

**HR POLICY DEVELOPMENT AND REVIEW**

**6 March 2024**

**Report of the HR Policy and Strategy Lead**

**PURPOSE OF REPORT**

To enable the Committee to consider and approve the introduction of revised Flexible Working Request, Disciplinary and Sickness Absence Management policies.

This report is public.

**RECOMMENDATIONS**

**That the draft revised Flexible Working Request, Disciplinary and Sickness Absence Management policies appended to this report are considered by the committee and approved.**

**1.0 Introduction**

- 1.1 The council has undertaken a phase three review of HR Policies which fall into the category of flexible working requests, disciplinary and sickness absence management.
- 1.2 The policy review continues to concentrate on standardising format and branding of all the HR policies; bringing them in line with the branding selected to produce the employee handbook.
- 1.3 The policy review also concentrates on simplifying and shortening policies where possible, so that they are easier to follow and digest for employees, trade unions and managers.
- 1.4 It is considered that a lot of information currently in these policies would be better served in guidance documents to ensure that the policy is focused on the fundamentals of principles and process. It is the intention that each of these policies will be introduced alongside a suite of supporting documents provided to both managers and employees to ensure they each feel equipped and prepared to engage with these meetings.
- 1.5 The policies are appended to this report, as well as a policy review tracker which focuses specifically on amendments to the policy.

**2.0 Disciplinary Policy**

- 2.1 The existing LCC Disciplinary Policy was last reviewed in 2019 and comprises an 18-page master policy and four appendices.
- 2.2 The main focus of the policy is on roles, responsibilities, and the procedure to be followed. Some FAQs have been introduced to address nuanced situations that the policy previously covered, but they are now much more accessible. If an employee is reading the policy for one of those specific purposes, their questions will be found very

easily. The FAQ section is something we can add to should any anomalous situations arise outside of a formal policy review.

- 2.3 The much-consolidated policy has an increased focus on informal resolution of minor conduct issues. Line managers are currently undergoing mandatory training on the disciplinary process to identify and differentiate between minor matters of misconduct which should be resolved informally and swiftly, and more serious incidents of misconduct which require investigation.
- 2.4 Whilst consolidated, there are no substantive changes suggested to the disciplinary process (or associated sanctions). The informal and formal stages of the process will remain the same, and the Chief Executive and Chief Officers remain only those with authority to approve suspension.
- 2.5 Throughout the policy there is a greater focus on alternatives i.e., alternatives to suspension and alternatives to dismissal. There is less emphasis on the specific examples of misconduct and gross misconduct and more emphasis on the difference between the two.
- 2.6 Employees (and the Disciplinary Hearing Manager) have historically had an unfettered ability to request witnesses *attend* hearings to be “cross-examined” by the employee and Disciplinary Hearing Manager. In a bid to de-formalise the process as much as possible, and to move away from a case versus case mentality, there is a new obligation on employees to identify potential witnesses at investigation stage, so the Commissioning Officer has all of the facts when deciding whether the formal disciplinary process should be initiated. Written witness evidence supporting mitigation should be shared by employees in advance of a hearing, and only in exceptional cases i.e. where there is new evidence, or it could not have reasonably been foreseen that the relevant witness could add value, should they be invited to attend a hearing. We consider this will lead to less rescheduling based on witness availability and is consistent with a move away from an overly legalistic approach to formal processes.
- 2.7 At the last People and OD Committee meeting, the new LCC Appeal Policy was approved which introduced consistency of the appeals process for each decision which carries the right of appeal. The disciplinary policy now links to the Appeal Policy.
- 2.8 If approved, the policy will be launched alongside a suite of supporting documents including guidance for Investigating Officers and Disciplinary Hearing Managers.

