

## REVIEW OF HUMAN RESOURCES POLICIES

**EXECUTIVE MEMBER:** Councillor John W Bowman  
**LEAD OFFICER:** Len Gleed, Human Resources Manager  
**REPORT AUTHOR:** Len Gleed, Human Resources Manager

### WHY HAS THIS REPORT COME TO THE EXECUTIVE?

This report presents recommendations from the Personnel Panel to the Executive, which has the relevant delegated powers, regarding proposed revised human resource management policies for Attendance Management, Discipline, Capability and Grievance handling.

**RECOMMENDATION:** The Executive is requested by the Panel to adopt the revised policies subject to:

- a) Delegation of authority to the Human Resources Manager to make any amendments to the terminology of the policies, necessitated by the management restructure currently in progress
- b) The new policies being recommended to take effect on 1 April 2011, to allow time for relevant communication and training for managers and employees.

## 1. INTRODUCTION

- 1.1 As part of the Choosing to Change partnership programme a review has been carried out of a number of Copeland's key Human Resources policies, and improvements proposed.
- 1.2 The Personnel Panel reviewed redrafted policies at its meetings on 1 December 2010 and 10 January 2011. The Panel was made aware of the extensive consultation feedback from management and the Trades Unions as part of the exercise, and the relevant responses, including consequent amendments to the draft policies.
- 1.3 In the case of the draft Attendance Management Policy, the proposals have also been considered by the joint Trades Union and management working group on sickness absence, which is attended by the Portfolio

## **2. ARGUMENT**

- 2.1 The main differences between the proposed new policies and the current policies are:

### Attendance Management

- The title of the policy itself has been changed from "Sickness Absence Management" to "Attendance Management" to emphasise the positive aspects of the policy.
- The use of "trigger points" for management action has been clarified and strengthened.
- The proposed policy incorporates a clear system of warnings for employees who do not meet the desired attendance standards, which strengthens the employer's position if dismissal is the unavoidable outcome

### Discipline and Capability

- The current policy, which includes both aspects, has been split into two separate policies, to improve clarity
- Both procedures are proposed to be entirely operated by management, with no Member involvement in appeal processes (except in relation to Chief Officers and the Chief Executive who are governed by their own National Conditions).

### Grievance

- Mediation has been introduced as a helpful addition to the available potential problem-solving approaches.
- Stage 3 of the current procedure, where the HR Manager acts as an "honest broker" to try to resolve the grievance, has been removed in the light of the introduction of mediation.
- There is no final stage role for the Personnel Panel, except for grievances relating to Chief Officers.
- The current policy has a section relating to collective grievances and Trades Union dispute resolution. This will now be the subject of a separate policy, yet to be produced.

## **4. CONCLUSIONS**

- 4.1 Executive are requested to agree the adoption of the proposed new policies, subject to :

- a) Delegation of authority to the Human Resources Manager to make any amendments to the terminology of the policies, necessitated by the management restructure currently in progress
- b) The new policies being recommended to take effect on 1 April 2011, to allow time for relevant communication and training for managers and employees..

## **5. WHAT ARE THE LEGAL, FINANCIAL AND HUMAN RESOURCES IMPLICATIONS?**

- 5.1 There are no specific legal implications of this report. The proposed policies are designed to be in accord with employment law
- 5.2 There are no direct financial implications of this report. Any associated training and communications will be funded from existing budgets.

## **6. HOW WILL THE PROPOSALS BE PROJECT MANAGED AND HOW ARE THE RISKS GOING TO BE MANAGED?**

- 6.1 There are no significant project management issues in this case.

## **7. WHAT MEASURABLE OUTCOMES OR OUTPUTS WILL ARISE FROM THIS REPORT?**

- 7.1 The Council will have up-to-date policies in relation to its people management, which will assist and support its Choosing to Change transformational journey.

### **List of Appendices**

Appendix A – Draft revised Attendance Management Policy  
 Appendix B – Draft revised Disciplinary Policy  
 Appendix C - Draft revised Capability Policy  
 Appendix D - Draft revised Grievance Policy

**List of Background Documents:** Current Council policies on Sickness Absence Management; Discipline & Capability; Grievance





**Copeland Borough Council**

# **Attendance Management Policy and Procedure**

*Redrafted November 2010  
Issued for consultation 16.11.10*

LWG/ January 2011  
Final Draft for Personnel Panel, incorporating post-consultation changes

## 1.0 POLICY STATEMENT

1.1 This policy applies to all employees of Copeland Borough Council.

1.2 The Council recognises its responsibility to provide a safe and healthy working environment for its employees. In fulfilling this responsibility, the Council will help to keep the level of attendance as high as possible by preventing accidents and promoting good health generally.

1.3 Sickness absence affects the ability of the Council to deliver high quality services reliably and to achieve value for money. This policy is designed to take account of both employee welfare and organizational requirements. In order to monitor the Council's performance in this important area, sickness absence levels will be monitored and audited as one of the key performance indicators. The Council will keep records of sickness absence and analyse them in order to identify trends and problem areas.

1.4 The Council's objective is to have a healthy and productive workforce and to be as supportive and caring as is reasonably possible where there is concern about a developing problem. The Council is also concerned to maintain good working standards and be fully committed to good employment practice and adherence to the law.

1.5 This policy and procedure is designed to combine:

- a positive, collaborative approach to the monitoring and management of sickness absence
- encouragement for accountability and responsibility among employees
- a consistent approach which is seen to be fair

1.6 Uncertified or suspect sickness absence could be a serious breach of trust and a separate issue of conduct which will be dealt with under the Council's Disciplinary Procedure.

1.7 Absence for medical, dental and other such appointments for the purposes of this procedure is not classed as sickness absence, but authorized absence, and should be recorded as such. It must be authorised by Managers or Supervisors, in accordance with other relevant guidelines including the Flexible Working Hours Scheme. See below for revised guidance on such appointments.

1.8 This policy statement and procedure is produced principally as guidance to assist Managers and Supervisors in dealing sympathetically with employees' sickness absence, both short and long term, in accordance with the Council's objectives, whilst recognising the fundamental need to provide an efficient and effective service. Employees should also be aware of the procedures that must be followed by themselves and their Managers or Supervisors.

## 2.0 THE COUNCIL'S RESPONSIBILITIES

In managing sickness absence, the Council will:-

2.1 ensure that all employees are treated in a fair and consistent manner. The ultimate aim will be to handle sickness in a supportive and effective manner, whatever the duration or pattern of absence.

2.2 fulfill its responsibilities under the Human Rights Act 1998. The Council is also committed to fair and flexible treatment of disabled employees, and compliance with the Equality Act 2010.

2.3 recognize the importance of harmonious employee relations, and the co-operation of the recognised trade unions in implementing this policy.

2.4 accept that every member of staff is likely to suffer from ill health at some time.

2.5 provide managers and supervisors with training, support and guidance in order to ensure that they are adequately equipped to deal with individual sickness problems. Their role is to help the employee to return to work as soon as possible, establish the cause of the absence, likely future patterns, maintain accurate records, and not to concentrate solely on the impact on their service.

2.6 acknowledge that any long-term sickness absence is normally in itself a source of anxiety for employees who may become particularly concerned about the security of their employment. In order to provide maximum support to employees faced with long-term ill health, the advice and guidance of the Occupational Health Service will always be requested.

2.7 recognise, in accordance with the principles of its Dignity at Work Policy, that disabled employees must be entitled to some special considerations. The Council also takes account of the impact of other associated policies in relation to disability (including HIV, AIDS, alcohol and drug abuse etc). In some circumstances, e.g. diagnosis of cancer, and similar degenerative conditions, an increased level of sickness absence may arise, and will be dealt with as sympathetically as possible. The Human Resources Team, in consultation with the Occupational Health Service, will provide specific guidance in this area.

2.8 attempt to support employees with temporary disabling conditions (e.g. a broken arm) to return to work on appropriate duties where this supports their rehabilitation. Decisions in these cases will always be made with appropriate occupational health advice.

2.9 make employees aware that their manager or supervisor will monitor their attendance record, and that reports will be made to more senior managers.

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2.10 require managers or supervisors personally to monitor the attendance of employees they supervise and personally be responsible for the management of absence in their own teams.

2.11 require accurate records of sickness absence to be kept by managers and supervisors to enable identification of individual absence patterns at an early stage.

2.12 only take action in cases where termination of employment on grounds of incapability arising from ill-health is considered, if:

- i) the employee has received guidance;
- ii) the employee has been advised that continued absence may result in termination of employment;
- iii) where appropriate, the possibility of alternative work has been considered.
- iv) Occupational Health advice has been sought.

2.13 take disciplinary action against employees who fail to comply with the requirements of this policy and procedure.

2.14 ensure that where employees decline to co-operate with efforts to obtain Occupational Health advice, they are made aware that decisions regarding their employment will still be made, without the benefit of such advice.

### 3.0 EMPLOYEES' RESPONSIBILITIES

Employees are required to:

3.1 attend work unless unfit to do so

3.2 be aware that the management of attendance is the joint responsibility of the manager and employee

3.3 take responsibility for their own health and wellbeing. The Council will offer opportunities from time to time for employees to participate in health improvement activities, including advice about alcohol consumption, diet, exercise, and smoking cessation.

3.4 be aware of the impact of their absence on colleagues, customers, and the Council as a whole.

3.5 raise concerns with their manager or Human Resources if they believe their job is making them ill or contributing to illness.

3.6 report sickness absence promptly in accordance with the procedure.

3.7 maintain contact with their manager during periods of sickness absence

3.8 ensure that appropriate certifications are completed, in accordance with the procedure.



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3.9 communicate effectively with their manager about their sickness absence.

3.10 co-operate fully with Occupational Health and other organisations that provide support to the Council and its employees.

3.11 ensure that medical advice and treatment, where appropriate, is received as quickly as possible in order to facilitate a return to work.

3.12 not abuse the sickness absence procedures or sick pay scheme.

### 4.0 REPORTING SICKNESS ABSENCE

4.1 Employees must notify their manager or supervisor of their inability to attend work, and the reason for it, as soon as possible and in any event no later than the start of their normal working day on the first occasion of any period of absence. The employee must provide information to enable the manager or supervisor to make appropriate arrangements during the absence.

If the absence continues for more than 7 days then a Fit note is required from the relevant GP. This should be sent to the manager who will forward it on to the HR/Payroll Department. The Fit Note allows doctors to state either that the employee is 'not fit for work' or that he or she 'may be fit for work' taking account of specified advice from the doctor.

A manager or supervisor may make suitable local arrangements for employees notifying sickness absence in order to meet the needs of their service (for example, asking for a call to be made to a mobile phone number before a set time).

4.2 The following information must be provided, recorded on the appropriate proforma and forwarded to Human Resources section for the employee's personal file, when absence is reported:-

- The absentee's name
  - The nature of the health problem
  - The likely duration of the absence
  - Any immediate work-related issues (appointments, deadlines etc.)
  - Contact details for the employee while absent because of sickness
- Where the duration of the absence extends beyond any estimate previously given by the employee, he or she must keep the Manager or Supervisor informed about the likely date of return.

4.3 A "Sickness Declaration Form" must be completed by the employee and returned to the manager or supervisor for any period of sickness absence of up to 7 days. This self-certification document must be completed on the day of return to work unless there are practical reasons why this cannot be done.

