



Date: **25 October 2022**
Our ref: **General Purposes Committee/Agenda**
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GENERAL PURPOSES COMMITTEE

4 NOVEMBER 2022

A meeting of the General Purposes Committee will be held at **12.00 pm on Friday, 4 November 2022** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Ashbee (Chair); Councillors: Albon, Austin, J Bayford, R Bayford, Everitt, Ovenden, Rev. S Piper, Rawf, D Saunders, M Saunders and Wright

AGENDA

Item
No

Subject

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST** (Pages 3 - 4)
To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest advice attached to this Agenda. If a Member declares an interest, they should complete the [Declaration of Interest Form](#)
3. **MINUTES OF PREVIOUS MEETING** (Pages 5 - 6)
To approve the Minutes of the meeting of the General Purposes Committee held on 05 July 2022, copy attached.
4. **HR POLICY REVIEW - PHASE ONE** (Pages 7 - 100)

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Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or
Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
 - exercises functions of a public nature; or
 - is directed to charitable purposes; or
 - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992



If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

Gifts, Benefits and Hospitality

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £25 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

What if I am unsure?

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Committee Services Manager well in advance of the meeting.

If you need to declare an interest then please complete the declaration of [interest form](#).

GENERAL PURPOSES COMMITTEE

Minutes of the meeting held on 5 July 2022 at 4.00 pm in Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Present: Councillor Ash Ashbee (Chair); Councillors Albon, Austin, J Bayford, R Bayford, Duckworth, Everitt, Rawf, D Saunders, M Saunders and Wright

12. **APOLOGIES FOR ABSENCE**

Apologies were received from the following Members:

Councillor Stuart Piper;
Councillor Ovenden, substituted by Councillor Duckworth.

13. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

14. **EXCLUSION OF PUBLIC AND PRESS**

Councillor Ashbee proposed, Councillor Bob Bayford seconded and Members agreed that the public and press be excluded from the meeting for agenda items 4, 5, 6 and 7 as they contain exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

15. **MINUTES OF PREVIOUS MEETING - 27 APRIL 2022**

Councillor Bob Bayford proposed, Councillor Austin seconded and Members agreed the minutes as a correct record of the General Purposes Committee meeting that was held on 27 April 2022.

16. **MINUTES OF PREVIOUS MEETING - 1 JUNE 2022**

Councillor Bob Bayford proposed, Councillor Austin seconded and Members agreed the minutes as a correct record of the General Purposes Committee meeting that was held on 1 June 2022.

17. **APPOINTMENT OF INTERIM CHIEF EXECUTIVE AND HEAD OF PAID SERVICE**

Members discussed the report and considered the recommendations for the appointment of an Interim Chief Executive and Head of Paid Service.

Councillor Bob Bayford proposed, Councillor David Saunders seconded and Members agreed the following:

1. To recommend to Council that Colin Carmichael, is appointed as Interim Chief Executive and Head of Paid Service for a fixed term from 20 July 2022 until 19 July 2023 initially, as set out in paragraph 1.3 in the committee report;
2. To recommend to Council that Colin Carmichael is appointed Returning Officer for the Council for the duration of his employment.

18. **APPOINTMENT OF INTERIM MONITORING OFFICER**

The committee also considered the proposals for the appointment of an Interim Monitoring Officer.

Thereafter Councillor Bob Bayford proposed, Councillor Rawf seconded and the committee recommended to Council that Sameera Khan, is appointed as Interim Monitoring Officer from 18 July.

Meeting concluded: 4.30 pm

HR Policy Review - Phase One

General Purposes Committee	04 November 2022
Report Author	Ffion Pepper, HR Business Partner
Portfolio Holder	Cllr Ash Ashbee, Leader of the Council
Status	For Decision
Classification:	Unrestricted
Key Decision	No
Ward:	N/A

Executive Summary:

To consider and adopt seven new HR policies as the first phase of a review of all HR policies and procedures. This follows on from recommendations made by the external auditor and Independent Monitoring Officer (IMO), with the aim of making HR processes more straightforward and reducing the potential for any risk to the council.

Recommendation(s):

To adopt the revised HR policies with effect from 1 November 2022.

Corporate Implications

Financial and Value for Money

The application of more straightforward and robust HR policies and procedures should create efficiencies in officer time that is allocated to attend to matters pertaining to these policies. Moreover, it should mitigate the risk of the need to engage with third parties (e.g. external HR consultants or employment solicitors) in these processes, except in very rare circumstances. Therefore, the adoption of these policies should assist the council in avoiding having to incur additional costs associated with HR matters.

Legal

Certain employment policies and procedures are specifically needed to comply with legal requirements under the Employment Act for example, a written health and safety policy. Even where a policy or procedure is not specifically required by law, employers often find it helpful to have a policy in place to provide clear guidance that reflects the legal framework for handling the issue in question and it also helps employees to be clear about the organisation's stance on a particular subject. The proposed policies presented in this review reflect current employment law and ACAS Codes of Practice and/or guidance where relevant.

The Council's Constitution confirms that the General Purposes Committee is responsible for updating and reviewing these policies. The proposed policies which are being updated as part of

the Annual review for endorsement and approval and, following consultation and negotiation with the trade unions.

There are no direct legal implications arising from this report. The new policies will need to be compliant with any legal obligations which apply to them.

Risk Management

The risks involved with this project lie solely in failing to implement a set of new HR policies. The policies in place at present are overly complicated, open to interpretation and their associated procedures are no longer reflective of the structure and size of the organisation. This leaves the council open to challenge when trying to implement processes to deal with employee relations issues and has, recently, meant outsourcing large parts of these processes to external individuals at significant cost.

In addition, some of these policies have been identified by the Independent Monitoring Officer as requiring review and form part of his recommended actions. Failure to implement revised policies therefore also brings the risk of failing to meet these recommendations.

Corporate

Effective HR policies and procedures are key to good employee relations and, in turn, employee engagement. They protect the organisation and the individuals within it by ensuring that appropriate processes are in place and adhered to and that the organisation is compliant with relevant employment legislation and best practice.

These revised policies aim to make some of the council's key employee relations processes easier to follow and understand, making Thanet District Council a good place to work and helping with the organisation's corporate aim of increasing openness and transparency.

This follows on from recommendations made by the external auditor and Independent Monitoring Officer (IMO), with the aim of making HR processes more straightforward and reducing the potential for any risk to the council.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -
(Delete as appropriate)

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.

An Equality Impact Assessment has been completed as part of the policy review project.

Corporate Priorities

This report relates to policies which will support and enable the effective internal management of the organisation.

1.0 Introduction and Background

- 1.1 The HR service was brought back in-house from the shared service (East Kent HR) in September 2021. In November 2021, an exercise was undertaken to identify any gaps in HR policy coverage and to document any known issues with existing HR policies.
- 1.2 This process identified that there are around 30 policies that would benefit from being reviewed or developed (where they didn't already exist), some of which were already underway/nearing completion.
- 1.3 This list was then split into three priority groups, plus a list of 'quick wins'. Prioritisation was based upon feedback from the external auditors report and the outcomes of recent case reviews where it had been identified that policy constraints had caused operational difficulties and made processes overly complicated, placing the council at risk of challenge.
- 1.4 The following seven policies were identified as an immediate priority for review and this was subsequently supported by recommendations from the Independent Monitoring Officer:
 - Disciplinary
 - Grievance
 - Performance Management
 - Absence Management
 - Whistleblowing
 - Some Other Substantial Reason
 - Dignity at Work (Bullying & Harassment)
- 1.5 A number of these policies were implemented by the shared service, East Kent HR, in 2015. Whilst the intention was to make processes more straightforward by having fewer policies (the disciplinary procedure, for example, provides the basis for dealing with not only misconduct, but also performance and capability on ill health grounds), in practice, it has made them more difficult to use. There are numerous documents for each policy and the need to refer to even more where formal action is needed. This can make the documents difficult to follow and open to possible interpretation.
- 1.6 Additionally, because a number of these policies were drafted to accommodate three organisations with different organisational structures, they have inadvertently created difficulties when arranging panels due to the need to continually escalate issues at various stages of the process, without a management structure of sufficient size to support such an approach. This has meant that there have been times where either it

has not been possible to identify anyone internally to chair hearings, relying instead on external organisations or individuals at significant cost, or that processes have been delayed pending panel availability. Refreshing the policies gives us an opportunity to ensure that processes are better suited to the size of the organisation.

- 1.7 Extensive research has been carried out to look at both best practice generally, as well as considering the policies and procedures in place at other comparable local authorities. This has informed the content and structure of the new draft policies, all of which now follow a standard format and incorporate their own procedures within them.
- 1.8 The revised policies have been developed with due consideration for the ACAS guidelines and any relevant legislation, as well as taking into consideration the HR team's understanding of the practical issues that have emerged whilst operating the existing policies and procedures.

2.0 The Consultation Process

- 2.1 Following an initial review by the Corporate Management Team (CMT); the draft policies were presented to the Employee Council (the councils collective bargaining forum with the Unison and GMB trade unions), before commencing a 45 day consultation period with the trade unions and staff.
- 2.3 During this consultation period, a number of workshops were also held with managers to gather feedback and talk through the practicalities of the revised policies and procedures.
- 2.4 Feedback was received predominantly from the trade unions during the consultation and this was considered by the Corporate Management Team, resulting in some changes to the proposed policies. The changes were then discussed in more detail at a further Employee Council meeting and, following some negotiations and further minor changes, the policies were agreed by CMT and the trade unions.
- 2.5 The final versions of the policies are attached to this report for consideration and, if agreed, adoption by the General Purposes Committee.

Contact Officer: *Ffion Pepper, HR Business Partner*
Reporting to: *Hannah Thorpe, Director of Communications*

Annex List

- Annex 1: [Absence Management Policy and Procedure](#)*
- Annex 2: [Bullying and Harassment Policy and Procedure](#)*
- Annex 3: [Disciplinary Policy and Procedure](#)*
- Annex 4: [Grievance Policy and Procedure](#)*
- Annex 5: [Performance Management Policy and Procedure](#)*
- Annex 6: [Some Other Substantial Reason Policy](#)*
- Annex 7: [Whistleblowing Policy](#)*

Corporate Consultation

Finance: Chris Blundell, Acting Deputy Chief Executive & s151 Officer

Legal: Sameera Khan (Interim Head of Legal & Monitoring Officer)

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Thanet District Council Absence Management Policy & Procedure

October 2022/Final/HR

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Key Points:

- A return to work meeting should always be held following any period of sickness absence.
- The short term formal absence procedure has three stages:
 - First absence review - the issue of a first written warning may be considered at this stage
 - Second absence review - The outcome of the review may be the issuing of a final written warning
 - Absence Hearing - a decision to terminate employment may be considered at this hearing
- Formal warnings may also be issued for long term absence and although this is dealt with as a separate procedure, warnings for both long and short term absence may be considered together to understand an employee's capability to undertake their role.
- Trigger points are used in this policy to ensure that attendance remains at an acceptable level and support is provided to employees at the earliest opportunity.
- Employees can choose to be accompanied by a trade union representative or workplace colleague at any formal meeting, including appeals.
- The HR team should be contacted prior to initiating any formal process.
- Confidentiality will be given the utmost importance at all stages of the procedure.

1. Introduction

The Council's aim is to promote a culture of exemplary attendance through fair, consistent and effective management of sickness absence.

2. Scope

- 2.1. This policy and procedure applies to all employees of Thanet District Council with the exception of the Chief Executive, Section 151 Officer and Monitoring Officer for whom separate arrangements apply and those within their probation period. In cases of absence during the probation period, the Probation Policy should be used.
- 2.2. Employees who take unauthorised absence, or who abuse the sick pay provision or fail to follow the notification procedures may be dealt with under the disciplinary policy and procedure as appropriate and may have their pay stopped for the period of unauthorised absence.

3. Roles & Responsibilities

Employees will:

- Endeavour to maintain exemplary attendance as expected by the council through managing their health and wellbeing wherever possible to mitigate absences;
- Take responsibility for their own health and wellbeing in order to maintain good attendance at work and seek timely advice from their GP and/or other relevant professional bodies;
- Adhere to any guidance that may emerge from time to time to ensure the safety and wellbeing of you and others whilst at work;

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- Comply with the requirement to report sickness absence by informing their line manager when they are unable to attend work due to sickness or if they are taken ill or are injured whilst at work;
- Attend Occupational Health appointments or other appropriate medical specialist appointments if reasonably requested to do so;
- Cooperate fully in meetings to discuss their health and wellbeing with their line manager;
- Seek clarification from their line manager if they are unsure of the sickness absence expectations and trigger points;
- Keep their line manager informed if their health is likely to, or is affecting the standard and consistency of their work;
- Consider what help and support they may need to facilitate a return to work to aid discussions with their line manager.

Managers will:

- Ensure their employees are aware of the Absence Management Policy and what is expected of them via induction and subsequent day-to-day management;
- Identify unacceptable levels of sickness absence and address these and other sickness absence issues at the earliest opportunity in a prompt, confidential and sensitive manner, ensuring consistency and fairness;
- Record sickness absence at the earliest opportunity and regularly monitor employees' attendance;
- Manage the sickness absence process in an efficient and timely manner to facilitate a return to work at the earliest opportunity;
- Conduct and record return to work discussions following a period of absence due to sickness and ensure that employees provide any appropriate documentation;
- Ensure a fair and reasonable investigation has taken place into sickness absence matters and that informal discussions have taken place before initiating the formal process;
- Chair or support First and Second Absence Review meetings when appropriate
- Ensure that any reasonable adjustments that are recommended by either the doctor or by Occupational Health are given due consideration and implemented (where appropriate) in a timely manner;
- Refer employees to Occupational Health as appropriate;
- Seek HR advice as appropriate;
- Ensure that in dealing with sickness absence cases that they are in compliance with the Equality Act 2010 (which incorporates the key provisions of the Disability Discrimination Act, as amended in 2005);
- Ensure that all employees are treated fairly and sympathetically.

HR will:

- Monitor employment legislation relating to sickness absence at work in line with the Equality Act (2010) and support the Council to review and amend this policy as appropriate;
- Provide support, advice and training to the Council and its employees in the interpretation and application of this policy at any stage;
- Help to maintain the link with Occupational Health to ensure consistent management of sickness absence;
- Ensure a consistent and fair approach to the application of this policy;

- Promote health and wellbeing tools and resources to managers and employees;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Encourage all employees to promote and maintain the standards of attendance expected by the Council;
- Support managers to act fairly and consistently in relation to sickness absence and ill health matters;
- Chair or support Absence and Appeal Hearings, as appropriate;
- Encourage managers to participate in the formal Absence Management Procedure when required, ensuring release from normal duties where appropriate, to ensure investigations are dealt with swiftly;
- Attend training on the application of this policy.

4. Reporting an absence

- 4.1. If you do not feel well enough to attend work, you must notify your manager at least half an hour before your working day is due to start. In the absence of your manager, you should notify another manager within your service or your line manager's manager. Other local arrangements for reporting sickness absence may apply and employees should ensure that they are aware of these and adhere to them.
- 4.2. This notification should be made by yourself unless, in exceptional circumstances, you are unable to do so for example, if you are hospitalised or incapacitated. In these situations, a friend or family member should notify your manager of your absence as soon as is reasonably practicable.
- 4.3. The notification of your absence should be made by way of a telephone call.
- 4.4. During the initial telephone call, you should provide your manager with the reason for your absence and an anticipated return to work date. If you are unable to return on the date originally agreed, you should notify your manager using the same notification method detailed above.
- 4.5. It is expected that you will remain in regular contact with your manager throughout any period of sickness absence. The method for doing this and the regularity with which such contact will be made should be agreed with your manager when you notify them of your initial absence.

5. Certification

- 5.1. You can self-certificate for the first seven days of your sickness absence but for the purposes of statutory sick pay, absences of more than seven calendar days will require a fit note, issued by a doctor, which states that you are not fit for work.
- 5.2. The council reserves the right to request a fit note or doctors certificate for absences of less than seven days.
- 5.3. If follow-on certificates are issued by your doctor, each day must be covered without any break in order to avoid any impact on pay.

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- 5.4. It is your responsibility to make a doctor's appointment to get continuation certificates before the previous one expires and to contact your manager to make them aware that you will remain off sick. Doctors are not obliged to backdate fit notes.
- 5.5. On a fit note a GP (and some other medical practitioners) can either declare an employee unfit for work or state that they 'may be fit for work taking account of the following advice.' With the second option, the Doctor will suggest one or more of the following temporary arrangements, which may enable the employee to return to work:
 - a change in duties;
 - a different working environment;
 - different hours of work;
 - a phased return to work (see below).
- 5.6. If a manager receives a fit note which states 'may be fit for work taking account of the following advice', they should arrange to meet with the employee at the earliest opportunity to discuss appropriate ways to manage the return to work process, which may include a referral to Occupational Health.
- 5.7. The information provided on a fit note is advisory and is not binding on either party. If, then, the manager cannot provide the support an employee needs to return to work or the employee feels unable to return then the fit note will be used in the same way as if the Doctor had advised that the employee was unfit for work.
- 5.8. At any time you may be required to provide proof of your absence and/or appointments to management, for example, fit notes; proof of vaccination; official test results; consultant's letters, discharge notices etc.

