The National Training Strategy for Town & Parish Councils

Being a good employer

A guide for parish and town councillors



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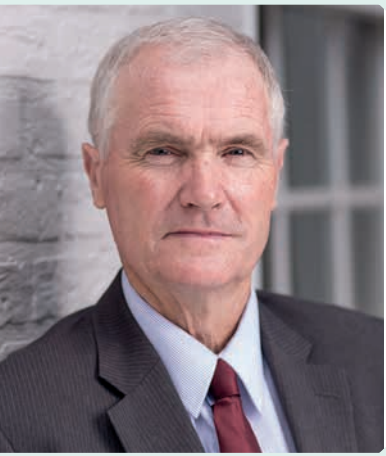
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Welcome



It gives me great pleasure to introduce to you the National Training Strategy publication "Being a good employer – a guide for parish and town councillors". It is a welcome and much needed resource aimed primarily at councillors. I hope that it will also be helpful for employees with line management responsibilities.

I believe that the defining indicator of good council is how it looks after its people. Time and time again we see councils which support their staff are better able to deliver their objectives and adapt to changing needs or priorities. Whether the council employs a single member of staff for a few hours a week, or a large and varied team of individuals, good employment practice from recruitment through to support and development is key to achieving the best outcomes for your communities.

Being a good employer means making your employees feel more valued and more effective in their work. This results in the improved delivery of council services for the citizens of your communities. As with "The good councillor's guide", in this guide councillors are provided with comprehensive and straightforward guidance to key employment areas. Each section contains easily digestible advice and information that will benefit the council and its employees.

Being a Good Employer has been written in six sections which run through the job cycle, from recruitment to leaving an organisation for whatever reason. It provides an overview of the key legal issues you should be aware of and how to get more information and support. The guide also provides information and advice on how to get the best from your staff through training and development. All together I hope this guide gives you and you council the information and confidence to put in place good employment practices, allowing you to recruit and retain the best staff for your council and to support them to deliver the council services effectively.

I wish you every success and I am confident that this guide will help you and your council to develop your role as a good employer. I would also like to thank Came & Company Local Council Insurance for their support of this publication.

Regards



Councillor Ken Browse

Chairman of the National Association of Local Councils

Acknowledgements

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- Alan Barker – East Riding and Northern Lincolnshire Local Council Association (ERNLLCA)
- Kim Bedford – Gloucestershire Association of Parish and Town Councils (GAPTC)
- Harry Honnor & Kelvin Scorer – Local Government Employers (LGE)
- Neil Evans, Martin Fine and Jane Moore – National Association of Local Councils (NALC)
- Councillor Gwen Radcliffe – Oundle Town Council, Northamptonshire
- Debbie Ashton and Bethan Osborne – Society of Local Council Clerks (SLCC)

The guide was reviewed and updated in 2016 with input from Alan Barker, ERNLLCA, Martin Fine, NALC and Ian Smith, SLCC.

The Improvement and Development Board (IDB) oversees the production of the Being a Good Employer guide. The membership organisations of this board are: the National Association of Local Councils, Society of Local Council Clerks, Department for Communities and Local Government, and the Local Government Association. Many people have contributed to the writing of this guide and the Improvement and Development Board members would like to thank all who have contributed.

We would like to thank Came & Company Local Council Insurance for their support of this publication.

Introduction

The guide has been written in six sections which run through the job cycle, from recruitment to leaving an organisation for whatever reason.

Although the first tier of local government includes town and parish councils and now some city, community, village and neighbourhood councils, the term "council" is used throughout. When the guide uses the term "employer" in the context of this guide it means "the council".

The contents do not necessarily reflect the views of the individual IDB stakeholders.

NALC provides guidance on a variety of the areas covered in the guide, which is available to member councils and can also be obtained from County Associations (CALCs). SLCC advice notes are also available to member clerks.

Any explanation of law or policy is correct at the date of publication. Names of relevant government departments and bodies and links to their websites are also correct at the date of publication and may be subject to change.

The guide is not intended to be a definitive legal guide.



Section 1

Recruitment

1. Is the new job within the council's statutory functions?
2. Is there a need for a new employee?
3. What distinguishes job descriptions from person specifications?
4. Advertisements must not discriminate.
5. Shortlists should not exceed six candidates.
6. Interviewers should avoid "personal" questions.

When should a council recruit?

A council's power to employ people is contained in section 112 Local Government Act 1972. Councils can take on employees if it helps them to exercise their statutory functions. When a potential vacancy arises, the first question a council should ask is "what work will the employee undertake?" A council could realistically employ people with a range of skills. These may include:

- clerk
- deputy clerk
- administrative assistants
- Responsible Financial Officer (RFO)
- deputy RFO
- financial assistants
- caretakers
- gardeners
- grounds staff
- markets managers
- village hall/ events managers.

Is recruitment necessary for a vacant post?

When preparing for recruitment, existing job descriptions should be reviewed: can new or additional work be incorporated into existing posts or should a new job be created? Would a new job fit into the existing employment structures? Who would manage the new employee?

A council may believe that new or additional work could be undertaken or incorporated into the job description of an existing employee. If the change to the job description would vary the existing contract of employment, the proposed change will generally require consultation and the employee's consent. If changes to the job description do not vary the contract of employment, it is still preferable to obtain the employee's consent to the proposed changes.

Councils should be cautious about imposing more responsibilities on existing employees without consulting them or obtaining their consent. If workloads are increased unreasonably, an employee may become overworked and stressed. The key point is for the council to manage effectively any new work and decide how it will be undertaken. Councils may decide not to recruit an employee but to engage agency workers or other non-employees instead.

What should be in the job description and person specification?

A job description should contain:

- the main purpose of the job (if possible in one sentence)
- the main responsibilities of the job (councils should use active verbs, like “writing”, “calculating”, instead of vaguer terms like “dealing with”, “in charge of”)
- the scope of the job (i.e. it should describe the main tasks and the importance of the job by giving information such as the number of people to be supervised)
- the person to whom the employee reports.

A council should create a person specification after it has written a job description. A person specification is different from a job description. It details the skills and experience a person should have to be able to do the job. The various attributes in the person specification should be separated into those that are essential and those that are desirable.

The types of attributes to consider putting into a person specification include:

- education and training (but only so far as is necessary for satisfactory job performance)
- qualifications
- skills and knowledge
- aptitude directly related to the job
- type of experience necessary
- necessary competencies.

It should be made clear on the person specification how these attributes will be measured, e.g. through the application form, at interview or by test.

What pay should councils offer?

The 2004 National Agreement between NALC and SLCC (the National Agreement) agreed a model employment contract and national pay scales for clerks, deputy and assistant clerks and RFOs[1]. The main provisions of the model employment contract are drawn from the National Joint Council for Local Government Services National Agreement on Pay and Conditions, (the Green Book). The salary levels for clerks in the National Agreement are based on comparable roles in other tiers of local government.

[1]At time of writing there are proposals that may change the nature of SLCC’s role in national pay and contract negotiations in the future.

The National Agreement leaves the final decision on pay to the council and the employee. However NALC and SLCC recommend that clerks' starting salaries should be consistent with salary scales set out in the National Agreement. The National Agreement also advises councils either to adopt an incremental pay scale or a single pay point within the appropriate range, which may then be reviewed annually. The National Agreement also provides for the job evaluation of clerks' posts. The pay of part-time clerks should be calculated on a pro-rata basis. The National Agreement and the revised model contract can be found in the members' part of the NALC website: www.nalc.gov.uk. They are also available from county associations.

