

**BRISTOL CITY COUNCIL
HUMAN RESOURCES COMMITTEE**

TO BE CONSIDERED - 16th October 2008

Title: Amendments to the Disciplinary Procedure, Improving Performance Procedure, Procedure for Termination on the Grounds of 'Some Other Substantial Reason', and Code of Practice on the Conduct of Investigations

Ward: City Wide

Report of: Head of Human Resources

Officer presenting report: Robert Britton - Head of HR
Jill Mikkleson, HR Manager

Contact telephone number: (0117) 922 2170

1. Report Summary

To seek members' views on specific changes to the Disciplinary, Improving Performance, 'SOSR' Procedure and Code of Practice on the Conduct of Investigations.

These changes relate to harmonising the recommended timescale for disciplinary investigations to 28 days in line with grievance investigations. It is also proposed that where there are issues to be considered at a hearing/meeting that fall under more than one policy, to allow for one meeting/hearing to be convened to hear all issues.

The key changes to each of these policies/procedures is as set out in paragraph 5.1 to 5.5 below.

For clarity and consistency, we have reflected the wording of (section 4.) of the Disciplinary Policy into (section 3. of) the Code of Practice on the Conduct of Investigations.

2. Recommendation

Members are requested to approve wef 1st December 2008, the following:-

- (i) The revised Disciplinary Procedure
- (ii) The revised Improving Performance Procedure
- (iii) The revised Procedure for Dismissal on the Grounds of SOSR
- (iv) The Code of Practice on the Conduct of Investigations

3. Policy

Disciplinary and Improving Performance Procedures are currently in existence for the purposes of Managing Conduct and Performance Issues. There is also a Code of Practice on the Conduct of Investigations and a Procedure for Terminating Employment on the grounds of 'Some Other Substantial Reason' (SOSR).

4. Consultation

(a) Internal

Trade unions have been consulted upon these changes at the TU/Officers meeting on Friday, 15 August 2008. Proposed changes have also been circulated to HR, Equalities and Self Organised Groups.

GMB do not agree with the proposal to hold one hearing where issues span a number of policies. UNISON and UNITE: The unions agree to one hearing in principle, on condition that the employee and trade union agree to this.

(b) External

N/A

5. Background and Assessment

The main changes are as follows:

5.1 'One hearing'

In the past there have been occasions when a 'hearing' convened under one policy also encompasses issues which span other policies, for example a hearing to consider disciplinary issues and also those under the 'SOSR' policy. Whilst this is permissible and in the past has happened, it is not explicitly stated in the policy. It is therefore proposed that a sentence be added to the Improving Performance, Disciplinary and 'SOSR' policies to clarify that one hearing can be convened to hear issues covered by different policies, within the overarching frameworks of the Disciplinary Procedure (as set out in paragraph 1.2 of the revised Disciplinary Procedure).

5.2 Any sanctions given following such a hearing must be given

in line with the appropriate policy(ies) and this will not enable managers to give sanctions more liberally than they would otherwise have been able to do, if using the policies separately. This will reduce the number of hearings (which are generally stressful for those attending) and where in some cases different policy issues are entwined.

- 5.3 It is also proposed to harmonise the time scales for conducting disciplinary and 'grievance' investigations. The timescale is currently 20 days for disciplinary and 28 days for grievance investigations. The proposal is to amend the disciplinary to 28 days also.
- 5.4 A minor amendment to the Code of Practice on the Conduct of Investigations has been made to reflect 4.2 of the current Disciplinary Policy, which states that if evidence against an employee suggests that he/she is guilty of gross misconduct, the employee's manager should not both investigate the allegations and take any disciplinary action which follows at any subsequent hearing. Finally, 4.1 of the existing Disciplinary Procedure which states 'disciplinary action must not be taken before there has been an investigation into the circumstances' has been removed because this has been covered later in the policy.

6. Other Options Considered

To retain existing wording will not give clarity with regards the ability to convene one hearing. The possible discontinuation of Member level appeals against dismissal has been considered, but is not considered appropriate.

7. Risk Assessment

There are no major risks associated with these proposals.

8. Equalities Impact Assessment

Not applicable (minor policy changes)

9. Legal and Resource Implications

Legal:

There are no legal implications arising from these changes to the Council's existing policies. The incorporation of the recommended amendments will ensure the Council's policies are consistent.

(Legal advice provided by Husinara Islam, Head of Legal Services)

Financial:

(a) Revenue

There are no financial implications arising from this report, the purpose of which is to harmonise the timescales contained within existing policies, and to rationalise/consolidate the meeting/hearings that may be required.

Advice from Stephen Skinner, Head of Finance, CSS and Chief Executive Depts.

(b) Capital N/A
(Advice from designated Finance Officer)

Land: N/A

Personnel: As set out in paragraph 5.1 to 5.4 above.

Appendices:

| | |
|------------|---|
| Appendix A | Disciplinary Procedure |
| Appendix B | Improving Performance Procedure |
| Appendix C | Procedure for Termination of Employment on the Grounds of 'Some Other Substantial Reason' |
| Appendix D | Code of Practice on the Conduct of Investigations |

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers: None



Disciplinary Procedure

Author: **Employee Relations**

Version: **1**

Date created/amended: **June 1999**

HISTORY OF POLICY CHANGES

| Date | Page | Details of change |
|-------------|----------------------|--|
| 15.01.07 | | Amendments to paragraph 1.2 - paragraph 1.7 included |
| 1 Oct 07 | p4, s6.1 | Report and statement to employee if proceeding to disciplinary hearing |
| Feb 08 | p3 and p9 | Additions to paragraph 3 re suspensions s3.3; 3.5; 3.8; 3.9. Para 10.1 amended - employees do have right of appeal if accept alternative job |
| August 08 | p6 p6 p6/7 | Harmonisation of investigation time frame to 28 days in line with the grievance policy Removal of 'old' 4.1 as this is duplicated in 6.1 Hearing can be convened to cover issues that arise under more than one policy |

Index

| | Page |
|---|-------------|
| Principles | 2 |
| Procedure | 2 |
| Suspension | 3 |
| Investigation | 5 |
| Cases involving child protection issues, vulnerable adults or financial irregularities | 5 |
| Disciplinary hearing | 5 |
| Result of hearing - disciplinary action | 6 |
| Time limits for warnings | 7 |
| Appeals | 8 |
| Appeals against dismissal | 9 |
| Appendix - Handling gross misconduct | |

