
- serious professional incompetence, negligence, or dereliction of duty
- posting derogatory, offensive, discriminatory or defamatory comments online about the Council, its employees, clients, customers or members
- a fundamental breakdown in trust and confidence (subject to the Public Interest Disclosure Act 1998 – whistleblowing in certain circumstances)
- failure to attend a disciplinary hearing without justifiable reason
- behaviour outside the place of work and working hours which results in or has the potential to result in criminal charges or convictions and which will affect your work, or colleagues in their work or the standing of the Council.
- bringing the Council into serious disrepute, even if done in the employee's own time

- 10.2. The Chief Executive, Directors and Assistant Directors may also use the Disciplinary Policy and Procedure where you fail to observe the principles and practices embodied in the Council's Code of Conduct, Standing or Financial Orders and other policies which may be in force at any particular time.

11. Informal action

- 11.1. You have a contractual responsibility to follow the Code of Conduct and policies and rules of the Council. Informal action will apply where there are minor faults or breaches in relation to your conduct.
- 11.2. If there is a decision that improved standards are required, an improvement note/development plan should be given to you making it clear what those standards are, what measures are to be taken to achieve those standards and within what period of time. A follow up discussion to ensure the standards have been achieved should then be arranged. The one to one form can be used for this process as long as all these points are covered.
- 11.3. There is no statutory right of representation at this stage but you must of course have the opportunity to respond to the issue(s) raised. A note of the discussion should be kept on the local one to one file indicating the nature of the issue.
- 11.4. If improvements are not made then the disciplinary procedures should be used. The improvement note/development plan should outline that the next stage will be the formal disciplinary procedure.

12. The disciplinary procedure

- 12.1. The formal disciplinary procedure will be used if conduct does not improve through the informal route or if the disciplinary matter is more serious, or if the conduct constitutes potential gross misconduct. If formal disciplinary action is envisaged, the manager concerned must consult with HR.
- 12.2. Disciplinary proceedings should be treated confidentially.
- 12.3. If the issue is one which relates to potential fraud, corruption or significant theft, for example the misappropriation of assets or otherwise for gain or the offering, giving, soliciting or acceptance of an inducement/reward to influence a decision; these should be referred in the first instance to the Fraud Forum. This Forum will agree, in line with the Anti-fraud, Theft and Corruption Policy:
- who should investigate the matter and the extent of their remit;
 - if it should be dealt with under the Disciplinary Policy and Procedure;
 - determine whether it is serious enough to inform the police
 - decide on frequency of reports, meetings, communication and release of information into the public domain.

13. Investigation

- 13.1. When dealing with any disciplinary matter, whether formal or informal, an investigation of events will always take place. Only at the end of the investigation will the investigating officer decide whether or not to recommend that there is a disciplinary case to answer. The investigation should be completed as soon as practicable, preferably within 4 weeks of the start of the disciplinary procedure.
- 13.2. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation will be.
- 13.3. The investigating officer will not be the same person as the Disciplinary Officer. Please contact HR for advice regarding who should investigate the issue.
- 13.4. Investigations will involve:
- clarifying the conduct related allegations
 - enquiring into the circumstances surrounding the allegations made
 - making sure that you are aware of the allegations; discussing these with you and seeking views and responses about the allegations
 - taking witness statements if appropriate

- gathering factual information
 - producing an investigation report
 - deciding whether or not, in the view of the investigating officer, a disciplinary hearing should be recommended
 - presenting the report and the findings of the investigation to the disciplining officer and to you at the hearing (where possible).
- 13.5. The purpose of the investigation is to establish if formal disciplinary action may be needed.
- 13.6. The purpose of the investigation is to enable the Disciplinary Officer to establish whether on the balance of probability, there appears to be a case which should be answered. It will be up to the officer/member conducting the hearing to decide, on the balance of probabilities, whether the case against you has been made out. The criminal test of proving the case against you beyond all reasonable doubt does not apply.

14. Suspension from work

- 14.1. In cases, which allegedly involve serious or gross misconduct, you may be suspended from work while the case is being investigated. The period of suspension will be as brief as is necessary for the investigation to be carried out. There will be regard for the principle that disciplinary matters will be dealt with as quickly as is reasonable in all the circumstances of the case.
- 14.2. Suspension is not an assumption of guilt and is not considered a disciplinary sanction and this should be made clear to you.
- 14.3. Suspension may be considered (according to Levels of Responsibility):
- where it would cause detriment to you or the Council if you were to remain at work
 - in serious cases where it would be inappropriate for you to continue with the normal activities of your job due to the nature of the allegation. In some cases, job activities may be limited to avoid full suspension in certain circumstances where you are the subject of police investigation.
- 14.4. The decision to suspend will be made only when preliminary enquiries have taken place. When a decision to suspend is made, the suspending officer should meet with you to inform you of the reason for and the fact of suspension, together with the purpose and implications of suspension.
- 14.5. If you are suspended, the suspending officer will keep the matter confidential and not disclose the nature of the suspension to anyone other than HR or others involved in advising or investigating the matter. If, for operational reasons, it is necessary to inform others of your whereabouts, the suspending officer should tell work colleagues/other managers that you are on 'authorised leave'.
- 14.6. The decision to suspend you will be confirmed in writing and this letter will include details of how you should make contact with your colleagues in order to support your case.
- 14.7. Whilst suspended, you must not contact your colleagues to discuss either work issues or the disciplinary matter and you must not return to your place of work without first obtaining permission to do so from your Line Manager and HR. You may of course contact your Trade Union representative or colleague representative without seeking permission.
- 14.8. Work colleagues must not try to make contact with you and/or ask questions or discuss the situation.
- 14.9. If, during the course of an investigation, it appears that a fraud or a crime may have been committed, the investigating officer must inform the Disciplinary Officer, HR and the Fraud Forum.
- 14.10. If it is decided that the police should be involved, you will be informed.
- 14.11. Whilst suspended, you will receive your normal basic salary.

15. Informing you

- 15.1. If it is decided that there is a disciplinary case to answer, you will be notified of this in writing. This notification should contain sufficient information about the alleged misconduct and its possible consequences. It should enable you to prepare to answer the case at a disciplinary meeting. With this notification, you will be provided with any investigation report and any copies of written evidence, which may include witness statements.
- 15.2. You will be notified in writing of the time, date and location of the disciplinary meeting. You may offer a reasonable alternative time within five days of the original date if your chosen companion cannot attend. An alternative time will be arranged but if you persistently and unreasonably fail to attend, the Council may conclude that a decision will need to be made on the evidence available. You will be informed if this decision is taken.

16. Representation

- 16.1. You do not have a statutory right to representation at an investigative interview. However, requests for representation during an investigative interview should not be unreasonably refused. Representation will be by a trade union representative or work colleague.
- 16.2. You have a statutory right to be accompanied at a disciplinary meeting by a companion where the disciplinary meeting could result in:
 - a formal warning being issued; or
 - the taking of some other disciplinary action; or
 - the confirmation of a warning or some other disciplinary action (appeal hearings) Your chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany you.
- 16.3. The companion is allowed to address the hearing to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during the meeting.
- 16.4. The companion does not, however have the right to answer questions on your behalf, address the hearing if the worker does not wish it or prevent the Disciplinary Officer from explaining their case.

17. Witnesses

- 17.1. Witnesses may be a key part of both the investigation and the disciplinary hearing. During the investigation, the investigating officer should interview witnesses directly and produce signed statements of the witnesses' contribution. If you are facing disciplinary action, you should be shown copies of these statements (except in the case of anonymity).
- 17.2. In some exceptional cases, a witness may wish to remain anonymous during the investigation and disciplinary hearing stage. At investigation, the statement shown to you will be made anonymous. At the disciplinary hearing you and your representatives and management representatives will not be able to question anonymous witnesses directly but will be able to put questions to them via the disciplining officer who together with HR will report back the responses.
- 17.3. Each side will assess whether or not it is necessary for them to bring essential witnesses to the investigation or the hearing. In all cases, these should be kept to a minimum and be essential to the substance of the case. Written witness statements may also be submitted to the hearing.
- 17.4. Witnesses will normally only attend the hearing for the period during which their statement is under discussion. However, if the witness is a specialist with particular detailed knowledge which may be required at different stages of the process, then the disciplining officer may require the witness to remain.

- 17.5. If you are a witness in a disciplinary matter you are expected to keep the matter confidential and not discuss it with work colleagues.
- 17.6. Breaches of confidentiality may be treated as a disciplinary matter.

18. Holding a disciplinary meeting

- 18.1. At the meeting the Disciplinary Officer should explain the complaint against you and go through the evidence which has been gathered. You will be given the opportunity to set out your case and answer any allegations that have been made. You will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses.
- 18.2. The disciplinary hearing will be undertaken by the authorised officer as set out in Levels of Responsibility.
- 18.3. The hearing itself will be conducted in accordance with the Council's commitments and will preferably take place within 4 working weeks of the conclusion of the investigation.
- 18.4. The meeting may not proceed in neat, orderly stages but it is good practice to:
 - introduce those present and explain their roles
 - introduce and explain the role of the accompanying person
 - explain that the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the organisation's disciplinary procedure
 - explain how the meeting will be conducted.
- 18.5. The Disciplinary Officer will state precisely what the complaint is and outline the case briefly by going through the evidence that has been gathered through the investigation.
- 18.6. You will be given the opportunity to state your case and answer any allegations which have been made. You will be able to ask questions, present evidence and call witnesses. The accompanying person may also ask questions and should be able to confer privately with you.
- 18.7. If it is not practical for witnesses to attend, consideration will be given to proceeding if it is clear that the lack of verbal evidence will not affect the substance of the complaint.
- 18.8. During the hearing the Disciplinary Officer will establish all the facts and ask you if you have any explanation for the alleged misconduct or if there are any special circumstances to be taken into account. If new facts emerge, it may be necessary to adjourn the meeting to further investigate them and reconvene when this has been done. If it becomes clear during this stage that the employee has provided an adequate explanation or there is no real evidence to support the allegation, the meeting will be brought to a close.
- 18.9. At the end of the hearing, the Disciplinary Officer will sum up the main points of the discussion after questioning is completed. This allows all the parties to be reminded of the nature of the offence, the arguments and evidence put forward and to ensure nothing is missed. It will be important that the Disciplinary Officer confirms that no one has any further points which they wish to add before the meeting is closed.

19. Grievances

- 19.1. Where an employee raises a grievance during a disciplinary process, a decision will be taken as to whether or not the disciplinary process will be temporarily suspended in order to deal with the grievance. A decision on whether to suspend the disciplinary process in order to deal with the grievance(s); to deal with the matters concurrently; to deal with the grievance(s) as part of the disciplinary process; or to address the grievance(s) following the conclusion of the disciplinary procedure will depend on the nature of the allegations and grievance(s). The aim of the approach decided upon will be to ensure a fair disciplinary process is followed.

20. Reasonable adjustments

- 20.1. Reasonable adjustments may be needed for people with a disability. This may include the provision of a support worker or advocate with knowledge of the disability and its effects.

21. Imposing formal disciplinary action

- 21.1. If it is decided that formal disciplinary action is appropriate, the type of action to be taken will relate to the circumstances and seriousness of each case. In deciding which disciplinary action, if any, is appropriate, consideration should be given to any mitigating circumstances. It is not possible to identify an exhaustive list of mitigating circumstances but they may include such things as length of unblemished service or misunderstandings. The effect of mitigating circumstances may be such as to lessen any action taken or identify the appropriate action to be taken.
- 21.2. Consideration should also be given to:
- the penalty imposed in similar cases in the past
 - whether standards of other employees are acceptable, and that the employee is not being unfairly singled out
 - the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
 - any special circumstances which might make it appropriate to adjust the severity of the penalty
 - whether the proposed penalty is reasonable in view of all the circumstances
 - whether any training, additional support or adjustments to the work are necessary.
- 21.3. It should be clear what the normal organisational practice is for dealing with the kind of misconduct. This does not mean that similar offences will always call for the same disciplinary action. Each case must be looked at on its own merits and any relevant circumstances taken into account. Such relevant circumstances may include health or domestic problems, provocation, justifiable ignorance of the rule or standard involved or inconsistent treatment in the past.

22. Disciplinary actions

- 22.1. Written warning - In cases of misconduct, formal action will be a written warning setting out the nature of the misconduct, the change in behaviour required and how long the warning will remain active (usually 6 months but up to 12 months dependent on the facts of the case). The warning should also inform the employee that a final written warning may be considered if there is further misconduct. A record of the warning will be kept but will be disregarded after it has expired.
- 22.2. Final written warning - If the employee has a current warning relating to misconduct then further misconduct may warrant a final written warning. This may also be the case where 'first offence' misconduct is sufficiently serious, but would not justify dismissal. Such a warning should normally remain current for twelve months (but could be up to 2 years depending on the facts of the case or indefinitely in exceptional circumstances) and contain a statement that further misconduct may lead to dismissal.
- 22.3. Dismissal - If the employee has received a final written warning, further misconduct or unsatisfactory performance may warrant dismissal. The penalty should be confirmed in writing, and the procedure and time limits for appeal set out clearly. There may be occasions when, depending on the seriousness of the misconduct involved, it will be appropriate to consider dismissal without notice (see below).
- 22.3.1. Dismissal with notice - You may be dismissed if, despite warnings, your conduct does not improve to the required standard within the specified time period. Dismissal must be reasonable in all the circumstances of the case. Unless you are being dismissed for reasons of gross misconduct, you will receive the appropriate period of notice or payment in lieu of notice.
- 22.3.2. Dismissal without notice - In cases of gross misconduct, you will be dismissed without notice. So far as possible the types of offences which fall into the category of 'gross misconduct' are clearly specified within this policy but this list is not exhaustive.

- 22.4. Action short of dismissal - As an alternative to dismissal where dismissal is a reasonable response, the following may be considered in addition to a final written warning:
- withholding of incremental progression for no longer than 1 year
 - permanent demotion to a lower graded post with no protection of salary or wages. This demotion would not apply subsequently should you apply for and be successful in achieving a higher graded post at some later date.
- It should be noted that the list of action short of dismissal is neither exclusive nor exhaustive and the Council has the right to take any other action it considers reasonable in the light of the circumstances of the particular case. Action short of dismissal would not be implemented until the internal appeals procedure has been completed.
- 22.5. The disciplinary action taken can be at any of the above levels depending on the seriousness of the offence or issue.