It may be difficult for a council to establish the "going rate" for a job. It can help their decision-making:

- to find out what rates are offered for similar work at the principal authority
- seek guidance from their county association as to appropriate levels of pay.

Will other benefits attract the right candidate?

Attracting good candidates is not only about getting pay right. For potential applicants, other considerations such as pension, sick pay and holiday entitlement will also be important.

Pensions

All councils will be required to enrol eligible workers into a pension scheme. Staged implementation of "autoenrolment" started in 2012 and has, at the time of publication, reached smaller employers including many local councils. For more information see the Pensions Regulator website www.thepensionsregulator.gov.uk

Making a decision about pensions is a significant long run commitment. The council may benefit from independent advice from a financial adviser authorised or registered by the Prudential Regulation Authority (PRA) and/or the Financial Conduct Authority (FCA). You can find out more on the FCA's register at http://www.fca.org.uk/register/.

Gratuities

Councils can only provide a gratuity if there is an extant contractual obligation that pre-dates 16 January 2012, when 'the gratuities regulations', the Local Government (Discretionary Payments) Regulations 1996, were abolished.

There is specific guidance from NALC available from county associations.

Previous service

Councils may want to attract candidates with valuable and relevant experience from other local government roles. It may help if the contract of employment

takes into account previous service elsewhere in local government when calculating benefits that can increase with service, such as holidays and sick pay. For the purpose of these benefits, previous local government service would be subject to the rules on continuity of employment. The Green Book takes into account previous local government service for calculating these benefits. It is not an automatic right for council employees and needs to be agreed by the individual and employer in the contract of employment.

If councils want further advice on pay and other benefits for any of their employees, they should contact their county associations.

What should be put in a job advertisement?

The advertisement should state:

- the position advertised
- the job location
- the intended pay
- the qualifications and experience required
- how to apply for the job and details of person to contact if more information is required
- the closing date for receipt of the application form.

The advertisement must be non-discriminatory, and should avoid any gender or culturally specific language.

It is unlawful to advertise for a male or a female except for limited jobs where the person's gender may be recognised to be a genuine occupational requirement.

Advertisements and job descriptions cannot advertise unjustifiably for people of a particular age group. Words that convey a particular type of person should be avoided e.g. "young", "vibrant", "mature." The Acas publication "Age and the Workplace" contains more detailed information on these issues (www.acas.org.uk).

Councils should include in their adverts a statement of commitment to equal opportunities, which will underline that they welcome applications from all sections of the community.

How should vacancies be advertised?

The more widely a job is advertised, the more successful and fairer the recruitment process is likely to be because a wider range of people will be able to apply for the job. Advertisements are most likely to be successful in local newspapers, CALC, NALC and SLCC communications, parish

newsletters, parish noticeboards, and websites. This is likely to achieve the greatest coverage of potential applicants at a reasonable cost. "Word of mouth" recruitment is not advisable and may be discriminatory.

Councils should ask candidates to complete an application form prepared by the council, rather than just asking for CVs. It ensures that applicants answer set questions, that the council will receive the same information from every applicant and will make its decision based on the criteria in the job and person specification. Councils should send applicants the job description and person specification with the application form.

Under the Immigration, Asylum and Nationality Act 2006 it is a criminal offence to employ a person who does not have permission to work in the United Kingdom. Councils must check an applicant's entitlement to work in the UK as part of the selection process before shortlisting candidates for interviews. Councils must also retain copies of these documents.

What should be in an application form?

A job application form should enquire whether the applicant has been convicted of a criminal offence and if so, to give details. Under the Rehabilitation of Offenders Act 1974 a conviction can become spent. If so, the applicant is not obliged to disclose it. The time required before the conviction is spent will depend on the nature and length of the sentence. Some convictions never become spent. See the Disclosure and Barring Service website www.gov.uk/disclosure-barring-service-check.

Job applications must not ask for the applicant's age.

The date by which applications have to be submitted should be a reasonable time after the advertisement appears (e.g. four weeks). This will allow time for the advert to be seen, the application papers to be obtained and for applications to be carefully completed. If a date for the interviews can be given in the advert then it should be included. Dates should be selected so as not to restrict the number of applications (e.g. days of religious observance and holiday periods should be avoided) and councils should try to adopt as flexible an approach as possible.

The selection process following the receipt of applications should be transparent and the selection process should be built around the relevant job description and person specification.

Councils are free to consider using employment agencies to conduct the recruitment process but should be aware of the potential costs involved. Your county association may also be able to offer recruitment assistance.

How do councils manage the selection process?

A councillor may know a job applicant. In these circumstances, the councillor must consider whether involvement in the selection process is consistent with the council's code of conduct and in particular, its commitment to the seven general principle of conduct (known as 'the Nolan Principles').

How do councils shortlist?

Shortlisting involves assessing each applicant as either having or not having the necessary attributes listed in the essential and desirable skills and experience in the person specification.

Shortlisting is most productively done by a personnel committee or a sub-committee rather than full council (see page 30). It would be sensible to include in the shortlisting process the person or body who will be the line manager of the new employee.

A shortlist should be limited to four to six applicants.

How should a council carry out interviews?

Interviewing should be delegated to a personnel committee, a sub-committee or an employee if appropriate. Large interview panels are likely to be unwieldy and intimidating. There would ideally be three people on an interview panel.

If there is to be a practical test (e.g. typing test) the council should inform the candidate in advance. Candidates should also be asked in advance of the interview whether they need any special facilities or arrangements to be available (e.g. wheelchair access). Further information can be obtained from the Equality and Human Rights Commission website: www.equalityhumanrights.com.

The candidate should be made to feel comfortable and at ease. Panel members should introduce themselves and give the candidate some explanation about the job and the council.

Candidates should be asked a standard set of questions, agreed in advance, to avoid potentially discriminatory questions. It is fine for councils to ask different supplementary questions of candidates that arise from the answers given.

Personal questions relating to the candidate's age, sex, sexual orientation, race, marital status, nationality, religion or belief, disability, civil partnership, gender re-assignment, pregnancy, maternity, membership or non-membership of a trade union should also not be asked.

Interview panels should allow time for the candidate to ask questions about the council and the job.

Interviewers should take notes during the interview to refer to when making the decision. Notes should be specific to the answers given and irrelevant subjective comments must be avoided. These notes will also be the basis of any feedback to the unsuccessful candidates if requested. Remember that any records relating to the recruitment process need to be kept for a reasonable period (e.g. not less than six months) in case a candidate brings an employment tribunal claim. Retained documents of unsuccessful candidates should be securely destroyed, e.g. shredded, at the end of this period. Tribunal claimants do not have to be employees if they are claiming that discrimination has taken place.

All candidates should be notified as soon as possible after the decision. The successful candidate should be informed that any offer is subject to satisfactory references. It is good practice to seek a reference from the current or most recent employer. References are generally taken up once an offer of employment has been accepted.

Councils should not be over-reliant on references. They should be prepared to make a decision based on their own perception of a candidate. Previous employers have no legal obligation to provide a reference and its content is a matter for the provider. It could contain a detailed assessment of the candidate's qualities or be limited to the job title and length of service.

