

To: Members of the Special Sub-Group

Councillors Hayfield, Phillips, Smith, M Stanley and Sweet

For the information of the other Members of the Council

SPECIAL SUB-GROUP

16 DECEMBER 2013

The Special Sub-Group will meet in the Committee Room, The Council House, South Street, Atherstone, Warwickshire on Monday 16 December 2013 at 2.30pm.

AGENDA

PART I - PUBLIC BUSINESS

- 1 Evacuation Procedure.**
- 2 Apologies for Absence / Members away on official Council business.**
- 3 Disclosable Pecuniary and Non-Pecuniary Interests**
- 4 Public Participation**

Up to twenty minutes will be set aside for members of the public to ask questions or to put their views to elected Members. Participants are restricted to five minutes each. If you wish to speak at the meeting please contact David Harris on 01827 719222 or email democraticservices@northwarks.gov.uk.

PART A – ITEMS FOR DISCUSSION AND DECISION (WHITE PAPERS)

- 5 **Accommodation Project** – Report of the Assistant Director (Streetscape)

Summary

To receive a progress report on the Accommodation Project.

The Contact Officer for this report is Richard Dobbs (719440).

- 6 **Proposed Replacement of Indoor Leisure Facilities in Coleshill** – Report of the Assistant Director (Leisure and Community Development)

Summary

This report provides the Sub-Group with details associated with the two cost options through which the Borough Council can progress the development of new indoor leisure facilities in Coleshill and invites Members to determine through which of these options its wishes to formally engage Wates Construction.

The Contact Officer for this report is Simon Powell (719352).

- 7 **Review of Existing Lone Working Policy and Procedure** – Report of the Assistant Director (Finance and Human Resources)

Summary

This report reviews and updates the existing policy. The revised policy has been consulted on with senior managers and the trade unions.

The Contact Officer for this report is Janis McCulloch (719236)

- 8 **Review of the Existing Disciplinary Policy and Procedure** – Report of the Assistant Director (Finance and Human Resources)

Summary

This report reviews the existing policy. The revision has been consulted on with senior managers and the trade unions.

The Contact Officer for this report is Janis McCulloch (719236)

- 9 **Zero Hours Contracts** – Report of the Assistant Director (Finance and Human Resources)

Summary

This report advises member on zero hour's contracts and how North Warwickshire Borough Council operates these contracts.

The Contact Officer for this report is Janis McCulloch (719236).

**PART C – EXEMPT INFORMATION
(GOLD PAPERS)**

10 Exclusion of the Public and Press

Recommendation:

That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of exempt information as defined by Schedule 12A to the Act.

11 Update on Health and Safety - Report of the Assistant Director (Housing)

The Contact Officer for this report is Angela Coates (719369).

JERRY HUTCHINSON
Chief Executive

For general enquiries please contact David Harris, Democratic Services Manager, on 01827 719222 or via e-mail – davidharris@northwarks.gov.uk. For enquiries about specific reports please contact the officer named in the report.

Agenda Item No 6

Special Sub-Group

16 December 2013

**Report of the
Assistant Director
(Leisure and Community Development)**

**Proposed Replacement of
Indoor Leisure Facilities
in Coleshill**

1 Summary

- 1.1 This report provides the Sub-Group with details associated with the two cost options through which the Borough Council can progress the development of new indoor leisure facilities in Coleshill and invites Members to determine through which of these options it wishes to formally engage Wates Construction.

Recommendation to the Sub-Group

That the Sub-Group determines through which cost option it wishes to contract with the Borough Council's appointed contractor, Wates Construction, in respect of the development of new indoor leisure facilities at The Coleshill School.

2 Consultation

- 2.1 The Chairman, Vice-Chairman and Opposition Spokesperson for the Special Sub-group, the Community and Environment and Resources Boards, the Safer Communities Sub-Committee, Members with responsibility for Health, Well-being and Leisure and Young People and Coleshill Ward Members have all had an opportunity to comment on the content of this report. Any comments received will be reported verbally to the Sub-group.

3 Construction Cost Options

- 3.1 Further to the meeting of Special Sub-group held on 18 November 2013, Members are aware that Wates Construction presented its Option C Target Cost for the Coleshill Leisure Centre project on time, on 28 October 2013. Ordinarily, through the EMPA Intermediate Projects Framework Agreement, the Option C Target Cost is the only option available to the client (in this case, the Borough Council). On this occasion, however, agreement has been secured from Scape for Wates Construction to prepare and submit an alternative Option A Lump Sum cost option. This cost proposal has also been received by the Authority.

3.2 For clarification, the capital funding available for the project is £4,301,366, made up as follows:

Borough Council	£2,815,000
Education Funding Agency	£1,461,366
England Squash and Racketball	£25,000
Total	£4,301,366

- 3.3 Account needs to be taken of the need to fund £152,000 of fees attributable to the project, thereby leaving a sum of £4,149,366 available to support project delivery (including all contingencies and provision for fitness equipment and furniture and fittings, etc.).
- 3.4 Wates Construction's initially proposed Option C Target Cost was presented in the sum of £4.175 million, which was approximately £26,000 over budget. This Option has subsequently been reduced to £4.164 million (£15,000 over budget). Its Option A Lump Sum offer is valued at £4.150 million (on budget). Both Options include provision for liquidated damages and a performance guarantee bond, but not provision for "retention" money to be held by the client until the end of the 12 months construction defect period.
- 3.5 Clearly, there are differences between Option C (Target Cost) and Option A (Lump Sum).
- 3.6 Within Option C, the Borough Council would pay the Actual Cost of works properly executed. In so doing, it could benefit ("gain") if the final Actual Cost was less than the agreed Target Cost. The client and contractor would share equally the first 5% of any gain. The Borough Council's share would increase to 85% of the next 5% of any underspend and to 100% of any saving greater than 10%. Conversely, however, if the Actual Cost exceeded the Target Cost by 5% or less then the Borough Council would be responsible for 100% of the cost difference (or "pain"). The contractor would be responsible for 100% of any costs above this 5% threshold.
- 3.7 Option C is an entirely "open book" process within which the contractor submits Actual Cost invoices in monthly valuations.
- 3.8 Within Option A, the Lump Sum price of the contract is "fixed" and only the contractor would benefit from any cost savings or become liable for any cost overrun.
- 3.9 Option A does not benefit from being "open book". The contractor would submit monthly invoices claiming a percentage of the agreed contract value.
- 3.10 It must be understood that within both Options, the Borough Council would retain responsibility for the additional costs of all client risks identified within the Risk Register and also for any client changes to the agreed project design.

3.11 By way of example, therefore, presuming a rounded contract value of £4 million:

Option C Target Cost

Target Cost = £4 million	Actual Cost = £3.8 million	Payment = £3.9 million (£3.8 million + 50% of £200k "gain")
Target Cost = £4 million	Actual Cost = £4.2 million	Payment = £4.2 million (£4 million + 100% of the "pain")

Option A Lump Sum

Lump Sum Cost = £4 million	Actual Cost = £3.8 million	Payment = £4 million
Lump Sum Cost = £4 million	Actual Cost = £4.2 million	Payment = £4 million

3.12 The highlighted examples above presume that none of the risks highlighted on the Risk Register occur and that no client changes are made to the agreed project design. Members need to be aware that this is very unlikely to be the case. Indeed, two relatively minor client changes to the project design have already been identified. The potential impacts of Risk Register and client changes are highlighted below:

Option C Target Cost

Target Cost = £4 million	Risk and Client Change = £100k	Revised Target Cost = £4.1 million	Actual Cost = £3.9 million	Payment = £4 million (£3.9 million + 50% of £200k "gain")
Target Cost = £4 million	Risk and Client Change = £100k	Revised Target Cost = £4.1 million	Actual Cost = £4.3 million	Payment = £4.3 million (£4.1 million + 100% of the "pain")

Option A Lump Sum

Lump Sum Cost = £4 million	Risk and Client Change = £100k	Revised Lump Sum Cost = £4.1 million	Actual Cost = £3.9 million	Payment = £4.1 million
Lump Sum Cost = £4 million	Risk and Client Change = £100k	Revised Lump Sum Cost = £4.1 million	Actual Cost = £4.3 million	Payment = £4.1 million