Disciplinary Procedure

1. Principles

- 1.1 The city council's role is to serve Bristol and all its 400,000 residents. The public has a right to expect consistently high standards of behaviour from everyone who works for the council, and council employees normally meet that expectation in full. The Disciplinary Procedure supports the city council's standards and rules (including the Code of Conduct) and aims to ensure consistent and fair treatment for all. It is not there to deal with problems associated with unsatisfactory work performance arising from an employee's lack of capability.
- 1.2 In addition to determining the procedure to be used for all disciplinary matters, this policy also provides an 'overarching' framework for formal action which in addition to disciplinary action, also incorporates action under the Improving Performance Procedure and/or action taken in accordance under the provisions of the council's 'Some Other Substantial Reasons Procedure' (see these separate HR policy documents).
- 1.3 In considering the application of this procedure, managers/HR staff should also be aware of the council's "*Improving Performance Procedure*" and the "*Some Other Substantial Reason (SOSR) Procedure*" which will be used separately if no disciplinary issues are involved. Both of these procedures incorporate dismissal processes not related wholly to disciplinary matters.
- 1.4 The procedure applies to all employees except:
 - those who work in locally-managed schools, for whom there are separate arrangements;
 - those who are in their probationary period, although disciplinary issues relating to such employees must be handled in a fair and equitable manner;
 - JNC 1st and 2nd tier officers (including the Chief Executive), for whom a separate council Disciplinary Procedure (linked to their national conditions of service) applies
 - casual workers, who have no employment rights.
- 1.5 Managers are responsible for specifying the standards of behaviour required, enforcing the rules and ensuring that breaches of them are tackled promptly. They should give the implementation of the disciplinary procedure a high priority when they need to use it.

- 1.6 The term 'manager' is used in this document to refer to managers who are designated by their chief officer to operate this procedure. Each case of potential misconduct should be treated on its merits.
- 1.7 Employees who abuse this or any other procedure by making malicious or frivolous allegations may face disciplinary action.

2. Procedure

- 2.1 An employee who is subject to this procedure has the right to be:
 - accompanied by a trade union representative or work colleague at the investigation stage; and
 - represented by a trade union representative or work colleague at a disciplinary / appeal hearing.

The employee is responsible for arranging to be accompanied or represented. However, they should advise the manager of the names of their witnesses and appropriate time off for them can be arranged.

- 2.2 A manager who is considering taking disciplinary action can ask for advice and / or participation from other persons, including HR Advisers.
- 2.3 An employee can be offered transfer to alternative employment (including relegation) as an alternative to dismissal either as a result of a disciplinary hearing or on appeal, if this is considered appropriate in the circumstances.
- 2.4 If the employee concerned is a Trade Union representative or officer, the manager should tell the full-time trade union officer prior to commencement of this procedure.
- 2.5 No employee will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.

3. Suspension

- 3.1 Normally, a manager should only suspend an employee if there is enough evidence to suggest that he/she may be guilty of gross misconduct or if the employee's presence at work could hinder the

investigation.

- 3.2 Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible (see appendix to this procedure).
- 3.3 If gross misconduct is not suspected, consider alternative actions. Suspension may not be the only option if misconduct is alleged. Managers may wish to consider moving the employee to an area where they are not undertaking the duties involved in the investigation. For example, an employee who is suspected of theft may be moved to duties where they do not have responsibility for cash or resources; an employee facing allegations of wrongfully accessing the Internet may have Internet access withdrawn. Advice should be sought from HR.
- 3.4 An employee can only be suspended on the authority of the chief officer or their designated officer. The manager must make it clear that suspension is not a disciplinary penalty and that it will not prejudice any future disciplinary hearing. The employee must be given the name of a manager to contact while they are suspended.
- 3.5 When an employee is suspended it is the responsibility of line managers to:
 - * make sure the employee is fully informed of the reason for suspension
 - * if they are informed of this in work and are sent home, ensure they are fit to drive
 - * let them know what the appropriate procedure is and their related rights, the likely timescales, possible outcomes
 - * contact them regularly to inform them of progress of the investigation and the reasons for any delays. This can also be used as an opportunity to check how they are
 - * whether it is appropriate to offer them a referral for counselling. If they initially refuse it, offer it again in a few weeks if the suspension continues
 - * if the police have been involved and decide there is no case to answer prior to us completing our procedures, ensure

they are told that the police are no longer involved

- * consider the appropriate information to give their colleagues, clients and service users.

3.6 During the suspension, an employee will be paid the same as if he/she were on authorised absence.

3.7 At frequent intervals, the manager and the departmental HR manager must review whether an employee should stay suspended. Any suspension which extends beyond four working weeks must be reported to the chief officer with details of how the investigation is progressing and when it is likely to end. Any suspension which continues for longer than three months must be reported to the employing committee.

3.8 Managers should check the employment status of the employee and ensure they do not suspend casual workers or employees on probation. Casual workers have no employment rights and if the manager decides that their presence has a detrimental impact on the situation their casual contract should be ceased. If an employee is on probation the manager should follow the three step dismissal procedure ie meet with them to discuss the issue, confirm the outcome in writing and offer them the right to appeal.

3.9 Suspension can lead to feelings of shock and isolation. The way a manager organises an employee's return to work following suspension is crucial in reducing their recovery time. When a suspended employee returns to work managers should:

- * ensure that actions recommended by the panel and agreed by the manager have been carried out
- * discuss with them what the team has been/ is to be told
- * inform the team
- * if it has been a long suspension, the employee may wish to return to work for a "visit" before returning to work. This will enable them to get any awkwardness out of the way before they come back
- * bring them up to date on any developments in their work area and any progress made on workload/case work they were engaged on before they were suspended

- * bear in mind that the initial days/weeks may be difficult for the employee and make due allowances

4. Investigation

- 4.1 If the initial information received or the complaint against an employee **does not** suggest potential gross misconduct, the employee's manager will usually both investigate the allegations and take any disciplinary action which follows at any subsequent disciplinary hearing.
- 4.2 If the initial information received or the complaint against an employee **does** suggest that he/she is guilty of gross misconduct, the employee's manager should not both investigate the allegations and take any disciplinary action which follows at any subsequent disciplinary hearing.
- 4.3 An employee must receive at least 5 working days' notice in writing of the requirement for them to attend any investigative meeting. The letter should also give them an appropriate amount of information about the allegations and their right to be accompanied by a TU representative or work colleague.
- 4.4 Any investigation should be completed within 28 working days, although it is acknowledged that a longer time frame may be required for more complicated investigations.

5. Cases Involving Child Protection Issues, Vulnerable Adults or Financial Irregularities

- 5.1 Any complaint involving allegations relating to child protection issues or vulnerable adults must be discussed with the designated senior manager in the department before any investigation takes place under this procedure.
- 5.2 In accordance with Financial Regulations the Chief Internal Auditor must be notified of any allegations or indications of any financial irregularities. In accordance with the responsibility placed upon him/her by the Council's Anti Fraud and Anti Corruption Strategy and the Fraud Response Plan, he/she will undertake all such investigations as are considered necessary, including notifying and liaising with the police where criminal offences are suspected. The results of the Audit investigations will form part of any action taken under this Disciplinary Procedure.

