

# Public Document Pack



## Rutland County Council

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Ladies and Gentlemen,

A meeting of the **EMPLOYMENT AND APPEALS COMMITTEE** will be held in the Council Chamber, Catmose, Oakham, Rutland, LE15 6HP on **Wednesday, 16th March, 2016** commencing at 7.00 pm when it is hoped you will be able to attend.

Yours faithfully

Helen Briggs  
**Chief Executive**

Recording of Council Meetings: Any member of the public may film, audio-record, take photographs and use social media to report the proceedings of any meeting that is open to the public. A protocol on this facility is available at [www.rutland.gov.uk/haveyoursay](http://www.rutland.gov.uk/haveyoursay)

### **A G E N D A**

#### **APOLOGIES FOR ABSENCE**

##### **1) DECLARATIONS OF INTEREST**

In accordance with the Regulations, Members are invited to declare any disclosable interests under the Code of Conduct and the nature of those interests in respect of items on this Agenda and/or indicate if Section 106 of the Local Government Finance Act 1992 applies to them.

##### **2) MINUTES**

To confirm the Minutes of the Employment and Appeals Committee held on 28 October 2015, previously circulated.

##### **3) PETITIONS, DEPUTATIONS AND QUESTIONS**

To receive any petitions, deputations and questions received from members of the public in accordance with the provisions of Procedure Rules.

The total time allowed for this shall be 30 minutes. Petitions, deputations and

questions shall be dealt with in the order in which they are received.

Questions may also be submitted at short notice by giving a written copy to the Democratic Services Officer 15 minutes before the start of the meeting. The total time allowed for questions at short notice is 15 minutes out of the total time of 30 minutes.

Any petitions, deputations and questions which have been submitted with prior formal notice will take precedence over questions submitted at short notice. Any questions which are not considered within the time limit shall receive a written response after the meeting and be the subject of a report to the next meeting.

**4) HR POLICIES**

To receive Report No 33/2016 from the Director of Resources  
(Pages 3 - 60)

**5) ANY URGENT BUSINESS**

To receive items of urgent business which have previously been notified to the person presiding.

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**DISTRIBUTION**

**MEMBERS OF THE EMPLOYMENT AND APPEALS COMMITTEE:**

Mr K Bool (Chairman)	
Mr E Baines (Vice-Chair)	
Mr R Foster	Mr A Walters
Mrs D MacDuff	Mr A Stewart

**OTHER MEMBERS FOR INFORMATION**

## EMPLOYMENT AND APPEALS COMMITTEE

16 March 2016

### HR POLICIES

#### Report of the Director for Resources

Strategic Aim:	Delivering Services within the Medium Term Financial Plan		
Exempt Information	No		
Cabinet Member(s) Responsible:	Mr T C King, Leader and Portfolio Holder for Places (Development and Economy) and Resources		
Contact Officer(s):	Debbie Mogg, Director for Resources	01572 758358	dmogg@rutland.gov.uk
	Carol Snell, Head of Human Resources	01572 720969	csmell@rutland.gov.uk
Ward Councillors			

#### DECISION RECOMMENDATIONS

<p>That Employment and Appeals Committee:</p> <ol style="list-style-type: none"> <li>1. Consider and approve the Restructure Policy (Appendix 1)</li> <li>2. Consider and approve the Disciplinary Policy (Appendix 2)</li> </ol>
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## 1 PURPOSE OF THE REPORT

- 1.1 To seek approval for updated HR policies with regard to (a) Restructure Policy and (b) Disciplinary Policy.

## 2 RESTRUCTURE POLICY

- 2.1 The Restructure Policy underwent a detailed review in 2013. Since that time it has supported the delivery of service reviews for example in - Democratic Services and Corporate Support, TUPE transfer of parts of Rutland Adult Learning Service to Peterborough College, Human Resources, Environmental Services, People Services.
- 2.2 Service reviews and restructure processes by their nature can be complex and time consuming but the procedure has served us well; a more flexible approach to the use of 'suitable alternative vacancies' has been advantageous and enabled us to avoid 'at risk of redundancy processes' in some cases by acquiring a redeployment opportunity for an employee who otherwise would be redundant.

2.3 This particular review/update has been to address:

- Clarity of the delegation of authority for compulsory redundancies; employment procedure rules provide that any dismissal below the level of deputy chief officer is a decision for the Head of Paid service, and Members can take no part in that decision (except for appeals) – this has therefore been amended to state that ‘any proposal for compulsory redundancy contained in the proposal must in due course be submitted to the Chief Executive for approval’.
- Confirmation that the relevant Director will ensure the necessary approvals are obtained prior to commencing consultation. The policy does not prescribe what the approval process has to be as this will depend on the scale of the proposal changes/impact on policy/impact on the budget and therefore appropriate delegations and terms of reference.
- Inclusion of the use of offering ‘suitable alternative vacancies’. Paras 2.2.1(g) and 2.2.5.
- For consistency, the current paragraph which refers to approval of voluntary redundancy has been amended to approval by the Chief Executive rather than approval by the relevant Director. Also includes reference to consideration of the loss of skills/experience and cost associated with redundancy and early release of pension benefit.
- Refresh of the appeals process relating to a request by an employee to be slotted/partially amended into another post – this is a two stage process in line with the appeal against a slotting/partial amend.

### **3 DISCIPLINARY POLICY**

3.1 The Disciplinary Policy was reviewed in 2012 and approved by Members in 2013. Since that period there have been 14 warnings given, 1 dismissal, and a further 8 investigations that either became resolved or were not taken to formal disciplinary.

3.2 Having an effective Disciplinary policy and procedure is fundamental to managing the Council’s risk and exposure for tribunal claims which can be very costly - in 2014-15 the average successful claim at tribunal in the UK was £12,362 and the maximum award was £238,000.

3.3 All conduct and disciplinary issues are managed with the support of an HR Adviser through a case management process and with monthly case reviews with our employment law advisers, EEF. Cases that are likely to result in dismissal or are assessed as high risk in terms of potential challenge or claim, are more regularly reviewed through specialist legal advice (EEF). The Council has not received any tribunal claims in 2015-16.

3.4 The purpose of the review and updates to the policy are to address:

- The role of a Commissioning Officer – in the 2013 policy this was defined as an additional role to the role of the line manager, investigating officer and disciplining officer. For a small authority, this additional role can be difficult to

resource for all cases and is not part of the ACAS Code of practice - a tribunal is concerned that a fair and objective investigation has taken place. It is therefore recommended that we remove this role and re-inforce that line managers can proceed with disciplinary cases within their teams. For more complex cases and those that may result in dismissal and where it is considered that a further degree of impartiality is required, we could still assign this role to an independent manager in such cases.

- As above, tribunals will always determine whether a fair and objective investigation has taken place – this is crucial for cases that result in dismissal. However, for lower level cases eg. Timekeeping, an investigation by an independent Investigating Officer, in most cases, is unlikely to add anything further to the procedure. In all cases there will be a separation of roles between someone undertaking an investigation and the individual conducting or making decisions at a disciplinary hearing.
- Levels of warning – the levels of warning in the 2013 policy is not common with other disciplinary procedures nor the ACAS code. It is therefore recommended that a 'Formal' level be removed and we therefore have – Written Warning (on file for 6 months) and Final Written Warning (on file for 12 months). These levels are all above the informal stage which remains ie. manager's ability to give an informal warning for lower levels of conduct.

#### **4 CONSULTATION**

- 4.1 These specific policies require consultation with the recognised Trade Unions – this has taken place with Unison and UCU.
- 4.2 In addition, input to the Disciplinary Procedure has been provided by our legal advisers (EEF) and we have reviewed guidance and codes of practice produced by ACAS. Employment Tribunals are legally required to take the ACAS Code of Practice into account when considering relevant cases; they can adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provisions of the code

#### **5 ALTERNATIVE OPTIONS**

- 5.1 As outlined in paragraphs 2.2 and 3.2, these two specific policies provide clear and important frameworks that serve to protect and manage a level of risk and exposure through employee challenge and potential employment tribunal claims. The policies as presented are considered to be in line with the public/private sector and represent robust procedures for Rutland Council.
- 5.2 The absence of such policies would remove clarity and consistency in the application of conduct/disciplinary issues and service reviews/restructures that could result in claims for unfair dismissal or discrimination resulting in lengthy and costly defence in court.

#### **6 FINANCIAL IMPLICATIONS**

- 6.1 Whilst there are no significant costs associated with the management and implementation of these policies, failure to follow them will presents risks at employment tribunal which could be costly (average costs of tribunal claims

identified in para 3.2) plus the additional cost of management time and legal fees.

## **7 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 7.1 The Council must be compliant with relevant employment law and regulations and in addition, employment tribunals will consider actions in relation to the ACAS Code of Practice for disciplinary issues.
- 7.2 Delegated authority in relation to organisational decisions is defined in the Council's Constitution – both policies are aligned with this framework.

## **8 EQUALITY IMPACT ASSESSMENT**

- 8.1 An Equality Impact Assessment (EqIA) has been completed. No adverse or other significant issues were found. A copy of the EqIA can be obtained from the Report's Contact Officers.

## **9 COMMUNITY SAFETY IMPLICATIONS**

- 9.1 There are no Community Safety implications arising from this report.

## **10 HEALTH AND WELLBEING IMPLICATIONS**

- 10.1 There are no specific Health and Wellbeing implications to these two particular policies but the Council has an overall duty of care to its employees which means taking all steps which are reasonably possible to ensure the health, safety and wellbeing. Clear and fair policies and procedures can also be a key factor in building trust and reinforcing commitment to our staff and help improve staff retention, productivity and performance and greater employee engagement.