Detailed guidance on confidentiality when giving and receiving references can be found in the Data Protection Good Practice Note: "Subject access and employment references" available on the Information Commissioner's Office website at www.ico.gov.uk. This contains guidance on issues such as what to do when an employee asks to see his or her own reference.

What should be in the offer letter?

The offer letter should contain the following information:

- the job offer (and whether it is subject to references)
- the job title
- the terms of the offer (e.g. salary, hours, benefits, pension arrangements, holiday entitlement, place of employment)

- the start date
- what action the candidate needs to take (e.g. returning a signed acceptance of the offer and informing the employer whether the start date is affected by the notice period of the present job).

If the letter is to form part of the contract of employment, it should say so. Alternatively it could form part of the written statement of particulars of employment, which must be issued to employees within two months of them starting work (see pages 19 and 20).

What else do employers need to consider?

For some jobs, such as working with children or vulnerable adults, convictions will never become spent (see page 13). Any criminal convictions can be subject to a criminal record check by the Disclosure and Barring Service (DBS). In these circumstances, the council should inform the candidates that any offer will be subject to DBS checking.

Employers should also refer to the DBS when they have concerns that a person poses a risk to children or vulnerable adults. For more information see the Disclosure and Barring Service website https://www.gov.uk/government/organisations/disclosure-and-barring-service

What happens when an employee starts work – probation and induction?

It is normal practice for employees to have a probation period and for there to be systems in place to assess the employee's progress during this period. Once employees start work, they should be given induction training. This should include an introduction to the councillors and employees, an organisation chart, health and safety information about their workplace and work and any other relevant information.

A good induction helps a new employee to fit in and be effective as quickly as possible. Time spent on induction for new employees will produce a good return.

Induction for clerks should be co-ordinated by a council's personnel committee (see page 30). The clerk as the most senior officer of the council can carry out inductions for other employees. New employees should be made aware of the council's various policies as part of their induction. A list of policies for councils can be found at the back of the guide. Councils can also contact county associations for further information and possibly assistance.

Notes



Section 2

Employee rights and obligations

1. Are all workers employees?
2. NALC/ SLCC National Agreement contains a model contract of employment.
3. Varying a contract's terms needs the consent of the council and the employee.

This section looks at the sources of the rights and obligations in the relationship between employers and employees.

Are all workers employees?

Not all workers are employees. There are self-employed and other types of workers (such as agency workers) who are not employees of the organisations where they work. Council workers will generally be employees. It is the view of NALC and SLCC that in the overwhelming majority of cases the clerk will be an employee. All clerks are office holders. As such, councils must always deduct tax and any National Insurance Contributions from their pay (see NALC and HMRC guidance).

What are the sources of the employer-employee relationship?

1. The contract of employment
2. Legislation: e.g. Acts of Parliament and Regulations

What is an employment contract?

The contract of employment forms the basis of the employment relationship. All employees have a contract of employment. In simple terms, an employee agrees to work for an employer in return for wages. A contract is made when an offer of employment is accepted. A number of rights and duties arise as soon as this happens e.g. the right to notice of termination of employment. However, most contractual rights and duties apply only when the employee starts work.

Does an employment contract need to be in writing?

Most employment contracts need not be in writing to be legally valid; an oral agreement can be sufficient. However, councils should provide their employees with written contracts of employment. Writing down the terms of the contract can minimise later disagreements. The Employment Rights Act 1996 requires employers to provide most employees with a written statement of the main terms of the contract not later than two calendar months after starting work.

The following details must be included in the written statement:

- the employer's name
- the employee's name
- the job title or a brief job description
- the date employment began
- the place(s) of work and the address of the employer
- the amount of pay or the method for calculating pay
- the intervals between payments
- hours of work
- holiday entitlement
- sickness arrangements (including sick pay)
- pension arrangements, if any
- notice period
- where the employment is not permanent, the period it is expected to continue
- where the employment is for a fixed term, the date when it is to end
- grievance and disciplinary arrangements (as a minimum these should comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures (see NALC Legal Topic Note 22)
- any collective agreements which directly affect terms and conditions.

What are implied terms?

Implied terms are terms that are not explicitly agreed by the employer and employee For example, all employment contracts contain the following terms even though they will not generally be written down:

- to maintain trust and confidence: e.g. a term that the employer will not harass the employee
- to maintain confidentiality: e.g. the employee must not disclose confidential information
- to take reasonable care to ensure safety and health in the workplace: this will apply to both the employer and the employee
- for the employee to obey reasonable instructions/ rules.

Not all implied terms are automatically contained in the contract of employment. Sometimes an employment contract will only be workable by implying a term into it; sometimes the term is so obvious that it does not need to be written down; and sometimes a term is in a contract of employment because of "custom and practice" in an organisation or sector. However,

where possible, contractual terms should be in writing to minimise the possibility of future disagreements.

What is the effect of collective bargaining?

Collective bargaining refers to negotiations between employers and employees which can include terms and conditions of employment and disciplinary matters.

What is agreed between employers' and employees' representatives in these negotiations can affect an individual employee's contract of employment. The local council sector has a National Agreement between NALC and SLCC (see pages 10 and 11).

What statutory rights and obligations affect the employment relationship?

There are a wide range of statutory rights and obligations, derived from Parliamentary Acts or Regulations which affect the employment relationship. In general, despite any express term to the contrary, statutory rights and obligations cannot be waived. They include the following:

- not to be discriminated against on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation. These are called "protected characteristics" and are defined by the Equality Act 2010
- to equal pay with the opposite sex if they are doing like work or work of equal value
- not to be unfairly dismissed: employees must generally have at least 24 months' continuous employment to bring an unfair dismissal claim. However, some unfair dismissal claims, such as a claim that the dismissal was discrimination related, can be made whatever the length of employment (see www.acas.org.uk)
- to an itemised pay statement that shows how net pay has been calculated (see HMRC website at www.hmrc.gov.uk)
- to maternity benefits: all pregnant employees have the right to paid time off for ante-natal care, the right to take up to 52 weeks' maternity leave and the right not to be dismissed because of pregnancy or childbirth. All employees who take maternity leave are entitled to Statutory Maternity Pay (SMP) if they have 26 weeks' or more continuous employment by

the end of the 15th week before the expected week of childbirth. Average earnings in the eight week period preceding the 15th week before the expected week of childbirth must not be less than the lower earnings limit for National Insurance contributions. SMP, which is payable from the beginning of maternity leave, is paid for up to 39 weeks. The first six weeks are paid at 90% of gross average earnings. The remaining 33 weeks are paid at the lower of 90% of gross average earnings or a fixed rate, which is adjusted annually

- to paternity benefits: employees who are the father, adopter, are in an established relationship with the mother or adopter of the child, or are intending to have a child by surrogacy, who have responsibility for the upbringing of the child and who have at least 26 weeks' continuous employment by the 15th week before the baby is due or the end of the week when the employee is matched with the child to be adopted, have the right to either one week's paternity leave or two weeks' paternity leave, paid at a fixed rate, which is adjusted annually (Statutory Paternity Pay) or 90% of gross average earnings, if that is less. To qualify for Statutory Paternity Pay employees must, on average, have weekly earnings which are equal to or above the lower earnings limit for National Insurance Contributions and be employed by the employer up to the date of birth
- to shared parental benefits: eligible employees are the mother, adopter or partner who share the main responsibility for the child's care. An employee who is entitled to statutory maternity pay or statutory paternity pay is likely to meet the service requirement for shared parental leave. They are entitled to up to 50 weeks' shared parental leave (SPL) in the year following the child's birth/adoption. They may also be entitled to shared parental pay during SPL. SPL can be shared between two people. It has replaced additional paternity leave which provided up to 26 weeks' leave. It does not replace statutory maternity leave or statutory paternity leave (see above). SPL cannot begin unless the mother or adopter brings statutory maternity leave or statutory adoption leave to an end. This cannot be before the end of the second week following birth or adoption. The outstanding statutory maternity leave or statutory adoption leave (i.e. up to 50 weeks) can then be available as SPL