23. Written confirmation

- 23.1. In all cases where disciplinary action is taken, you shall have the decision confirmed in writing within five working days. The letter must state the level of action taken and the reasons for that action. The written notification should specify:
- the nature of the misconduct
 - any period of time given for improvement and the improvement expected
 - the disciplinary penalty and where appropriate how long it will last
 - the likely consequences of further misconduct
 - the timescale for lodging an appeal and how it should be made.

24. Time limits for warnings

- 24.1. Except in agreed special circumstances, any disciplinary action taken should be disregarded for disciplinary purposes after a specified period of satisfactory conduct.
- 24.2. A decision to dismiss should not be based on an expired warning but the fact that there is an expired warning may explain why the Council does not opt to substitute a lesser sanction.
- 24.3. Warnings will normally remain on the disciplinary record for the following time periods, unless a longer period is decided upon at the time of the disciplinary action. The disciplining officer must discuss any variation in timescales with HR.
- Written warning - 6 months
 - Final written warning - 12 months
- 24.4. There may be occasions when a final written warning is so close to gross misconduct that the warning remains on your file for longer than 12 months or even indefinitely.

25. The Appeals Procedure

- 25.1. Where you feel that disciplinary action against you is wrong or unjust, you may appeal against the decision. Appeals should be heard without unreasonable delay.
- 25.2. You must exercise the right of appeal by writing within 5 working days of the date of the written notification of disciplinary action. The grounds of appeal should be specific, stating why the decision is regarded as incorrect or unfair and if appropriate, referring to the specific allegations which were the basis of the disciplinary action.
- 25.3. The letter of appeal should be sent to the Disciplinary Officer, who should forward a copy to HR. The person hearing the appeal will be as set out in Levels of Responsibility.
- 25.4. In preparation for and at least 5 working days before the appeal hearing, both the Disciplinary Officer and you (now the appellant) should give to the person or panel hearing the appeal:
- a copy of the notes of the disciplinary hearing
 - a statement of the case against the decision and for the (appellant) appeal
 - any relevant supporting documentation or documentary evidence either party wish to be taken into account
 - details of any witnesses the parties wish to attend in person and why
 - any witness statements that they wish to submit.

26. Conducting an Appeal Meeting

- 26.1. At the Appeal Meeting the following people will be present:
- The Appeal Officer/panel
 - You and your representative
 - The investigating officer(s)
 - Witnesses as necessary
 - HR as adviser to the Appeal Officer/panel
- 26.2. The Appeal Officer should:
- Introduce those present to each other, explaining their presence if necessary.
 - Explain the purpose of the meeting, how it will be conducted, and the powers the person deciding the appeal have.
 - Ask you to outline why you are appealing.
 - Pay particular attention to any new evidence that has been introduced and ensure that you have the opportunity to comment on it.
 - Once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision.

27. Reaching a decision

- 27.1. In the first instance, the appeal is concerned with whether or not the decision reached by the Disciplinary Officer was reasonable on the basis of the evidence and information available at the time of the hearing. It may be that new evidence has emerged and the person hearing the appeal must decide whether or not to allow that evidence to be introduced. If it is introduced the 'other side' must have the opportunity to comment on it even if this means that the appeal must be adjourned.
- 27.2. If the appeal is being submitted due to issues around the investigation, it may be necessary to conduct a fresh investigation.
- 27.3. At the end of the appeal process, the Appeal Officer may conclude:
- that the appeal has been successful and that the disciplinary action taken should be reversed
 - that the appeal has been unsuccessful and that the disciplinary action taken should be upheld
 - that the appeal has been unsuccessful but that the disciplinary action taken is too harsh and should be substituted by more lenient action
 - that so much new evidence has come forward that the case should be reheard by a different Disciplinary Officer.
- 27.4. At the conclusion of the appeals process and within 5 working days, the decision must be confirmed to the appellant in writing in the same way as for the disciplinary action. There is only one right of appeal internally.

28. Summary of time-scales

- 28.1. Investigation - This should take place as speedily as practicable and preferably within 4 working weeks of the start of the disciplinary procedure or date of suspension. You will be invited to the investigatory interview in writing and the written invitation will include details of the allegations being made.
- 28.2. Disciplinary hearing - You should be given at least 5 working days' notice of the disciplinary hearing, which, wherever practicable should be held within 4 working weeks of the conclusion of the investigation. Papers from both sides, to be considered at the hearing, should be available to all parties at least 5 working days before the hearing.
- 28.3. Notification of disciplinary action - You should be told the results of the disciplinary hearing as soon as practicable after the hearing and this should be confirmed in writing within 5 working days of the verbal notification.
- 28.4. Lodging of appeal - You should lodge any appeal in writing within 5 working days of the date of the written notification of disciplinary action.

- 28.5. Appeal hearing - You should be given at least 5 working days' notice of the appeal hearing, which, wherever possible should be held within 4 working weeks of the notification of appeal. Papers to be considered as part of the hearing should be available to all parties at least 5 working days before the hearing.
- 28.6. Variations to these time-scales may be appropriate and agreed within the parties.

29. Failure to attend the disciplinary hearing

- 29.1. If you or your representative cannot attend the hearing, an alternative date should be offered.
- 29.2. Where you are off sick, supported by a medical certificate at the time of any of the hearings, then you may be referred to Occupational Health for advice on your fitness to participate in the disciplinary process. If Occupational Health advises that, despite your fitness for work, you can attend a hearing, then you must attend the rescheduled hearing or make written representations. If you do not attend the hearing the case will be heard in your absence.
- 29.3. If Occupational Health advises that you cannot attend and the sickness is long term, then the rescheduled hearing can be held without you being present. In these circumstances, you are encouraged to instruct your representative to act on your behalf and/or provide written representations.
- 29.4. Whilst it is accepted that on occasion, it is unavoidable that dates of the meetings need to be changed, the speedy resolution of disciplinary matters is clearly advisable.
- 29.5. In accordance with the ACAS Code of Practice, in cases where you are persistently unable or unwilling to attend a disciplinary meeting 'without good cause', EDDC may make a decision about the allegations on the basis of the available evidence.

30. Records

- 30.1. Written records will be kept of the formal hearing. These records will be confidential and retained in accordance with Data Protection legislation.
- 30.2. Copies of any meeting records should be given to you although in certain circumstances some information will be withheld, for example to protect a witness.
- 30.3. Details of warnings will be held on your HR staff file.
- 30.4. The Council does not agree to the recording of meetings and any recording of meetings will be treated as misconduct which may result in disciplinary action including warnings and potentially dismissal.
- 30.5. Notes will be taken of meetings where appropriate and there will be an opportunity for individuals to amend the notes taken. If agreement cannot be reached, both sets of notes will remain as a record of the meeting.
- 30.6. Managers should remind people of this at the start of meetings and may ask for mobile phones to be switched off.

31. Criminal charges or convictions

- 31.1. You should not be dismissed or otherwise disciplined solely because you have been charged or convicted with a criminal offence. The question to be asked in such cases is whether your conduct or conviction merits action because of its employment implications.
- 31.2. Where it is thought that conduct warrants disciplinary action, the following guidance should be borne in mind:
- The Council will investigate the facts as far as possible and come to a view about them. This will include considering whether the conduct is sufficiently serious to warrant commencement of the disciplinary procedure.
 - Where the conduct requires prompt attention the Council will not await the outcome of the criminal prosecution before taking fair and reasonable action.
 - Where the police are called in they will not be asked to conduct any investigation on behalf of the employer, nor should they be present at any meeting or disciplinary hearing.

32. Managing allegations against employees working with children / vulnerable adults

32.1. Where there are allegations against employees of a safeguarding nature (please refer to the Devon Districts Safeguarding Policy), including allegations of employees accessing child pornography), the Council's Corporate Safeguarding Lead (**Director of Housing, Health and Environment**) and HR Manager must be notified.

32.2. The Council's Corporate Safeguarding Lead will:

- determine/provide advice on how to proceed and whether to make a formal referral to the appropriate external organisation e.g. Devon County Council, Safeguarding Board or the Police;
- issue instruction on how a formal referral is to be made;
- ensure that any evidence or complaint of abuse or lack of care is reported to the appropriate body;
- ensure that the matter is referred to HR;
- ensure that proper records are kept of any incidents occurring and that these are passed on to HR;

32.3. Where the employee's position involves regulated activity (see Disclosure and Barring Service (DBS) Risk Assessment for the post), and the employee concerned is:

- dismissed or removed from working with vulnerable groups (or would have been had they not left/resigned); AND
- carried out any 1 of the following:
 - engaged in relevant conduct in relation to children and/or adults. An action or inaction has harmed a child or vulnerable adult or put them at risk or harm; or
 - satisfied the harm test in relation to children and / or vulnerable adults. e.g. there has been no relevant conduct but a risk of harm to a child or vulnerable still exists; or
 - been cautioned or convicted of a relevant (automatic barring either with or without the right to make representations) offence

HR, in conjunction with the Corporate Safeguarding Lead and Local Authority Designated Officer (LADO), will make a Barring Referral to the DBS. A decision on making Barring Referrals is unlikely to be taken until sufficient investigation has been conducted into the safeguarding allegations and the DBS guidance will be followed in all cases.

32.4. As a local authority, East Devon District Council also has a duty to make a barring referral in the following circumstances:

- Where we believe a person has either:
 - harmed or possesses a risk of harm to a child or vulnerable adult; or
 - satisfied the harm test; or
 - received a caution or conviction for a relevant offence; AND
- the organisation thinks that:
 - the person they are referring is or has been, or might in the future be working in regulated activity; and
 - the DBS may consider it appropriate for the person to be included in a barred list

and HR will make any such referrals where this involves employees, volunteers or workers working on behalf of the Council in line with the above process.

32.5. HR and the Safeguarding Lead will support senior managers in dealing with allegations of abuse or lack of care by employees through robust application of the disciplinary policy and in compliance with the safeguarding policy.

Policy administration

- **Equality impact** - High. This policy has high equality relevance. Indirect discrimination can arise if disciplinary proceedings are unfairly implemented. HR will monitor implementation of this policy.
- **Who authorised the policy/strategy and date of authorisation** – Following review to clarify Chief Officer disciplinary arrangements, this policy was agreed with SMT and UNISON in xxxx and confirmed with Personnel Committee on xxxx.
- **Policy date for review and responsible officer** - Corporate HR Manager 2025

Absence Management Policy

1. At East Devon District Council, we aim to ensure that our employees are happy, healthy and here. We understand that there is a direct link between staff engagement, organisational culture and staff morale. For this reason, the Council is committed to developing an organisation to which people want to belong and a culture which encourages staff engagement and wellbeing, aligned with our Happy Health Here Policy. However, as absence has significant financial and operational implications for the Council, we will take steps to minimise absence and maximise attendance. The Absence Management Policy sets out procedures for reporting sickness absence and for the management of sickness absence in a fair, consistent and robust way. It also provides for a formal process which can lead to warnings and even dismissal, but which is distinct from the Disciplinary Policy and Procedure.
2. The Council recognises that sickness absence can arise in different ways, from short intermittent periods of sickness to long term absence, and for different reasons. The Council will ensure that the reasons for sickness absence are understood in each case, investigated where necessary and that, where needed, measures are taken to assist and facilitate a return to work.
3. The Council may vary the procedures set out in this policy, including any time limits, as appropriate in each case.
4. **Who is covered by the policy?**
 - 4.1 This policy has been agreed in consultation with UNISON and applies to all employees working for the Council regardless of status. It does not apply to agency workers or self-employed contractors. The formal procedure does not apply to employees in their probationary period for whom absence and attendance will be monitored and dealt with using the probationary review process.
 - 4.2 **Formal action in respect of Chief Officers will be taken as outlined in the Constitution and within the Council's Disciplinary Procedure for Chief Officers which reflects the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives and Chief Officers.**
5. **How we will go about it**
 - 5.1 We have both informal and formal measures for managing absence cases and we work hard to ensure that we are consistent and fair in applying these. We aim to manage absence proactively, taking into account the unique and individual circumstances of each case.
 - 5.2 Cases of unauthorised absence will be dealt with under the Disciplinary Policy and Procedure. Unauthorised absences will normally occur when an employee is absent from his/her place of work:
 - without authorisation including unauthorised time in lieu or flexi time
 - without personally informing the line manager or nominee, normally within the first hour of the normal starting time, in accordance with 'reporting your absence' requirements
 - there is a failure to complete a self-certification form where appropriate
 - there is a failure to submit regular medical certificates when appropriate
 - there is evidence to suggest an individual is fit for work when off sick.

6. Disabilities

- 6.1 The Council is aware that sickness absence may be disability related. At each stage of the sickness absence meetings procedure outlined below, particular consideration will be given to the Council's duty to make reasonable adjustments for employees with a disability. Reasonable adjustments may be in relation to the requirements of a job, sickness absence triggers or other aspects of working arrangements that will provide support at work and/or assist a return to work.
- 6.2 Any employee who considers that they are affected by a disability or a medical condition which affects their ability to undertake their work should inform a member of the Human Resources (HR) team and their line manager.

7. Reporting your absence

- 7.1 If you are taken ill at work, you should notify your line manager. Line managers should make arrangements for anyone who is unwell to be accompanied home and/or to receive medical treatment where necessary.
- 7.2 If you cannot attend work because you have been taken ill, you must telephone your line manager (not a colleague) on your first day of absence, at the earliest possible opportunity. This should be as early as possible and no later than one hour after the time when you are expected to start work. If you are unable to contact your line manager or another manager within your service, you should telephone HR as a last resort. You should contact your line manager on every other day of absence unless otherwise agreed. If you feel uncomfortable discussing the reasons for your absence with your direct line manager due to the nature of your illness then you should contact another manager within your department or a member of HR.
- 7.3 You must provide your line manager with details of:
- the nature of your illness or injury and your anticipated length of absence
 - your contact details and any outstanding or urgent work commitments that requires attention in your absence.
- 7.4 Normally, we would expect you to telephone in person. However, if you are unable to telephone in person, you must arrange for someone else to telephone on your behalf. You must make direct contact with your line manager as soon as possible.
- 7.5 Please note that it is not acceptable to notify your line manager by email or text message as this does not allow two way communication.
- 7.6 Failure to inform your line manager of absence has implications for your colleagues and our customers. This may lead to the absence from work being considered as unauthorised, resulting in loss of pay and possibly disciplinary action including dismissal.
- 7.7 If you believe that your absence may have been caused by something that happened at work you should inform your line manager of this and, if appropriate, arrange for an Accident Report Form to be completed in accordance with the Accident Reporting and Recording procedures detailed in the Council's Health and Safety Policy. Your line manager will also raise this with HR at the earliest opportunity.
- 7.8 Line managers must:
- ensure that the employee's voicemail message is changed to indicate they are out of the office and provide another contact number for the caller to ring
 - cancel any appointments in the employee's diary
 - place an out of the office rule on the employee's email account suggesting an alternative contact for queries
 - forward any doctors certificates to Payroll Services
 - if the employee's absence is related to an assault or accident, advise the Council's Health and Safety Officer
 - check with the employee the reason why they are unable to come to work, how long they anticipate being absent, treatment / advice from their G.P to aid recovery and how they can be contacted
 - make arrangements to have regular verbal contact to maintain communications and relations.