## **11 ORGANISATIONAL IMPLICATIONS**

- 11.1 Consultation has taken place with the recognised Trade Unions as required.
- 11.2 Briefings will be provided to managers to ensure they are aware of the updated policies.

## **12 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

- 12.1 Once approved by Employment and Appeals Committee, the Council will communicate these policies to all staff and ensure copies of the Policies are available on the Council's intranet.
- 12.2 The Human Resources team will carry out briefings with Line Managers to ensure they are aware of the policies.

## **13 BACKGROUND PAPERS**

- 13.1 There are no additional background papers to the report.

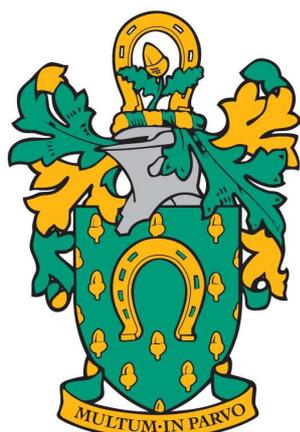
**14 APPENDICES**

Appendix A – Restructure Policy

Appendix B – Disciplinary Policy

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.

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# Rutland County Council

## Restructure Policy and Procedure

Version & Policy Number	Version 2.0
Guardian	Carol Snell
Date Produced	October 2015
Next Review Date	October 2018

Approved by SMT	26 October 2015
Approved by Unions	December 2015
Approved by EAC	

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# **1. POLICY**

## **1.1 Introduction**

It is the intention of Rutland County Council to seek to provide, as far as is possible, security of employment for all of its employees and this Policy and Procedural Guidelines document conforms to the requirements of relevant legislation and good standards of employment practice.

## **1.2 Purpose**

This Policy provides a framework for dealing with any situation which meets, or could potentially meet, the statutory definition of redundancy. It provides a uniform method for:-

- a) planning;
- b) consulting and communicating with trades unions and employees at each stage;
- c) resolving situations of potential overstaffing by means other than compulsory redundancy, wherever possible;
- d) providing support and assistance to employees who are potentially redundant;
- e) handling compulsory redundancies, where these become inevitable.

## **1.3 Definitions**

Where reference is made to Director it is recognised that this can relate to a member of management nominated by the Director.

## **1.4 Equality Act 2010**

At all stages of the procedural guidelines consideration will be given to the needs of employees with specific reference to the provisions of the Equality Act 2010 and the Council's commitment to the Two Ticks Positive About Disabled Symbol.

The public sector equality duty, as specified within the Equality Act 2010, relates to nine 'protected characteristics' which are age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, sexual orientation, pregnancy and maternity. The Council will not discriminate against employees because of any of these characteristics.

- 1.4.1 When considering redundancy of a disabled employee, there are particular requirements to make sure they are not being placed at a disadvantage for reasons relating to their disability.

1.4.2 The beginning of pregnancy to the end of maternity leave is a 'protected period' during which a woman is entitled to special considerations. A woman on maternity leave who is selected for redundancy, must be offered any suitable alternative vacancy if available, before any other employee. She does not need to apply for it.

If there is no suitable alternative vacancy, a woman can be made redundant during her maternity leave provided the reason for redundancy is unconnected with her pregnancy or maternity leave and a fair redundancy process has been followed. The alternative job must be suitable and appropriate for the employee in the circumstances.

Line Managers should consult with an HR Adviser before taking any action.

## **1.5 Scope**

This Policy applies to all employees (except those based in Schools and Colleges with delegated budgets) of Rutland County Council.

## **1.6 Statement of Intent**

As a responsible employer Rutland County Council wishes to retain, wherever possible and practicable, the skills and experience of its staff and to ensure, as far as possible, security of employment for its employees.

However, departments will, from time to time, have to deal with overstaffing which may arise through:

- ◆ budget cuts;
- ◆ re-organisation (except where TUPE applies).
- ◆ legislative and policy changes;
- ◆ staffing reviews.

It is recognised that such situations will generate anxiety and management will always handle them in the most fair, consistent and sympathetic manner possible, balancing the needs of the organisation with those of individuals. Management will ensure that all reasonable measures are taken to mitigate the effects of change, so as to avoid or minimise the possibility of redundancies and the hardship that may be suffered by the employees concerned.

The Policy will not be used to treat employees more or less favourably because of their membership or non-membership of a trades union.

## **1.7 When the Policy should be implemented**

The Policy is to be implemented in any situation which meets, or could potentially meet the statutory definition of redundancy - see Appendix A.

The initial stages of pre-planning and consultation should begin whenever there is a potential redundancy situation, i.e. before any final decisions are taken.

## **2 PROCEDURAL GUIDELINES**

### **2.1 Pre-Planning and Consultation**

#### *2.1.1 Pre-Planning*

As soon as a potential redundancy situation is identified the Director will begin to prepare a proposal and timetable – Templates in Appendix B. These are key documents in the process which will contain the following details:

- background and context to the proposal
- ◆ the nature of and reasons for the potential redundancy situation;
- ◆ the directorate/department/area(s)
- ◆ the numbers and descriptions of jobs and employees affected;
- ◆ the timescale for decision making and implementation of changes;
- ◆ the measures to be taken and reasons if any measures are not to be adopted

It may not be possible to complete the above fully at the outset and a degree of flexibility may be necessary. This should not, however, preclude the drawing up of a partial proposal which can subsequently be added to and/or amended as necessary.

In order to achieve a co-ordinated approach, all proposals, full or partial, should be discussed with an Human Resources Adviser and submitted to the Senior Management Team for first stage approval as appropriate and applicable.

Following approval, informal consultation will take place in confidence, with the recognised trades unions; a Human Resources Adviser will facilitate a meeting between management representatives and relevant trades unions for this purpose. This informal stage of consultation will not replace the required formal consultation.

The relevant Director will ensure that the necessary approval be obtained prior to commencing eg. Elected Members, Senior Management Team.

Any proposal for compulsory redundancy contained in the proposal must in due course be submitted to the Chief Executive for approval. Full consideration must be given to approval processes required in the Financial Procedure Rules.

### 2.1.2 *Consultation with trades unions*

The Council is committed to consulting with relevant, recognised trade unions and individuals as soon as practicable and keeping them informed as fully as possible.

The proposals must be the subject of consultation with recognised trades unions facilitated by Human Resources.

Consultation should begin as early as possible and be ongoing as necessary. Statutory minimum periods for consultation in cases of compulsory redundancy must be met. The trade unions to be consulted are those which are recognised for the categories of employee concerned, whether or not those affected are union members.

The Director must consider any written representations or counter proposals made by the trade union(s) and /or individuals if they are not union members. If any proposals are rejected, the trades unions and/or individuals should be informed in writing of the reasons for this.

Following the formal consultation period, it may be necessary to submit the proposal together with the views of the trade unions, to SMT and/or Members for formal approval.

### 2.1.3 *Consultation and Communication with Staff/Individuals*

Consultation and communication with the employees affected is also necessary. Individual meetings will be arranged with employees affected at the earliest opportunity and as necessary thereafter. Such meetings will be organised and supported by a Human Resources Adviser. Employees will be advised to contact their trades union for advice and support and recognised trades union representatives will be invited to consultation and communication meetings.

Individuals placed 'at risk' under this Policy will be invited to individual consultation meetings with a line manager (usually at Head of Service/equivalent level) and a Human Resources Adviser. Individuals may be accompanied at those meetings by their trade union representative or workplace colleague.

## **2.2 Measures for Dealing with Overstaffing**

### 2.2.1 *Preliminary Measures*

When a potential redundancy situation is identified, measures (a) – (f) below must be considered initially to try to avoid the need for redeployment, reduction in hours or redundancy: *(This list is not exhaustive; all measures should be considered)*.

- (a) ending agency staff, consultants and 'contractor' arrangements
- (b) termination of casual contracts;

- (c) reduction or elimination of overtime;
- (d) non-filling of vacancies (or appointing on only a casual basis);
- (e) restrictions on external recruitment;
- (f) in the case of a restructuring, 'ring-fencing'
- (g) consideration of offering a suitable alternative vacancy
- (h) use of approaches outlined in Section 2.11

The proposal will include details of the measures which it is proposed to adopt together with reasons if any measures are not to be adopted.

### 2.2.2 *Selection Methods*

If the preliminary measures do not bring about the required reduction in staffing and there is a need to select (see Section 2.5) the following methods are available:-

- (a) Voluntary redundancy/substitution
- (b) Voluntary reduction in hours
- (c) Voluntary redeployment
- (d) Compulsory selection methods

### 2.2.3 *Redeployment Methods*

The procedures are detailed in Section 2.8.

### 2.2.4 *Partial Amends*

Where new/amended jobs are at least 50% or more the same as an existing job and at the same grade, employees will be offered a partial amend. However, even if the role meets this criteria, but there is a diminution of staffing numbers, then those affected will be placed 'at risk' of redundancy and will not be offered a partial amend.

Employees are able to appeal against a partial amend on the basis that they do not consider it a suitable match. In addition, employees are able to appeal against not being offered a partial amend if they feel there is a suitable match – appeals will not be accepted if there is a diminution in staffing numbers within the role.

Appendix D outlines the current process.

### 2.2.5 Suitable alternative vacancies

Offers of suitable alternative vacancies must be considered and may avoid an individual being placed at risk of redundancy and being dismissed on redundancy grounds. A tribunal may consider a case for unfair dismissal if the Council does not consider offering alternative work that is available and suitable.

In considering the suitability of an alternative post, the following factors should be assessed:

- similarity of the work between the current job and the new job
- a match of the right skills and experience for the new role
- the terms and conditions of the new post should be similar eg. Status, place of work, job duties, pay, hours of work, responsibility.