6. Disciplinary Hearing

- 6.1 If the manager concludes, following an investigation, that there is a case to answer at a disciplinary hearing, the employee should be notified in writing that such a hearing will take place. Where any issues to be considered fall under the Disciplinary Policy and another policy (e.g. SOSR, Improving Performance Policy), one hearing can be convened to hear all issues where appropriate. However, any sanction(s) should be in line with the appropriate policy(s).
- 6.2 The letter must give them at least 5 working days' notice of the hearing. The following information should be included in the letter:
- the date and time of the hearing
 - details of the allegations
 - the fact that the employee will have the opportunity to state their case and question any witnesses
 - the fact that the employee will have the right to invite a trade union representative or work colleague to represent them
 - any previous warnings that could be taken into account when deciding the level of any disciplinary action
 - the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
- 6.3 They should also be sent a copy of the investigation report and appropriate statements where applicable.
- 6.4 Employees should be asked to inform the author of the letter of their witnesses so that (where they are employees of the council) the line manager can be approached to arrange appropriate time off.
- 6.5 At a disciplinary hearing which may result in dismissal, an HR Adviser should be present to advise the disciplining manager.
- 6.6 Disciplinary action can be taken at any level from a recorded warning to dismissal, depending on the nature of the misconduct.

7. Result of Hearing - Disciplinary Action

7.1 If, following an investigation and disciplinary hearing, the disciplining manager concludes that disciplinary action is required, the following options are available:

Level 1: Recorded warning

7.2 If the conduct concerned is unacceptable but not serious in nature, a recorded warning will normally be appropriate. (See paragraph 7.5 about written confirmation.)

Level 2: Written warning

7.3 If the offence is too serious for a recorded warning, or if there is further misconduct while a recorded warning remains in force, the manager may give the employee a written warning. (See paragraph 7.5 about written confirmation.)

Level 3: Final written warning

7.4 If the misconduct is too serious for a written warning but not serious enough to warrant dismissal, or if there is further misconduct while a previous written warning remains in force, the manager may give the employee a final written warning. (See paragraph 7.5 about written confirmation.)

Written confirmation of warnings

7.5 The manager must give the employee written confirmation of any warning, together with an explanation of:

- the reason for the warning;
- whether it is a recorded, written or final warning;
- the employee's right of appeal (see paragraph 9);
- the fact that a note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- the fact that further misconduct may lead to further disciplinary action which could (adding where appropriate) include dismissal;
- the fact that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

Level 4: Dismissal, and dismissal with offer of re-engagement

7.6 If, following an investigation and disciplinary hearing, the disciplining manager is satisfied that an employee is guilty of gross misconduct, the employee will be dismissed without notice or pay in lieu of notice. As soon as is reasonably possible, the manager will confirm the dismissal in writing, giving the date on which the person's employment ended and explaining the reasons for the dismissal and the employee's right of appeal (see paragraph 9 and the appendix to this procedure concerning gross misconduct)

OR

7.7 If, while a final written warning is still in force, the employee's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, the disciplining manager will normally dismiss the employee. As soon as is reasonably possible, the manager will confirm the dismissal in writing, giving the date on which the person's employment will end and explaining the reasons for the dismissal and the employee's right of appeal (see paragraph 9). The employee will receive full pay during the notice period.

OR

7.8 If appropriate, the disciplining manager may dismiss an employee on either of the above grounds and offer to re-employ them in a different job. The alternative post should be identified when the employee is told the outcome of the disciplinary hearing and this may require the proceedings to be adjourned. The alternative post may mean relegation to a lower grade. No pay protection will apply. A final written warning will form part of such a disciplinary decision. If the employee refuses the offer of transfer / relegation, his/her dismissal from the council will still stand.

8. Time Limits for Warnings

8.1 Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- recorded warnings - 6 months
- written warnings - 1 year
- final written warnings - normally 1 year or such other time as is considered appropriate - see paragraph 8.2 below

- 8.2 Depending upon the nature of the misconduct, service managers may impose a final written warning that will remain in force for a period of greater than 1 year. In this event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period. In exceptional circumstances (eg abuse against children and vulnerable adults), the written warning may be extended for as long as the employee concerned is employed in his/her current job or a similar job. If an employee considers that the extended time period is unreasonable, he/she may appeal to the service director or designated senior manager.
- 8.3 Where disciplinary action relates to abuse against children, vulnerable adults, breaches of financial regulations or issues which relate to racial, sexual or disability discrimination, the relevant documentation should be retained on the employee's personal file for as long as he/she remains in his/her existing (or similar) post. Such documentation will not, however, form part of any subsequent disciplinary action if it is time-expired.
- 8.4 In all other disciplinary actions, the relevant documentation will be removed from the file and destroyed, with the exception of the letter to the employee which confirms the outcome of the disciplinary hearing. This letter will not, however, form part of any subsequent disciplinary action if it is time-expired.

9. Appeals

- 9.1 An employee who wants to appeal against a disciplinary decision should inform the directorate's designated officer within five working days of being told the decision in writing. (The name of the designated officer should be specified in the formal notification of the decision.) The employee must explain the grounds for the appeal, specifying whether it relates to the facts of the matter, the level of sanction imposed or the way the procedure was followed.
- 9.2 The purpose of an appeal is:
- to review the decision taken by the disciplining manager;
 - to consider whether the procedure has been followed correctly.
- 9.3 An appeal is not a re-hearing of the disciplinary hearing, but a review of the decision. The outcomes open to the manager are to:
- uphold the appeal;
 - reject the appeal in full;

- reject the appeal in part and impose a lower level of warning;
- in exceptional circumstances, reject the appeal and impose a higher level of warning up to and including a final written warning.

9.4 The disciplining manager or their designated management representative will present the case at any appeal against a disciplinary decision.

9.5 An appeal against a recorded, written or final written warning must be heard by a manager more senior than the one who issued the warning. The appeal will normally take place within 15 working days of the appeal request being received by the directorate's designated officer. An HR Adviser will be present to make sure the procedure is properly applied and to advise and support the manager who is hearing the appeal.

9.6 In exceptional cases, it is possible for the manager hearing an appeal on a recorded or written warning to impose a higher level of warning.

10. Appeals Against Dismissal

10.1 An employee must be informed in writing that he/she may appeal against dismissal from the council's employment by writing to the Democratic Support Team within 5 working days of written notification of the decision to dismiss. The employee should state the reasons for his/her appeal. The appeal will be heard by the Appeals Committee.

10.2 The appeal will be carried out in accordance with the city council's agreed procedure for conducting appeal hearings.

10.3 The decision options open to the Appeals Committee are as follows:-

- Uphold the appeal
- Reject the appeal in part and impose a lower level of warning
- Reject the appeal in full
- Reject the appeal and ask the employee's manager to reconsider the option of offering alternative employment on the basis that if the offer of redeployment is rejected by the employee, the dismissal stands.