6. Occupational Health

- 6.1. The council contracts with an Occupational Health (OH) provider to give advice on employees fitness to work and any reasonable adjustments that could be made to roles to facilitate a return to work.
- 6.2. A referral to OH should always be made in the cases where absence is long term (i.e. a continuous period of two weeks or more) and in cases where stress, depression or anxiety are given as the reason for absence.
- 6.3. A referral to OH may also be appropriate in cases of frequent short term absence, if an employee is provided with a fit note from their doctor which suggests reasonable adjustments could be made following a period of absence and/or if an employee is diagnosed with a condition or disability that may affect their performance or attendance at work. The HR team will be able to advise when/if a referral is appropriate.
- 6.4. The OH Adviser is an independent, objective specialist assessing and advising on what appears best for both employee and employer in relation to an individual's health and their work. They will sometimes seek a report from the employee's GP before offering advice.

7. Return to Work Meeting

- 7.1. Managers should always meet with any member of staff returning from any sickness absence, even if it was just for one day.
- 7.2. This should usually be carried out before the employee commences work. If a face to face/virtual meeting isn't possible, the meeting could be carried out via telephone in exceptional circumstances.
- 7.3. The basic purpose of it is to acknowledge that the employee has been unable to attend work due to ill health and offer them support and encouragement on their return to work.
- 7.4. Return to work discussions should not be used to express doubts about the validity of a particular absence. If any reasonable doubt exists, the circumstances should be objectively investigated.
- 7.5. The return to work meeting should:
 - Enable early identification of any issue which can impact on performance or the ability to attend work
 - Establish what, if any, support can be offered to the employee at the earliest opportunity (including Occupational Health referral, counselling, light duties or reduced hours for phased return etc)
 - Ensure that the employee is aware of the council's expectations regarding attendance and the operation of this policy
 - Review the sickness history to identify if a trigger has been reached or if there are any absence patterns that are of concern e.g. absence on specific days in the year (e.g. birthday), absence starting or ending adjacent to non-working days etc

8. Sick Pay

The council operates an occupational sick pay scheme as follows:

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

For the purpose of contractual sick pay, a 'months' pay is the pay the employee would normally receive if he or she had not been absent from work (excluding any non-contractual overtime payments normally received).

For the purposes of this Policy, service in a temporary capacity shall be recognised.

Where the period of sickness absence crosses two service periods, the amount of contractual sick pay shall be based on the entitlement as at day one of the absence.

9. Medical and dental appointments

- 9.1. Time off with pay can be granted for medical and dental appointments, however, it is expected that every effort will be made to arrange appointments outside of normal working hours.
- 9.2. Where this is not possible, they should be booked at the start or the end of the working day to minimise disruption.
- 9.3. Reasonable notice must be given to your manager who may request evidence of your appointment.
- 9.4. Appointments which are not bookable, for example from hospitals or specialists, can be taken as needed but, as above, you must make your manager aware as soon as possible.

10. Absences arising from injury, accidents or assault at work

- 10.1. If you are absent due to an accident, injury or assault (confirmed by an approved medical practitioner and where the appropriate accident reporting has taken place) which has arisen out of and in the course of employment, and through no fault of your own, sick pay will be paid at the normal level but the absence will not be recorded as sickness absence, nor counted towards the period of entitlement to sick pay.
- 10.2. This can apply to more than one period of absence arising as a direct result of the same incident.

11. Contact with infectious diseases

- 11.1. If you are prevented from attending work in accordance with the Health & Safety at Work Act because of contact with an infectious disease, you must inform your line manager immediately.
- 11.2. Provided that acceptable medical evidence is submitted, the absence will be paid at normal levels of sick pay, less any benefits payable under the Act but will not be treated as a sick leave for absence management purposes.

12. Annual leave

- 12.1. If you fall ill whilst on pre-booked annual leave, you should notify your manager in accordance with the normal sickness absence reporting process and provide a doctors certificate as soon as practicable. You will be credited back the annual leave booked with effect from the date the doctor's certificate was signed.
- 12.2. During periods of ill health, you will continue to accrue annual leave. Statutory leave as defined in the working time directive may be carried forward to the following year if it is not taken due to sickness absence. Annual leave in excess of statutory leave will be lost.

- 12.3. If you are ill during public holidays or concessionary days, you cannot reclaim the time as annual leave.
- 12.4. If you are off sick and wish to go on holiday or take a period of annual leave, this should be agreed in advance with your manager and recorded in the usual way. You are still expected to be contactable and available for reasonable meetings with your manager, HR and/or Occupational Health whilst off sick, unless prior agreement for a period of annual leave has been agreed with your manager.
- 12.5. If you exhaust your sick pay, it may be possible to take and be paid for annual leave during sick leave. This should be discussed with your manager.

13. Employees with disabilities

- 13.1. The council is committed to attracting, supporting and retaining employees with disabilities. Employees are encouraged to disclose any disability they have to their line manager/HR before the start of their employment or as the condition/disability arises in order to access support.
- 13.2. Employees with a disability may be referred to Occupational Health for advice on what adjustments the council can make to their responsibilities, equipment or workplace, to enable them to carry out the functions of their post, such adjustments to be made in consultation with the employee, and the effectiveness monitored over a period of time.
- 13.3. Disability Leave is a form of reasonable adjustment in line with the requirements of the Equality Act 2010 and enables employees to take paid time away from work for pre-planned appointments or treatments, related to an employee's disability, that help maintain health and wellbeing. Disability Leave is available to employees who have a recognised disability and must be agreed by the line manager for a specified reason. This is paid time off and should not be used for disability related sickness absence. Managers may request evidence of appointments and/or treatment before agreeing to a period of leave. Where a disabled employee's condition is likely to lead to frequent, short-term sickness absences, this will be taken into consideration when monitoring attendance.

14. General principles

- 14.1. You should not undertake any work - paid or otherwise - during a period of sickness absence unless this is agreed by a Service Director or member of the Corporate Management Team, although it is likely that such agreement will be withheld. If therapeutic work is recommended to aid your recovery, you should discuss this with your line manager and support to undertake this will be provided where possible.
- 14.2. Sick pay may be suspended in the following circumstances:
 - If you abuse the sickness scheme
 - If you do not engage with your line manager as agreed to update them on your prognosis or recovery
 - If you are absent without leave and continue to fail to make contact with your line manager
 - If you are absent on account of sickness due or attributable to deliberate conduct prejudicial to your recovery

- If you are absent on account of sickness due or attributable to your own misconduct, neglect or active participation in professional sport
- If you are absent on account of sickness due or attributable to an injury while working in your own time, for private gain or for another employer
- Failure to provide proof of sickness as per point 5.8

This list is not exhaustive and other situations may arise where a suspension of sick pay is appropriate.

Should your sick pay be suspended for any reason you will be informed in writing.

15. Sickness Absence Triggers

- 15.1. There are two types of sickness absence - short term and long term (continuous absence over two weeks), each requiring a different approach.
- 15.2. Formal warnings for sickness absence may be issued for both short term and long term sickness absence and may be considered together.
- 15.3. Absence in a 12 month rolling period which meets **any** of the following criteria and does not exceed two continuous weeks will be dealt with under the short term sickness absence procedure:
 - 3 separate episodes of absence in any 6 month period; or
 - 4 separate episodes of absence in any 12 month period
- 15.4. In addition to the above, a pattern of absence which causes concern, e.g. absences on either side of a weekend or rest day, or if an employee narrowly avoids falling into one of the above trigger points in three consecutive years may also trigger the initiation of the Sickness Absence Management Procedure.
- 15.5. Where a period of absence exceeds a continuous period of two weeks or more, it will be dealt with under the long term sickness absence procedure.

16. Short Term Absence Management Procedure

- 16.1. When a trigger point has been reached, the manager will carry out a fact finding exercise and produce a report to establish the cause of any absence and to offer assistance based on the individual circumstances of the case.
- 16.2. In most circumstances, it is likely that this will result in the initiation of the formal process. However managers may use their discretion, as appropriate and in conjunction with HR advice.
- 16.3. The formal procedure has the following three stages:
 - First absence review hearing
 - Second absence review hearing
 - Final absence hearing

16.4. First Absence Review Hearing

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- 16.4.1. The employee will be invited to the hearing in writing and will be provided with reasonable notice, usually of no less than three working days. A copy of the manager's report will be included with the written invitation.
- 16.4.2. The hearing will usually be chaired by the employee's manager supported by another manager who has not previously been involved in the case. A member of the HR team may be present to advise the panel.
- 16.4.3. The chair of the panel will present the report detailing the facts of the case up to this point.
- 16.4.4. Depending on the circumstances, the hearing may cover some of the following matters, as appropriate:
 - 16.4.4.1. Identify the frequency and reason for the absences and ensure that the employee is aware that their absence record may be giving cause for concern, and highlighting the impact on the rest of the team or authority.
 - 16.4.4.2. Advise the employee to seek medical attention to determine if there are grounds to consider that there might be an underlying medical problem, or refer to OH as appropriate
 - 16.4.4.3. Give consideration to personal problems which may be causing the absences and offer possible ways of helping the employee to resolve them
 - 16.4.4.4. If any temporary or permanent redeployment or reduction of duties/reasonable adjustment, or ill health retirement is required
 - 16.4.4.5. Explore whether the absences may be due to a work related injury; a disability defined within the Equality Act; or pregnancy, and take advice from the HR lead as appropriate
 - 16.4.4.6. Indicate that if sickness absence continues at a high level then the employee may be excluded from participating in any additional hours/overtime
- 16.4.5. At the end of the hearing, the manager will advise the employee whether or not a first formal written warning for sickness absence will be issued, providing reasons for the decision. They will explain that the next stage of the procedure will be a second absence review hearing and the potential issuing of a final written warning for sickness absence if attendance doesn't improve. They will also explain clearly what constitutes satisfactory improvement.
- 16.4.6. The outcome of the hearing will be confirmed to the employee in writing within a reasonable timeframe but usually within five working days of the hearing.
- 16.4.7. If a first written warning is issued, it will remain on file for six months and this will be confirmed in the outcome letter.
- 16.4.8. The employee will have the right to appeal against the decision to issue a first written warning for sickness absence. This will follow the process as detailed at 14.7.

16.5. Second Absence Review Hearing

- 16.5.1. If, following a first absence review hearing and the issuing of a first formal warning for sickness absence, the employee's attendance remains

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unacceptable, the manager may decide, in consultation with HR, to move to a second absence review hearing.

- 16.5.2. The manager will prepare an up to date report based upon the facts of the case.
- 16.5.3. The meeting will follow the same format as the first absence review hearing detailed above.
- 16.5.4. The outcome of the hearing may be the issuing of a final written warning for sickness absence which will remain on file for 12 months.
- 16.5.5. The outcome will be confirmed in writing to the employee within a reasonable timeframe but usually within five working days of the hearing.
- 16.5.6. The outcome letter will also confirm that, should the employee fail to achieve a satisfactory level of attendance in the timeframe set out during the meeting or if they hit another trigger within 12 months of the warning being issued, a final absence hearing is likely to be convened, which may result in the employee's dismissal from the council due to poor attendance.

16.6. Final Absence Hearing

- 16.6.1. If, following the issuing of both a first and a final warning for sickness absence, there is no improvement in the employee's attendance, a final absence hearing will be arranged.
- 16.6.2. The employee will be invited to the hearing in writing with reasonable notice which will not normally be less than three working days. The invitation will confirm that the employee can choose to be accompanied by a trade union representative or workplace colleague and that a potential outcome of the hearing could be their dismissal on the grounds of capability.
- 16.6.3. The line manager will prepare a report for the hearing, a copy of which will be provided to the employee along with their invitation to the hearing. The report will detail the history of the case, the absences which have been taken into consideration and any support that has been provided to the employee along with details of any advice received from Occupational Health.
- 16.6.4. The absence hearing will be chaired by a Service Director, supported by another manager not previously involved in the case. A member of the HR team may also be present.
- 16.6.5. The purpose of the hearing is to consider all information in relation to the absences, including Occupational Health advice. If appropriate the chair of the hearing may adjourn the hearing to seek further medical advice.
- 16.6.6. Consideration will also be given at the hearing as to whether or not alternative employment, reasonable adjustments to the current role or ill-health retirement could and have been recommended prior to making a decision to terminate employment.
- 16.6.7. The hearing will be adjourned to enable the panel to reach a decision. The outcome of the hearing will be confirmed in writing within a reasonable timeframe following the hearing but usually not more than three working days. If the chair of the hearing determines that they require more information prior to making a decision, they may reconvene the hearing or undertake additional investigations. If this is the case, the employee will be informed and updated on the timeframe for a decision to be made.

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- 16.6.8. If the decision is to terminate the employee's employment, this will be confirmed in writing along with confirmation of any notice/pay in lieu of notice and outstanding holiday to be paid.

16.7. Appeal Hearing

- 16.7.1. If the employee wishes to appeal the outcome of a hearing at any stage of this procedure, this should be made in writing to HR within five working days of receipt of the written outcome, clearly setting out the reasons for appeal.
- 16.7.2. An appeal is not a re-hearing of the original case but instead should be based upon one or more of the following principles:
 - 16.7.2.1. The sanction imposed is disproportionate or inconsistent with sanctions imposed on other employees in similar circumstances
 - 16.7.2.2. New evidence has come to light since the original hearing which needs to be considered
 - 16.7.2.3. The Council has failed to follow its absence management policy and procedure
- 16.7.3. An appeal hearing will be arranged as soon as reasonably practicable and the employee will be given reasonable written notice of usually not less than three working days.
- 16.7.4. The hearing will be chaired by a manager at the same level as the manager who issued the warning. In cases of dismissal, the hearing will be chaired by a Service Director not previously involved in the case or a senior manager. In both cases, another manager not previously involved in the case will make up the panel and a member of the HR team may be present.
- 16.7.5. At the hearing, the employee will be asked to give their reasons for appealing, referring to any relevant evidence and the chair of the absence hearing panel may be asked to attend the appeal hearing to explain the rationale for their decision.
- 16.7.6. Once all evidence has been considered, the hearing should be adjourned to allow the panel to consider the information put before them. If the panel requires further information or clarification prior to making a decision, this should be sought as a matter of urgency and the employee advised that there will be a delay in reaching an outcome.
- 16.7.7. Once a decision has been reached, the hearing should be reconvened or a letter written to the employee to inform them of the outcome.
- 16.7.8. The outcome of the appeal could be that the appeal is upheld or it is not upheld. This will be confirmed in writing within five working days of the hearing unless there has been a delay due to additional evidence or clarification being sought.
- 16.7.9. The decision of the appeal hearing is final and there is no further right of appeal.
- 16.7.10. If the employee is appealing against a decision to dismiss them, their dismissal date will be effective from the date in their dismissal letter, unless their appeal is upheld. The employee's employment will not continue whilst a decision regarding their appeal is reached. If the appeal is upheld, the employee will be reinstated with no break in their continuous service and their pay will be backdated to the date of dismissal.

17. Long Term Absence Management Procedure

Long term absence is defined as a period of medically certified sickness absence that is continuous for at least two weeks.

- 17.1. When an employee is suffering a long term illness, line managers are expected to exercise judgement in respect of the appropriate timing of Occupational Health referrals and the scheduling of meetings based on the individual circumstances (e.g. it may not be appropriate to make arrangements if the employee is seriously ill or could not reasonably be expected to attend). HR can advise as appropriate.
- 17.2. Normally after two weeks, or earlier if long term absence can be predicted, the manager should invite the employee to a meeting, accompanied by a member of the HR team. This must be confirmed in writing and may take place either at the employee's home or workplace if their medical condition allows. The meeting will:
 - 17.2.1. Help to gain further information relating to the absence,
 - 17.2.2. Inform the employee that they will be referred to Occupational Health to establish the likely length of the absence and the long term effect on capability in relation to job performance and attendance at work,
 - 17.2.3. Address, where possible, any needs or concerns of the employee,
 - 17.2.4. Determine whether the employee may qualify as having a disability under the Equality Act 2010,
 - 17.2.5. Consider offering appropriate alternative work if this would enable the employee to return to work
- 17.3. On receipt of the Occupational Health report a further meeting will be arranged with the line manager and the employee. HR may be present. The purpose of the meeting will be to discuss the report and to give consideration to the options available which may include:
 - 17.3.1. The employee being expected to be fully fit for their duties on an on-going basis in the near future, setting a possible start date and possibly including a phased return to work and/or temporary modification of duties for an interim duration,
 - 17.3.2. The employee being capable of undertaking modified duties, giving consideration to making reasonable adjustments within the workplace (e.g. amended duties, part-time working, redeployment, re-training)
 - 17.3.3. If no improvement can be expected in the short term, stating when reviews will take place and whether the employee requires further medical treatment or referral
- 17.4. Should the individual be unable to fulfil the duties of a post within the council for the foreseeable future, consideration should be given to whether an application for retirement on the grounds of ill health is recommended, if the employee is in the Local Government Pension Scheme. An Occupational health doctor will be required to assess the case and any ill health retirement recommendations will be subject to the discretion of the employer.
- 17.5. The employee must provide a contact point during the absence and maintain contact with their line manager, keeping them informed of any changes in condition and at regular intervals. The manager will be able to contact the employee directly or via family members or other intermediaries (e.g. Occupational Health) depending

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on the medical condition and advice. If an employee refuses to maintain contact sick pay may be withheld and the Disciplinary procedure may be invoked.