  For more information (including information on eligibility and shared parental pay) see http://www.acas.org.uk/index.aspx?articleid=4911
- to adoption benefits: rights are equivalent to the maternity leave/pay entitlements

- to parental leave: employees who have at least one year's continuous employment with their employer are entitled to take unpaid time off work if they have a baby or adopt a child. The right applies to both mother and father and allows for up to 18 weeks' parental leave until the child's 18th birthday. Leave must be taken in blocks of one week, unless the child is disabled, and no more than four weeks can be taken in any one year without agreement
- to time off for dependants: all employees have the right to take a reasonable period of unpaid time off work to deal with an emergency involving a dependant, such as husband, wife, partner, child, parent or someone who reasonably relies on the employee for help in an emergency
- to apply for flexible working: employees who have at least 26 weeks' continuous service on the date of their request have the right to apply to their employer to work flexibly. The request can cover job share, hours of work, times of work and place of work. The employer must consider the request seriously but may refuse it if there are clear business grounds for doing so
- to notice of termination of employment: employees are entitled to receive from their employers at least one week's notice after one month's continuous employment, two weeks' after two years and an additional week's notice for each complete year of employment up to 12 weeks' for 12 years' or more continuous employment. Employers must receive at least one week's notice from employees with continuous employment of one month or more. Contractual provisions can provide for longer notice
- not to have unlawful deductions from pay: employers must not deduct from an employee's pay unless the deduction is allowed by law or the employee's contract; or if the employee has previously given written agreement or consent to the deduction
- to redundancy pay: employees with at least two years' continuous employment who are dismissed for redundancy are entitled to a redundancy payment. The payment depends on pay, age and the length of continuous employment of the employee (see the ready reckoner on www.gov.uk/redundancy-pay)
- to a safe system of work: an employer is statutorily responsible for the health and safety of its workers. An employer may be required to send a worker home if there is a health risk in the workplace. The Health and Safety at Work etc Act 1974 requires all employers, for example, to have a written health and safety policy if they employ five or more employees, to

report certain injuries, diseases and dangerous occurrences, to provide information and training, and to provide first aid facilities. Additionally, all employers are required to carry out risk assessments in their workplace. See www.hse.org.uk for further information

- to statutory sick pay (SSP): paid by the employer from the fourth day of continuous absence for up to 28 weeks, provided the employee meets the qualifying conditions and the employer does not pay occupational sick pay that is equal to or more than SSP. For more information see www.hmrc.gov.uk
- to a reasonable amount of time off:
  - for public duties (councillor, school governor, etc)
  - for jury service
  - to look for work if declared redundant with at least two years' service by the date of expiry of the notice period
  - for trade union activities, duties and training (see Acas Code of Practice 3: time off for trade union duties and activities)
  - for duties as an employee representative where there are redundancies or business transfers
  - for carrying out functions as a safety representative
  - to study
- To be enrolled automatically into a 'qualifying' pension scheme, subject to eligibility criteria: Staged implementation of "autoenrolment" started in 2012 and has, at the time of publication, reached smaller employers including many local councils. For more information see http://www.thepensionsregulator.gov.uk/docs/pensions-reform-pension-schemes-v4.pdf
- To apply for time to train: all employees with more than 26 weeks' continuous employment in organisations of 250 employees or more can apply. Employers must consider a request but can turn it down if there is a good business reason (see https://www.gov.uk/training-study-work-your-rights)
- to trade union membership: employees have the right to belong or not to belong to a trade union
- to protection if a business transfer is covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"): employees have the right to be transferred automatically, on the same terms and conditions of employment without loss of employment rights
- to written reasons for dismissal: provided they have at least two years' service. There is no qualifying period of employment if an employee is dismissed while pregnant or on maternity or adoption leave

- to a written statement of the main terms of the contract (see pages 19 and 20)
- to minimum hourly rates: On 1 April 2016, the National Living Wage (NLW) replaced the National Minimum Wage (NMW) for all workers aged 25 and over. The NMW continues to apply to workers under 25. See https://www.gov.uk/government/publications/national-living-wage-nlw
- to annual leave and working time limits: under the Working Time Regulations 1998, workers are entitled to 28 days paid leave per year (pro-rated for workers on less than five days a week) including public holidays. The Regulations also limit the average working week to 48 hours. Employees can agree, in writing, to waive the 48 hour right. Special rules apply to young persons. The Regulations also provide for rest breaks
- to be accompanied at disciplinary and grievance hearings by a colleague, an accredited trade union representative or trade union official of their choice
- for part-timers to be treated no less favourably than comparable full-timers: see the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- for employees on fixed-term contracts to be treated no less favourably than comparable permanent employees: see the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. Employees become permanent if they have been continuously employed for more than four years on more than one contract unless the employer can show a good reason why this should not apply
- to protection when making disclosures of wrongdoing (i.e. whistleblowing) if dismissed or treated less favourably by their employer
- to access their personal data securely held by their employer under the Data Protection Act 1998. See www.ico.org.uk.

For further information on individual employment rights see www.acas.org.uk.

How can a contract be altered?

Most changes to an employment contract require the consent of employer and employee. They can be agreed:

- either orally or in writing (although written consent can avoid later disagreements)
- through collective bargaining arrangements
- when the employee works in accordance with the new terms without objecting to the changes
- through a term which provides for a variation in the contract, e.g. a clause specifically allowing an employer to change an employee's duties.

It is important that contractual changes are discussed and agreed where possible because disagreement over the changes may lead to the ending of the contract and employers facing unfair/ wrongful dismissal claims (see Section 6). Councils must ensure that they act reasonably in these circumstances.

Councils may need to obtain legal advice about these matters.

Notes



Section 3

Management

1. Management decisions cannot be made by an individual councillor.
2. Appraisals set and review objectives to improve performance.
3. Employee records must be accurate, securely stored and consistent with the Data Protection Act 1998.
4. Employing homeworkers requires special consideration e.g. health and safety.

Effective management of employees has benefits for both the council and the employee. It involves continuous dialogue, support, personal development, conflict management and team building. Good line management structures should be in place for all staff.

Employment policies are also an important management tool and contribute to the smooth running of an organisation. Policies should be written in a clear and precise manner so that employees understand them. Employees should be made aware of the existence and importance of a council's policies. A list of policies can be found at the back of the guide.

How should a council manage its employees?

The council as the body corporate is the employer for all its employees. Decisions about employment matters cannot be delegated to individual councillors, including the chairman. They can be delegated to employees such as the clerk. It is recommended that management matters are dealt with by a committee appointed for such a purpose. Where a council is dealing with disputes (e.g. grievance and disciplinary matters), it is essential that they are dealt with by a committee or sub-committee with appropriate terms of reference. See Section 5 for further information.