Appendix - Handling Gross Misconduct

Some of the offences which may be regarded as gross misconduct are:

- theft, unauthorised use or removal of the council's, a service user's, a client's or a fellow employee's property
- falsification of time-sheets, expenses claims or other records
- fighting or physical assault
- sexual or racial harassment
- harassment or discrimination on the grounds of race, gender, sexuality, disability, age or religious belief
- deliberate damage to council or a fellow employee's property
- inability to carry out normal work through being under the influence of alcohol or other drugs (medically prescribed drugs may be an exception)
- deliberate disregard for safety rules
- serious negligence causing unacceptable loss, damage or injury
- a serious breach of the Code of Conduct
- misuse of an employee's official position for personal gain, or for the inappropriate benefit of a friend, colleague or member of the employee's family
- failure to comply with a reasonable management instruction, despite being warned of the consequences
- abuse of a service user
- Non disclosure of criminal convictions, cautions, and bans eg from driving that have occurred during the employees employment with the council



Improving Performance Procedure

Author: **Employee Relations**

Version: 4

Date created: **22 November 2007**

HISTORY OF POLICY CHANGES

| Date | Page | Details of change |
|-------------|-------------|--|
| 01.11.06 | 4 | Paragraph 6.3 inserted |
| 01.04.07 | 4 | Paragraph 5 re-written |
| 22.11.07 | 5 | Paragraph 6.6 “may” to “will” |
| 05.08.08 | 7 | Para 7.7 - Hearing can be convened to cover issues that arise under more than one policy |
| | | |
| | | |

1. Aim

- 1.1 Performance management is an on-going process, usually delivered through one-to-one/supervision sessions between an employee and their line manager. The council's Performance Management and Development Scheme (PMDS) formalises this through twice-yearly review and planning sessions.
- 1.2 This procedure aims to support under-performing employees in reaching the required standard of performance within a reasonable period. It is not about dismissing under-performing employees at the first opportunity.

2. Scope

- 2.1 This procedure applies to all employees who have completed their probationary period (trial period in the case of redeployees), except centrally-employed teachers and staff in locally managed schools, for whom there are separate procedures.
- 2.2 For directors and heads of service there is a separate contractual arrangement between the PMDS and pay progression.
- 2.3 This procedure is to be used in cases of employee under-performance (that is capability including attitude), not misconduct (for example - dishonesty, lateness, refusal to follow procedures or instructions), where the Disciplinary Procedure should be used. Managers should seek advice from their HR Adviser as to which procedure should be used in each case.
- 2.4 If the primary reason for employee under-performance is sickness absence, then the Managing Attendance Procedure should be used, unless the primary reason is related to alcohol or drugs in which case the Alcohol Misuse/Drugs Misuse Policies should be used.
- 2.5 Throughout this procedure, the term "employee" includes directors, heads of service and managers where they are under-performing.
- 2.6 If formal action under this procedure, also involves disciplinary issues, the Disciplinary Procedure should be used.

3. Identifying employee under-performance

- 3.1 Examples of employee under-performance include:
 - Not undertaking the duties and responsibilities of their post to the required standard (as shown in their job description) **and/or**
 - Not achieving the objectives agreed with their manager (as shown in their PMDS agreement and/or one-to-one/supervision notes) **and/or**

- Not fulfilling the requirements of The Bristol Manager and/or Employee Competence Framework.

3.2 When determining whether an employee is under-performing, the manager will take into account any reasonable adjustments required under the Disability Discrimination Act (DDA) and/or any agreed programme of training/support following redeployment. The manager will also take into account any other factors that may be impacting on an employee's performance (for example issues in the workplace, personal circumstances (for example relationship breakdown, caring responsibilities, recent bereavement), seeking advice from their HR Adviser as necessary.

4. Addressing employee under-performance through normal day-to-day management

4.1 Where a manager has evidence of an employee's under-performance, the manager will discuss the issues with the employee as soon as possible as part of their normal day-to-day management role.

4.2 All discussions about an employee's under-performance will take place in a confidential environment and will be conducted in an appropriately supportive manner.

4.3 Because this is part of the normal day-to-day management process, discussions will normally involve the employee and their line manager only. However, the employee may if they wish be accompanied by a trade union representative or work colleague.

4.4 The manager will:

- Explain the ways in which the employee is under-performing
- Seek to explore the reasons for the employee's under-performance
- Take into account the employee's views and advice from HR and the Occupational Health and Counselling Service as appropriate
- Explain how the employee's performance needs to improve and how performance will be monitored/measured and advise of any targets
- Discuss with the employee any training/support measures that will be provided
- Advise the employee of a reasonable and appropriate review period for the employee's performance to improve (which will normally be no less than eight weeks and no more than six months), taking into account the extent and impact of the under-performance, the duration and pattern of the employee's working week and the need to allow sufficient time for any training/support measures to be put in place and take effect
- Arrange regular follow-up/review arrangements with the employee (to take place during and at the end of the review period)

- Document the main points of the discussion and the next steps and provide a copy to the employee within five working days of the meeting.

4.5 If it becomes apparent that the reasons for under-performance relate to the employee's health or a disability, then the manager will seek advice from their HR Adviser, which they will then discuss with the employee. Where appropriate, the HR Adviser will recommend that the employee be referred to the Occupational Health & Counselling Service (OH&CS). The OH&CS can advise on whether the employee is disabled within the meaning of the DDA and what reasonable adjustments the council should consider making in order to accommodate the particular needs of the employee. Advice is also available from the Equalities and Social Inclusion Team (Chief Executive's department) and external organisations (such as the Department for Work and Pensions' Regional Disability Service/Access to Work Scheme).

4.6 The manager will fully consult the employee on the options available to them and will ensure that the employee is fully involved in the process of making reasonable adjustments. Where reasonable adjustments can be agreed between the manager and the employee, there is no automatic requirement for these to be validated by the OH&CS. The manager will also ensure that review periods allow sufficient time for adjustments to be made and take effect.

4.7 During the review period the employee's performance will be monitored. If at the end of the review period the employee's performance has improved to the required standard, then the manager will meet to confirm this with the employee and will follow this up in writing within five working days of the meeting.

4.8 If the employee's performance has not improved to the required standard, then the manager will seek advice from their HR Adviser with a view to following the procedure outlined in paragraph 6 below or considering redeployment (as outlined in paragraph 5 below).

5. Considering redeployment

5.1 If it becomes evident in the application of this procedure that the employee's performance is unlikely to improve to the required standard (even taking into account any reasonable adjustments required under the DDA and/or any training/support measures), but they have valuable skills that the council would wish to retain, then the manager has the discretion to discuss with the employee the possibility of redeployment to a vacant job (at the same or a lower grade) within their department. The employee may be accompanied/represented by a trade union Representative or work colleague at this stage.

