

REPORT TITLE: OFFICER EMPLOYMENT PROCEDURE RULES

PERSONNEL COMMITTEE

16 JANUARY 2017

PORTFOLIO HOLDER: Cllr James Byrnes, Transport & Professional Services

REPORT OF ASSISTANT DIRECTOR (ORGANISATIONAL & SERVICE DEVELOPMENT)

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WARD(S): ALL - GENERAL

PURPOSE

The purpose of this report is to inform Members of proposed additions to the Officer Employment Procedure Rules, which are incorporated into the Council's Constitution.

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations") came into force on 11 May 2015 and the Council's Officer Employment Procedure Rules ("the Rules") were amended at that time.

Additional advice has recently been issued by the Local Government Association; the Rules have been refreshed taking this advice into account.

RECOMMENDATIONS:

That it be recommended to Council:

- 1) That the additions to the Officer Employment Procedure Rules as set out in Appendix 1 and Appendix 2 of this paper be adopted.

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 The changes set out in this paper ensure that Council's governance processes are updated to reflect changes to the Regulations and advice from the Local Government Association.

2 FINANCIAL IMPLICATIONS

- 2.1 There are no financial implications associated with this report.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 There are no legal or procurement implications associated with this report.

4 WORKFORCE IMPLICATIONS

- 4.1 If the additions to the Officer Employment Procedure Rules are not amended as set out in this paper, there is a risk that the Council's Constitution does not comply with the Regulations.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 None.

6 CONSULTATION AND EQUALITY IMPACT ASSESSMENT

- 6.1 The Assistant Director (Organisational & Service Development) continues to monitor the impact of the policy.

7 RISK MANAGEMENT

Risk	Mitigation	Opportunities
Failure to comply with the Regulations increases the risk of an Employment Tribunal claim and the costs of the legal fees associated with defending such a claim.	Incorporate amendments to the Officer Employment Procedure Rules as set out in this paper.	

8 SUPPORTING INFORMATION:

- 8.1 The City Council incorporated the requirements of the Regulations into the Officer Employment Procedure Rules in June 2015. Since that time, further guidance has been issued by the Local Government Association relating to the procedures Councils are required to follow in relation to statutory officers (Head of Paid Service, Monitoring Officer, and “Section 151” Officer).
- 8.2 The Regulations made changes to the disciplinary procedures which all Councils must adopt in relation to the three statutory officers or if there is a proposal to dismiss a statutory officer for any reason other than redundancy, permanent ill health or the expiry of a fixed term contract. The Officer Employment Procedure Rules have therefore been refreshed, taking the current guidance into account.
- 8.3 The guidance issued by the Local Government Association (LGA) included model disciplinary and grievance procedures which reflect the ACAS Code of Practice. Officers have reviewed the guidance and the draft procedures appended to this report have been written to reflect the LGA guidance and the principles established in the existing Council procedures which apply to other officers.
- 8.4 It is proposed that the disciplinary procedure is appended to the existing Officer Employment Procedure Rules (as **Appendix B**). The proposed procedure is attached as **Appendix 1** of this report for ease of reference.
- 8.5 The revised Guidance as set out in the National Conditions of Service for Local Authority Chief Executives also covers the process to be followed where an employee raises a grievance against one of the statutory officers or where the Chief Executive raises a grievance. It is proposed that a grievance procedure is appended to the Officer Employment Procedure Rules (as **Appendix C**). The proposed procedure is attached as **Appendix 2** of this report for ease of reference.
- 8.6 There are no further amendments being made to the Rules at this time.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

[PER272](#) – Officer Employment Rules – The Local Authorities (Standing Orders) (Amendment) Regulations 2015 (15 June 2015).

Other Background Documents:-

Joint Negotiating Committee for Local Authority Chief Executives: National Salary Framework and Conditions of Service Handbook (updated 13 October 2016) – available for reference from [Human Resources](#).

APPENDIX:

Appendix 1: Proposed disciplinary procedure to be incorporated as **Appendix B** to the existing Officer Employment Procedure Rules.

Appendix 2: Proposed grievance procedure to be incorporated as **Appendix C** to the existing Officer Employment Procedure Rules.

