WEST LOTHIAN COUNCIL

MANAGEMENT OF EMPLOYEE RELATIONS CASES DURING COVID-19 (REVISED JULY 2020)

1. **Scope**

The need for staff to follow strict social distancing guidance for an extended period, in line with public health guidance and the national roadmap for remobilisation, means that a review of the Council's guidance in relation to the management of Employee Relations cases during COVID-19 is necessary.

This document takes account of public health guidance, the ACAS Code of Practice and the Employment Rights Act 1996.

The proposed approach has also been informed by changes to the arrangements for conducting Employment Tribunal Proceedings, with regard to the Employment Tribunal Service's governing role in employment disputes.

2. **Background**

Notwithstanding the changes required to working arrangements during the COVID-19 pandemic and a phased remobilisation of the workforce, the law and governing provisions in the ACAS Code of Practice on disciplinary and grievance procedures continue to apply. As such, employees and employers are still advised to raise issues promptly and without unreasonable delay.

In terms of disciplinary proceedings, the Council must therefore decide if it would be fair and reasonable to continue, or commence a disciplinary process while employees are following social distancing and other public health guidelines in the workplace, or where employees are required to work from home.

In relation to grievances and complaints under the Bullying and Harassment Procedure, as employees can still raise such complaints, the Council must determine if a fair procedure can be carried out when the complainant and/or those involved are working from home or following social distancing in the workplace.

The Council must also ensure it is able to adapt its approach to the implementation of the Supporting Attendance at Work policy during the pandemic.

3. **ACAS Code of Practice**

ACAS states that "*Any disciplinary or grievance procedure at this time must be carried out in a way that follows public health guidelines around social distancing and closure of certain business premises.*"

In order to decide whether an investigation or hearing can still be carried out in a fair and reasonable way where employees are working from home, the Council must consider:

- the individual circumstances and sensitivity of the case, for example if it needs to be dealt with urgently, or if it would be dealt with more fairly when people are able to return to the workplace;
- if anyone involved has a reasonable objection to the investigation or hearing going ahead at this time;
- if it is possible to fairly assess and question evidence using alternative methods.

Managers should talk through the options with everyone involved before deciding whether and how to proceed. This includes:

- the employee involved in the investigation or hearing;
- the employee's representative or companion (if there is one);
- any other people involved, for example the manager chairing the meeting or witnesses who may need to attend.

This will help to make an informed decision based on everyone's circumstances.

When taking through the options it's important to consider if anyone:

- has a good reason for wanting the investigation or hearing to either go ahead or be suspended;
- has concerns about holding the meeting in person or remotely;
- has concerns about how the employee can be fairly accompanied at the meeting.

Managers are advised to think carefully about the health and wellbeing of employees at this time and to provide clear reasons for any decision to progress, or postpone an investigation or hearing in writing.

On this basis, decisions about the management of disciplinary, grievance or bullying and harassment cases will be made on a case by case basis and services should consult the Human Resources (HR) Policy and Advice Team. Every attempt will be made to conclude these hearings as quickly as possible for all concerned, using the most appropriate communication means available whilst adhering to the latest public health guidance. Where it is not possible to progress cases, the case will be adjourned and the HR Policy and Advice Team will review the case in line with Scottish Government guidelines and inform the individual of the outcome.

4. Supporting Attendance at Work

While the Council will continue to ensure the consistent and effective management of sickness absence using the Supporting Attendance at Work policy and procedure, thought will be given to alternative arrangements for procedural meetings and communication. Services should consult the HR Policy and Advice team.

The guidance below sets out how to progress the Supporting Attendance at Work Policy during this period:

- **Informal Review Meetings (IRM)**

  As a Trade Union representative is not required to attend these meetings, they should be conducted by telephone or by one of the other alterative communication methods wherever possible. If the Line Manager cannot complete this due to delivering critical work, they should nominate another appropriate officer.

- **Stage 1 and 2 Meetings**

  These meetings should be conducted wherever possible using alternative communication methods. When the meeting is held the monitoring period will begin from the date the employee reached the corporate absence trigger, not from the date of the meeting.