Councils should ensure that the minutes of any committee or council meeting contain only the decision that was made and employees should not be referred to by name. Under the Data Protection Act 1998 personal data about employees must not be disclosed.

What is the clerk's role as manager?

The clerk is the most senior employee of a council and is generally best placed to manage other employees.

Informal chats between the clerk and employee can make sensitive or less serious complaints easier to handle and easier to resolve before they escalate. An example of where this is appropriate might be occasional lateness with unsatisfactory explanations.

If a council does not delegate all management of its employees to the clerk, the personnel committee should still take responsibility for the remaining duties (e.g. the powers to suspend or dismiss an employee).

Who should manage the clerk?

The management of the clerk differs from the management of other employees because the clerk is the council's most senior employee. As such, line management of the clerk cannot be delegated to another employee.

Management of the clerk by full council is generally ineffective and cumbersome and should be delegated to a personnel committee to which council should give clear terms of reference.

Personnel committees should adopt relevant standing orders for lawfully authorising clerks' sick leave, annual leave and the discussion of sensitive matters such as informal grievances and disciplinary matters. They would also be responsible for any decisions relating to recruitment or termination of clerks' employment contracts. Any appeals arising from disciplinary or grievance matters should be made in accordance with the council's disciplinary policy.

What is an appraisal?

Management is a continuous process. A regular review of an employee's performance is an effective tool. It also allows an employee to give their views to the manager.

Performance reviews or appraisal discussions normally set and review objectives which should be "SMART" i.e.

S Specific

M Measurable

A Achievable

R Realistic

T Time-bound

Who undertakes appraisals?

Clerks and other employees with management responsibilities may conduct appraisals for other employees. A clerk's appraisal will be best undertaken by a small committee rather than full council. Relevant councillors and employees should receive training in appraisals.

A written record of the appraisal should be placed on the employee's personnel file so that the objectives form part of the next appraisal.

How should appraisals be conducted?

Discussions should be open and two-way communication should be encouraged. There should also be an opportunity to agree training and development needs. See section 4 for further information.

When should appraisals be held?

It is usual to hold annual appraisals. Half-yearly appraisals are also good practice. It may be appropriate to hold more frequent appraisals during the early stages of employment or following disciplinary action.

Are appraisals linked to salaries?

If an employment contract allows for a salary increment to be paid "subject to satisfactory performance", councils should have an annual appraisal system in place.

How should sickness absence be managed?

A personnel committee should have policies and procedures in place to deal with matters such as:

- delegating the power to deal with other employees' absence to the clerk
- notification of a clerk's sick leave. Sometimes there will not be sufficient time for a personnel committee to meet to consider an urgent request. The committee's standing orders should specify the member, such as the chairman of the committee, who can be notified of leave. The standing orders must provide for reporting this back to the committee for ratification
- monitoring continued absence due to illness
- making arrangements for clerks' work to be completed in their absence
- investigating sensitively any long-term absence due to illness and the expected date of return, ascertaining if the employee is fit to return to work and that the employee's workload on the return to work is manageable and realistic.

Doctors can issue "fit notes" which contain their advice about employees' fitness for work. They are intended to help employers and employees consider ways to help a return to work. For more information see https://www.gov.uk/government/collections/fit-note "

If an employee has been unfit for work for 4 weeks or more, the GP or employer can refer them to Fit for Work http://fitforwork.org – the government

occupational health service. The service aims to reduce long-term sickness absence by helping the employee develop an agreed "return to work plan". For more information see https://www.gov.uk/government/collections/fit-for-work-guidance.

How should other leave be managed?

Employees with management responsibilities of other employees should deal with their requests for leave. Personnel committees should deal with the leave requests of the clerk.

What records should the council keep?

Councils must ensure they keep accurate and appropriate employee records. Personal data/ information are subject to the Data Protection Act 1998. The council should agree a data protection policy to include the safe and secure storage of that data/information, including who can have access to it. Records that should be kept by the council include:

- personal employee details such as name and address/ next of kin/ banking details/ National Insurance information
- the employee's employment history with the council
- a copy of the employee's contract of employment
- holiday records
- absence records including sickness absence
- details of any disciplinary action taken against the employee or grievances brought by the employee
- the original job application information with details of previous employment history, qualifications and references obtained.

The period for retaining details of disciplinary action may depend on the sanction. Disciplinary sanctions often provide that the written warning will remain on the personnel file for 12 months. All documents related to the recruitment process (see Section 1 for further information) should be retained for a minimum of six months after appointment.

How should a council manage homeworkers?

Some smaller councils have no office premises from which the employee can work. In such cases it is normally expected that the employee will work from home. Whilst this arrangement can often be mutually satisfactory, there are some issues which need to be addressed and agreed at the

outset and specifically included in the written contract of employment (see pages 19 and 20).

The contract of employment should specify the place of work as the employee's home address. It should also identify the times and days that the employee works e.g. "Monday to Thursday, 9 am to 1 pm" rather than "16 hours per week".

If the employee's home is his/ her designated office, the council should arrange for a risk assessment of the relevant work space to ensure that health and safety regulations are complied with. The council should be responsible for any cost. There must be employers' liability insurance and there should also be public liability insurance to cover employees working from home.

The council should reimburse all reasonable expenses incurred by homeworkers (as for all other employees) in the course of their duties upon receipt of satisfactory claims.

The council should provide the equipment necessary to enable homeworking employees to do their job or agree with homeworkers a suitable sum to cover use of their own equipment. The council should also pay the employee for the costs associated with heating, lighting, etc. HMRC rules allow for some of these expenses to be paid tax-free (www.hmrc.gov.uk). The council should provide or cover the cost of appropriate fireproof storage for documents. Councils should ensure that documents stored at home are secure and kept in accordance with the Data Protection Act 1998.

Clerks are normally contractually obliged to make themselves available to members of the public during agreed hours at premises designated by the council. Meetings with the public or councillors at clerks' homes are to be discouraged.



Section 4

Staff Development

1. Staff development policies help identify employee training needs.
2. Should councils have training budgets?
3. Clerks must be qualified for the council to achieve the Quality and Quality Gold award levels of the Local Council Award Scheme.

This section is a guide to councils' responsibilities for the development of employees. It contains helpful links and ideas which will assist councils in their staff development policies.

What might a staff development policy contain?

The employer should include the following setting out how each would be achieved:

- a brief statement of the council's commitment to staff development and training
- a brief outline of who the policy will be for
- how development and training needs will be identified
- how training and development requests can be made
- how the council will support staff through their development and training
- what professional development schemes and structures the council might have in place.

What is training?

The Chartered Institute of Personnel and Development (CIPD) defines training as "a planned process to develop the abilities of the individual and to satisfy the current and future needs of the organisation."

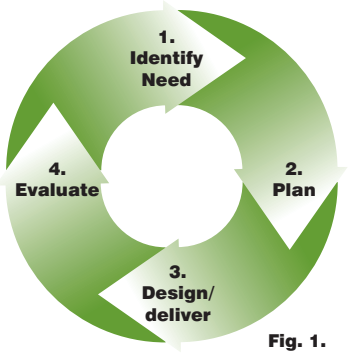


Fig. 1.

Councils should see training and development as a planned process. The personnel committee should be given responsibility for monitoring and delivering employees' development and training needs. Councils with appropriately trained employees will be better equipped to provide services to the community.