**This is additional text to be added as a new Appendix B to the Officer
Employment Procedure Rules**

**Winchester City Council
Disciplinary and Dismissal Procedure for Statutory Officers**

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**Winchester City Council
Disciplinary and Dismissal Procedure for Statutory Officers**

Document History

Document Title	Disciplinary and Dismissal Procedure for Statutory Officers		
This Version	0.2		
Issue Date	06/01/2017		
Status:	Draft		
Next Review Date:	December 2018		
Version	Issue date	Author	Comments
0.1	12/12/2016	JC	Initial Draft
0.2	06/01/2017	JC	Minor amendments to reflect comments from Portfolio Holder and CMT.

1. Introduction

Winchester City Council expects a high standard of conduct at work and aims to promote positive working relationships between all employees.

This document defines the approach that the Council will take in terms of addressing concerns relating to misconduct and/or unacceptable performance.

This Policy and Procedure is important so that Statutory Officers understand what is expected of them. It also provides a consistent mechanism so that concerns about it are addressed promptly and effectively.

The aim of this Procedure is to describe the process by which matters of misconduct and under performance are managed.

This procedure sets out the steps to be taken where it is necessary to instigate formal proceedings. This does not prevent dealing with very minor breaches of conduct/capability that are not considered to merit progression to formal stages. This might include dealing with the matter in supervision, or through appropriate written direction or guidance which would include the setting of standards.

This Procedure incorporates the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into effect on 11 May 2015.

This policy and procedure will be reviewed every 2 years or sooner if required, taking into account changes to legislation, ACAS guidelines and best practice.

2. Scope

The Standing Order Regulations require specific arrangements for the Head of Paid Service, Section 151 Officer and the Monitoring Officer.

Disciplinary action under this procedure means any action occasioned by alleged misconduct and/or under-performance which, if substantiated, would be recorded on the employee's personal file, and includes any proposal for dismissal for any reason other than redundancy, permanent ill-health but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew such a contract.

For the avoidance of doubt this includes employment during the 6 months Probationary Period.

3. Authority to Take Action

Authority to take action at each stage is shown at **Appendix 1**

4. Disciplinary Rules

A list of examples of disciplinary offences is attached to this document as **Appendix 2**. These are examples only and not an exhaustive list. The list of examples may be reviewed and amended, as necessary, by the Assistant Director (Organisational & Service Development).

5. Referral to Outside Bodies

It may be necessary to report concerns about conduct and/or capability to an appropriate regulatory body, in accordance with statutory or regulatory requirements. The Chief Executive (or the Leader where the Chief Executive is the subject of disciplinary action) must decide if and when this is necessary in consultation with the Assistant Director (Organisational & Service Development).

In situations where an external agency (e.g. Police, Adult Services, Children's Services) is carrying out an investigation, the internal investigation may be halted pending the outcome of the external investigation. During this time, if the employee is suspended, the suspension will be reviewed on a regular basis.

Depending on the outcome of the external investigation, it may be appropriate to undertake an internal investigation once the external investigation has been concluded. This is because any external investigation considers different aspects of the allegations.

6. Suspension

The Chief Executive or The Leader as appropriate (see Appendix 1), in consultation with the Assistant Director (Organisational & Service Development), will decide if it is necessary to suspend the employee on full pay whilst investigating the allegations.

The suspension will be confirmed in writing and include the following that:

- suspension is considered to be a neutral act;
- the reasons for, and the terms of, the suspension;
- the individual's IT account and access will be suspended;
- the individual must not attend work and contact colleagues (except their trade union representative) or clients without prior permission.

The suspension will be regularly reviewed and all reasonable efforts will be made to investigate and conclude the matter within a reasonable time.

7. Investigation

An investigation will be undertaken by the appropriate person (see Appendix 1) without unreasonable delay.

Where an investigation identifies sufficient grounds for disciplinary action, the case will proceed in accordance with this procedure.

8. The right to be accompanied

The employee has the right to be accompanied at hearings by a work colleague or trade union representative. If the work colleague or trade union representative is unable to attend the employee may propose an alternative date provided it is no more than 7 calendar days after the original date. The hearing may proceed and a decision be taken if the employee fails to attend the hearing.

Legal representation will not normally be permitted.

9. The hearing

A meeting of the Council's Personnel Committee will be arranged. The Committee will include at least one Cabinet Member.¹

The employee will be notified at least 7 clear calendar days before the meeting of the following details:

- date, time and venue;
- the allegations to be considered at the hearing;
- Possible outcome and, where appropriate, if a recommendation for dismissal may result;
- copies of any documents to be relied upon, including witness statements, if applicable;
- whether witnesses will be called and who they are;
- the right to be accompanied at the hearing (see Section 5.5 below);
- that if the employee fails to attend without reasonable grounds a decision may be made in their absence; and

¹ This Panel must include at least one member of Cabinet as required by the Local Authority (Standing Orders) (England) Regulations 2001 (Schedule 1, Part II, 4(2)).