4.4 Failure on the part of an employee to submit a Sickness Declaration Form or Fit note will normally result in the withholding of sick pay.

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## **5.0 MONITORING AND RECORD KEEPING**

5.1 Managers must maintain accurate records, as this ensures a fair and consistent managerial approach to work attendance. It also helps to raise employee awareness of management's interest in this area whilst enabling each employee to review his or her own standard of attendance. It is an integral part of each manager's or supervisor's responsibilities.

5.2 The most important aid to effective absence control is the detailed individual record. This must accommodate all forms of employee absence, including sickness, holidays, flexi-leave, lieu days, leave of absence, unauthorised absence and compassionate leave. Records must be accurately maintained as they will form part of the evidence needed for formalised action, where required. Accurate records will also ensure that each employee is dealt with fairly.

5.3 To support the role of managers and supervisors, monitoring of sickness absence will also be undertaken centrally by the Human Resources team. Statistical information regarding the overall work attendance within the organisation will be derived from the records kept by individual managers and supervisors. Overall monitoring of absence levels and trends will be carried out at least every quarter and findings reported to Corporate Leadership Team. This statistical information will also be provided to managers and supervisors.

## **6.0 SICKNESS ABSENCE CONTROL PROCEDURES**

### **6.1 Return to Work Interviews**

6.2 When an employee returns to work after any absence due to sickness, their manager or supervisor must carry out a Return to Work interview as soon as possible (preferably at the start of the employee's normal working day) to check that the employee is fit to return to work, and discuss whether or not any further health problems are anticipated. Where the absence has been of short duration and relates to a minor ailment, the interview may be appropriately brief, and will be recorded on a Return to Work interview form. A copy of the interview pro-forma will be forwarded to the Human Resources Section, where it will be placed on the employee's personal file.

6.3 The manager or supervisor will discuss the reasons for absence and the fitness of the employee to return to work. The discussion should try to identify any help the Council could provide to overcome the health problems suffered by the employee, and establish whether or not such problems are connected with the employee's work or working environment. The employee should be asked whether or not he or she has sought medical help. The manager or supervisor should identify any positive steps they have taken to assist the employee, and whether or not there is any further help the Council can provide. The manager or supervisor may seek agreement for him or her to be seen by the Occupational Health Service nurse or Physician, who may in turn seek further information from the employee's own Doctor.

## **7 MANAGING PERSISTENT SHORT-TERM ABSENCE**

7.1 Persistent absence should be dealt with promptly, fairly and consistently. If the Council does not show that it is concerned about levels of absence, employees in a small minority of cases may abuse the conditions of the Sick Pay Scheme. The effective use of absence records is an important part of the responsibility of any manager or supervisor. Patterns of sickness absence will be investigated by managers and supervisors, and if abuse is suspected, a disciplinary investigation will be commenced.

7.2 Persistent short-term absence may be either for reasons of sickness, (short periods of one or two days occurring frequently), or may arise where an employee fails to attend for work without permission or for reasons which are not notified in advance. It is important to identify the cause of the absence because this will determine the action which may reasonably be taken if abuse of the Council's procedures is suspected.

### **7.3 Non-Urgent, Planned and Elective Appointments**

7.4 Whenever possible employees are expected to make appointments for non urgent dental, medical and therapeutic check-ups and treatment out of work Hours in line with other relevant policies such as the Flexitime Scheme rules. If this is not possible, such appointments should be timed to minimise the disruption to the Council's work, and permission should be sought from line managers and supervisors.

7.5 Employees must notify their supervisors or line managers at least 48 hours before the appointment that they will be away from work for a non-urgent appointment and give an estimated time of return to work. Supervisors and team managers will give their agreement to the employee taking the time off, and it will be recorded as "authorised absence".

7.6 In the case of treatments such as cosmetic surgery, elective laser eye treatments, and fertility treatments beyond 2 IVF cycles, authorized absence will not be granted, and annual leave or flexi time must be used

### **7.7 Urgent Appointments**

7.8 An employee who needs an urgent medical, dental or therapeutic appointment during normal working hours should notify the line manager or supervisor before attending the appointment, and request "authorised absence".

7.9 If following the appointment the employee does not return to work because they are not well enough to do so, the whole period will be counted as sick leave,

### **7.10 Out-Patient Treatment**

7.11 If an employee is to be treated as an out-patient, through an appointment which has been notified in advance to the supervisor or line manager, the time away

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from work can count as authorised absence of up to a day.

7.12 If an out-patient appointment requires more than a day's attendance at the clinic, or preparation for, or recovery from the appointment prevents attendance at work, half a day's sick leave should be recorded for each half day's absence from work.

7.13 Managers may ask to see proof of the appointment to be attended, which should be provided if requested.

7.14 While it is accepted that all employees may occasionally have absences from work as a result of minor ailments, excessive short-term absence or patterns of absence (e.g. Mondays and Fridays, absence after annual leave or at the end of the leave year) will give cause for concern. The levels of absence shown in the column "trigger points" in the table at paragraph 7.15 will require a formal management review. In the absence of any special circumstances, the review will result in the outcomes shown in the "Potential Outcome" column of the table. Special circumstances include:

- Conditions covered by the Equality Act 2010 where reasonable adjustments can be made, including chronic conditions
- Authorised hospital stays, including post-operative recuperation periods
- Industrial injuries, where appropriate accident report documentation has been completed
- Pregnancy-related absence

### 7.15 Trigger points for formal review/action

Sickness Absence Trigger Point	Meeting	Potential Outcome	Period Valid
3 occasions or 7 working days within a rolling 6 months	Stage 1	Verbal Warning	6 Months
A further 2 occasions or a further 6 working days or more in the following 6 months	Stage 2	Written Warning	6 Months
A further 2 occasions or a further 6 working days or more in the following 6 months	Stage 3	Final Warning	6 Months
A further 2 occasions or a further 4 working days or more in the following 6 months	Stage 4	Dismissal	

## 8.0 Attendance Meetings

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8.1 Where an employee's attendance record reaches a trigger point as set out in paragraph 7.15 above, the relevant manager or supervisor will hold an attendance meeting at one of the 4 stages indicated. The support of the HR team is available at every stage, if required.

### **9.0 Informal Welfare Meeting**

If the employee has 2 occasions of absence in a 6 month period an informal welfare meeting will take place. This meeting can form part of the return to work interview or a separate meeting can be arranged.

The purpose of this meeting is to:

- make the employee aware that the manager or supervisor is concerned about him/her;
- provide the employee with the opportunity to comment on the factors which have contributed to his/her absence level;
- advise him/her of support services available and discuss other action which may be taken by the individual, or the Service, in order to assist them to improve their attendance;
- specify the improvement required in line with the trigger points

If any action points are agreed they should be confirmed in writing on the return to work form.

If there are no further absences in the specified period no further action will take place. Both parties should still follow up on any commitments made during the welfare meeting.

If there are further absences the employee will go into the formal procedure.

### **9.1 Stage 1 – Verbal Warning Meeting**

Where an employee has 3 occasions or 7 working days of sickness absence within a rolling 6 months, a meeting will take place between the employee's manager and the employee concerned. If support is required a member of Human Resources may be present to provide advice to the manager.

The employee will be informed in writing of the formal meeting. This can be done via email if appropriate.

The employee will be given a minimum of 3 working days notice of the formal meeting and offered the right to have representation from a Trade Union or work colleague.

At the meeting the following will be taken into consideration:

- The employees absence history.

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- The nature of the absences and any treatment that has been received.
- The effect the absence is having on Service performance and colleagues within the Service.
- Any action taken to improve attendance.
- Any support that can be provided by the Council.

The employee and his or her representative will be given the opportunity to provide any mitigating circumstances.

The employee's manager will make the decision at the end of the meeting, if no further investigation is necessary. If further investigation is necessary the meeting will be adjourned and reconvened for a decision to be made.

The manager must confirm his or her decision in writing to the employee, including the improvements required.

### **9.2 Stage 1 – Appeal against Verbal Warning**

The employee has a right to appeal against this warning by writing to the Corporate Director – Resources & Transformation, within 5 working days of receipt of the letter, giving reasons for the appeal.

An appeal will be heard by another more senior manager, if possible from within the employee's Service and should be conducted within 10 working days of the appeal being received.

### **9.2 Stage 2 – Written Warning Meeting**

If, following a verbal warning, an employee has a further 2 occasions or a further 6 working days or more of sickness absence in the following 6 months, a Written Warning Meeting will be convened by the employee's manager. If support is required a member of the Human Resources team may be present to provide advice to the manager.

The employee will be informed in writing of the formal meeting. This can be done via email if appropriate.

The employee will be given a minimum of 3 working days notice of the formal meeting and offered the right of Trade Union representation or work colleague present.

At the meeting the following will be taken into consideration:

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- The employee's absence history.
- The nature of the absences and any treatment that has been received.
- The effect the absence is having on Service performance and colleagues within the Service.
- Any action taken to improve attendance.
- Any support that can be provided by the Council.

The employee and his or her representative will be given the opportunity to provide any mitigating circumstances.

The employee's manager will make the decision at the end of the meeting, if no further investigation is necessary. If further investigation is necessary the meeting will be adjourned and reconvened for a decision to be made.

The manager must confirm this in writing to the employee, including the improvements required. If not already done so an appointment with Occupational Health will be arranged to provide the Council with further information on the employee's medical issues.

### **9.2 Stage 2 – Appeal against Written Warning**

The employee has a right to appeal against this warning by writing to the Corporate Director – Resources & Transformation within 5 working days of receipt of the letter, giving reasons for the appeal.

An appeal will be heard by another more senior manager, if possible from within the employee's Service, and should be conducted within 10 working days of the appeal being received.

### **9.3 Stage 3 – Final Written Warning Meeting**

If, following a written warning, the employee has a further 2 occasions or a further 6 working days or more of sickness absence in the following 6 months, a Final Written Warning Meeting will be heard by the employee's manager. A member of Human Resources will be present to provide advice to the Manager

The employee will be informed in writing of the formal meeting. This can be done via email if appropriate.

The employee will be given a minimum of 3 working days notice of the formal meeting and offered the right of Trade Union representation or work colleague present.

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At the meeting the following will be taken into consideration:

- The employee's absence history.
- The effect the absence is having on Service performance and colleagues within the Service.
- The nature of the absences and any treatment that has been received.
- Any action taken to improve attendance.
- The report from Occupational Health following the Written Warning.
- Any support that can be provided by the Council.

The employee and his or her representative will be given the opportunity to provide any mitigating circumstances and further medical evidence that the employee may wish to provide including a report from the employee's own GP.

The employee's manager will make the decision at the end of the meeting if no further investigation is necessary. If further investigation is necessary the meeting will be adjourned and reconvened for a decision to be made.

The manager must confirm this in writing to the employee, including the improvements required. An appointment with the Occupational Health Physician will be arranged to provide the Council with up to date information on the employee's medical issues.

### **9.3 Stage 3 – Appeal against Final Written Warning**

The employee has a right to appeal against this warning by writing to the Corporate Director – Resources & Transformation, within 5 working days of receipt of the letter, giving reasons for the appeal.

An appeal will be heard by another more senior manager, if possible from within the employee's Service, and should be conducted within 10 working days of the appeal being received.