- Note that these figures are rounded and not specific to the Coleshill Leisure Centre project
- 3.13 As identified, Risk Register and client changes are inevitable on a project of the scale proposed in respect of Coleshill Leisure Centre. It is not possible to be precise about which of these possibilities will manifest themselves. A number of the client risks on the Risk Register, however, are potentially expensive if they occur, a non-exhaustive list of which includes:
- A Severn Trent Water requirement to resolve a potential foul water drainage problem on site
 - Discovery of abnormal ground conditions not identified within the site investigation reports
 - The need to divert existing services and drains not identified within the site investigation reports
 - Additional asbestos removal requirements not identified within the site investigation reports
 - Further client design changes
- 3.14 As identified above, both Options carry the potential cost risks associated with the need to undertake works for which the Borough Council is responsible, as identified on the Risk Register. The Risk Register is considerably longer under Option C, although the high risk / high cost items are evident and held by the Borough Council within both Options. Within Option A, the contractor would be responsible for the costs associated with a breach of contract by any of the sub-contractors.
- 3.15 Contingency provision has been made for the Authority within both Options to cover the need to fund Risk Register works and / or client changes to the project design. This provision, however, is relatively small and is unlikely to cover the costs if, for instance, any of the first four Risk Register items listed above require to be undertaken. More significant contingency provision exists for the contractor in both Options (£120,000 in Option C and approximately £110,000 in Option A). Within Option C, this represents a potential area of underspend from which the Borough Council could benefit, particularly in view of the fact that the perceived high risk items are “owned” by the Authority.
- 3.16 In discussion with the Project Manager, Coventry City Council, the view has been formed that Wates Construction’s Option C Target Cost price is “robust”. Given that its Option A Lump Sum offer is approximately £15,000 cheaper, it is held that Wates Construction must be relatively confident in the pricing of its Target Cost proposal. The Project Manager has confirmed that the contractor also has a very good track record of delivering projects on time and within budget. It is not able to guarantee, however, that this will be the case with the Coleshill Leisure Centre project.
- 3.17 It could, of course, be held that Wates Construction has greater incentive to reduce cost within Option A, where only it would benefit from any financial savings made within the project. This incentive is reduced even further within Option C at the point at which the contractor realises that cost savings are

unlikely, for it knows that the Borough Council would be responsible for the first 5% of any cost overrun. Indeed, under this scenario, there is a relatively small benefit to the contractor, given that its contractually agreed profit percentage would be applied to the Actual Cost of the scheme (by way of example, its 4.9% profit entitlement could be paid against an Actual Cost of up to £4.2 million, instead of £4 million). This potential level of benefit, however, is lower than the financial gain to be accrued (by both parties) from a healthy cost saving under Option C. It is felt that potential areas of cost gain are still evident within the project. Nevertheless, these will only become of benefit to the Borough Council under Option C.

3.18 Members, therefore, are faced with a difficult decision in respect of whether to contract with Wates Construction under its Option C Target Cost proposal, which is very slightly over budget, or through its on budget Option A Lump Sum offer. Option C is believed to be robust and holds the potential for cost savings, as well as cost overrun, whilst Option A is “fixed”, but presents no opportunity for savings to the Authority. Essentially, given that the Borough Council's responsibility to fund Risk Register items applies to both Options, the decision comes down to the Authority's attitude to cost risk. Does the Council value the greater cost certainty of Option A, or is it prepared to carry the potential risk of a cost overrun of up to 5% in an effort to realise a contract saving (the first 5% of which would be shared equally with the contractor)? Of course, a judgement also has to be made in respect of the contractor's commitment to realising cost savings and, in this regard, the Project Manager has confirmed that Wates Construction has a positive track record of achievement. It is held that the contractor values its reputation for delivering projects on programme and within budget. Anecdotally, this is currently the case in respect of its involvement, albeit under a different Framework Agreement, on the Borough Council's accommodation project. The Project Manager has declined the opportunity to make its own recommendation in respect of the identified Cost Options. In respect of both Options, however, it has advised the Authority to identify a contingency reserve of £100,000, which would only be used if Borough Council “owned” high cost risk items manifest themselves.

3.19 In order to remain on programme and to achieve the required “practical completion” date of 24 October 2014, the project has entered Gateway 5 (construction phase) of the EMPA Intermediate Projects Framework. Whilst Wates Construction has been engaged through to the end of the scheme, in respect of which both parties have entered into a Memorandum of Agreement, formal contracts will not be exchanged until either a Target or Lump Sum Cost has been agreed. The Borough Council continues to be liable only for the Actual Cost of works properly undertaken, which, at the time of writing this report, is approximately £300,000.

3.20 It is clear, however, that the contractor requires a formal “Instruction to Proceed”, and in this regard a decision is needed in respect of under which Cost Option to contract with Wates Construction. The Sub-group is asked to consider and confirm its stance on this difficult issue.

4 Report Implications

4.1 Finance and Value for Money Implications

4.1.1 In addition to those previously reported to the Sub-group, the headline financial implications associated with the Cost Options relating to the construction of Coleshill Leisure Centre are the subject of this report and, as such, are detailed in section 3 above.

4.2 Safer Communities Implications

4.2.1 The provision of good quality leisure facilities and services has profound and positive implications for the development of safer communities and a reduction in the likelihood of criminal and / or anti-social behaviour.

4.3 Legal and Human Rights Implications

4.3.1 The future replacement of Coleshill Leisure Centre will have direct and positive implications for the Authority's ability to meet the requirements of Equalities and other legislation and on its determination to equitably enhance access to good quality services for the local community.

4.4 Environment and Sustainability Implications

4.4.1 The proposed investment of resources is required if the Council is to maintain and enhance the quality, consistency and sustainability of its indoor leisure provision in Coleshill. The services provided through the new leisure facility will make a positive and lasting impact on individual and collective quality of life within North Warwickshire.

4.5 Health, Well-being and Leisure Implications

4.5.1 Leisure facilities have a positive impact on the health and well-being of individuals and communities through the provision of opportunities for formal and informal recreation and by contributing to an enhanced quality of life in the Borough. The project is also compliant with, and helps to deliver against, the priorities identified in the Warwickshire Health and Well-being Strategy and the supporting Joint Strategic Needs Assessment.

4.6 Human Resources Implications

4.6.1 There is no immediate human resource implication arising directly from this report.

4.7 Risk Management Implications

4.7.1 The condition and future replacement of Coleshill Leisure Centre have been the subject of a detailed risk assessment, a copy of which was presented to the Community and Environment Board in July 2012.

4.7.2 The risks associated with the Cost Options that are the subject of this report are detailed in section 3 above.

4.8 Equalities Implications

4.8.1 Any scheme undertaken to replace Coleshill Leisure Centre would be designed to positively impact on the corporate priority to protect and provide easier access to Council services. An Equality and Impact Needs Assessment (EINA) has been carried out and was presented to the Community and Environment Board at its meeting held in July 2012.

4.9 Links to Council's Priorities

4.9.1 An undertaking to replace Coleshill Leisure Centre would have positive and direct links to the following corporate priorities:

- Public service
- Crime and disorder
- Access to services
- Consultation and communication
- Health and well-being

4.9.2 The future replacement of Coleshill Leisure Centre with a new development at The Coleshill School would also have positive implications for the Sustainable Community Strategy priorities to:

- Raise aspirations, educational attainment and skills
- Develop healthier communities
- Improve access to services

The Contact Officer for this report is Simon Powell (719352).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
1	Wates Construction	Coleshill Leisure Centre – Target Cost Submission	October 2013
2	Wates Construction	Coleshill Leisure Centre – Lump Sum Cost Submission	Nov 2013
3	Coventry City Council	Briefing Note on Cost Options	Nov 2013

Agenda Item No 7

Special Sub-Group

16 December 2013

**Report of the Assistant Director
(Finance and Human Resources)**

**Review of Existing Lone Working
Policy and Procedure**

1 Summary

- 1.1 This report reviews and updates the existing policy. The revised policy has been consulted on with senior managers and the trade unions.

Recommendation to the Sub-Group

- a To adopt the revised Managing Lone Working and the Risk of Violence Policy and Procedure**

2 Introduction

- 2.1 Human Resources' policies are reviewed periodically to ensure that they remain up to date and incorporate any changes in legislation. The Lone Working Policy and Procedure has been updated and now includes the management of the risk of violence. The policy has been renamed Managing Lone Working and the Risk of Violence Policy and Procedure.

3. Managing Lone Working and the Risk of Violence Policy and Procedure

- 3.1 The Council has a duty under the Health and Safety at Work Act 1974 to ensure the health, safety and welfare of all its employees. The duty extends to the safety of lone workers. Working alone in itself is not hazardous but it does increase the risk of incidents at work not being managed safely and of encountering violence at times during the working day. It is therefore best practice to have a policy and procedure for managing these risks.
- 3.4 The revised policy is attached at Appendix A, and includes references to the management of the risk of violence. The responsibilities of Managers and employees have been clarified. In addition, a section has been added on post incident support in line with what we do in practice.

4 Report Implications

4.1 Human Resources Implications

4.1.1 As detailed in the report.

4.2 Risk Management Implications

... 4.2.1 The risk assessment for lone working and the management of violence has been updated and is attached as Appendix B.

4.2.2 The use of the policy will reduce the risk of inconsistencies.

4.3 Equalities Implications

... 4.3.1 As attached at Appendix C

4.4 Links to Council's Priorities

4.4.1 Proper management of employee issues through policies contributes to the Council's priority relating to the effective use of resources.

The Contact Officer for this report is Janis McCulloch (719236).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

Management of Lone Working and the Risk of Violence Policy and Procedure

December 2013



**North Warwickshire
Borough Council**

1. Introduction

North Warwickshire Borough Council (NWBC) recognises that it has a duty to ensure, as far as is reasonably practicable, the health, safety and welfare of all its employees, including those who work alone, either within Council premises or in the wider community.