- the opportunity to call witnesses, provide any documents, written statements or submissions before the meeting.

The timescales can be varied if both parties agree.

10.If the employee fails to attend a hearing

The employee is required to attend including when the employee is absent due to sickness unless they are in hospital or have been assessed by the Council's Occupational Health Consultant as being unfit to attend.

Where a meeting is postponed because of the ill health of the employee, the meeting will be rearranged once with the second date normally being within **5 working days**.

If the employee does not attend the rescheduled meeting, a decision will be made by the Chair in consultation with the Assistant Director (Organisational & Service Development) either to defer the meeting or proceed in the employee's absence. The employee should be informed in writing that this may be the case and advised that any written representations made on their behalf, or those of a representative attending on their behalf, will be considered.

If the hearing takes place in the absence of the employee, a decision will be made on the evidence available.

11.If a grievance is raised

Complaints will usually be considered during the proceedings. The Chairman will decide if the Procedure should be temporarily suspended in order to deal with the complaint.

12. How the hearing should be conducted

12.1 Note taking

A note will be taken of the hearing. The notes will not be verbatim or formal minutes and will not require the agreement of all parties. A copy of the notes will be shared with the employee as soon as reasonably practicable.

If the employee disagrees with the accuracy of the notes, a record to this effect will be retained with the formal notes.

Recording of the hearing will not be permitted except in exceptional circumstances (for example as a reasonable adjustment for a disabled participant at the hearing) and at the discretion of the Chairman.

12.2 The hearing

The Chairman will explain the purpose of the hearing and the process to be followed. All parties at the hearing will be introduced.

12.2.1 Presentation of the case

The allegations will be presented along with any supporting evidence which may include the calling of witnesses. The employee (or their representative) may question the presenting officer and the witnesses.

The employee will be invited to respond to the allegations, refer to any evidence and call witnesses. The employee and their witnesses may be asked questions.

The employee's representative may address the hearing to put the employee's case. The representative may not answer questions on the employee's behalf or address the hearing without permission.

If new facts emerge it may be necessary to adjourn the meeting to undertake further investigation.

12.2.2 Summing up

The officer presenting the allegations will summarise their case. The employee or their representative will then summarise their response including any mitigation.

The hearing will be adjourned while a decision is taken.

The Personnel Committee will consider the evidence presented and decide the outcome. The levels of sanction are set out in Section 5.9.

12.2.3 Sanctions

There are three possible sanctions as follows:

Level of Sanction and time limits	Examples that may attract this level of sanction
1. First Written Warning 12 months	Minor cases of misconduct or lack of improvement.
2. Final Written Warning 18 months	A more serious offence or repetition of minor offences or continued lack of improvement.
3. <u>Recommendation for Dismissal</u>*	An act of gross misconduct or continued repetition of minor offences or continued lack of improvement.

It is not necessary to progress through each level of sanction. No sanction will be imposed without first holding a hearing.

*Personnel Committee may only make a recommendation for dismissal. The dismissal process is set out at Section 5.12.

In determining the level of sanction, Personnel Committee will take account of the following:

- The nature and seriousness of the allegations and findings;
- The employment record (including any current warnings), general work record, work experience, position within the organisation and length of service;
- Any special or mitigating circumstances;
- Whether the sanction is reasonable in all the circumstances;
- Consistency with the application of the Disciplinary Procedure and rules (determined through consulting with HR);

- Whether any training, additional support or adjustments to the work are necessary or appropriate; and
- Where a recommendation to dismiss is being considered, whether there is an alternative to dismissal.

The decision and sanction will be retained on the employee's personal file. Expired warnings will not usually be used to increase sanctions but may be taken into account where relevant and appropriate.

12.2.4 Confirm the outcome (Action Short of Dismissal)

The decision of the Personnel Committee and any sanction will be confirmed in writing as soon as reasonably practicable.

Where the allegations are proven, the outcome notification will include the following:

- The nature of the allegation;
- The sanction and how long it will last (see Section 5.9);
- Any period of time given for improvement and the improvement expected;
- The likely consequences of further misconduct/under-performance (i.e. a further sanction or possible dismissal);
- The right to appeal including:
 - How the appeal should be lodged;*
 - That the appeal should be lodged within 14 calendar days; and
 - the requirement to set out clearly the grounds for appeal.