8. Certification required

- 8.1 Every absence has to be certified to ensure prompt and correct payment of contractual and statutory sick pay and to ensure that accurate records are maintained. Failure to comply with the certification procedures may result in loss of sick pay. Misleading or false statements will be dealt with under the Disciplinary Policy and Procedure and may result in disciplinary action.
- 8.2 All absences of half a day or more must be updated in Employee Self Service (ESS) by the returning employee or covered by a Self-Certification Form (SCF) which clearly indicates the start and end dates and reason for the absence, regardless of duration for employees without access to ESS. If the absence is less than seven days only completion of ESS or a SCF is required. ESS/SCF's must be completed by you and your line manager upon your return to work and forwarded to Payroll Services.
- 8.3 If you continue to be absent for more than seven consecutive calendar days (regardless of whether or not these are working days), you must obtain a Statement of Fitness for Work "Fit Note" covering the period of absence and stating the reasons(s) for your absence, which must be forwarded immediately to your line manager. Your line manager must then forward the certificate to Payroll Services, along with an email or note, confirming the first date of your absence.
- 8.4 Where there is continuing sickness absence you must submit to your line manager concurrent Fit Notes to cover the whole period of absence. Your line manager must then forward these to Payroll Services.
- 8.5 Your line manager must ensure that appropriate and timely Fit Notes are received from you and sent on to Payroll Services promptly.
- 8.6 Other than in agreed circumstances, you should not attend work whilst certified as sick.
- 8.7 In cases of suspected abuse, if you are working your notice or where there is a concern about the level of or reason for absence, you may be required to provide a Fit Note for each absence regardless of duration. In such circumstances, the Council will cover any costs incurred in obtaining Fit Notes, for absences of less than seven days, upon production of a GP's Invoice.

9. Doctors' Assessment of Fitness for Work

- 9.1 Other medical professionals other than GP's such as, Nurses, Occupational Therapists, Pharmacists, and Physiotherapists can issue fit notes provided they are treating you through NHS services.
- 9.2 Fit notes are required to provide patients with a "Statement of Fitness for Work", known as a Fit Note, which provides the medical professional with a choice between noting that the patient is:
 - "unfit for work" or
 - "may be fit for work taking account of the following advice"
- 9.3 You do not always need to be fully recovered to go back to work, and in fact returning to work can often help your recovery. If your fit note certificate states that you "May be fit for work" you should inform your line manager immediately. Your line manager will discuss with you whether there are any additional measures that can be taken to help facilitate your return to work. This may take place in a return to work interview or a discussion prior to returning to work. A number of options may be explored with you depending on the advice from your medical professional and these may include but are not limited to; a phased return to work, amended duties, altered hours or workplace adaptations. It is likely that the Council will also want to seek Occupational Health advice when considering measures to facilitate a return to work.
- 9.4 Adjustments which are made to working hours or amended duties are only temporary until you can make a full return to work unless occupational health advice suggests that the adjustments should be a permanent variation to your original terms of employment.

- 9.5 If appropriate measures cannot be taken, you will remain on sick leave and a review date may be set to revisit the situation. This may be prior to the end of the period specified by the medical professional signing the fit note.
- 9.6 Medical professional's no longer need to sign the fit note in ink but the note will only be valid provided the issuer's name, profession and medical practice is detailed on the Fit Note. Fit Notes can be handwritten, computer generated and digitally sent to you, if the latter you can e-mail this to your line manager.

10. Keeping in contact during sickness absence

- 10.1 If you have reported in unwell or have left work after being taken ill you should expect to be contacted by your line manager and/or HR who will want to enquire after your wellbeing, expected length of continued absence from work and any of your work that requires attention. Such contact is intended to provide reassurance and will be kept to a minimum in view of the needs of the Council's obligations.
- 10.2 The Council considers that it is important that contact is maintained between you and your line manager. Your line manager needs to ensure that work is reallocated and service delivery is maintained. You need to ensure that you do not feel isolated, vulnerable or out of touch.
- 10.3 You and your line manager are encouraged to maintain regular telephone contact during the early stages of sickness absence. If absences become long-term regular contact must be maintained and you and your line manager have a responsibility to ensure that this happens. The reasons for this are to enable your line manager to ask relevant questions and to make some informed management decisions. Maintaining contact with you will also provide your line manager with an opportunity to update you with Council developments and any team news, which can help you to feel less isolated and concerned about returning to work.
- 10.4 In the event that you are absent on sick leave and have any concerns, whether about the reason for your absence or your ability to return to work, you should feel free to contact your line manager or a member of HR at any time.

11. Monitoring sickness absence

- 11.1 All sickness absences must be recorded on our HR / Payroll Services system for sick pay and absence monitoring purposes. It is therefore essential that your line manager reports absences to Payroll Services in a timely and accurate manner by ensuring that self-certification and Fit Notes are forwarded immediately to Payroll Services.
- 11.2 The Council has to provide corporate sickness absence level statistics as part of its Performance Indicators. The Council also uses absence information to monitor the success of the Absence Management Policy and identify causes for concern, which might require further action through the policy and procedure.
- 11.3 Your line manager is required to monitor sickness absence levels within your team and take further action as necessary when trigger points are reached and/or where there are concerns about your absence levels. HR will provide regular reports to managers but managers are also expected to monitor absence levels day to day, through normal management practice.
- 11.4 Line managers are responsible for monitoring absence but HR will also alert your manager to your absence levels where you reach trigger points.
- 11.5 You can view your sickness absence record in accordance with the Data Protection Act by contacting a member of HR.

12. Return to work interviews

- 12.1 If you have been absent from work on sick leave you will have a return to work interview with your manager once you return to work.
- 12.2 The purpose of the return to work interview will be to welcome you back to work, establish your current health situation, discuss advice from your G.P, provide you with information on appropriate support if necessary, discuss referral to Occupational Health and complete self-certification. In some cases, the discussion may be very short but it is important that your manager acknowledges that you have been sick and checks that you are now fit to be at work.
- 12.3 Except in exceptional cases where the absence is truly a one off, the discussion must be documented in the Return to Work Interview Form, with a copy provided to you and a copy retained by your manager.

13. Returning to work from long term sickness absence

- 13.1 The Council is committed to helping employees return to work from long term sickness absence. As part of its sickness absence meetings procedure the Council will, where appropriate and possible, support return to work by:
 - obtaining medical advice
 - making reasonable adjustments to the workplace, working practices and working hours
 - considering redeployment and/or
 - agreeing a return to work programme with you.
- 13.2 In the case of terminal illness or, where you are permanently unable to return to your job role and all other options for reasonable adjustments or redeployment have been explored and exhausted, the Council will consider whether you are entitled to any benefits under your contract of employment or ill health benefits through the Local Government Pension Scheme if you are a scheme member.

14. Medical referral

- 14.1 The Council may, at any time in operating this policy, ask you to consent to a medical examination by its Occupational Health service at the Council's expense. You will be consulted about the Council's wish to obtain medical advice prior to the referral and be informed of the process and your rights.
- 14.2 You will be asked to agree that any report produced in connection with any such examination may be disclosed to the Council (limited to appropriate personnel) and its advisers and that the Council and its advisers may discuss the contents of the report with the relevant doctor. In some circumstances Occupational Health or the Council may seek a report from your GP or own Consultant.
- 14.3 If you are unwilling to co-operate with the referral process, you will be consulted over the consequences of your decision for your employment. In particular, in the event that you are not prepared to be referred to Occupational Health, the Council may make a decision regarding your continuing employment, without the benefit of expert medical advice.
- 14.4 In the event of a difference of medical opinion, in certain circumstances, the Council reserves the right to refer you following consultation to another OH clinician for a second opinion.

15. Reasons for manager referral to Occupational Health

- 15.1 We may request your consent to refer you to Occupational Health even where you have not actually been absent. This is not an exhaustive list but examples include:
 - Where there are signs of muscular skeletal (such as back, neck and shoulder pain) and mental health/wellbeing issues (such as stress, depression).
 - You have been diagnosed by your GP with a medical condition which might affect your ability to undertake your contractual duties.
 - Sporadic absences where an underlying medical condition is responsible/suspected for all or most of the absences.

- Where ill health is affecting your ability to undertake your contractual duties, with or without absence.
- Where your G.P has indicated that you “may be fit for work”.

16. Employee Support

- 16.1 The Council has an Employee Assistant Programme (EAP), which includes counselling, telephone helplines and an online health portal, and is available to employees and councillors. Login: imass, Password: group, Telephone: 0800 030 5182.
- 16.2 The Council has MINDFUL Employer charter status. We aim to provide non-judgemental and proactive support to individual staff who experience mental health issues and ensure that all managers have information and training about managing mental health in the workplace. Practical guidance to support members of staff with a mental health condition can be found in the MINDFUL Employer resource on the intranet. If you think that you may have a mental health condition you should speak to your G.P and also discuss this with your manager and/or HR so that you can be provided with appropriate support whilst at work. In addition, all employees can access one of our Mental Health First Aiders who can signpost you to professional support, or contact the Employee Assistance Programme on your behalf.

17. Medical appointments

- 17.1 In situations where you are required to attend medical appointments (whether GP, dentist, optician, hospital) it is expected that you attend in your own time.
- 17.2 Where this is not possible, appointments should be arranged to minimise any absence from work, for example, at the beginning or end of your normal working day. Time may be taken using a variety of different methods including flexi time, time to be made up, annual leave or unpaid leave.
- 17.3 No flexi credit will be given for dental, medical or hospital appointments. You are expected to take a reasonable approach when making appointments to minimise the impact on the service and colleagues and to advise your line manager of arrangements which may mean for example starting later or leaving earlier than usual. The flexi time policy has been designed to be extremely flexible so that you can accommodate appointments in your own time.
- 17.4 Where exceptions are required due to disability issues or serious illnesses or where you are required to attend a number of hospital appointments for a specific course of treatment that cannot be changed and which relate to a disability or serious illness, these will require permission from the appropriate line manager. HR should also be involved in these discussions to ensure fairness and consistency. In such circumstances where you are required to attend during work time, these will be provided as paid time off to the extent that this is regarded reasonable in line with the Council’s duty to make reasonable adjustments. HR will provide guidance for line managers in these cases.
- 17.5 Medical or ante-natal appointments related to pregnancy or maternity are dealt with under the maternity policy and such leave is paid.

18. Probationary Period

- 18.1 During your probationary period, your attendance will be closely monitored. If absence is deemed to be unsatisfactory then this may result in your employment being terminated. The formal procedure outlined in this policy does not apply to those still in their probationary period. Sickness absences occurring during your probationary period will count towards sickness absence triggers after you have passed your probation.

19. Sick pay and allowances

- 19.1 The Council provides statutory and contractual sick pay depending on eligibility.
- 19.2 You will be entitled to statutory sick pay if you meet the lower earnings limit. For the current lower earnings level please contact Payroll Services.
- 19.3 Occupational sick pay (which shall be inclusive of statutory sick pay in accordance with applicable legislation in force at the time of absence) is payable to employees as follows:

During 1 st year of service	1 month's full pay and (after completing four months service) 2 months half pay
During 2 nd year of service	2 months full pay and 2 months half pay
During 3 rd year of service	4 months full pay and 4 months half pay
During 4 th and 5 th year of service	5 months full pay and 5 months half pay
After 5 years of service	6 months full pay and 6 months half pay

- 19.4 The payment of sick pay is dependent on you complying with the Sickness Absence Policy and Procedure. Accordingly, the Council reserves the right to withhold occupational sick pay where you fail to comply with the Sickness Absence Policy and Procedure.
- 19.5 Please note that any sickness absence for the following reasons will not usually attract occupational sick pay:
- absence due to elective or cosmetic surgery
 - absence due to injuries resulting from participation in dangerous sports such as hand gliding, bungee jumping, parachuting, boxing
 - absence occasioned working for another employer or on your own behalf outside your employment
 - absence due to self-inflicted illness or injury such as severe sunburn, hangover.
- 19.6 If a period of sickness absence is or appears to be occasioned by actionable negligence, nuisance or breach of any statutory duty on the part of a third party, in respect of which damages are or may be recoverable, you must immediately notify HR of any claim, compromise, settlement or judgment made or awarded in connection with it and all relevant particulars that the Council may reasonably require. You shall, if the Council requires, cooperate in any related legal proceedings and shall refund to the Council that part of any damages or compensation recovered by them relating to the loss of earnings for the period of sickness absence as the Council may reasonably determine, less any costs incurred by them in connection with the recovery of such damages or compensation, provided that the amount to be refunded shall not exceed the total amount paid to you by the Council in respect of the period of sickness absence.
- 19.7 Further general information on the sick pay scheme is set out in your Written Statement of Particulars of Employment. However, the following specific points should be noted:
- 19.7.1 Essential User Car Allowance - If you are absent through illness and in receipt of an essential user allowance, Payroll Services will pay the allowance for the remainder of the month in which you became absent and for a further three months. Thereafter for a further three months the allowance will be paid at 50%.
- 19.7.2 Mobile Phone Allowance - Where you are in receipt of a telephone user allowance for either a land line or mobile phone or both and are absent through illness, Payroll Services will pay the allowance for the remainder of the month in which you became absent and for a further three months. Thereafter for a further three months the allowance will be paid at 50%.
- 19.7.3 First Aid Allowance - Payment will cease at the end of the month the absence started.

- 19.7.4 Honorarium - Where you are in receipt of an honorarium for performing higher graded duties, sick pay will be at your normal rate of pay. An honorarium will continue to be paid during your sickness absence except when an absence period continues for longer than 1 month after which the payment will be withdrawn. When you return to work the **Director/Assistant Director** will need to decide whether the honorarium payment should start again depending on whether you will still be required to perform higher graded duties.

20. Phased return

- 20.1 Where Occupational Health recommends, as a reasonable adjustment, that you should return on a phased basis (so that you work reduced hours, slowly building up to your contractual hours) you will be paid normal pay for the hours you work and occupational sick pay for the remaining hours (provided there is still an entitlement). During the graded return you will be required to submit a time sheet to Payroll Services for the actual hours worked.
- 20.2 A phased return to work will normally be for a period of 4 to 6 weeks and may be a period in which your working hours are reduced and/or your duties are adjusted temporarily to assist you in a return to work. Following this period in the event that you were unable to revert to your full duties and hours the situation would be reviewed and discussion would take place with you about options that may be available to you depending on the circumstances.