Working alone is not inherently unsafe and most employees are likely, at times, to work alone. For some, working alone is a significant aspect of their work and is the only way that the task can be achieved effectively. Although working alone itself is not hazardous it can significantly increase the risk for employees by increasing the likelihood or severity of an incident occurring, particularly where there is foreseeable exposure to violence or where work activities include exposure to significant hazards such as working at height, confined spaces or electricity.

The risk of violence is one faced by some Council employees due to the nature of the work that they undertake. Although recognised, this in no way means that violence is an accepted part of any job within the Council.

The Council is therefore committed to effectively managing the risks faced by those who work alone and those potentially exposed to violence and will ensure that working alone and the exposure of employees to potential situations of violence is avoided wherever it is reasonably practicable. Where it is not reasonably practicable to eliminate lone working or potentially violent situations the Council will implement effective measures to ensure that the risks to employees are reduced to a level that is as low as is reasonably practicable.

The Council's commitment to effectively manage the risks of lone working and violence will be achieved through its Divisions who will, as part of their safety management systems, assess the risks posed by lone working and violence and implement suitable and sufficient procedures and systems of work to adequately address their identified risks.

2. Definitions

Lone Workers

Lone workers are those who work by themselves without close or direct supervision. The Management of Health and Safety Regulations 1999 require employers to carry out a suitable and sufficient risk assessment and ensure that lone workers are not exposed to a higher risk than if the same task is carried out by more than one employee. If the risk is assessed to be too great then the Council will send two people.

The Health and Safety at Work etc. Act 1974 requires the provision and maintenance of a safe system of work, a safe workplace, safe means of access and egress, the provision of adequate information, instruction, training and supervision; and adequate welfare facilities. These duties extend to the safety of lone workers.

Lone workers are found in a wide range of situations and can include;

- People in fixed workplaces where only one person works on the premises, such as reception desks and home workers;
- People who work separately from others, eg in large office buildings and leisure centres;
- People who work outside normal hours, eg cleaners and maintenance staff;
- Mobile workers working away from their fixed base on eg home visits and maintenance/repairs in properties and;
- Service workers, e.g. pest control and surveyors.

Violence

The Health and Safety Executive defines violence as:-

“Any incident in which an employee is abused, threatened or assaulted by a member of the public in circumstances arising out of the course of his or her employment”.

Violence includes behaviour which produces damaging or hurtful effects which are either physical, whether visible injury occurs or not, emotional or verbal, including abuse over the telephone.

Work-related violence can occur whether or not employees are on duty and may include serious or persistent harassment (including harassment related to a protected characteristic); threat with a weapon; major and minor injury or fatalities.

Verbal abuse and threats are the most common, and most commonly under reported, types of incident. Although more likely to be reported, physical attacks are normally, by comparison, less frequent.

3. Training

Training can play an important role in avoiding and handling violent and potentially violent situations at work. In practical terms this will mean that all employees who work alone and those potentially exposed to violence will receive training to raise awareness. This awareness training will concentrate on:

- The causes of aggressive behaviour;
- Recognising potential violence at an early stage;
- Defusing violent or potentially violent situations;

- Developing an awareness of the physical surroundings, which may contribute to violence;
- Understanding the Council's policies, procedures etc.

Following the completion of risk assessments managers may recommend additional training relating to specific areas or issues.

3. Risk Assessment

All Managers and Supervisors who are responsible for lone workers or workers who have a reasonably foreseeable exposure to violence will ensure that an assessment of the risks posed is undertaken and the significant findings recorded. They will ensure that suitable control measures are implemented to adequately control the risks to lone workers and those exposed to violence to reduce these risks to a level that is as low as is reasonably practicable.

The following areas should be considered when carrying out the risk assessment:

3A. Person

1. Is the person suitable to work alone?
2. Consider both routine work and foreseeable emergencies which may impose additional physical and mental burdens on the individual. Seek advice from HR, if necessary.
3. Can the lone worker carry out all of the manual handling tasks alone?
4. Is the lone worker sufficiently competent and experienced to deal with both the routine work and foreseeable emergencies?
5. Does the lone worker fully understand and appreciate the risks involved and the necessity for control measures?

3B. Task

1. Does the work activity present a special risk to the lone worker? If the risk cannot be adequately controlled, eg it needs more than one person to perform the task, lone working should not be allowed.
2. Can the risks of the job be adequately controlled by one person?
3. Can the lone worker safely handle and use any equipment, plant and materials that may be required? (Tools and equipment should be safe for use by lone workers).
4. Will money or valuables be involved or any other triggers which might expose the lone worker to threats of violence?
5. Can the lone worker safely use essential controls?

3C. Location

1. Does the workplace environment present a special risk to the lone worker?
2. Is there safe access and egress for the lone worker?

3. Can the lone worker safely handle and use any portable access equipment?
4. Is there any risk of violence at the location?
5. Is first aid equipment available for lone workers in isolated locations, where access to emergency facilities is difficult or dangerous tools and equipment is used?
6. Are there any arrangements for food and drink and adequate welfare facilities?

3D. Procedures

1. Has information, instruction, training and supervision been provided?
2. Have procedures been developed to control risks and protect the lone worker?
3. Has the lone worker been trained in the use of equipment, tools and procedures?
4. Does someone else know the whereabouts of the lone worker and what they are doing? (The level of supervision should be determined by a risk assessment to ensure that it is consistent with the possible risks and that there is a system for maintaining contact.

3E. Control Measures

When risks to the lone worker have been identified and assessed, they must then be adequately controlled. This can be done by applying the following control measures:

1. Develop systems of work or procedures for work practices that are carried out by lone workers, including the associated risks and measures in place to control them.
2. Ensure that the requirements can be met by people working alone.
3. Ensure that lone workers know, understand, are trained in and are competent in these procedures.
4. Provide all lone workers who work out of hours with a two way means of contact e.g. radio, mobile telephone which the lone worker must ensure that they have access to and is in working order.
5. Ensure that all lone workers who work in remote locations have access to first aid facilities.
6. Keep a record of known hazards in terms of locations and individuals.
7. Utilise appropriate information from the Council's Customer Risk Assessment Panel and ensure that staff are aware of the role of this forum.
8. Introduce additional control measures as required based on the information, or prohibit lone working.
9. Ensure that a lone worker monitoring system is in place during and out of work hours.
10. Ensure that all relevant employees are instructed in the use of the monitoring procedure and, as far as is reasonably practicable, ensure that it is used.

4. Responsibilities

Managers and Supervisors

Managers/Supervisors will ensure that lone workers or those potentially exposed to violence are aware of the risks, are capable of responding correctly to emergencies and are aware of the control measures that should be taken.

Managers/Supervisors will review all accident/incident reports involving lone working and reports of violence including verbal threats both directly and indirectly to ensure that control measures remain appropriate and effective.

Where Managers/Supervisors have arranged for workers to be provided with a lone worker protection device they will ensure that any changes to emergency contact numbers are forwarded to Borough Care as soon as is practicable and will check at least quarterly that the numbers held by Borough Care are correct.

Following a report of violence an assessment must be made to determine whether the person involved poses a further risk to the Council's employees and whether the Council's Customer Risk Assessment Panel should be notified.

Employees

Employees working alone will:

- follow the safe working arrangements developed by the Council for lone working;
- take reasonable steps to ensure their own safety; and
- inform their line manager/risk assessor of any incidents or safety concerns.

Employees who have the potential to be exposed to violence will:

- follow safe systems of work that have been developed for their safety;
- report any incidences of violence, including verbal abuse, that have occurred as part of their work to their line manager;
- avoid putting themselves at risk from violent attack;
- inform their manager of any concerns that they have relating to violence at work.

5. Post Incident Support

In accordance with the Council's Policy, the Council will support employees who experience violence in the course of the official duties, as follows:

1. Debriefing (to avoid trauma situation developing);
2. Make provision of appropriate counselling;
3. Give assistance in obtaining medical treatment and advice;

4. If a decision to prosecute is made by the Crown Prosecution Service deciding to prosecute on the basis of evidence/information provided by the Police and any employee is required to give evidence in Court, NWBC will grant appropriate paid leave of absence;
5. Consider compensation for loss or damage to personal property as a result of violence associated with the exercise of any employee's duties.

6. Lone Worker Monitoring System

This procedure is a preferred system to be used. However, divisions can develop their own procedure which must, as a minimum, meet the standards set below.

Where Divisions adopt their own lone worker monitoring system, the Assistant Director will ensure that;

1. suitable training is undertaken by all users,
2. appropriate managers are nominated as contacts in the event of an emergency,
3. All managers nominated as contacts within the escalation procedure are aware of their nomination and the actions to take in the event of an alert being raised.