If an employee unreasonably refuses a suitable alternative offer they will not receive a redundancy payment. The test of reasonableness will depend on individual circumstances but include:

- the amount of time given to consider the new job
- whether the role is temporary or not
- the status of the role
- the impact the role may have on their personal situation eg. If it is a different location, the effect on family life and health.

Where a new job is offered that is a reasonable alternative but there are some differences to the previous position and the terms and conditions, the employee is entitled to 4 weeks statutory trial period in the new job. This period can be extended if more time is needed for re-training.

If either during the 4 week trial period or at the end, the employee does not wish to continue with the new job, the employee's contract of employment may be terminated on redundancy grounds and receive a redundancy payment. However, if the refusal is not considered 'reasonable' the employee may forfeit their entitlement to a redundancy payment. The test of 'reasonableness' would include (but may not be restricted to):

- the amount of time given to consider the new job, for example whether the employee has requested and been provided an extension of the trial period
- whether the job could be determined as a reasonable alternative as outlined in para 2.2.5

If the trial period is successful and the employee remains in the new role, they will be considered to have accepted the new job and there is no entitlement to redundancy.

### 2.3 Ring-Fencing

A restructuring of a section or department may involve the regrading of existing posts or the deletion of posts and the creation of new ones. In the latter case, 'ring-fencing' may be appropriate where the new posts are similar to the old ones. This is a process whereby applications for the new posts are sought from a group of employees, the purpose being to avoid the unnecessary displacement of employees

in the section/department concerned. A Director will include details of any proposed 'ring-fence' in the proposal which will be the subject of consultation. The following overriding principles will apply:

### 2.3.1 Deleted Posts

Employees whose posts have been deleted should not be given preferential treatment for new posts on a higher grade.

### 2.3.2 Deletion/Redeployment

Should all employees whose posts have been deleted be redeployed, either in new posts or vacancies created by the redeployment of other employees, ring-fencing will cease and any remaining vacancies will be made available to other employees, firstly those at risk.

## 2.4 Selection Methods

A selection process would not be applicable where compulsory redundancy applies, for example in the following circumstances:

- there is only one employee undertaking the role
- when all posts and all employees within the specific group are affected and potentially redundant

In addition, voluntary redundancy, voluntary reduction in hours and voluntary redeployment also do not apply.

### Note

Directors will need to refer to contracts of employment, regarding flexibility and mobility clauses for example, in order to identify the extent of the employee group in which the redundancy situation exists.

## 2.5 Voluntary Selection Methods

Where selection is necessary, then voluntary redundancy, voluntary redeployment and voluntary reduction in hours will always be considered first, on the following basis

- ◆ the employee group(s) from which volunteers are sought
- ◆ the closing date for the receipt of requests

The Director will determine the criteria to be used for selecting which employees' requests will be accepted if there is more than the required number of volunteers. Details of the criteria and the order in which they are to be applied will include:

- ◆ skills, knowledge and experience
- ◆ cost implications

### 2.5.1 *Voluntary Redundancy*

Individual requests for voluntary redundancy can be considered and approved by the Chief Executive in accordance with this policy and relevant statutory provisions. Such considerations will include the impact on loss of skills and experience and cost to the Council (ie. Redundancy costs and any early release of pension).

(a) Employees Aged Under 55 – not in LGPS

- ◆ A redundancy payment, in accordance with the Employment Rights Act 1996 (Section 162) and the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006.

(b) Employees Aged Under 55 – in LGPS

- ◆ A redundancy payment, as above
- ◆ Deferred pension benefits.

(c) Employees Aged 55 and Over – not in LGPS

- ◆ A redundancy payment, as above.

(d) Employees Aged 55 and Over – in LGPS

- ◆ A redundancy payment, as above
- ◆ Payment of an immediate pension

### 2.5.2 *Substitution*

Substitution (or bumping) is a means of creating redeployment opportunities by seeking volunteers for redundancy from outside the employee group in which the redundancy situation exists. ie. Moving potentially redundant employee (A) into another role, and dismissing the employee currently performing that role (B). Substitution must be the reason for dismissal.

When substitution is included in the proposal, voluntary redundancy may be offered to the holders of posts, in any department, which could provide suitable redeployment opportunities for employees in the group affected on the same basis as above. Release will be subject to the agreement of the Director and subject to an employee in the group affected being redeployed on a permanent basis into the vacancy created.

The costs associated with the redundancy will be met from the budget of the department in which the redundancy situation exists.

### 2.5.3 *Voluntary Reduction in Hours*

This measure may be appropriate where a redundancy situation could be resolved by a number of employees reducing their hours rather than one or more posts becoming redundant.

Employees who voluntarily reduce their hours will receive compensation calculated on the basis of a redundancy payment pro rata to the number of hours lost (provided they have a statutory entitlement to redundancy payment – see Appendix C).

### 2.5.4 *Voluntary Redeployment*

Whether or not voluntary redeployment is available will depend, amongst other things, on the timescale within which the workforce must be reduced to the required level. Accordingly, the Director will decide whether it is necessary to place restrictions on the level of post into which employees may be redeployed. Trade Unions and employees concerned will be advised accordingly.

Volunteers will be assisted by the designated departmental officer (usually their Line Manager), and a Human Resources Adviser, to identify suitable vacancies in their own or another department. The redeployment procedure will be as detailed in paragraph 2.6 except that the trial period will not normally exceed the statutory entitlement of 4 weeks.

### 2.5.5 *Protection of Pay*

An employee voluntarily redeployed into a lower graded post and who would therefore suffer a loss of pensionable earnings, will receive protection of their pay when redeployed to a post one grade lower, for a period of 2 years, with 3 years where the loss of pensionable pay exceeds 8% and 4 years where it exceeds 12%. There will be no protection of any other non- pensionable payments (e.g. allowances) and all other conditions of service will be those pertaining to the new post.

### 2.5.6 *Failure to Achieve Redeployment*

If any volunteers do not achieve redeployment within the prescribed timescale the Director will move to the next stage of the proposal and the volunteers will be treated in the same way as the other employees affected.

## 2.6 **Compulsory Selection Methods**

Where voluntary methods of selection fail to produce the required reduction in staffing, it will then be necessary to determine the criteria to be used to select for compulsory redundancy, in formal consultation with recognised Trades Unions. These must include:

- ◆ skills, qualifications and experience

- ◆ cost implications

Efforts will be made to reach agreement on the criteria for selection, including any weighting and scoring.

A proposed order will be determined in which the criteria are to be applied and, if necessary, additional criteria. Once the criteria have been determined the relevant line manager (with HR support) will carry out the selection process, inform the individuals selected and notify the Trade Unions.

On request, an individual member of staff will be provided with their own details against the criteria.

## **2.7 Notice of Redundancy**

Those employees whose posts are to be deleted will be advised of this at a meeting where the proposal to dismiss them on grounds of redundancy will be considered, and afterwards they will be advised of the outcome and issued with notice of redundancy.

Where it is not possible to give notice in accordance with the employee's statutory or contractual entitlement (whichever is the greater) payment in lieu of notice will be made.

Whenever possible redundancy notice will not be issued until the consultation period has expired. The intention is that the maximum achievable period of notice will be given, during which every effort will be made to find alternative employment.

## **2.8 Redeployment**

Every effort will be made to redeploy employees who are at risk of redundancy and under notice of redundancy into alternative posts within the County Council. An employee will receive salary protection when redeployed to a post one grade below, for a period of 2 years, with 3 years where the loss of pensionable pay exceeds 8% and 4 years where it exceeds 12%.

*The treatment of an employee on maternity leave is covered in para 1.4.*

### **2.8.1 Redeployment Procedure**

#### **a) Designated Officers**

Employees under notice will be assisted by a nominated officer (usually their Line Manager) within their employing department and both will be advised by a Human Resources Adviser.

#### **b) Notification of Vacancies**

Employees who are at risk of redundancy or under notice will be sent details of current vacancies on a weekly basis.

c) Application Procedure

When applying for a vacant post, employees who are at risk of redundancy or under notice should complete an application form and clearly mark it 'At Risk'.

Any applications from employees under notice of redundancy must be considered before any others received but, if the vacancy is on a higher basic grade than the employee's, he/she must compete with other applicants in the usual way.

Where the vacancy is on a basic grade equivalent to or lower than the employee's they will be interviewed unless they do not come close to meeting the essential requirements of the person specification for the post. If the employee demonstrates at interview that they meet or come close to meeting them, they will be offered a trial period – see paragraph d) below.

If there is more than one applicant who is under notice of redundancy, the same criteria will apply but the applicants will be interviewed in competition

d) Trial Period

The purpose of a trial period is to enable both the employee and the relevant line manager to decide upon the suitability of the job. The trial period will comply with the statutory minimum of 4 weeks but can be increased according to the circumstances, up to a maximum of 12 weeks. During the trial period the employee will be given reasonable assistance, with a particular focus on training and development if necessary, to reach the required standard of competence. The employee may terminate the trial period at any time. An employee who is not appointed to a post following a trial period or who decides to terminate a trial period will be treated as follows:

i) Request Alternative Voluntary Redeployment

The employee may seek alternative voluntary redeployment if the prescribed deadline for achieving this has not passed. Otherwise the Council will move to the next stage of the proposal and the employee will be treated in the same way as other employees affected.

ii) Compulsory Redundancy

The employee's contract will be terminated in accordance with any redundancy notice already issued. Otherwise notice in accordance with the employee's statutory or contractual entitlement will be issued.

Compensation will also be paid in accordance with paragraph 2.12. The provision regarding non-payment of compensation (paragraph 2.12 (e) ) is applicable.