- 17.6. Depending on circumstances, the employee may not be allowed to return to work until Occupational Health has declared them fit to return. Where declared fit an employee must return to work.
- 17.7. A formal warning for sickness absence may be issued where appropriate for staff who are absent for more than 2 weeks. This must be confirmed in writing to the employee, clarifying that exceeding 2 formal warnings in a rolling 12 month period may result in dismissal.

17.8. Redeployment on medical grounds

- 17.8.1. Finding alternative employment will only be considered where it is necessary for medical reasons, in instances of long term sickness and disability related absence, and recommended by Occupational Health. The initial search for an alternative role should be explored within the service and/or directorate prior to considering a move across the Council.
- 17.8.2. Individuals must be aware that there may be occasions where alternative roles cannot be sourced or would not be suitable. In those instances, where relevant, ill health retirement will be considered or ultimately dismissal due to capability with notice.

17.9. Ill Health Retirement

- 17.9.1. Retirement on the grounds of ill health can only be considered after all other options have been exhausted, and where an independent registered medical practitioner, qualified in Occupational Health medicine, has determined that an employee meets the criteria for ill health retirement, in accordance with the Local Government Pension Scheme (LGPS) Regulations.
- 17.9.2. LGPS Regulations require that for there to be an entitlement to an ill health retirement pension:
- the employer has to terminate the member's employment on the grounds of ill health or infirmity of mind or body before the member's Normal Pension Age and;
 - before deciding whether the member meets the conditions for an ill-health retirement pension and, if so, which tier of benefit to award, the employer must obtain a certificate from an Independent Registered Medical Practitioner (IRMP) who has been approved by the administering authority
- 17.9.3. The following criteria have to be satisfied before an ill health retirement can take place:
- The member's employment must be terminated by the employer on the grounds of ill health or infirmity of mind or body.
 - At the date of termination the member must be under their Normal Pension Age in the current 2014 scheme.
 - At the date of termination the member must have met two years' qualifying service in the LGPS.

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- The member must, as a result of ill health or infirmity of mind or body, be permanently incapable of discharging efficiently the duties of the employment the member was engaged in and;
- The member, as a result of ill health or infirmity of mind or body, must not be immediately capable of undertaking any gainful employment. (Gainful employment is defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months).

17.9.4. Where ill health retirement is an option because an employee is deemed to be permanently incapable of doing their job, one of three tiers of benefit can be awarded. Each tier looks at the employee's capacity to carry out gainful employment in the future.

17.9.5. An IRMP, who has had no previous dealings with the case, will be engaged by the Occupational Health provider to carry out an ill health retirement assessment. This will be organised through HR.

17.10. Termination of employment on grounds of capability due to ill-health

17.10.1. Where long term sickness absence continues and there is no prospect of a return to work within a reasonable timeframe or an employee is unable to maintain their attendance due to an ongoing medical condition, consideration will be given to escalation to a Final Absence Hearing on the grounds of capability due to ill health. This Hearing may result in the employee's dismissal (see section 16.6). The hearing will need to review whether all reasonable adjustments have been considered and whether an alternative role has been found/cannot be found/is not considered suitable.

17.10.2. If termination of employment on grounds of capability is given, notice will be based on full pay, even if the sick pay entitlement is exhausted, or pay in lieu of notice may be given (N.B. Dismissal may take place before sick pay expires).

17.10.3. Employees have a right of appeal against termination of employment on ill health grounds and must be advised of that right. Any appeal must be made in writing to HR, following the appeal process detailed at 16.7.

18. Right to be accompanied

18.1. Employees have the right to be accompanied by a fellow worker or trade union representative at any formal meeting or subsequent appeal during this process.

18.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process.

18.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the grievance and anyone who has previously behaved inappropriately during a hearing.

18.4. If the employee's trade union representative or workplace colleague is not available at the time arranged for the hearing, the employee may request an alternative hearing date provided that it is within a reasonable timeframe, which will be determined by the chair of the panel. A postponement will normally also be granted

where, to do otherwise would seriously prejudice the ability of either party to present their case. A hearing will normally only be rearranged once and the chair of the hearing may determine an outcome on the evidence available without the employee being present if they are unable to attend a hearing that has already been rearranged.

19. Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.

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Thanet District Council Bullying & Harassment Policy & Procedure

October 2022/Final/HR

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Key Points:

- Where it is appropriate to do so, complaints of bullying and harassment should be dealt with informally in the first instance. If this fails to resolve the problem or an informal approach is inappropriate in the circumstances, the formal approach will be used.
- In any allegation, it is not the intention of the perpetrator that is key in deciding if harassment or bullying has occurred, but whether the behaviour is unacceptable by *reasonable normal standards*, and is disadvantageous or unwelcome to the person or people subjected to it or witnessing it. This does not mean that allegations of bullying and/or harassment are automatically founded but rather that the decision as to whether there is any merit to the complaint(s) will be determined by the investigating manager based upon these principles.
- In cases where allegations of bullying and/or harassment are founded, it is likely but not automatic that the disciplinary process will be instigated.
- Employees who raise complaints related to bullying and harassment will not suffer any detriment as a result of doing so. However, in cases where the complaint(s) are deemed to be vexatious disciplinary action may be taken.
- Victimisation of employees who raise such complaints or who act as witnesses in these cases will not be tolerated and may result in disciplinary action being taken.
- Employees can choose to be accompanied by a trade union representative or workplace colleague at any formal meeting, including appeals.

- The HR team should be contacted prior to initiating any formal process and, if necessary, for advice around the informal process.
- Confidentiality will be given the utmost importance at all stages of the procedure.
- Before raising a complaint either formally or informally, you should ensure that you are able to substantiate the claims that you are making and provide any supporting evidence, as appropriate.

1. Introduction

Thanet District Council aims to support the creation of a work environment that is free from discrimination, harassment and bullying. This means an environment where everyone is treated with dignity and respect and no one is treated less favourably than any other person or group of persons on the grounds of their gender, age, disability, race, sexual orientation, gender reassignment status, religion and belief, pregnancy and maternity, marriage and civil partnership status or any other characteristic.

The purpose of this policy and procedure is to encourage a working environment in which bullying and harassment are always unacceptable and where individuals have the confidence to complain about bullying and harassment should it arise, in the knowledge that their concerns will be dealt with appropriately and fairly. Complaints will not be ignored but investigated swiftly and confidentially ensuring the rights of all are protected.

2. Scope

- 2.1. This policy and procedure applies to all employees other than the Chief Executive, Section 151 and Monitoring Officer for whom separate arrangements apply. Please see separate [Grievance Policy for Statutory Officers](#).
- 2.2. Cases which relate to a Non-Statutory Chief Officer can be considered by other Non-Statutory Chief Officers, the Section 151 Officer, the Monitoring Officer and/or the Chief Executive, as appropriate and in accordance with sections 9 and 10 of this policy. In the event that there are insufficient panel members to consider an appeal process, the Council will engage an appropriate external party to act as the decision maker on its behalf.
- 2.3. The policy covers bullying and harassment in the workplace and in any work related setting outside the workplace, for example business trips or any work related social events. It also covers contact between colleagues outside of working hours such as through social media or messaging apps.

3. Roles & Responsibilities

Employees will:

- Ensure that their interactions with their colleagues are respectful and that their relationships remain professional at all times;
- Report incidents of bullying and harassment that they have witnessed or experienced to an appropriate manager as soon as they occur;
- Cooperate fully in meetings to discuss allegations of bullying and harassment;
- Seek clarification if they are unsure of the standards of behaviour expected of them;

- Ensure they are aware of the types of behaviour which might constitute bullying and harassment.

Managers will:

- Ensure they and their employees act in accordance with this policy;
- Remain impartial and keep an open mind when considering the points raised by all parties
- Make effective use of the council's informal mechanisms to address concerns raised by employees wherever possible;
- Keep comprehensive records of the above activities and their success / failure to improve standards accordingly;
- Seek guidance from the HR team as soon as they become aware of an incident which may constitute bullying or harassment;
- Make arrangements for their employees to be released from normal duties as appropriate, if involved in this process;
- Make any necessary arrangements for hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

HR will:

- Monitor employment legislation relating to bullying and harassment at work and support the council to review and amend this policy as appropriate;
- Provide support, guidance and training to the council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Encourage all employees to promote and maintain the standards of behaviour expected by the council;
- Support managers to act fairly and consistently in relation to bullying and harassment matters;
- Encourage managers and employees to attempt to resolve issues informally in the first instance;
- Participate, and/or encourage managers to participate in the formal Procedure when required, ensuring release from normal duties where appropriate;
- Attend training on the application of this policy;

4. Definitions

4.1. The words bullying and harassment are often used interchangeably in the workplace. The impact on the individual can however be the same. Harassment and bullying which amounts to conduct defined as harassment in the Equality Act 2010, could ultimately result in a complaint to an Employment Tribunal.

4.2. **Harassment:**

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- 4.2.1. Under the Equality Act 2010, harassment is ‘... unwanted conduct which is related to a relevant protected characteristic which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile or degrading, humiliating or offensive environment for that individual’.
 - 4.2.2. The relevant protected characteristics in respect of harassment are age, disability, gender reassignment, race, religion or belief, sex, sexual orientation. (Note: Whilst marriage and civil partnership, pregnancy and maternity are not protected characteristics directly under the harassment provisions of the Equality Act, pregnancy and maternity harassment would amount to harassment related to sex, and harassment related to civil partnership would amount to harassment related to sexual orientation).
 - 4.2.3. To make a complaint of harassment, the complainant doesn’t need to possess the relevant characteristic themselves; it can be because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one, or are treated as if they do.
- 4.3. **Bullying:**
- 4.3.1. ACAS defines bullying as: ‘...offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient’.

5. When does and doesn’t bullying & harassment occur?

- 5.1. A single incident may amount to bullying or harassment - it does not have to be a series of events.
- 5.2. It is also not necessarily that the behaviour in question was directed at the employee, bullying or harassment can include behaviour which creates an intimidating and offensive environment for those who witness that behaviour.
- 5.3. Bullying and harassment may not necessarily be face to face but may occur through written communications, visual images, email, phone, through social media and by exclusion.
- 5.4. Although not an exhaustive list, the following are examples of behaviour that may constitute bullying or harassment:
 - 5.4.1. Any form of unjustifiable discrimination harassment, threatening or bullying behaviour on the grounds of race, sex/gender, sexual orientation, marital status, disability, age, religion or belief, whether or not the subject of current legislation
 - 5.4.2. Offensive, abusive or intimidating comments, insensitive jokes or pranks, derogatory or stereotypical remarks.
 - 5.4.3. Sexual jokes, comments or gestures.
 - 5.4.4. Displaying or distributing pornographic material, abusive literature or graffiti or other material that some people may find offensive.
 - 5.4.5. Deliberately excluding someone from conversations, work activities or activities outside work.
 - 5.4.6. Unwelcome sexual advances or suggestive behaviour.
 - 5.4.7. Unwanted physical contact including touching, kissing, pinching, grabbing.

- 5.4.8. Ridiculing, humiliating or belittling someone.
- 5.5. Although not an exhaustive list, the following are examples of behaviour that would not constitute bullying or harassment:
 - 5.5.1. Legitimate and reasonable feedback provided by a manager to an employee about their performance or conduct.
 - 5.5.2. Reasonable refusal of employee requests, e.g. for leave or changes to working arrangements

6. Policy & Procedure Principles

- 6.1. The Council expects that allegations concerning bullying and harassment will be raised as soon as practically possible after the incident(s) and without unreasonable delay.
- 6.2. Bullying or harassment of employees by visitors to the council will not be tolerated. Where there is an allegation against a third party e.g. a customer, supplier or visitor, the complaint should be made to the employee's line manager who will then discuss with the employee how best to deal with the situation. The council will act to provide full support to the employee in this situation.
- 6.3. Whilst the council will aim to respect confidentiality of any employee's concerns or complaints there are occasions where, as part of its duty of care, or legal responsibilities, the council reserves the right to investigate and take forward matters without their consent.
- 6.4. In any allegation, it is not the intention of the perpetrator that is key in deciding if harassment or bullying has occurred, but whether the behaviour is unacceptable by *reasonable normal standards (i.e. it is behaviour that is unlikely to have been exhibited by most other people in the same circumstances and/or is likely to breach the Council's Code of Conduct)*, and is disadvantageous or unwelcome to the person or people subjected to it or witnessing it. What one employee may find acceptable, another may not and therefore all employees should ensure that they treat their colleagues with respect. This does not mean that allegations of bullying and/or harassment are automatically founded but rather that the decision as to whether there is any merit to the complaint(s) will be determined by the investigating manager based upon these principles.
- 6.5. In considering *reasonable normal standards*, the provisions included in the Equality Act 2010 will be taken into account.
- 6.6. Employees may choose to be accompanied by a trade union representative or a workplace colleague throughout the formal stages of the procedure.
- 6.7. This procedure sets timescales to ensure that any complaint is dealt with in a timely manner. However, these may be extended in consultation with the HR team to ensure a fair process.
- 6.8. Audio/visual recordings of the proceedings are not acceptable at any stage of the procedure and are not admissible within this process, unless agreed as a reasonable adjustment for an employee with a disability.
- 6.9. In cases where serious allegations are made which may prevent employees from working constructively together whilst they are being dealt with, consideration will be given to making reasonable adjustments to working practices/arrangements for the benefit of all parties.

7. Informal Resolution

- 7.1. An employee who feels that they are being subjected to bullying, harassment, discriminating or unfair treatment, may attempt to resolve the matter informally in the first instance. This might include explaining clearly to the person(s) engaged in the unwanted activities that their behaviour is unwelcome, unacceptable, or is causing offence, or makes them uncomfortable and request that the behaviour stops.
- 7.2. It is recognised that sometimes an individual may not be aware how their behaviour or conduct is impacting on another individual. Making that individual aware may be sufficient to stop the bullying or harassment.
- 7.3. An employee can choose to raise the matter informally and directly with the offending employee. If the employee finds this too difficult or embarrassing, they may wish to be accompanied by a friend/colleague, or who may make representations to the offending employee on their behalf.
- 7.4. Alternatively, the employee may seek advice and/or support from HR, a manager or a trade union representative on other possible approaches.
- 7.5. The employee may also wish to seek counselling or advice from the Employee Assistance Programme (EAP) or seek mediation support via the HR Team

8. Vexatious Complaints

- 8.1. The council recognises the right of employees to raise complaints relating to their employment. However, the council also recognises that, occasionally, this process is open to misuse or abuse through the raising of complaints that are petty, repetitive and/or vexatious.
- 8.2. In this situation, the manager in receipt of the complaint should seek advice from the HR team and determine whether the grievance is petty or clearly unfounded. It may be that it is immediately obvious from the content of the complaint or it may be that an initial conversation with the employee and/or other parties is required before this can be determined with any certainty.
- 8.3. A complaint could be considered to be petty or vexatious if it appears to have been raised in bad faith. This might be for a number of reasons, including that it has no reasonable prospect of success, it is a repeat of issues which have been raised and dealt with previously and/or it is not an issue that is reasonable to complain about. To some extent this judgement may be informed by whether the individual employee has a history of submitting petty or unfounded complaints but ultimately it will be based upon the content of the complaint itself and the outcome of any initial discussions.
- 8.4. Individual complaints can be deeply held and serious consideration will be given to the merits of each individual case. A decision to classify a complaint as petty or unfounded will result in it not being taken any further so will not be taken lightly.
- 8.5. If it is believed that an employee is deliberately wasting council time and resources in this way, the decision on how to proceed will be taken by a manager at an

appropriate level¹ who has no conflict of interest in the matter and in consultation with the HR Manager. If it is deemed that it constitutes a vexatious complaint, it may result in no further action taken on the complaint or, in the worst case, disciplinary action being taken against the employee who raised the complaint.

- 8.6. The decision will be confirmed to the employee in writing and it will be clearly explained to the employee why this decision has been taken. The Council will then deem the matter to be closed.
- 8.7. Likewise, if an investigation as part of the formal process shows that a complaint is unfounded and has been raised vexatiously, this may lead to disciplinary action against the person who raised the complaint.

