

HR POLICY DEVELOPMENT AND REVIEW

21 November 2023

Report of the HR Policy and Strategy Lead

PURPOSE OF REPORT

To enable the Committee to consider and approve the introduction of revised Grievance and Performance Improvement policies and the introduction of a new Appeal Policy.

This report is public.

RECOMMENDATIONS

That the draft Grievance, Performance Improvement and Appeal policies appended to this report are considered by the Committee and approved.

1.0 Introduction

- 1.1 The council has undertaken a phase two review of HR Policies which fall into the category of performance improvement, grievance, and appeal.
- 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, and where a new policy has been introduced, summarises each of its provisions.

2.0 Appeal Policy

- 2.1 There is no pre-existing appeal policy at LCC.
- 2.2 When the phase 2 policy review commenced, it was identified that a number of formal decisions concerning performance, conduct, sickness absence, flexible working requests, redundancy and probation all included the same or a very similar appeal process within the body of the relevant policy. It was only the grievance policy that was an outlier where the appeal process was concerned in that it included a referral to People and OD Committee (formerly Personnel Committee).

- 2.2 Introducing a standalone appeal policy, which each of the applicable policies link into, allows the main policy to focus solely on the process and responsibilities relevant to the matter in hand.
- 2.3 Not all decisions are appealed, and separating the two out directs focus and allows each policy to be as concise as possible and should aid all parties to digest and follow them more easily.
- 2.4 Introducing an appeal policy which is applied to all decisions where a right of appeal exists ensures consistency and fairness.
- 2.5 If approved, the policy will be launched alongside a suite of supporting documents which will include Appeal Hearing Officer guidance on how to conduct a fair appeal hearing, updated template letters, interactive supporting information for employees on what to expect in an appeal hearing and how to draft an effective appeal.

3.0 Grievance Procedure

- 3.1 The LCC Grievance Procedure had not been reviewed since 2017 and consisted of an eight-page master policy and a seven-page appendix governing the overall process to be followed and the roles and responsibilities of each party.
- 3.2 The Grievance Procedure was a four-stage procedure, which effectively allowed an employee two rights of appeal; one of which was to the People and OD Committee. Whilst a panel decision features in other local authority policies, it is less common to see *two* rights of appeal. This goes beyond what is required by the Acas code of practice and the result has been that grievances take a considerable length of time to resolve. It is now recommended that to ensure consistency with other procedures, the *only* appeal stage be dealt with by Chief Officers, rather than the People and OD Committee.
- 3.3 The current procedure also only recommended the utilisation of mediation in exceptional circumstances.
- 3.4 The recommended changes to the policy are focused on consolidating the procedure to provide only one right of appeal, with a heightened focus on informal resolution and mediation. The process now envisaged is 1) attempt at informal resolution 2) attempt at formal resolution 3) appeal per the Appeal Policy. This is much more straightforward for employees, trade unions and managers to follow.
- 3.5 Where the circumstances of the grievance permit, an investigation officer will be appointed. Typically, the investigation officer will be at the grade above the employee raising the grievance or the subject of the grievance (whoever's grade is higher) and from a different service where possible. Over time, this will lead to the upskilling of more managers to deal with investigations into grievances with a longer-term view that more managers will be able to participate in the process. Training will be provided.
- 3.6 The appendix (which focused on the conduct of meetings) has been removed from the policy. The focus of the policy document is limited to what LCC will not consider a grievance, the roles and responsibilities of all parties, and the process to be followed. When this policy is launched, it will be accompanied by guidance on how to conduct an effective investigation, how to conduct a fair grievance hearing, and interactive supporting information for an employee on what an effective grievance looks like and what to expect in a hearing. Updated letters will also form part of the manager's self-service intranet site.

4.0 Performance Improvement Policy

- 4.1 The Capability and Performance Improvement policy was incepted in 2013 and it does not appear to have been substantively reviewed since then. It contained a number of outdated references to ongoing performance management which were no longer consistent with the new Performance Conversation Framework.
- 4.2 The Performance Improvement Policy (renamed) is consistent with the Performance Conversation Framework; the first stage of which is the Performance Improvement Conversation set out within that framework. The Performance Improvement Conversation (stage 1) carries with it a commitment to a minimum term of performance review (the Performance Review Period) of 3 months. This is consistent with the original policy.
- 4.3 The minimum Performance Review Period of the two subsequent stages of the policy (Stage 2 – Formal Review Meeting and Stage 3 – Final Review Meeting) has been reduced to a minimum of one month. The objective of reducing the review period is to increase co-operation and to keep all participants engaged in the process. The previous policy allowed for a minimum of nine months underperformance before a stage 4 case review hearing; and where no or little improvements have been made, that is an unsustainable level of underperformance for LCC. This is however a *minimum* commitment; where managers consider that the individual circumstances warrant a longer Performance Review Period, they have the authority to set this as necessary.
- 4.4 Historically, the Stage 4 – Case Review Hearing has been “presented” by the previous decision maker. Usually, but not in all cases, this would have been the employee’s line manager. It will always be for a Chief Officer to chair the Stage 4 – Case Review Hearing when considering an employee’s dismissal. The policy, as revised, introduces a new discretion for the Chief Officer to *invite* the previous decision maker if they consider this is necessary in the circumstances.
- 4.5 Where the reason for the referral is very clear on the facts, a Chief Officer will be able to hear the Stage 4 – Case Review Hearing with the employee and their companion in the absence of the previous decision maker. This to alleviate any pressure on the employee in having to challenge the case of their line manager in the line manager’s presence. It will be open for the relevant Chief Officer to meet with the previous decision maker in advance of the Hearing to ask questions and clarify matters and an accurate note of that meeting will be provided to the employee alongside all of the evidence in the case. It will still remain open for the employee to request the previous decision maker be present should they prefer.
- 4.6 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.
- 4.7 In line with simplification of the policy document itself, and focusing on the policy fundamentals, it is intended that the policy will be accompanied by manager guidance on conducting a fair performance improvement policy, and interactive supporting information for an employee on what to expect from a formal performance improvement meeting under this policy.