* See table at Appendix 1.

Where appropriate the outcome will be notified to the relevant professional or safeguarding body as described at Section 5.1 (above).

12.2.5 Right of appeal (Action short of Dismissal)

The employee has the right to appeal the outcome to the Appeals and Disputes Committee. Separate guidance is available for managing the appeals process. The outcome of the Appeals and Disputes Committee will conclude the Council's internal processes.

12.2.6 Recommendation to dismiss

The employee may not be dismissed by Personnel Committee unless the matter has first been considered by an Independent Panel, the Executive Objections Procedure² has been followed and full Council have voted on the recommendation.

Where Personnel Committee considers the allegations sufficiently serious to recommend dismissal the following steps will be taken in the following order:

- the employee will be informed of the decision of Personnel Committee and advised that an Independent Panel will be convened to consider the recommendations of Personnel Committee
- the Independent Panel will be established in accordance with the Standing Orders Regulations (please see Appendix A). The Independent Panel must be appointed at least 20 working days before the relevant Council meeting where the recommendations will be considered. The Independent Panel will review the investigation and any recommendations that have been made;
- the Executive Objections Procedure should be followed to provide an opportunity to object to the recommendations; and
- the views of the Independent Panel and the results of the Executive Objections Procedure will be presented to the Council meeting³.

² Executive Notification/Objections Procedure as defined in the Local Authority (Standing Orders) (England) Regulations 2001 Schedule 1, Part II, (6) as amended by the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015.

³ Members with prior involvement in the matter being determined will not be eligible to vote when full Council consider the recommendation. This is because the full Council Meeting is considered to be the Independent Appeal process required by the Regulations and to comply with the ACAS Code of Practice.

12.2.7 The Council meeting

The employee will be invited to attend a meeting of the Council. A minimum of 7 clear calendar days' notice of the meeting will be given in order that the employee has a reasonable opportunity to prepare their response. The notification will include the following:

- The date, time and venue for the meeting of Council;
- The nature of the allegations;
- The possible consequences of the recommendation (i.e. that dismissal may result);
- Any written evidence, including the outcome of Personnel Committee hearing, the advice, views and recommendations of the Independent Panel, and the outcome of the Executive Objections Procedure;
- The right to be accompanied at the hearing (see Section 5.5 above); and
- The opportunity to make written representations in advance of the meeting, provide any documents, written statements or submissions.

Council will take account of:

- the recommendations of Personnel Committee;
- the outcome of the Executive Objections Procedure;
- the Independent Panel's advice, views and recommendations; and
- any representations made by the employee or their representative.

The employee's representation to Council before a vote is taken satisfies any appeal that they may wish to make.

The press and public would be excluded from any Council meeting where disciplinary matters were discussed.

12.2.8 Outcome/Notice of Dismissal

The Chairman of the Personnel Committee will write to the employee to confirm the decision taken by Council.

Where the outcome is no action or action short of dismissal this will be confirmed in writing in accordance with Section 5.9 above.

Where summary dismissal is decided there will be no payment for notice or pay in lieu of notice.

The Council may take action to recover or retain, in full or part, the employee's pension benefits in accordance with the prevailing pension regulations.

13. Criminal Convictions

The employee will not automatically be disciplined solely because they have been charged with, or convicted of, a criminal offence, or have accepted a police caution. Whether disciplinary action will be merited will depend upon:

- what effect the charge or conviction has on the employee's suitability to undertake their role and their relationship with the Council, work colleagues and customers;
- consideration of whether the conduct is sufficiently serious to warrant commencing formal procedures.

It is not always necessary to wait for the outcome of criminal proceedings before taking formal action. If the employee refuses or is unable to co-operate with this Procedure, e.g. they have been imprisoned, they will be advised in writing that a decision will be taken on the basis of information available and may result in dismissal.

APPENDIX 1

Action under the Procedure	Level of Officer Subject to Disciplinary Action	
	S 151 Officer or Monitoring Officer	Chief Executive
Investigation	Chief Executive - provided they have had no prior involvement in the matter, or a suitable independent person appointed by Personnel Committee and agreed between the parties	A suitable independent person appointed by Personnel Committee and agreed between the parties
Suspension	Chief Executive or Leader in consultation with the Assistant Director (Organisational & Service Development)	Leader in consultation with the Assistant Director (Organisational & Service Development)
Warnings (action short of dismissal)	Personnel Committee ⁴ (LA Standing Orders Regulations 2001 Schedule 1, Part II, 3)	
Appeal against action short of dismissal	Appeals and Dispute Committee	
Dismissal	Personnel Committee will action the decision of Council. Full Council must vote taking into account the recommendations of Personnel Committee, the outcome of the Executive Objections procedure, the advice, views or recommendations of the Independent Panel ⁵ and any representations from the employee.	
Appeal against Dismissal	This is provided for by the meeting of Council – the employee will respond to the findings of the investigation and recommendations before a vote is taken by Council.	