21. Elective or cosmetic surgery

- 21.1 You will not be eligible to receive occupational sick pay where cosmetic surgery is self-elective and normal holiday entitlement or unpaid leave (with agreement) should be used to cover absences for this purpose. If the surgery is to be carried out as a medical necessity, you will be required to provide medical evidence such as a letter from your GP or Consultant, before contractual sick pay will be paid. If as a result of complications during cosmetic surgery you become ill the Council will require a medical certificate in order to pay occupational sick pay.

22. Pregnancy

- 22.1 Where you are absent from work due to a pregnancy-related absence (outside the maternity leave period), you should ensure that you comply with the Sickness Absence Procedure regarding notification and certification. However, pregnancy-related absence will not count towards sickness absence triggers for absence management purposes.
- 22.2 If you fall ill after the beginning of the 4th week before your expected date of childbirth and the illness is pregnancy-related then maternity pay will automatically be triggered.
- 22.3 Please see a member of HR for further information on the rights of pregnant employees.

23. Annual leave and sickness absence

- 23.1 It is your responsibility to contact your manager if you fall sick during a period of annual leave. Please see the section on 'reporting your absence'. This applies even if you fall sick whilst on holiday abroad. In order to claim any period of scheduled annual leave as, a period of sickness, you may be required to provide a Fit Note to cover the days that you wish to be counted as sick leave in order that the annual leave can be reclaimed and taken at a later date. If no FIT Note is provided or contact was not made in accordance with this policy, annual leave may not be reinstated. You will only be entitled to reclaim your statutory annual leave period of 5.6 weeks. Any contractual annual leave (inclusive of bank holiday entitlement) which is over and above the statutory entitlement may not be taken at another time and you will be deemed to have taken this leave as annual leave, not sick leave.
- 23.2 You will continue to accrue annual leave during your sickness absence. Accrual of annual leave during long term sickness absence is capped at 5.6 weeks (inclusive of public/statutory days) per year. Carry-over of annual leave during long term sickness

absence is limited to 4 weeks carry over per year. Any annual leave carried over in these circumstances which is not taken within 18 months of the end of the annual leave year in which it accrues (whether or not you have returned to work) will be lost.

- 23.3 You are not generally entitled to reclaim public holidays, the 2 Extra Statutory days or 1 Locally Agreed day where these fall within a period of sickness absence, unless your annual leave is less than statutory 5.6 weeks/28 days per year (pro-rata for part-time staff), in which case claims for re-instatement of annual leave will be considered by HR and your manager.
- 23.4 Please be advised that it is possible to take annual leave when you are on long term sick leave. Please inform your manager if you wish to take annual leave during any period of sickness absence. Your Manager will need to inform Payroll Services so that this leave is correctly recorded and so you are paid correctly. For example, you are receiving half pay through Occupational Sick Pay this would be 'topped up' to full pay whilst on annual leave and revert to half pay on return from annual leave.
- 23.5 If you leave the employment of the Council, through dismissal, ill health retirement or resignation, you will be paid for any leave accrued and untaken up to the point of your last day of services (subject to the limits on carry-over of annual leave when on sickness absence set out above).
- 23.6 Any other treatment of untaken leave outside the scope of this policy will be at the discretion of the **Director/Assistant Director** having regard to the particular individual circumstances and the needs of the service.

24. Infectious Diseases

- 24.1 Infectious diseases are a continuing threat to the health of the UK public with the possibility of new threats arising at any time. Some infections are becoming resistant to drugs. Air travel and international trade mean that diseases can be rapidly spread internationally. If you have visited a country where an infectious disease warning has been issued you may be requested by your manager to remain at home until Occupational Health can advise as to the precautionary measures to be taken.

25. Reporting an Accident at Work / RIDDOR Reporting

- 25.1 All accidents at work must be recorded through the 'Report It' facility on the internet. The report must be completed in a timely manner and with as much detail as possible by the individual involved in the incident/injured party, or by their manager if they do not have access to this facility / are unable to complete it due to injury.
- 25.2 If an employee is off work, or unable to perform their normal work duties, for more than seven consecutive days as a result of a work place accident/injury (this includes hand/arm vibration syndrome) this must still be reported by the individual / line manager using 'Report It' on the intranet. The 7-day period does not include the day of the accident/injury but does include weekends and rest days. Prompt reporting of the occurrence is essential as such accidents are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). The RIDDOR report must be made by the Health & Safety Adviser, the Corporate Safety Officer or the Principal Environmental Health Officer (Commercial) within 15 days of the accident. There are other reportable incidents (such as in the event of death or specified injuries or diseases). If you have any queries in relation to the reporting of injuries, diseases and dangerous occurrences or an accident then please speak to the Corporate Safety Officer.
- 25.3 It is no longer a requirement to report via RIDDOR accidents resulting in more than 3 days (but less than 7 days) incapacity, but such accidents must still be recorded through the 'Report It' facility on the internet to meet specific HSE recording requirements.

26. Industrial Injuries Disablement Benefit

- 26.1 Industrial Injuries Disablement Benefit (IIDB), is administered by the Department of Work and Pensions (DWP)/ Local Jobcentre plus. Employees may be able to claim Industrial

Injuries Disablement Benefit if they are ill or disabled because of an accident or events that happened at work or in connection with their work. Employees can make a claim by completing the relevant claim form available on the <https://www.gov.uk/> website. IIDB may affect other benefits that are paid. For further information please contact the DWP or check the website.

27. Sickness absence triggers

- 27.1 In order to take a consistent approach managers are asked to use trigger points as clear guidance to the stages of the sickness absence procedure. However, managers should be aware that on some occasions it may be appropriate to take action prior to a trigger point being reached. In these cases, managers should contact HR for guidance.
- 27.2 The absence triggers are:
- 2 or more instances, OR 5 or more days of sickness absence in a rolling 13 week period; and/or
 - 4 or more instances, OR 9 or more days of sickness absence in a rolling 52 week period.
- 27.3 Your absence will be monitored over a 13 and 52 week rolling period.
- 27.4 If you are part time, a day of absence will equate to your normal working day. Therefore, if you work a 4 hour day, 4 hour absence from work on that day would be classed as a working day for the purposes of the procedure.
- 27.5 Please note that these triggers will be regularly reviewed and amended from time to time to ensure their ongoing effectiveness in improving attendance.

28. Informal procedure

- 28.1 Informal absence review meetings will take place where your absence is a concern and/or starting to reach the absence trigger thresholds. These will be conducted by your manager through one to ones, return to work interviews or a specially convened meeting to discuss your absence.

29. Formal procedure

- 29.1 **The following formal procedure applies to all employees except Chief Officers, as formal action in respect of Chief Officers will be as set out in the Council's Disciplinary Procedure for Statutory/Chief Officers** ~~the Chief Executive, Monitoring Officer and Chief Finance Officer will be taken as outlined in the Constitution.~~
- 29.2 The formal procedure may be triggered when any of the following situations apply:
- If you have been absent due to illness on a number of occasions reaching the absence triggers outlined in this policy.
 - If you have been absent from work for a prolonged period.
 - Other exceptional circumstances on the guidance of HR.
- 29.3 The formal procedure includes formal sickness absence review meetings. These meetings may take place at the Council offices, in your home if preferred, or at another appropriate venue. It is essential that you attend these meetings and co-operate with the Council's efforts including any investigation and discussion regarding your absence. Failure to do so without good reason may be treated as misconduct and if information and co-operation is not forthcoming, it may result in the Council taking a decision without the benefit of input and feedback from you.
- 29.4 Unless it is impractical to do so, the Council will usually give you five days' prior written notice of the date, time and place of a formal sickness absence review meeting. The Council will put any concerns about sickness absence and the basis for those concerns in writing or otherwise advise why the meeting is being called. A reasonable opportunity to consider this information before a meeting will be provided.

29.5 The meeting will be conducted by an appropriate manager appointed in accordance with the following framework:

Level of employee	Level of actioning officer	Level of appeal's officer
Staff	Line manager or a more senior manager	Assistant Director/Director or senior manager above level of actioning officer
Assistant Director	Director	Chief Executive

29.6 Wherever possible, Officers should not act in more than one of the formal stages to ensure fairness and objectivity, but where this is not possible, the Officer acting at stage 3 should not have been involved in the previous stages.

29.7 HR will be involved at all levels of the procedure and will advise the Officer taking formal action of any 'live' warnings.

29.8 You may bring a companion with you to the meeting and this is further detailed in the section called right to be accompanied below.

29.9 You must take all reasonable steps to attend a formal sickness absence review meeting. Failure to do so without good reason may be treated as misconduct. When you or your companion is unable to attend at the time specified they should immediately inform the relevant Manager conducting the meeting who will seek to agree an alternative date.

29.10A meeting may be adjourned if the relevant Manager is awaiting receipt of information, needs to gather any further information or give consideration to matters discussed at a previous meeting. You will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

29.11 Notes of all meetings will be maintained by the Council. Whilst written notes will be maintained in no circumstances will the Council agree to such meetings being tape recorded and if you do so covertly, this may lead to disciplinary action.

29.12 Confirmation of any decision made at a meeting, the reasons for it, and of the right of appeal will normally be given in writing within 5 days of a sickness absence meeting (unless this time scale is not practicable, in which case it will be provided as soon as is practicable).

29.13 If, at any time, the relevant manager considers that an employee has taken or is taking sickness absence when they are not unwell, the manager may refer matters to be dealt with under the Council's Disciplinary Policy and Procedure.

30. Right to be accompanied at meetings

30.1 You may bring a companion to any meeting or appeal meeting under this procedure. The companion may be either a trade union official or a fellow work colleague. Their identity must be confirmed to the relevant manager conducting the meeting, in good time before it takes place.

30.2 Employees are allowed reasonable time off from duties without loss of pay to act as a companion. However, they are not obliged to act as a companion and may decline a request if they so wish.

30.3 Some companions may not be allowed: for example, anyone who may have a conflict of interest, or whose presence may prejudice a meeting.

30.4 In exceptional circumstances, the Council may at its discretion, permit a companion who is not a fellow work colleague or union official where this will help overcome particular difficulties caused by a disability, or difficulty understanding English.

30.5 A companion may make representations, ask questions, and sum up your position, but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during a meeting.

31. Formal absence stages

31.1 The formal sickness absence procedure will involve a number of formal sickness absence review meetings in the stages outlined as follows:

31.2 Meetings will be conducted within the spirit of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

31.3 Stage 1: First formal sickness absence review meeting

31.3.1 The purposes of the formal sickness absence review meeting may include:

- Discussing the reasons for your absence.
- Where you are on long-term sickness absence, determining how long the absence is likely to last.
- Where you have been absent on a number of occasions, determining the likelihood of further absences.
- Considering whether medical advice is required or considering advice already provided.
- Considering what, if any, measures might improve health and/or attendance such as reasonable adjustments; and/or agreeing a way forward, action that will be taken and a time-scale for review and/or a further meeting under the formal sickness absence procedure.
- Following an adjournment, a formal written warning may be issued identifying the improvement which must be achieved.

31.3.2 You will be notified of how long the warning will be active: this will usually be 12 months. You will also be notified that should absence not improve to the required level this may result in further formal action which may include dismissal. The outcome of this and matters discussed will be confirmed in writing and you will receive a copy of the notes of the meeting. A copy of the notes from the meeting will also be placed on your personnel file.

31.3.3 In the event of long term absence, the Council will inform you that you will be at risk of dismissal if the absence continues.

31.4 Stage 2: Second formal sickness absence review meeting

31.4.1 Depending on the matters discussed at the first stage of the sickness absence procedure, a further meeting may be necessary, particularly if the absence is ongoing or improvement has not been achieved.

31.4.2 Arrangements for the meeting under the second stage of the sickness absence procedure will follow the procedure set out above on the arrangements for and right to be accompanied.

31.4.3 The purpose of the sickness absence meeting may include:

- Discussing the reasons for and impact of ongoing absence(s).
- Where you are on long-term sickness absence, discussing how long the absence is likely to last.
- Where you have been absent on a number of occasions, discussing the likelihood of further absences.
- If it has not been obtained, considering whether medical advice is required. If it has been obtained, considering the advice that has been given and whether further advice is required.
- Considering your ability to return to/remain in their job in view both of their capabilities and the Council's business needs and any adjustments that can reasonably be made to their job to enable them to do so.
- Considering possible redeployment opportunities and whether any adjustments can reasonably be made to assist you to redeploy.
- Where you are able to return from long-term sick leave, whether to their job or a redeployed job, agreeing a return to work programme.
- If it is considered that you are unlikely to be able to return to work from long-term absence whether there are any benefits for which they should be considered.

- Agreeing a way forward, action that will be taken and a time-scale for review and/or a further meeting(s).
- Following an adjournment, a formal final written warning may be issued identifying the improvement which must be achieved.

31.4.4 You will be notified of how long the warning will be active: this will usually be 12 months. You will also be notified that should absence not improve to the required level this may result in dismissal. The outcome of this and matters discussed will be confirmed in writing and you will receive a copy of the notes of the meeting. A copy of the notes from the meeting will also be placed on your personnel file.

31.5 Stage 3: Final formal sickness absence review meeting

31.5.1 Dependent upon the outcome of a previous stage of the sickness absence procedure a further meeting may be required if the absence is ongoing or improvement has not been achieved. This meeting will be conducted by a manager in seniority to those who have conducted previous meetings. You will be invited to a final stage of the sickness absence procedure. Arrangements for this meeting will follow the procedure set out above for stages 1 and 2 on the arrangements for and right to be accompanied at sickness absence meetings.

31.5.2 The purpose of the sickness absence meeting will be:

- To review the meetings that have taken place and matters discussed with you.
- Where you remain on long-term sickness absence to consider whether there have been any changes since the last meeting under stage two of the procedure; either as regards your possible return to work or opportunities for return or redeployment.
- To consider any further matters that you wish to raise.
- To consider whether there is a reasonable likelihood of you returning to work or achieving the desired level of attendance in a reasonable time.
- Following adjournment, a decision may be taken to extend the final written warning under stage 2, take no action (in which case the stage 2 warning would remain until expired) or alternatively confirm that your employment will be terminated with full notice or payment in lieu of notice.
- If you have been absent on a long term basis, the Council will explore the possibility of ill health retirement.

31.5.3 The outcome of this and matters discussed will be confirmed in writing and you will receive a copy of the notes of the meeting. A copy of the notes from the meeting will also be placed on your personnel file.