- **Capability Assessment Review Panels (CARP)**

  These meetings should be held between the HR Policy and Advice Team, the Head of Service and the Line Manager where available, using one of the alternative means of communication. Where the employee is unlikely to be dismissed, the Head of Service should consider applying discretion and keeping the employee on the existing monitoring arrangements. A letter confirming this outcome will be sent to the employee by the HR Policy and Advice Team by email.

- **Capability Assessment Meeting (CAM)**

  CAM meetings will be conducted using alternative communication methods where appropriate.

  If, after consultation with the HR Policy and Advice Team, it is agreed that this meeting should be held face to face then the risk assessment(s) and building protocols will be provided to the employee and any representative at least 3 days in advance of the scheduled meeting. All risk assessments, protocols and social distancing measures will be strictly adhered to by all attendees.

  Managers should apply discretion where appropriate, details of which should be confirmed to the employee by their Line Manager, or other suitably appointed officer.

5. **Proposed methods**

   To avoid unnecessary delay, a range of methods for communication and procedural meetings may be adopted, which include, but are not limited to:

   - Video or telephone conferencing for case related meetings;
   - Video or telephone conferencing for formal hearings;
   - Option for written submissions, including by email for formal meetings, as appropriate;
   - Email approval of investigatory interview records;
   - Formal correspondence by email, or by post if not available;

   For those employees still attending the workplace, face to face meetings will be considered in line with public health guidelines. However, any case related meetings should only take place where the necessary social distancing and privacy can be guaranteed and a relevant risk assessment is completed for every meeting. It may be necessary to adopt a hybrid approach where some employees are in the office and others, such as witnesses, are attending the meeting through alternative methods of communication.

   For those employees not attending their workplace or for visiting staff, attending face to face meetings at any Council building can only happen following consultation with the HR Policy and Advice Team, and in line with the appropriate phase advice in the Scottish Government route map through and out of the coronavirus crisis. This will be determined on a case by case basis and alternative methods of communication should be explored in the first instance. If it is agreed that a face to face meeting is appropriate, then the service must complete the relevant risk assessment for the meeting prior to inviting people to attend. (Appendix 1).

   When thinking about the appropriate method of communication, managers must consider the employee's personal circumstances and in particular any protected characteristics that

would make it more difficult for the employee to communicate effectively using the proposed communication method. Where reasonable adjustments cannot be made to support the employee to communicate effectively and a face to face meeting is not deemed appropriate, a holding letter will be sent to the employee explaining why and the situation reviewed weekly by the HR Policy and Advice Team in line with public health advice.

6. Protocols for Alternative Methods

When holding meetings using alternative communication methods, measures will be put in place to ensure that employees and their representative/companion, if appropriate, are able to fully participate in the meeting.

Employees will be given access to all relevant documents before the meeting so they have time to read the information. Where necessary, sharing of information may be done via video screen sharing, although screen sharing should be limited and only shared on Council approved platforms.

Electronic links with instructions for joining telephone calls or video conferencing will be sent at least 3 days in advance, unless otherwise agreed, to allow time for the employee to familiarise themselves with the arrangements for joining.

Arrangements should be agreed to allow the employee and their representative/ companion to have private conversations during the meeting, for example, by text message, WhatsApp or private messaging via video conferencing, telephone calls etc.

If an employee requires support to access and use alternative methods of communication, a digital champion or other appropriate Council Officer will be identified to help the employee before the meeting.

Holding meetings by alternative methods can be more demanding on participants than face to face meetings, and so the chair will ensure regular comfort breaks for everyone at least hourly.

Any witnesses will only be invited to attend the meeting for the time they are needed to give their evidence. Once the witness has provided their evidence and has answered all relevant questions, the Nominated Officer will establish if there is a need for them to be available for any recall or if they are no longer required for the remainder of the hearing. If required, the witnesses will be asked to leave the hearing but remain available for recall.

As meetings continue to be held under Council policy, normal formal meeting etiquette and practice will apply. For example, people should be dressed appropriately for video meetings.

7. Risk Assessment

If, in exceptional circumstances, it is not possible to progress cases via an alternative method of communication then a risk assessment must be completed before arranging a face to face meeting. (Appendix 1). The risk assessment should consider any particular risk e.g. underlying health condition, age group, pregnancy, ethnicity etc.