⁴ This Panel must include at least one member of Cabinet as required by the Local Authority (Standing Orders) (England) Regulations 2001 (Schedule 1, Part II, 4(2)).

⁵ Independent Panel as required by Schedule 3 the Local Authority (Standing Orders) (England) (Amendment) Regulations 2015

APPENDIX 2

Disciplinary Rules (incorporating matters of Capability)

Below is a list of examples of offences which may lead to disciplinary action or dismissal. The list is not exhaustive and the Council reserves the right to take action for matters not listed or alluded to. The particular circumstances of any allegations may be treated as misconduct or capability, or gross misconduct or gross incapability.

Officers also need to refer to Council policies and procedures; the Code of Conduct; their contract of employment; and the relevant National Scheme of Conditions of Service where other rules and standards are implied. In addition, Officers are required to work in accordance with relevant statutory obligations, professional standards, health and safety regulations and other rules governing their profession or working environment. For example, the National Scheme of Conditions of Service for Local Government Officers states, "Employees will maintain conduct of the highest standard such that public confidence in their integrity is sustained".

Breaches of any of these rules may lead to disciplinary action being taken in accordance with the Disciplinary Procedure. Officers may be suspended from work as part of the Disciplinary Procedure. Officers dismissed for gross misconduct will not normally receive notice or pay in lieu of notice.

Non-exhaustive lists of examples of misconduct that are likely to attract disciplinary action are given below in Part 1. A non-exhaustive list of examples of serious misconduct, potentially serious enough to be considered gross misconduct, are detailed in Part 2.

PART 1: Examples of Misconduct Offences

Misconduct will not normally warrant dismissal without previous warning. (Please also refer to Gross Misconduct below).

Although not intended to be an exhaustive list, some examples of breaches of discipline, which may render an employee liable to disciplinary action, are as follows:

1. Repeatedly failing to be in attendance at the employee's place of work at the required time.
2. Being absent from work without prior permission and without reasonable cause.

3. Failing to report absence from work on the day of such absence without a good reason.
4. Failing to conform to established working practices and procedures whether professional or as laid down by the Council.
5. Refusing to carry out legal and reasonable management instructions.
6. Acting in a way prejudicial to the Council's interests in dealing with suppliers, contractors, partner organisations, members of the public or other outside contacts.
7. Failing to take reasonable care of the Council's property; this includes failing to act to prevent loss or damage to it.
8. The use of abusive, offensive or racist language or behaviour to any person in the Council, its customers, clients or contractors.
9. Failure to perform to an acceptable standard despite having been given guidance and assistance to do so.
10. Failure to wear appropriate protective clothing or use necessary safety equipment provided by the Council for particular duties.
11. Leaving the place of work during the hours of duty without permission or a satisfactory reason.
12. Smoking within a prohibited area including e-cigarettes and vaping products.
13. Knowingly undertaking activities during a period of sick leave likely to inhibit recovery and return to work.
14. Contravention of the Council's ICT policies and procedures in respect of computer, email, text messaging and internet use.
15. Failure to discharge obligations in accordance with Statute, professional standards or contract of employment without sufficient cause.

Part II – Examples of Gross Misconduct Offences

Gross misconduct is misconduct that is so serious that dismissal is a reasonable sanction to impose. A dismissal for gross misconduct is justified at the first offence and the employee will normally be dismissed without notice (i.e. summary dismissal).

It is not usually the number of offences, but rather the nature of the offence that determines gross misconduct. Repeated disciplinary offences, however, which individually might otherwise have amounted to misconduct (as opposed to gross misconduct), might, when aggregated, amount to gross misconduct.