9. Malicious Complaints

- 9.1. A malicious complaint is one which is raised with the intention of causing harm, for example to defame a colleague or manager and is based upon rumour, gossip or fabrication. Complaints which are found to have been raised with the sole intention of delaying or disrupting a disciplinary process will also be considered to be malicious.
- 9.2. If, during the process of considering a complaint, the manager has concerns that it may be malicious, they should seek advice from the HR team as to whether there is sufficient evidence to substantiate these concerns.
- 9.3. Complaints of bullying and harassment can be deeply held and serious consideration will be given to the merits of each individual case and the evidence available.
- 9.4. If it is believed that there is sufficient evidence that the complaint is malicious, it may result in no further action being taken on the complaint and/or, in the worst case, disciplinary action being taken against the employee who raised the complaint.

10. Formal Procedure

- 10.1. Where it hasn't been possible to resolve issues informally or where the employee is uncomfortable raising it informally, they should raise their complaint in confidence with their manager, or a member of the HR team or their trade union representative for advice and assistance. If their manager is the subject of their complaint, or they would be more comfortable raising the matter with someone else (e.g. someone of the same sex), employees should raise their complaint with a more senior manager.
- 10.2. The employee should set out the details of the complaint in writing confirming:
 - the name of the alleged bully/harasser,
 - the nature of the behaviour and if possible outlining specific examples
 - the dates and times of when the bullying or harassment took place,
 - the names of any witnesses or other individuals they believe to have been subject to the same behaviour
 - what action, if any, they have taken to date to seek to address the issue.
 - what outcomes they might be looking for.
- 10.3. The manager receiving the complaint will be the person to consider it, in most cases. If, for any reason, this is not appropriate, the manager in receipt of the

¹ This may be the manager in receipt of the grievance or it may be passed to another manager, depending on the circumstances of the case.

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complaint will contact HR and an alternative manager will be identified. This may be a manager at the same or a higher level to the manager who received the complaint.

- 10.4. A meeting will be arranged as soon as is reasonably practicable, normally within ten working days of receipt of the complaint. The purpose of this meeting is for the employee to explain their complaint in more detail, what outcome they are seeking and how they think it should be resolved. The employee will have the right to be accompanied by a trade union representative or workplace colleague at this meeting.
- 10.5. Where appropriate, the manager may adjourn the meeting in order to undertake further investigations. In most cases, it will be the manager who is considering the case who will also undertake the investigation but in exceptional circumstances, another suitable manager/employee may be asked to investigate. This is only likely to be in cases where the situation is particularly complex and doing so is likely to expedite the process.
- 10.6. As part of this investigation, the employee(s) with complaints made against them will be provided with the details of the complaint(s) that are relevant to them, up to and including full disclosure. This will be provided in advance of an investigatory meeting at which they will be given the opportunity to respond. They will also be provided with support from another manager not involved in the process or a member of the HR team who they can contact should they wish to talk to someone, access information etc.
- 10.7. Following the meeting and any subsequent investigation, you will be informed of the outcome in writing as soon as is reasonably practicable and, wherever possible, within five working days.
- 10.8. Where appropriate, you will also be informed of any action that the Council proposes to take as a result of your complaint but the progress and outcome of any subsequent actions or processes will not be shared.
- 10.9. Whilst the outcome of the hearing and any investigation will remain strictly confidential, employees involved with the investigation will be advised when the process has completed and the manager responsible for the process will discuss any aspect of the outcome that is relevant to them.
- 10.10. In cases where allegations of bullying and/or harassment have been upheld or partially upheld; the manager who has considered the case will make a recommendation for action in accordance with the disciplinary policy and procedure. This may be at the informal or formal stage, depending upon the circumstances and the recommendation will be made to the manager of the employee against whom the allegation has been made. The process will then transfer over to the Disciplinary Policy and the employee's manager should seek advice from HR as to whether additional investigation is required prior to the implementation of any formal disciplinary action.

11. Appeal

- 11.1. If you are dissatisfied with the outcome of the formal process, you can appeal the decision.
- 11.2. An appeal must be made in writing to HR within five working days of receipt of the written outcome. This must detail the grounds of appeal i.e. the basis on which you

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think that the result of the formal process was wrong or that the action taken as a result was inappropriate.

- 11.3. A manager not previously involved in the process of the same level or more senior to the manager who considered the formal complaint will consider the appeal.
- 11.4. Depending on the circumstances of the case, the appeal may be dealt with as a paper exercise taking into consideration the content of the written appeal and the details of the outcome or an appeal hearing may be arranged. Either way, the approach to be taken will be confirmed in writing as soon as reasonably practicable and usually within five working days of receipt of the appeal. This will include either the timescale in which the manager will consider the appeal or an invitation to an appeal hearing which will be as soon as is reasonably practicable.
- 11.5. The appeal is not a rehearing of the original case but a consideration of whether the conclusion reached in the original hearing was appropriate and the action taken within a range of reasonable responses. If there is an appeal hearing, the manager considering the appeal may, therefore, confine discussions to those specific areas rather than reconsider the whole matter afresh.
- 11.6. The outcome of the appeal may be to overturn or uphold the original decision or apply a different resolution.
- 11.7. The outcome of the appeal is final and will be confirmed in writing as soon as is reasonably practicable but usually within five working days of the appeal being considered.

12. Right to be accompanied

- 12.1. Employees have the right to be accompanied by a fellow worker or trade union representative at any formal meeting or subsequent appeal during this process.
- 12.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process.
- 12.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the grievance and anyone who has previously behaved inappropriately during a hearing.
- 12.4. If the chosen companion is not available on the given hearing date, the employee can request an alternative date provided that it does not unduly delay the process. If the chosen companion is not available for the alternative date, the employee may choose an alternative companion or proceed without one.
- 12.5. Employees who are interviewed as part of an investigation into allegations raised in a grievance do not have a statutory right to be accompanied. They may, however, request a colleague or trade union representative to accompany them at the investigatory meeting and it will be for the manager considering the case to determine whether or not it is appropriate. If the employee is allowed to be accompanied, the role of their companion will be to provide moral support and not to speak on behalf of the employee. In determining whether or not to allow the employee to be accompanied, the manager will consider any potential conflict of interest such as whether the requested companion has had any prior involvement with the case and will ensure that they agree to maintain confidentiality.

13. Confidentiality

- 13.1. During this procedure (and after it is completed) the need to maintain confidentiality is of paramount importance. All employees have a personal responsibility for ensuring that information they receive remains confidential whether it is written or verbal and whether it is received directly or indirectly. This should be advised and reiterated to all those involved in any hearings or investigations.
- 13.2. Access to confidential information should be limited to those who 'need to know'. For example, witnesses who are interviewed as part of an investigation need only be informed of the aspects of the grievance that are relevant to them. This is to enable them to provide an accurate statement and ensure they have a fair opportunity to respond to any allegations made against them.

14. Records

Records should be kept of the nature of the complaint raised, meetings held, the manager's response, any action taken and the reasons for it. These records should be kept confidential and retained in accordance with the HR Retention Schedule. Copies of any meeting records should be given to the individual concerned although in certain circumstances some information may be withheld, for example to protect a witness. Copies of all documentation should be sent to HR for retention on the employee's file.

15. Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.



Thanet District Council Disciplinary Policy & Procedure

October 2022/Final/HR

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Key Points:

- Managers may discuss a misconduct issue with an employee informally before taking formal action. If this fails to resolve the problem or an informal approach is inappropriate in the circumstances, the formal approach will normally be used.
- No formal disciplinary action will be taken without:
 - A timely and reasonable investigation to establish the facts;
 - A meeting at which the employee is allowed to set out their case and answer any allegations made; and
 - The right of appeal being outlined
- Employees have a statutory right to be accompanied by a trade union representative or workplace colleague at any formal meeting which could result in the issue of any disciplinary action, including appeals.
- The HR team should be contacted prior to initiating any formal process and, if necessary, for advice around the informal process.
- Confidentiality will be given the utmost importance at all stages of the procedure.
- Dismissal is only likely to be considered as an outcome in cases of gross misconduct or repetitive misconduct cases where other sanctions have already been exhausted or are no longer appropriate.

1. Introduction

We strive to ensure through our policies that staff can deliver excellence in all that they do and we try to find creative and innovative ways of working together to achieve that excellence. We will be open and accountable in all of our dealings with you and value and respect your views and contributions at all times.

This policy is for use in situations when employee conduct falls below what we would reasonably expect and addresses situations which could be deemed to constitute misconduct and/or gross misconduct whilst ensuring that employees are treated fairly and consistently.

2. Scope

- 2.1. This policy and procedure applies to all employees other than those in their probationary period, the Chief Executive, Section 151 Officer and Monitoring Officer for whom separate arrangements apply.
- 2.2. Cases which relate to a Non-Statutory Chief Officer can be considered by disciplinary and appeal panels comprising of other Non-Statutory Chief Officers, the Section 151 Officer, the Monitoring Officer and/or the Chief Executive, as appropriate and in accordance with sections 8 and 10 of this policy. In the event that there are insufficient appropriate panel members to consider an appeal process, the Council will engage an appropriate external party to act as the decision maker on its behalf.
- 2.3. This policy and procedure applies to issues relating to misconduct and gross misconduct. Where issues relate to capability, consideration needs to be given to whether these issues are believed to be attributable to a wilful refusal to work. Where that is the case, this procedure should apply.
- 2.4. Where there is a willingness to perform but employees are currently unable to perform duties in a satisfactory manner, managers should refer to the Performance & Capability Procedure.
- 2.5. When dealing with capability on the grounds of ill health, managers should refer to the Sickness Absence Management Procedure.
- 2.6. Managers can move from one procedure to another at a comparable stage in light of a change in circumstances and where it is appropriate to do so.

3. Roles & Responsibilities

Employees will:

- Strive to conduct themselves in a professional manner and deliver excellence in everything that they do;
- Cooperate fully in meetings to discuss their conduct;
- Seek clarification if they are unsure of the standards of conduct expected of them;
- Ensure they are aware of the types of behaviour which might constitute misconduct and gross misconduct.

Managers will:

- Lead by example and ensure that they and their employees act in accordance with this policy;
- Make effective use of the council's informal mechanisms to maintain standards of conduct amongst employees;
- Keep comprehensive records of the above activities and their success / failure to improve standards accordingly;
- Regard the use of the formal Disciplinary Procedure as a last resort;
- Seek guidance from the HR team as soon as they become aware of an incident which may constitute misconduct or gross misconduct;
- Make arrangements for their employees to be released from normal duties as appropriate, if involved in the conduct process;
- Make any necessary arrangements for disciplinary hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

HR will:

- Monitor employment legislation relating to conduct at work and support the Council to review and amend this policy as appropriate;
- Provide support, guidance and training to the Council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Encourage all employees to promote and maintain the standards of conduct expected by the council;
- Ensure that managers are acting fairly and consistently in relation to conduct matters;
- Participate, and/or encourage managers to participate in the formal Disciplinary Procedure when required, ensuring release from normal duties where appropriate, to ensure investigations are dealt with swiftly;
- Attend training on the application of this policy.

4. Policy & Procedure Principles

- 4.1. Except in cases of gross misconduct, this procedure is primarily concerned with helping and encouraging employees to improve rather than just being a way of imposing disciplinary sanctions. It aims for an outcome that is fair, reasonable and constructive.
- 4.2. Managers are responsible for informing staff of the council's expected standards of behaviour, enforcing rules and ensuring that any breaches are tackled promptly.

- 4.3. Before suspending, placing on alternative duties or taking formal action against an employee under this procedure, managers should consult the HR team.
- 4.4. The whole process must be given a high priority by the manager, the employee concerned and anyone else involved in the process and be dealt with in a timely manner.
- 4.5. A decision whether or not to take disciplinary action must be made with the minimum delay and communicated to those involved.
- 4.6. No formal disciplinary action will be taken without a prompt and appropriate investigation by a trained investigating officer to establish the facts of the case.
- 4.7. Dismissals can only be carried out by managers with the appropriate delegated authority. This applies automatically to the Chief Executive, Corporate and Service Directors. In exceptional circumstances, the Chief Executive can delegate this authority to another manager if appropriate. Managers should always check that they have the appropriate authority prior to any disciplinary hearing being arranged where dismissal is a possible outcome.
- 4.8. At every stage of the procedure, the relevant manager will decide whether disciplinary action is justified. If disciplinary action is not warranted, the manager will inform the employee of this decision at the earliest opportunity.
- 4.9. Dismissal is only likely to be considered as an outcome in cases of gross misconduct or repetitive misconduct cases where other sanctions have already been exhausted or are no longer appropriate.
- 4.10. The procedure allows for the issuing of warnings, the severity of which will depend on the seriousness of the misconduct. The hierarchy of warnings is not, therefore, intended to be sequential, but instead a judgement will be made about the level of sanction appropriate to the circumstances by the disciplinary panel.
- 4.11. In the case of employees who are trade union representatives, no disciplinary action should be taken until the circumstances have been discussed with a Regional Representative.
- 4.12. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance or it may be appropriate to deal with both issues concurrently.
- 4.13. Audio/visual recordings of the proceedings are not acceptable at any stage of the disciplinary procedure and are not admissible within this process, unless agreed as a reasonable adjustment for an employee with a disability.

5. Informal Action

- 5.1. Wherever possible, managers should deal with minor shortcomings in conduct and/or behaviour informally in the first instance. Where appropriate this may be achieved by giving informal advice, coaching and counselling.
- 5.2. The purpose of the informal meeting is to allow the manager and the employee to discuss the issue or problem on a one to one basis for the manager to advise as to where they are not attaining the expected standard of behaviour and/or conduct, what the expected standards are and how they will be supported to achieve them.
- 5.3. This does not form part of the formal disciplinary process and any action taken does not constitute formal disciplinary action. As such, there is no right for the employee to be accompanied at these meetings. In exceptional circumstances, managers may

allow an employee to be accompanied where they believe doing so may help to facilitate a positive outcome and where it would not cause undue delay to the process.

- 5.4. At the end of the informal meeting the manager will check that the employee understands what needs to be done, how it will be reviewed and over what period of time. A review date or dates may be set to evaluate progress. The manager should advise the employee that if there is no improvement then the formal procedure may be initiated. Documentation confirming that the meeting took place and the outcome, will be kept for reference purposes. When the actions are reviewed, if there has been improvement as agreed then this should be acknowledged by the manager and any temporary arrangements put in place to support the improvement should be reviewed to determine whether they are still required.
- 5.5. If the informal stage does not bring about an improvement, or the misconduct is considered to be too serious to be dealt with informally, managers should seek advice from HR around instigating the formal process.

6. Suspension

- 6.1. An employee may be suspended from duty on full pay if:
 - 6.1.1. The employee's continued presence constitutes a risk to the Council, other staff or customers,
 - 6.1.2. To safeguard the employee and others by providing a 'cooling off period' for all parties involved
 - 6.1.3. To facilitate a full and proper investigation which their continued presence could prevent
- 6.2. The line manager should complete the suspension checklist at appendix 2 of this policy in conjunction with HR before seeking a decision on suspension from their Service Director or another member of the Corporate Management Team.
- 6.3. The decision to suspend can only be taken by a Service Director or member of the council's Corporate Management Team who should firstly always consider alternatives to suspension such as a temporary change to duties or transfer of workplace.
- 6.4. Where it is considered appropriate, the line manager will usually conduct the suspension meeting once agreed in accordance with 6.2. During this meeting, employees should be informed of the terms of the suspension and that, whilst it is part of the formal process, it does not constitute disciplinary action. Whilst suspended, employees must not access any work premises or contact any work colleagues without the specific permission of a designated contact.
- 6.5. Details, including the reasons for the suspension, should be confirmed in writing to the employee.
- 6.6. Whilst suspended from duty, employees are able to apply for and take annual leave, In all cases, employees should inform the designated contact of any intention to take leave. Unless employees have been prevented from taking leave whilst suspended, employees will not normally be granted the carry-over of leave from one leave year to the next due to being suspended.

- 6.7. The continued need for suspension of the employee will be kept under constant review and will be monitored by the HR team. The period of suspension should be as brief as possible.
- 6.8. On any occasion when an employee is suspended under this procedure they shall be offered the opportunity of counselling support.

7. Investigation

- 7.1. No formal disciplinary action will be taken without a timely and reasonable investigation to establish the facts.
- 7.2. Investigations will only be undertaken by a trained investigating officer.
- 7.3. In the case of a suspected financial irregularity, the manager must inform the Section 151 officer of all allegations or suspicions at the earliest opportunity.
- 7.4. The investigation may require employees and witnesses to be interviewed to establish the facts. As far as possible, all witness statements should be in the form of Q&A by the investigating officer and should be signed and dated. In some cases, it may be appropriate to take a preliminary statement from witnesses that could then be explored in more detail during the investigation.
- 7.5. Employees should be given reasonable notice of any investigation meetings/interviews and to be made aware of the nature of the allegations or concerns being expressed in writing in advance of the meeting.
- 7.6. All investigations will be concluded in a timely manner as far as is reasonably practicable. The investigating officer will seek advice from HR before determining whether formal disciplinary action is necessary, based on the findings within their report.
- 7.7. In cases where formal disciplinary action is required, the investigating officer will liaise with HR to arrange a disciplinary panel chaired by an appropriate manager.
- 7.8. In cases where it is decided that either informal action or no further action at all is recommended, the investigating officer should inform the individual and/or their line manager as soon as possible.