### **9.4 Stage 4 – Dismissal Meeting**

If after a Final Written Warning, an employee has a further 2 occasions or a further 4 working days or more of sickness absence in the following 6 months, a Dismissal Meeting will be convened by the employee's Corporate Director or if unavailable another suitable Corporate Director, with a Human Resources adviser present. JNC conditions apply for Chief Officer Sickness Absence. Dismissal should not be considered until both a Written and Final Written Warning have been issued and attendance has been found to be unsatisfactory.

The employee will be informed in writing of the Dismissal Meeting.



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The employee will be given a minimum of 5 working days notice of the formal meeting and offered the right of Trade Union representation or work colleague present.

If an employee wishes to submit a medical report from his/her own Doctor/ Consultant then they must write to them within 1 week of being informed of the hearing. The hearing will be postponed for a maximum of 4 weeks to provide adequate time for the Doctor's/ Consultants report.

All documentation which is to be presented at the Hearing must be submitted at least 3 working days beforehand, by both parties, to the Corporate Director – Resources & Transformation.

At the hearing the following will be considered:

- If there have been signs of improvement,
- The employee's absence history.
- The nature of the absences and any treatment that has been received.
- Any action taken to improve attendance.
- The effect of the absence on the performance and effectiveness of the Service.
- All individual circumstances, including medical reports from the Occupational Health Physician and employee's Doctor and/or Consultant.

The employee and/or their representative have the opportunity to put forward all their reasons for the continuing levels of absence and these are given consideration.

When making their decision the Corporate Director should consider if :

- the employee should be dismissed due to being incapable of carrying out the requirements of their post due to consistent high levels of absence.
- a further review period should be set to continue to monitor attendance levels.
- Any reasonable adjustments need to be considered under the Equality Act 2010.

The Corporate Director will normally announce the decision at the end of the Hearing and this will be confirmed in writing to the employee within 5 working days. In cases of dismissal the appropriate notice period will be paid according to the employee's Terms and Conditions of Service.

### **9.5 Appeals against Dismissal**

Any appeal against the decision of the Corporate Director must be lodged, in writing, to the Chief Executive, within 10 working days of receipt of the letter confirming the decision. This letter must clearly state the grounds for appeal. A letter purely requesting an appeal will not be acceptable.

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The Personnel Panel will hear any appeals against dismissal.

The Appeal Hearing will be convened for a mutually convenient date as soon as reasonably practicable following receipt of the letter lodging the appeal.

### **10.0 LONG-TERM ABSENCE**

10.1 For the purposes of this policy and procedure, long-term absence is defined as a situation where:

- an employee is absent for a period exceeding 4 weeks
- an employee has sustained a serious injury and a prolonged absence is anticipated. Where this type of absence occurs it may not be appropriate to deal with the situation using a procedure of formal warnings. The approach adopted should balance the employee's need for time to recover with the Council's need for work to be done;
- aggregated sickness absence exceeds 4 weeks in any 6-month period (or pro-rata for part-time workers)

10.2 The Council will deal sensitively with long-term sickness cases. It is clearly important to take a flexible approach and in these cases the manager or supervisor, the Human Resources Officer and the Occupational Health Provider will work closely together in managing the situation and will adopt a 'case management' approach. This means regularly reviewing an employee's absence and state of health and fitness to see whether or not there is any improvement and if there is anything the Council can do to facilitate the recovery and aid return to work. Case reviews will normally be held on a monthly basis and these will involve the employee's line manager, the HR department and OH.

10.3 Part of the case management will be for the Employer to keep in touch with the employee. The employee will be consulted about how contact will be maintained, for example by telephone, email and/or visits to the employee's home at agreed times. The employee's views on how contact should be made will be sought and respected.

### **11.0 Procedures for Managers to deal with long-term sickness absence**

11.1 The Council's approach to dealing with ill health which is likely to result in long term absence (as defined at 10.1 above) is based on the principles of early intervention, and sound professional Occupational Health guidance. This approach is founded on the belief that the best way to deal with long-term sickness absence is firstly to prevent it, if possible, and secondly to manage it in a pro-active way which is helpful to both the employee and the employer. The management of potential or actual long-term absence must therefore address the particular situation of the employee involved, and cannot be based on rigid thresholds for action. As a general guide, the Council will seek to resolve cases of long-term sickness absence as soon as is reasonable.

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11.2 In cases where the employee is suffering from a diagnosed physical ailment which is likely to last for 4 weeks or more, early advice from Occupational Health experts will assist both the employee and the Council to explore the best way of managing the situation. In particular, such advice will facilitate approaches which will enable an earlier return to work than would be likely if there is no such advice. For example, referral to Physiotherapy services, redeployment on to light duties and phased returns to work are all positive approaches which will assist both parties. Such interventions are particularly helpful in the case of musculoskeletal disorders, which are one of the commonest causes of lost time at work.

11.3 In cases where the employee's ill health is of a psychological nature, including such conditions as stress-related illness, anxiety and depression, it is particularly important to establish at an early stage if the illness is work-related, so that remedial steps can be taken as quickly as possible.

11.4 Where an employee is unable to work as a result of the types of condition referred to in 11.2 and 11.3 above, the manager or supervisor should arrange a meeting with the employee as soon as possible, and in any event no later than 4 weeks after the absence begins, to discuss the situation. When arranging the meeting it should be made clear that the initial discussion will be informal, but the employee should be given the opportunity to have a representative present if he or she so wishes. The meeting should cover all aspects of the employee's situation, and in particular:

- making the employee aware that the manager or supervisor is concerned about him/her;
- reasons for absence;
- progress on the absence and on-going treatment
- possible likely return date
- referral to the Occupational Health Service
- advice concerning welfare services available and discussion of other action which may be taken, by the employee or the Service, in order to help the employee to return to work;
- exploration of other options such as redeployment or a change in hours, or assisted/phased return;
- ensuring that reasonable adjustments are explored, through the agreement of the employee
- offering any assistance that may be required e.g. returning on reduced hours
- how future contact should be maintained

11.5 At all stages, appropriate file notes should be made by the manager or supervisor, and a confidential copy forwarded to the Human Resources section for the employee's personal file.

11.6 The manager or supervisor should complete the relevant Occupational Health Referral form and contact the employee to advise them that an appointment has been requested with the nurse or physician for advice.

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11.7 The Occupational Health Service will act on the referral document, addressing any specific questions asked on the form, and will assess the employee's case and ask them to complete a form which gives permission for their GP to disclose any medical information related to the absence. Assessment may involve one or more of the following procedures:

- Checking with the employee's own doctor about the possibility of return to work. The inquiry may also seek a view on any limitations on the work which the employee could be expected to do when they return.
- Waiting for the employee to return to work in their original job, and taking any steps necessary to facilitate an early return to work (variation of hours; temporary light duties etc.)
- Providing alternative work for the employee if available. [The Council does not have to create a special job].
- Retirement of the employee on the grounds of ill health in accordance with the terms of the superannuation scheme and the Council's policy on Early Retirement.
- Dismissal of the employee on the grounds of incapability due to ill health.

**11.8 Maintaining regular contact with the employee:** When the management process has started, as set out at 11.4 above, the manager or supervisor should keep up to date with the employee's state of health at all stages of the process.

**11.9 Keeping the employee informed:** If the absence continues, it is obviously important to inform the employee if his or her employment is likely to be at risk. Following the first meeting outlined at 11.4 above, at least 2 more similar meetings should be arranged at 4 week intervals.

11.10 If the length of the absence reaches 12 weeks, and it is apparent that the employee is unlikely to return to work in the foreseeable future, the relevant meeting as referred to at 11.8 above should include:

- All details relating to the current absence
- Review of any possible date of return
- Review of any need for assistance
- Informing the employee that a first warning is being issued regarding the sickness absence due to the serious operational problems created by his/her absence.
- Referral to Occupational Health.
- Whether it would be possible for the employee to return to work on a part time basis;
- Whether it would be possible for the employee to be assisted to return to work
- Whether redeployment of the employee is feasible, if he/she is unfit for only certain types of work
- The implications of the absence on the service provision, other employees, the budget etc

## APPENDIX A

- That the next stage of the absence procedure includes the issue of a second warning, due to the serious operational problems that the employee's absence is creating.

If it is unlikely that the employee will return to work in their substantive post the following issues need to be discussed:

- Redeployment
- Reasonable adjustment
- Retirement

**11.11 Where an employee refuses to cooperate:** If an employee refuses to provide medical evidence or to be examined by the Occupational Health Service, he or she should be told in writing that a decision about continued employment will be taken on the basis of the information available and that dismissal may result.

**11.12** Where the cause of the absence was created by conditions of work e.g. allergies, the Council will consider remedial action or the possibility of a transfer to alternative work.

**11.13** Where the employee's job can no longer be kept open and there is no suitable alternative work available, the employee must be informed of the likelihood of dismissal.

**11.14 Return to work after long term absence.**

When an absent employee is well enough to work, the Manager will meet with the employee to discuss the terms of his/her return. The discussions will include:

- The employee's opinion about his/her capabilities, for example whether the employee is confident that he/she are capable of full job performance or only partial performance;
- Whether the employee's return should be to full-time duties or whether a phased return would be beneficial;
- Whether the employee will be taking any medication after his/her return to work that might have side effects, for example tiredness;
- Any special arrangements, additional support or adjustments to the employee's duties, working conditions or environment that would help the employee to reintegrate into the workplace;
- Whether or not an induction programme is desirable or necessary, for example if the employee's absence has been lengthy and if a number of organisational or procedural changes have taken place.

**11.15** Occupational Health advice will always be sought for a return to work after a long period of absence and the authorities Health and Safety Officer may also be consulted.

## APPENDIX A

11.16 After the return to work the Manager will monitor the employee's progress over the first few weeks to ensure that he/she is coping with the work and the day-to-day pressures of working life; make sure that the employee is not 'thrown in the deep end', for example is not required to deal with a high backlog of work caused by the period of absence; take all reasonable steps to facilitate the employee's reintegration into the workplace.

**12.0 Dismissal as a result of ill-health incapability.** When the procedure described above has been followed, and there appears to be no alternative to dismissal, the matter will be heard by the employee's Head of Service. At this meeting, the manager responsible for the employee and a member of the HR team will detail the circumstances of the case, including all the options which have been explored. If the Head of Service is satisfied that there is no viable alternative, the dismissal of the employee on the grounds of ill-health incapability will be authorised.

**12.1** The employee will be informed of any incapability meeting taking place under this section of the Capability Policy and has the right to attend if this is possible, or may choose to be represented by a trade union representative or work colleague. If this right is exercised, the Head of Service hearing this case will consider any information presented on behalf of the employee before reaching a decision.

**12.2** Where the decision is taken to dismiss an employee under the provisions of this procedure, employment will be terminated with notice, in writing.

## **13.0 SUMMARY**

**13.1** A distinction should be made between absence on grounds of incapability as a result of ill health and absence for reasons which may call for disciplinary action. Proper investigation (based on accurate records) and consultation with the employee is essential. To ensure consistency the Human Resources Section must receive a copy of all Return to Work Interview Forms in the case of persistent short-term sickness absence. In the case of long-term sickness absence the Human Resources Section acts as the Occupational Health appointments co-ordinator and should be kept informed and copied any relevant documentation when it becomes necessary to involve the Occupational Health Service and thereafter.