### **3.0 Sickness Absence Management**

- 3.1 The LCC Sickness Absence Management Policy and Procedure had not been reviewed since 2016 and comprised a 40-page document including 4 appendices.
- 3.2 It is one of the most frequently used policies for line managers and employees, so we considered it important that it was as concise and easy to follow as possible. The focus of this review has therefore been on consolidation. The use of FAQs (which will be highlighted to employees viewing the policy on the intranet) should hopefully answer some of the specific questions an employee might look at the sickness absence policy for.
- 3.3 The current policy starts off with the nuanced circumstances around sickness absence such as withdrawal of sick pay, attendance at appointments, employee third party compensation claims and work-related ill-health or injury. It is a vast amount of information to get through prior to sickness absence reporting and the actual process to follow should an employee be absent from work due to sickness absence. The nuanced

situations have been addressed as FAQs at the end and the policy now concentrates on entitlement, reporting and stages of the process.

- 3.4 There is no proposal to change any of the stages of the informal or formal absence management process for either short or long-term absences. The only substantive change is in respect of repeated long-term absences. Previously, the policy required that managers look back at the previous 36 months when a third period of long-term sickness absence had started and automatically refer to a stage 3 Review Meeting. This has been reduced to 24 months, so that managers are not looking back as far. We consider that this will mean fewer automatic referrals to a Stage 3 in these circumstances. The policy still provides that disability related absences will not be counted in these circumstances (and they will likely make up a significant proportion of LTS absences in any event).
- 3.5 The previous policy made it clear that telephone was the preferred method of communication unless the employee is severely inhibited. This is underlined in the consolidated new policy. LCC understands that there will be times that employees cannot communicate their absences directly by telephone, but it remains the preferred method of communication. Further, the existing policy is very prescriptive around the days that contact must be made during sickness absence. This will very much be dictated by the reason for the sickness absence and contact on the second fourth and eight day may not be conducive to recovery or appropriate in the circumstances. LCC wants to empower managers to decide how much contact is necessary and to agree this with the employee when the absence is first communicated.
- 3.6 The policy previously required fit notes to be provided if an employee fell sick during a holiday. This is inconsistent with self-certification and in all cases, self-certification will be applicable for the first 7 calendar days of sickness absence (pro-rated for part-time employees).
- 3.7 The policy previously made it a Chief Officer's responsibility to *confirm* a work-related injury. We do not consider that it should be a Chief Officer's responsibility to decide whether something is a work-related injury or not, particular as it relates to liability, but only to decide whether their discretion should be exercised to increase sick pay for those who have not yet reached the maximum. The updated policy makes it clear that exercising such discretion is not an admission of liability.
- 3.8 At the last People and OD Committee meeting, it was considered whether there is a place for previous decision makers in a final hearing. The wording of the policy has been adapted so that it is no longer a *requirement* that a previous decision maker be in a case review hearing, but that a Chief Officer can choose to invite a previous decision maker if they wish. If *either* the Chief Officer *or* the employee decides that they wish for the previous decision maker to be present, they are *required* to attend the case review hearing.
- 3.9 At the last People and OD Committee meeting, the new LCC Appeal Policy was approved which introduced consistency of the appeals process for each decision which carries the right of appeal. The Sickness Absence Policy now links to the Appeal Policy.
- 3.10 If approved, the policy will be launched alongside a suite of supporting documents which will include manager guidance on how to conduct informal and formal review meetings.

#### **4.0 Flexible Working Request Policy and Procedure**

- 4.1 The Flexible Working Request Policy and Procedure had already been updated in July 2023 in anticipation of the April 2024 changes in legislation. A review has been undertaken to ensure that the policy remains compliant with legislation.

- 4.2 The April 2024 changes remove the requirement that an employee needs to explain the impact they consider the requested changes may have on the business and the workforce. The Policy did not include this requirement, however the Application Form did, and this has now been removed.
- 4.3 At the last People and OD Committee meeting, the new LCC Appeal Policy was approved which introduced consistency of the appeals process for each decision which carries the right of appeal. The Flexible Working Request Policy now refers to the new Appeal Policy, and as such employees will have a further five working days to submit an appeal, in line with appeals of other formal decisions.