Examples of those breaches of discipline which warrant suspension or that could lead to summary dismissal are as follows:

1. The theft of; or unauthorised possession of; or wilful damage to property belonging to the Council, suppliers, contractors or any other employee or other persons.
2. The fraudulent obtaining of money or other property from the Council, suppliers, contractors, or any other employee or other persons.
3. Falsely recording the arrival or departure from work of any other employee; falsifying official records, time sheets, etc.
4. Committing any assault on the Council's premises or whilst on Council business, or physical violence against another person.
5. Committing a criminal offence which renders the employee unsuitable or unable to carry out the duties for which he was employed or otherwise makes continuing employment undesirable.
6. Being unable to carry out normal duties or constituting a serious safety risk as the result of the influence of alcohol or drugs.
7. The persistent and wilful refusal to carry out instructions despite warnings of the consequences of continued refusal.
8. Serious acts of racism, bullying, harassment or victimisation to any person in the Council, its customers, clients or contractors.
9. Forging, falsifying, altering or defacing medical certificates.
10. Committing a serious breach of duty prejudicial to the Council's relations with other bodies or the general public or any wilful attempt to damage the Council's standing or position.
11. Giving false information when applying for a job including withholding information that is relevant to the employment.

12. The fraudulent claiming/obtaining of Housing Benefit, Student Award, or other Benefit from this, another local authority or another Government Department/Body.
13. Intentionally, negligently or recklessly disclosing or communicating any confidential information or personal data without authority to any person not entitled to receive it.
14. Acting in a way that could constitute a significant risk to the health or safety of the employee concerned or any other person on the Council's premises or property, or contravening rules drawn up in consequence of the Health and Safety at Work Act. (See above)
15. Gross contravention of the Council's ICT policies and procedures in respect of computer, e-mail, text messaging and internet use e.g. circulating pornographic or offensive material.
16. Reckless or deliberate failure to discharge obligations in accordance with Statute, professional standards or contract of employment without sufficient cause.
17. Continued failure to perform to an acceptable standard and/or being unable to achieve or sustain an acceptable standard of performance despite support.
18. Soliciting gifts or gratuities.
19. Use, or attempted use, of official position for private advantage or improper personal gain.
20. Performing unauthorised private work (whether paid or unpaid) during hours when contracted to work for the Council or during periods of sick leave.
21. Recording or retaining personal or financial information contrary to Council procedures and in a manner which could lead to this information being improperly or fraudulently used.
22. Making malicious and false accusations against any other employee or other persons.
23. Intentional unauthorised use of Council vehicles whether during or outside the working day.
24. Forging, falsifying, altering or defacing of Council records and/or files.

25. Repeatedly refusing to attend appointments or meetings (including with Occupational Health) under this or other Council procedures (including the Sickness Absence Procedure).
26. Failure to notify the Assistant Director (Organisational & Service Development) immediately of a charge, conviction or caution for any offence where the offence may impact on the employment relationship.
27. Breach of the agreement on the use of pool cars.
28. Misuse of Council car parking permits or car parking rules, including the falsification of the car parking permit application.
29. Failure to subscribe to, or maintain subscription to bodies as required by the contract of employment e.g. the DBS Update Service.
30. Behaviour, either inside or outside of work (including, but not limited to, posts on social media, online forums, message boards or blogs) that causes concern as to suitability for the role, or which brings the organisation into disrepute.

Note: These examples may be changed or amended at any time by the Assistant Director (Organisational & Service Development)

**This is additional text to be added as a new Appendix C to the Officer
Employment Procedure Rules**

**Winchester City Council
Grievance Procedure for Statutory Officers**

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**Winchester City Council
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Document History

Document Title	Grievance Procedure for Statutory Officers		
This Version	0.1		
Issue Date	12/12/2016		
Status:	Draft		
Next Review Date:	December 2018		
Version	Issue date	Author	Comments
0.1	12/12/2016	JC	Initial Draft

1. Introduction

- 1.1 Winchester City Council recognises that a positive working environment and good working relationships have a positive impact on employee well being and employee engagement. A positive working environment can also lead to better performance, improved retention and reduced sickness absence levels. Focussing on early resolution therefore benefits individuals, teams, the Council as a whole and ultimately the district we serve.
- 1.2 This procedure is aimed at securing constructive and lasting solutions to workplace disputes. It does not apply where separate rights of appeal are given under different procedures (e.g. disciplinary procedure) or where the issue relates to a collective agreement.
- 1.3 This is because the employee should use any meetings which exist under another procedure to offer any explanation or mitigation.
- 1.4 This Procedure incorporates the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. It also reflects the requirements of the ACAS Code of Practice relating to disciplinary and grievance matters.
- 1.5 This procedure will be reviewed every 2 years or sooner if required, taking into account changes to legislation, ACAS guidelines and best practice.