6A. Office Hours

1. All lone workers must write on an 'Out Board', or similar, in the office their destination(s), expected time of return or next contact time and, if possible, a contact telephone number. The board must be monitored by office staff and they must be notified if there is a significant change to these details.
2. For lone workers who are absent for the whole day, contact times must be established before hand. The frequency of these will depend on the job and location, but as a minimum should be at the start and end of the working day and at least once during the day.
3. If lone worker fails to return or make scheduled contact attempts will be made to contact staff who have failed to return or make contact 30 minutes after the scheduled time. This can be done via the radio, mobile telephone, telephoning a contact number or, if necessary, visiting the location(s).
4. In the event of contact not being made, the line manager, or other senior officer must be notified immediately to instigate further investigation.

6B. Outside Office Hours

1. Lone workers are responsible for notifying Borough Care of their exact location(s), estimated time of arrival home and any other relevant information (e.g. carrying a different mobile telephone).
2. They are also responsible for notifying Borough Care when they have arrived home safely.

3. If a lone worker fails to return or make scheduled contact, if Borough Care do not receive a call within 30 minutes of the estimated time of arrival they will attempt to make contact with the lone worker. If contact is made they will check the new time of return and repeat the procedure.
4. If contact cannot be made, they will telephone the relevant managers, as pre-arranged, for further investigation.

Equality Impact Assessment Summary Sheet

Please complete the following table summarised from the equality impact assessment form. This should be completed and attached to relevant Board reports.

Name of Policy Procedure/Service	Managing Lone Working and the Risk of Violence Policy and Procedure
Officer Responsible for assessment	Janis McCulloch

Does this policy /procedure /service have any differential impact on the following equality groups /people

- (a) Is there a positive impact on any of the equality target groups or contribute to promoting equal opportunities and improve relations or:
- (b) could there be a negative impact on any of the equality target groups i.e. disadvantage them in any way

Equality Group	Positive impact	Negative impact	Reasons/Comments
Racial	No	No	
Gender	No	No	
Disabled people	No	No	
Gay, Lesbian and Bisexual people	No	No	
Older/Younger people	No	No	
Religion and Beliefs	No	No	
People having dependents caring responsibilities	No	No	
People having an offending past	No	No	
Transgender people	No	No	

If you have answered **No** to any of the above please give your reasons below

The policy will apply to all employees.

Please indicate if you believe that this document

Should proceed to further Impact assessment **No**

Needs no further action **No**

Risk Management Form

NORTH WARWICKSHIRE
BOROUGH COUNCIL

Cost Centre or Service

Division

Risk Ref	Risk: Title/Description	Consequence	Likelihood (5 = high, 1 = low)	Impact (5 = high, 1 = low)	Gross Risk Rating	Responsible Officer	Existing Control Procedures	Likelihood (5 = high, 1 = low)	Impact (5 = high, 1 = low)	Net Risk Rating
	To not adopt the reviewed Managing Lone Working and the Risk of Violence Policy and Procedure	Not having proper procedures in place resulting in injury to employees and subsequent claims for compensation and HSE investigation into Council practices	3	5	15	Janis McCulloch	Reviewed policy implemented	1	5	5
Risk Ref	Options for additional / replacement control procedure						Cost Resources	Likelihood (5 = high, 1 = low)	Impact (5 = high, 1 = low)	Net Risk Rating

Completed By: Janis McCulloch

Date: December 2013

Agenda Item No 8

Special Sub-Group

16 December 2013

**Report of the
Assistant Director
(Finance and Human Resources)**

**Review of Existing Disciplinary
Policy and Procedure**

1 Summary

- 1.1 This report reviews the existing policy. The revision has been consulted on with senior managers and the trade unions.

Recommendation to the Sub-Group

- a To Adopt the revised Disciplinary Policy and Procedure**

2 Introduction

- 2.1 Human Resources' policies are reviewed periodically to ensure that they remain up to date and incorporate any changes in legislation. The Disciplinary Policy and Procedure has been updated to include these and other changes that have evolved from using the policy since the last review in November 2011.

3. Disciplinary Policy and Procedure

- 3.1 A modified stage 2 procedure was previously included, which simply required an assessment / action and an appeal process. This has been taken out of the Policy as the Government removed this when making changes to the guidance on disciplinary and grievance procedures.
- 3.2 References to capability have been removed and replaced by references to the Attendance Management Policy where ill health capability is concerned and the Improved Performance Support Policy when performance is referred to.
- 3.3 The Unions requested that the reviewing officer should be independent and not related to the case in any way. This was implemented and the practice has ensured independence at every stage.
- 3.4 The learning from using the previous version of the policy caused the Council to change it's practices and these tried and tested practices are included in the revised version. They are:

- Check the availability of the union representative as part of the process;
- Included similar further misconduct while a warning is 'live' could invoke the next stage;
- All interviews are taped;
- Greater emphasis on confidentiality;
- If off sick the employee must get consent to carry out other work. Consent would not be given if the work was the same or similar;
- Removed levels for investigators as we choose from a pool of trained investigators depending on capacity

The revised policy is attached at Appendix A.

4 **Report Implications**

4.1 **Human Resources Implications**

4.1.1 As detailed in the report

4.2 **Risk Management Implications**

4.2.1 The use of the policy will reduce the risk of inconsistencies.

4.3 **Equalities Implications**

4.3.1 As attached at Appendix B

4.4 **Links to Council's Priorities**

4.4.1 Proper management of employee issues through policies contributes to the Council's priority relating to the effective use of resources.

The Contact Officer for this report is Janis McCulloch (719236).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

DISCIPLINARY POLICY & PROCEDURE

December 2013

DISCIPLINARY POLICY AND PROCEDURE

PURPOSE AND SCOPE

This disciplinary code is derived from the ACAS Code of Practice on Disciplinary Practice and Procedures in Employment 2004 and incorporates the requirements of the Employment Act 2002. The code is designed to help and encourage employees to achieve and maintain good standards of conduct. The aim is to ensure fair treatment for all.

It does not apply to:

- Termination of employment for the purpose of redundancy.
- The Chief Executive and Chief Officers, who have a separate disciplinary procedure.
- Employees within their probationary period. This should be dealt with under the probationary process.
- Termination of employment of employees reaching retirement age, provided that the normal retirement terms and procedures are applied.
- Termination of employment at the expiry of a fixed-term contract.
- Termination due to ill health. This should be dealt with under the Attendance Management Policy and Procedure.

Workers have the right to be accompanied at disciplinary hearings. Under the Employment Relations Act 1999, section 10, workers have the statutory right to be accompanied by a fellow worker, a full-time trade union official, or a lay trade union official certified by the union as having experience of or having received training in acting as a companion at disciplinary and grievance hearings when invited or required to attend formal disciplinary hearings.

All employees who are accredited officials of a trade union recognised by the Council will be subject to the normal disciplinary standards. However, no formal disciplinary action will be taken against such an employee (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Council has had a chance to discuss the matter, with the prior agreement of the employee, with a full time official of that trade union.

PRINCIPLES

Managers will consult with Human Resources on all aspects of discipline.

Managers will be trained in the application of this policy.

Counselling will be offered, where appropriate, to resolve problems.

No disciplinary action will be taken against an employee until the case has been fully investigated.

At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

At all stages of the procedure the employee will have the right to be accompanied by a trade union representative, or work colleague (see purpose and scope above).

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will usually be dismissal without notice or payment in lieu of notice.

Where the Council knows about a potential gross misconduct, this will be taken seriously and a decision will be taken as to whether a period of transfer or suspension with full pay should be imposed until the investigation into the allegations has taken place (see section 10).

An employee will have the right to appeal against any disciplinary action imposed.

The process will be commenced where an issue has arisen. However, where an allegation is made, the nominated officer, who would normally be the line manager will meet with the person making the allegation and wherever possible get the allegation in writing. If the complainant is not prepared to make the allegation in writing and the nominated officer and the HR officer decide that the allegation warrants investigating, an investigation will be carried out.

An investigation will be part of the process at every stage of the procedure.

A hearing will be part of the process unless the Reviewing Officer, having reviewed the investigation report, decides that there is no case to answer. The Reviewing Officer will inform the employee in writing if there is/is not a case to answer. Where there is a case to answer the letter will state;

- The date, time and venue of the disciplinary hearing
- The right to be accompanied at the hearing
- The stage the hearing will be heard at
- Details of the panel hearing the case
- Right to submit additional documents and how to do this
- Named contact person for anything relating to the case

Where a hearing is required, the disciplinary chair will be accompanied as a minimum by an officer from Human Resources. Any investigators responsible for the investigation of the disciplinary offence(s) shall not be a member of the disciplinary panel. The investigator(s) may present the management case or present supporting facts and material to the disciplinary hearing.

Although the process will normally go through each stage consecutively, the procedure may be implemented at any stage if the employee's misconduct warrants such action.

In deciding on what action is to be taken, the chair of the hearing will not be bound by the stage that they are in when deciding on a disciplinary sanction. There will be flexibility to ensure that the correct/appropriate decisions are taken during/after the hearing.

STAGES IN THE FORMAL PROCESS

The formal process has three stages:

Stage 1

If action is to be taken under stage 1 of the disciplinary procedure, this will be a formal written warning. In addition to the warning, there could be supplementary action such as close supervision, re-training etc.