8. Hearing

- 8.1. Before any formal disciplinary sanction is issued, the employee shall be given the opportunity to hear the allegations and to explain their actions to the hearing panel in the form of a disciplinary hearing.
- 8.2. The panel may be chaired by the employee's manager, one of their peers or a more senior manager depending on the circumstances of the case. Another officer or manager not previously involved in the case will make up the panel. An HR representative will provide advice and guidance on policy and process, including on the appropriateness of the panel members.
- 8.3. The employee will be given reasonable written notice of no less than three working days of the disciplinary hearing detailing the nature of the allegation, any witnesses to be called and the employee's right to be accompanied by either a trade union representative or workplace colleague. A copy of the investigation report will also be supplied. In cases where dismissal could be an outcome, the employee should be informed that the hearing may result in dismissal.

- 8.4. Any documentary evidence to be used and details of any witnesses to be called at the time of the disciplinary hearing by the employee in their defence should be submitted to the panel at least twenty four hours prior to the hearing.
- 8.5. The investigating officer will present the case at the hearing but will not be part of the decision making process.
- 8.6. New allegations are not normally introduced at the hearing, and if any new matters come to light in the course of the hearing that cannot be dealt with then it may be necessary to adjourn the hearing for further investigation to take place.
- 8.7. Once all evidence has been considered, the hearing should be adjourned to allow the panel to consider the information put before them. Once a decision has been reached, the hearing should be reconvened or a letter written to the employee to inform them of the outcome.
- 8.8. The potential outcome of the hearing could be no action, action deemed reasonable and appropriate outside of the disciplinary procedure (e.g. training, demotion), first written warning, final written warning or dismissal.
- 8.9. Following the hearing, the employee should be sent written confirmation within five working days, detailing the outcome of the hearing and their right to appeal.

9. Disciplinary Sanctions

- 9.1. The level of sanction applied will take account of all relevant factors; in particular the seriousness of the employee's alleged misconduct.

9.2. First Written Warning

- 9.2.1. A first written warning will be appropriate when issues previously addressed have not been resolved or in more serious breaches of rules or standards of conduct whether or not they have been addressed previously.
- 9.2.2. It will be live on file for a period of 6 months but disregarded for disciplinary purposes after this time.
- 9.2.3. This warning will be taken into account if any further acts of misconduct or failure to satisfactorily improve occur during this period.

9.3. Final Written Warning

- 9.3.1. A final written warning will be appropriate where misconduct of a more serious nature arises but on the merits of the case it is decided that dismissal is not appropriate or where issues that have previously been addressed have not been resolved.
- 9.3.2. It will be live on file for a period of 12 months but disregarded for disciplinary purposes after this period of time.
- 9.3.3. In exceptional circumstances, it may remain live on file for a longer period and this will be advised at the outcome.

9.4. Dismissal/Demotion/Re-deployment

- 9.4.1. Dismissal will be appropriate where there has been an instance of misconduct of any kind in situations where a Final Written Warning is still live.
- 9.4.2. An employee dismissed in this way is entitled to be paid in lieu of the appropriate period of notice as set out in their contract of employment.

- 9.4.3. Other options such as demotion or redeployment will be explored prior to a decision to dismiss being made, if this is deemed appropriate.

9.5. Gross Misconduct/Summary Dismissal

- 9.5.1. Summary dismissal will usually be appropriate in cases which constitute gross misconduct, examples of which are detailed at Appendix 1, although this list is not exhaustive.

10. Disciplinary Appeals

- 10.1. If the employee wishes to appeal against the outcome of a disciplinary hearing, they should do so in writing to HR stating the reasons for their appeal no later than five working days after the outcome letter is received.
- 10.2. An appeal is not a re-hearing of the original case but instead should be based upon one or more of the following principles:
- 10.2.1. The level of disciplinary sanction imposed is disproportionate to the offence or inconsistent with sanctions imposed on other employees in similar circumstances
- 10.2.2. New evidence has come to light since the original hearing which needs to be considered
- 10.2.3. The council has failed to follow its disciplinary policy and procedure
- 10.3. The appeal hearing will be chaired by a manager of the same level or above to the chair of the disciplinary hearing, depending on the circumstances of the case. Another officer or manager not previously involved in the case will make up the panel. An HR representative will provide advice and guidance on policy and process, including on the appropriateness of the panel members.
- 10.4. The appeal hearing will be arranged in a timely and reasonable manner.
- 10.5. The employee will be given reasonable notice in writing of no less than three working days of the appeal hearing detailing who will be conducting the hearing, arrangements in relation to any documents to be forwarded prior to the hearing (if not already enclosed) and the employee's right to be accompanied by either a trade union representative or workplace colleague.
- 10.6. At the hearing, the employee will be asked to give their reasons for appealing, referring to any relevant evidence and the chair of the disciplinary panel may be asked to attend the hearing to explain the rationale for their decision.
- 10.7. Once all evidence has been considered, the hearing should be adjourned to allow the panel to consider the information put before them. If the panel requires further information or clarification prior to making a decision, this should be sought as a matter of urgency and the employee advised that there will be a delay in reaching an outcome.
- 10.8. Once a decision has been reached, the hearing should be reconvened or a letter written to the employee to inform them of the outcome.
- 10.9. The outcome of the appeal could be that the appeal is upheld or it is not upheld. This will be confirmed in writing within five working days of the hearing unless there has been a delay due to additional evidence or clarification being sought.
- 10.10. The decision of the appeal hearing is final and there is no further right of appeal.
- 10.11. If the employee is appealing against a decision to dismiss them, their dismissal date will be effective from the date in their dismissal letter, unless their appeal is upheld.

The employee's employment will not continue whilst a decision regarding their appeal is reached. If the appeal is upheld, the employee will be reinstated with no break in their continuous service and their pay will be backdated to the date of dismissal.

11. Right to be accompanied

- 11.1. You have the right to be accompanied by a fellow worker or trade union representative at any formal meeting or subsequent appeal during this process. A formal meeting for the purpose of this policy is a hearing at which a disciplinary sanction could be issued or a subsequent appeal hearing.
- 11.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process. An informal meeting for the purpose of this policy could be a 121 with a manager, an investigation meeting or a suspension meeting.
- 11.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the disciplinary or a conflict of interest and anyone who has previously behaved inappropriately during a hearing.
- 11.4. If the employee's trade union representative or workplace colleague is not available at the time arranged for the hearing, the employee may request an alternative hearing date provided that it is within a reasonable timeframe, which will be determined by the chair of the panel. A postponement will normally also be granted where, to do otherwise would seriously prejudice the ability of either party to present their case. A disciplinary hearing will normally only be rearranged once and the chair of the hearing may determine an outcome on the evidence available without the employee being present if they are unable to attend a hearing that has already been rearranged.
- 11.5. Employees who are interviewed as witnesses during a disciplinary investigation do not have a statutory right to be accompanied. They may, however, request a colleague or trade union representative to accompany them at the investigatory meeting and it will be for the manager considering the case to determine whether or not it is appropriate. If the employee is allowed to be accompanied, the role of their companion will be to provide moral support and not to speak on behalf of the employee.

12. Retention of Disciplinary Records

- 12.1. A full confidential record of all notes, evidence and letters relating to the formal Disciplinary Procedure must be kept.
- 12.2. Where the investigation shows that there is no case to answer, all documentation relating to the case should be destroyed with the exception of the following scenarios:
 - Where documents are required to support the informal procedure, should this subsequently be followed or,

- if it is relevant to another process involving the same employee where it would be deemed reasonable to hold this information for an extended period of time.
- 12.3. Lapsed disciplinary warnings will not be taken into consideration in any subsequent related acts of misconduct. However, they may be referred to, in order to:
- Refute evidence by the employee that they did not know that such conduct amounted to a disciplinary offence;
 - Refute representations by the employee about their previous service which are inconsistent with their disciplinary record.
- 12.4. In line with the Children Act 2004, any disciplinary investigation conducted with reference to an allegation of abuse against a child (whether a disciplinary sanction is imposed or not) all records pertaining to the investigation and the sanction (if applicable) will be kept indefinitely and will be available for consideration should further misconduct of a similar nature occur. The Council is obliged under the Act to share relevant information with future employers on request.

13. Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.

Appendix 1 - Examples of misconduct & gross misconduct

Failure to comply with the Council's policies, procedures, rules or working practices including, but not limited to:

Code of Conduct
Dignity at Work Policy
Health & Safety Policy
Email & Internet Usage

May constitute either misconduct or gross misconduct, depending upon the circumstances.

The following are examples of misconduct and gross misconduct. These lists are not exhaustive and it is likely that there will be incidents which do not fit within a specific category detailed within them but this does not preclude them from being deemed an act of misconduct or gross misconduct. This will be determined during the investigation and/or formal disciplinary process.

Misconduct

- Unauthorised and/or unreasonable absence or consistently poor timekeeping.
- Failure to comply with the Council's sickness notification and certification procedures.
- Dishonesty.
- Breach of Data Protection Legislation
- Misuse of the Council's network, email, internet and telephone systems, for example, excessive private usage or usage for inappropriate purposes.
- Negligence or irresponsibility in carrying out duties, including failure to follow reasonable management instructions.
- Damage to property belonging to the Council, colleagues, employees or members of the Council or members of the public.
- Ongoing or unreasonably negative attitude or behaviour to management or colleagues.

Gross misconduct

- Theft, fraud or dishonesty associated with place of work or job being undertaken such as falsification of timesheets/expenses/work record or falsification of any information given on an application form.
- Deliberate and continued refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.
- Any form of harassment, discrimination or incitement to discriminate, including sexual and racial harassment or bullying of employees or members of the Council, colleagues or members of the public.
- Non compliance with the law whilst carrying out the agreed duties of the post.

- Gross negligence in failing to attend work, to carry out the agreed duties of the post, or to follow a reasonable management instruction.
- Wilfully ignoring responsibilities/instruction thus placing yourself or others in danger, e.g., ignoring safety regulations.
- Being unfit to perform duties associated with the post as a result of taking alcohol or drugs (other than in accordance with medical advice) or other substances such as psychoactive legal highs.
- Misuse of computer facilities, including significant misuse of the Council's email, internet and other electronic communications systems, in contravention of the Data Protection Act.
- Deliberate or significant breach or breaches of Data Protection Legislation
- Willful dishonesty in complying with the requirements of the Freedom of Information Act 2000 or Environmental Information Regulations 2004 process, including knowingly withholding, destroying or modifying information to deceitfully misrepresent the Council's activities.
- Wilful unauthorised use or disclosure of information classified as confidential, including those who, in the course of their duties, have access to such information which by its release, could be harmful to the Council, members of the public, other staff or elected members.
- Acts or attempted acts of violence, abusive behaviour or vandalism in the course of employment with the Council such as malicious damage to Council property or physical violence and or abusive behaviour towards members/employees/members of the public.
- Abusive or offensive language or behaviour towards employees or members of the Council, colleagues or members of the public.
- Failure to declare all criminal offences or cautions (without prejudice to the employee's rights under the Rehabilitation of Offenders Act 1974).
- Persistent or substantial failure to follow the Council's policies, procedures and regulations.
- Breaking statutory provisions that would render the Council liable to prosecution.
- Any serious breach of health and safety rules and or procedures.
- Serious or persistent acts of harassment/victimisation/bullying of other employees.
- Offering, promising, requesting, accepting or agreeing to receive a bribe to or from any person or company, or acting in any other manner which constitutes an offence under the Bribery Act 2010.
- Any actions which the employee knows or ought reasonably to know are likely to bring the Council into disrepute.
- A serious breach of the rules of any authority which regulates the Council's business.
- Conviction of a criminal offence arising from or related to the employee's work for the Council.
- Conviction of a criminal offence committed outside working hours which in the opinion of the Council adversely affects the Council's business or reputation, or affects the employee's suitability for the type of work which he or she performs or affects their acceptability to other employees.
- Willfully failing to disclose a medical condition (whether or not a formal diagnosis has been made) or symptoms, which the employee ought reasonably to know may have an impact on his or her ability to perform the role for which they are employed.
- Being absent from work without leave ("AWOL"). In most cases this is normally a more extended period of unauthorised absence when an employee is unexpectedly absent without authorisation and does not respond when contacted.

Appendix 2 - Suspension Checklist

Suspension checklist for manager

Prior to suspending an employee, please contact HR.

Any suspension must be authorised by the manager's Service Director or another member of the Corporate Management Team in consultation with HR.

Employee Name:

Department:

Date:

	Suspension	Comments
1	Why are you considering suspension? i.e has there been a critical incident and/or serious allegations made?	
2	Is the presence of the employee likely to hinder the investigation?	
3	Is there a risk of harm to self/others if the employee remains at work? Ensure that support is offered to the employee where there is a risk that they could harm themselves. Consider the impact of suspension on the employee.	
4	Is there a likelihood of further serious or gross misconduct whilst the investigation is taking place?	
5	Is there a workable alternative to suspension? i.e. redeployment to another work area, work from home, restriction of work duties, temporary change in line manager etc?	
6	If restriction of duties is to be considered, have you considered what duties you are intending to restrict?	

7	Is a different role an alternative to suspension? If so, does the individual have the skills and experience for that role?	
8	Suspension should only be considered if all other alternatives have been exhausted. Have you ascertained details that lead you to think that suspension is the only reasonable course of action?	
9	Is your course of action realistic and reasonable in all of the circumstances?	
10	Who else needs to be made aware of your course of action (suspension, deployment, restriction of duties)? i.e manager, professional lead ect	
11	Does the nature of the incident warrant the Director of Communications being consulted? Has internal communication of the issue been discussed and agreed? Has external communication of the issue been discussed and agreed (if applicable)?	
12	Is the employee an accredited union rep (so that, if any action is taken, the regional officer can be notified)?	
13	Have you identified an investigating officer who will be able to give priority to the initial investigation? If not, who will progress this?	
14	Have you identified a *manager to provide support to the staff member throughout the investigation *Manager must be independent of the investigation and contact frequency should be weekly	
15	Is the staff member on annual leave or sick leave? If so, do not wait for the staff member to return from leave before suspending. Suspension takes place immediately	
16	Has a completed change form to HR notifying them of the suspension been sent, including paying average enhancements where applicable?	
17	If the employee is not being suspended but placed on restricted duties, has the manager completed a change form to notify HR to protect average pay enhancements where applicable?	
18	If suspended & where applicable, has ICT been notified to temporarily lock the account, retain all	

	information and not to delete the account and confirmed that this has been actioned?	
19	Has a timeframe been agreed regarding review of the suspension/restriction and feedback to the employee?	
20	Has a formal suspension letter been drafted in consultation with HR to be sent out if the suspension is agreed	

Where a serious incident has occurred which involves employees and/or members of the public the checklist below must also be completed

	SAFEGUARDING CHECKLIST	COMMENTS
1	Is this a safeguarding issue?	
2	Has the safeguarding lead (Community Manager) been informed?	
3	Has the manager informed the police?	
4	Has the employee been allocated a named contact for support and follow up?	
5	Do other employees need to be contacted? If so, who will lead on this process? How will staff be notified?	

At the suspension meeting, let the employee know;

- Reason for suspension
- Which policy/code may have been considered to be contravened
- That suspension is a neutral act to allow investigation, pay will continue and the suspension will be as brief as possible
- Not to contact other staff/contractors to discuss the issues under investigation
- Not to access their work email account or system
- Not to enter Council premises without prior agreement with the suspending manager or HR
- Investigation meetings will take place and if the employee is called they must make themselves available
- The employee must not undertake any other paid work during contracted hours whilst on suspension
- It may be appropriate to ask the employee to give you any work mobiles, keys, etc prior to suspension
- Check their home address to ensure we can send correspondence and any email address that can be used

- Confirm telephone contact details
- Inform the employee that the EAP service is available should they feel this would be helpful to them
- Confirm to the employee that they should follow the normal sickness reporting procedure and annual leave booking procedures
- Confirm who their point of contact will be

Line manager:

Print name:

CMT authorisation:

Print name:

Date:

End of Suspension

When ending a suspension please contact HR to discuss and agree actions required

	SUSPENSION ENDING CHECKLIST	COMMENTS
1	Has the employee been notified of the change in writing?	
2	Do other people need to be informed of the change? If so, who and why? Who will inform them and how?	
3	Has the manager notified HR that the suspension has been lifted?	
4	Have arrangements been made to meet with the employee on their return to the workplace?	
5	If the employee has been dismissed, has a leaver notification form for HR been completed?	