- 5.2 Redeployment will only be considered if the employee agrees to it. The employee may ask to be redeployed but their manager is only required to consider the request and, having considered it, may decide that it is not appropriate to agree to it.
- 5.3 Redeployment via the New Opportunities Procedure (NOP) will only be considered where departmental attempts have been unsuccessful and where agreed by the HR Manager responsible for the NOP.
- 5.4 Redeployment will not be initiated after the end of the extended review period (following the second performance improvement meeting).
- 5.5 Where redeployment is considered, reasonable time (of at least 12 weeks in total) will be allowed for it to be achieved, though (if reached) the dismissal stage will not be delayed and the employee's notice period will not be extended.
- 5.6 Employees who are being considered for redeployment will either remain in post or be placed in a temporary position(s) within their department (where they will remain the responsibility of their manager). This will be determined by the service director (or nominee) and their HR Manager. The improving performance process continues whilst redeployment is sought.
- 5.7 Employees who are considered for redeployment under this procedure are entitled to priority consideration for vacancies, time off to apply for and to attend interviews/assessments and (where required) centrally funded training/development. However, they do not have priority above employees who are at risk of redundancy or who are being redeployed on medical grounds and they are not entitled to contractual pay protection if they are redeployed to a lower graded post.
- 5.8 Employees who are redeployed under this procedure should be appointed subject to satisfactory completion of a trial period of at least four weeks. Where the employee needs training, the manager and the employee may agree an extension to the trial period before its start. The manager will set clear objectives that are appropriate to the job and the post holder with the aim of enabling the post holder to meet all of the essential criteria for the post by the end of the trial period. The manager will regularly review the post holder's progress during the trial period to assess whether the post is suitable. The post from which the employee is being redeployed will not be filled permanently until the vacating employee has been confirmed in their new post.

6. First performance improvement meeting

- 6.1 If the employee's performance has not improved to the required standard through the process described in paragraph 4 above and redeployment has

not been considered/achieved within reasonable time, then the manager will write to the employee (giving at least five working days notice) to ask them to attend a performance improvement meeting.

- 6.2 The employee may be accompanied/represented by a trade union representative or work colleague at this stage and the HR Adviser may also attend.
- 6.3 If the employee concerned is a trade union steward or officer, the manager should tell the full-time officer prior to any meeting under the formal procedure.
- 6.4 If an employee cannot attend a meeting, it will be re-arranged for a mutually agreeable date.
- 6.5 The meeting will follow the same format as outlined at paragraph 4.4 above, with the exception that the outcome of the meeting will be a formal performance improvement plan, which will include “SMART” [Specific; Measurable; Achievable; Realistic; Time-related] objectives; details of any training/support that will be provided, by whom and by when; how performance will be monitored/measured and any targets.
- 6.6 If the employee is paid at less than the maximum spinal column point of their grade, the manager will (but only having first sought advice from their HR Adviser) withhold further increments until the employee’s performance has improved to the required standard.
- 6.7 The manager will provide the employee with a copy of the plan within five working days of the meeting, together with a covering letter which will make clear not only the manager’s commitment to helping the employee to improve their performance but also the possible consequence of not improving to the required standard (ie, action up to and including dismissal).
- 6.8 At the end of the review period the manager will review the employee’s performance against the contents of the formal performance improvement plan. If the employee’s performance has improved to the required standard, the manager will meet and confirm this with the employee. The manager will then confirm this in writing to the employee within five working days of the meeting, informing the employee that the formal performance improvement plan will remain on their personal file for 12 months from the date of this meeting. Where issues raised in the plan could put children at risk, it may be retained on the employee's personal file for longer than 12 months.
- 6.9 If the employee’s performance has not improved to the required standard, then the manager will either:

- (a) Follow the procedure set out at paragraph 7 below
or
(b) If the employee's under-performance is so serious that the manager considers that there is no reasonable chance of the individual reaching the required standard within a reasonable period, follow the procedure set out at paragraph 8 below.

Reminder: This procedure aims to support under-performing employees in reaching the required standard of performance within a reasonable period. It is not about dismissing under-performing employees at the first opportunity.

7. Second performance improvement meeting

- 7.1 The manager will write to the employee (giving at least five working days notice) to ask them to attend a second performance improvement meeting.
- 7.2 The employee may be accompanied/represented by a trade union representative or work colleague at this stage and the HR Adviser may also attend.
- 7.3 At the meeting, the manager will:
- Explain where the employee's performance still needs to improve
 - State what (if any) further training/support will be provided to the employee
 - Inform the employee that the review period will be extended once only (normally by no less than four weeks and no more than three months), taking into account the extent and impact of the under-performance, the duration and pattern of the employee's working week and the need to allow sufficient time for any training/support measures to be put in place and take effect
 - Issue the employee with a performance warning, which will remain live on the employee's personal file for 12 months from the date of the meeting
 - Update the formal performance improvement plan accordingly.
- 7.4 The manager will provide the employee with a copy of the updated plan within five working days of the meeting, together with a covering letter which will confirm the performance warning and remind the employee that the review period can be extended once only and that the possible consequence of not improving to the required standard remains (that is action up to and including dismissal).
- 7.5 At the end of the extended review period the manager will review the employee's performance against the contents of the updated formal performance improvement plan. If the employee's performance has improved to the required standard, then the manager will meet and confirm

this with the employee. The manager will then confirm this in writing to the employee within five working days of the meeting, informing the employee that the formal performance improvement plan will remain on their personal file for 12 months from the date of this meeting. Where issues raised in the plan could put children at risk, it may be retained on the employee's personal file for longer than 12 months.

- 7.6 Only where the employee's performance has still not improved to the required standard will the manager follow the procedure set out at paragraph 8 below.
- 7.7 Where there are additional issues to be considered (for example, conduct issues), that fall under more than one policy, one hearing can be convened to hear all issues where appropriate. However, any sanction(s) should be in line with the appropriate policy(s).

8. Dismissal

8.1 The manager will:

- (a) Write to the employee (giving at least five working days notice) to inform them that:
- Their performance has not improved to the required standard
 - They are therefore at risk of dismissal
 - They are invited to a meeting (where they may be represented by a trade union or work colleague and where the HR Adviser will attend) to discuss the reasons for the dismissal and for management to consider any representations they may have.
- (b) Meet the employee to discuss the proposed dismissal and determine whether it should be confirmed.
- (c) Write to the employee to confirm the outcome of the meeting and if the dismissal is confirmed:
- Issue them with contractual notice of dismissal and set out the reason for the dismissal
 - Inform them of their right to appeal against the dismissal setting out the grounds of appeal within 10 working days of receipt of this notice:
 - (i) In the case of employees who have less than one year's continuous service with the council, the appeal should be submitted to the HR Manager for their department and will be heard by a more senior manager (normally from the same department, but exceptionally from another department) and an HR practitioner (neither of whom may have been involved in the case before this point).

- (ii) In the case of those who have one or more year's continuous service with the council, the appeal should be submitted to the Democratic Support Team (in the Chief Executive's department) and will be heard by the Employee Appeals Committee.
- (iii) Appeal outcomes will be confirmed to the employee concerned within five working days of the decision.

9. Date of implementation

9.1 01 May 2006.