Stage 2

If action is to be taken under stage 2 of the disciplinary procedure, this will be a final written warning and could include supplementary action in addition to the warning.

Stage 3

If action is to be taken under stage 3 of the disciplinary procedure, this will be dismissal or some action short of dismissal.

1 POLICY

The well being of the Council and all its employees depends to a large extent on its ability to achieve and maintain high standards of communication, co-operation and discipline. The Council believes that most employees accept that in any organisation there is the need to conform to rules of conduct and behaviour and to have the means by which individual problems concerning employment may be resolved.

Since it is important that everyone should understand the procedures that should be followed in cases of discipline, the following procedures and notes have been prepared.

2 RESPONSIBILITY

All employees are expected to familiarise themselves with their conditions of employment and the accepted standards of conduct within the Council.

All Managers, Section Heads, Assistant Directors, Assistant Chief Executives, Deputy Chief Executive, Chief Executive and Trade Union Officials are responsible for ensuring that in cases of discipline, the agreed procedures are followed and due attention paid to the timescales identified.

3 REPRESENTATION

Employees have a statutory right to be accompanied by a fellow worker or a Trade Union official. A fellow worker who agrees to act as a representative is eligible for reasonable time off with pay to prepare for and to fulfil their responsibility. Throughout these procedures, all references to an employee's representative relate to any suitable person chosen by the employee to represent them.

4 GENERAL NOTICES FOR GUIDANCE

4.1 Cases of minor misconduct are usually best dealt with informally. A quiet word by the line manager, off the record, is often all that is required to improve a worker's

conduct . The line manager should always make a diary note that such a meeting has taken place. If informal action does not bring about an improvement, or if the misconduct is considered to be too serious to be dealt with informally, then employees should be given a clear signal that the disciplinary procedure will be invoked formally. This should be done in writing by the line manager/ nominated officer

- 4.2 In certain circumstances it may be necessary to take disciplinary action against a working team. This will usually be the case when it is not practical or desirable to single out any individual member(s) of the team. In such cases, any warnings or action taken must relate to the conduct of the team as well as to its individual members.
- 4.3 Formal disciplinary action would normally consist of three stages. The first stage would conclude with a first written warning. Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is serious, then the employee would be moved to stage 2 and would be issued with a final written warning. If the worker's conduct still fails to improve, the final stage in the disciplinary procedure would normally result in dismissal or action short of dismissal, this would include for example demotion, or suspension without pay. Where an investigation under the Dignity at Work Policy has concluded that disciplinary action is necessary, then stage 3 of the disciplinary procedure will be invoked.
- 4.4 If the conduct fails to improve, or the breach of discipline is seen as a very serious offence, ie gross misconduct, then the final stage of the procedure can be invoked. This final stage in the procedure may be dismissal or some action short of dismissal such as demotion or disciplinary suspension or transfer (as allowed in the contract of employment).
- 4.5 Offences of gross misconduct usually warrant summary dismissal. However, 'summary' is not the same as 'instant' and incidents of gross misconduct will still need to be investigated and dealt with as part of a formal disciplinary procedure. It is still important to establish the facts before taking any action. The Council may need to carry out some form of preliminary investigation to discover whether there is any substance to the allegations. If the Council knows about a potential gross misconduct, an act that is so serious that it strikes at the very root of the employment relationship, destroying it, a short period of suspension with full pay will usually be necessary (see section 10) while a detailed, unhindered investigation is carried out. Although suspension should be imposed only after careful consideration and should be kept under regular review by the line manager/nominated officer and HR to ensure that it does not become unnecessarily protracted; it should be made clear to the employee that the suspension is not considered to be a disciplinary measure.
- 4.6 As the employee faces dismissal or a certain action short of dismissal the minimum procedure involving 3 steps will be followed:

- Step 1** The employee receives in writing the allegation(s) and the basis for these
- Step 2** A hearing to consider and discuss the allegation(s)
- Step 3** A right of appeal including an appeal hearing

The employee will be reminded of their right to be accompanied.

Dismissal decisions or some other action short of dismissal can only be taken by the disciplinary chair as indicated in table 1, and within 2 working days of the disciplinary hearing. The employee will be informed of the decision and supplied with a letter giving written reasons for the dismissal and the date on which the employment will terminate, or some other action short of dismissal, and the right of appeal.

5 Formal Disciplinary Procedure

- 5.1 The disciplinary procedure should be invoked when:
- informal methods have not worked;
 - action under another procedure has concluded that formal disciplinary action may be required; or
 - something that is seen too serious to be dealt with informally.
- 5.2 The Line manager or more senior manager, whichever is appropriate (nominated officer) will inform the employee of what it is alleged that they have done wrong and that there is to be an investigation under the Disciplinary Procedure. The nominated officer will outline the nature of the allegation(s) in a letter and provide them with a copy of this procedure and remind them of their right to representation.
- 5.3 The employee must maintain confidentiality and must refrain from discussing their situation with any work colleagues, anyone involved in the case or anyone they have been advised not have contact with except either their union representative or nominated representative for advice. If they require information from the workplace, they can obtain this from their contact person in HR either direct or through their representative. Where it is necessary to collate the information personally, the employee would be able to do this under supervision.
- 5.4 HR will advise the nominated officer on investigators that are available. The investigators will be briefed as to the scope and detail of area(s) to investigate.
- 5.5 Investigations should be carried out by two investigating officers. This practical approach allows for one officer to take the lead whilst the other takes notes. All interviews are taped. The notes are then typed by an independent typist. The investigators then prepare a statement from the typed transcript of the interview.
- 5.6 The investigating officers will investigate all the circumstances by gathering any relevant documentary evidence and interviewing appropriate witnesses. Witnesses should be asked to sign statements certifying that the statement is an accurate account of what they have said. A copy of the statement should be kept as documentary evidence and the witness should also receive a copy. Where there is a difference of opinion in relation to the statement these should be documented and included in the report with the statement.
- 5.7 As part of the investigation, the investigators will meet with the employee concerned. This is the opportunity for the employee to give their account of events, an explanation of their behaviour and/or offer any mitigating circumstances. The employee should be asked to sign a statement certifying that the statement is an accurate account of what they have said. A copy of the statement should be kept as documentary evidence and the employee should also receive a copy.

- 5.8 Where possible, the investigators should aim to complete the investigation within twenty working days. Depending on the nature of the investigation this can be shorter or longer than twenty days. An independent person will be appointed to review the investigation report. The investigators will present to the reviewing officer their findings in an investigation report, together with any evidence papers relevant to the investigation. The reviewing officer will examine the facts presented by the investigator(s) and with Human Resources decide whether disciplinary action is necessary and what stage in the procedure is appropriate. Anyone responsible for the investigation of the disciplinary offence(s) shall not be a member of the disciplinary panel, save to the extent that such a person may present any supporting facts and material to the disciplinary hearing. Provided that the line manager/nominated officer has had no involvement in the formal investigation and they are senior enough for the stage that the hearing is being held at then they will chair the disciplinary hearing. (See table 1 below)
- 5.9 The employee will have a minimum of 5 days notice of the hearing and will have the right to submit evidence, materials etc prior to the hearing as stated in the principles of this document.
- 5.10 The employee must take all reasonable steps to attend the hearing. The hearing will be scheduled taking into account the availability of the employee's representative. If an employee fails to attend the hearing through circumstances outside their control, such as illness, the Council will arrange another hearing. If after two offers agreement cannot be reached, the Council will set a date for the hearing. If the meeting is re-arranged, the Council is entitled, if there is no good reason, to make a decision if the employee doesn't attend.
- 5.11 Where an employee is absent from work due to sickness, written advice from an Occupational Health Physician as to whether the employee is fit to attend a disciplinary hearing should be sought. Postponement should only be considered where there is strong medical evidence that continuation would be detrimental to the employee's health. When the employee recovers, or recovers sufficiently to attend a disciplinary meeting, the Council will proceed with the hearing. Human Resources should be approached for advice. Where the employee remains on long-term sick leave and is not certified by the Occupational Health Physician as being fit to attend a hearing, the Council will continue to manage the absence as sickness absence.
- 5.12 In cases of alleged gross misconduct, if the employee is unable to attend the hearing, the Council will rearrange the hearing where practicable within a further two weeks. If the employee does not attend the second hearing, the Council will hear the case without the employee being present, preferably with the employee being represented by a colleague or union representative.

6 Procedure for the Disciplinary Investigation

- 6.1 Investigations will be carried out by trained investigators.
- 6.2 The investigator(s) should not be connected in any way to the facts giving rise to the investigation. HR will appoint and brief the investigators.