**13.2** Appropriate action should be taken based on all the available information and following consultation between the relevant Manager or Supervisor and the Human Resources Section.

**13.3** Before any decision is taken concerning termination as described in paragraph 12 above, all available options must have been considered, and management must be satisfied that they have acted reasonably in the circumstances.

**13.4** Employees will be notified of the contents and effect of this procedure.

## APPENDIX A

13.5 Records of interviews conducted under the procedure will be forwarded to the Human Resources Section where they will be placed on the employee's personal file.

13.6 Employees will be made aware of the consequences of continued poor attendance.

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Draft







Copeland Borough Council

# **DISCIPLINARY POLICY AND PROCEDURE**

Re-drafted November 2010  
Issued for consultation 16 11 10



# Disciplinary Policy

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## COPELAND BOROUGH COUNCIL DISCIPLINARY PROCEDURE

### **1 PURPOSE**

- 1.1 An important aspect of the employment relationship between the Council and its employees is the expectation that all employees will maintain appropriate standards of conduct and behaviour in the workplace and any situation associated with their employment. Such standards are specifically referred to in a variety of Council policies and procedures, including this policy (which provides examples of misconduct and gross misconduct), health and safety procedures and rules, the Employee Code of Conduct, the Council's policies relating to equality and diversity, policies relating to confidentiality and security of information, and others. Discipline is therefore about the way in which employees behave and conduct themselves in the work environment and related situations, and their obligation to observe any specific rules and regulations. Problems which arise in relation to the quality of work, and the performance standards expected of employees, are dealt with in the Capability Policy and Procedure.
- 1.2 The objective of the disciplinary procedure is to encourage employees to adhere to their terms and conditions of employment, required standards of conduct, and any other specific rules. It provides for all employees to receive consistent, fair and reasonable treatment in cases of breaches of these standards and allows them to take the necessary steps to improve their performance.
- 1.3 The procedure will be used only where it is clearly necessary. Where possible, it will be used as an aid to improvement rather than a means of punishment. Counselling or informal warnings may in some cases be the appropriate way of resolving problems.
- 1.4 Managers and Supervisors operating this procedure will comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. They will maintain fairness and consistency of treatment to ensure that all cases are investigated thoroughly and that decisions reached are fair and reasonable in all the circumstances, and avoid any unlawful discrimination in the operation of the procedure.
- 1.5 It is important that employees know the standards expected of them. Managers should keep notes, securely and confidentially, of any informal discussions that take place in relation to the matters covered by this procedure. Copies of such notes can also be made available to the employee concerned in accordance with the Data Protection legal framework. If discussion and counselling do not achieve the required improvement, or the problem warrants more serious action, then the formal procedures should be invoked immediately.

### **2 SCOPE**

- 2.1 This procedure applies to all employees of the Council employed under the National Agreements on Pay and Conditions of Service of the National Joint Council for Local Government Services.
- 2.2 The procedure does not apply to Chief or other Officers employed under Joint National Council Conditions of Service, for whom there are separate arrangements, or to employees serving their initial probationary period of employment,.

### 3 PRINCIPLES

- 3.1 This procedure embodies the principles of natural justice, and takes account of the provisions of the Human Rights Act 1998 and the Equality Act 2010.
- 3.2 No action will be taken against an employee under this procedure until the matter has been fully investigated.
- 3.3 At every stage in the procedure, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- 3.4 At all stages of this procedure the employee will have the right to be accompanied by a Trade Union representative or work colleague.
- 3.5 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or without payment in lieu of notice.
- 3.6 An employee will have the right to appeal against any penalty imposed under this procedure.
- 3.7 The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- 3.8 Disciplinary issues will be dealt with as quickly as is practical to allow proper gathering of evidence and also to give the employee sufficient time to prepare his/her case and arrange for suitable representation. The maximum and minimum timescales specified in the procedure will be adhered to as far as possible. Equally, reasonable requests for an extension to the timescales specified will normally be granted.
- 3.9 The schedule at Appendix D shows the people authorised to take action under this procedure. However, if for some valid reason they cannot carry out their responsibility the Chief Executive (or nominated deputy) will appoint an appropriate person as a substitute.

Valid reasons include:-

- (i) unavailable to the extent that the timescale could not be complied with;
- (ii) some prior involvement with a disciplinary issue;
- (iii) some other substantial reason.

In relevant cases, the timescales may have to be extended if Corporate Directors or the Chief Executive are not available when required.

- 3.10 All persons undertaking any disciplinary action under these procedures must have received appropriate training (except when temporarily suspending an employee).

### 4 TRADE UNION REPRESENTATIVES' ARRANGEMENTS

- 4.1 In cases of an alleged breach of discipline or gross misconduct, no formal disciplinary proceedings shall normally take place in respect of an employee who is a recognised Trade Union representative, until the circumstances of the case have been discussed with a full-time

official, or other appropriate official of the employee's Trade Union. This does not, however, prejudice the right of the Council to suspend the employee concerned pending investigation, if that is considered appropriate.

## **5 INFORMAL ACTION**

- 5.1 Cases of minor misconduct or unsatisfactory behaviour will be dealt with informally in the first instance. An employee's line manager will gather the facts and have a quiet word in private with the individual to ascertain if there is a case to be answered. This is not a disciplinary hearing, the aim is to encourage and improve. If appropriate, training or counselling will be offered or a rule re-emphasised. If there is an issue, the line manager will make it clear what needs to be done to improve and agree a time to speak again with the employee. Line managers will keep records of such discussions for future reference but these will not be recorded officially on the employee's personnel record but kept securely by the manager. Copies of such notes can also be made available to the employee concerned in accordance with the Data Protection legal framework.
- 5.2 If there is no improvement, following further discussions with the employee, the issue will move into formal disciplinary measures.

## **6 FORMAL ACTION**

### **PRELIMINARY INVESTIGATION – ALLEGATIONS OF MISCONDUCT**

- 6.1 Where a matter arises which is suspected, or believed, to be a disciplinary matter, it will be investigated promptly and adequately, normally by the employee's direct supervisor or line manager. If this is not appropriate, the Head of Service (or nominated deputy) will appoint an officer to carry out the investigation. When the investigation is concluded, the employee and his/her representative will be informed.
- 6.2 The Investigating Officer will conduct a full investigation of the matter and the facts surrounding it, taking evidence from anyone who has, or may have, knowledge of the complaint/incident. The employee will normally be interviewed and told at the outset that this is an investigation into a specific complaint. As set out in paragraph 3.4 above, the employee is entitled to be accompanied by a Trade Union representative or work colleague at all stages of this procedure. The employee will be given adequate notice of 1 to 5 working days of any investigatory interview, in order to prepare his/her case.
- 6.3 On completion of the investigation, the Investigating Officer will present a written report confirming one of two decisions that may be reached:
- a) that there is no case to answer, in which case no further action is required;
  - b) that on the balance of probabilities, the complaint is justified, in which case the Investigating Officer will advise the appropriate person to arrange a disciplinary hearing.

## **7 DISCIPLINARY HEARING – ALLEGATIONS OF MISCONDUCT**

- 7.1 If, on completion of an investigation as described in Section 6 above, it is considered on the balance of probabilities that a complaint of misconduct is justified, a disciplinary hearing will be arranged.
- 7.2 The letter instructing the employee to attend a disciplinary hearing will:

- a) give a minimum of 1 working day and maximum of 5 working days' notice of the date, time and place arranged for the hearing;
- b) name the officer who will conduct the hearing, the management representative and any officer attending as advisor;
- c) state the matters to be considered at the hearing;
- d) specify, if appropriate, that the alleged misconduct constitutes Gross Misconduct and, if substantiated, will result in summary dismissal.
- e) inform the employee of his/her right to be accompanied or represented by a Trade Union of which he/she is a member and which is recognised by the Council, or by a work colleague of his/her choice;
- f) inform the employee that either side may call witnesses and that relevant documentation may be considered at the hearing. Copies of any documents to be produced by the management representative should be enclosed with the letter. The employee is required to provide copies of any documents which he/she intends to refer, not less than 1 working day before the hearing, to enable due consideration to be given to them;
- g) enclose a copy of this Procedure.

- 7.3 The hearing will be conducted in accordance with the format set out in Appendix A before an officer, as specified in the Schedule at Appendix D. The objective of the hearing is to obtain all the relevant facts so that the decision is fair both to the employee and to the Council.
- 7.4 If, for good cause, the employee is unable to attend the hearing on the date arranged, it will be adjourned to a date which the employee and his/her representative can confirm is acceptable. If the employee is unable to attend the rearranged hearing, it will normally proceed in his or her absence, but with the representative being provided with an opportunity to present the employee's case on his or her behalf. Any submission by the employee, in writing, or by his/her representative will be considered. Only one adjournment will normally be permitted, and then only for a maximum of 10 working days.

## 8 FORMAL DISCIPLINARY ACTIONS

8.1 Following a disciplinary hearing where a reasonable belief of the employee's guilt of the misconduct alleged is established on the balance of probabilities, the following disciplinary action may be taken:

- a) **A FORMAL VERBAL WARNING** may be given for a minor offence or offences.

Formal verbal warnings will normally remain "live" for six months, during which satisfactory conduct or performance is expected. This period may be increased to a maximum of 12 months if more appropriate, for example, because of the scale or seriousness of the breach of discipline. Verbal warnings will be recorded and kept on employee files.

- b) **A FIRST WRITTEN WARNING** may be given for:-
  - (i) a more serious offence or offences;

- (ii) a lesser offence or offences after a formal verbal warning has been given and remains "live";

First written warnings will normally remain "live" for 12 months but this period may be increased to a maximum of 2 years if appropriate, for example, because of the scale or seriousness of the breach of discipline.

c) **A FINAL (OR COMBINED FIRST AND FINAL) WRITTEN WARNING** may be given for

- (i) a serious offence which might justify summary dismissal for gross misconduct, but where management decides that a lesser penalty is appropriate in the circumstances;

- (ii) an offence after a first written warning has been given and remains "live".

Final written warnings will normally remain "live" for 18 months but this period may be increased to a maximum of 2 years if appropriate, for example, because of the scale or seriousness of the breach of discipline.

d) **DISMISSAL WITH NOTICE OR WITH PAY IN LIEU NOTICE** may be imposed for an act or acts of further misconduct, other than gross misconduct, by an employee who is under a final written warning given under 8.1(c) above.

e) In cases where gross misconduct is alleged and is established on the balance of probabilities, the employee will be liable to **SUMMARY DISMISSAL WITHOUT PAY IN LIEU OF NOTICE.**

8.2 Disciplinary suspension, transfer, demotion, stoppage of pay or bonus, or other penalty short of dismissal may be imposed in conjunction with a warning issued under (c) above, or as an alternative to dismissal.

## 9 **CONFIRMATION OF WRITTEN WARNINGS**

9.1 Employees will receive written confirmation of any formal disciplinary action taken against them. The letter to the employee confirming disciplinary action which comprises a written warning must include:

- a) the date(s) and details of the conduct giving rise to the warning, and relevant facts established at the disciplinary hearing/investigation;

- b) a statement as to its status (i.e. formal verbal, first written, final written);

- c) the period for which it will apply;

- d) the method of monitoring the employee's performance during the period of the warning, if appropriate, and any support which is to be given;

- e) a clear statement that further disciplinary action (including dismissal) may result if the employee's performance or conduct continues to fall below the specified standard;

- f) an explanation of the employee's right of appeal.