However, if it is considered that an employee has ‘unreasonably resigned’ during the Trial Period, they may lose their right to a statutory redundancy payment.

### *2.8.2 Written Reasons for Non-Appointment*

If it is proposed by the recruiting manager not to interview an applicant who is under notice of redundancy, not to offer them a trial period or not to appoint them following a trial period, the circumstances should be discussed with a Human Resources Adviser.

Should the line manager’s final decision be not to interview or appoint, this must be approved by the Director. The employee must then be provided with written reasons, with a Human Resources Adviser giving advice and guidance.

### *2.8.3 Pay Provisions*

An employee redeployed into a post one grade below will have their superannuable earnings protected as outlined in paragraph 2.5.5 under “Protection of Pay”. This definition and application of earnings will also apply to those employees not in the pension scheme.

### *2.8.4 Travelling Expenses*

No additional travel expenses will be reimbursed by the Council should an employee be redeployed into a post at another location. This is in accordance with current terms and conditions enabling a change of location.

## **2.9 Retraining**

Consideration will always be given to reasonable retraining of employees under notice of redundancy. Retraining may take place during the notice period, in order to equip an employee to apply for potential vacancies, or during a trial period in a new post. The purpose of retraining will normally be to enhance an employee’s existing skills rather than to facilitate a complete change of career direction.

## **2.10 Time Off**

Employees under notice of redundancy will be allowed reasonable time off with pay to look for alternative employment, to arrange training or to take advantage of the assistance outlined in Section 2.11. Such time off should be agreed in advance with the Line Manager.

## **2.11 Assistance**

The Council will endeavour to offer, in conjunction with external agencies where necessary, additional advice/assistance to ‘at risk’ and or ‘on notice’ of redundancy employees which may include:-

- ◆ identification of suitable vacancies outside the County Council
- ◆ training in job-hunting skills e.g. completion of application forms, letter writing
- ◆ advice on retraining
- ◆ advice on self-employment
- ◆ advice on pension benefits (if applicable)
- ◆ advice on, and assistance to apply for, state benefits
- ◆ financial counselling
- ◆ stress counselling.

## 2.12 Compulsory Redundancy Compensation

Compensation will be as follows:-

(a) Employees Aged Under 55 – not in LGPS

- ◆ A redundancy payment, in accordance with the Employment Rights Act 1996 (Section 162) and the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006.

(b) Employees Aged Under 55 – in LGPS

- ◆ A redundancy payment, as above
- ◆ Deferred pension benefits.

(c) Employees Aged 55 and Over – not in LGPS

- ◆ A redundancy payment, as above

(d) Employees Aged 55 and Over – in LGPS

- ◆ A redundancy payment, as above,
- ◆ Payment of an immediate pension.

- (e) No redundancy payment will be made if an employee unreasonably refuses an offer of, suitable alternative employment. The employee must be advised in writing of the decision and will have the right to appeal against the decision to the Chief Executive. The appeal must be lodged within 5 days of receipt of the above written confirmation.

### **2.13 Re-employment**

Up to a maximum of 4 weeks after employment has ended due to compulsory redundancy, should a vacancy arise which is suitable for the ex employee, and the individual wishes to be considered for the post, they will be given preferential treatment in line with Section 2.3.

The Modification order states that if an employee who is under notice of redundancy receives an offer of a job from another Modification Order body before the termination of his or her employment and takes it up within 4 weeks of the end of the old employment, there will be no dismissal for redundancy payment purposes.

A repayment arrangement and timescale will be agreed as part of the reinstatement or redeployment agreement.

### **2.14 Right Of Appeal**

An employee who is dismissed on grounds of redundancy will have a right of appeal to the County Council Employment Appeals Panel. The Appeal must be lodged within five days of receipt of formal notice, and should be addressed to the Chief Executive.

The reason(s) for dismissal, details of the appeals process and timescales will be provided in a formal letter to the individual, at the time the dismissal is confirmed in writing.

# APPENDIX A

## STATUTORY DEFINITION OF REDUNDANCY

An employee who is dismissed will have been dismissed for redundancy if the dismissal is attributable wholly or mainly to the fact that:

- a) The employer has ceased, or intends to cease:
  - i) to carry on the business for the purposes of which the employee was employed by him; or
  - ii) to carry on the business in the place where the employee was so employed; or
  
- b) The requirements of the business for employees:
  - i) to carry out work of a particular kind; or
  - ii) to carry out work of a particular kind in the place where the employee was employed;

have ceased or diminished, or are expected to cease or diminish.

S139 (1) (b) ERA 1996

# APPENDIX B

CONFIDENTIAL

REVIEW OF xxxxxxxxxx

## Background and context

### Proposed structure

The proposal impacts the xxxxx Service within the xxxxxxx Team situated in the xxxxe Directorate. This currently comprises the following roles

The functions of the current team include:

The proposed structure will comprise:

Therefore the impact will be xxxxxxxxxxxxxx

### Staffing Implications

Will be managed in accordance with the Council's Restructure Policy and in consultation with the recognised Trade Unions and staff.

The Council wishes to avoid disruption to staff and service users and work closely with all involved to enable a smooth transition. We would therefore seek to adopt ring-fencing to individuals directly affected by any proposed changes to minimise any unnecessary displacement within this team. In addition, we will follow 'partial amends' where a new job is at least 50% or more the same as an existing job and at the same grade. Staff will be placed at risk if we identify that their existing post will not exist in the new structure; where there are suitable alternatives available, every effort will be made to redeploy them and they will have preferential consideration

### Proposed timescales

We propose a timetable as follows:

- Consultation with recognised Trade Unions
- Consultation with staff
- Staff placed 'at risk' if necessary
- Consideration of alternative proposals and options (30 day consultation)
- Confirmation of new structure/posts

### Target date for completion:

## Xxxx Service - TIMETABLE

### Based on a Service review likely to lead to staffing reductions

Action	Timeline	By Whom
Service review conducted – Proposal developed		Head of Service
Proposal agreed by (as applicable): - DMT -SMT - Members		Head of Service
Informal meeting with Trade Union		Head of Service/HR Adviser/Trade Union
Staff meeting/s		Head of Service/HR Adviser
JE completed on new Job Descriptions		Head of Service
Commence Formal Consultation on proposals - Trade Unions - Individuals		Head of Service/HR Adviser
Staff placed 'at risk' (if proposed staffing reductions)	30 day consultation period	Head of Service/HR Adviser
Feedback requested on outline proposals		All Staff
Consideration of alternative proposals; responses provided		Head of Service
Consideration of preliminary measures to avoid redundancies (if applicable)		Head of Service
Proposed closure of consultation/extension of consultation period. <b><i>This and the following timescales are indicative only and will be reviewed in order to allow for further consultation if necessary; alternatively timescales can be brought forward in consultation and agreement with staff and Trade Unions.</i></b>		Head of Service/HR Adviser
Consideration and offer of partial amends	After consultation period ends	Head of Service
Posts advertised internally	After consultation period ends	Head of Service

Requests for partial amends to be received	<i>3 working days</i>	
Partial amends decision made	<i>2 working days</i>	Head of Service
Appeals re partial amends received by	<i>3 working days</i>	
Applications for new posts received by	<i>10 working days (from advert)</i>	
Interviews for new posts	<i>10 working days (from closing date)</i>	Head of Service
Decisions on appointments – notified to staff	<i>2 working days (from interview)</i>	Head of Service
Meetings with unsuccessful staff to give notice of redundancy	<i>5 working days</i>	Head of Service

# APPENDIX C

## **EMPLOYEES ENTITLED TO REDUNDANCY PAYMENT**

To be entitled to a redundancy payment an employee must have worked, or been contracted to work, for at least 2 years continuously in local government or certain related employment.

Service before age 18 does not count.

With the exception of the sections relating to payments, this Policy applies to employees with less than two years' service.

# APPENDIX D

## RUTLAND COUNTY COUNCIL

### APPEALS PROCESS FOR A REQUEST TO BE SLOTTED INTO A ROLE (PARTIAL AMEND)

During the restructuring process, the Council has advised you that your existing post is at risk of redundancy and that there is no appropriate post as a partial amend. However, you may wish to appeal against this decision and demonstrate that your existing job constitutes at least 50% or more of any new job and this is at the same grade. There is no appeal in the event of a reduction in the number of job holders within the same job.

In order to appeal, you should follow the process detailed below.

#### Stage One

Within 5 working days from the date when you have been formally advised that you are not eligible for a partial amend, you should lodge a written appeal with the relevant Head of Service (or equivalent) with a copy to Human Resources.

Your written appeal should outline your reasons and evidence as to (a) the post you consider you should receive as a partial amend and (b) the rationale. This should include the fact that the post is at least 50% the same and at the same grade.

The Head of Service (or equivalent) will consider your appeal, with support from Human Resources and will write to you outlining the decision. This decision will be either:

(a) if it is agreed that you have demonstrated that your existing job constitutes at least 50% or more of a new job and is at the same grade, you will be offered a partial amend. This will therefore remove the 'at risk' status. You will receive confirmation in writing of the partial amend together with the effective date for the new role.

(b) if it is considered that your existing job does not constitute at least 50% or more of a new role or is not at the same grade, you will be advised in writing that your appeal has not been successful.

#### Stage Two

You may appeal against the decision at Stage One by writing to the relevant Director, to be received within 5 working days of receipt of the outcome of Stage One.

Appeals at Stage Two will be considered by the Director and a representative from Human Resources. Both parties, ie. the Head of Service (or equivalent) at Stage One and the appellant will be invited to a meeting to give information and respond to questions from the Director.

At this stage, you have the right to be accompanied by a recognised trade union representative or workplace colleague.