- 6.3 The evidence collected during the investigation will be put to the employee who is the subject of the disciplinary investigation. The investigator(s) will give the employee the opportunity to respond to the allegation(s) and the witness statements. The employee will have the opportunity to name witnesses, documents or issues that he/she believes are relevant so that the investigator(s) can follow it up.
- 6.4 All witnesses will be asked to give account in their own words of what took place. This should be in terms of what they personally witnessed or had involvement with.
- 6.5 All interviews will be taped and witness statements produced from the transcripts.
- 6.6 Where the witnesses are not employees, the investigator(s) will ask them to assist in the investigation.
- 6.7 All statements will be agreed and signed by the person(s) giving the statement to the Investigator(s) and by the investigators. They should be given the opportunity to make any necessary amendments in order to ensure accuracy. Where amendments cannot be agreed they should be documented and remain with the statement.
- 6.8 The investigator(s) should compile the information gathered during the investigation in the form of a report for the reviewing officer to assess the findings of the investigators and recommend the next stage to be taken in the process.

TABLE 1.

Disciplinary Chair

Level of Staff to Attend a Disciplinary Hearing	Chair of Hearing at Stage 1	Chair of Hearing at Stage 2	Chair of Hearing at Stage 3
Employees up to Section Head Level	Section Head and above	Section Head and above	Assistant Director and above
From Section Head up to but not Including Chief Officers	Assistant Director and above	Assistant Director and above	Assistant Director and above

7 Procedure for the Disciplinary Hearing

- 7.1 A disciplinary hearing will be conducted by the chair at the appropriate level (see table 1 above) together with the Council's Human Resources manager/officer (the panel). No member of the panel should be connected in any way to the facts giving rise to the investigation. The disciplinary chair will introduce the hearing, and explain its purpose and how it will be conducted. The hearing will be taped and a typed transcript will be produced after the hearing. The purpose of the hearing will be to establish the facts and determine, on conclusion of the hearing, whether the Council

has proper grounds to take disciplinary action against the employee and, if so, the level of such disciplinary action.

- 7.2 The employee will be entitled to be accompanied, if he/she wishes, by a fellow worker or trade union official of his/her choice. If the employee attends the hearing without a representative, the chair should check that he/she was made aware of the right and is happy to proceed unaccompanied. A note should be made of this. If it becomes clear that the employee wishes to be accompanied, the chair should adjourn to allow the right to be met. The employee and his/her representative should have had reasonable notice of the hearing and received the papers at least 5 working days before the hearing. The chair should check that this has happened before proceeding with the hearing.
- 7.3 The parties present at the hearing, the employee and/or their representative and those presenting the management case, will introduce themselves and confirm their respective roles in the hearing.
- 7.4 The disciplinary chair will state that the hearing is being conducted as part of the Council's disciplinary procedure, at what stage, and confirm that the hearing will be taped and that a written record of the hearing will be made.
- 7.5 The management case will be presented by the investigator(s). All the relevant facts will be put to the employee, with specific examples of relevant incidents being given where possible.
- 7.6 The employee will also be entitled to state his/her case in response to the Council's case and put forward an explanation of his/her conduct and/or mitigating factors.
- 7.7 The disciplinary chair will allow each side to present its own case.
- 7.8 Where evidence has been obtained from third parties in the form of written statements, the employee will have received these in advance of the hearing. The Council reserves the right, however, to conceal the identity of the parties who provided the evidence if it thinks it is necessary or appropriate to do so (this would be the exception rather than the rule).
- 7.9 The Council has a duty of care to its employees. Where it is deemed to the detriment of the witnesses to be called, the Council will decide if any witnesses are to be called into the hearing and asked to state their evidence in front of the parties. Witness statements will always be provided. However, in extreme cases witness statements may be anonymised.
- 7.10 The employee or his/her representative will be allowed to question those presenting the management case, to question any witnesses called by the Council and to challenge the content of any witness statements.
- 7.11 The employee will be allowed a full and fair opportunity to state his/her side of events, explain his/her conduct or state any mitigating factors. He/she may do this personally, or the employee's representative (if he/she has elected to be represented) may do so on his/her behalf. The representative has no right to answer questions on the employee's behalf.
- 7.12 The employee may bring any witnesses to give evidence to support his/her case. As in 7.9 above where a witness for the employee would suffer detriment, the employee

and their representative will seek agreement from the chair and HR for the witness not to attend the hearing or in extreme cases the witness statement to be anonymised.

- 7.13 The investigator(s) may question the employee and any witnesses on his/her evidence. Although the employee may confer with his/her representative at any time during the hearing on request, the investigator(s) has the right to ask the employee personally to answer the questions put to him/her.
- 7.14 At any time during the hearing the disciplinary chair may ask questions of either party for clarification.
- 7.15 Both parties will present their summations.
- 7.16 The disciplinary chair will inform the employee when the decision will be made on whether to impose a disciplinary sanction on the employee. This will be within 2 working days of the hearing. The decision will normally be given at a meeting held by the disciplinary chair.
- 7.17 The disciplinary chair will inform the employee that he/she will have the right to appeal against the decision. If an employee does not take up their right to appeal it is unlikely that they will be successful in taking their case to an employment tribunal.
- 7.18 The disciplinary chair will close the meeting.

At any point during the hearing, the disciplinary chair may adjourn the proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment (no longer than 2 days). If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

8 Decision Process

- 8.1 The disciplinary chair will take into account any mitigating factors put forward by the employee when subsequently making a decision about whether or not to impose a disciplinary sanction and the level of any such penalty.
- 8.2 Wherever possible a meeting will be convened to inform the employee of the decision of the panel. The employee will be informed in writing of the decision from the disciplinary hearing by the disciplinary chair. This will be within 2 working days. If no formal action is to be taken, then the employee should be informed of this and given the reasons why. If formal action is to be taken, the employee should be informed under what stage of the disciplinary procedure, what the sanction is and what supplementary action, if any, is to be taken at this stage, ie close supervision, re-training. The letter should also contain the future consequences if there is no sustained satisfactory improvement and/or a repetition of the problem. These consequences should be clearly stated.
- 8.3 The letter should also outline the length of time that it will remain active on the employee's personal file and after what period of time it will be disregarded for disciplinary purposes, subject to achievement and sustainment of satisfactory conduct and give details of the appeals procedure. Usually the active life and when

the warning is disregarded for disciplinary purposes are the same. A copy of the letter should also be supplied to the employee's representative. An example of an exception could be a warning that states that an employee will not be allowed to work with children would remain active for the whole of the employee's employment with the Council.

- 8.4 If during the hearing the disciplinary chair believes that the case should be heard at a lower/higher stage, the disciplinary chair will adjourn the hearing and take advice as to whether in this case it is appropriate. If the case has to move to a higher stage and requires a new chair to be appointed the hearing would then continue as soon as is practicable.

9 Appeals Procedure

9.1 The Right of Appeal

- 9.1.1 It is the employee's right to appeal against any decision taken at any stage of the disciplinary procedure. Because of the importance of any appeal, the employee is strongly advised to have a suitable representative in attendance.
- 9.1.2 If the employee wishes to exercise their right of appeal against any form of disciplinary action taken against them, they must do so within 10 working days of receipt of the written confirmation of the disciplinary action. The notice of appeal should be sent to the Human Resources Manager.
- 9.1.3 In cases of alleged gross misconduct, if the employee is unable to attend the hearing due to ill health, the Council will rearrange the hearing within a further 2 weeks. If the employee does not attend the second hearing, the Council will hear the case without the employee being present, preferably with the employee being represented by a colleague or union representative.
- 9.1.4 In circumstances such as these, it may not be practicable to complete the statutory process within a reasonable time ie. taking the employee outside of the timescale for taking a claim to the employment tribunal. In these circumstances the statutory disciplinary procedure will be disapplied and neither party will be treated as responsible for its non-completion.

9.2 Procedure to be Followed at the Appeals Board

- 9.2.1 The Appeals Sub-group will consist of either the Chairman of the Special Sub-group or the Chairman of the Resources Board together with three other Members from either the Special Sub-group or the Resources Board.
- 9.2.2 The employee shall be given notice in writing at least five working days in advance of the time and place of the hearing. The employee should be advised of the importance of representation. Employees should also be informed of their right to call witnesses and produce documents relevant to their case at the hearing.
- 9.2.3 The officer(s) presenting the management case, the lead officer being the chair of the disciplinary hearing, shall put the case in the presence of the employee and their representative and may call witnesses.
- 9.2.4 The employee (or their representative) shall have the opportunity to ask questions of the officer presenting the management case on the evidence given by them and/or witness whom they may call.

- 9.2.5 The Sub-group may ask questions of the officer presenting the management case and witnesses.
- 9.2.6 The employee (or their representative) shall put their case in the presence of the officer presenting the management case and shall call such witnesses as they wish.
- 9.2.7 The officer presenting the management case shall have the opportunity to ask questions of the employee and their witnesses.
- 9.2.8 The Sub-group may ask questions of the employee and their witnesses.
- 9.2.9 The officer presenting the management case and the employee (or their representative) shall have an opportunity to sum up their cases if they so wish.
- 9.2.10 The officer presenting the management case and the employee and their representative and witnesses will then withdraw.
- 9.2.11 The Sub-group will deliberate in private, only recalling the officer presenting the management case and the employee to clear points of uncertainty on the evidence already given. If recall is necessary, both parties are to return, notwithstanding that only one may be concerned with the point giving rise to doubt.
- 9.2.12 The Sub-group will announce the decision to the parties verbally at the hearing, confirmed in writing or in writing, as may be determined, not more than five working days after the hearing.