Bristol City Council

**Procedure for
termination of employment
on the grounds of
“Some Other Substantial Reason”**

Effective from 1 April 2005

Amended March 2005 (to remove FTC)

Amended February 2008 (to remove failure to disclose CRB checks)

Amended August 2008 (to add that a hearing can be convened to cover issues that arise under more than one policy).

INDEX

| Section | Title | Page No |
|----------------|---|----------------|
| 1 | Introduction | 1-2 |
| 2 | Exclusions | 2 |
| 3 | Procedure <i>Investigation</i> <i>Hearing</i> | 2-3 2 2 |
| 4 | Appeals | 3 |
| 5 | Date of Implementation | 3 |

Section 1 Introduction

1. The City Council has a number of procedures in place that deal with the dismissal of employees. These are:-

| | | |
|-------------|-------|---------------------------------------|
| Conduct | | Disciplinary Procedure |
| Performance | | Improving Performance |
| Procedure | | |
| Ill Health | | Sickness Absence Policy and Procedure |
| Redundancy | | Managing Change Policy and Procedure |

Please note that the termination of temporary or fixed term contracts is dealt with separately in the Fixed Term Contract Guidelines, available on the Intranet.

2. However, occasionally dismissals do not fall into any of these categories and are termed under the Employment Rights Act 1996 as for “some other substantial reason” (SOSR) dismissals. This procedure should be used where it is considered that dismissal on the grounds of SOSR is necessary. For the purposes of this procedure SOSR will include such issues as the following:-

(1) where an employee has confirmed that they are not prepared to accept a change/s in their working practices / contractual terms following a service review undertaken in accordance with the Management of Change Policy and Trade Union consultation;

(2) where as a result of an external service transferring in to the Council under the TUPE regulations, there are economic, technical, and organisational reasons entailing a change in the workforce that require the dismissal of an employee (see separate TUPE guidance);

(3) 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 post).

(4) where an employee has a sentence of imprisonment imposed on them and the matter did not fall within the purview of the disciplinary procedure;

(5) where there is a *serious* breakdown in a relationship between two (or more) employees which is not due to conduct and/or performance and all reasonable steps to avoid moving towards dismissal have been considered eg agreement to transfer / redeployment by one of the parties; and

(6) Some other substantial reason (to be defined in each instance) not specified above.

3. If formal action under the above, also includes disciplinary issues, the dismissal provisions of the Disciplinary Procedure should be used.

Section 2 Exclusions

4. This procedure does not apply to employees whose employment is terminated within or at the completion of their Probationary Period. The probationary procedure can be found on the Intranet site. The Head Teacher can supply details of any probationary procedures for locally managed school employees.

Section 3 Procedure

Investigation

5. Given the nature of this policy, it will not be necessary to conduct an investigation in some of the dismissal reasons set out in Section 1 above. However, advice should be sought from the departmental HR Advice and Support team or from corporate Employee Relations, where it is considered that an investigation is required. If a separate formal investigation is required, the manager conducting the hearing must not also investigate the matter.

Hearing

6. The employee must be invited to a hearing and be provided with the reasons for the potential dismissal in writing with at least five working days notice also stating that the employee will have the right to be represented by a trade union representative or a work colleague. Where there are issues to be considered that fall under more than one policy (for example, conduct issues), one hearing can be convened to hear all issues where appropriate. However, any sanction(s) should be in line with the appropriate policy(s). Any documentation to which reference will be made at the hearing should also be included with this letter.

7. The hearing will be conducted by a manager who has delegated authority from their Chief Officer to dismiss. At the hearing an HR Adviser must be present to provide advice to the manager considering the case. The employee or their representative will have the right to make submissions and call witnesses if necessary.

8. At the end of the hearing the manager considering the case will determine whether or not the employee should be dismissed. If it is

determined that the employee should be dismissed, the manager will have the following options:-

to dismiss the employee from their existing post and offer them re-employment in a different post at the same grade or at a lower grade without pay protection. The alternative post should be identified when the employee is told the outcome of the hearing and this may require the proceedings to be adjourned or (if appropriate) during the formal notice period. If the alternative job offer is rejected by the employee the original SOSR dismissal will stand.

Or

to dismiss the employee from the City Council.

9. If the employee is dismissed from the City Council, they will be entitled to contractual notice in accordance with the provisions of their contract of employment.

10. In all cases, the outcome of the hearing will be confirmed within five working days.

Section 4 Appeals

11. If the employee is dismissed they have the right of appeal. However, this does not apply in the event that the employee has accepted an offer of alternative employment.

12. The appeal must be lodged within 5 working days of receiving the formal outcome of the hearing. The employee must specify the grounds of their appeal, including whether it relates to the facts of the case or the way the procedure was followed.

13. The purpose of an appeal is:-

- to review the decision that has been taken; and
- to consider whether the procedure was followed correctly.

14. An appeal is not a re-hearing but a review of the decision. The outcomes available are:-

- uphold the appeal
- reject the appeal, or
- reject the appeal and ask the employee's manager to offer the employee alternative employment at the same or a lower

grade (without pay protection) but if this is rejected by the employee, the dismissal will stand.

15. For employees with less than one year's service the appeal will be heard by another manager within the department, at either an equivalent or more senior level. They will be advised by a personnel adviser.

16. An employee with more than one year's continuous service with the City Council will have their appeal heard by the Employee Appeals Committee.

Section 5 Implementation

17. Date of Implementation - 1 April 2005.



Code of Practice on the Conduct of Investigations

Author: **EMPLOYEE RELATIONS TEAM**

Version: **1.4**

Date created: **1ST June 2005**

HISTORY OF POLICY CHANGES

| Date | Page | Details of change |
|-------------|-------------|---|
| 25.8.06 | 5 | Section 7.2. Grievance handling time amended to 28 days as per grievance policy |

| | | |
|-----------|------------------|--|
| July 07 | 6 9 4 8 | Section 8.3. Clarity that entitlement to a copy of a complaint does not relate to complaints made by members of the public Reference to template documentation s4.4 Specialist advisers must not recommend sanctions s13.3 Investigating officers must not recommend sanctions or penalties |
| August 08 | 3 5 | Amended 'who investigates' to mirror the Disciplinary policy Recommend timescale amended to 28 days |
| | | |

1. What's the purpose of the code of practice?

1.1 The Code of Practice provides a framework for managers to use when gathering information and facts about issues needing investigation.

1.2 It is to be used in conjunction with policies that have no integral procedure for investigations eg:

- Disciplinary
- Employee Grievances
- Whistleblowing
- Dismissal on grounds of some other substantial reason (SOSR)
- Formal management investigations arising where managers commission issues to be explored that don't fall into any of the other categories.

1.3 Where investigations arise from "Whistleblowing" reference should be made to the Public Interest Disclosure Act 1998 and to the Code of Conduct for Employees.

1.4 There is a Corporate Complaints Procedure for service users and members of the public.

1.5 This Code of Practice applies to all employees except those in locally managed schools where a separate code of practice exists.