31.5.4 Please note that the Council reserves the right to extend the duration of any warning given under this procedure at any time by giving notice in writing to you.

31.5.5 Entry into the procedure can be at any of the above stages depending on the level or long term prognosis of absence.

31.5.6 The Council may vary the procedures set out in this policy, including any time limits, as appropriate in each case.

32. Appeals

32.1 You may appeal against the outcome of any stage of this procedure and may bring a companion to an appeal meeting (see right to be accompanied, above).

32.2 An appeal should be made in writing, stating the full grounds of appeal, to HR within five days of the date on which the decision was sent.

32.3 Unless it is not practicable, up to five days' written notice of an appeal meeting will be given. In cases of dismissal the appeal will be held as soon as possible. Any new matters raised in an appeal may delay an appeal meeting if further investigation is required.

32.4 You will be provided with written details of any new information which comes to light before an appeal meeting. You will also be given a reasonable opportunity to consider this information before the meeting.

- 32.5 Where practicable, an appeal meeting will be conducted by a Manager senior to the individual who conducted the sickness absence meeting and in accordance with the above framework.
- 32.6 Depending on the grounds of appeal, an appeal meeting may be a complete rehearing of the matter or a review of the original decision.
- 32.7 A copy of the notes from the meeting will be placed on your personnel file.
- 32.8 Following an appeal the original decision may be confirmed, revoked or replaced with a different decision. The final decision will be confirmed in writing, if possible within 5 days of the appeal meeting. There will be no further right of appeal.
- 32.9 The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss will be revoked with no loss of continuity or pay.

33. Records

- 33.1 Written records will be kept of the formal meeting. These records will be confidential and retained in accordance with the Data Protection Act 1998.
- 33.2 Copies of any meeting records should be given to you although in certain circumstances some information will be withheld, for example to protect a witness.
- 33.3 Details of warnings will be held on your employment record in HR. Spent warnings, whilst retained, will not be taken into account in future proceedings unless exceptional circumstances warrant it, such as a repeated long term pattern of behaviour. The council does not agree to the recording of meetings and any recording of meetings will be treated as misconduct which may result in disciplinary action including warnings and potentially dismissal.
- 33.4 Minutes will be taken of meetings where appropriate and there will be an opportunity for individuals to amend the notes taken. If agreement cannot be reached, both sets of notes will remain as a record of the meeting.
- 33.5 Managers should remind people of this at the start of meetings and may ask for mobile phones to be switched off.

34. Performance Excellence Reviews (PER)

- 34.1 Where you return to work after annual reviews have taken place the manager must ensure that you receive a review of your performance in the preceding period before your absence from work. Objectives should be realistic and take into account any graded return to work or adjustments to their job.

Policy administration

- **Equality impact** - High. This policy has high equality relevance. Indirect discrimination can arise if absence management is unfairly implemented. HR will monitor implementation of this policy.
- **Who authorised the policy/strategy and date of authorisation** - This policy was updated to reflect Chief Officer procedures and was agreed with SMT and UNISON in xxx and confirmed with Personnel Committee on xxx.
- **Policy date for review and responsible officer** - Corporate HR Manager 2025

Disciplinary Procedure for Statutory and Chief Officers

1. This procedure reflects the model procedures and associated guidance of the Joint Negotiating Committee for Local Authority Chief Executives and Chief Officers (Model Procedure) to which further detailed reference should be had in the event this procedure is required. Any conflict between this procedure and the Model Procedures should be resolved in favour of the Model Procedure.
2. This procedure applies to the Chief Executive, Monitoring Officer and Chief Finance Officer (Statutory Officers) and Chief Officers who are not statutory officers (the Council's Directors).
3. The following procedure should be applied in cases of:
 - 3.1. Misconduct
 - 3.2. Capability related to performance issues
 - 3.3. Capability related to sickness absence (long term or frequent intermittent absence (apart from permanent ill health which may be through mutual termination rather than dismissal)
 - 3.4. Some other substantial reason
 - 3.5. Failure to renew a fixed term contract where the authority has undertaken to renew such a contract.
4. This procedure should be read in conjunction with the guidance set out in the Model Disciplinary Procedure.
- 5. Issues requiring investigation**
 - 5.1. Where an allegation is made relating to the conduct or capability of the Statutory/Chief Officer or there is some other substantial issue there shall be an initial filtering exercise conducted by the nominated officer for dealing with such complaints (the Proper Officer). The Proper Officer may procure such advice and support as is necessary for carrying out the initial filtering exercise.
 - 5.2. Following the initial filtering exercise if it is concluded that the allegation requires investigation, the matter will be considered by the Investigating & Disciplinary Sub Committee (IDC) of the Personnel Committee, in accordance with the terms of reference set out in the Constitution. Arrangements for flexibility will be considered in the event that a member of the Sub Committee has a conflict of interest. The Sub Committee will identify who will comprise the Independent Panel, of independent persons, appointed in accordance with The Local Authorities (Standing Orders) (England) Regulations 2001 as amended, should there be a subsequent recommendation to the Council by the IDC for the dismissal of the Statutory/Chief Officer. The appointment of the Independent Panel will be based on consideration of a report prepared by the Proper Officer.
- 6. Timescales**
 - 6.1. It is in the interests of all parties that proceedings be conducted expeditiously. It is recognised that it would be inappropriate to impose timescales that could in practical terms be difficult to achieve.

7. Suspension

- 7.1. Suspension will not always be appropriate as there may be alternative ways of managing the investigation. However, the IDC will need to consider whether it is appropriate to suspend the Statutory/Chief Officer. This may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the Statutory/Chief Officer might compromise the investigation or impair the efficient exercise of the Council's functions.
- 7.2. In any case, the Statutory/Chief Officer shall be informed of the reason for the proposed suspension and have the right to present information before such a decision is taken.
- 7.3. On rare occasions circumstances could arise which require an immediate suspension before the IDC has a reasonable opportunity to meet to consider the matter fully, for example if the allegations of misconduct are such that the Statutory/Chief Officer's remaining presence at work poses a serious risk to the health and safety of others or the resources, confidential information or reputation of the authority. To account for this, the IDC can be convened on an urgency basis to facilitate an emergency suspension, subject to the suspension being reviewed by the IDC at the earliest opportunity.
- 7.4. The continuance of a suspension should be reviewed after it has been in place for two months and periodically thereafter as appropriate.

8. Right to be accompanied

- 8.1. Other than in circumstances where there is an urgent requirement to suspend the Statutory/Chief Officer, he or she will be entitled to be accompanied at all stages. The guidance in the Model Procedure sets out who may accompany the Statutory/Chief Officer.

9. Considering the allegations or other issues under investigation

- 9.1. The IDC will, as soon as is practicable, inform the Statutory/Chief Officer in writing of the allegations or other issues under investigation and provide him/her with any evidence that the Sub Committee is to consider, and of his/her right to present oral evidence.
- 9.2. The Statutory/Chief Officer will be invited to put forward written representations and any evidence including written evidence from witnesses he/she wishes the Sub Committee to consider. The Committee will also provide the opportunity for the Statutory/Chief Officer to make oral representations. At this initial consideration of the need to investigate further, it is not anticipated that witnesses will be called. The discretion to call witnesses lies solely with the IDC.
- 9.3. The IDC will give careful consideration to the allegations or other issues, supporting evidence and the case put forward by the Statutory/Chief Officer before taking further action. The IDC, through the Proper Officer, may procure such advice and support as is necessary to enable it to reach a decision.
- 9.4. The IDC shall decide whether:
 - the issue requires no further formal action under this procedure,
 - the matter is not serious but there is some minor fault or error such that an unrecorded oral warning should be given, or
 - the issue should be referred to an Independent Investigator because the 'threshold test' has been met
- 9.5. The IDC shall inform the Statutory/Chief Officer of its decision without delay.

10. Appointment of an Independent Investigator

- 10.1. The IDC, through the Proper Officer, will be responsible for appointing an Independent Investigator, providing the necessary facilities, paying the remuneration and providing all available information about the allegations. The Independent Investigator should be selected from the list maintained by the National Joint Secretaries.

11. The Independent investigation

- 11.1. The ACAS Code of Practice on Discipline and Grievance requires there to be an investigation to establish the facts of the case before proceeding to the disciplinary hearing. This should be carried out by an Independent Investigator. He/she should operate on the basis of an independent investigation using his/her powers to access information and interview witnesses.
- 11.2. Once appointed it will be the responsibility of the Independent Investigator to investigate the issue/allegation and to prepare a report stating in his/her opinion whether (and, if so, the extent to which) the evidence he/she has obtained supports any allegation of misconduct or incapability or supports a need for action under this procedure for some other substantial reason; and recommending any disciplinary action (if any is appropriate) or range of actions which appear to him/her to be appropriate for the authority to take against the Statutory/Chief Officer.

12. Receipt and consideration of the Independent Investigator's report by the Investigating & Disciplinary Sub Committee

- 12.1. The Proper Officer should ensure that the Statutory/Chief Officer receives the Independent Investigator's report simultaneously with the IDC. The IDC will consider the report of the Independent Investigator, and also give the Statutory/Chief Officer the opportunity to state his/her case and to question witnesses, where relevant, before making a decision.
- 12.2. Having considered any other associated factors the IDC may:
 - Take no further action
 - Recommend informal resolution or other appropriate procedures
 - Refer back to the Independent Investigator for further investigation and report
 - Take disciplinary action short of dismissal against the Statutory/Chief Officer including imposing an appropriate disciplinary sanction or taking other appropriate action
 - Propose dismissal of the Statutory/Chief to the Council.

13. Where dismissal is proposed

- 13.1. The following applies to proposals to dismiss on the grounds of misconduct and for other reasons such as capability or some other substantial reason:
- 13.2. The IDC will inform the Proper Officer that it is proposing to the Council that the Statutory/Chief Officer be dismissed and that the executive objections procedure should commence.
- 13.3. Executive objections procedure:
 - 13.3.1. The Proper Officer will notify all members of the executive of:
 - The fact that the IDC is proposing to the council that it dismisses the Statutory/Chief Officer
 - Any other particulars relevant to the dismissal
 - The period by which any objection to the dismissal is to be made by the leader on behalf of the executive, to the Proper Officer
 - 13.3.2. At the end of this period the Proper Officer will inform the IDC either:
 - that the leader has notified him/her that neither he/she nor any member of the executive has any objection to the dismissal
 - that no objections have been received from the leader in the period or
 - that an objection or objections have been received and provide details of the objections.
 - 13.3.3. The IDC will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are, then the IDC will consider the impact of the executive objections on its recommendation for dismissal, commission further investigation by the Independent Investigator and report if required.

- 13.3.4. Having satisfied itself that there are no material and well-founded objections to the recommendation to dismiss, the IDC will inform the Statutory/Chief Officer of the decision and put that recommendation to the Independent Panel along with the Independent Investigator's report and any other necessary material.
- 13.4. The role of the Independent Panel¹:
- 13.4.1. Where the IDC is recommending dismissal, this recommendation shall be considered by an Independent Panel. This is not a full re-hearing of the case and will not involve the calling of witnesses. If practicable, the Independent Panel should be serviced and supported by officers who have not attended meetings of the IDC. Both the Statutory / Chief Officer and the IDC should be present or represented (the IDC might be represented by its Chair or another member of the IDC who attended the relevant meetings).
- 13.4.2. The Panel should hear the reasons for the IDC's recommendation and also receive any oral representations from the Statutory/Chief Officer, in which case it should invite any response on behalf of the IDC to the points made, and may ask questions of either party. The Independent Panel should review the IDC's recommendation for dismissal and prepare a report for Council. Where the Independent Panel disagrees with the recommendation of the IDC then this report should contain a clear rationale as to why it disagrees with the recommendation to dismiss.
- 13.5. The role of the Council:
- 13.5.1. The Council will consider the proposal that the Statutory/Chief Officer should be dismissed, and must take into account:
- Any advice, views or recommendations of the Independent Panel
 - The conclusions of the investigations into the proposed dismissal
 - Any representations from the Statutory/Chief Officer
- 13.5.2. Where the Independent Panel does not endorse the recommendation of the IDC, the Chair of the Independent Panel should be invited to attend and present the report of the Panel and to answer questions,
- 13.5.3. The Statutory/Chief Officer will have the opportunity to appear before the Council and put his or her case to the Council before a decision is taken.
- 13.6. Redundancy, Permanent Ill-Health and the expiry of Fixed Term Contracts:
- 13.6.1. Proposed dismissals on the grounds of redundancy, permanent ill-health and the expiry of a fixed term contract where there has been no commitment to renew it, do not require the involvement of an Independent Investigator or Independent Panel. However, the Council will follow appropriate and fair procedures in these cases and have mechanisms in place, including appropriate delegated authorities, to manage such eventualities. In addition, dismissals for all reasons including those set out in this paragraph must be approved by the Council itself.

14. Appeals

- 14.1. Appeals against dismissal:
- 14.2. Where the IDC has made a recommendation to dismiss, the hearing by the Council will also fulfil the appeal function.
- 14.3. Appeals against action short of dismissal:
- 14.4. If the IDC imposes a disciplinary sanction short of dismissal, the Statutory/Chief Officer may appeal against any such sanction to the Employment Appeals Sub Committee. The Employment Appeals Sub Committee will consider the report of the Independent Investigator and any other relevant information considered by the IDC, e.g. new information, executive objections (if relevant), outcome of any further investigation, etc. The Statutory/Chief Officer will have the opportunity to appear at the meeting and state his/her case. The Employment Appeals Sub

¹ Appropriate training has been devised by the JNC, and should be offered to members of the Panel

Committee will give careful consideration to these matters and conduct any further investigation it considers necessary to reach a decision. The decision of the Employment Appeals Sub Committee will be final.

Policy administration

- **Equality impact** - High. This policy has high equality relevance. Indirect discrimination can arise if disciplinary proceedings are unfairly implemented. HR will monitor implementation of this policy.
- **Who authorised the policy/strategy and date of authorisation** –This policy was agreed with SMT and UNISON in xxxx and confirmed with Personnel Committee on xxxx.
- **Policy date for review and responsible officer** - Corporate HR Manager 2025

Appendix 5 – Grievance Policy

(Proposed changes shown in red)



Grievance policy and procedure

1. East Devon District Council encourages open and free communication between employees and their managers. This helps to ensure that questions and problems arising during the course of employment can be aired and, where possible, resolved quickly, informally and to the satisfaction of all concerned.
2. Grievances are concerns, problems or complaints that employees raise with their employers, and this policy has been introduced to ensure that there is a clear process for dealing with grievances quickly and effectively. As such, this policy aims to:
 - Support a culture in which issues and problems are resolved quickly and at the lowest level of management
 - Provide a clear framework for dealing with grievances if they arise
 - Support motivated and customer focused staff
 - Improved service delivery
3. It is anticipated that most grievances will be resolved through informal discussion, normal management channels or mediation without the need to invoke the formal grievance procedure.
4. Where the normal channels prove unsuccessful in dealing with the grievance, this policy and procedure should be adopted.
5. Any steps under this procedure should be taken promptly unless there is good reason for delay. The time limits in this procedure may be extended where it is reasonable to do so.
6. We may vary this procedure as appropriate to a particular case.
7. If you have difficulty at any stage of the grievance procedure due to a disability, you should ask HR for assistance.