8. Timescales

Managers should stick to the relevant timescales wherever possible. If they are unable to hold the meetings within the relevant timescales, consideration should be given to appointing another nominated officer from within the service. If this isn't feasible, or where the delivery of critical services means the Manager cannot deliver within the timescales,

then approval must be sought from the HR Policy and Advice Team to postpone the meetings. Managers must make sure that they liaise everyone involved when the timescales cannot be met.

9. Trade Union Consultation

The recognised Trade Unions have a critical role in the management of employee relations in the Council and we will continue to consult with the recognised Trade Unions on the Council's response to COVID-19.

The HR Policy and Advice Team and service managers will work in partnership with Trade Union representatives to determine appropriate alternative arrangements for specific cases where existing policy requirements cannot reasonably be met.

Any amendments to this guidance will be discussed and agreed with the recognised Trade Unions prior to re-issue.

10. Monitor & Review

The situation regarding COVID-19 is changing rapidly so managers and staff should continue to check the Council website https://www.westlothian.gov.uk/coronavirus for further information and updates.

This procedure will be subject to regular review and revision in light of the changing situation concerning COVID-19.

Human Resources
July 2020

<div align="right">**Appendix 1**</div>

Risk Assessment – Face to Face HR Employee Relation Meetings

Given that existing workplace risk assessments may not cover Covid-19 hazards in sufficient detail, managers will develop specific risk assessments as part of their remobilisation planning. The Government's 5 Steps to Working Safely guidance should be applied and key findings and controls effectively communicated to staff and other interested parties. The Health and Safety Executive (HSE) have also produced a short guide to working safety during the coronavirus outbreak which managers may find useful when carrying out their assessments.

This **Risk Assessment** should be completed **in conjunction with the** COVID19 Generic risk assessment.

I.D.	Document History	Date	By whom	Version
-	Document first introduced	04.06.20	VB	V1

I.D.	HAZARD	RISKS	C. RR	WHO MAY BE HARMED	EXISTING CONTROL MEASURES	Additional Control Measures
1.	Staff entering premises	Spread of Infection		• Staff	• Minimise the number of employees having to attend premises for meetings by using video/telephone conferencing facilities where possible. • Controlled entry points to building. • Hand sanitising stations set up at entrance points. • Hand washing facilities readily available https://www.nhs.uk/live-well/healthy-body/best-way-to-wash-your-hands/. • Visitor appointments by prior arrangement. • Social distancing to be applied in all work areas. • Drying of hands with hand driers and/or disposable paper towels. • Gel sanitisers in any area where washing facilities not readily available.	Employees to regularly wash their hands for 20 seconds with water and soap and drying with hand driers and/or disposable paper towels. Also reminded to catch coughs and sneezes in tissues – Follow Catch it, Bin it, Kill it and to avoid touching face, eyes, nose or mouth with unclean hands. Tissues should be available where the risk warrants an additional control (e.g. care homes, waiting rooms etc.) To help reduce the spread of coronavirus (COVID-19) reminding everyone of the public health advice - https://www.hps.scot.nhs.uk/.

I.D.	HAZARD	RISKS	C. RR	WHO MAY BE HARMED	EXISTING CONTROL MEASURES	Additional Control Measures
						Posters, leaflets and other materials are available for display. https://www.gov.uk/government/publications/ guidance-to-employers-and-businesses-about- covid-19

West Lothian Council staff guidance:

https://intranet.westlothian.gov.uk/article/50410/Advice-and-Information-on-Coronavirus-COVID-19

Staff should make sure the most recent guidance is being followed. The above site is regularly updated to reflect the changing nature of the current situation and taking account of advice from other bodies e.g. NHS Inform and Government Agencies.

Staff returning to work in a building where changes have been made will be required to undergo a building induction prior to returning to workplace. A record of this induction will be kept. The induction must cover all the points that would have been covered in a general workplace induction in addition to the Covid-19 related changes.