## **10 MISCONDUCT**

- 10.1 Appendix C ii outlines a non-exclusive and non-exhaustive list of offences that generally amount to misconduct falling short of gross misconduct and may be dealt with under the procedure. More serious examples of these can amount to gross misconduct.

## **11 GROSS MISCONDUCT**

- 11.1 Gross misconduct is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the Council, and justifies the employer in no longer accepting the continued presence of the employee at the place of work.
- 11.2 Gross misconduct is defined by reference to the relevant sections of the various National Conditions of Service, the Council's Code of Conduct for Employees, and the disciplinary rules as listed in Appendix C(i). This list is neither exclusive nor exhaustive. Other acts of misconduct may come within the general definition of gross misconduct.

## **12 APPEALS AGAINST DISCIPLINARY ACTION**

- 12.1 An employee may appeal against any action taken against him/her under this procedure.
- 12.2 The request must be made, in writing, to the authorised officer (as detailed in Appendix D) within 10 working days of receipt of the confirmation of the outcome of the disciplinary hearing. The request must include details of the grounds for appeal (see 12.3 below).
- 12.3 The appeal must be for one, or more, of the following reasons:-
- a) The employee contends that a matter of fact has not been properly taken into account;
  - b) The employee contests the appropriateness of the type of disciplinary action decided upon;
  - c) The employee believes the Disciplinary Procedure has not been followed properly.
  - d) On a point of law.
- 12.4 The appeal will normally be held within 15 working days of receipt of the employee's request.
- 12.5 The arrangements and format to be followed for the appeal are set out in Appendix B.
- 12.6 An Appeal Hearing:
- a) May find the action taken to have been unwarranted and, if withdrawn, any references to it will be removed from the employee's file, and written confirmation of this action will be given;
  - b) May uphold the disciplinary action, impose a lesser penalty or take alternative disciplinary action.
  - c) Will be the final step in the Council's procedure relating to matters of discipline.
  - d) Will normally convey its decision orally to the parties at the end of the hearing. In any case the HR Department will confirm a written decision, normally within 5 working days of the hearing.



The employee has, after the above procedure has been exhausted, recourse to such other machinery as may be established by any relevant legislation. Where employment legislation does not give this right, the provisions of this procedure alone will apply.

### **13 RECORDS**

- 13.1 The decision made by a disciplinary hearing will be recorded on the employee's file, but warnings will be disregarded for disciplinary purposes after the specified period of satisfactory conduct or performance.

### **14 CRIMINAL OFFENCES**

- 14.1 Notwithstanding the requirements of this disciplinary procedure, where it appears there is prima facie evidence of a criminal offence having been committed, the matter shall be reported to the police immediately by the employee's Corporate Director, the Chief Finance Officer, or other appropriate Officer.
- 14.2 Where an employee is the subject of criminal investigation or prosecution for an offence which it is considered makes him/her unsuitable for his/her type of work or unacceptable to other employees, then any decision to suspend or dismiss will be subject to consultation with the Chief Legal Officer and the HR Manager. The normal investigation, hearing and appeal procedures will be followed, if it is practically possible for the employee to attend, and any criminal investigations are not compromised. The Police will be appropriately consulted to ensure that their investigations are not compromised by any action taken under this policy and procedure

### **15 SUSPENSION**

- 15.1 An employee may be suspended on full pay for a period of not normally more than 15 working days, while a case of alleged misconduct is being investigated. Suspension may also be used in appropriate cases pending a disciplinary hearing or appeal.
- 15.2 The authority to suspend employees is detailed in Appendix D, following consultation with the Human Resources department.
- 15.3 Suspension may be necessary because:
- a) it is believed that to allow an employee who is accused of committing an act of gross misconduct to continue to work could undermine management's case for summary dismissal for gross misconduct, if this is seen as appropriate when the matter has been investigated, and the disciplinary procedure applied;
  - b) the employee, if continuing to attend the workplace, may try to interfere with management's investigation of the matter;
  - c) the employee may be in a position where he or she can damage the successful operation of the Authority;
  - d) if the employee were to remain at work he/she may endanger the health and safety of him/herself, or colleagues or members of the public.
- 15.4 Any decision to suspend an employee will be confirmed, in writing, by the suspending officer

as soon as reasonably practicable, indicating the reason for the suspension and that it is a precautionary, not a disciplinary, suspension pending the outcome of the matter.

- 15.5 If, in the opinion of the most senior person on site, it is necessary to suspend an employee and the appropriate management/HR advice is not available, the senior person present may temporarily suspend the employee until the appropriate officer is available to either confirm the suspension or re-instate the employee.

## **16 RESPONSIBILITY FOR IMPLEMENTATION**

- 16.1 All those persons referred to within the scope of this procedure are required to adhere to its terms and conditions and keep accurate and timely records throughout. This procedure is also incorporated into their contract of employment.
- 16.2 Individual managers are responsible for ensuring that this procedure is applied within their own area. Any queries on the application or interpretation of this procedure must be discussed with the HR department, prior to any action being taken.

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## DISCIPLINARY PROCEDURE

## APPENDIX A

### DISCIPLINARY HEARING

#### FORMAT TO BE FOLLOWED AT A DISCIPLINARY HEARING

1. The officer conducting the hearing will call on the management representative to state the facts of the matter giving rise to the hearing in the presence of the employee and the representative, and to present evidence and call such witnesses as they may wish. Witnesses in all cases will not enter the hearing until called to give evidence, will leave the hearing after completing their evidence, and remain available until released by the officer conducting the hearing.
2. The officer conducting the hearing and the employee or representative will be given the opportunity to ask questions of the management representative and the witnesses.
3. The employee or the representative will be given an opportunity to make a response to the officer conducting the hearing, in the presence of the management representative and may call witnesses to give evidence.
4. The officer conducting the hearing and the management representative will be given the opportunity to ask questions of the employee and the witnesses.
5. If, as a result of the evidence given either by the witnesses, the employee or the management representative, it seems desirable in the opinion of the officer conducting the hearing, that more evidence should be obtained or more witnesses called, this will be done. The process of obtaining evidence shall be continued until the officer conducting the hearing is satisfied that he or she fully understands both the facts and the opinions on each side.
6. At the conclusion of obtaining and hearing the evidence, the officer conducting the hearing will call on the management representative and then the employee or the representative to summarise their position.
7. The management representative, the employee and the representative will then withdraw.
8. The officer conducting the hearing together with the officer attending as advisor will deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties will return, notwithstanding only one is concerned with the point giving rise to doubt.
9. The officer conducting the hearing will give his decision to the parties either immediately or after a short period for consideration, in any case within no more than 5 working days. The decision will specify any subsequent action to be taken, review arrangements and any rights of appeal and will be confirmed in writing.

**NOTE: IT IS NOT THE ROLE OF THE REPRESENTATIVE TO ANSWER QUESTIONS ON BEHALF OF THE EMPLOYEE AT ANY STAGE OF THIS PROCEDURE.**

APPEAL PROCESS

FORMAT TO BE FOLLOWED AT AN APPEAL HEARING

- 1) The Officer conducting the hearing will invite the Appellant and/or his/her representative to state the grounds on which the appeal is made.
- 2) An appeal will not normally be by way of rehearing unless the Investigating Officer, or the employee or his representative, has additional material to introduce which was not available at the time of the disciplinary hearing.
- 3) The Officer conducting the hearing will invite the original Hearing Officer to explain the decision made at the relevant hearing.
- 4) The Officer conducting the hearing can question both parties if necessary, and give the opportunity to both parties to question each other on matters relevant to the presentations.
- 5) The Officer conducting the hearing will ask the original Hearing Officer and the Appellant or representative to sum up respectively.
- 6) If, when all the evidence has been heard the Officer conducting the hearing is satisfied, the hearing will be adjourned and both parties asked to withdraw.
- 7) The Officer conducting the hearing will consider the merits of the appeal before reaching a decision.
- 8) The Officer conducting the hearing has the authority to quash or reduce a disciplinary penalty.
- 9) If possible the Officer conducting the hearing will inform the Appellant orally of the decision, and this will be confirmed by the HR Advisor, in writing, no later than 5 working days after the hearing.
- 10) Where an appeal against dismissal fails, the effective date of termination is the date on which the employee was originally dismissed.
- 11) On announcement of the appeal hearing decision, no further right of appeal will be available to the employee within the procedure.

**Examples of gross misconduct are as follows: -**

1. Improper, disorderly or unacceptable conduct at, during, or when arriving for work including fighting, physically assaulting another person, serious incapability through alcohol or being under the influence of illegal drugs
2. Theft or misappropriation of, or failure to account for, or falsely claiming entitlement to, the Council's property assets or funds;
3. Gross neglect of duty, wilful refusal to work properly or any action that could result in an action against the Council for negligence or for a breach of the duty of care;
4. Loss, damage to, or misuse of the Council's equipment, vehicles, facilities and/or property, assets or funds, through wilfulness, negligence or carelessness;
5. Serious acts of discrimination in breach of the organisations's Equal Opportunities Policy, including acts of incitement or actual acts of discrimination on the grounds of disability, gender, sexual orientation, race, religion, belief, colour or ethnic origin
6. Failure to comply with a reasonable order, work rule, instruction or contractual requirement;
7. Failure to comply with a health or safety requirement;
8. Absence without proper cause;
9. While purporting to be absent sick, working or indulging in activities that are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery;
10. Committing an act outside work, or being convicted for a criminal offence, which is liable to affect adversely the performance of the contract of employment and/or the relationship between the Council and the employee;
11. Corrupt or improper practice, including accepting a gift that could be construed as a bribe or inducement and misuse of an employee's position within the Council for personal gain.
12. Serious breach of trust, including the provision of false information orally or in contravention of the Data Protection Act 1998
13. Falsification of qualifications, records or documents, including the unauthorised alteration, mutilation or destruction of the Council's records or documents;
14. Serious misuse of Council rules pertaining to the use of computers including e-mail and internet, including breaches of the Council's Security/Acceptable Use policies.
15. Abusiveness, harassment or sexual misconduct in relation to colleagues or customers in breach of the Council's Dignity at Work Policy
16. Failure to report or record any matter which it is the employee's duty to report or record;

Other acts of misconduct may, if sufficiently serious, come within the definition of gross misconduct. If, on completion of an investigation and disciplinary hearing, the Council is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

## MISCONDUCT

## Appendix C (ii)

The following is a non-inclusive and non-exhaustive list of offences which generally amount to misconduct falling short of gross misconduct and will be dealt with under the disciplinary procedure:

- Persistent unauthorised absence from work
- Lateness or abuse of the flexi-time arrangements
- Failure to report absence from work in the correct manner
- Failure to report and/or record working times in the correct manner
- Refusal to carry out a reasonable instruction
- Time wasting
- Unauthorised use of the Authority's property, goods, vehicles or equipment
- Breaches of confidentiality
- Breaches of the Employee Code of Conduct
- Unauthorised or inappropriate use of telephone, computer, e-mail or internet
- Inappropriate standard of dress or personal hygiene
- Disruptive behaviour and/or acts of insubordination
- Smoking in contravention of no-smoking rules (Note that in some working environments this could amount to gross misconduct – e.g. where a serious fire risk exists)
- Breaches of Council Equality Policies

Note: Serious examples of any of the above can amount to gross misconduct.