2. Principles

2.1 Appropriate confidentiality must be maintained at all stages of the investigation. Information should not be shared with people not involved in the investigation or the issues arising from it. Investigating officers should pay particular attention to considering what information needs to be shared and the way in which this is done. It should be noted that confidentiality issues differ between whistleblowing and other investigations, please refer to the Whistleblowing Policy and Procedure when appropriate.

2.2 All employees interviewed under this investigation procedure (including witnesses) are entitled to be accompanied by a trade union representative of their choice of colleague. Where there is an employee grievance alleging

harassment, the complainant is also entitled to be accompanied by a friend or work colleague.

2.3 The commissioning officer will define terms of reference and time scales for the Investigation. Regular meetings should be held between the panel and the commissioning officer so that the progress and scope of the investigation can be monitored.

2.4 As far as possible, the investigating officer should inform all parties of progress.

2.5 In some cases it may not be appropriate for managers to undertake investigations in their own service areas. Advice should be sought in the first instance from the departmental HR section.

2.6 If members of the public are interviewed as witnesses, they must be interviewed by two officers of the City Council - it is the council's policy not to hold one-to-one meetings. A statement should be prepared and signed or the notes of the meeting signed as a correct record. They should be told that they may be asked to attend further hearings and/or and to submit a written statement of their evidence.

3. Who investigates?

3.1 An investigation will be undertaken by a lead Investigating Officer, assisted by other officers where appropriate.

3.2 Commissioning officers should consider gender and race balance amongst those undertaking the investigation where sensitive complaints of race, sex, religious belief, age or disability discrimination/harassment are being investigated. Employees can request that there is a person of ethnic minority background on the panel, this will be accommodated where possible.

3.3 For relatively minor issues a panel will not be required, although the use of a trained note taker is advisable to ensure an accurate record of the meeting.

3.4 If the initial information received or the complaint against

an employee **does** suggest that he/she is guilty of gross misconduct, the employee's manager should not both investigate the allegations and take any disciplinary action which follows at any subsequent disciplinary hearing.

3.5 In exceptional circumstances the investigating officer may be external to the authority, and this is subject to the approval of the relevant Chief Officer.

4. Specialist investigations

4.1 Some incidents will be investigated by officers who have either legal, regulatory or policy responsibilities and particular obligations to meet, and in these cases the appropriate investigative processes/requirements will take precedence over this procedure.

4.2 It may be appropriate for specialist advisers to either:

- undertake the investigation from the start
- undertake the investigation in conjunction with the investigating officer
- advise the investigating officer as and when required.

4.3 When are specialist advisers needed? Who are they?

- In cases involving children: Principal Officer (Children), Social Services and Health
- In cases involving vulnerable adults: Principal Officer (Adults), Social Services and Health or the identified Service Manager or Principal Officer (Learning Difficulties and Mental Health Division).
- In cases involving significant legal issues: Solicitor (Employment)
- In cases where serious complaints of discrimination or harassment have been made: Corporate HR Manager (Employee Services)
- In cases where adverse information is received via CRB check: CRB TL
- In cases involving suspected financial irregularities: Chief Internal Auditor. Investigations into alleged financial irregularities will be conducted by Internal Audit from the start.
- External investigators may conduct investigations at the discretion, under delegated powers, of the Chief

Executive (as “Head of Paid Service”) or by the Head of HR on his (her) behalf, or relevant Chief Officer. This would normally only be considered when the subject of the investigation is the senior officer or where there are substantial operational issues that prevent an investigation being conducted by internal staff.

4.4 Once an investigation is completed by specialist advisors, a report will be prepared for the commissioning manager and this will form the basis of any necessary action. It may be appropriate for specialist advisors to recommend specific action, but not to recommend sanctions.

5. Access needs of employees being interviewed

The letter inviting employees to interview should ask them to state any access needs eg wheelchair access, British Sign Language (BSL) interpreter, specialist equipment etc. If appropriate, BSL interpreters should be familiar with the terminology of the pertinent work area.

6. Role of TU rep/work colleague

6.1 If the employee wishes to be accompanied, they must arrange it. The person accompanying an employee should be allowed a reasonable amount of paid time off to do so. It should be noted that there is no duty on a fellow worker or trade union official to accept a request to accompany an employee.

6.2 A trade union representative/work colleague may accompany the employee. They are allowed to address the meeting in order to put the employee’s case, sum up the case, respond on the employee’s behalf to any view expressed at the meeting and confer with the employee during the meeting. They do not have the right to answer questions on behalf of the employee, address the meeting if the employee indicates that s/he doesn’t want the companion to do so, or prevent the employer from putting the case.

7. Timescales and Venues

7.1 Investigations should be concluded within the time scales laid out in specific procedures - please refer to the particular policy and procedure.

7.2 An investigation should normally be completed within 28 working days in relation to the Disciplinary Procedure, Employee Grievance Procedure and SOSR dismissals. The time scales for management investigations will depend upon the nature of the investigation that has been commissioned. More straightforward cases should be completed within 28 working days, although it is acknowledged that a longer time frame may be required for more complicated investigations.

7.3 Due to the nature of concerns raised using the Whistleblowing Policy and Procedure, it may not always be possible for the Council to indicate how it proposes to deal with the matters raised and the time scales involved. However, the Council undertakes to inform employees who wish to know of the progress and outcome of an investigation under this procedure (where this will not compromise the process).

7.4 If the timescale is likely to be exceeded, the commissioning officer should be informed. The Disciplinary Procedure imposes additional requirements where employees are suspended as a precautionary measure.

7.5 Where necessary, interviews may be conducted at an appropriate, mutually acceptable site. However, the following should be noted:

- A. All employees (complainant, alleged perpetrator, witness) have the same right to be accompanied as they would in the workplace.
- B. On no account should one-to-one interviews be carried out.
- C. That all interviews held (regardless of venue) are part of the formal procedure.

8. Prior to the investigation:

8.1 The Investigating Officer will prepare a programme of meetings with the employees to be interviewed and make appropriate arrangements with their line manager for release.

8.2 Employees required for interview should be given the period of notice required by the relevant procedure and should be advised of their right to be accompanied by a trade union representative, colleague or friend (if applicable).

8.3 Witnesses should receive a summary of the complaint, unless they are named in the complaint, in which case they should receive a copy of the complaint in full. Employees under investigation should receive a copy of the complaint in full. (This does not apply to complaints that are made by members of the public and dealt with through the Corporate Complaints Procedure.) Refer to Appendix A.

8.4 The workloads of investigating officers should be adjusted to recognise this additional duty.

8.5 If an employee requests that the meeting be postponed because they are unable to get a trade union representative of their choice or work colleague to accompany them on the proposed day, a new date should be arranged which is mutually acceptable to all involved, provided the new date falls within five working days of the original date. If there is no mutually acceptable date available within five working days of the originally proposed date, it is for Investigating Officers to decide how to proceed.