The Director will consider your appeal and write to you outlining the decision. This decision will be either:

(a) if it is agreed that Stage One did not fully consider the evidence presented to it and that you have therefore demonstrated that your existing job constitutes at least 50% or more of a new job and is at the same grade, you will be offered a partial amend. This will therefore, remove the 'at risk' status. You will receive confirmation in writing of the partial and together with the effective date for the new role.

(b) if it is considered that the outcome of Stage One is correct and justifies that your existing job does not constitute at least 50% or more of a new role or is not at the same grade, you will be advised in writing that your appeal has not been successful.

The decision at Stage Two is final and will be confirmed in writing.

## **RUTLAND COUNTY COUNCIL**

### **APPEALS PROCESS AGAINST A PARTIAL AMEND**

During the restructuring process, the Council will have determined and advised you in writing, that your existing post constitutes a match to a new post as a suitable alternative based on the following criteria:

- your existing job constitutes at least 50% or more of the new job, and
- your current post is at the same grade as the new post (or equivalent if on different Conditions of Service)

You will have been given the opportunity to accept the post by signing the acceptance form on the letter by the date given.

However, you may wish to appeal against the decision that your current post has been partially amended, and that you consider the post you are being offered represents a more substantial change.

In order to appeal you should follow the process detailed below.

#### **Stage One**

Within 5 working days from the date on the letter you should lodge a written appeal with your Head of Service (or equivalent) with a copy to Human Resources.

Your written appeal should outline your reasons in detail, for why you believe the new post being offered to you represents a change to your current post of more than 50% and is therefore not a Partial Amend.

The Head of Service (or equivalent) will consider your written argument and will write to you outlining their decision. This decision will be either:

- (a) the Partial Amend offer will stand, or
- (b) your argument is accepted – you should be aware that this may mean you will be placed 'at risk' of redundancy (please refer to the Council's Restructuring Policy for more information).

#### **Stage Two**

If the decision at Stage One is confirmation of the Partial Amend, you may appeal further against this decision.

In order to appeal, you should write to the relevant Director, to be received within 5 working days of the date of the written decision of Stage One above.

Appeals at Stage Two will be considered by the Director and a representative of Human Resources. Both parties, i.e. the Head of Service at Stage One and the appellant will be invited to a meeting to give information and respond to questions from the Director.

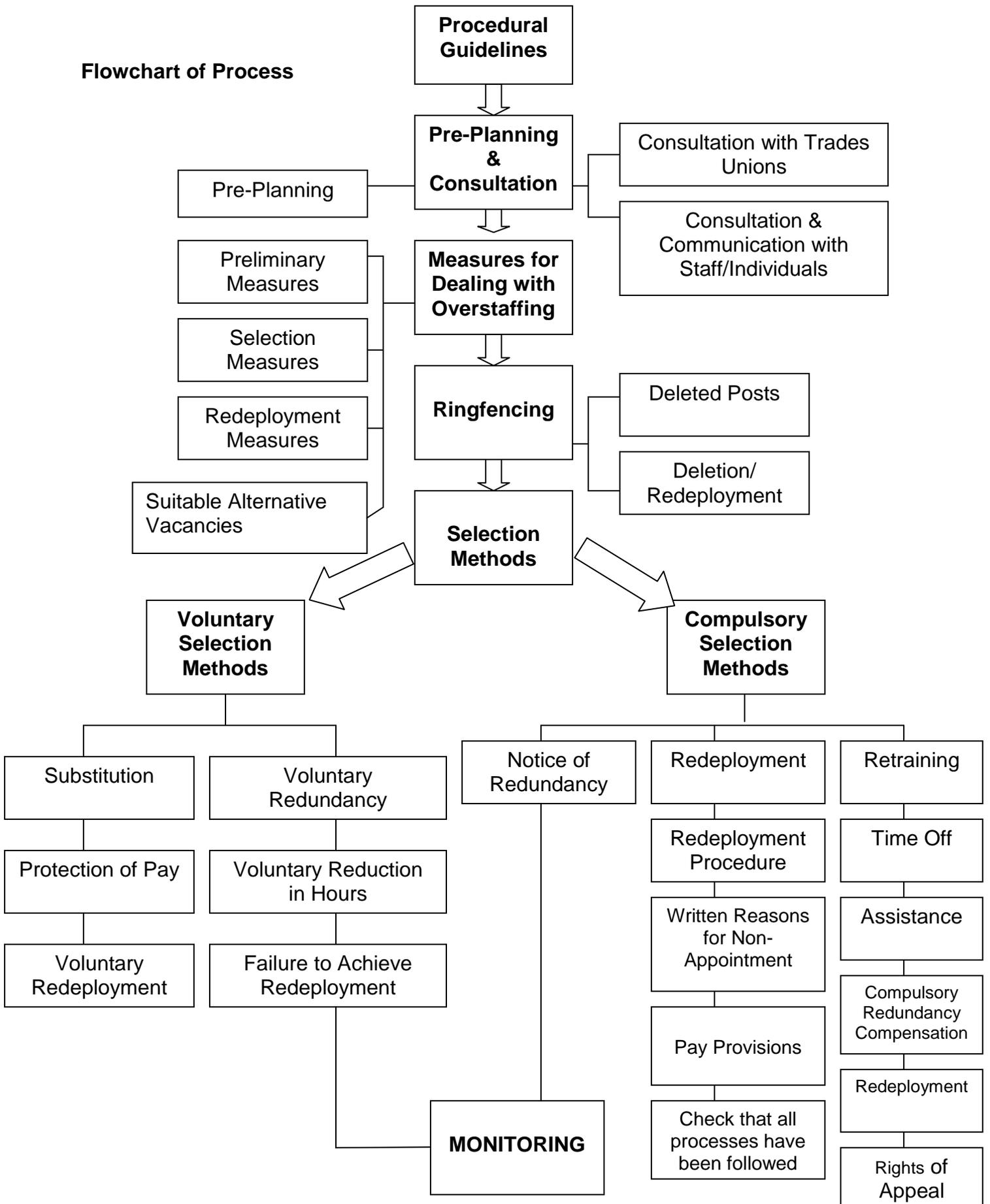
You have the right to be accompanied by a recognised trade union representative or workplace colleague.

The decision at Stage Two will be final and will be conveyed in writing. The decision will be either

- (a) the Partial Amend offer will stand, or
- (b) your argument is accepted - you should be aware that this may mean you will be placed 'at risk' of redundancy.

# APPENDIX E

Flowchart of Process





# Rutland County Council

## DISCIPLINARY POLICY AND PROCEDURE

Version and Policy Number	Version 2
Guardian	Human Resources
Date Produced	December 2015
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Approved by Resources DMT	January 2016
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Approved by EAC	

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## RUTLAND COUNTY COUNCIL

### DISCIPLINARY POLICY AND PROCEDURE

#### **1. POLICY INTRODUCTION**

- 1.1 This policy is designed to help and encourage all employees to achieve and maintain standards of conduct. Its purpose is to ensure fair treatment, in accordance with the Council's Equality and Diversity Policy, of employees who become liable to disciplinary action because of failure to meet the required standards of conduct or behaviour. Strict confidentiality should be maintained with discussions and information sharing being strictly limited. The Managers Guidance on dealing with Disciplinary issues, which can be accessed on the intranet HR Policies/Disciplinary, should be referred to in addition to this Policy.

#### **2. SCOPE**

This disciplinary policy and procedure applies to employees of Rutland County Council, including permanent, temporary and casual employees. Exclusions to this are referred to at 2.2.

##### 2.1 Probationary employees

The Council's Probation Policy and procedure should be applied where an employee has not satisfactorily completed their probationary period and dismissal arises from unsuitability for the position. Unsuitability may be, for example, any serious failure in performance and/or unacceptable conduct and behaviour.

##### 2.2 Exclusions

The following are excluded from this disciplinary policy and procedure:

- The Chief Executive and holders of statutory posts for whom a separate procedure exists, in accordance with The Local Authorities [Standing Orders] [England] (Amendment) Regulations 2015.
- Employees based in Schools and Colleges
- Individuals engaged either an in Interim or Agency worker capacity through an employment agency.

##### 2.3 Trade Union Officials

Normally no disciplinary action shall be taken against an accredited Trade Union Representative until the circumstances has been discussed with a Regional Official of the Trade Union Regional Office, after obtaining the employee's agreement.

## 2.4 Role of Officers

There are various roles involved in the process. These are the Investigating Officer [IO], Disciplining Officer [DO], Line Manager [LM], Human Resources Adviser, recognised Trade Union Representative or work colleague [employee of the Council] and the Contact Person (CP). These roles are described in Appendices 1 to 5. The term Representative is used to mean whichever the employee chooses to accompany him/her,

## 3. THE INFORMAL PROCEDURE

Standards in the workplace are normally maintained on an informal basis. One-to-one meetings between the manager and employee and team meetings can provide opportunities to clarify the required standards. Cases of minor misconduct should be dealt with speedily and informally by the employee's manager. The aim is to discuss the issue with the employee, establish their version of events and where appropriate provide advice and guidance on expected improvements and how these might be achieved. This may include an informal warning. Taking informal action quickly provides an opportunity to avoid relatively minor difficulties becoming a major problem. The manager and employee can explore the difficulties together and agree a way forward to enable acceptable working standards to be achieved.

An informal warning may be issued in appropriate circumstances and may be confirmed in writing to ensure clarity of the improvement required and over what period.

If informal action does not bring about an improvement or the misconduct is considered too serious to be classed as minor, then more formal action may be taken.