Investigating Officer/Chair of Panel:

Date:

Thanet District Council Grievance Policy & Procedure

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Key Points:

- It is expected that attempts will always be made to resolve grievances informally in the first instance. If this fails to resolve the problem or in the exceptional circumstance that an informal approach is inappropriate, the formal approach will be used.
- Employees have a statutory right to be accompanied by a trade union representative or workplace colleague at any formal meeting, including appeals.
- The HR team should be contacted prior to initiating any formal process and, if necessary, for advice around the informal process.
- When raising a grievance, you need to be aware that the details of the grievance will be shared with the person/people against whom you have raised it.
- This policy seeks to address employee grievances that affect you personally. If you are concerned about any potential wrongdoing by the council (including in any area which is not directly related to your role), it may be more appropriate to follow the Whistleblowing Policy.
- The allegations within a grievance cannot be expanded/added to without offering the party against who they are raised the right of reply before the grievance process is concluded.
- Employees who raise grievances will not suffer any detriment as a result of doing so, except for situations where the grievance(s) are deemed to be vexatious or malicious.
- Victimisation of employees who raise grievances or who act as witnesses in grievance cases will not be tolerated and may result in disciplinary action being taken.

- Confidentiality will be given the utmost importance at all stages of the procedure.
- Before raising a grievance either formally or informally, you should ensure that you are able to substantiate the claims that you are making and provide any supporting evidence, as appropriate.

1. Introduction

Thanet District Council recognises that, from time to time, employees may have problems or concerns about their work, working environment or relationships with colleagues that they wish to raise and successfully resolve. The council takes such issues seriously and actively encourages employees to have the confidence to raise such concerns at the earliest opportunity. The purpose of this policy and procedure is to provide the council with a robust mechanism to deal with these issues quickly, consistently and fairly to support this objective.

2. Scope

- 2.1. This policy and procedure applies to all employees other than the Chief Executive, Section 151 and Monitoring Officer for whom separate arrangements apply. The Grievance Policy for Statutory Officers can be found [here](#).
- 2.2. Cases which relate to a Non-Statutory Chief Officer can be considered in line with this policy by other Non-Statutory Chief Officers, the Section 151 Officer, the Monitoring Officer and/or the Chief Executive, as appropriate and in accordance with sections 9 and 10 of this policy. In the event that there are insufficient panel members to consider an appeal process, the Council will engage an appropriate external party to act as the decision maker on its behalf.
- 2.3. This policy and procedure applies to issues which may cause grievances including but not limited to:
 - 2.3.1. Terms and conditions of employment
 - 2.3.2. Health and safety
 - 2.3.3. Work relations
 - 2.3.4. New working practices
 - 2.3.5. Working environment
 - 2.3.6. Organisational change
 - 2.3.7. Discrimination
- 2.4. This policy and procedure does not cover the following issues;
 - 2.4.1. Disciplinary and dismissal matters (you should use the appeals process in the disciplinary policy and procedure)
 - 2.4.2. Questions relating to statutory adjustments to pay and allowances (e.g. income tax, national insurance, occupational pension scheme, statutory sick pay)
 - 2.4.3. National agreements (other than local interpretation)
 - 2.4.4. Grading issues
 - 2.4.5. Personal matters not directly related to employment or conditions of service

- 2.4.6. Any attempt by an individual who is no longer employed by the Council, seeking to raise a grievance
- 2.4.7. Issues that have been raised and addressed within the last 12 months unless the recommended outcomes have not been implemented.

2.5. In this policy and procedure, the term 'you' is used to refer to an employee or group of employees who are raising a grievance.

3. Roles & Responsibilities

Employees will:

- Ensure that their interactions with their colleagues are respectful and that their relationships remain professional at all times;
- Attempt to resolve grievances informally in the first instance, where appropriate;
- Cooperate fully in meetings to discuss grievance issues;
- Give careful consideration to any recommendations made to resolve the grievance, for example mediation or training;
- Seek clarification if they are unsure of the behaviour expected of them.

Managers will:

- Ensure they and their employees act in accordance with this policy;
- Remain impartial and keep an open mind when considering the points raised by all parties;
- Make effective use of the council's informal mechanisms to maintain effective working relationships with and between employees;
- Keep comprehensive records of the above activities and their success / failure to improve situations accordingly;
- Seek guidance from the HR team as soon as they become aware of an issue which may result in the raising of a grievance;
- Make arrangements for their employees to be released from normal duties as appropriate, if involved in the grievance process;
- Make any necessary arrangements for formal grievance hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

HR will:

- Monitor employment legislation relating to grievances at work and support the council to review and amend this policy as appropriate;
- Provide support, guidance and training to the council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Encourage all employees to promote and maintain the standards of behaviour expected by the council;
- Encourage managers and employees to attempt to resolve issues informally in the first instance;
- Support managers to act fairly and consistently in relation to grievance matters;
- Participate, and/or encourage managers to participate in the formal Grievance Procedure when required, ensuring release from normal duties where appropriate;
- Attend training on the application of this policy;

4. Policy & Procedure Principles

- 4.1. The council expects that grievances will be raised as soon as practically possible after the incident(s) that led to the grievance and without unreasonable delay.
- 4.2. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance or it may be appropriate to deal with both issues concurrently. In this situation, the manager in receipt of the grievance will make the investigating officer/chair of the disciplinary panel aware that it has been received and will agree with HR the most appropriate course of action. The decision as to whether to suspend the disciplinary process or deal with the two issues concurrently is likely to depend upon the nature of the grievance and is therefore likely to be determined on a case by case basis. The affected employee does not have the right to contribute to or influence this decision.
- 4.3. Where an employee has concerns about a potential conflict of interest on the part of the manager considering the grievance, they should raise these with HR, clearly setting out (and evidencing where possible) what they believe the conflict to be. Careful consideration will be given by HR to the points raised after discussion with the but alternative arrangements will only be made where a conflict of interest is demonstrable i.e. the raising of a concern will not automatically preclude an individual from continuing with a case.
- 4.4. Whilst the council will aim to respect confidentiality of any employee's concerns or complaints there are occasions where, as part of its duty of care, or legal responsibilities, the council reserves the right to investigate and take forward matters without their consent e.g. discrimination, theft etc.
- 4.5. When a group of employees have a concern about treatment they have received or any aspect of their work the matter should be raised collectively with their line manager or a more senior manager in their service.
- 4.6. If your complaint relates to bullying or harassment on the part of a colleague, the matter should be dealt with under the Bullying and Harassment Policy and Procedure. Complaints that amount to an allegation of misconduct on the part of a colleague will be investigated and dealt with under the disciplinary procedure and you will be informed once the matter has been dealt with.
- 4.7. This procedure sets timescales to ensure that any grievance is dealt with quickly and efficiently. However, these may be extended in consultation with the HR team to ensure a fair process.

- 4.8. Audio/visual recordings of meetings will not be allowed at any stage of the grievance procedure and are not admissible within this process, unless agreed by HR as a reasonable adjustment for an employee with a disability.

5. Informal Resolution

- 5.1. The formal grievance process can be very difficult and can have an impact on the health and wellbeing of the parties involved. It may also be very difficult to restore good working relationships following an outcome. It is therefore expected that, in the first instance, attempts should be made to resolve the issue or concern informally through your line manager. This may be through one to one meetings, requesting a specific meeting with your manager or through day to day interactions between yourself and your manager. Dealing with grievances in this way can often lead to the quickest and most effective resolution
- 5.2. Employees should be able to resolve the majority of workplace issues in this way without needing to invoke the formal procedure. If the grievance is about your line manager then you should approach your line manager's manager or a member of the HR team.
- 5.3. If attempts to resolve the issues informally are unsuccessful then you can raise a formal grievance in accordance with this procedure.

6. Mediation

- 6.1. If the problem concerns relationship difficulties and/or conflict, it may be more appropriate to consider mediation as a way to resolve the issue. In this situation a third party mediator will be appointed who will discuss the issues raised in your grievance with all those involved and will seek to facilitate a resolution.
- 6.2. Mediation can be introduced at any stage in this procedure and will be used only where all parties involved in the grievance agree.
- 6.3. The third party mediator could be either an employee of the council who has relevant training and is not directly involved in the case or someone from an external organisation.

7. Vexatious Grievances

- 7.1. The council recognises the right of employees to raise grievances relating to their employment. However, the council also recognises that, occasionally, this process is open to misuse or abuse through the raising of grievances that are petty, repetitive and/or vexatious.
- 7.2. In this situation, the manager in receipt of the grievance should seek advice from the HR team and determine whether the grievance is petty or clearly unfounded. It may be that it is immediately obvious from the content of the grievance or it may be that an initial conversation with the employee and/or other parties is required before this can be determined with any certainty.
- 7.3. A grievance could be considered to be petty or vexatious if it appears to have been raised in bad faith. This might be for a number of reasons, including that it has no reasonable prospect of success, it is a repeat of issues which have been raised and dealt with previously, and/or it is not an issue that is reasonable to complain about.

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To some extent this judgement may be informed by whether the individual employee has a history of submitting petty or unfounded grievances but ultimately it will be based upon the content of the grievance itself and the outcome of any initial discussions.

- 7.4. Individual grievances can be deeply held and serious consideration will be given to the merits of each individual case. A decision to classify a grievance as petty or unfounded will result in it not being taken any further so will not be taken lightly.
- 7.5. If it is believed that an employee is deliberately wasting council time and resources in this way, the decision on how to proceed will be taken by a manager at an appropriate level¹ who has no conflict of interest in the matter and in consultation with the HR Manager. If it is deemed that it constitutes a vexatious grievance, it may result in no further action taken on the grievance or, in the worst case, disciplinary action being taken against the employee who raised the grievance.
- 7.6. The decision will be confirmed to the employee in writing and it will be clearly explained to the employee why this decision has been taken. The Council will then deem the matter to be closed.
- 7.7. Likewise, if an investigation as part of the formal process shows that a grievance is unfounded and has been raised vexatiously, this may lead to disciplinary action against the person who raised the grievance.

8. Malicious Grievances

- 8.1. A malicious grievance is one which is raised with the intention of causing harm, for example to defame a colleague or manager and is based upon rumour, gossip or fabrication. Grievances which are found to have been raised with the sole intention of delaying or disrupting a disciplinary process will also be considered to be malicious.
- 8.2. If, during the process of considering a grievance, the manager has concerns that it may be malicious, they should seek advice from the HR team as to whether there is sufficient evidence to substantiate these concerns.
- 8.3. Individual grievances can be deeply held and serious consideration will be given to the merits of each individual case and the evidence available.
- 8.4. If it is believed that there is sufficient evidence that the grievance is malicious, it may result in no further action being taken on the grievance and/or, in the worst case, disciplinary action being taken against the employee who raised the grievance.

9. Formal Procedure

- 9.1. If attempts to resolve a grievance informally have failed then a formal grievance can be raised. The details of the grievance should be put in writing to your line manager (where appropriate) or to a more senior manager within the same service, clearly setting out the nature of the grievance and the outcome or remedy that is being sought.

¹ This may be the manager in receipt of the grievance or it may be passed to another manager, depending on the circumstances of the case.

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- 9.2. Where an outcome or remedy has not been made clear from the outset, you will be asked to provide this detail in order for the manager to deal with your grievance in a way that is reasonable and acceptable.
- 9.3. The manager receiving the grievance will be the person to consider it, in most cases. If, for any reason, this is not appropriate, the manager in receipt of the grievance will contact HR and an alternative manager will be identified. This may be a manager at the same or a higher level to the manager who received the grievance.
- 9.4. A meeting will be arranged as soon as is reasonably practicable, normally within ten working days of an initial investigation being undertaken.
- 9.5. At the meeting, you will be invited to explain the nature of your complaint in more detail and what action you feel should be taken to resolve the matter.
- 9.6. Where appropriate, the manager may adjourn the meeting in order to undertake further investigations and will aim to keep you informed of the investigation's progress. Any further investigation will be completed in a timely manner.
- 9.7. In cases which involve complaints against other employees, the employee(s) with complaints made against them will be provided with the details of the complaint(s) that are relevant to them, up to and including full disclosure. This will be provided in advance of an investigatory meeting where they will be given the opportunity to respond. They will also be provided with support from another manager not involved in the grievance process or a member of the HR team who they can contact should they wish to talk to someone, access information etc.
- 9.8. Following the meeting and any subsequent investigation, you will be informed of the outcome by the manager who has considered the case. This will be provided in writing as soon as is reasonably practicable and, wherever possible, within five working days. The outcome may be that your grievance is upheld, is partially upheld or is not upheld and will confirm the extent to which your remedies have been satisfied.
- 9.9. Where appropriate, you may also be informed of any action that the Council proposes to take as a result of your complaint but the progress and outcome of any subsequent actions or processes will not be shared.
- 9.10. Even in cases where the proposed action to be taken may remain confidential, all parties will be advised when the process has completed and the manager responsible for the process will discuss any aspect of the outcome that is relevant to them.
- 9.11. In cases where an investigation is undertaken and a report prepared as a result, it will be shared with all parties to the grievance unless, in exceptional circumstances, the manager determining the case feels that it would be detrimental to do so. Any decision to withhold an investigation report will be discussed and agreed with HR.
- 9.12. In cases where grievances have been upheld or partially upheld; the manager who has considered the case will make a recommendation for action to be taken. This may be disciplinary action at the informal or formal stage, depending upon the circumstances and the recommendation will be made to the manager of the employee against whom the allegation has been made. The process will then transfer over to the Disciplinary Policy and the employee's manager should seek advice from HR as to whether additional investigation is required prior to the implementation of any formal disciplinary action.

10. Appeal

- 10.1. If you are dissatisfied with the outcome of the formal process, you can appeal the decision.
- 10.2. An appeal must be made in writing to HR within five working days of receipt of the written outcome. This must detail the grounds of appeal i.e.
 - the basis on which you think that the result of the grievance was wrong and/or
 - why you believe that the action taken as a result was inappropriate.
- 10.3. A manager not previously involved in the process of the same level or more senior to the manager who considered the formal grievance will consider the appeal.
- 10.4. Depending on the circumstances of the case, the appeal may be dealt with as a paper exercise taking into consideration the content of the written appeal and the details of the outcome or an appeal hearing may be arranged. Either way, the approach to be taken will be confirmed in writing within five working days of receipt of the appeal. This will include either the timescale in which the manager will consider the appeal or an invitation to an appeal hearing which will be as soon as is reasonably practicable.
- 10.5. The appeal is not a rehearing of the original case but a consideration of whether the conclusion reached in the original hearing was appropriate and the action taken within a range of reasonable responses. If there is an appeal hearing, the manager considering the appeal may, therefore, confine discussions to those specific areas rather than reconsider the whole matter afresh.
- 10.6. The outcome of the appeal is final and will be confirmed in writing as soon as is reasonably practicable but usually within five working days of the appeal being considered.

11. Collective Grievances

- 11.1. If you and your colleagues are affected by the same grievance issue you must all agree (without any pressure being exerted on staff members to join the collective process) to raise it collectively.
- 11.2. If you do not all voluntarily agree to this arrangement or if your grievances are not identical then they will need to be considered as individual grievances.
- 11.3. You will be entitled to one collective grievance hearing and (if applicable) one appeal and you will need to nominate a spokesperson from within your group to represent you all throughout the process.
- 11.4. If you are members of the same trade union you may also be accompanied by a trade union representative or your trade union representative can raise the grievance on behalf of the collective, provided that you all agree to this.

12. Right to be accompanied

- 12.1. You have the right to be accompanied by a fellow worker or trade union representative at any formal grievance meeting or subsequent appeal.
- 12.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process.

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- 12.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the grievance and anyone who has previously behaved inappropriately during a hearing.
- 12.4. If the employee's trade union representative or workplace colleague is not available at the time arranged for the hearing, the employee may request an alternative hearing date provided that it is within a reasonable timeframe, which will be determined by the chair of the panel. A postponement will normally also be granted where, to do otherwise would seriously prejudice the ability of either party to present their case. A hearing will normally only be rearranged once and the chair of the hearing may determine an outcome on the evidence available without the employee being present if they are unable to attend a hearing that has already been rearranged.
- 12.5. Employees who are interviewed as part of an investigation into allegations raised in a grievance do not have a statutory right to be accompanied. They may, however, request a colleague or trade union representative to accompany them at the investigatory meeting and it will be for the manager considering the case to determine whether or not it is appropriate. If the employee is allowed to be accompanied, the role of their companion will be to provide moral support and not to speak on behalf of the employee.

13. Confidentiality

- 13.1. During the grievance process (and after it is completed) the need to maintain confidentiality is of paramount importance. All employees have a personal responsibility for ensuring that information they receive remains confidential whether it is written or verbal and whether it is received directly or indirectly. This should be advised and reiterated to all those involved in any hearings or investigations.
- 13.2. Access to confidential information should be limited to those who 'need to know'. For example, witnesses who are interviewed as part of an investigation need only be informed of the aspects of the grievance that are relevant to them. This is to enable them to provide an accurate statement and ensure they have a fair opportunity to respond to any allegations made against them.