8.6 In circumstances where it would not be reasonable or appropriate to delay the investigation, the Investigating Officer must exercise judgement in proceeding with the investigation if employees or witnesses are not available to participate.

9. At the start of the meeting

The following should be made clear to all those being Interviewed during the investigation:

9.1 The purpose of the meeting:

- To gather facts and ask questions relating to allegations and record responses.
- Reassurance should be given that no opinion has yet been reached as to the validity of the allegations or to the outcome of the investigation.

9.2 Possible outcomes

The employee being investigated should be advised of the possible outcomes.

9.3 Adjournments

May be requested if an individual or the Investigating Officer feel that they require the meeting to be adjourned for a short period.

9.4 Record of the meeting

All those interviewed will be sent a record of the meeting and asked to sign it as an accurate record. If there is a disagreement it should be noted and the alternative version provided.

9.5 Subsequent hearing(s)

Employees under investigation or witnesses may be required to attend further meetings, where investigation statements will be shared.

9.6 Disclosure of statements

All those interviewed should be advised that their statement maybe disclosed upon request to other individuals. Refer to Appendix A.

10. During the meeting

10.1 The employee under investigation or the witnesses do not have the right to ask questions of the Investigating Officer, other than those relating to the investigation process itself.

10.2 The Investigating Officer should not get into an argument with the individual or his/her representative.

10.3 Occasionally there may be a request that an investigation be taped. It is not the council's practice to allow

this because transcribing tapes is unreasonably expensive and time-consuming. Where taping is felt to be essential (such as to meet an employee's access needs), it should only take place with the prior agreement of both parties.

10.4 The Investigating Officer may recall the employee being investigated or any witnesses to obtain clarification on any points or ask further questions.

11. Delays

11.1 An investigation can be delayed for various reasons, such as the investigation widening as statements are taken, and/or more information becoming necessary to ensure that the full facts are available. Where delays arise, progress letters should be sent to all parties (ie the complainant, alleged perpetrator, witnesses) to inform and update him/her on the reason for the delay.

12. Individuals not covered by the Code of Conduct

Ex-employees will not be covered by the provisions of the Code of Conduct in:

relation to the need to maintain confidentiality and may make disclosures that might bring the council into disrepute. Therefore, in certain circumstances, they may be asked to sign a Confidentiality Agreement so that the city council can ensure its duty of confidentiality for both employees and service users. This will be dealt with on a case by case basis and advice will be provided by the Data Protection Officer and the Corporate Legal team.

13. Action following an investigation

13.1 An investigation report should be prepared for the Commissioning Officer, which may include:

- An introduction outlining the substance of the complaint
- The names of the investigating panel and their role
- The process undertaken ie assembling documentation, interviewing

- Employees and witnesses, background papers that have been considered
- The names and role of the people interviewed ie witness, complainant (statements will normally be included as appendices to the investigation report)
- Issues of consistency/inconsistency
- Any specialist advice sought/taken
- Any explanation/circumstances offered in mitigation
- Conclusions, based on the balance of probability - ie is there a case to answer?

13.2 The Investigating Officer will advise the commissioning officer either:

- That there is insufficient evidence to uphold the complaint
- or**
- That the complaint has been found in part to be justified.
- or**
- There is evidence that suggests further action be taken

13.3 Investigating Officers must not make recommendations as to appropriate sanctions or penalties - that is for the panel/disciplining manager to decide.

13.4 The investigation report (with attached statements) should be sent to the commissioning manager to raise any queries or issues before it is sent to any other party. Statements requested should not be circulated prior to completion of the investigation as it may prejudice the investigation.

14. Access to investigation report

14.1 If the issue is to be considered as part of the Disciplinary Procedure, the employee who has been investigated will be given a copy of the report and the witness statements as part of the documentation made available to him/her. They will also receive a full copy of the original complaint. If the complaint involves a third party eg a

child or vulnerable adult managers may edit the complaint to protect confidentiality.

14.2 Both the complainant and the employee who has been investigated are entitled to receive a copy of the report. This can include copies of the witness statements, upon request, and to know whether or not the matter will be pursued in accordance with the appropriate council procedure.

15. Anonymous reports/unsigned statements

15.1 Occasionally managers may receive anonymous information concerning their staff. All anonymous statements should be treated with extreme caution. It should be noted that information received anonymously cannot be used in a disciplinary hearing.

15.2 Anonymous information may lead to an investigation which reveals facts on which further action can be based. Anyone against whom an anonymous allegation is made should normally be informed that a complaint has been received and be invited to comment. The final outcome of any discussion or investigation should be recorded.

15.3 Anonymous letters received should be immediately placed into a clear plastic wallet. This will enable the police to examine the letter for fingerprints if this becomes necessary eg should the letter turn out to be malicious or worthy of police investigation.

16. Third party evidence

16.1 Some investigations may involve taking third party evidence from members of the public, Councillors or from other persons (e.g. contractors). The same principle should be applied to third party evidence as to other evidence.

17. Police inquiries

The fact that a police investigation is taking place does not necessarily mean that the management investigation and subsequent hearing cannot take place until the police investigation is over. Personnel and Audit advice may be needed on the best

way forward. It is important that nothing happens in an internal investigation which might prejudice a police inquiry.

Templates of the documentation relevant to this policy can be found on :

<http://intranet.bcc.lan/php/home/people/investigations.phtml>

Disclosable documentation

Appendix A (amended August)

2006)

Employee Complaint

| Documentation | Complainant | Alleged Perpetrator | Witnesses |
|----------------------|---|---|---|
| The Complaint | Yes | Yes | A summary of the complaint |
| Their Statement | Yes | Yes | Yes |
| Other Statements | If an application is made for access, consideration will be made on a case-by-case basis to disclose the parts of the statement that contain their personal data. | If an application is made for access, consideration will be made on a case-by-case basis to disclose the parts of the statement that contain their personal data. | If an application is made for access, consideration will be made on a case-by-case basis to disclose the parts of the statement that contain their personal data. |
| Investigation report | Yes | Yes | If an application is made for access, consideration will be made on a case-by-case basis to disclose the parts of the report that contain their personal data. |

Disciplinary / SOSR / Formal management investigation

| Documentation | Alleged Perpetrator / subject of management investigation | Witnesses |
|----------------------|--|------------------|
| The Allegation | Yes | No access |
| Their Statement | Yes | Yes |

| | | |
|----------------------|--|---|
| Other Statements | Access to all statements should be granted (upon request) except in exceptional circumstances whereby statement may be edited/access refused e.g. to protect the identity of vulnerable adults and children. In cases that lead to a disciplinary hearing, the employee has access to all documents. | If an application is made for access, consideration will be made on a case-by-case basis to disclose the parts of the statement that contain their personal data. |
| Investigation Report | Yes | If an application is made for access, consideration will be made on a case-by-case basis to disclose the parts of the report that contain their personal data. |

Whistleblowing: Please note that different rules of confidentiality apply under this policy. Please seek advice from your personnel section as needed.