8. Scope

- 8.1. The scope of this policy includes matters which are not entirely in the control of the organisation such as client, customer **and member** relationships and working on another employer's site. These will be treated in the same way as grievances within the organisation, with the Council investigating as far as possible and taking action if required. The relevant service should make it very clear to any third party that grievances are taken seriously and action will be taken to protect Council employees.
- 8.2. For matters involving accusations of unacceptable behaviour (bullying or harassment), the Grievance Procedure should be followed once all steps in the Unacceptable Behaviour Policy have been exhausted and the unacceptable behaviour remains unresolved.
- 8.3. This grievance procedure should not generally be used to complain about disciplinary, performance or absence management action that has been taken against you. If you are dissatisfied with any action, you should submit an appeal under the Disciplinary Policy and Procedure, Absence Management Policy or Dealing with Unsatisfactory Performance Policy and Procedure as appropriate. Grievances raised while you are subject to disciplinary proceedings will usually be heard only when the disciplinary

process has been completed. Where a grievance has any bearing on the disciplinary proceedings, it should be raised as a relevant issue in the course of those proceedings. Ultimately, a decision will be taken on whether or not to temporarily suspend the disciplinary process.

- 8.4. The scope of this policy also excludes situations where the matter constitutes a grievance relating to salary, grade or job evaluation outcome. These shall be handled using the Job Evaluation Appeals Procedure where there is a dispute about the decision of the panel.
- 8.5. This procedure does not apply to a disclosure made under the Public Interest Disclosure Act 1998 ('whistle blowing'). The Council operate a separate whistle blowing policy to enable employees to report illegal activities, wrongdoing, and malpractice within the organisation.
- 8.6. This procedure can be utilised to raise a grievance against a member's alleged unacceptable behaviour, with a view to the Council, as employer, taking reasonable and proportionate steps to seek to deal with this, if the behaviour is deemed unacceptable. However, this is a separate process to raising a complaint about member behaviour via the member's Code of Conduct, which the employee is also able to do if they wish, and which will be dealt with under the arrangements within the Localism Act 2011. Reference should be made to the Protocol for Relationships between Members and Officers when dealing with such issues.
- 8.7. This procedure will apply for collective grievances where two or more employees are raising an issue. The grievances will be dealt with together.
- 8.8. This procedure applies to all employees regardless of length of service, **except the Chief Executive, where a separate procedure applies**. It does not apply to agency workers or self-employed contractors.

9. Levels of responsibility within the Grievance Policy and Procedure

- 9.1. The following framework applies:

Level of employee	Level of actioning officer	Level of appeal's officer
Staff	Line Manager or a more senior manager	Assistant Director/Director or senior manager above level of actioning officer
Assistant Director	Director	Chief Executive
Director (chief and statutory officers, except the Chief Executive/Head of Paid Service)	Monitoring Officer or S.151 Officer	Chief Executive
Grievance against the Chief Executive (all staff)	Grievance Sub-committee	Employment Appeals Committee

10. Informal processes

- 10.1. You have the right to speak to your Line Manager about issues which arise during the course of your employment. There are many opportunities where you can communicate directly with your Manager, for example through one to one meetings, Performance Excellence Review meetings, team meetings or through a specially scheduled meeting.
- 10.2. If you have a grievance relating to your employment, you should raise the matter informally with your Line Manager during the course of normal work. This is not part of the grievance procedure. If the issue involves your immediate Line Manager, you should talk to the Line Manager's manager or your trade union representative informally in an attempt to resolve the issue before raising a formal grievance.
- 10.3. Mediation is a very effective tool in helping to resolve grievances particularly where working relationships have been damaged. Mediation should be suggested at the informal stage but may also be recommended to help resolve matters in formal grievances.

11. Formal grievance procedure

- 11.1. If it is not possible to resolve a grievance informally you should raise the matter formally, in writing, and without unreasonable delay with your Line Manager (as long as that person is not the subject of the grievance in which case you should raise the matter with another Manager).
- 11.2. Your written grievance should indicate that you are invoking this grievance procedure and contain a brief description of the reasons for your complaint, including any relevant facts, dates and names of individuals involved. In some situations, we may need to ask you to clarify the subject matter of your grievance in advance of the meeting or to provide further information.
- 11.3. A suggested pro forma for setting out the necessary information is contained in Appendix 1, but if you would like help in formulating your written grievance, you may seek help from a colleague, HR or a trade union representative.
- 11.4. When stating your grievance it is important that you try to stick to the facts and avoid language which may be considered insulting or abusive.
- 11.5. East Devon District Council will arrange for a grievance meeting to be held without unreasonable delay after a grievance is received. This will normally be within 10 working days. We may carry out such investigations as we consider appropriate prior to the meeting. This may involve interviewing you and any witnesses if appropriate.
- 11.6. You may bring a companion to the meeting. You and your companion should make every effort to attend the meeting. If you or your companion cannot attend at the time specified for a meeting, you should inform us immediately and we will make reasonable efforts to agree an alternative time. If the meeting does not take place for a second time because you or your representative cannot attend due to an unforeseeable reason, the Council is not obliged to rearrange it again.
- 11.7. Grievance proceedings should be treated as confidential. You may contact your Trade Union representative or colleague representative to discuss your grievance. However, you should treat the matter as confidential and not discuss it with other colleagues.
- 11.8. The purpose of the initial grievance meeting is to enable you to explain your grievance and to discuss it with us. If you have a companion, they may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.
- 11.9. You will be allowed to explain your grievance and how you think it should be resolved.
- 11.10. Consideration will be given to adjourning the meeting for any further investigation that may be necessary.

- 11.11. We will inform you of our decision and your right of appeal within 5 working days of the final grievance meeting. We may hold a meeting to give you this information but in all cases it will be confirmed in writing. If it is not possible to respond to you within 5 working days, a letter will be sent explaining the reason for the delay and identifying a time frame by which a response will be given.
- 11.12. The Council will bear in mind actions taken to resolve a grievance may have an impact on other individuals who may also feel aggrieved.
- 11.13. If the grievance highlights any issues concerning policies or procedures these will be addressed through recommendations.

12. Investigation

- 12.1. When dealing with any grievance matter, an investigation of events may take place. The investigation should be completed as soon as practicable, preferably within 4 weeks from the date that it is requested.
- 12.2. The investigating officer will not be the same person as the officer hearing the grievance. Managers will contact HR for advice regarding who will arrange for a suitable person to investigate.
- 12.3. The investigation will involve:
 - clarifying the nature of / grounds for the grievance
 - enquiring into the circumstances surrounding the issues raised
 - taking witness statements if appropriate
 - gathering factual information
 - producing an investigation report
 - presenting the report and the findings of the investigation to the grievance officer and the employee at the grievance hearing
- 12.4. The purpose of the investigation is to enable the grievance officer to decide if the grievance should be totally or partially upheld or not.
- 12.5. If you are a witness in a grievance matter you are expected to keep the matter confidential and not discuss it with work colleagues.
- 12.6. Breaches of confidentiality may be treated as a disciplinary matter.

13. Appeals procedure

- 13.1. An appeal against the decision should be made in writing to HR, stating the full grounds of appeal within 5 working days of the date on which the decision was sent.
- 13.2. An appeal meeting will be held, normally no longer than 10 working days after we receive your appeal. Where practicable, this will be held by someone more senior to the person who conducted the grievance meeting. You may bring a companion to the appeal meeting (this may be a work colleague or trade union representative).
- 13.3. We will inform you of the outcome of your appeal within 5 working days of the appeal meeting. We may hold a meeting to give you this information but in all cases it will be confirmed in writing. If it is not possible to respond to you within 5 working days, a letter will be sent explaining the reason for the delay and identifying a time frame by which a response will be given.

14. Procedure for dealing with a grievance raised by an employee against the Chief Executive

- 14.1. An employee raising a grievance against the Chief Executive should do so using this Grievance Procedure. Due regard will also be given to the guidance within the Joint Negotiating Committee for Local Authority Chief Executives Model Disciplinary Procedure and the flow chart contained within Appendix 7 of the Conditions of Service

Handbook and this information will be shared with the employee who has raised the grievance.

- 14.2. Grievances against the Chief Executive should be forwarded to the Council's Monitoring Officer (the 'Receiving Officer'). If the Monitoring Officer is the person bringing the grievance against the Chief Executive or is otherwise involved in the grievance, then another appropriate Chief Officer and/or a Monitoring Officer from a neighbouring authority should be commissioned to act as the Receiving Officer.
- 14.3. A meeting will be held between the Receiving Officer and the complainant without unreasonable delay after a grievance is received. The employee should be allowed to explain the grievance and how it could be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.
- 14.4. The Receiving Officer will then undertake initial filtering to assess the best procedure for dealing with the matter. For example, allegations and complaints that are directed at the Chief Executive, but are actually complaints about a particular service, should be dealt with through the Council's general complaints procedure. If appropriate an attempt should be made to resolve the matter informally. This might be through internally facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator. If the matter is a serious complaint against the Chief Executive's personal behaviour such as sexual or racial harassment, the matter would potentially be one that would be appropriate for an investigation under the disciplinary procedure.
- 14.5. After the initial filtering and any attempt at informal resolution, if the grievance remains unresolved, then the matter will move to Formal Stage 1. In most cases it will be appropriate for an independent investigator to be commissioned to carry out an investigation. If the outcome of the investigation is in favour of the complainant, a solution should be proposed, taking into account the remedy requested by the complainant and the Receiving Officer's assessment of what would be appropriate in all the circumstances. If the Chief Executive is unwilling to accept these proposals, the matter will be referred to a panel of elected members (the Grievance Sub Committee) to hear the grievance on behalf of the employer (Formal Stage 1). It is here that the power exists to resolve a grievance against the Chief Executive. The Grievance Sub Committee can either uphold or dismiss the grievance.
- 14.6. If the outcome of the Stage 1 investigation is that the grievance is not upheld, then the complainant has the right to appeal (Formal Stage 2) to a different panel of elected members (the Employment Appeal Sub Committee) and the Chief Executive should be immediately informed that this has happened. The Employment Appeal Sub Committee will then be responsible for considering the appeal with appropriate technical and procedural advice from the Receiving Officer. Where the Employment Appeal Sub Committee upholds the appeal and also decides that it is a matter of a serious nature, then it may decide to refer the matter to the Investigation and Disciplinary Committee. That Committee will then consider the matter in accordance with the Council's Disciplinary Procedure for Statutory and Chief Officers.

15. Records

- 15.1. Written records will be kept of the formal hearing. These records will be confidential and retained in accordance with the Data Protection Act 1998.
- 15.2. Copies of any meeting records should be given to you although in certain circumstances some information will be withheld, for example to protect a witness.
- 15.3. The Council does not agree to the recording of meetings and any recording of meetings will be treated as misconduct which may result in disciplinary action including warnings and potentially dismissal.

- 15.4. Managers should remind people of this at the start of meetings and may ask for mobile phones to be switched off.
- 15.5. Notes will be taken of meetings where appropriate and there will be an opportunity for individuals to amend the notes taken. If agreement cannot be reached, both sets of notes will remain as a record of the meeting.

16. Discipline and grievance

- 16.1. Where an employee raises a grievance during a disciplinary process, a decision will be taken as to whether or not the disciplinary process will be temporarily suspended in order to deal with the grievance. A decision on whether to suspend the disciplinary process in order to deal with the grievance(s); to deal with the matters concurrently; to deal with the grievance(s) as part of the disciplinary process; or to address the grievance(s) following the conclusion of the disciplinary procedure will depend on the nature of the allegations and grievance(s). The aim of the approach decided upon will be to ensure a fair disciplinary process is followed.

Policy administration

- **Equality impact** - High. This policy has high equality relevance. Indirect discrimination can arise if grievances are unfairly dealt with. HR will monitor implementation of this policy.
- **Who authorised the policy/strategy and date of authorisation** - **Following review to clarify Chief Executive grievance arrangements and application of the member Code of Conduct, this policy was agreed with SMT and UNISON in xxx and confirmed with Personnel Committee on xxx.**
- **Policy date for review and responsible officer** - Corporate HR Manager 2025

Appendix 1 - Suggested pro forma for grievance submissions

Name	Job title
Service	Date
Main reason for grievance. Try to summarise the main reason or reasons for the grievance.	
Supporting information. You should provide dates and factual information to support your grievance	
Impact on you. Try to summarise your feelings and the impact that the issue has had or is having on you.	
Secondary issues. Are there other issues which are related to your main grievance? If so, please try to summarise these.	

Appendix 6 – Unacceptable Behaviour Policy

(Proposed changes shown in red)



Unacceptable Behaviour Policy

1. East Devon District Council is committed to creating a working environment in which all colleagues are treated fairly, with dignity and respect and unacceptable behaviour will not be tolerated. This means a working environment which is free from harassment, bullying and intimidation. This policy applies in the following contexts:
 - anywhere on the Council's premises
 - anywhere off the Council's premises during work-related social events, business trips, training courses or business events.
2. **Unacceptable behaviour** has a detrimental and negative effect on individuals and ultimately on the organisation's ability to deliver excellent services to our customers.
3. This policy applies to elected members and all employees as well as volunteers, contractors and anyone else undertaking work on behalf of the organisation. These groups will be collectively referred to as 'individuals' within this policy.
4. All individuals have a clear role to play in helping create a positive working environment. In particular, individuals should be aware of their own conduct and behave in a manner which ensures and promotes acceptable behaviour. Managers have a responsibility to raise awareness of this issue and challenge and stop unacceptable behaviour in the workplace.
5. All individuals should be prepared to take appropriate action if they observe or have evidence that a colleague is being subjected to unacceptable behaviour and/or demonstrate a colleague behaving in an unacceptable way.
6. To foster a positive working environment, the Council has existing policies that help set the standards of conduct which must be observed and enable employees to raise concerns. These include the Employee Code of Conduct, Whistle Blowing Policy, Equality and Diversity Policy, Grievance Policy, Disciplinary Policy and Behaviours Framework.
7. The Council will provide training in relation to **unacceptable behaviour** and ensure that colleagues are reminded of this **as part of their mandatory training three-yearly updates. The Council's Behaviours Framework is also discussed within the annual Performance Excellence Review.**
8. Any bullying or harassment or other forms of unacceptable behaviour directed towards another will not be tolerated in any form by the Council. Action including dismissal may be taken using our Disciplinary Policy.
9. This policy takes account of specific legal requirements under the Equality Act with regard to the protections offered to people with 'protected characteristics' which are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation. Direct or indirect discrimination, harassment or bullying will not be tolerated. The Act's provisions also apply to individuals who may complain of

discrimination or harassment even if they do not possess the protected characteristic but they are associated with someone who does.