## DISCIPLINARY PROCEDURES - Authorised Officers

## APPENDIX D

The action to be taken is shown down the left side of the matrix, the two categories of employee who may be the subject of the action are shown in the three column headings across the top and the people empowered to take the relevant action shown in the appropriate position in each column

ACTION TO BE TAKEN:	DELEGATION:		
Suspend temporarily	Most senior person on site or HR Manager		
Suspend	Direct Line Manager		
Authorise extensions to timescales	Direct Line Manager or HR Manager		
Investigate under Disciplinary Procedure	Direct Line Manager or person nominated by Head of Service		
Issue verbal warnings	Direct Line Manager/Supervisor		
Issue first written warnings	Direct Line Manager/Supervisor		
Issue final written warnings	Head of Service (from another Service)		
Dismiss	Head of Service		
Hear appeals against verbal warnings	Head of Service (from another Directorate)		
Hear appeals against first written warnings	Head of Service (from another Directorate)		
Hear appeals against final written warnings	Head of Service (from another Directorate)		
Hear appeals against dismissals	Corporate Director or Chief Executive		

## Disciplinary Process

## Appendix E

It is recognised that on some occasions it will not be appropriate for the personnel indicated below to take action. The appropriate Head of Service will make the necessary judgement in these situations.

### INFORMAL ACTION

What	Who	To note
<p><i>Gather facts -Have a quiet word in private</i></p> <p><i>Is there a case to be answered?</i></p> <p><i>If no the matter is over</i></p> <p><i>If yes be clear about</i></p> <ul style="list-style-type: none"> <li>• <i>What needs to be done to improve</i></li> <li>• <i>When you will speak again</i></li> <li>• <i>What could happen next i.e. formal action</i></li> </ul> <p><b>KEEP WRITTEN RECORD FOR FUTURE REFERENCE</b></p>	<p><b>Direct Line Manager</b></p>	<p><b><i>This is not a Disciplinary Hearing. The aim is to encourage and improve</i></b></p>

### FORMAL ACTION

What	Who	To note
Inform employee that investigations in accordance with the formal Disciplinary procedures are to be invoked	Direct Line Manager	
Alert and brief manager and Human Resources Manager of situation	Direct Line Manager	
Carry out thorough investigation	Direct Line Manager or Nominated Investigation Officer	
<p>Inform the employee in writing</p> <ul style="list-style-type: none"> <li>• what they are alleged to have done wrong</li> <li>• the time and place for a meeting, giving 1-5 days notice</li> <li>• that they have the right to be accompanied</li> </ul>	Direct Line Manager	
<p>At the disciplinary hearing*</p> <ul style="list-style-type: none"> <li>• state the evidence</li> <li>• let the employee put their case</li> <li>• let the accompanying person(if any) ask questions</li> </ul>	Hearing Officer	<p>*Give the employee copies of any information to be used. Rearrange another meeting within 5 days if the employee or accompanying person cannot attend Consider fresh evidence if necessary</p>
<p>Adjourn to consider any action and think about :</p> <ul style="list-style-type: none"> <li>• previous sanctions</li> <li>• employee's record</li> <li>• any special circumstances</li> </ul>	Hearing Officer	
<p>Make your decision:</p> <ul style="list-style-type: none"> <li>• inform the employee of the decision and the right to appeal</li> <li>• monitor the situation</li> </ul>	Hearing Officer	
Write up disciplinary hearing notes	Hearing Officer or Nominated Note Taker	
<p>Confirm decision in writing</p> <p>Ensure all records are filed appropriately</p>	Hearing Officer /HR Officer	

**IT IS IMPERATIVE THAT WRITTEN NOTES BE KEPT OF ALL DISCUSSIONS/ACTIONS THROUGHOUT THE PROCESS**



## APPENDIX C



Copeland Borough Council

# **CAPABILITY POLICY AND PROCEDURE**

Drafted November 2010  
Issued for consultation 16 11 10



Copeland Borough Council

# Capability Policy

## PURPOSE:

The objective of this policy is to help and encourage all employees to achieve and maintain high standards of job performance and to ensure that Copeland Borough Council has fair and effective arrangements in place for dealing with work performance and capability matters. The Council is committed to ensuring that all staff have the appropriate skills, knowledge, competence and aptitude to undertake their role effectively.

Where an employee is performing below expectations, the role of the Line Manager will be to bring this to the attention of the individual and to work closely with them to support them to improve performance to an acceptable level. The objective will always be to set out a constructive approach to achieving improved work performance through effective supervision, mentoring, support and training, and performance review and development.

The Council also recognises, in accordance with the principles of its Dignity at Work Policy, that disabled employees must be entitled to some special considerations. The Council also takes account of the impact of other associated policies in relation to disability (including HIV, AIDS, alcohol and drug abuse etc).

Whilst the Council will support employees who are underperforming, it is the employee's responsibility to take whatever action is necessary, including seeking guidance, to improve their performance.

## DEFINITION OF CAPABILITY:

For the purpose of this policy and procedure, capability is assessed with reference to skill, aptitude, attitude, behaviours, competence, knowledge and ability to do the job.

This Policy will ensure that:

- Cases of poor performance are handled fairly and consistently with any underlying reasons and mitigating circumstances taken into account.
- Employees are offered appropriate support and training within a performance review framework.
- All employees are aware of the work performance standards expected of them.
- Employees will be given the opportunity to state their case and be represented at all formal stages of the Capability Policy, by a Trade Union Representative or work colleague of their choice.

- A record of discussions and agreed actions will be retained and a copy will be provided to the employee at all stages of the procedure.
- Employees will have a right of appeal against the issuing of an improvement notice under each formal stage of the capability procedure and also against any decision to dismiss on the grounds of incapability.
- Timescales for meetings, appeals, etc may be varied by mutual agreement. The intention is to avoid unreasonable delay but to allow for reasonable flexibility.
- Whilst every effort will be made to enable an employee to improve their performance and retain them in post, the Council cannot guarantee to maintain employment if reasonable and appropriate performance is not achieved following the exhaustion of the Capability Policy.
- In exceptional cases, where one performance error has serious consequences (e.g. where it results or could result in the serious jeopardy of the health & safety of service users or employees) the principles in this policy may not apply. Instead, the matter may be dealt with as potential misconduct or gross misconduct under the Council's Disciplinary Policy.
- In operating this policy, employees' rights under the Equality Act 2010 will be respected.

## **EMPLOYEE'S RESPONSIBILITIES:**

All employees have a responsibility to:

- take full accountability for their own performance and behaviour.
- perform in line with their job profile performance criteria within the Council's competency framework.
- contribute to review meetings and to engage in performance objective setting, problem solving and evaluation.
- work with managers constructively to address any underlying issues which may be affecting performance.
- move forward their Learning and Development by taking ownership of their own personal development.
- be open to constructive feedback.

## **SCOPE**

This Policy applies to all Council employees other than the Chief Executive and Chief Officers

It is important to ensure that issues of discipline are not dealt with under this policy. The Disciplinary Policy will apply where misconduct or negligence are believed to be the causes and also where employees have demonstrated that they are capable of performing the job at the required level but choose not to do so.

## **SHORT SERVICE AND PROBATIONARY PERIODS**

Where action is necessary in respect of a new employee during their probationary period or within the first 12 months of employment, such action may commence at Stage 3 of this policy, regardless of the seriousness of the issue. Managers should consult with HR prior to taking such action.

## **CAPABILITY MANAGEMENT OF TRADE UNION REPRESENTATIVES**

Although normal capability and work performance standards apply to trade union representatives, no formal capability management action will be taken until the circumstances of the case have been discussed with a senior trade union representative or full time official and in consultation with HR. This arrangement is in place to avoid the action being misconstrued as an attack on the union itself or on its representation and negotiating role, and is in accordance with the ACAS Code of Practice.

## **DEFINITION OF A WORKING DAY**

The definition of a working day is Monday to Friday (excluding Bank and Public Holidays) irrespective of whether this is a normal working day for the employee.

### **Timescales**

- As each case will be different it is not appropriate to set fixed timescales for each stage of the procedure. As a general guide, performance review periods should be at least 1 month but no longer than 3 months. Timescales for meetings, appeals etc, may be varied by mutual agreement.

### **Capability Records**

- Records of formal action will be disregarded for future capability purposes after 12 months. Records will be treated as confidential and kept in accordance with the Data Protection Act 1998.

## **ILL HEALTH / DISABILITY (as recognised under the Equality Act 2010)**

- Managers in conjunction with the Occupational Health Service and a member of the HR team should consider whether an employee may be considered to have a disability under the Equality Act 2010, and if so whether "reasonable adjustments" might permit retention in the job, or in another job within the Council. Managers should also explore with employees whether any adjustments could be made to improve performance.
- If ill health or a disability is affecting an individual's performance, the employee should raise this with their manager so that this may be taken into account and any reasonable adjustments made in consultation with Occupational Health Service advice. A critical stage in assisting an employee may be to gain authorisation to view information from their medical records. If it is necessary for an employee's full medical records to be reviewed then this will be done directly by an Occupational Health adviser. However, with the employee's permission, relevant information as determined by the medical practitioner will be made directly available to HR. In addition, the Council may request that an employee be seen by Occupational Health and/or an independent medical examiner. If an employee refuses permission to any

or all of the above, any future decision which the Council makes will be based on the limited evidence and knowledge at its disposal.

## SUPPORT FOR EMPLOYEES AND MANAGERS

- Employees may contact HR for support and guidance. UNISON, UNITE or GMB may also be able to offer support and guidance to employees who are members of a union and who are facing potential management action.

## MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION

The Council reserves the right to seek assistance from external facilitators at any stage of this procedure in the interest of seeking a satisfactory and objective outcome for all.

## POLICY STAGES

The Capability Policy contains the following stages:

- Informal Stage – interview and expression of concern
- Formal Stage – Stage 1 Capability Meeting
- Formal Stage – Stage 2 Capability Meeting
- Formal Stage – Stage 3 Capability Case Hearing (potential of dismissal with pay in lieu of notice or in exceptional circumstances, alternatives to dismissal)

## Authority to Take Action

The table below gives details of the level of management authorised to take action and to conduct an appeal under these procedures. The Manager conducting the appeal will not have had any previous direct involvement.

STAGE	ACTION	RESPONSIBILITY (HR to be consulted about process and consistency of proposed action)	APPEALS
Informal	Meeting with employee	Immediate Manager/Supervisor (or nominated deputy)	
Stage 1	Capability Meeting and formal Review	Immediate Manager/Supervisor (or nominated deputy)	More senior Manager (or nominated deputy)
Stage 2	Capability Meeting and formal Review	Immediate Manager/Supervisor (or nominated deputy)	More senior Manager
Stage 3	Capability Case Hearing	More senior Manager	Corporate Director

In exceptional circumstances, it may be appropriate for members to conduct the appeal at Stage 3. The Council reserves the right to make this decision if the circumstances are appropriate and to ensure there is complete objectivity and transparency in the hearing of the appeal.