### 3.1 Applying the Informal Procedure

An informal meeting should be arranged to take place at a suitably discreet venue. There is no automatic right for an employee to be accompanied at an informal meeting. However, in exceptional circumstances the manager has the discretion to deviate from this. The employee must clearly state their reasons for the request in order for it to be considered.

The manager should:

- Explain the reason for the meeting
- State that it is to discuss areas of concern
- Advise that it is an informal discussion
- Clarify the reasons for concerns and provide any relevant evidence, dates/times etc.
- Listen to the employee's response
- Consider any explanation
- Make it clear whether and if so what improvements are expected

- Advise that a failure to improve will result in formal disciplinary proceedings
- Agree clear goals and timescales for improvement where appropriate
- Agree a date to review progress where appropriate.

### 3.2 **Monitoring during the Informal Procedure**

Targets and regular reviews should be set, so that the manager can monitor the employee's progress and agree further action. At the review meeting, if the employee has achieved the agreed improvement, then no further action will be necessary unless there is a subsequent lapse in the required standards.

### 3.3 **Recording the Informal discussion**

The manager should make a record of the discussion, including the concerns raised, the employee's responses, targets set, reviews undertaken and the outcome. Records should be destroyed when it is determined that no further action is required.

Copies of any correspondence with the employee regarding the issues and remedies for improvement should also be kept by the manager. There is no right of appeal.

## 4. **PRINCIPLES THAT APPLY TO THE FORMAL PROCEDURE**

- 4.1 There will be fair and consistent treatment of employees who become liable to disciplinary action and a commitment to resolving issues as soon as reasonably practicable.
- 4.2 Disciplinary decisions may include a requirement for counselling/training in certain cases. It is important that negligence and misconduct are distinguished from capability, as the latter should be dealt with under the Council's Capability Procedure.
- 4.3 An HR Adviser must be consulted on all disciplinary matters and will be present at a Disciplinary Hearing to give advice on policy and procedure.
- 4.4 In most cases no disciplinary action will be taken against an employee until a full, formal investigation has been conducted. There may be circumstances where no investigation is necessary but as a minimum, the collation of evidence is essential ie. minor cases of misconduct. The nature and extent of the investigation will be proportionate and depend on the seriousness of the matter.
- 4.5 Managers will need to ensure that an employee with a communication difficulty is provided with the appropriate assistance. An employee may request appropriate assistance where necessary. Reasonable adjustments will be considered for any disabled employee at any stage of the policy.
- 4.6 All stages of the Disciplinary Procedure must be kept confidential. Any breach in confidentiality could result in the disciplinary procedure being used in respect of the breach of confidentiality.

- 4.7 In cases of alleged harassment, discrimination or bullying the Council's Grievance Policy and Procedure should be referred to in the first instance.
- 4.8 In the majority of cases disciplinary action will relate to conduct or behaviour at work. However, there may be occasions where it will relate to conduct or behaviour outside of work, this could, for example, impact on the Council's reputation. In such circumstances, it may have a direct bearing on the employee's suitability for employment. It is important to consider each case according to the circumstances.
- 4.9 An employee who has concerns of possible fraud or corrupt behaviour should report this to their line manager or a nominated individual under the Council's Whistleblowing Policy.
- 4.10 There may be circumstances where the disciplinary procedure will be concluded regardless of whether the employee leaves the authority in the meantime. The Council may be under a duty to do this in relation to an employee who would have to be reported to the Disclosure and Barring Service [DBS] if the allegations were found to be proven, i.e. it could potentially cause significant risk to children/vulnerable adults if an employee is charged with a safeguarding disciplinary offence and the disciplinary is not concluded.
- 4.11 No employee will be dismissed for the first breach of discipline, except in the case of gross misconduct. Examples of gross misconduct are set out at Appendix 6.
- 4.12 An employee has the right to appeal against any disciplinary penalty.
- 4.13 Grievances

Where an employee raises a grievance during a disciplinary process, consideration may be given to temporarily suspending the process in order to deal with the Grievance.

Where a grievance triggers a disciplinary investigation the grievance process may be temporarily suspended in order to deal with the disciplinary matter.

In any circumstance where both the grievance and disciplinary procedures apply in relation to the same facts it may be appropriate to deal with both matters together. It will be for the Manager and/or Disciplining Officer to make a decision. Advice should initially be sought from an HR Adviser. The employee will be entitled to make representations to the Manager and/or Disciplining Officer if s/he believes the matters are more appropriately dealt with separately however the ultimate decision rests with Rutland County Council.

## **5. THE FORMAL PROCEDURE**

### **5.1 Is Suspension Appropriate?**

In some instances it may be necessary for an employee to be suspended pending resolution of the investigation and/or process. This is likely only to be appropriate in exceptional circumstances and require approval by a Director. In all such circumstances advice should be sought from HR and any period of suspension should be kept under review.

The following points should be noted:

- Suspension is not an assumption of guilt and is not considered a disciplinary sanction. It may be appropriate, for example, where relationships have broken down.
- Suspension may be appropriate in circumstances where it is considered there may be a risk of interference with evidence or witnesses pressurised before the meeting
- Suspension may be appropriate if an incident raises safeguarding concerns regarding children, young people or vulnerable adults.
- It may be appropriate where the allegations, if proved, would be likely to amount to gross misconduct.
- Suspension will be on normal pay. Normal pay includes all earnings that would be paid during a period of normal working, but excluding any payments not made on a regular basis.
- Suspension should be for as brief a period as necessary. In order to facilitate this, the investigation should be given high priority and the appointed IO released from their work duties as much as possible.
- In the event of a suspension the Line Manager will appoint a CP who should keep in touch with the employee during the period of suspension and keep the employee informed of progress. It may not be appropriate for the manager of the employee to be the contact person if the manager is involved in the investigation or other aspects of the disciplinary process.
- The potential for temporary redeployment to other duties or another location should be considered and exhausted, prior to consideration of suspension. The employee will receive their normal pay whilst redeployed.

## 5.2 The following should be considered:

In some circumstances it may not be appropriate for an employee's LM to undertake or commission an investigation e.g. where they are themselves a witness. In such circumstances an alternative staff member will be appointed. This should be discussed with HR before any decisions are made. Employees will be notified in writing of any decisions in this respect.

### 5.3 The Investigation Process

- 5.3.1 An Investigating officer will be appointed – this will be either
- the Line Manager (but cannot then act as Disciplining officer) OR
  - an independent Investigating Officer not connected to the issues of the case.

For illustrative purposes:

- in cases of minor misconduct such as timekeeping, the Line Manager will be more averse with the evidence and issues of the case and therefore it is unlikely that another independent IO would be necessary. Any hearing would be conducted by another manager.
- for cases where the allegations are more serious, it would be appropriate to appoint an independent IO.

Of paramount importance and in all cases, is separation of roles between someone undertaking an investigation and the individual conducting and making decisions at a disciplinary hearing. In addition, it is vital that an IO has the requisite skills and experience to undertake a disciplinary investigation; the Council will from time to time provide specific training to identified officers. The role of the IO is further explained in Appendix 1.

The Council reserves the right to appoint an external IO where the circumstances may call for it – this will be considered by the relevant Director and a representative from HR. The cost will be funded by the Directorate within which the employee is employed.

- 5.3.2 The terms of reference given to the IO should give a clear indication of the scope and limitations of what needs to be achieved and the timescales involved.
- 5.3.3 The employee should be advised that the purpose of the investigation is to decide whether or not there is a case to answer. The employee will be given sufficient details of the alleged offence to be in a position to understand the nature of the complaint and to have sufficient time to consider a response.
- 5.3.4 Employees must co-operate fully and promptly in any investigation. This may include providing the names of any witnesses, disclosing relevant documents and attending interviews.
- 5.3.5 At every stage of the procedure the employee will be given the opportunity to state their case and ask questions.
- 5.3.6 At the Investigation interview the employee may be represented by a workplace colleague or recognised Trade Union representative. This is Council policy rather than a statutory right.
- 5.3.7 Once an employee has been notified of an investigation, the employee must advise the IO of the name of the employee's Representative [if applicable] and the names of any witnesses they wish to request to give statements [if applicable].

#### 5.3.8 On conclusion of the investigation:

- The IO will compile a report for the LM and which will subsequently be submitted as part of the Disciplinary Hearing.
- The LM will then make a decision on whether or not a Disciplinary Hearing should be convened. If the decision is that there is no case to answer then the report should be destroyed.
- If the decision is **not to** convene a Hearing, the LM must advise the employee of the outcome and confirm the decision in writing. The letter will also advise of any issues or recommendations that may have been identified during the course of the investigation
- If the decision **is to** convene a Hearing, an appropriate officer will be nominated to act as the DO, who should be at an appropriate level to conduct a hearing and make a decision in accordance with the policy. .

#### 5.4 Preparation for a Disciplinary Hearing

- 5.4.1 The employee will be given at least 10 working days' notice in writing as to where and when the Disciplinary Hearing will be held. However, any timescales laid down in this procedure may be adjusted by mutual agreement in exceptional circumstances. Documentary evidence will be provided to the person against whom allegations have been made to enable the preparation of a response to the allegations.
- 5.4.2 There may be exceptional cases in which it is considered that the names of witnesses should not be released due to, for example, a genuine fear of reprisal. The DO should seek advice from an HR Adviser when making a decision on this or in response to considering a request from the witness. Where this happens the employee should be notified in advance of the Hearing.
- 5.4.3 If a Disciplinary Hearing is convened, the employee should submit a written request at least 5 working days before the Disciplinary Hearing, to the DO, of the names of any witnesses they wish to call to the Hearing. The DO will then confirm whether or not they agree to this request, taking into consideration any potential conflicts of interest. A conflict of interest could be for example, due to a personal connection or financial interest. If the witness request is agreed to, it will be the employee's responsibility to ensure that they inform the witness/es that they intend to call of the relevant details of the Hearing. Paid time off to attend the Hearing will be granted to witnesses who are also employees of Rutland County Council.
- 5.4.4 An employee should take all reasonable steps to attend the Disciplinary Hearing. If an employee fails to attend the Disciplinary Hearing a decision will be made on whether to continue the Hearing in their absence. If an employee is off on long-term sickness absence, advice should be sought from HR, who will seek further medical advice if necessary. The purpose of the medical advice will

be to determine what if any reasonable adjustment can be made to facilitate the employee's full participation in the process.