2. Scope

- 2.1 The Standing Order Regulations apply to the statutory roles of Head of Paid Service, S151 Officer and Monitoring Officer.
- 2.2 This procedure sets out the process by which a grievance relating to, or raised by, one of the statutory officers will be addressed.
- 2.3 In keeping with the ACAS Code of Practice, all employees should raise an issue under this policy as soon as reasonably possible after the incident has occurred and preferably within 20 working days of the incident or last incident. This is because the procedure places an emphasis on reaching early resolution.

3. Right to Representation

- 3.1 Employees are entitled to be accompanied by either a trade union representative or a colleague at any meeting held under the **formal stage** of this procedure. There is no right to legal representation at **any** meeting held under this procedure.
- 3.2 The companion should be allowed to address the meeting to present and summarise the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The companion does not have the right to answer questions on the employee's behalf or prevent the employee from addressing the meeting.
- 3.3 In exceptional circumstances, following consultation with the Assistant Director (Organisational & Service Development) or in their absence, the HR Manager, the employee may be supported by someone other than a colleague or trade union representative where this is considered to be a reasonable adjustment.
- 3.4 Each request outside the normal parameters of a colleague or trade union representative will be reviewed on its individual merits, taking into account the full circumstances of the case. Examples of additional support at a meeting may include an advocate from Solent Mind, a community mental health practitioner or similar specialist adviser.

4. Re-arranging of Meetings

- 4.1 Employees are required to make all reasonable efforts to attend meetings held under this procedure, including when they are absent due to sickness unless they are in hospital or have been assessed by the Council's Occupational Health Consultant as being unfit to attend.
- 4.2 If the employee is not able to attend a meeting due to ill health, the meeting will be rearranged once with the second date normally being **within 10 working days**.
- 4.3 If the aggrieved employee chooses not to attend meetings, the Chair will seek advice from the Assistant Director (Organisational & Service Development) or in their absence the HR Manager. As the purpose of this procedure is to achieve grievance resolution, if the aggrieved employee chooses not to attend meetings, the Council reserves the right to assume

that the complaint has been withdrawn and that the aggrieved employee accepts the outcome of previous stages.

5. Grievances relating to the Disciplinary Procedure

- 5.1 Notwithstanding that employees should use meetings under the Council's Disciplinary Procedure for Statutory Officers to offer an explanation or mitigation the employee may, in exceptional circumstances, raise a grievance relating to the way in which the Disciplinary Procedure has been applied.
- 5.2 In some cases, it may be appropriate to hear the grievance before continuing with the disciplinary process. In which case, the disciplinary process will be temporarily suspended for no more than 8 weeks in order to resolve the grievance.

6. Grievance Procedure

6.1 Overview of Grievance Procedure

- 6.1.1 This procedure incorporates the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and applies to a grievance relating to any of the Council's statutory officers.
- 6.1.2 The Chief Executive will be responsible for the application of this procedure where the subject of the grievance is the S151 Officer or the Monitoring Officer.
- 6.1.3 Where the Chief Executive is the subject of the grievance, the roles assigned to the Chief Executive in this procedure will be undertaken by the Leader, in consultation with the Assistant Director (Organisational & Service Development).
- 6.1.4 In circumstances where the Assistant Director (Organisational & Service Development) is compromised by the grievance, the Monitoring Officer will advise the Leader.
- 6.1.5 This procedure comprises three stages and is intended to be followed in a linear way which will incorporate the following:
 - Initial Review

- Informal Resolution
- Formal Resolution

6.1.6 As far as reasonably possible, it is intended that informal resolution will be attempted before recourse to the formal stage of the procedure. In exceptional circumstances and subject to advice from the Assistant Director (Organisational & Service Development), the Council reserves the right to by-pass the informal stage of this procedure.

6.2 Initial Review

6.2.1 Where an employee raises a grievance against one of the statutory officers, it is appropriate to undertake an initial review to identify whether the grievance should be more appropriately considered under some other procedure.

6.2.2 Any grievance relating to one of the statutory officers should be addressed in the first instance to the Assistant Director (Organisational & Service Development), hereafter “the reviewing officer”, who may nominate a senior manager with no prior involvement in the matter to review the grievance on their behalf.

6.2.3 If the reviewing officer determines that the grievance relates to service delivery, the matter should be referred back to the aggrieved employee who should be advised to raise the matter in accordance with the Council’s Complaints Procedure.

