

HUMAN RESOURCES COMMITTEE

15 MARCH 2013

ELECTED MEMBER APPEALS PANEL

Report of the Director of Human Resources & Organisational Development

1.0 Purpose of the Report

- 1.1 The purpose of this report is to propose the terms of reference for the hearing of appeals against dismissal or demotion, and formal stage 2 grievance appeals (attached as Appendix 1).

2.0 Description of Decision (Recommendations)

- 2.1 It is recommended that the attached terms of reference for the hearing of appeals against dismissal or demotion and formal stage 2 grievance appeals, proposed by the Director of Human Resources and Organisational Development (HR&OD), be approved.
- 2.2 To approve the procedures for Attendance Management (Appendix 2), Capability (Appendix 3) and Disciplinary (Appendix 4) originally submitted to HR Committee in February 2013.

3.0 Introduction/Background

- 3.1 The Council has proposed revised procedures for Attendance Management, Capability and Disciplinary Procedures. The procedures have been simplified and have been revised based on the ACAS Code of Practice and guidance. It is noted that the documents were previously submitted to the February 2013 HR Committee, along with an accompanying report (See Appendix 5) however these were deferred to the March 2013 meeting, to amend the proposed appeal arrangements. These procedures are pending approval, and are attached.
- 3.2 At a previous meeting in April 2012, Personnel Committee approved a two stage Grievance Procedure, which has also been designed based on the ACAS Code of Practice and guidance document.
- 3.3 The Council will retain the Elected Member Appeals Panel to hear appeals against dismissal or demotion, and final stage grievances advised by the Director of HR&OD (or their authorised officer). Appeals against other formal action will be heard by the Chief Officer (or their authorised officer), advised by the Director of HR&OD (or their authorised officer).
- 3.4 In line with the development of the proposed procedures and to support appeal arrangements, consideration has been given to developing Terms of Reference for appeal meetings, to reflect the recommendations set out in the ACAS Code of Practice and guidance. Employers are required to comply with the principles set out in the ACAS Code of Practice on disciplinary and grievance procedures when handling disciplinary matters. An employment tribunal is required to take the code into account when considering relevant cases. Where there has been an unreasonable failure by either party to comply with the code the tribunal may

increase or decrease compensation by up to 25%, depending on which party is at fault.

- 3.5 If agreed by HR Committee, the Terms of Reference will be used to structure appeals held for written warnings and final written warnings.

4.0 The ACAS Code of Practice and Guidance

- 4.1 The Code does not include detailed information on how to handle disciplinary or grievance appeals.

- 4.2 The guidance document sets out that the opportunity to appeal against a disciplinary decision is essential to natural justice and appeals may be raised by employees on any number of grounds such as undue severity or inconsistency of penalty.

- 4.3 The appeal will be a review of the decision made at the disciplinary hearing.

- 4.4 The guidance document sets out further information in relation to holding a disciplinary appeal meeting:

- Introduce those present to each other, explaining their presence if necessary.
- Explain the purpose of the meeting how it will be conducted and the powers the person/people hearing the appeal have.
- Ask the employee to explain the grounds of their appeal against the decision.
- Pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it.
- Once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision.
- Change a previous decision if it becomes apparent that it was not soundly based.
- Inform the employee of the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear, if this is the case that the decision is final.

- 4.5 All of these points have been included when drafting the proposed terms of reference for appeal hearings.

5.0 Reason for Change

- 5.1 The Council's procedures have been updated to be simplified and reflect the ACAS Code and guidance. The Council will retain an Elected Member Appeals Panel, and this is an opportunity to ensure that the Terms of Reference for appeals are also consistent with the ACAS documents.

6.0 Impact Analysis Equalities

- 6.1 Equality analysis assessments were undertaken on the procedures, not specifically on the Appeal arrangements. The analysis did not identify any adverse issues that may arise as part of introducing these changes.

7.0 Financial Implications/Sunderland Way of Working

- 7.1 There are no financial implications associated with this proposal.