For those staff working from home or visiting a building that isn't their normal place of work, they will be provided with building protocols to |

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I.D.	HAZARD	RISKS	C. RR	WHO MAY BE HARMED	EXISTING CONTROL MEASURES	Additional Control Measures
						read in advance of the hearing. They will be asked to confirm they have read and understood this prior to attending the meeting. Visitors and visiting staff must follow the instructions provided by the meeting organiser/host at all times who will have undergone a building induction.
2.	Managing Visitors and/or Visiting Staff (staff attending a different workplace or attending their normal workplace but are currently working from home)	Spread of infection		• Staff • Visitors	• Visitors and visiting staff can only attend buildings by prior arrangement. • Controlled entry points. • Signs erected advising visitors of control arrangements in place for their and staff safety. • Hand sanitising stations set up at entrance points. • Hand washing facilities readily available https://www.nhs.uk/live-well/healthy-body/best-way-to-wash-your-hands/ • Social distancing to be applied in all work areas. • Drying of hands with hand driers and/or disposable paper towels. • Gel sanitisers in any area where washing facilities not readily available.	Visitors and visiting staff must be told that visits are by appointment/ invitation only. This is to protect them and staff. If a visitor arrives early they are to be told leave the building and come back as close as possible to the time of their scheduled meeting. A risk assessment to allow the visit to take place safely must be implemented for every meeting. The risk assessment should consider: • The health of the person • The demeanour of the person • Any adjustments required • The nature of visit/appointment • The location where visit can take place safely • Social distancing requirements

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						• PPE requirements Visitors and visiting staff will be given building protocols in advance of coming to the meeting which they must confirm they have read and understood to the meeting organiser.
3.	Susceptibility in catching COVID-19	Serious illness / illness or death		Vulnerable Groups: • Elderly • Expectant mothers • Staff with existing underlying medical conditions • BAME	Line Managers must take account of NHS Inform Guidance relating to higher and moderate risk categories. **Hand Washing** • Hand washing facilities with soap and hot water in place. • Stringent hand washing taking place. • Disposable paper towels/hand driers for drying of hands • See hand washing guidance. https://www.nhs.uk/live- well/healthy-body/best-way- to-wash-your-hands/ • When dealing with the elderly or highly vulnerable people, suitable and sufficient PPE/RPE must be used, taking the NHS guidance on COVID19: Infection Prevention and Control into account. • Gel sanitisers in any area where washing facilities not readily available. Where a staff member is invited to attend but has said they have existing	Employees and visitors to be reminded on a regular basis to wash their hands for 20 seconds with water and soap and the importance of proper drying hands with disposable paper towels/hand driers. Also reminded to catch coughs and sneezes in tissues. Follow Catch it, Bin it, Kill it and to avoid touching face, eyes, nose or mouth with unclean hands. Tissues to made available where the risk warrants an additional control (e.g. care homes, waiting rooms etc). Where staff have intimated they have an underlying medical condition and there is any uncertainty or doubt regarding the medical condition or exposure routes, managers should consider seeking advice from the Council's Occupational Health Provider through the normal referral process. Where visitors have intimated they

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					underlying medical conditions which makes them more at risk to catching the COVID-19, managers must ensure an individual risk assessment is carried out to determine how the risk can be managed Expectant mothers should already have an individual risk assessment however this needs to be continually reviewed in line with emerging guidance from NHS. Coronavirus (COVID-19): Pregnancy and newborn babies New and Expectant Mothers at Work Guidance is available on the Council's Health, Safety & Welfare, which also includes the relevant risk assessments.	are in high risk group, they should be advised of the risks in attendance and asked to attend by video/telephone conferencing instead. Emerging evidence suggests that COVID-19 is having a disproportionate effect on people from BAME backgrounds. Some BAME groups are at higher risk of certain diseases and conditions and this may suggest an increased likelihood of developing COVID-19. This needs to be considered in any individual risk assessment. Expectant mothers can obtain further guidance from Royal College of Obstetricians & Gynaecologists
4.	Displaying symptoms of COVID 19	Illness / Spread of infection		• Staff • Visitors	If anyone becomes unwell with a new continuous cough, a high temperature or reports suffering from a loss or change in sense of smell or taste (anosmia) whilst attending the meeting, they will be sent home immediately and advised to follow NHS Inform guidance. The individual's households should also self-isolate for 14 days as per the current guidelines and the individual should stay at home for 7 days, or longer if they still	All staff and invited visitors to confirm to the meeting organiser in advance of attending they are symptom free before they can enter the premises. Staff who develop symptoms will be asked to take a test using any portal and confirm a negative test result or are symptom free before able to attend any face to face meetings. Visitors who become unwell with