6.2.4 If the grievance relates to allegations of bullying, or to similar serious issues such as racial or sexual harassment, the reviewing officer may determine that it is more appropriate to invoke the Council’s Bullying and Harassment Policy.

6.2.5 The reviewing officer may consult with any of the statutory officers not implicated in the grievance to determine the appropriate course of action. Any such consultation would not prejudice or compromise that officer from dealing with the matter at a later stage.

6.2.6 Having carefully considered the facts of the case, the reviewing officer may determine that the grievance is frivolous, vexatious or otherwise malicious and that no further action will be taken. This decision will not be taken lightly and the reviewing officer will consider whether the aggrieved employee has a history of submitting unfounded grievances.

6.2.7 Where the reviewing officer determines that the grievance relates to the behaviours of a statutory officer (rather than, for example but not limited to service delivery, process, provision of facilities, failure to consult etc.), the reviewing officer will invoke the informal stage of this procedure.

6.3 Informal Resolution

6.3.1 The Chief Executive will nominate a senior manager to be the “grievance resolver”.

6.3.2 The grievance resolver will have an informal discussion with the aggrieved employee to identify the most appropriate form of informal resolution.

6.3.3 Informal resolution might be achieved through an internally-facilitated discussion, coaching or referral to external mediation service.

6.4 Formal Resolution

6.5 Stage 1 – Formal Resolution Meeting

6.5.1 Where informal attempts at resolution are either considered inappropriate or have been tried but unsuccessful, the aggrieved employee should raise the matter with the Chief Executive¹ setting out clearly previous attempts at resolution and what matters remain unresolved.

6.5.2 The Chief Executive will appoint a member of Corporate Management Team with no significant prior involvement in the matter to act as the investigating officer.

6.5.3 Once the matter has been investigated, the investigating officer will write a report summarising their findings and proposing a suitable resolution. The report should take into account the views of the aggrieved employee, the response from the officer who is the subject of the grievance and the investigating officer’s assessment of the situation.

6.5.4 A copy of the confidential report will be given to the Chief Executive to determine the most appropriate way forward.

¹ Where the Chief Executive is the subject of the grievance, the matter should be referred to the Assistant Director (Organisational & Service Development) unless they are compromised in which case the matter should be raised with the Monitoring Officer.

- 6.5.5 The Chief Executive will chair a meeting between the two parties with the intention of reaching resolution.
- 6.5.6 If both parties accept the intended resolution, the Chief Executive will write to both parties setting out the formal resolution.
- 6.5.7 Outside of the meeting, the Chief Executive should consider whether the actions of the statutory officer constitute an allegation of misconduct. If this is the case, the Chief Executive should consider whether further investigation is warranted.
- 6.5.8 Allegations of potential misconduct should be discussed with the Assistant Director (Organisational & Service Development) and addressed in accordance with the Council's Disciplinary Procedure for Statutory Officers.

6.6 Stage 2 – Appeal Process

- 6.6.1 If the aggrieved employee does not accept the proposed resolution, they have a right to appeal to Members. The matter should be considered by the Appeals and Disputes Committee.
- 6.6.2 Where the Committee **upholds** the appeal this may include a decision or recommendation on how the issue can be best resolved.
- 6.6.3 Where the Committee **dismisses** the appeal, the decision of the Appeals and Disputes Committee is final and ends the internal process.

7. Grievances raised by the Chief Executive

- 7.1 Where the Chief Executive raises a grievance, the principles and procedure set out in **Section 6** above shall apply, namely:
- Informal attempts at resolution should be regarded as preferable to immediate recourse to formal procedures
 - The formal stage of the procedure should include a two-step process, including a right to appeal.
- 7.2 The Chief Executive cannot take out a grievance against another officer; as Head of Paid Service, the Chief Executive could potentially initiate action against any member of staff under the Council's Capability or Disciplinary Procedures as appropriate.

- 7.3 As any grievance raised by the Chief Executive would relate to one or more Members, the Monitoring Officer will act as the “Reviewing Officer” as set out in **6.2** above.
- 7.4 The Monitoring Officer will establish through discussions with the appropriate parties whether there is any merit in seeking to resolve the matter informally.
- 7.5 Informal resolution might be achieved through an internally-facilitated informal discussion, external mediation or external conciliation through ACAS or similar body.
- 7.6 In the event that informal resolution is either inappropriate or unsuccessful, the matter should be considered by the Council’s Standards Committee.
- 7.7 If the Chief Executive is not satisfied with the decision of the Standards Committee any appeal should be considered by Full Council.