

## Human Resources Committee

February 2013

### Disciplinary, Capability Procedures and Attendance Management Policy

#### 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 new disciplinary and capability procedures and an attendance management policy (attached as Appendix 1, 2 and 3).

#### **2.0 Description of Decision (Recommendations)**

- 2.1 It is recommended that the new disciplinary and capability procedures and the attendance management policy, proposed by the Director of Human Resources and Organisational Development, be approved.

#### **3.0 Introduction/Background**

- 3.1 Following the Dispute Resolution Review (DRR), the Government changed the way that problems at work are dealt with. ACAS revised its Code of Practice on disciplinary and grievance procedures and produced a revised Code.
- 3.2 Employers are expected 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.
- 3.3 As the Council continues to develop the Sunderland Way of Working, it is important that our policies and procedures support and enable change. Therefore, the Council's current procedures have been streamlined and the documentation simplified to meet the requirements of the Council, its values, and its employees, whilst retaining compliance with the ACAS Code of Practice.

#### **4.0 The ACAS Code of Practice**

- 4.1 In summary, the Code identifies a number of elements to enable a disciplinary process to be followed fairly. Employers should:

- Raise issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Act consistently.
- Carry out necessary investigations, to establish the facts of the case.
- Inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Allow employees to be accompanied at any formal disciplinary meetings.
- Allow an employee to appeal against any formal decision made.

## **5.0 The Current Position**

### **Disciplinary Procedure**

- 5.1 The Council's disciplinary procedure has been reviewed and updated to reflect the ACAS code of practice, and proposed changes include using the language of the new code. The current procedure has very short timescales detailed for managers to investigate issues. Whilst it is essential that matters are dealt with promptly these timescales are difficult to adhere to, which can lead to further problems resulting from unrealistic expectations. Instead the proposed disciplinary procedure uses the language of the code which states that matters should be dealt with promptly without unreasonable delay.
- 5.2 In relation to disciplinary action that employers may consider taking, the ACAS code no longer refers to formal oral warnings so it also proposed that the stages of disciplinary action are also simplified in the Council's procedure. Further in order to provide for other options for managers who may be considering taking action short of dismissal, it is proposed that a further alternative of compulsory transfer is introduced, either to an alternative post or location. In addition the presentation of the procedure has been simplified to make it easier to follow and understand.
- 5.3 In relation to appeals against formal decisions, it is proposed that for appeals against disciplinary warnings or transfer, the Appeal will be heard and determined by a Chief Officer (or their authorised officer), advised by the Director of HR&OD (or their authorised officer). In cases of dismissal or demotion, the Appeal be heard and determined by a Chief Officer (or their authorised officer), after consultation with a Cabinet Member, and advised by the Director of HR&OD (or their authorised officer). These proposals are in line with the proposals which are described in a separate report which proposes revised appeal arrangements following the decision to discontinue the current appeals committee arrangements.

### **Capability Procedure**

- 5.4 The Council's capability procedure is used where there are concerns about an employee's performance that day to day management support and the performance management framework have been unable to address. The same principles from the ACAS Code of Practice apply to how such matters should be dealt with. The Council's capability procedure has also been updated to reflect the code and has been simplified to make it easier to follow and understand.
- 5.5 The proposed procedure includes the same appeal arrangements as those proposed for the disciplinary procedure.

### **Attendance Management Policy**

- 5.6 This policy sets out the Council's approach to managing attendance in relation to health related matters.
- 5.7 Many of the same principles described above also apply to how such matters should be dealt with under this Policy. Therefore, this Policy has also been updated to ensure it is consistent and has been simplified to make it easier to follow and understand.
- 5.8 The proposed procedure includes the same appeal arrangements as those proposed for the disciplinary procedure.

## **6.0 Alternative Options**

- 6.1 Alternatively the current procedures could be retained, however, this is not recommended because whilst they are compliant with the ACAS code of practice they no longer reflect the current code. In addition they no longer suit the needs of the Council and need to be updated to reflect revised appeal arrangements following the disestablishment of Appeals committee arrangements.

## **7.0 Impact Analysis Equalities**

- 7.1 Equality analysis assessments were undertaken as part of changing the procedures. The analysis did not identify any adverse issues that may arise as part of introducing these changes.

## **8.0 Financial Implications/Sunderland Way of Working**

- 8.1 There are no financial implications associated with this proposal. The new procedure works in accordance with the Sunderland Way of Working by making the process more efficient whilst retaining the appropriate level of decision making.

## **9.0 Consultation**

- 9.1 The Trade Unions have been consulted about the proposed policy and procedures. A meeting was held with GMB, UNISON and UNITE to discuss improvements that could be made to the procedures. These comments were incorporated into the development of the procedures. Consultation, which also included other Trade Unions, then took place to invite comments on the proposed documents. GMB, UNISON and UNITE did not submit any comments as part of this formal consultation. One Trade Union Representative, representing NAYCEO/ASPECT, requested a meeting to understand the changes. His comments were positive and have mostly been incorporated into the documents. AEP submitted a small number of comments in relation to the Disciplinary Procedure only. The suggestions have been considered and some have been incorporated.