10 **Transfer or Suspension**

- 10.1 Suspension does not imply that any decision has been taken about the alleged misconduct. The key consideration in deciding whether suspension is appropriate is usually whether there has been a fundamental breach of contract or whether the continued presence of the member of staff concerned would:
- be contrary to the public or departmental interest;
 - prejudice any investigation, eg where there is a possibility of someone destroying evidence;
 - have an adverse effect on the work of the officer, eg where harassment of colleagues is alleged and may intensify once an investigation is started.
- 10.2 In all cases, the decision to suspend will be taken by the appropriate member of EMT in consultation with Human Resources. Where there is a difference of opinion and agreement cannot be reached, the matter will be referred to the nominated officer's manager
- 10.3 If the employee is suspected of gross misconduct, that suspicion must be based on reasonable grounds. In most cases some preliminary enquiries will be necessary in order to provide the reasonable grounds for the suspicion upon which the decision to initiate action will be based. The alternative of a transfer to other duties should always be considered before suspension.
- 10.4 Where an employee is suspended they must remain available during that time. Should the employee not be available they must notify the Council of the period of time and the reason why they are not available. The reason must be reasonable eg

a hospital appointment or pre booked annual leave. NB: leave can be pre booked whilst on suspension

- 10.5 The employee as stated at 5.3 above must maintain confidentiality and must refrain from discussing their situation with any work colleagues, except either their union representative or nominated representative for advice.
- 10.6 The decision to transfer or suspend may also be made at any time during the disciplinary process if considered appropriate. As soon as possible after a decision has been made, the individual will be informed in writing of the reason for the transfer or suspension.
- 10.7 The letter will set out the process for the investigation and also include the offer of support in the form of a named person to contact during the transfer or suspension and the offer of independent counselling.

11 Roles and Responsibilities

- 11.1 Both the Council and the employee's representative will liaise and keep the employee informed of the status of the investigation on a regular basis.

12 Retention of Warnings

- 12.1 All written confirmation of warnings shall be held on the employee's personal file and normally retained for the following durations:-

First written warning	:	twelve months from issue
Final written warning	:	eighteen months from issue
Sanction short of dismissal:		eighteen months from issue

- 12.2 In exceptional circumstances, warnings may be retained on employees' files for longer than the above periods at the discretion of the nominated officer. The nominated officer will inform the employee and their representative of this in writing.
- 12.3 Letters confirming the disciplinary action shall stipulate the duration that the warning will be regarded as being "live". At the end of this period, and subject to no further breaches of discipline, all papers relating to the disciplinary action will be removed from the employee's personal file. There will be occasions when papers will remain on the employee's personal file for the duration of their employment. This will be at the discretion of the nominated officer, in consultation with the Assistant Director (Finance and Human Resources).
- 12.4 In the event of a similar further misconduct and the previous warning is 'live', the Council may invoke the disciplinary procedure at the next stage to the stage of the previous misconduct.

13 Monitoring and Review of Policy

- 13.1 The provisions of this policy will be subject to regular review and as required by changes in legislation and guidance. The policy will be monitored by the Human Resource Section.

14 Communication and Training

14.1 The provisions of this policy and any updates will be communicated to all employees of the Council.

15 Gross Misconduct

15.1 For offences of suspected or alleged gross misconduct, immediate suspension will normally apply, followed by summary dismissal (without notice or pay in lieu of notice) if the offence is established following a disciplinary hearing at stage 3 and there are no acceptable mitigating circumstances.

15.2 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Council.

15.3 **Listed below are examples of offences of gross misconduct. This list is not exhaustive:-**

- Theft, fraud, unauthorised possession of Council property, deliberate falsification of records or any other form of dishonesty, including the falsification (or aiding and abetting the falsification) of subsistence and expenses claims, timesheets etc, and the falsification of qualifications which are a stated requirement of employment or which result in financial gain;
- In line with the Attendance Management Policy 2.4:
"An employee who is in receipt of sick pay (including Statutory Sick Pay) is not allowed to undertake any form of paid alternative employment, self-employment or voluntary work unless previously agreed with the Human Resources Manager/ Officer . Any breach of this rule will be regarded as gross misconduct, which could result in dismissal"
Note
If an employee is no longer in receipt of sick pay and is able to carry out alternative work for North Warwickshire Borough Council, or for others if none is available at the Council, then they should obtain permission from North Warwickshire Borough Council
- Disciplinary action resulting from an investigation under the Dignity at Work Policy;
- Bullying, discrimination or harassment;
- Sexual misconduct at work;
- Malicious damage to the Council's property;
- Serious breaches of safe working practices, regulations or procedures endangering other people, including deliberate damage to, neglect of, or misappropriation of safety equipment;
- Work related acts of violence, physical or verbal against colleagues and members of the public;
- When at work deliberate accessing of internet sites containing pornographic or obscene material;
- Bringing the Council into serious disrepute;

- Serious incapacity at work through an excess of alcohol or illegal drugs;
- Setting up in direct competition with the Council or seriously misusing confidential information
- Serious acts of insubordination

Notes of Guidance

The following notes are provided to give further information to those involved in actions that may lead to disciplinary action. The lists contained are not exhaustive and are to be used as guides. Within all areas it is recognised by the Council and the Trade Unions involved that, in the majority of cases, a prompt and informal discussion with a member of staff is all that is required, and counselling will often be a more satisfactory method of dealing with minor matters than formal disciplinary action. Please note that counselling refers to managing conduct through talking, listening and guiding. Counselling should be recorded for reference purposes. Where such counselling has failed to have the desired effect, a more formal approach may need to be taken. Examples of such instances are as follows:-

Examples of Conduct which can lead to Disciplinary Action

Disobedience of reasonable requests or instructions (eg when an employee, without sufficient cause, disobeys or omits or neglects to carry out a lawful order, whether in writing or not), including failure to observe the operational regulations and standing orders of the employing department and/or the Council.

Neglect of Duty (eg when an employee:-

- a Without sufficient cause fails to discharge the obligations which statute or other contract place upon them; or
- b Unauthorised absence; or
- c By carelessness or neglect allows any loss, damage or injury to occur to the Council's interest or to any person or property; or
- d Fails to report any matter which it is their duty to report; or
- e Fails to make an entry which it is their duty to make, in any book or document; or
- f Fails properly to account for, or to make a prompt and true return of, any money or property which comes into their possession in the course of their duties) or
- g Exposing the public and/or the Council to unacceptable risk.

Unauthorised Employment (eg undertaking unauthorised work during hours when contracted to work for the Council, or engaging in employment during off duty hours which is detrimental to the interests of the Council). An employee's off duty hours are their personal concern, but they should not subordinate their duty to their private interests or put themselves in a position where their duty and their private interests conflict. The Council does not preclude employees from undertaking additional employment, with permission, where necessary, but any such employment must not, in the view of the Council, conflict with or react detrimentally to the Council's interests, or in any way weaken public confidence in the conduct of the Council's business.

Note: Paragraph 71 of the National Scheme of Conditions of Service for APT and C Staff states – "Officers above NWBC Grade 8 shall devote their whole time service to the work of the Council and shall not engage in any other business or take up any other additional appointment without the express consent of the Council." A request to take up any other

additional work must be made in writing to the Assistant Director. The Assistant Director will respond in writing to the employee and where the request is refused will explain why.

In addition, it is Council policy "That employees should not be permitted to undertake any private work involving the submission to this Council of planning or building regulation applications and applications for house renovation grants."

Falsehood (eg when an employee:-

- a Knowingly or through neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the Council; or
- b Has knowingly or through neglect falsified any information used in support of an application for any post in the employment of the Council.

Misconduct in relation to official documents etc (eg where an employee improperly destroys or mutilates any record, or document made, kept or required for the purpose of the Council or alters, erases or adds to any entry in such a record or document).

Improper Disclosure of Information (eg when an employee, without proper Council authority, communicates to any person, information which was given to or acquired by them in confidence as an employee of the Council).

Corrupt or improper practice (eg when an employee improperly uses, or attempts so to use, their official position for their own private advantage or for the private advantage of some other person).

Damage to Council property eg when an employee:-

- a Wilfully or without due care causes any waste, loss or damage to any property of the Council, or fails to take proper care thereof; or
- b Fails to report any loss of or damage to any such property issued to, or used by them or entrusted to their care.

Being under the influence of drink or drugs (other than those which are used in accordance with the instructions of a medical practitioner).

- a When an employee renders themselves unfit through alcohol, banned substances or drugs for duties which they are or will be required to perform or which they may reasonably foresee having to perform.
- b When an employee breaches health and safety rules and procedures or could potentially breach health and safety rules, due to being under the influence of alcohol or other banned substances or drugs.