14. Records

Records should be kept of the nature of the grievance raised, meetings held, the manager's response, any action taken and the reasons for it. These records should be kept confidential and retained in accordance with the HR Retention Schedule. Copies of any meeting records should be given to the individual concerned although in certain circumstances some information may be withheld, for example to protect a witness. Copies of all documentation should be sent to HR for retention on the employee's file.

15. Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.

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Thanet District Council Performance Management Policy & Procedure

October 2022/Final/HR

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Key Points:

- Managers should discuss performance issues with employees informally before taking formal action. If this fails to resolve the problem, the formal approach will normally be used.
- Employees have a statutory right to be accompanied by a trade union representative or workplace colleague at any formal meeting which could result in the issue of any warning/action, including appeals.
- The HR team should be contacted at the earliest stage and prior to initiating any formal process and, if necessary, for advice around the informal process.
- Confidentiality will be given the utmost importance at all stages of the procedure.

1. Introduction

We strive to ensure through our policies that staff can deliver excellence in all that they do and we try to find creative and innovative ways of working together to achieve that excellence. We will be open and accountable in all of our dealings with you and value and respect your views and contributions at all times.

This policy is to help employees whose performance has fallen below achieving an acceptable standard to improve within a workable timescale. The emphasis is on encouragement, training and support to make the necessary improvement. However, it is recognised that it may be necessary, in some cases, to take further action where improvements to performance are not achieved or sustained for a reasonable period.

2. Scope

- 2.1. This policy and procedure applies to all employees other than the Chief Executive, Section 151 and Monitoring Officer for whom separate arrangements apply.
- 2.2. Cases which relate to a Non-Statutory Chief Officer can be considered by hearing and appeal panels comprising of other Non-Statutory Chief Officers, the Section 151 Officer, the Monitoring Officer and/or the Chief Executive, as appropriate and in accordance with sections 6 and 7 of this policy. In the event that there are insufficient appropriate panel members to consider an appeal process, the Council will engage an appropriate external party to act as the decision maker on its behalf.
- 2.3. This policy and procedure applies to issues relating to the underperformance of an employee for reasons relating to their capability. If at any time it is found that underperformance is wilful the council has the right to move to an appropriate stage of the Disciplinary Policy and Procedure.
- 2.4. When dealing with capability on the grounds of ill health, managers should refer to the Sickness Absence Management Procedure.
- 2.5. Managers can move from one procedure to another at a comparable stage in light of a change in circumstances and where it is appropriate to do so.

3. Roles & Responsibilities

Employees will:

- Strive to deliver excellence in everything that they do;
- Endeavour to maintain exemplary performance as expected by the council.;
- Cooperate fully in meetings to discuss their performance with their line manager;
- Seek clarification from their line manager if they are unsure of any of the improvements expected in their performance at the earliest possible opportunity;
- Keep their line manager informed if there is any reason that is likely to, or is affecting the standard and consistency of their work.

Managers will:

- Ensure they and their employees act in accordance with this policy;

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- Ensure their employees are aware of the Performance Management Policy and what is expected of them via induction, 1-2-1's and subsequent day-to-day management;
- Address performance issues when they arise and seek to resolve these at the earliest opportunity in a prompt, confidential and supportive manner, ensuring consistency and fairness;
- Set achievable performance improvement targets in collaboration with the employee where possible;
- Maintain records of conversations with employees and the performance expectations that they have agreed with them;
- Appraise sustained improvements in performance and provide clarity if there are any further areas to work on;
- Keep records relevant to any performance improvement discussions and the employee's success / failure to improve standards accordingly;
- Seek guidance from the HR team at any point through this process where support is required but always at the formal stage;
- Ensure a fair and reasonable investigation has taken place into employee performance matters before initiating the formal process;
- Lead informal discussions and formal Stage 1 and 2 Performance Review Meetings as appropriate;
- Ensure that in dealing with performance management cases that they are compliant with the Equality Act 2010 (which incorporates the key provisions of the Disability Discrimination Act, as amended in 2005);
- Make any necessary arrangements for hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

HR will:

- Monitor employment legislation relating to performance management at work in line with the Equality Act (2010) and support the council to review and amend this policy as appropriate;
- Provide support, advice and training to the Council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Encourage all employees to promote and maintain delivering excellence as expected by the council;
- Support managers to act fairly and consistently in relation to performance matters;
- Participate, and/or chair Hearings and Appeal Hearings, as appropriate;
- Encourage managers to participate in the formal Performance Management Procedure when required, ensuring release from normal duties where appropriate;
- Attend training on the application of this policy.

4. Policy & Procedure Principles

- 4.1. This policy and procedure is primarily concerned with helping and encouraging employees to improve their performance and it aims for an outcome that is fair, reasonable and constructive.
- 4.2. Managers are responsible for informing staff of the performance that is expected of them through effective induction, regular 1-2-1 meetings and annual appraisal and should highlight any performance that falls short of expectations promptly.
- 4.3. The whole process must be given a high priority by the manager, the employee concerned and anyone else involved in the process and be dealt with in a timely manner.
- 4.4. No formal action will usually be taken without concerns having been raised and attempts made to address them on an informal basis in the first instance.
- 4.5. Dismissals can only be carried out by managers with the appropriate delegated authority. This applies automatically to the Chief Executive, Corporate and Service Directors. In exceptional circumstances, the Chief Executive can delegate this authority to another manager if appropriate. Managers should always check that they have the appropriate authority prior to any hearing being arranged where dismissal is a possible outcome.
- 4.6. Audio/visual recordings of the proceedings are not acceptable at any stage of the procedure and are not admissible within this process, unless agreed as a reasonable adjustment for an employee with a disability.

5. Informal Action

- 5.1. Before the formal stages of this procedure are engaged, the employee should receive face to face feedback via good 1-2-1 conversations with his/her manager, either virtually or in person, setting out the concerns about their performance and how it should be improved.
- 5.2. There should be a specified improvement period which is not usually more than 12 weeks.
- 5.3. The manager will identify the standards of improvement to be achieved during this period and will put in place appropriate monitoring arrangements to review progress. This may include:
 - Additional 1-2-1 and/or supervision sessions
 - Feedback
 - Support and guidance, including but not limited to counselling or training, for example
 - Work shadowing
 - Coaching and mentoring
- 5.4. If any training needs are identified as part of the discussion, appropriate training should be arranged to take place during the review period.
- 5.5. A written record will be maintained of the steps taken and any improvement made during the informal improvement stage. This may take the form of a Performance Improvement Plan.
- 5.6. Improvement targets should be attainable, objective and realistic and should take into account the specific requirements of the job description of the post.

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- 5.7. If at the end of the informal review period the employee has made sufficient improvement he/she will be advised of this and the procedure will cease.
- 5.8. If at the end of the informal improvement period some progress has been made and there are prospects of further improvement, the manager may agree to extend the improvement period to allow such progress to continue. The length of the extension will be for the manager to determine based on the particular circumstances. The employee will be advised of this.
- 5.9. If the informal stage does not bring about the required improvement, managers should seek advice from HR around instigating the formal process.
- 5.10. In addition to the above, a pattern of poor performance which causes concern, e.g. a repeated inability to sustain improved performance for an extended period following successful completion of Performance Improvement Plan(s) may also trigger the initiation of the Formal Performance Management Procedure.

6. Formal Action

The formal procedure is designed to be used when efforts during the informal stage do not lead to the employee improving his/her performance to an acceptable level. In exceptional circumstances where performance has been particularly poor the manager may commence the procedure directly at the formal stage without needing to undertake the informal improvement stage but must seek advice from the HR team before doing so.

Stage 1 - Performance Review Hearing

- 6.1. The manager will write to the employee inviting them to a Stage 1 Performance Review Hearing and explaining that either:
 - There has been insufficient progress during the informal stage and the formal procedure will be initiated; or
 - Due to the seriousness of the poor performance the process has been commenced immediately at the formal stage.
- 6.2. The employee's manager will prepare a report detailing the facts of the case up to this point, which will be shared in advance of the hearing.
- 6.3. The employee will be given reasonable notice, usually of no less than three working days, that a hearing will take place to discuss their performance.
- 6.4. The hearing will usually be chaired by the employee's manager supported by another manager who has not previously been involved in the case. A member of the HR team may be present to advise the panel.
- 6.5. The hearing will focus on:
 - Clarifying the shortfall in performance;
 - Exploring the potential reasons for this
 - Identifying what support can be offered to the employee to help them improve
 - Obtaining the employee's suggestions as to how they can improve their performance
 - Setting improvement targets for a specified improvement period (normally no more than 12 weeks)

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- Setting dates for further review meetings throughout the improvement period.
 - Confirming that a first or final written warning for performance will be issued and will remain on the employee's file for a period of six or twelve months, as applicable
- 6.6. Following the meeting, the manager will confirm all of this in writing to the employee within a reasonable timeframe not usually more than five working days from the date of the meeting.
- 6.7. If at the review meeting, the desired improvement has been achieved, the employee will have this confirmed to them in writing within a reasonable timeframe not usually more than five working days from the date of the meeting. The employee's performance should continue to be monitored via the normal 1-2-1 process although performance that is not sustained whilst the first or final written warning is live, will resume at the formal stage of the procedure. Any minor lapses should be dealt with in ordinary day to day management but should this become an issue then the line manager must seek advice from the HR team before progressing.

Stage 2 - Performance Review Hearing

- 6.8. If the required performance improvement has not been achieved, a Stage 2 Performance Review Hearing will be arranged.
- 6.9. In cases where a final warning has been issued at Stage 1, the manager should proceed straight to Stage 3 of the procedure.
- 6.10. The employee's manager will prepare a report detailing the facts of the case up to this point, which will be shared in advance of the hearing.
- 6.11. The manager will write to the employee inviting them to the hearing, providing reasonable notice usually of no less than three working days.
- 6.12. The hearing will usually be chaired by the employee's manager supported by another manager who has not previously been involved in the case. A member of the HR team may be present to advise the panel.
- 6.13. The hearing will focus on:
- Clarifying the shortfall in performance and exploring the potential reasons for this;
 - Reviewing the support measures previously identified and agreeing whether they should continue or if supplementary measures may be helpful;
 - Setting improvement targets for a specified improvement period (normally no more than 12 weeks)
 - Setting dates for further review meetings throughout the improvement period.
 - Confirming that a final written warning for performance will be issued and will remain on the employee's file for a period of twelve months
- 6.14. It may be felt appropriate at this meeting to discuss formal career counselling or whether a permanent redeployment would be appropriate, and, if so, an agreeable option for the employee.
- 6.15. Where redeployment is made to a lower graded post, the new post's salary and conditions will be applicable with no salary or terms and conditions protected.
- 6.16. The employee will be advised that should their performance fail to meet the required standard by the agreed review date, dismissal is a possible outcome.

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- 6.17. Following the meeting, the manager will confirm everything that has been discussed and agreed in writing to the employee along with a copy of the agreed action plan, within a reasonable timeframe of not normally more than five working days.
- 6.18. If at the review meeting, the desired improvement has been achieved, the employee will have this confirmed to them in writing within a reasonable timeframe not usually more than five working days from the date of the meeting. The employee's performance should continue to be monitored via the normal 1-2-1 process although performance that is not sustained whilst the final written warning is live, will resume at the appropriate formal stage of the procedure. Any minor lapses should be dealt with in ordinary day to day management but should this become an issue then the line manager must seek advice from the HR team before progressing.
- 6.19. If the employee has still not achieved the required standard of performance at the end of the review period, then consideration to move to a Stage 3 Capability Hearing that may result in the employee's dismissal should be made. During this final review, consideration should be given with regard to ensuring that all the relevant training and assistance has been given to the employee.

Stage 3 Capability Hearing

- 6.20. This Capability Hearing will be chaired by a manager with authority to dismiss who has not previously been involved in the case. This is usually a Service Director or member of the Corporate Management Team but delegated authority may be given by the Head of Paid Service to another manager if appropriate.
- 6.21. The chair of the hearing will be accompanied by another manager not previously involved in the case and a member of the HR team may also be present.
- 6.22. The employee will be invited to the hearing in writing and provided with reasonable notice of not usually less than three working days.
- 6.23. The employee's line manager will prepare a report that will be shared with the employee and the hearing panel in advance of the hearing outlining the steps that have been taken to date, both informally and formally, to address performance issues including details of the support and training provided, where appropriate. They will present this report at the hearing.
- 6.24. The employee will have the opportunity at the hearing to respond to the evidence in the report and to set out any concerns about the assessment of their performance and/or the support they have received. The employee may be questioned by the line manager and the hearing panel.
- 6.25. If appropriate, the chair of the panel may explore the option of redeploying the employee to another role within the Council.
- 6.26. The hearing may be adjourned if the chair decides that they need to gather any further information or give consideration to matters discussed at the hearing.
- 6.27. The outcome of the hearing will be confirmed in writing to the employee as soon as reasonably practicable. The outcome could be one of the following:
 - That there is insufficient progress but that redeployment to another role or demotion is possible;
 - That there has been insufficient progress, but it is reasonable to set a further review period (no more than 12 weeks), due to some improvement being made. In this situation, the capability hearing will be adjourned and reconvened at the end of this review period.

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- That there is insufficient progress and the employee should be given notice of dismissal on the grounds of capability.
- 6.28. In cases of dismissal, it will usually be on contractual notice, unless performance has been so negligent it may amount to gross negligence. Cases of gross negligence/gross neglect of duty will usually be dealt with under the council's disciplinary policy.
- 6.29. Where the hearing is reconvened and there has been some improvement, the decision may be taken to issue a further final written warning for performance which would remain on file for a period of 12 months. This decision will be confirmed to the employee in writing within a reasonable timeframe, usually no more than five working days following the meeting. Failure to maintain this level of improvement during this time may result in the process being reinstated at the Stage 3 Capability Hearing stage, depending on advice from the HR team.
- 6.30. Employees will not normally be dismissed for performance reasons without a previous warning, except in cases of gross negligence or cases involving an employee who has not yet completed their probationary period.

7. Appeal

- 7.1. An employee has the right to appeal the decision of any formal warning or dismissal made as a result of this procedure.
- 7.2. The submission of an appeal will not halt any improvement periods currently in place unless there are exceptional circumstances to warrant this.
- 7.3. Appeals must be made in writing to HR within five working days of receipt of the written confirmation of the warning or dismissal.
- 7.4. An appeal is not a re-hearing of the original case but instead should be based upon one or more of the following principles:
- The level of sanction imposed is disproportionate based on the evidence presented or is inconsistent with sanctions imposed on other employees in similar circumstances
 - New evidence has come to light since the original hearing/meeting which needs to be considered
 - The council has failed to follow its performance management policy and procedure
- 7.5. The appeal hearing will be chaired by a manager of the same level or above to the chair of the hearing/meeting that is subject to the appeal, depending on the circumstances of the case. Another officer or manager not previously involved in the case will make up the panel. An HR representative will provide advice and guidance on policy and process, including on the appropriateness of the panel members.
- 7.6. The appeal hearing will be arranged in a timely and reasonable manner.
- 7.7. The employee will be given reasonable notice in writing of no less than three working days of the appeal hearing detailing who will be conducting the hearing, arrangements in relation to any documents to be forwarded prior to the hearing (if not already enclosed) and the employee's right to be accompanied by either a trade union representative or workplace colleague.
- 7.8. At the hearing, the employee will be asked to give their reasons for appealing, referring to any relevant evidence and the chair of the previous hearing/meeting may be asked to attend the hearing to explain the rationale for their decision.

- 7.9. Once all evidence has been considered, the hearing should be adjourned to allow the panel to consider the information put before them. If the panel requires further information or clarification prior to making a decision, this should be sought as a matter of urgency and the employee advised that there will be a delay in reaching an outcome.
- 7.10. Once a decision has been reached, the hearing should be reconvened or a letter written to the employee to inform them of the outcome.
- 7.11. The outcome of the appeal could be that the appeal is upheld or it is not upheld. This will be confirmed in writing within five working days of the hearing unless there has been a delay due to additional evidence or clarification being sought.
- 7.12. The decision of the appeal hearing is final and there is no further right of appeal.
- 7.13. If the employee is appealing against a decision to dismiss them, their dismissal date will be effective from the date in their dismissal letter, unless their appeal is upheld. The employee's employment will not continue whilst a decision regarding their appeal is reached. If the appeal is upheld, the employee will be reinstated with no break in their continuous service and their pay will be backdated to the date of dismissal.

8. Redeployment

- 8.1. Whilst an employee might be considered incapable of reaching the standards of their current role it may be possible that they are capable of undertaking another role within the organisation.
- 8.2. Consideration of redeployment to such alternative employment should be given at the earliest opportunity and before any final decision to dismiss is taken.
- 8.3. Consideration of redeployment is dependent upon the types of vacancies available at that time and the employee's individual skills and experience so cannot be guaranteed.
- 8.4. Where redeployment is offered it may be at the same or a lower grade of the employee's current position and there will be no salary protection.