## **THE POLICY**

The Council encourages Managers to quickly make employees aware of any shortfall in their performance as part of routine day to day performance management without entering into the capability process. In many instances, this action will allow the employee to address their under-performance.

## **THE INFORMAL STAGE**

### **Informal one to one meeting**

Where an employee has not addressed underperformance as part of the normal performance management discussion, the Manager will invite the employee to an informal meeting. This is part of the Capability Policy. As the meeting is 'informal action', neither party will be accompanied nor will the right of representation exist, as the aim is to try and resolve matters on a 1:1 basis and in an informal capacity. As part of this meeting, the employee will be offered access to additional training, support or role clarification as appropriate to the situation.

The aim of this meeting is to try to help the employee rapidly address their under-performance in an informal manner. A problem solving approach will be taken to address the situation. During the meeting:-

- The employee will be provided with objective examples of the areas of under-performance which are causing concern;
- They will be asked to explore possible reasons for the performance shortfall;
- The standards of required job performance will be confirmed to the employee once more and the employee will be set a performance improvement plan (PIP) including short term objectives which they need to achieve within a specified timescale;
- Additional support required by the employee will be identified and where reasonable, provided by the Council;
- The possibility that medical / disability related reasons may be affecting the employee's performance will be explored. If this is mentioned as a possibility, the manager should refer to HR. It may be necessary to ask the employee to authorise Access to Medical Records and/or be referred to our Occupational Health Service;
- The timetable for achievement of the performance improvement plan will be set by the manager, but will be a minimum of 4 weeks and a maximum of 12 weeks. During this time, the manager will hold regular informal review meetings with the employee both to provide feedback on progress and to encourage and motivate improved performance;

- The manager will confirm to the employee that the formal stages of the Capability Policy will be implemented if the employee fails to improve sufficiently with sustained satisfactory performance standards;
- File notes will be made and a copy given to the employee for their record;
- If there is a need to share with any other parties (other than HR) the fact that the employee is being managed under the informal stage of the policy, this will be discussed and agreed at the meeting (e.g. if the employee's work is to be monitored by a third party or if they are to be provided with on-the-job training by someone else in the team, etc).

## OUTCOMES OF THE INFORMAL STAGE

- If at the review interview, it is evident that the required improvement has been made then the employee will be given positive feedback and reminded of the need to sustain this improved level of performance.
- Should significant improvements be evident, but the employee has not yet achieved the required standards of performance, the manager may choose to extend the length of the review period for a further 4 weeks.
- If there has been insufficient improvement, or there is a further shortfall in performance, the formal part of the Capability Policy will be implemented and the employee will be requested to attend a Stage 1 Capability Meeting.

## THE FORMAL STAGES – Stages 1, 2 and 3

- If the informal approach to improving performance has been unsuccessful, the employee will be advised of this, and it will be confirmed that the formal procedure will be followed. At all formal capability meetings, employees will have the right of representation.
- Managers will be accompanied by a member of the HR team whose role it will be to act as a management advisor, ask questions as appropriate; provide advice strictly on procedural matters only and to take notes. The decision about management action must be made by the manager.

## STAGE 1

Employees will be issued with a letter giving at least 2 working days' notice of the requirement to attend a Stage 1 Capability Meeting. This notice will include a reminder of the employee's right of representation. The meeting format is similar to the structure of the meeting held at the informal stage.

The purpose of the meeting is to:

- identify clearly and fairly the ways in which the employee is under-performing providing examples as appropriate;

- explore with the employee what may be the possible cause for the shortfall in performance;
- allow the employee to have the opportunity to challenge and/or put forward any facts and evidence for consideration;
- re-confirm the standards of performance which are expected from job holders;
- explore the support which was already provided as part of the informal process and investigate what other support may be required by the employee in order to improve their performance;
- confirm that the employee is clear as to the concerns about performance, the standards that are reasonably required, and understands the particular areas where there are shortfalls;

Having given consideration to the contents of the discussions, the manager will confirm one of the following three outcomes;

1. The employee will continue to be managed under the informal stage of the policy;
2. The employee will be managed under the formal stages of the Capability Policy;
3. No further action is appropriate at this time.

The manager will set a Performance Improvement Plan for achievement including the specific measurable objectives that need to be achieved to address this and confirming also the timescales for achievement.

A review period of between 4 – 12 weeks will be agreed, during which, the manager will continue to hold regular review meetings with the employee both to provide feedback on progress and to encourage and motivate improved performance. These interim informal review meetings will be held on a 1:1 basis and employees will not have a right of representation at such meetings.

At the Stage 1 meeting, the manager will confirm to the employee that if they fail to improve and sustain satisfactory performance standards that it may be necessary to move to Stage 2 of the formal Capability Policy and that ultimately a failure to achieve and maintain satisfactory performance could lead to dismissal.

The manager will confirm the employee's right to appeal at this meeting and that all appeals should be addressed to the manager in writing, clearly stating the reasons for appeal, within 5 working days of the written confirmation that the employee is being placed on Stage 1 of the Capability Policy.

If there is a need to share with any other parties (other than HR) the fact that the employee is being managed under the informal stage of the policy, this will be discussed and agreed at the meeting (e.g. if the employee's work is to be monitored by a third party or if they are to be provided with on-the-job training by someone else in the team, etc).



A letter confirming that the employee is being managed under Stage 1 of the Capability Policy will be issued to the employee, in consultation with HR, following the meeting. The letter will include copies of the file notes of the meeting, the outcomes of the meeting, any actions agreed and the potential consequences of failure to achieve a significant and sustained improvement within the agreed time period i.e. implementation of the next stage of the formal procedure, potentially leading to dismissal.

After the meeting and during the monitoring period, review meetings will be held as in the informal stages of this procedure.

**OUTCOMES OF THE FINAL FORMAL REVIEW MEETING – Stage 1 (at which HR must be present and the employee has the right to be accompanied by a work colleague or trade union representative).**

- At the final review meeting, the line manager will discuss the employee's overall progress since the plan was set and they will be informed of the outcome of the review period.
- If at the end of the review period, the required improvement has been made, this will be confirmed to the employee. The manager will also confirm that the improved level of performance must be maintained and any subsequent lapse in performance may lead to action under the Capability Policy being resumed without starting afresh.
- By exception, if some improvement has been made but the standard(s) have not yet been met, the manager may elect to extend the current review period for a maximum period of 4 working weeks. The employee should be reminded of the potential consequences of failure to achieve a significant and sustained improvement.
- If there has been insufficient improvement, or there is further shortfall in performance, the employee will be invited to a Capability Meeting at the next stage of the Policy.

**STAGE 2 AND 3 CAPABILITY MEETINGS**

- The meeting formats will be as for Stage 1 and employees will be given at least 2 working days' notice of the meeting and of their right of representation at this meeting. Managers will be accompanied by a member of the HR team whose role it will be to act as a management advisor, ask questions as appropriate, provide advice strictly on procedural matters only and to take notes of the meeting. The decision about management action must be made by the manager.

As an essential part of the Stage 2 meeting, consideration will be given to the nature of support which may be appropriate for the employee in the circumstances including additional training, or access to other relevant Council services including Counselling or Occupational Health

Employee's have the right of appeal against being managed at Stage 2 of the Capability Policy.

**OUTCOMES OF FINAL FORMAL REVIEW MEETING – Stage 2 (at which HR must be present and the employee has the right to be accompanied by a work colleague or trade union representative).**

- At the final review meeting, the line manager will discuss the employee's overall progress since the performance improvement plan was set and they will be informed of the outcome of the review period;
- If at the end of the review period, the required improvement has been made, this will be confirmed to the employee. The manager will also confirm that the improved level of performance must be maintained and any subsequent lapse in performance during this timescale may lead to action under the Capability Policy being resumed without starting afresh.
- By exception, if some improvement has been made but the standard(s) have not yet been met, the manager may elect to extend the current review period for a maximum period of 4 working weeks. The employee should be reminded of the potential consequences of failure to achieve a significant and sustained improvement.
- If the conclusion of Stage 2 is that the employee's performance has not sufficiently improved and there is still evidence of incapability, despite the support and prior meetings held with the manager, it should be made clear to the employee that they will now be invited to a Capability Case Hearing at the final stage of the Capability Policy, which will consider terminating the employee's contract on the grounds of incapability.

**STAGE 3 – CAPABILITY CASE HEARING**

The final stage of the Capability Policy, Stage 3 is the Capability Case Hearing. Employees have the right of representation at this meeting.

***The aim of the meeting is to enable all parties to fully present their case to a Head of Service for consideration and decision as to next steps***

This meeting, given its potential implications and significance, will be held by a Head of Service, or if appropriate a Corporate Director. They will be supported by a member of HR.

Employees will be given at least 5 working days written notification of the Capability Case Hearing.

- The management representative (normally the employees manager), the employee and their representative, will be asked to compile a summary report of the case they will be presenting to the Capability Case Hearing Manager.
- Each party is responsible for providing a copy of the summary report, no later than 2 working days in advance of the Capability Case Hearing to the other

involved parties (i.e. the Capability Case Hearing Manager; employee and their representative; the line manager).

- The employee's line manager will usually present the "management case", the employee and their representative should present the employee's case.
- Both parties (management and employee) are entitled to call witnesses. All witnesses should have been invited to the meeting and their attendance confirmed in advance.

## **NON ATTENDANCE AT A CAPABILITY CASE HEARING**

If either the employee or their representative is unable to attend a meeting on the date of the Capability Case Hearing due to sickness or another substantial and valid reason, the meeting may be postponed and rearranged for within 5 working days of the original meeting date. All parties will be notified of the revised date. If the employee is unable to attend this second re-arranged meeting, in most circumstances, the meeting will be held in the employee's absence. However, employees will have the option of requesting that their representative be allowed to present the case in their absence.

## **THE CAPABILITY CASE HEARING**

The Capability Case Hearing will be conducted by the nominated Head of Service, who will be accompanied by a member of the HR team. The prime role of the HR representative will be to act as management advisor, ask questions as appropriate, contribute specialist knowledge of procedural issues, relevant policies and employment law matters and to take notes of the meeting. They will participate fully in the hearing and any discussions about the case, but the decision will only be made by the Capability Case Hearing Manager.

## **POSSIBLE OUTCOMES OF THE CAPABILITY CASE HEARING**

The Capability Case Hearing allows for the following outcomes:

- No further formal action required but the employee to maintain satisfactory levels of performance. A failure to do so may lead to a further Capability Case Hearing and dismissal may be a consideration.
- Extension of Stage 2 and a further final review meeting with the option of moving to Stage 3 and a Capability Hearing if there is no improvement within set timescales.
- Dismissal with contractual notice
- Dismissal with pay in lieu of notice
- Offer of alternative employment as an alternative to dismissal – this may not be at the same grade, seniority, or with the same pay and will not carry any protection of existing salary or benefits.

The outcome of the Capability Case Hearing will be confirmed to the employee in writing, including the right of appeal.

## APPEALS

Employees have the right to appeal against any formal action taken under this policy.

Employees have the right to appeal against being managed under each of the formal stages of the Capability Policy and against dismissal. The employee must provide notice of the appeal (in writing) within 5 working days of written confirmation of any formal decision under this Policy.