A recommended format for the Disciplinary Hearing to follow is shown at Appendix 7.

## **6. FORMAL RESOLUTIONS**

There are five possible resolutions of the Disciplinary Hearing:

- Case dismissed
- Written Warning
- Final Written Warning
- Action short of dismissal
- Dismissal

Each case will be considered on its merits based on all available evidence as presented by the investigating officer and the employee and their representative. Further factors will include (a) a subsequent incident of misconduct, (b) level of risk or harmful impact on the organisation or service users.

### **6.1 Case Dismissed**

If a decision is made to dismiss the case, the DO will write to the employee confirming the reasons for reaching this decision. Advice on the letter should be obtained from HR. A record will not be kept on the personal file. If a case has been dismissed but it is considered that recommendations can be made for additional training, counselling, support or service improvements, the formal letter should also confirm this and any period within which this should be achieved.

### **6.2 Written Warning**

In cases of minor offences a Written Warning will be given to the employee.

The content of the warning will be recorded and a copy will be given to the employee and placed on the personal file.

After the active period of six months from the date of the warning, the record will be removed from the personal file. It will be disregarded in deciding the outcome of future disciplinary proceedings. There may be exceptions to this, for example in connection with safeguarding issues. Reference is made at section 9 to disciplinary matters relating to safeguarding issues.

### 6.3 Final Written Warning

Where:

- the degree of misconduct is more serious than a Written Warning offence; or
- current written warning[s] have not been effective relating to conduct of a similar or the same issue, additional disciplinary action short of dismissal will be taken and a Final Written Warning will be issued to the employee.

**This warning letter will set out clearly:**

- i) the nature of the complaint;
- ii) the reasons for the warning;
- iii) reference to previous Written Warnings, if appropriate;
- iv) what improvement is needed – specifying any additional training that may be required and any period within which the improvement must be achieved; the letter will confirm the requirement for support from the manager to ensure that this is achieved;
- v) the consequences if improvement is not forthcoming;
- vi) the rights of appeal;
- vii) the written warning will be placed on the employee's personal file. After the active period of 12 months from the date of the warning letter, the record will be removed from the personal file. It will be disregarded in deciding the outcome of future disciplinary proceedings. There may be exceptions to this, for example in connection with safeguarding issues. Reference is made at section 9 to disciplinary matters relating to safeguarding issues.

### 6.4 Action Short of Dismissal

Action short of dismissal may be appropriate in cases where the employee has behaved in a manner justifying dismissal, but the DO conducting the hearing considers that there are mitigating circumstances. It may be agreed with the employee, that in place of dismissal, additional sanctions will be made in addition to a final warning. The DO must obtain the advice from HR on additional sanctions.

Where the sanction given is temporary, regular review meetings should be arranged to determine an employee's progress and also following any appropriate training and support measures that have been put in place. This will help to determine what improvements; increased understanding etc. has been achieved to assist in reaching a conclusion on when it is appropriate for the additional sanction to be lifted. The outcome of the review meetings should be confirmed in writing to the employee.

### 6.5 Dismissal

Where current disciplinary action has been ineffective, or in cases of gross misconduct or gross negligence, an employee may be dismissed.

According to the severity of the case, the DO will decide whether or not to give notice.

Summary dismissal is dismissal without notice and is only considered for 'gross misconduct'. This is where a situation is serious enough for a dismissal to take place without warning [e.g. for violence, abuse, fraud].

The action taken will be confirmed in writing following the Hearing, and will include the reasons for the dismissal and rights of appeal.

EXAMPLES of where immediate dismissal without notice may be appropriate are set out at Appendix 6. It is stressed that the list is neither exclusive nor exhaustive.

#### 6.6 Confirmation of the resolution

During the adjournment of the Hearing the DO will give full consideration to the evidence presented in order to reach a decision. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the hearing. In cases where it is not possible the employee will be informed of when to expect a decision.

#### 6.7 Warnings

Warnings will be disregarded after the specified period and provided that there is no abuse of the Disciplinary Procedure [see section 10].

#### 6.8 References

Unspent formal warnings will be referred to in any employment reference until such a time that the warning is deemed to be spent.

In cases where an employee leaves the Council prior to the conclusion of an investigation or prior to a Disciplinary Hearing, the reference **will** include the fact that the employee was due to attend a Disciplinary Hearing but left prior to the conclusion, if this information is requested. Live sanctions will be included on a reference for a future employer.

### 7. APPEALS

7.1 There is a right of appeal against formal disciplinary action.

7.2 Any appeal must be lodged within 10 working days following the date on the letter confirming the disciplinary penalty, giving the grounds of the appeal. The person, to whom an appeal should be lodged, depends on the disciplinary penalty given.

- 7.3 The aim will be to hold an Appeal Hearing within 21 days of the appeal being lodged and with 10 working days' notice given. However, it may take longer to arrange depending on the availability of attendees.
- 7.4 The employee has the right to be accompanied by a Representative if he or she so wishes and may request witnesses.
- 7.5 An appeal will be heard by a higher authority than that taking the disciplinary action and/or by parties with no prior involvement in the case to be appealed.
- 7.6 Appeals against dismissal should be addressed to the Head of Corporate Governance. Appeals are heard by the Employment and Appeals Committee.
- 7.7 Full consideration will be given by the Appeals panel to the evidence presented in order to reach a decision. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the Appeal. In cases where it is not possible the employee will be informed of when to expect a decision.
- 7.8 A decision on internal appeal may, on the evidence provided or after seeking further advice or information:-
- Dismiss the appeal and confirm the decision already taken
  - Reduce the penalty to a lesser penalty
  - Uphold the appeal

If a decision to dismiss is withdrawn, then the action will be to:-

- Reinstatement of the employee with continuous service and award an amount to ensure that no pay has been lost, for the period lost through dismissal, or other disciplinary sanctions may apply

A recommended format for the Appeal Hearing to follow is shown at Appendix 8.

## **8. CRIMINAL OFFENCES COMMITTED OUTSIDE THE COUNCIL'S EMPLOYMENT**

- 8.1 An employee shall not be dismissed or otherwise disciplined solely because he or she has been charged with or convicted of a criminal offence.
- 8.2 Disciplinary action may be taken, however, where the Council decides that the nature of the alleged offence committed affects the interest of the Council and/or the employee's continued performance of his or her contract of employment and/or working relationships.

## **9. DISCIPLINARY MATTERS RELATING TO SAFEGUARDING ISSUES**

- 9.1 Managers must ensure that they are aware of the relevant safeguarding policies and regulations where the matter relates to any safeguarding issue with regard to vulnerable groups. It may be necessary to refer to the Disclosure and Barring Service [DBS] for consideration of inclusion of the employee on the list of barred persons. Advice must be sought from HR in all cases.
- 9.2 If an employee is subject to registration or regulation by a professional body or regulator, e.g. HCPC or OFSTED, it may be appropriate to make a referral to that body. The Director for the Directorate concerned will decide whether or not to refer a matter to the relevant professional body. There is a statutory duty to report to the relevant body in specific cases.

## **10. REVIEW**

- 10.1 This procedure may be reviewed from time to time subject to the appropriate consultation and with a view to seeking agreement with the recognised Trade Unions.
- 10.2 In every case the need to satisfy the test of reasonableness in all circumstances shall be exercised. So far as possible, account shall be taken of the employee's record and any other relevant factors

## APPENDIX 1

### **THE INVESTIGATING OFFICER [IO] ROLE IN A DISCIPLINARY INVESTIGATION**

The role of the IO is to conduct a balanced investigation and to collect relevant evidence. This should be concluded as soon as is reasonably and practicably possible.

Timescales laid down in the Policy should be followed by the IO in order to assist in speedy treatment.

#### Responsibilities are:

1. Interview the employee suspected of the alleged misconduct to provide the opportunity to respond to the allegation. HR can provide the IO with a template letter to use when arranging interviews.
2. As a guide, it is recommended that a minimum of 5 working days' notice in writing is given of the investigatory interview. This is in order to allow time for the employee [or witnesses] to consider the allegations and also to arrange to be accompanied by a Representative, should they wish.
3. Any witnesses must also be interviewed. Witnesses must be given notice in writing of the investigatory interview [date, time, venue etc.].
4. All interviews must be conducted on an individual basis, i.e. the employee against whom allegations have been made should not be present when a witness is interviewed and vice versa.
5. Interviews must be conducted with strict confidentiality. Where necessary, the IO may arrange for an officer to attend with them in order to take notes of the meetings. This will enable the IO to concentrate on the interview and assist in the provision of an accurate record.
6. The employee under investigation and witnesses should review, sign and date their statements. In some cases, the IO may produce the notes for approval at the time of the interview. The statements will comprise part of the report for the investigation. .
7. Witnesses should be made aware that it is normal practice to provide copies of all witness statements to the employee against whom allegations of misconduct have been made and to the complainant if there is to be a Disciplinary Hearing. However, there may occasionally be exceptions to this if the witness has a genuine fear of potential reprisals and believes that this could put them at risk. The witness may want their statement to remain anonymous. The DO will be required to make a decision following consultation with HR.