10. When defining unacceptable behaviour, it is appropriate to place emphasis on the recipient's experience rather than the motivation of the person complained about. Behaviour that is acceptable to some individuals may cause embarrassment, distress or anxiety to others.
11. Legitimate, constructive, fair and evidence based feedback of an individual's performance or behaviour at work is not bullying or harassment. It is important to acknowledge that the views and opinions of decisions made by managers and team leaders may not always coincide with an individual's. It must be recognised that those in management roles may have to deal with capability, conduct or performance issues as part of their job. If the concerns are not clearly evidenced to the individual, the individual may perceive criticism as bullying, harassment or discrimination. The Council will support managers, through the provision of policy, guidance, training and HR support, to deal with such issues in an appropriate manner.

12. Definition of acceptable and unacceptable behaviour

12.1. The Council's Members' Code of Conduct, Employees Code of Conduct and Protocol for relationships between Members and Officers (Part 5 of Constitution) set out the standards expected. Acceptable behaviour is also defined and reflected in the Council's Behaviours Framework. The Framework includes examples of behaviours that fail to demonstrate the required Behaviours.

12.2. Bullying and harassment is any behaviour that creates a hostile, humiliating, degrading or similarly offensive environment and leaves the victim feeling threatened, intimidated, humiliated, vulnerable or otherwise upset. Bullying is a type of harassment which consists of persistent actions, criticisms or personal abuse in public or private which humiliate, intimidate, frighten, undermine or demean the individual. People affected by bullying often feel the matter appears trivial or that they have great difficulty in describing it. Bullying can be defined in many ways but is generally behaviour that is identified as the misuse of power. Bullying and harassment may be misconduct that is physical, verbal or non-verbal and includes on-line behaviour.

12.3. Examples of unacceptable behaviour that are covered by this policy include (but are not limited to):

- using aggressive language, threatening, ridiculing, ignoring people or shouting
- shifting blame to others
- telephoning people at home unreasonably or unnecessarily (for example, demanding work when the person is absent due to sickness or ill health)
- focusing only on weaknesses
- bringing up details of or speculations regarding someone's personal life
- leaving impossibly long lists of tasks and making unreasonable demands
- criticising people in their absence
- racist comments or jokes including those about people's nationality
- comments and jokes about a person's age – old or young
- questioning an individual about his/her sexual relationships or preferences
- frequent comments about aspects of physical appearance
- using forms of address which are demeaning
- repeated staring or leering or suggestive looks at part of the body
- use of profanity, jokes or blasphemy to an unreasonably excessive level or in appropriate situations likely to cause offence or significant discomfort
- physical contact such as unwanted touching of any kind
- making unwanted sexual advances
- the display of inappropriate pin-ups, posters or electronic display for example pornographic pictures or objectionable cartoons

- comments about or the excluding of a colleague from workplace talk or activities because they are younger, older, disabled or of a different race or sexual orientation
- threatening or implying that you will cause the person to lose his or her job or fail to get a promotion or suffer some sort of career difficulty or financial disadvantage
- using language or gestures that someone feels personally threatened
- managers ignoring unacceptable behaviour or not addressing an employees' concerns
- not being prepared to deal with people face to face or refusing to engage with them appropriately.

13. How the Council deals with unacceptable behaviour

- 13.1. Any form of unacceptable behaviour **will** not be tolerated and individuals are advised to seek advice and support at the earliest opportunity.
- 13.2. Individuals will not be victimised or treated less favourably if they raise an **unacceptable behaviour** complaint. Employees must inform their line manager as soon as possible if they believe that they have been subjected to this type of treatment.
- 13.3. If an individual is concerned about their own observations regarding the treatment of another, they should attempt to immediately challenge the behaviour or speak to their line manager **(if an employee) or a senior officer (if a member, volunteer or contractor)** informally regarding their concerns.

13.4. The following steps can also be utilised:

13.4.1. Self-help

- Many issues can be resolved informally. Before individuals use the formal procedure, it may be appropriate to speak with the person they feel is exhibiting unacceptable behaviour towards them and explain that their behaviour is unwelcome, inappropriate or upsetting. The person may not realise that their behaviour is having that effect (for example they might have thought of it as 'banter' and have had no idea that it was upsetting or inappropriate).
- Sometimes it is difficult to speak with the perpetrator directly, in which case the individual should speak to their line manager **(if an employee) or a senior officer (if a member, volunteer or contractor)** informally regarding their concerns. Alternatively, there may be circumstances where the individual would prefer to speak to Human Resources (HR).
- The ideal solution is for the recipient of the **unacceptable behaviour** to bring the unwanted nature of this to the attention of the perpetrator. The intention is to stop the continuation of the behaviour that is causing the problem. In many instances no further action will be required other than the perpetrator recognising the effect of his/her behaviour and varying it accordingly.
- It is important to ensure that the alleged perpetrator is advised of the act to which the recipient took offence, when and where the conduct which offended took place and, finally, that the behaviour which caused offence must stop.

13.4.2. Mediation

- Mediation may be considered to improve the working relationship **and identify and address behaviours which are perceived as unacceptable**.
- Mediation usually involves a trained and approved Mediator facilitating discussions between the recipient and the alleged perpetrator to bring about a resolution. It need not mean both parties having to meet initially, as the Mediator can work with individuals separately. The outcome normally sought is a proper professional and acceptable relationship within the workplace. As it is only possible to prove unacceptable behaviour took place in certain cases, mediation is often used as a neutral method to enable both parties to modify the way in which they handle their relationship with each other.
- Requests for mediation should be made to Human Resources.

13.4.3. Formal Grievance Procedure (employees)

- If resolving the issue informally proves impossible the employee should instigate the Grievance Policy. The Council will treat your complaint in confidence as far as is possible and if it is found that you have been the victim of unacceptable behaviour, will take steps to stop it continuing or recurring. Sometimes, if we think it necessary, we may need to separate you from the person that you complain about while we investigate. If that involves moving you or the alleged perpetrator on a temporary basis or asking you or the alleged perpetrator to stay at home while we investigate, it is not a pre-judgement of your complaint. It is simply us trying to stop things getting worse during the investigation.
- Subject to any informal or formal action taken initially to resolve the unacceptable behaviour, HR may also provide information to the alleged perpetrator. Being accused of behaving unacceptably can be equally concerning to the individual. In many cases, individuals are unaware that their behaviour is the cause of another person's distress or discomfort. This will be impartial information so that the individual can decide their course of action.
- In accordance with the Grievance Policy, the matter will be investigated, a meeting will be held to consider the employee's grievance and the employee will be notified of the outcome, with the right of appeal against this decision. As part of the decision there will be a discussion, where appropriate, to consider ways of addressing the employee's relationship with the alleged perpetrator – this may include mediation where this has not already been explored.
- As set out in the Grievance Procedure, the procedure can be utilised to raise a grievance against a member's alleged unacceptable behaviour, with a view to the Council, as employer, taking reasonable and proportionate steps to seek to deal with this, if the behaviour is deemed unacceptable. However, this is a separate process to raising a complaint about member behaviour via the member's Code of Conduct, which the employee is also able to do if they wish, and which will be dealt with under the arrangements within the Localism Act 2011. Reference should be made to the Protocol for Relationships between Members and Officers when dealing with such issues.

13.4.4. Complaints Procedure (volunteers and contractors)

- If resolving the issue informally proves impossible the volunteer or contractor should instigate the Council's Complaints Procedure.
- Further information is available at [Complaints procedure - East Devon](#).

13.4.5. Protocol for relationships between Members and Officers (members)

- The Protocol sets out what members should do if they are unhappy about the actions taken by, or conduct of, an officer.
- The Monitoring Officer can provide further advice.

14. Support

- 14.1. Individuals can access counselling support at any time through the Council's Employee Assistance Programme. Further information is available on the intranet and from HR. Support is also available from the trade union and there are various external support groups and websites that provide advice and support including BullyingUK - <https://www.bullying.co.uk/>.

Policy administration

- **Equality impact** - High. This policy has high equality relevance. Human Resources will monitor implementation of this policy.
- **Who authorised the policy/strategy and date of authorisation** - This policy was agreed with SMT and UNISON in xxx and confirmed with Personnel Committee on xxx.
- **Policy date for review and responsible officer** - Corporate HR Manager 2025

Appendix 7 – Chief Executive Grievance Procedure

(NEW policy)



Chief Executive Grievance Procedure

1. This procedure applies where the Chief Executive raises a grievance – by definition this will be against an individual elected member(s) or the Council generally.
2. This procedure should be read in conjunction with the guidance set out in the Joint Negotiating Committee for Local Authority Chief Executives Model Disciplinary Procedure and the flow chart contained within Appendix 7 of the Conditions of Service Handbook.
3. The procedure relating to grievances from employees against the Chief Executive is set out in the Council's standard Grievance Policy and Procedure.
4. A Chief Executive cannot take out a grievance against another member of staff, as any cause for such concern would constitute grounds for disciplinary action and as Head of the Paid service the Chief Executive could initiate such action against any other employee. A Chief Executive grievance has to be against one or more member(s) and the Council's Monitoring Officer should act as Receiving Officer.
5. Where the Chief Executive raises a grievance, informal attempts at resolution should be regarded as preferable to immediate recourse to formal procedures.
6. Where the Chief Executive raises a grievance, then this should be referred to the Receiving Officer in the first instance who should establish, through discussions with the appropriate parties, whether there is any prospect of resolving the matter informally. This might be through internally-facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator.
7. In the event that informal resolution is neither appropriate nor successful, the Receiving Officer should refer the matter to the Council's Grievance Sub Committee. If the Grievance Sub Committee considers it appropriate, having come to its conclusions, it might refer a matter about the conduct or behaviour of an elected member to be dealt with in accordance with the Council's procedures adopted in accordance with the Localism Act 2011 for dealing with member behaviour or other appropriate arrangements.
8. An appeal by the Chief Executive against the outcome of the Grievance Committee's deliberations should be to the Employment Appeal Sub Committee.
9. Grievances raised by the Chief Executive during disciplinary proceedings - Where a chief executive is the subject of a disciplinary/capability investigation and raises a grievance relating to the case, the Investigating and Disciplinary Committee will decide how to deal with the grievance. This will depend on the facts of the case, the stage of the disciplinary procedure reached and the nature of the grievance raised. In some cases it may be appropriate to hear the grievance before continuing with the disciplinary/capability investigation. In other cases it will be appropriate to deal with the issues raised in the grievance as part of the wider disciplinary/capability investigation.

Policy administration

- **Equality impact** - High. This policy has high equality relevance. Indirect discrimination can arise if grievances are unfairly dealt with. HR will monitor implementation of this policy.
- **Who authorised the policy/strategy and date of authorisation** - This policy was agreed with SMT and UNISON in xxx and confirmed with Personnel Committee on xxx.
- **Policy date for review and responsible officer** - Corporate HR Manager 2025

Redundancy Policy and Procedure

1. The Council is committed to providing a stable environment and to ensuring as far as possible, security of employment for its employees. However, it is recognised that changes in the demand for services, levels of funding, sharing services and/or the need for change because of technological, legal or organisational reasons may lead to a requirement for a reduction in the number of posts or the activities in certain posts.
2. According to the Employment Rights Act 1996, redundancy occurs when the employer 'has ceased or intends to cease:
 - to carry on the business for the purposes of which the employee was employed by it, or
 - to carry on that business in the place where the employee was so employedor the fact that the requirements of that business:
 - for employees to carry out work of a particular kind or
 - for employees to carry out work of a particular kind in the place where they are so employedhave ceased or diminished or are expected to cease or diminish'.
3. Whilst the Council would wish to avoid redundancies wherever possible, the following procedures are designed to be applied whenever the potential for redundancies arises. The Council is committed to managing any redundancy situation in a sympathetic, fair and non-discriminatory manner. This policy and procedure applies to all employees of the Council who qualify. To qualify for a redundancy payment, employees will have been employed for a minimum of two years.
- 4. The Council's Commitments**
 - 4.1. The Council has an obligation to consult with you if you are affected by a potential redundancy situation.
 - 4.2. The Council will keep you, employee representatives where appropriate and the Joint Staff Forum informed, as fully as possible, about staffing requirements and any need for redundancies. Formal consultation with you, employee representatives where appropriate and the Joint Staff Forum will commence at the earliest opportunity and will comply with relevant legal requirements.
- 5. Measures to avoid or minimise redundancy**
 - 5.1. Before deciding upon compulsory redundancy, consideration will be given to the following measures which might avoid or minimise the need for redundancy:
 - natural staff turnover
 - restricting all recruitment in areas of reduced need
 - reduction or termination of the employment of temporary or contract employees
 - job share
 - reduction in hours
 - voluntary redundancy
 - early retirement
 - redeployment
 - 5.2. The above list is not exhaustive and any or all may be used according to the circumstances and not necessarily in any particular order. As part of its consultation with employees, employee representatives where appropriate and the Joint Staff Forum, the Council will consider any other proposals, which are aimed at avoiding compulsory redundancy.

6. Volunteers for redundancy or early retirement

- 6.1. Where appropriate, you will be invited to indicate your willingness to consider voluntary redundancy. Such indications will not imply any commitment on the part of you or the Council.
- 6.2. Volunteers for redundancy (including those eligible for early retirement) may be considered from those normally within the same employment category as the employee group at risk where acceptance of redundancy by volunteers would reduce the risk of a compulsory redundancy. Consultations will take place with a view to reaching agreement in respect of the criteria to be used in the selection among the volunteers for redundancy.
- 6.3. The Council reserves the right to retain you on the grounds of specialist knowledge, training and qualifications to preserve organisational balance and therefore, has the right to refuse or to accept any volunteers for redundancy.
- 6.4. The Council will consider applications for early retirement from employees not themselves at risk if their leaving might then avert the need for redundancy.
- 6.5. If such an application is approved, you would be eligible (if aged 55 and over) to receive payment of pension benefits in accordance with the Local Government Pension Scheme.
- 6.6. When making any decision to allow an early retirement, the Council will take into account the financial implications associated with any such retirement.
- 6.7. If you take early retirement you will be subject to the re-employed pension rule if you take employment in another related public service (for example local government) whereby pension may be abated depending upon the amount of the new salary.