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					have symptoms other than cough or loss of sense of smell. Line Managers will maintain regular contact with staff members during this time.	symptoms during the course of the meeting will be asked to leave the premises immediately and will not be able to gain entry until symptom free or negative test result.
5.	Arranging and holding meetings	Spread of Infection		• Staff • Visitors	Every effort must be taken by managers to prevent face-to-face meetings with staff, trade unions and visitors during the COVID crisis. Meetings should be conducted over the phone or by video conferencing where possible. If face-to-face meetings cannot be avoided Managers must ensure an individual risk assessment is carried prior to each meeting to determine what arrangements will need to be in place to allow the meeting to go ahead safely. For example: • Venue • Time • Persons involved • Social distancing • Supervision • Customer / client history / demeanour • Emergency arrangements The meeting location must be large enough to accommodate social distancing at all times for all participants. Consideration should be given to hybrid of	Arrange for all staff and visitors to be given building and meeting protocols in advance of meetings. They must confirm to the meeting organiser they have read and understood the contents. Only those people invited to the meeting should attend the building. If the staff member is entitled to be accompanied, they must notify the meeting organiser to advise prior to attend. No-one else will be allowed entry. Everyone attending the premises will have to confirm they are symptom free to the meeting organiser before they can enter the building. The meeting organiser should ensure a disinfecting product is used before and after the meeting, making sure hard surfaces are wiped down with disposable paper towels. i.e. Table tops, arms rests, top/back of seats and anywhere else that may have been touched. In areas that have been electrostatically cleaned

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					video/telephone conferencing and face to face participants particularly if large groups of staff need to attend	only the designated cleaning products should be used. Ensure equipment is not shared, this includes pens/pencils etc. If there is a requirement to share they must be wiped down using a bacterial killing product before passing it over and again when it's returned. Ensure staff and visitors are aware of numbered seating system in operation for room and that this must be followed to allow social distancing to be maintained as participants enter and leave rooms.
6.	Staff and visitors interacting	Spread of Infection		• Staff • Visitors	Social Distancing - reducing the number of persons in any work area to comply with the 2-metre rule. Redesigning processes/protocols to ensure social distancing in place, including one-way systems and entry or exit only doors. Manager to highlight to staff the importance of social distancing and provide examples of distancing. Regular cleaning to take place in communal areas and of high use items such as door handles, light switches, reception desk tops, stair banisters etc using bacterial killing products by FM staff.	Visitors and visiting staff to be given clear guidelines in advance of attending meetings of building protocols. Visitors and visiting staff will need to confirm to the meeting organiser they have read and understood the contents prior to attending. Staff to be reminded at every meeting of the importance of social distancing both in and out of the workplace. Equipment should not be shared, this includes pens/pencils etc. If there is a requirement to share then they must be wiped down using a

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						disinfecting product before passing it over and again when it's returned. Management to regularly monitor arrangements to check they are working.
7.	Sharing of equipment	Spread of infection		• Staff • Visitors	Every effort must be made not to share equipment, including things like pens, pencils etc. Where this cannot be prevented then a cleaning procedure must be adopted whereby the items are wiped down with antibacterial wipes or other bacterial killing products before issuing and upon return.	
8.	Accessing mail rooms / photocopying rooms	Spread of infection		• Staff	Local controls must be in place to limit the number of people who can access mail / photocopying rooms. This will largely be dependent on the size of these rooms. If social distancing cannot be achieved (e.g. two metre rule) then only one person to access the area at any given time. Hand sanitiser to be available at the doors of these rooms. Local instructions provided to staff, supported by signs on entry points. Increased cleaning regime by staff to be implemented for deliveries and hard surfaces (e.g. table tops, regularly touched areas such as door handles etc.)	Managers must emphasise to staff the importance of following the manufacturer's instructions and rubbing the hand sanitiser on their hands until it's completely evaporated. This will ensure protection and prevent lumps of sanitiser lying on the skin that could ignite if exposed to an ignition source.