Training can be divided into a number of different elements (see diagram). Each element may be carried out at different levels and different stages in the process of development. These elements are:

- identifying training and development needs – in the light of council objectives and the requirements of employees
- planning and organising training and development opportunities to meet those needs
- designing and delivering training and development opportunities
- evaluating the effectiveness of training and development opportunities.

How might a council identify development and training needs?

There are a number of ways that developmental needs can be identified:

- staff appraisals (see pages 30 and 31)
- interviews
- formal meetings or processes e.g. a one-to-one meeting with a manager
- informal discussions
- organisational goals, plans and strategies e.g. a council could have an objective to be accredited in the Local Council Awards Scheme or to become eligible for the General Power of Competence
- questionnaires.

Areas that might necessitate training needs include:

- a training request from a member of staff
- new members of staff
- changes to legislation
- changes to quality systems
- new and revised qualifications launched
- accidents
- professional negligence/ mistake
- new equipment
- new processes/ working methods
- complaints to the council
- council resolutions
- new services being delivered by the council
- a structured professional development programme.

How should training be requested?

The committee responsible for staff management should agree procedures for making training and development requests. It should inform employees of how procedures work and where the appropriate documents for completion are located.

Who should pay for training?

Councils should establish training budgets as part of their staff development policies. Councils should specify their training budgets and how requests for training should be made. The budget and training request procedures should be agreed by the relevant committees, e.g. the finance committee and personnel committee, and reviewed annually. There should be regular reports to council on training expenditure.

How is training delivered?

First launched in 2001 the National Training Strategy sought to increase consistency and quality in training taking place across the country. Revised and updated in 2010, the strategy sets out the core aims, objectives and aspirations for the sector and its development of skills and qualifications. The strategy can be found on both the NALC and SLCC websites.

County Associations and County Training Partnerships

There is a wide range of training available to local councils. County associations all provide training specifically designed and delivered for councillors and staff of local councils. Most county associations will provide a range training for clerks and other employees such as induction days, CiLCA training, briefings on changes in legislation and conferences.

In some areas there are County Training Partnerships (CTP) where the county association will deliver training alongside a number of partners such as the local SLCC branch, principal councils, or private trainers. Even where this is not a CTP there may still be training offered by your principal authorities or other local partners, your county association can help you find and choose the training that is best for you.

The Society of Local Council Clerks

The SLCC offers an extensive suite of national training programmes tailored to support clerks' professional development delivered through a network of providers and training officers. The full range of courses, events and how to access them can be found on the SLCC website www.slcc.co.uk.

What courses and qualifications are available?

Nationally recognised qualifications and courses include the NTS Certificate in Local Council Administration (CiLCA), the accredited certificate for the sector designed to test competence for the role of council clerk. Attending training will help your staff in their work for CiLCA. There are 'recognised CiLCA trainers' in every county area that have specialist knowledge of this qualification. You can find your local CiLCA trainers by contacting your county association who will coordinate the local training. SLCC also offer CiLCA training as a CPD course and at some of their events and conferences.

"Introduction to Local Council Administration" (ILCA) is an online course in five sections based on the Occupational Standards established by the National Training Strategy in England. It can be completed by distance learning and is widely recognised as a useful induction tool and an excellent preparation for CiLCA. Further information is available on both the NALC and SLCC websites.

Higher education

The SLCC also provides a higher education qualification for clerks. This is a programme of advanced courses in Community Governance (formerly Local Policy and Community Engagement & Governance) including single modules, a Certificate of Higher Education and a Foundation Degree. The awards are made by the University of Gloucestershire which also provides a Level 6 course for an Honours degree.

What is Continuing Professional Development?

Continuing Professional Development (CPD) is the process by which employees can track, record and plan learning. A structured CPD training programme has been developed by the SLCC providing in-depth training opportunities for practitioners working for, or involved with local councils.

There is also a CPD point scheme developed by NALC and SLCC under the NTS. This allows council staff to record points allocated to various development activities such as attending any training relevant to their council role, research, qualifications, reading etc. All clerks whose councils seek an award in the Local Council Award Scheme, are required to demonstrate that they have achieved at least 12 CPD points in the 12 months immediately preceding the council's application. The CPD point scheme is also the vehicle by which members of the Institute of Local Council Management (ILCM) can progress through the ranks of

membership. A copy of the CPD point guidance can be downloaded from both the NALC and SLCC websites with information on how to join the ILCM.

What are learning agreements?

Learning agreements are internal documents drawn up between employers and employees. They detail both parties' agreed responsibilities in terms of time and financial support from the employer and the commitment to complete the agreed training course or qualification from the employee. They are not intended to be legally binding or mandatory but are examples of good employment practice. They are also a good way of ensuring that the council and its employees are aware of the commitment they are making.

The employment contract could include some form of compensation or claw back provision if the employee leaves within a set time after the investment in development or training has been made. If they have not completed the training paid for by the employer within the agreed timescale, reimbursement might also be requested from the employee.

The Local Council Award Scheme

The Local Council Award Scheme was launched in January 2015, replacing the previous Quality Council Scheme. It is an accreditation scheme that helps councils confirm they have sound processes in place for good governance, community engagement and for developing their council.

The Local Council Award Scheme has been designed to celebrate the successes of the very best local councils, and to provide a framework to support all local councils to improve and develop to meet their full potential.

The Local Council Award Scheme has three award levels:

- Foundation Award

  Councils achieving the Foundation Award demonstrate that they have the documentation and information in place for operating lawfully, including in their duties as employers, and according to standard practice, building a foundation for improvement and development.

- Quality Award

  To achieve the Quality Award a council demonstrates that it meets all requirements for the foundation award and has additional documentation and information in place for good governance, effective community engagement and council improvement. This includes an ongoing commitment to staff and councillor development.

- Quality Gold Award

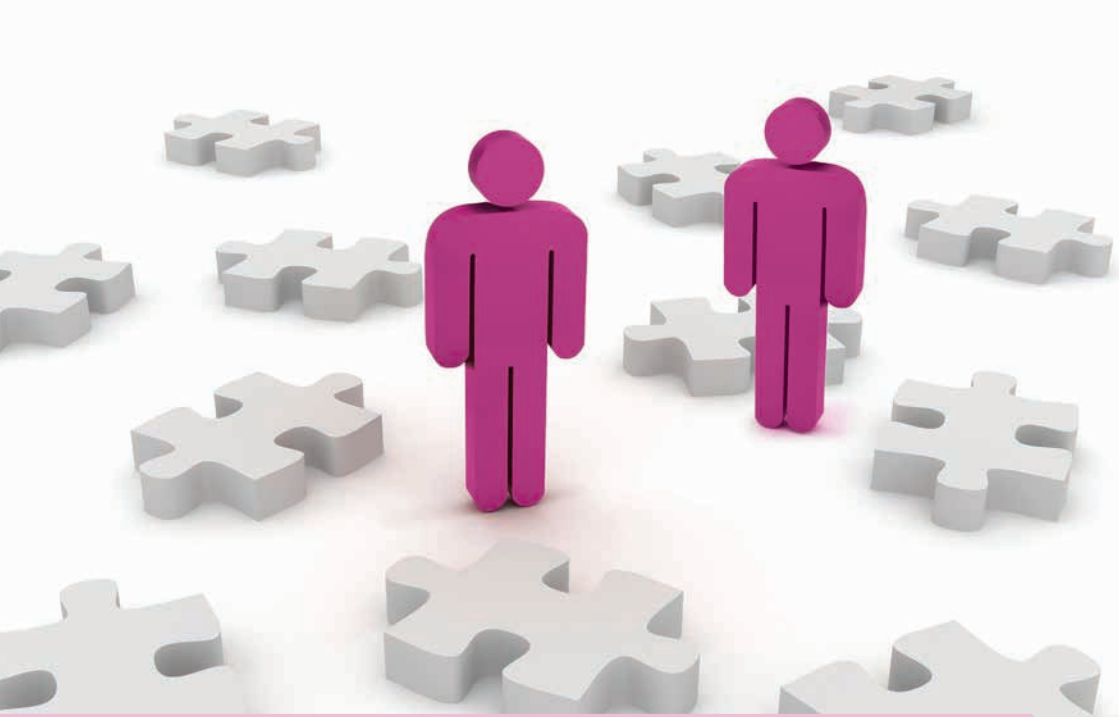
  Councils achieving the Quality Gold Award demonstrate that they meet all requirements of the foundation and quality awards, and are at the forefront of best practice by achieving an excellent standard in community governance, community leadership and performance management.