## **5.0 Comments and Amendments following the meeting of JCC on 21 February 2024**

### **Flexible Working Requests**

- 5.1 The first policy discussed at the meeting of the JCC was the Flexible Working Request policy. Following an observation at the meeting, provision 6.1 has been revised to ensure that employees are kept up to date if an initial review of a formal request is taking longer than 7 days. This would routinely happen in any event, however the policy is now explicit.
- 5.2 It was also observed that there is an increased emphasis on de-escalation, and a greater emphasis on informally resolving issues more widely, and it was therefore suggested that an informal process could be introduced as regards flexible working requests. This will require a process to be mapped out to ensure that any permanent changes are adequately reflected from a HR perspective, but this will necessitate changes to provision 1.2 to include the option to agree flexible working requests informally, and a new provision to encourage informal resolution where possible prior to requesting an application form be submitted. It requires further deliberation on when it may be necessary to rely on the application form and to ensure all parties are comfortable with how specifically the policy will be adapted going forward to provide for this.

### **Disciplinary**

- 5.3 A couple of straightforward amendments have been made to the Disciplinary policy following observations made at the JCC meeting:
- 5.3.1 Provision 6.2 has been amended to confirm that suspension is a neutral act designed to protect the Council and the employee; and
- 5.3.2 Provision 7.5 has been amended to remove the first bullet point confirming that the investigating officer will write to the employee confirming the name of the investigating officer (rather the letter will be signed off by the investigating officer).

### **Sickness Absence Management**

- 5.4 Two amendments have been made to the Sickness Absence Management policy following observations made at the JCC meeting:
- 5.4.1 Provision 10.1 has been revised to include an *essential* referral to Occupational Health where an employee is suffering from work related stress; and
- 5.4.2 Provisions 13.1 and 13.2 have been amended to remove references to “automatic” referral to a stage 3 case review hearing, and instead the emphasis is on

*may* to ensure that managers are conscious of whether this is an appropriate step in the circumstances.

- 5.5 There was some reflection on the usefulness of the Bradford Factor and the use of triggers in sickness absence management. It was acknowledged that there was not the time to consider this in greater detail prior to the next People and Organisational Development Committee meeting, however, there have been internal comments to the same effect, and will be something which is explored further in future.

## **6.0 Options**

- 6.1 The options available to the Committee are to approve the revised policies as drafted, to approve the policies with amendments, or not to approve the policies.
- 6.2 However, if substantial changes in respect of any Policy are proposed at the People and Organisational Development Committee meeting, it may be appropriate for consideration of that Policy to be deferred to a future meeting to enable Officers to consider the proposed amendment in more detail and to consult further with the trade unions.

## **7.0 Conclusions**

- 7.1 Members are asked to consider and accept the Officer recommendations set out above in respect of the draft policies appended to this report.

### **CONCLUSION OF IMPACT ASSESSMENT (including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):**

Please see associated Equality Impact Assessment in respect of the proposed revised policies. There is no notable impact when compared with the existing policies as the revisions proposed are minor, the revised policies achieve the same aims and are necessary for legal compliance.

### **LEGAL IMPLICATIONS**

There are no further legal implications. Each of these policies are necessary to ensure legal compliance.

### **FINANCIAL IMPLICATIONS**

There are no financial implications to the implementation of the policy.

### **OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces:**

Chief Officers and their delegates, managers and HR have significant roles to play in these procedures. The revised policies will be implemented at a time where the Lancaster People Manager Essentials mandatory courses are being run to upskill line managers in these commonly used areas.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no comments to add.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments.

**BACKGROUND PAPERS**

Policies and policy amendment tracker are appended.

**Contact Officer:** Laura Collins

**E-mail:** [lcollins@lancaster.gov.uk](mailto:lcollins@lancaster.gov.uk)