The Appeal Hearing will be conducted by a manager authorised to take such action, who will be accompanied by a member of the HR team. The prime role of the HR representative will be to act as management advisor, ask questions as appropriate, contribute specialist knowledge of procedural issues, relevant policies and employment law matters, and to take notes of the meeting. They will participate fully in the hearing and any discussions about the case, but the decision will only be made by the Appeal Hearing manager.

An appeal may overturn, modify, or uphold the original decision. Generally the appeal hearing will not be a re-hearing of the whole capability case unless the person hearing the appeal concludes that earlier proceedings were in some way fundamentally flawed.

When lodging an appeal, the employee should state the grounds and brief reasons for their appeal. The grounds of appeal will normally be based on one or more of the following:

- That the penalty is unfair / inconsistent under the circumstances (judgement);
- New evidence has arisen which was not considered at the original meeting and which may have a bearing on the outcome (facts);
- That the policy and procedure has not been followed correctly (process)
- Other

Appeals should be addressed to the manager who issued the original decision and a copy sent by the employee to HR at the same time.

Appeal hearings will take place as soon as reasonably possible upon receipt of the employee's written notice of appeal.

At the formal appeal hearing, the authorised manager, will:

- Initially review the proceedings to date to decide whether the appeal hearing will take the form of a review of the previous capability decision or a full rehearing of the case.
- The appeal will normally be conducted as a review only where the facts/procedure are not in dispute but where the employee believes the judgement to be unfair.
- The appeal will normally be conducted as a rehearing in the following instances (not exhaustive);
  - There was a procedural defect of substance at the original meeting;

- New evidence has come to light which needs to be heard in full, or there is a dispute about evidence given by witnesses.
- Generally, the outcome of the appeal hearing will be confirmed orally at the conclusion of the appeal hearing. In some circumstances it may be necessary to adjourn to complete further investigations. In these situations, the appeal hearing will be reconvened and a decision confirmed orally at the conclusion of this hearing. All decisions will be confirmed in writing.
- The appeal Manager's decision is final. No further right of appeal exists within Copeland Borough Council.
- Where an appeal against dismissal fails, the effective date of termination of employment will be the date on which the employee was originally dismissed.

## **INCAPABILITY IN CIRCUMSTANCES OF ILL HEALTH**

- I. The Council's general approach to the management of long-term absence due to ill health is set out in the Attendance Management Policy and Procedures. The Policy refers to the Council's commitment to fulfil its responsibilities under the Human Rights Act 1998 and the Equality Act 2010.
- II. Where long-term absence due to ill health arises, the procedures set out in the Attendance Policy will be followed. In cases where it appears doubtful that the employee will be able to return to work, and the length of absence is having serious effects on the ability of the department concerned to deliver the required level of service, the Council will seek medical guidance before any decision concerning termination of employment is made. The various options referred to in the Attendance Policy will be explored, and termination will only take place where there is no other viable option for the employer.
- III. Where the procedures referred to in paragraphs (I) and (ii) above have been completed, and there appears to be no alternative to dismissal, the matter will be heard by the employee's Head of Service. At this meeting, the manager responsible for the employee and a member of the HR team will detail the circumstances of the case, including all the options which have been explored. If the Head of Service is satisfied that there is no viable alternative, the dismissal of the employee on the grounds of ill-health incapability will be authorised.
- IV. The employee will be informed of any incapability meeting taking place under this section of the Capability Policy and has the right to attend if this is possible, or may choose to be represented by a trade union representative or work colleague. If this right is exercised, the Head of Service hearing this case will consider any information presented on behalf of the employee before reaching a decision.
- V. Where the decision is taken to dismiss an employee under the provisions of this procedure, employment will be terminated with notice, in writing.

## RESPONSIBILITY

All those persons referred to within the scope of this procedure are required to adhere to its terms and conditions. This procedure is also incorporated into their Contract of Employment.

Individual managers are responsible for ensuring that this procedure is applied within their own area. Any queries on the application or interpretation of this procedure must be discussed with the HR section prior to any action being taken.

Issued (*Date*)

2010

Draft

## APPENDIX D



Copeland Borough Council

# GRIEVANCE POLICY AND PROCEDURE

Drafted November 2010  
Issued for consultation 16 11 10



Copeland Borough Council

# Grievance Policy

## **POLICY INTRODUCTION:**

The Council recognises that, from time to time, employees may wish to seek redress for grievances relating to their employment. The purpose of this procedure is to set out the steps to be taken by an employee if they have a grievance which they wish to be resolved. The procedure is designed to deal with individual grievances against the Council as an employer arising directly out of the employee's employment or some working practice of the Authority.

## **POLICY OBJECTIVE:**

The purpose of the grievance policy is to ensure that the Council can give any grievance reasonable consideration and deal with it fairly, consistently and quickly, promoting transparency at all times. The procedure exists so that an employee has an official channel through which to raise a grievance so that the issues in question can be thoroughly investigated and resolved as close to the point of origin as possible. The policy provides a framework for resolving conflict fairly.

The Council would stress that raising a grievance is the last resort and would encourage employees and managers to take all reasonable steps to resolve issues without resorting to a grievance.

## **SCOPE:**

The procedure covers all permanent and temporary staff employed by the Council.

Issues that might give rise to a matter being raised under this procedure include:

- Application or interpretation of terms and conditions of employment
- Disagreements with colleagues
- Health & Safety issues
- Work relations
- New Working Practices
- Working Environment
- Organisational Change
- Equal Opportunities



This procedure does not apply to matters relating to the following:

- Discipline, Sickness Absence, Capability, Probation, Bullying & Harassment, or Whistleblowing - these will be dealt with under separate procedures
- If a Grievance is raised during the Disciplinary process, the Disciplinary process may be suspended, or if the Grievance and Disciplinary cases are related, both issues may be dealt with at the same time
- Malicious claims, which are dealt with separately under Dignity at Work Policy
- Individual grading issues which are dealt with through the Grading of Jobs Policy
- Matters relating to the administration and application of the Local Government Pension Scheme
- Non employment matters

## **DEFINITION AND PRINCIPLES:**

The ACAS Code defines Grievances as concerns, problems or complaints that employees raise with their employers.

An employee who uses this procedure has the right to be accompanied at any stage by a trade union representative or work colleague. A member of the HR team will be present at all stages of the formal procedure.

The time limits should be observed in order to try to resolve the Grievance as quickly as possible. However, they may be reduced or extended for practical reasons, provided there is mutual agreement to do so. Similarly, the stages in the procedure may need to be amended depending on the circumstances (e.g. if the Grievance relates specifically to the behaviour of an employee's line manager).

## **INFORMAL STAGE**

The majority of Grievances can and should be resolved through informal employee/line manager discussion. Therefore, every effort should be made by both parties to resolve matters in this way. The majority of matters can be resolved by early, informal discussion with both sides working towards a mutually satisfactory resolution. Each stage (including the informal stage) of the Grievance procedure should be exhausted before moving on to the next.

If there has been no attempt to resolve matters informally, the formal Stage 1 procedure will be referred back to be dealt with by the line manager. If the line manager is able to give a decision, they should do so within 1 working day. If the line manager requires further advice on the matter, this advice should be sought and a decision given within 5 working days.

A work colleague or trade union representative may accompany employees to the informal meeting. It is good practice for a file note to be prepared and retained on the individual's HR personal file.

If it is difficult or inappropriate for an employee to discuss matters with their line manager, the employee should contact the next senior manager or HR for further advice.

## **MEDIATION:**

If the matter has not been satisfactorily resolved at the informal stage and the individual submits a formal grievance (see Stage 1 below) the manager should contact HR to establish if mediation would be appropriate.

Mediation is a process where a neutral person – the mediator – works with employees who have a disagreement to help them to find their own solution and reach agreement that will sort out their problem or improve the situation.

The mediator will not take sides or judge who is right or wrong.

If it is appropriate, the mediator can recommend a way forward if both sides want this and are unable to find their own solution. This is called mediation with recommendations.

Mediation is:

- Voluntary – individuals only take part if they want to
- Confidential – nothing discussed will be passed on to anyone else unless agreed. (what has happened in a mediation session cannot normally be used in any later Council procedures or court action).
- Quick – mediation can be arranged within a few days
- Most effective at the early stages of conflict

## **FORMAL PROCEDURE:**

### **Stage 1**

Where a grievance is not resolved at the informal stage, the employee should submit a formal grievance in writing to their line manager within 7 working days of the informal response they received. The formal stage should be invoked as soon as possible and within 4 weeks of the incident/problem giving rise to the grievance. The employee should clearly state the grounds of the grievance together with details of attempts to resolve the matter at the informal stage. Evidence, such as dates, times, diary sheets, emails, letters or text messages should also be submitted along with names of any sources who can verify the basis of the grievance. The employee should also outline what resolution they are proposing / seeking.

The line manager should then send a copy of the Grievance to HR and arrange a meeting to hear the grievance with the employee, the individual accompanying them and a member of the HR team within 7 working days.

After hearing the Grievance, it may be the case that further investigation is required before a decision can be given to the employee. This could be by way of additional meetings with individuals who can verify the basis of the grievance. If this is the case, the line manager will inform the employee of their intention to investigate further, along with the names of other people they will be speaking to and an indication of timescales. The line manager will then produce a report, which will include a summary of their findings, conclusions, and any recommendations to resolve the grievance.

The line manager will then arrange a further meeting to discuss the findings. Following this meeting, the manager will confirm their decision in writing to the individual within 7 working days.

Should the employee be dissatisfied with the decision or recommendations at this stage, the employee may take the matter to Stage 2 of the Grievance Procedure. In this case, the employee should submit their reasons for their dissatisfaction and their expectations for resolution to HR within 7 working days from the outcome notified at Stage 1. A more Senior Manager will hear Stage 2.

## **STAGE 2**

The Senior Manager will arrange a meeting within 7 working days to hear the basis of the grievance, the Stage 1 response, the reason why the employee is dissatisfied and expectations for resolution. The purpose of this meeting at Stage 2 is to test the conclusions (or aspects of the conclusion that is being challenged) that were reached at the earlier stage. All parties concerned may ask relevant questions and the meeting may be adjourned to allow further investigations if this would help resolve the matter (as per Stage 1).

Following the formal meeting and any subsequent inquiries, the Senior Manager will notify both parties of the decision within 7 working days. The decision will set out whether or not the grievance is upheld, the reasons for the conclusion and any actions proposed to be taken by way of resolution.

There are no further internal stages available to the employee and the decision by the Senior Manager will be final.

## **SPECIAL CIRCUMSTANCES:**

### **Complaint against the immediate Line Manager**

If the complaint relates directly to the immediate Line Manager, the employee, in the first instance, may refer the matter to the next most senior Manager, or if the complaint relates to a Director, the Chief Executive.

In consultation with the interested parties, and dependant upon the issues raised, the Director or Chief Executive can decide either to consider the

matter themselves or to appoint another Senior Manager or Director to hear the Grievance.

Complaints or differences of opinion between a Director and the Chief Executive should be raised, in the first instance, on an informal basis with the Chief Executive.

Should the matter not be resolved, written details of the grievance and the respective position of the two parties should be considered by the Personnel Panel. The Panel may decide to either consider the matter themselves following due process or appoint an independent adjudicator from the ACAS list of approved adjudicators, mediators, and conciliators to investigate and report to the Panel. The Panel's decision shall be final.

There are no further internal stages available to Directors.