  More information about the Local Council Award Scheme can be obtained by contacting your county association or visiting NALCs website.

Are there other alternatives to formal training?

Formal training should not be seen as the only option once a need has been identified. It may be that formal training is not necessary or not appropriate for the subject identified. Employees may gain just as much by shadowing a more experienced colleague, having a focussed professional discussion on the topic with a qualified person or by simply being signposted to relevant books, journals or websites. The appropriate method of learning should be agreed between the employer and employee.

Notes



Section 5

Dispute resolution/ if things go wrong

1. Councils' procedures should comply with Acas Code of Practice.
2. Mediation is an effective means of dispute resolution.
3. Workers have a statutory right to be accompanied in grievance and disciplinary proceedings.
4. Employees should have the right to appeal councils' decisions.
5. Councils should seek suitable sources of advice.

Introduction

From time to time disputes between a council and its employees can arise. They are likely to be either:

- disciplinary matters following concerns by the employer about misconduct and/ or poor performance of an employee
- grievance matters which involve concerns, problems or complaints employees have about their employer or colleagues.

Some county associations offer an employment support service or will be able to signpost the council to professional help.

What are the different types of dispute resolution?

Informal stage

The main focus of all employment dispute processes should be about getting the employment relationship back on track. Many potential disputes can be resolved informally by managers having a "quiet word" with employees or through regular dialogue and during job reviews/ appraisals (see pages 30 and 31).

The formal process

Disputes within the employment relationship can be time-consuming, stressful for all concerned and detrimental to the running of the council. The council should have an agreed written procedure to deal with disputes so that they can be handled promptly, consistently and fairly. Any procedure should comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (see www.acas.org.uk for the Code, and Discipline and Grievances at work – the Acas guide).

Councils' disciplinary and grievance arrangements should be established by the personnel committee in accordance with councils' standing orders (see NALC publication "Local Councils Explained"). Personnel committees' terms of reference should be relevant and proportionate. Councillors must consider whether involvement in hearing the matter is consistent with the council's code of conduct and in particular, its commitment to the seven general principles of conduct (known as 'the Nolan Principles'). If it is not, they should not take part.

Members of personnel committees, clerks and other employees with management responsibilities must fully understand the procedures and receive training on disciplinary/ grievance handling. County Associations can provide such training or details of where it can be obtained.

Mediation

Mediation is voluntary and confidential. It involves an independent person helping two or more individuals or groups reach a solution that is acceptable to everyone. Mediators do not make judgments or determine outcomes – they ask questions that help to uncover underlying problems, assist the parties to understand the issues and clarify the options for resolving their difference or dispute. There are a range of organisations that can offer mediation services, inlcuding ACAS (see www.acas.org.uk).

How should the disciplinary process be conducted?

It is worth keeping in mind that the main purpose of a disciplinary procedure is normally to encourage improvement where an employee's conduct or performance is below acceptable standards.

Investigate

In cases of misconduct, an investigation should be carried out as soon as possible. Different people should carry out the investigation from those who sit on any subsequent disciplinary hearing. It is often helpful for investigations to be undertaken by an independent, external person. It may be necessary to suspend the employee pending investigation where there is an allegation of gross misconduct. This should be done on full pay and for as brief a time as possible. It is not always necessary to carry out an investigation, such as in cases of poor performance.

Inform

If, following an investigation a council decides that there is no case to answer, it should inform the employee in writing. If the council decides there is a case to answer about the alleged misconduct, an employee should receive written information about the possible disciplinary outcomes. In cases of misconduct, the employee should receive the relevant investigation report with supporting witness statements and other evidence. The employee should be invited to attend a meeting. The letter should include details of venue, time and the employee's right to be accompanied.

Meeting

Disciplinary hearings should be heard by a panel consisting of members of the staffing committee. The panel should not be less than three members and, in general, three members is to be recommended.

A meeting should be held as soon as possible. The employee should be given reasonable time to prepare. At the meeting the complaint should be presented and supporting evidence discussed. The employee may wish to present his/ her case, call witnesses and ask questions. Proceedings should be minuted by a person appointed for the purpose. Additionally it is helpful for a more detailed confidential record of the hearing to be made. This record must not be put into the public domain. If the employee is persistently unable to attend a meeting, the council will need to decide whether the meeting can go ahead in the employee's absence. If the inability to attend is because of ill health, the council may need to obtain a prognosis from the employee's GP, with the employee's consent. Even if the employee does not attend the meeting, he/ she should be given the opportunity to be represented and to submit evidence.

Right to be accompanied

Employees have a statutory right to be accompanied to a hearing where a disciplinary sanction could be imposed or where a grievance is raised (see page 25). The chosen companion may be a colleague, an accredited trade union representative or an official employed by a trade union. An employee's reasonable request for the companion to attend should be made in advance of the meeting. If the companion cannot attend on the original meeting date, the hearing must be postponed if the employee proposes a reasonable alternative date which is within five working days. The companion may address the meeting to put the employee's case, respond to any view expressed and confer with the employee. The companion does not have the right to answer questions on behalf of the employee or address the meeting if the employee does not wish it or it prevents the council from expressing its case.

What disciplinary action can be taken?

After the meeting the panel should inform the employee of the outcome in writing.

Common sanctions resulting from disciplinary action are as follows:

- first minor misconduct/ poor performance: written warning with action plan and review date
- subsequent misconduct/ continued poor performance: final written warning with action plan/ review date
- continued misconduct/ poor performance whilst on a final written warning: dismissal with notice
- gross misconduct: summary dismissal (i.e. without notice), dismissal with notice or final written warning.

Gross misconduct includes matters so serious that they fundamentally breach the employment relationship e.g. theft, fraud, physical violence or bullying, gross negligence, serious insubordination.

Councils will need to ensure that the person or body who makes the decision has the requisite authority to impose disciplinary sanctions. In some councils a decision to dismiss will need to be ratified by full council but this can be delegated to an appropriate committee (see page 29). Individual councillors cannot impose sanctions (see page 29).

Is there a right of appeal?