9. Right to be accompanied

- 9.1. You have the right to be accompanied by a fellow worker or trade union representative at any formal meeting or subsequent appeal.
- 9.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process.
- 9.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the process and anyone who has previously behaved inappropriately during a hearing.
- 9.4. If your trade union representative or workplace colleague is not available at the time arranged for the hearing, you may request an alternative hearing date provided that it is within a reasonable timeframe, which will be determined by the chair of the panel. A postponement will normally also be granted where, to do otherwise would seriously prejudice the ability of either party to present their case. A hearing will normally only be rearranged once and the chair of the hearing may determine an

outcome on the evidence available without the employee being present if they are unable to attend a hearing that has already been rearranged.

10. Retention of Records

- 10.1. A full confidential record of all notes, evidence and letters relating to the formal Performance Management Procedure must be kept for a period of 6 or 12 months in line with the sanction issued.
- 10.2. Lapsed warnings for performance will not be taken into consideration in any subsequent performance case. However, they may be referred to, in order to:
 - Refute evidence by the employee that they did not know that such performance was below what was expected of them;
 - Refute representations by the employee about their previous service which are inconsistent with their performance record.

11. Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.

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Thanet District Council Some Other Substantial Reason (SOSR) Policy & Procedure

October 2022/Final/HR

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Key Points:

- There are times when an employee may be fairly dismissed for a reason which does not relate to conduct, capability, performance or redundancy and therefore is not covered by the council's standard employment policies.
- Employees have a statutory right to be accompanied by a trade union representative or workplace colleague at any formal meeting which could result in their dismissal, including appeals.
- The HR team should be contacted at the earliest opportunity and prior to initiating any action under this policy.
- Confidentiality will be given the utmost importance at all stages of the procedure.

1. Introduction

Although rare, there are times when an employee may be dismissed for a reason which does not relate to conduct, capability or redundancy and therefore is not covered by the council's standard employment policies. In such circumstances dismissal for some other substantial reason may be a fair reason for terminating employment.

This policy and procedure provides a framework to ensure that, in these circumstances, the dismissals are carried out fairly, sensitively and in accordance with an employee's statutory and contractual rights.

2. Scope

This policy and procedure applies to all employees with the exception of the Chief Executive, Section 151 and Monitoring Officer, for whom separate arrangements apply.

3. Roles & Responsibilities

Employees will:

- Strive to deliver excellence in everything that they do;
- Cooperate fully in meetings;
- Make their manager aware as soon as reasonably practicable of any change in their circumstances which might impact their ability to carry out their duties.

Managers will:

- Ensure they and their employees act in accordance with this policy;
- Regard dismissal as a last resort;
- Seek guidance from the HR team as soon as they become aware of an issue which may require initiating this policy;
- Make arrangements for their employees to be released from normal duties as appropriate, if involved in this process;
- Make any necessary arrangements for hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

HR will:

- Monitor relevant employment legislation and support the council to review and amend this policy as appropriate;
- Provide support, guidance and training to the council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Support managers to act fairly and consistently in relation to this policy;
- Participate, and/or encourage managers to participate in this process when required, ensuring release from normal duties where appropriate, to ensure the process is dealt with swiftly;
- Attend training on the application of this policy.

4. Examples of SOSR scenarios

4.1. Whilst not exhaustive, the following scenarios may be considered some other substantial reason (SOSR) dismissals:

- Where an employee has confirmed that they are not prepared to accept a change(s) in their working practices/contractual terms following a consultation process.
- Where the continued employment of an employee in a post they occupy would be in contravention of a statutory enactment. For example, where a driver has been banned from driving where driving is an essential part of the role.
- Where an employee has a sentence of imprisonment imposed on them and the matter did not fall within the remit of the disciplinary policy. For example, where an employee receives a sentence for a crime that is unrelated to their work and which does not bring the Council into disrepute but where it is not feasible to keep their position open for them for the duration of their sentence.
- Where there is a serious breakdown in a relationship between two (or more) employees or between an employee and a third party contractor, which is not due to conduct and/or performance and all reasonable steps to avoid a dismissal have been considered e.g. redeployment of one of the parties
- Where the end of a Fixed Term Contract does not give rise to a redundancy situation.
- Some other substantial reason (to be defined in each instance) not specified above.

5. Procedure

- 5.1. Prior to taking any formal action, the employee's line manager should meet with the employee informally to make them aware of the issue, to gather additional facts (where appropriate), to explore the potential for redeployment (where appropriate) and to make the employee aware that this could result in their dismissal.
- 5.2. If the manager determines that there is no other resolution but to move to dismissal, they should prepare a report detailing all of the facts of the case and any supporting information and arrange a hearing.
- 5.3. The employee will be invited to the hearing in writing with reasonable notice, usually of no less than three working days. The invitation will outline the reason(s) for their

potential dismissal and a copy of the line manager's report will also be provided in advance of the hearing.

- 5.4. The hearing will be chaired by a manager with delegated authority to dismiss. This will usually be a Service Director or another member of the Corporate Management Team although the Head of Paid Service can delegate authority to dismiss to another manager if appropriate.
- 5.5. Another manager not previously involved in the case will make up the panel and a member of the HR team may also be present.
- 5.6. The employee can make submissions to the panel and call witnesses if appropriate. The panel should be informed of any intention to call witnesses and provided with any supplementary information in advance of the hearing.
- 5.7. The panel will adjourn the hearing to consider the evidence presented to them. If the chair of the panel determines that further investigation and/or information is required before a decision can be made then this will be confirmed to the employee in writing along with a timescale for a decision to be made.
- 5.8. The outcome of the hearing will be provided to the employee in writing within a reasonable timeframe, usually not more than five working days from the date of the hearing, and may be one of the following:
 - Dismissal from the existing post and re-employment in a different post at the same grade or at a lower grade without pay protection or in the same post but on different terms and conditions. The alternative post will be identified in the outcome letter and notice will be given prior to the new arrangements taking effect. If the alternative role is rejected during this period, the original SOSR dismissal will stand
 - Dismissal from the council with contractual notice.

6. Appeals

- 6.1. If the employee wishes to appeal against the outcome of the hearing, they should do so in writing to HR stating the reasons for their appeal no later than five working days after the outcome letter is received.
- 6.2. An appeal is not a re-hearing of the original case but instead should be based upon one or more of the following principles:
 - The dismissal is disproportionate or inconsistent with sanctions imposed on other employees in similar circumstances
 - New evidence has come to light since the original hearing which needs to be considered
 - The Council has failed to follow its policy and procedure
- 6.3. The appeal hearing will be chaired by a manager of the same level or above to the chair of the disciplinary hearing, depending on the circumstances of the case. Another officer or manager not previously involved in the case will make up the panel. An HR representative will provide advice and guidance on policy and process, including on the appropriateness of the panel members.
- 6.4. The appeal hearing will be arranged in a timely and reasonable manner.
- 6.5. The employee will be given reasonable notice in writing of no less than three working days of the appeal hearing detailing who will be conducting the hearing, arrangements in relation to any documents to be forwarded prior to the hearing (if

not already enclosed) and the employee's right to be accompanied by either a trade union representative or workplace colleague.

- 6.6. At the hearing, the employee will be asked to give their reasons for appealing, referring to any relevant evidence and the chair of the panel may be asked to attend the hearing to explain the rationale for their decision.
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- 6.8. Once a decision has been reached, the hearing should be reconvened or a letter written to the employee to inform them of the outcome.
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8. Equality Statement

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consideration, in accordance with the Equality Act 2010.

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Thanet District Council **Whistleblowing (Freedom to speak up) Policy**

October 2022 /Final/HR

Introduction

Scope

Definitions

How to raise a concern

How will the council respond?

What safeguards are there for the employee?

Where can you get further advice?

Disclosure of information

Recording and Monitoring

Equality Statement

Introduction

Thanet District Council is committed to the highest possible standards of propriety and accountability in the conduct of its activities for the community. Employees are often the first to become concerned that some wrongdoing has occurred, may be occurring, or may be about to occur within the Council and this policy is intended to help employees with such concerns to raise them.

This policy does not form part of any contract of employment or other contract to provide services and we may amend it at any time.

Scope

This policy applies to the following groups:

- All employees
- Officers and consultants
- Interims and casual/agency workers
- Contractors engaged by the Council

Councillors and volunteers do not fall within the limited scope of the law but they can report any concerns as described in this policy to the relevant Director, Monitoring Officer or the s151 Officer.

Definitions

What is whistleblowing?

Whistleblowing is the disclosure of information which relates to suspected wrongdoing [or dangers at work]. This may include:

- A criminal offence, e.g. fraud, theft or corruption
- Failure to comply with any legal obligation
- Danger to health and safety
- Danger to the environment
- A miscarriage of justice
- Misuse of public funds
- if Council is breaking the law
- The deliberate concealment of any of the above matters

What is a whistleblower?

- A **whistleblower** is a person who raises a genuine concern relating to any of the above. If you have any such concern affecting any of our activities (a **whistleblowing concern**) you should report it under this policy.
- The wrongdoing you disclose must be in the public interest. This means it must affect others, e.g. the general public.

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- As a whistleblower you are protected by the law - you should not be treated unfairly or lose your job because you 'blow the whistle'.
- You can raise your concern at any time about an incident that happened in the past, is happening now or you have reason to believe will happen in the near future.

Complaints that don't count as whistleblowing

This policy should not be used for complaints relating to your own personal circumstances such as the way you have been treated at work. In those cases, you should use the Grievance Procedure or Bullying and Harassment Policy as appropriate.

If a complaint relates to your own personal circumstances but you also have wider concerns regarding one of the areas set out under the "what is whistleblowing" heading above (for example, a breach of our internal policies), you should discuss with either the Section 151 Officer or the Monitoring Officer, which route is the most appropriate.

If you are uncertain whether something is within the scope of this policy you should seek advice from either the Section 151 Officer or the Monitoring Officer, whose contact details are available on the Council's intranet site.

How to raise a concern

Complaints may be verbal or (preferably) written. They should explain the background and history of the situation and the reason why you are concerned.

As soon as you become reasonably concerned, raise the issue with your line manager (unless they are the potential transgressor) or Your Service Director, the Monitoring Officer, or the Section 151 Officer. If you are not comfortable raising your concern with your line manager or senior management; consider raising it with the HR Manager or East Kent Audit Partnership.

If you don't want to report your concern to the Council, tell a solicitor or a prescribed person or body (e.g. the Information Commissioner's Office, Environment Agency, Health & Safety Executive, Serious Fraud Office etc.). See the link below for the complete list of prescribed persons. If you tell a prescribed person or body, it must be one that deals with the issue you're raising, e.g. a disclosure about wrongdoing in respect of Health and Safety can be made to the Health & Safety Executive (HSE). They will be able to advise on their respective procedures.

Raising your concern anonymously or requests to remain anonymous

The Council will not tolerate the harassment or victimisation of anyone raising a genuine concern of wrongdoing. We hope that staff will feel able to voice whistleblowing concerns openly under this policy. However, if you want to raise your concern and request this remain anonymous, we will make every reasonable effort to keep your identity anonymous. If it becomes necessary to disclose your identity for the purposes of dealing with your report, we will discuss this with you.

Agenda Item 4

Annex 7

We do not encourage staff to make disclosures anonymously, although we will make every reasonable effort to investigate anonymous disclosures. You should be aware that proper investigation may be more difficult or impossible if we cannot obtain further information from the person who has raised the concern. It is also more difficult to establish whether any allegations are credible. Whistleblowers who are concerned about possible reprisals if their identity is revealed should come forward to the Section 151 Officer or the Monitoring Officer or one of the other contact points listed above and appropriate measures can then be considered in order to protect your identity. If you are in any doubt, you can seek advice from the independent whistleblowing charity, Protect, who offer a confidential helpline. Their contact details are:

Protect (Independent whistleblowing charity)	Helpline: 0203 117 2520 Email: info@protect-advice.org.uk Website: https://protect-advice.org.uk/contact-protect-advice-line/
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Anonymous disclosures can be made by calling 01304 872198 and leaving a message. These messages are confidential and are only accessed by East Kent Audit Partnership who frequently check the voicemail box.

As concerns expressed anonymously are much less powerful, individuals are encouraged to put their names to all concerns raised. Anonymous disclosure makes it unlikely that the individual would qualify for legal protection as a whistleblower because there would be no documentary evidence linking them to the disclosure for the Employment Tribunal to consider. Matters raised anonymously may nevertheless be considered at the discretion of the Council.

In exercising this discretion, the factors to be considered include the seriousness of the concern raised, its credibility and the likelihood of being able to verify the concern using other attributable sources.

How will the Council respond?

If the concern is raised verbally, the person receiving the information should put it in writing as soon as practicable and ensure that it properly reflects the concerns that have been raised. The individual must also indicate if the concern is to be treated in confidence. The limit of that confidence will be checked out by the person receiving the information.

Once you have told us of your concern, we will initially assess what action should be taken and an acknowledgement should be sent to you within two working days. We will tell you who may be handling the matter, how you can contact them and whether your further assistance may be needed. If you request it, we will write to you summarising what we understand your concern(s) to be and setting out how we propose to handle the matter.



If you have any personal interest in the matter, we do ask that you tell us at the outset. Should your concern fall within another policy or procedure of the Council (for example, the Grievance Procedure), we will tell you.

While the purpose of this Policy is to enable us to investigate possible wrongdoing and take appropriate action to deal with it, we will give you as much feedback as we reasonably can. If requested, we will confirm our response to you in writing. Please note, however, that we may not be able to tell you the precise action we take should this infringe a duty of confidence the Council owes to someone else or where it may impede an investigation or be contrary to law.

Concerns raised may:

- Be investigated by management, internal audit, and/or through the disciplinary process
- Be referred to the Police
- Be referred to the external auditor
- Form the subject of an independent enquiry.

What safeguards are there for whistleblowers?

A disclosure will be protected if the whistleblower makes a disclosure of information which, in their reasonable belief, is made in the public interest. Please note that, as set out above, there are a limited number of types of wrongdoing which are legally defined as whistleblowing.

If, as a result of a disclosure, the whistleblower suffers any detriment or the Council dismisses or victimises the employee or fails to protect them from victimisation from colleagues, the law provides that action can be taken against the Council.

Allegations made vexatiously, maliciously or which are deliberately false will be dealt with under the Council's Disciplinary Procedure.

The Council will not tolerate any detrimental treatment, harassment or victimisation (including informal pressure) of anyone who raises a genuine and lawful whistleblowing concern and will take appropriate action to protect them.

Any investigation into allegations of potential wrongdoing will not influence or be influenced by any disciplinary or redundancy procedures already taking place concerning an employee who is a whistleblower.

Every effort will be made to maintain confidentiality as far as is reasonably practical.

Help will be provided to a whistleblower to minimise any difficulties which they may experience and this may include advice on giving evidence if needed. Meetings may, if necessary, be arranged off-site with a whistleblower being accompanied by a work colleague or trade union representative, if they wish.

You must not threaten or retaliate against a whistleblower in any way, or subject them to any detriment, because they have made a whistleblowing disclosure. If you are involved in such conduct you may be subject to disciplinary action which could result in dismissal.

Where can you get further advice?

If you are unsure whether to use this policy or you want independent advice at any stage, you may contact:

- If applicable, your trade union;
- Other bodies prescribed by the Secretary of State. A complete list of prescribed persons can be found here: [Prescribed people and bodies](#)
- The independent charity Public Concern at Work on 020 3117 2520 or via [their website](#). Their advisers can give you free confidential advice at any stage about how to raise a concern about the particular types of wrongdoing.

An employee who is not satisfied with the action taken by the Council and feels it right to question the matter further, may consider the following possible contact points:

- the Council's S151 Officer
- the Council's Monitoring Officer
- Internal Audit and/or the External Auditor
- the employee's trade union
- a lawyer with a specialism in a relevant field
- the Citizens' Advice Bureau and/or law centre/firm
- a government department
- the Local Government and Social Care Ombudsman
- the Information Commissioner
- the Health and Safety Executive

If you believe that you have been unfairly treated because you have made a whistleblowing disclosure, you may decide to take your case to the Employment Tribunals. The process for this would involve attempted resolution through the Advisory, Conciliation and Arbitration Service (Acas) Early Conciliation service. www.acas.org.uk/conciliation

Disclosure of information

This policy is intended to provide a mechanism to raise concerns about the Council. If an employee takes the matter outside the Council, they should seek advice and ensure that no unlawful disclosure of confidential information takes place as the Public Interest Disclosure Act 1998 (as amended) does not provide blanket protection and could leave individuals vulnerable to disciplinary or other action, if they disclose confidential information in circumstances not covered by the Act.

Recording and Monitoring

Following good practice, we will:

- Record the number of whistleblowing disclosures we receive each year and their nature
- Maintain records of the date and content of feedback provided to whistleblowers

Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.