8. If the employee against whom the allegations have been made or any witnesses do not agree with the content of their statement, the IO should seek to clarify their understanding/interpretation. The final report will make reference to areas of the statement that were not agreed.
9. The report should also include any other evidence gathered or evidence that could substantiate comments made in employee or witness statements e.g. letters, memos, e-mails, reports, records etc.
10. The IO's report will be limited to presenting findings of fact and containing actions/behaviours/incidents etc. relevant to the allegations which it is considered could be viewed as concerning and a possible policy/procedural breach or any potential mitigation. It is not for the IO to determine a disciplinary sanction.
11. The Report should be forwarded to the LM and a copy sent to HR. Having carefully read and considered the Investigator's Report, the LM will determine whether or not to proceed with the formal disciplinary procedure.
12. If a Disciplinary Hearing is arranged the IO will normally attend to present their report and findings to the Disciplining Officer.

## **APPENDIX 2**

### **THE NOMINATED DISCIPLINING OFFICER [DO] ROLE**

#### **Responsibilities include:**

1. Attend the Disciplinary Hearing to hear the case, call witnesses and ask questions. Adjourn in order to make a decision. Reconvene to sum up and deliver the decision and explain the reasons.
2. Ensure fair, consistent and speedy treatment of employees who become liable to disciplinary action. Giving employees the opportunity to state their case, call witnesses where appropriate and ask questions. Allow an employee to be accompanied by a Representative.
3. Give the employee a written explanation for any disciplinary action taken clarifying what improvement is expected and associated timescales, following advice from HR. The employee's manager should also receive a copy of the letter so that they are fully aware and able to monitor the situation accordingly.
4. Follow timescales laid down in the Policy to assist in speedy treatment.
5. Make a decision if an employee raises a grievance during any stage of the disciplinary process.
6. Present the case at an appeal.

## APPENDIX 3

### THE LINE MANAGER [LM] ROLE

1. Consult HR on all disciplinary matters and prior to instigating the formal procedure.
2. Ensure that employees are made aware of the standards expected of them.
3. Informal – the LM may give an informal reprimand (see the informal process Section 3.) There is no right of appeal against an informal reprimand.
4. Where formal action is required, the LM should arrange to meet the employee concerned to provide a brief verbal explanation and provide a formal letter advising of an investigation etc.
5. The LM must permit the employee against whom allegations have been made a reasonable amount of paid time off during working hours, for private discussions with their representative. This includes time off for the hearing itself, if applicable.
6. The LM should also allow an employee a reasonable amount of paid time off to familiarise him or herself with the case and confer with their representative in their support. This includes time both before and after the hearing.
7. The LM must permit an employee a reasonable amount of paid time off work during working hours, to act in support of another employee or appear as a witness for that employee. This also applies to time off for the hearing itself.
8. The employee, against whom allegations have been made, may need access to data, other relevant information and contact with colleagues to assist them in preparing their case; advice must be sought from Human Resources on this and before contact with colleagues is made.
9. An employee who is asked to provide a witness statement should be allowed a reasonable amount of paid time off to facilitate this and to attend the Hearing if their presence is required.
10. As this will be a difficult time for the employee against whom allegations have been made, the LM is advised to reiterate that the Council has a free, confidential counselling service should the employee feel that this may be of benefit to them. Further details can be obtained from Human Resources.
11. Attendance at meetings/Disciplinary Hearing, as appropriate.
12. Depending on the decision made and the resolution monitor and carry out regular reviews on the employee.
13. Act as DO where appropriate ie. Minor cases of misconduct.

## **APPENDIX 4**

### **THE HUMAN RESOURCES [HR] ROLE**

The Human Resources Team provide advice, guidance and support on the Council's Disciplinary Policy and Procedure. This includes:

- Advice on all disciplinary matters prior to any formal procedure being instigated.
- Assistance in drafting all formal letters. Produce the outcome letter for approval by the DO ensuring all legal and procedural aspects are covered.
- Attendance at any Disciplinary Hearings to provide advice, guidance and ask questions, as appropriate.
- Take notes at formal hearings
- Ensuring that files are kept up to date and warnings cancelled and disregarded on expiry, as appropriate.
- Seek further and specific legal advice where necessary.

## **APPENDIX 5**

### **THE TRADE UNION Representative OR WORK COLLEAGUE'S [Representative] ROLE**

If an employee is a member of a trade union or wishes to be supported by a work colleague [employee of the Council], they may request the following from their Representative:

- Provision of support and advice
- Attendance at meetings/Hearings.

If the employee wishes, the Representative can:

- Present the employee's case
- Sum up the employee's case
- Respond on the employee's behalf to any view expressed at the Hearing
- Confer with the employee during the Hearing
- Ask questions of witnesses.

However, they cannot answer questions on the employee's behalf or address the Hearing if the employee does not wish it. They may not prevent the management from explaining their case.

## **APPENDIX 6**

### **EXAMPLES OF GROSS MISCONDUCT**

Rutland County Council intends that the following examples of gross misconduct will call for the consideration of immediate dismissal without notice. Please note that the list is neither exclusive nor exhaustive. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms:

- Gross negligence
- Significant breach of safeguarding of children, young people or vulnerable adults
- Significant breach of the Council's Equality and Diversity Policy and acts of unlawful discrimination and harassment on the grounds of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, sexual orientation, pregnancy and maternity
- Serious incidents of Harassment, Discrimination and Bullying on any other grounds
- Significant breach of the Council's Health and Safety Policy
- Significant breach of the Council's Code of Conduct, e.g. Bribery, fraud, corruption, accepting gifts or services [other than token] from outside bodies/individuals
- Deliberate falsification of claims or records
- Malicious damage to property and/or equipment
- Serious insubordination
- Physical assault or violence, or threatening violence whilst on duty
- Theft of property from the Council, its tenants or from fellow employees
- Serious incapability through alcohol or illegal drugs
- Significant breach of Computer Misuse Act e.g. unauthorised use of computer hardware or software facilities, loading or use of unauthorised and/or pirated software
- Serious breach of the Rutland County Council IT email and Internet Policy
- Negligent breach of the Data Protection Act 1998 and any other disclosure of confidential information
- Bringing the organisation into serious disrepute
- Serious breach of confidence
- Making serious and malicious, unfounded allegations against a fellow employee.

## **APPENDIX 7**

### **DISCIPLINARY HEARING PROCEDURE**

The purpose of this procedure is to ensure that a Disciplinary Hearing is conducted in a fair and equitable way. The order of events may be altered with the agreement of the parties and the Panel if the circumstances of the case make it desirable.

#### **Management's Case**

1. Management's Representative, normally the IO, will present their report and may call witnesses. In more serious case eg. Potential gross misconduct, the case may be presented by a management representative and the IO attend to present the Investigation report.
2. The employee [or their Representative] may ask questions of the Management's Representative and any witnesses.
3. The DO and HR may ask questions of Management and any witnesses.

#### **The Employee's Case**

4. The employee [or Representative] will put their case and may call witnesses.
5. The Management's Representative may ask questions of the employee [or Representative] and any witnesses.
6. The members of the Disciplinary Panel may ask questions of the employee [or Representative] and any witnesses.

#### **General**

7. Final questions of any party by the Disciplinary Panel on issues which may have emerged during the Hearing.

#### **Summing up**

8. Both parties to sum up if they wish. The Management Representative will sum up first.

#### **Adjournment**

9. Both parties, including any witnesses, to withdraw to enable the Disciplining Officer to consider and come to a decision in private seeking advice from the HRA as appropriate.
10. If it is necessary to recall either party to clarify certain points, both parties are to return.

11. During the adjournment of the Hearing the DO will give full consideration to the evidence presented in order to reach a decision. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the Hearing. However, this may not always be possible. In cases where this is not possible the employee will be informed when to expect a decision
12. The IO should be advised of the outcome of the Hearing only after the employee has been notified of the outcome. Witnesses are not advised of the outcome of the Hearing.

## **APPENDIX 8**

### **APPEAL HEARING PROCEDURE**

The purpose of this procedure is to ensure that an Appeal Hearing is conducted in a fair and equitable way. The order of events may be altered with the agreement of the parties and the Panel if the circumstances of the case make it desirable.

#### **Management's Case**

1. Management's representative, normally the Disciplining Officer from the original Hearing will put the case and may call witnesses.
2. The appellant [or their Representative] may ask questions of the Management's Representative and any witnesses.
3. The members of the Appeal Panel may ask questions of Management and any witnesses.

#### **The Appellant's Case**

4. The appellant [or Representative] will put their case and may call witnesses.
5. The Management's representative may ask questions of the appellant [or Representative] and any witnesses.
6. The members of the Appeal Panel may ask questions of the appellant [or Representative] and any witnesses.

#### **General**

7. Final questions of any party by the Appeal Panel on issues which may have emerged during the Hearing.

#### **Summing up**

8. Both parties to sum up if they wish. The Management Representative will sum up first.

#### **Adjournment**

9. Both parties, including any witnesses, to withdraw to enable the Appeals Panel to consider and come to a decision in private, seeking advice from the HRA as appropriate..
10. If it is necessary to recall either party to clarify certain points, both parties are to return.
11. During the adjournment of the Hearing the Appeal Panel will give full consideration to the evidence presented in order to reach a decision. The decision will be

announced to both the manager and appellant at the same time and confirmed in writing. It may not, in all cases, be possible or appropriate for the decision to be made on the same day. Written confirmation of the resolution will normally be given within 5 working days of the Hearing. However, this may not always be possible. In cases where this is not possible the employee will be informed when to expect a decision.

**A large print version of this document is available on request**



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