Where an employee feels that the disciplinary sanction imposed was unjust or that a proper or fair process was not followed, the employee can appeal in writing within the period set by the procedure. The appeal should be heard by a committee or panel consisting of members who did not sit on the committee or panel that made the original decision. The appeal committee or panel should not be less than three members and, in general, three members is to be recommended. Its decision will be final. The appeal stage of disciplinary procedures may either take the form of a complete rehearing or a review of the original decision. There is a right to be accompanied to an appeal hearing as detailed above. The outcome of the appeal should be communicated in writing and, if possible, handed to the employee as soon as possible after the appeal meeting.

What are the stages of the grievance process?

Inform

If it is not possible to resolve a problem informally, the employee should submit a formal written grievance to his/ her line manager. A clerk's grievance should be made to the staffing committee. Councillors with any interest declarable under their council's code of conduct should seek advice as to their ability to consider or participate in any decision making.

Discuss

There should be a meeting to allow the employee to discuss his/ her concerns. This meeting may need to be adjourned for the employer to undertake further investigation.

Right to be accompanied
Employees have a right to be accompanied at grievance hearings (see pages 25 and 45).

Action
After the (reconvened) meeting, the committee or panel should write to the employee to confirm whether or not it upholds the grievance and if so, what action the council intends to take to resolve the employee's concerns.

Right of appeal
If the employee is not satisfied with the grievance outcome, or considers that a proper or fair process was not followed, then an appeal with written reasons should be submitted to the council within the period set by the procedure. The appeal should be heard by a committee or panel of members who were not involved in the original hearing. The appeal committee or panel should not be less than three members and, in general, three members is to be recommended. Its decision will be final. There is a right to be accompanied to an appeal. The outcome should be communicated in writing and if possible, handed to the employee as soon as possible after the appeal.

Special cases
Where an employee raises a grievance during a disciplinary process, it may be appropriate to deal with the grievance first. If the two complaints are related they can be handled concurrently.

Preparing for the meeting
Employees who are subject to disciplinary investigation or action or who have raised a grievance should be given reasonable notice of the date of the meeting so that they have reasonable time to prepare their case.

Dispute Resolution – is there external legal redress?

If employees are dissatisfied with the outcome of internal procedures, it is possible that they may seek legal redress in the courts or employment tribunals. In these circumstances a council would need to seek professional legal advice. In some cases such as discrimination claims, legal proceedings can also be brought against individual councillors. A complaint under the council's code of conduct could also be made to the relevant principal authority.



Section 6

The end of the contractual relationship

1. **Councils must use a fair dismissal procedure.**
2. **Capability, conduct and redundancy can be fair reasons to dismiss.**
3. **Councils and employees must generally give notice to end employment in line with the contract.**

When can an employee be fairly dismissed?

There are a number of potentially lawful reasons for ending the employment:

- capability
- conduct
- contravention of an enactment
- redundancy
- some other substantial reason

Capability

Capability relates to employees' ability to perform their job. If councils have concerns about their employees' capabilities, they need to adopt set procedures which are fair and consistent (see Section 5). Fairness will depend, for example, on whether the employer set reasonable performance standards or targets, informed the employee of failure to meet standards, gave the employee a reasonable opportunity to improve or provided appropriate support and training opportunities.

Conduct

Conduct refers to employees' behaviour, generally in the workplace. If councils have concerns about their employees' conduct, the Acas Code of Practice on Disciplinary and Grievance Procedures must be followed before a decision to dismiss on grounds of misconduct is made (see Section 5). Procedures should be fair and consistent. Dismissal should be the sanction of last resort.

Contravention of an enactment

If continued employment would contravene a law, dismissal for this reason can be fair. The question that councils should ask is "does the particular law make it unlawful for the council to continue to employ the employee?"

Redundancy

A redundancy can arise where an organisation has a reduced need for employees.

In some circumstances a redundant employee's duties may continue. For example, if the duties of a redundant employee can be absorbed into the jobs of existing employees.

The Acas Code of Practice on Disciplinary and Grievance Procedures does not apply to redundancy dismissals. However, when considering redundancy dismissals, councils should ensure that employees (and any representatives)

have the opportunity to be consulted, that there is a fair selection procedure in place and that they consider whether there are any suitable jobs.

Where an employer is contemplating 20 or more redundancies, there are statutory consultation requirements. Guidance on handling redundancies is contained in Acas' guide 'Handling small-scale redundancies – a step-by-step guide'. http://www.acas.org.uk/.

Some other substantial reason

A dismissal can be fair even if it is not for one of the above reasons if it is "for some other substantial reason of a kind such as to justify the dismissal of the employee" (section 98 of the Employment Rights Act 1996). "Some other substantial reason" often arises when there are business reorganisations falling short of redundancy.

When can an employee bring an unfair dismissal claim?

The right not to be unfairly dismissed is a statutory right (section 94 Employment Rights Act 1996). Employees can bring unfair dismissal claims to an employment tribunal if they have two years' continuous service. No minimum service is required for certain types of dismissal e.g. if the reason is based on discrimination, health and safety, trade union membership or whistleblowing (see Section 2). Claims must generally be brought within three months of the dismissal.

Unfair dismissals generally require an actual dismissal. However, in certain circumstances, resignation may still count as a dismissal and entitle an employee to bring an unfair dismissal claim. This is known as constructive dismissal.

Wrongful dismissal

The right not to be wrongfully dismissed is a contractual right. It arises when an employer terminates the contract of employment in breach of its terms e.g. where no notice of termination is given.

An employee who has been wrongfully dismissed can recover damages for breach of contract. A claim can be brought in an employment tribunal (provided that the claim is for less than £25,000) within three months of dismissal or in the courts, usually the county court, within six years of the breach.

No minimum period of employment is required for an employee to bring a wrongful dismissal claim.

An employee can claim to have been wrongfully dismissed where unfair dismissal (including constructive dismissal) is alleged.

How can the employee terminate the employment relationship?

Resignation

Employees can terminate their contracts of employment by resigning. Both the council and the employee should follow the contractual notice provisions. An employee who fails to give the contractual notice will breach his/ her contract unless a different notice period has been agreed with the employer.

Once notice of resignation is given it cannot be withdrawn unless the employer agrees that it wants the employment contract to continue. Once the employee has given notice to end the contract, the employer's acceptance is not required.

For more information on ending the contractual relationship, see www.acas.org.uk

Retirement

Older workers can voluntarily retire at a time they choose. Employers cannot force employees to retire or set a retirement age unless it can be objectively justified as what the law terms as "a proportionate means of achieving a legitimate aim". Further information is available from ACAS and also at https://www.gov.uk/retirement-age

Employment Policies

This table contains a list of suggested policies which may be of use to councils. Not all of them will be appropriate for every council. Examples of most of these policies can be found at the following websites **www.hse.gov.uk** and **www.acas.org.uk**

Discipline

Grievance

Equality and Diversity

Health and Safety (such as fire policy, VDU use, eye care, alcohol and drugs, major incident policy, employee counselling)

Bullying and Harassment/ dignity at work

Computer use

Email, internet and telephone

Absence (sickness, holiday, authorised/ unauthorised)

Homeworking (if relevant)

Expenses (travel, subsistence)

Retirement

Data Protection/ Freedom of Information

Family friendly (e.g. maternity, paternity, adoption, shared parental, parental leave, special leave, flexible working)

Conduct (e.g. use of council property, conflict of Interest/ ethics)

Employee Lifecycle (e.g. recruitment, induction, appraisal, training and development)

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The National Training Strategy
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