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9.	Breaks in communal areas	Spread of Infection		• Staff • Visitors	Location of break times discussed and agreed with everyone at the meeting. Social Distancing - reducing the number of persons in break area at any one time, maintaining the 2-metre rule recommended by the Scottish Government https://www.gov.scot/news/social-distancing-guidance-for-business/ Rearrange seating/tables to make sure staff and visitors are spread out. In communal areas all hard surfaces to be cleaned by users after use with a disinfecting product (i.e. table top, chair handles etc). Hand contact points on equipment e.g. microwaves/hot water taps should be cleaned before use and hands washed following cleaning by users.	Management to regularly monitor arrangements to check they are working and ensure appropriate cleaning products are available.
10.	Shared toilet / kitchen facilities / showers	Spread of infections		• Staff • Visitors	Local arrangements to be put in place so only one person can use toilet / shower facilities at any time (verbal instruction and signs on doors). Antibacterial wipes, hand sanitiser made available in toilet.	If queuing to use these facilities is likely managers must ensure there are floor markings in place to maintain two metres distance between people.

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						Increased cleaning regime by FM staff in place to ensure hard surfaces are regularly wiped down with bacterial killing products.
11.	Fire Safety Emergency Procedures	Staff congregating at Fire Assembly Points.		• Staff • Visitors	Responsible Persons for the building will review and where necessary increase the location of Fire Assembly Points to maintain social distancing requirements.	Responsible Persons will need to keep this measure under review, depending on the size of premises and volume of pedestrians/members of the public visiting premises.
12..	Virus remaining on hard surfaces	Spread of infection		• Staff • Visitors	Risk of contamination reduces after 72 hours (in most cases). Routine cleaning and disinfection of frequently touched objects and surfaces such as telephones, keyboards, door handles desks, tables, lift buttons etc Electrostatic cleaning of higher risk areas by FM staff.	Following advice from the NHS Inform Guidance. Where Electrostatic cleaning has been implemented staff must be made aware that they cannot bring their own cleaning products into the building for use.

Risk Rating

The Severity, Likelihood and resultant Risk Rating are arrived at after taking the existing controls into account. The rating may change when additional controls/ recommendations are implemented.

Health and Safety 5x5 Risk Matrix

			CONSEQUENCE				
			1	2	3	4	5
			Insignificant	Minor	Moderate	Major	Catastrophic
LIKELIHOOD	1	Very Unlikely	1. Acceptable	2. Acceptable	3. Acceptable	4. Acceptable	5. Acceptable
	2	Unlikely	2. Acceptable	4. Acceptable	6. Adequate	8. Adequate	10. Tolerable
	3	Fairly Likely	3. Acceptable	6. Adequate	9. Adequate	12. Tolerable	15. Tolerable
	4	Likely	4. Acceptable	8. Adequate	12. Tolerable	16. Tolerable	20. Unacceptable
	5	Very Likely	5. Acceptable	10. Tolerable	15. Tolerable	20. Unacceptable	25.Unacceptable

Risk Rating is defined by the **likelihood** of the event occurring **multiplied** by the **consequence** if it happens. (e.g. likelihood is 4 and consequence is a 3 – 4 x 3 = **12 Risk Rating)**

1 - 5 **Acceptable**	Risk is being managed appropriately. Continue to **monitor** controls to ensure safe working methods are being maintained.
6 – 9 **Adequate**	Controls are adequate but the appropriate level of **supervision** must be in place to ensure safe working methods are being maintained.
10 - 16 **Tolerable**	Risks remain and consideration should be given to lowering the risk level further. This may involve an element of **dynamic risk assessment** prior to and whilst the activity is being carried out. **Increased level of supervision** may be required to ensure the safe working methods are being adhered to at all times.
17 - 25 **Unacceptable**	**STOP** the activity **cannot** take place; the risk of injury is too high! Further actions are required and stronger controls introduced to reduce the level of risk involved. Once new controls have been identified the activity / task should be re-assessed.