7. Consultation

- 7.1. The Council will consider any alternative proposals with a view to reaching agreement on ways of avoiding redundancy and reducing the number of posts to be made redundant. This may include, for example, curtailing recruitment, reducing overtime, redeployment, retraining and reducing the use of external employees. Where job reductions are anticipated, the Council will start consultation in good time whilst plans are at a formative stage.
- 7.2. The timescale for consultation will have regard for the statutory timetable for consultation **and relevant conditions of service**, as follows:

Number of employees to be dismissed at the establishment	Period over which redundancy takes effect	Minimum period
Less than 20	Within 30 days	28 days
20 - 99	Within 30 days	30 days
100 +	Within 45 days	45 days

- 7.3. Where the number of employees affected by the proposed redundancy is 20 or more, collective consultation will be required. This will be carried out with the Joint Staff Forum and employee representatives as appropriate.
- 7.4. Collective consultation does not preclude individual consultation. Individual consultation will take place in the form of a meeting between you and the appropriate manager. However, where this is not possible, the information will be communicated in writing. You will have the right to be represented by a colleague or trade union representative. Consideration will be given to any matter raised by, or on behalf of, the employee in such consultations.

- 7.5. If your post is identified as 'at risk' of redundancy you will be consulted and issues for discussion may include:
- Why the Council is proposing redundancies.
 - How the Council has identified the selection pools.
 - The selection criteria.
 - How the Council has applied the selection criteria.
 - Why your position has been provisionally selected for redundancy.
 - The terms on which any redundancy would take place.
 - Possibilities for alternative employment within the Council.
 - Any ideas you may have for avoiding redundancy or reasons why you think the Council should not select you for redundancy.
- 7.6. Following consultation the Council will consider any submissions you make at the meetings.

8. Application of selection methods

- 8.1. The Council is committed to using fair and non-discriminatory selection criteria and the following list is illustrative and gives examples of fair criteria:
- skills, experience and aptitude of the employee
 - the standard of work performance
 - flexibility and adaptability to respond positively to changing work practices
 - the absence and disciplinary record of employees based on the previous 12 months. Absence records will not include any time taken in relation to an illness covered by the Equality Act 2010.
- 8.2. The selection criteria will be determined following consultation.
- 8.3. Where a restructuring results in potential redundancies, but also creates new roles the method of selection for those roles will generally include a structured interview and may include a presentation or other work-based tests. Where there are not significant changes to roles but a diminishing requirement for them, the method will generally be by matrix (a paper based assessment).

9. Compulsory redundancy

- 9.1. After consultation and careful consideration of all the other measures available in mitigation of redundancy, it may still be necessary to make you redundant on a compulsory basis. Compulsory redundancies will be made using selection criteria determined following consultation with you, employee representatives where appropriate and representatives from the Joint Staff Forum.
- 9.2. The Council will always need to have regard to retaining specific knowledge, experience and skills to preserve a balance within the workforce and further criteria in addition to those outlined may be required to select individuals for redundancy.

10. Decisions regarding redundancy

- 10.1. Redundancy decisions (whether voluntary or compulsory redundancy) for all staff (excluding Chief Officers) will be made by the relevant Director on behalf of the Head of Paid Service.
- 10.2. Redundancy decisions (whether voluntary or compulsory redundancy) for Chief Officers/Chief Executive will be made by Full Council following a recommendation from either the Investigating and Disciplinary Sub Committee or Employment Appeals Sub Committee.

11. Notice

- 11.1. The notice period will be in accordance with your contract of employment or the statutory entitlement, whichever is the longer.
- 11.2. The notice period to the date of termination of employment will normally be worked, however, if you have been served notice of redundancy you may be requested to remain at home during this period. Where this is not possible, payment in lieu of notice will be made.

12. Appeal

- 12.1. After the notice of dismissal has been issued, there shall be a right of appeal to the Chief Executive in respect of selection for redundancy and the ways in which the redundancy procedures have been operated.
- 12.2. For Chief Officers, the right of appeal will be to the Employment Appeals Sub Committee who will then recommend to Full Council whether or not the appeal will be upheld and Full Council will make the final redundancy decision.
- 12.3. Appeals should be lodged, in writing, stating the full grounds of the appeal within 10 working days of the notification of dismissal. The appeal will be heard as soon as practicable after receipt. Individuals have the right to be accompanied by a work colleague or trade union representative.

13. Redeployment

- 13.1. Redeployment, if possible and where appropriate, will be used to avoid compulsory redundancy. All suitable vacancies within the Council will be ring-fenced in order that they be offered to those individuals whose posts are at risk of redundancy. In this context, 'suitable vacancies' are those of a similar level where the skills and experience required by the individual's current post are compatible with the job/person specification of the vacant post. Such individuals will become 'priority candidates' for a vacancy. You will not usually be required to undergo any selection process if you are a 'priority candidate' for a post, but the Council retains the right to ask you to undertake a limited selection process in certain circumstances. An example of such a circumstance would be where the dimensions and scale of the vacant post is wider than that which you undertake in your current role.
- 13.2. Where more than one person who is at risk of redundancy has the necessary skills and experience to carry out the role, the Council retains the right to determine the most suitable candidate for redeployment from that pool of candidates based on objective criteria and using a selection process which may involve paper selection or an interview process. HR will inform those at risk of all the relevant suitable vacancies within the Council.
- 13.3. If there are other vacant posts which could represent an alternative to redundancy but require different skills and experience to those required by the individual's current post, there will be a requirement for the individual to go through a selection process to determine suitability for the role.
- 13.4. If you are redeployed you will be given reasonable, appropriate training to enable you to perform the duties of the new job. Redeployment will be subject to your express agreement and approval by the relevant Director/Assistant Director for that service (for the redeployed position) who will need to agree to you being considered for a ring-fenced post as a priority candidate.

14. Trial period in redeployment

- 14.1. If you are redeployed, there is a mandatory trial period. The trial period begins at the end of your employment under the previous contract and ends after either four weeks has passed from the date on which you started work under the new contract, or for a longer period that was agreed for the purpose of retraining.
- 14.2. There is no limitation to the number of trial periods that can take place if you are at risk of redundancy and are offered a number of alternative roles. It is appropriate that for

each role undertaken a trial period takes place and if they all prove unsuitable and the contract is finally terminated, you are still treated as having been dismissed for redundancy when the original contract ended.

- 14.3. If you decline the offer of a suitable reasonable alternative or terminate the contract during the trial period, you shall be treated as having refused the offer of a new job. This will result in the forfeit of the redundancy payment (providing the new job was a suitable, reasonable alternative).
- 14.4. If you are not successful in securing redeployment, you may appeal against the decision. Appeals should be lodged, in writing, stating the full grounds for the appeal within ten working days of the notification of the decision. Appeals will be heard by a Director accompanied by HR, as soon as reasonably practicable after the notification of appeal. No action will be taken to fill the post offering potential redeployment until the conclusion of the appeals process.

15. Salary on redeployment

- 15.1. It is expected that redeployment will normally be to a post near the existing salary level. However, applications for all suitable alternative posts will be considered. Where you are re-deployed to a post designated at one grade lower, salary and benefits will be frozen for one year. Where you are offered an alternative post which is more than one grade lower you will not receive this protection.

16. Redundancy payments and new employment

- 16.1. If, prior to the expiry of your notice of dismissal, you receive the offer of a job with a related employer (another public body), to start immediately or within four weeks of the end of the previous employment, then a redundancy payment cannot be made by the Council.

17. Assistance in finding other work

- 17.1. The Council will assist, where possible, at risk employees in finding alternative posts. In addition, the Council will grant reasonable paid time off to look for work or to arrange for training for new employment. Reasonable time off with pay will also be given to attend interviews. Such time off must be arranged in advance with the relevant manager.

18. Advice and counselling

- 18.1. Advice on completing application forms and job interview skills will be provided by HR. Individual counselling will be available through the Counselling Service for employees selected for redundancy and also for those who are not selected but would like extra support during the period of uncertainty. The Council will circulate details of employees seeking redeployment, if requested, to other relevant organisations.

19. Miscellaneous

- 19.1. If you leave on early retirement or redundancy other than at the end of the leave year, the Council will not deduct pay in respect of leave already taken in excess of your proportional entitlement.
- 19.2. If you are provided with a lease car and you leave on the grounds of redundancy, the lease car arrangements will be terminated. The cost incurred in prematurely terminating the lease will be met by the Council.
- 19.3. If you have been provided with relocation or further education assistance and you leave on the grounds of redundancy, there will be no requirement to repay any monies outstanding.
- 19.4. If you have a car loan with an outstanding amount, you will be required to make arrangements (which are satisfactory to the Council) to repay this.
- 19.5. If you participate in a salary sacrifice scheme such as the cycle scheme then conditions as outlined in the scheme will apply if your employment is terminated by reason of redundancy.

- 19.6. Depending on the circumstances of any particular redundancy, the Council may consider a contribution towards an employee receiving Outplacement Service support and/or other appropriate advice and assistance.
- 19.7. If you wish to waive all or part of your notice, agreement to this shall not be unreasonably withheld but shall be judged in the light of individual circumstances and operational requirements. Where agreement is given in writing to an early departure, entitlement to redundancy terms will not be unreasonably withheld, but you will not receive any payment in lieu of notice beyond the revised termination date. If you leave the Council before the notice period expires, without the agreement of your Director, then entitlement to redundancy payment terms may be lost.

20. Redundancy payments

- 20.1. In all cases, the calculation used for redundancy pay is based on your actual weekly pay.
- 20.2. If you have no 'normal' working hours and the hours worked vary from week to week, a week's pay shall be the average weekly pay for the 12 weeks prior to the effective date (calculation date). If you receive no pay for individual weeks within the 12 week period, then this period is extended to include the weeks where pay was made.
- 20.3. The following is a statutory table which outlines your entitlement based on your age:

Age	Entitlement
Up to 21 years	Half a week's pay
22 – 40 years	One week's pay
Over 41 years	One & a half week's pay

[Use our redundancy calculator](#)

- 20.4. The Council has adopted the use of discretionary enhanced compensation payments where employment is terminated by reason of redundancy.
- All redundancy payments are paid free from PAYE deductions for the first £30,000. Thereafter, they will be treated as income and subject to the normal statutory deductions.
 - Service is determined based upon the final date of the notice period which is your last day of service.
 - Payments are limited to a maximum of 60 week's pay.
 - Your actual weekly pay is used, with the above age table used to calculate the number of weeks' entitlement. The date that the weekly rate is set at is the date of termination of employment.
 - A multiplier is applied to the number of weeks used within each age bracket as prescribed by the statutory table. This multiplier is 2.5. This means for example that for the age bracket shown above of "up to 21 years", this would equate to 1.25 week per years' service. If the total redundancy pay exceeds the value of 60 weeks' pay then the sum is reduced to this amount.
 - This enhanced payment includes the statutory redundancy payment and is not in addition to.
 - The calculation and payment of discretionary enhanced compensation payments (enhanced redundancy pay) will be carried out by Payroll Services and will be included within the final payment to the employee in the normal manner.

21. Local Government Pension Scheme (LGPS)

- 21.1. The LGPS is a statutory scheme. It requires that each employer adopts a policy relating to a number of discretionary benefits within the scheme. This document works in

conjunction with the Council's policy on Benefits and Employers Adopted Discretionary Powers.

- 21.2. The entitlement to LGPS benefits which are in addition to the redundancy payment is subject to the following conditions:
- You are aged over the earliest retirement date (age 55 as defined within the LGPS at the time of termination of employment).
 - You must be a member of the LGPS.
 - You are a member of the LGPS and may also have transferred pension rights into the LGPS (of any length) from another pension scheme.
 - East Devon District Council confirms that the reason for the retirement is by reason of redundancy.
- 21.3. The term "pension benefits" means the payment of an annual pension and, depending upon your personal circumstances, a single payment of a lump sum (called the "lump sum"). All pension lump sum benefits are paid tax free. However, annual pension benefits may be subject to deductions for tax, depending upon your individual circumstances.
- 21.4. If you are a member of the LGPS, aged 55 or over, you could receive your pension upon leaving. Please visit Peninsula Pensions retirement pages for more information and timescales. If you are under age 55 please visit their leaving before retirement pages.
- 21.5. Please note that a retirement by reason of redundancy will not result in a reduction to pension benefits. This means that if you are entitled to your pension benefits and your age and pensionable service do not add up to 85, your benefits will not be reduced. This is specific to redundancy situations.
- 21.6. With effect from 1 April 2014 the LGPS changed to a 1/49th career average related earnings (CARE) scheme. This means that if you joined the scheme before this date then you may have two or even three pension benefit calculations. One for service accrued under the old 1/80th scheme (pre April 2008), one for service accrued under the old 1/60th scheme (pre April 2014) and one accrued for service under the current 1/49th scheme. There is no automatic lump sum under the 1/60th and current 1/49th schemes. Members have the opportunity to convert some of their pension into a lump sum, in addition to any automatic lump sum under the 1/80th scheme. Details of this and the new scheme are available from the Peninsula Pensions website.
- 21.7. You will be asked to provide your birth certificate, marriage certificate, certificate of civil partnership (if applicable) and spouses/partners birth certificate (again if applicable). Payroll Services will provide copies for the Pensions Administering Authority, along with all appropriate information to effect payment of benefits to the employee. They are required for the payment of any future benefits to the surviving spouse or estate.
- 21.8. You are able to calculate your own pension via your pension self-service portal on the Peninsula Pensions website.
- 21.9. All information concerning payment of pension benefits will come from the Administering Authority (Peninsula Pensions), including requesting any appropriate decisions from you if you are buying additional service via an AVC provider and whether you wish to commute some of your annual pension into a larger lump sum.

Policy administration

- **Equality impact** - High. This policy has high equality relevance. Indirect discrimination can arise if redundancy processes are unfairly implemented. HR will monitor implementation of this policy.
- **Who authorised the policy/strategy and date of authorisation** – Following inclusion of the redundancy process arrangements for the Chief Executive and Chief Officers, this policy was agreed with SMT and UNISON in xxx and confirmed with Personnel Committee on xxx.
- **Policy date for review and responsible officer** - Corporate HR Manager 2024