Breach of Health and Safety Rules

- a Where an employee ignores rules and procedures laid down for health and safety.
- b Where an employee endangers the health and safety of colleagues and members of the public through negligence or their behaviour.

Sleeping on Duty (except when expressly permitted or if there is a medical reason).

Criminal Conduct (eg when an employee has been found guilty by a Court of Law of a criminal offence, and where, in the view of the Council, the nature of the offence conflicts with or reacts detrimentally to the Council's interest, or in any way weakens public confidence in the conduct of the Council's business).

Discrimination against a member of the staff or the public on grounds of sex, colour, race, creed, nationality, ethnic origin, age or disability.

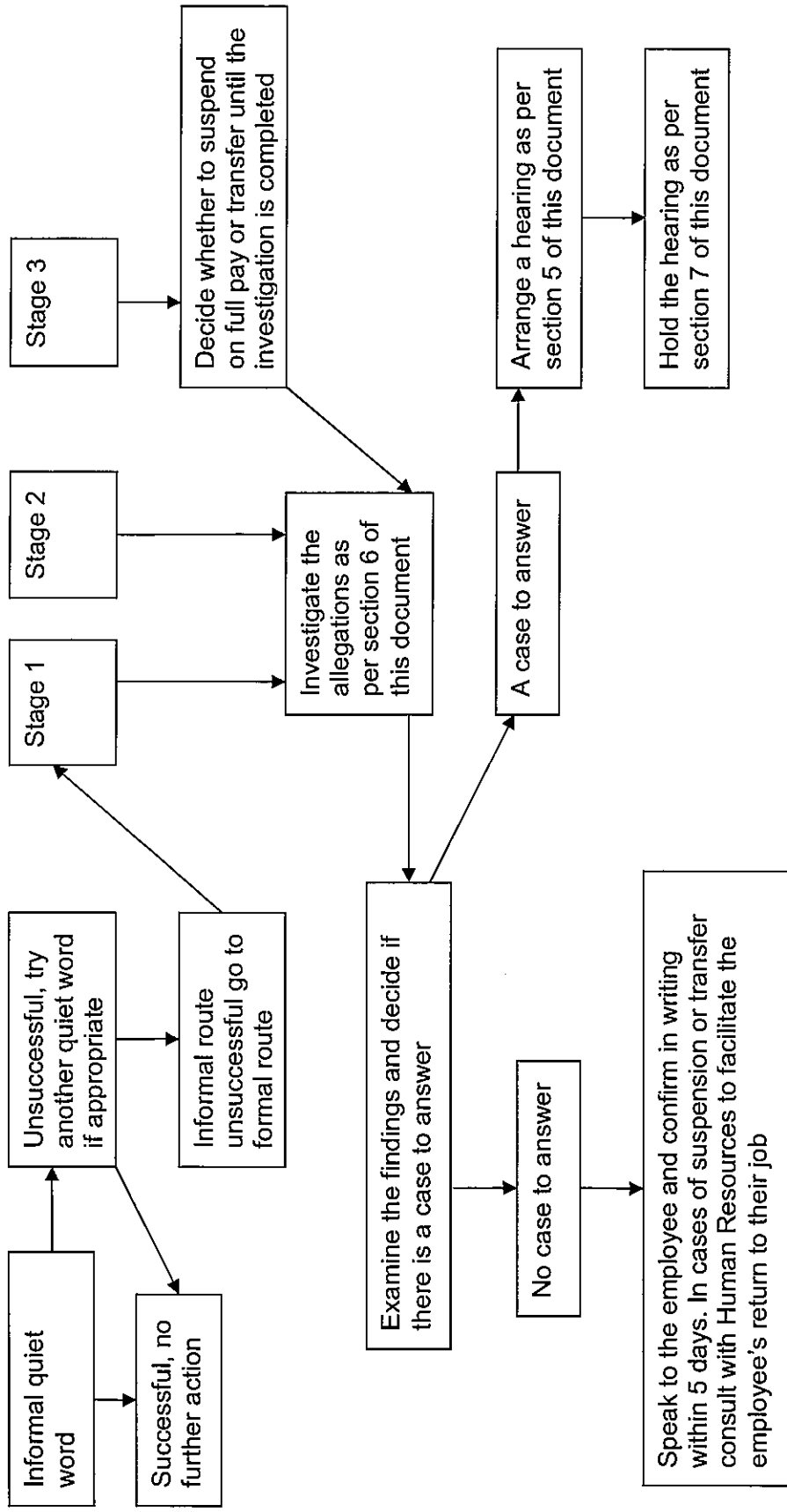
Being an accessory to a disciplinary offence (eg when an employee connives at or is knowingly an accessory to any offence against discipline).

When an employee fails to meet their duty of care to the Council and/or colleagues by not reporting an event that they have witnessed that breaches the Council's policies/procedures.

Neglect of Health (eg where an employee neglects their personal hygiene to such an extent that it is offensive to their fellow employees and/or members of the public).

NB The stage of the disciplinary procedure to be invoked is dependent on the degree of seriousness of any alleged offence. To assess the stage of the procedure to be used and to ensure consistency across the Council, the manager will consult with HR.

Disciplinary Procedure



Equality Impact Assessment Summary Sheet

Please complete the following table summarised from the equality impact assessment form. This should be completed and attached to relevant Board reports.

Name of Policy Procedure/Service	Disciplinary Policy and Procedure
Officer Responsible for assessment	Janis McCulloch

Does this policy /procedure /service have any differential impact on the following equality groups /people

- (a) Is there a positive impact on any of the equality target groups or contribute to promoting equal opportunities and improve relations or:
- (b) could there be a negative impact on any of the equality target groups i.e. disadvantage them in any way

Equality Group	Positive impact	Negative impact	Reasons/Comments
Racial	No	No	
Gender	No	No	
Disabled people	No	No	
Gay, Lesbian and Bisexual people	No	No	
Older/Younger people	No	No	
Religion and Beliefs	No	No	
People having dependents caring responsibilities	No	No	
People having an offending past	No	No	
Transgender people	No	No	

If you have answered **No** to any of the above please give your reasons below

The policy will apply to all employees except the Chief executive and Chief officers, who have a separate disciplinary procedure.

Please indicate if you believe that this document

Should proceed to further Impact assessment **No**

Needs no further action **No**

Agenda Item No 9

Special Sub-Group

16 December 2013

**Report of the Assistant Director
(Finance and Human Resources)**

Zero Hours Contracts

1 Summary

- 1.1 This report advises member on zero hour's contracts and how North Warwickshire Borough Council operates these contracts.

Recommendation to the Special Sub-Group

That the report be noted

2 Background

- 2.1 The term 'zero hours' is not defined in legislation, but is generally understood to be an employment contract between an employer and a worker, which means the employer is not obliged to provide the worker with any minimum working hours, and the worker is not obliged to accept any of the hours offered.
- 2.2 Using these contracts the employer can easily access a pool of staff to assist when demand rises. There is no ongoing requirement to provide guaranteed levels of work for staff and it can be more cost effective than using agency staff.
- 2.3 The use of a zero hour's contract is not unlawful. They do work successfully in certain circumstances. The major benefit of zero-hours contracts to employers is the flexibility they provide to a business. In particular, it is the ability to adjust to peaks and troughs in demand without permanently inflating a wage bill or conducting a costly redundancy exercise. Also, zero hour contracts provide flexibility to the people on them. Those who want occasional earnings (or additional work to their part/full time job) and to be entirely flexible when they choose to work will find this type of contract beneficial.
- 2.4 The recent media coverage is more about the morality of the use of zero hour contracts. Some companies abuse the use of the contracts by not providing the worker with paid holiday, or choice of when to work e.g. Sports Direct employs 23,000 employees, 20,000 of whom are on zero hours contracts.

3. Use of Zero Hour Contracts in North Warwickshire

- 3.1 The Council uses zero hour's (casual) contracts to cover for absences. They are also used for coaching and instructing roles in Leisure and Community Development e.g. Aerobics / Yoga / Zumba / Tea Dance Instructor, Football Coach. We have 1 person on refuse collection that comes in at short notice if a driver is absent.
- 3.2 The Council follows best practice in the use of zero hour contracts. Casual staff accrue annual leave, are paid the job evaluated rate for the job and are paid for work-related travel.
- 3.3 There is no mutuality of obligation. The Council does not have to provide work to the individual and similarly the individual is free to choose whether they accept any work/shifts.
- 3.4 The Council actively monitors the use of casual staff. Payroll will notify HR if a casual employee is being used regularly. HR will then assess whether the service requires regular cover, and if so, the casual employee will be offered a permanent / temporary contract.

4 Report Implications

4.1 Finance and Value for Money Implications

- 4.1.1 It is a cost effective way to deal with peaks and troughs in the business.

4.2 Human Resources Implications

- 4.2.1 These are obtained in the body of the report.

4.3 Links to Council's Priorities

- 4.3.1 It meets the Council's priority relating to the effective use of resources.

The Contact Officer for this report is Janis McCulloch (719236).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date