5.0 Comments and Amendments following the meeting of JCC on 1 November 2023

- 5.1 The first policy discussed at the meeting of the JCC was the Appeal policy. There were two central topics of conversation which applied also to the Grievance Procedure and the Performance Improvement Policy.
- 5.2 The first was the recommendation that it would no longer be mandatory for the previous decision maker (the maker of the formal decision) to be present at the appeal hearing. Of the four policies available to benchmark, two policies provide for the case to be presented by the previous decision maker and two do not. This is reflective of the feedback received internally and at the JCC meeting.
- 5.3 Some delegates consider that not having the previous decision maker present prevents access to justice. Some have observed the usefulness of having the previous decision maker present. Whilst others have commented that it can be uncomfortable for both the employee and the previous decision maker and that the case against the employee should be clear on the facts.
- 5.4 The above were all considerations in formulating the compromise position recommended in the policy. Rather than (at this time) removing the participation of the previous decision maker, it is recommended that the Chief Officer have the *option* to invite them if they feel it is necessary. The Chief Officer will be able to meet with the previous decision maker and provide a note of that conversation as part of the evidence bundle provided to the employee. The employee will also always have the right to request that the previous decision maker be present.
- 5.5 This compromise position reflects the differences in opinion on this topic and will hopefully allow Chief Officers to test how they feel hearings work without the previous decision maker present. Long-term, this may lead to the complete removal of the role of the previous decision maker, as it is not a practice recommended by Acas.
- 5.6 The second topic of conversation which was related to both the Appeal Policy and the Grievance Procedure, was whether these decisions should be taken by the People and Organisational Development Committee.
- 5.7 The Grievance Procedure, is the only policy outstanding where the appeal is heard by the People and Organisational Development Committee. All other formal decisions are now taken by Chief Officers, and it is the strong recommendation that this apply consistently across the board.
- 5.8 It is important to have confidence in the Council's senior personnel to make decisions. It is also important that the processes we use to make formal decisions are consistently applied.
- 5.9 Whilst the benchmarking exercise revealed that panel decisions are still used in other Local Authority bodies, there has been movement away from this and there have been a number of posts in the NW Employer policy group which have questioned whether the panel decision should remain. In one of the four available policies, panel decisions were no longer a feature. In two of the available policies, a panel decision was *only* available for dismissal decisions and in the fourth a panel decision was available for grievances as well as dismissal decisions.
- 5.10 A unique feature of the current Grievance Procedure was that it provided an employee with two rights of appeal; the second of which was the panel decision. It is the strong recommendation of this author that a Chief Officer's decision does not need a review, and that confidence in their decision making is paramount (particularly where they are the final decision makers for *all* other formal decisions).

- 5.11 Another topic of discussion at the JCC meeting was the ability to increase a sanction on appeal. The current wording of the disciplinary policy is vague, as it refers to substituting a different sanction. It does not appear that this has happened frequently, if at all.
- 5.12 Trade Union delegates strongly resisted the inclusion of this right, which **must** be made explicit if an employer is to rely on it (according to established case law from 2014). The author considers that it would be prudent to include the provision, even if its use is limited, to have a means to increase the sanction where a decision maker's decision is manifestly unfounded and would cause a risk to the Council if not rectified.
- 5.13 That being said, the benchmarking exercise revealed that three of the four available policies were silent on whether a sanction could be increased and one of them was explicit that they could not. According to the 2014 case *McMillan v Airedale NHS Trust*, it will be necessary for an employer to be explicit on this for it to be acceptable practice, and it is also provided that there should be another right of appeal where the uplifted sanction would result in dismissal.
- 5.14 It will be for the People and Organisation Development Committee to decide between striking the provision in its entirety, to provide that a sanction can never be increased, or to consider whether the provision is amended to include for a further right of appeal where the uplifted sanction results in dismissal. Any amendments will be made following this decision.
- 5.15 With regard to the Performance Improvement Policy, an observation was made, in relation to the reduction of the recommended minimum Performance Review Period that managers may view this as a target, rather than as a minimum. There will be a number of situations where a one-month Performance Review Period will not be appropriate, and this Policy will be accompanied by manager guidance to be placed on a manager's intranet site to coach them on how to set Performance Review Periods and Performance Review Objectives.
- 5.16 With regard to the Grievance Procedure, Councillor Wood observed that the level of the investigating officer should be higher than the *subject* of the grievance, rather than the employee raising the grievance. An amendment has been made to reflect this, and to suggest that the Investigation Officer should be a level higher than the employee or the subject of the grievance (whosoever's grade is the highest).

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 OD 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 policy. There

is no notable impact however I would always encourage the use of reasonable adjustments where any formal process is followed due to a disabled employees' ability to purposefully interact with a meeting.

LEGAL IMPLICATIONS

Proposed policies comply with legal obligations.

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. It would be recommended that as many managers as possible are upskilled in mediation and investigation so that more lower-level managers are able to be utilised.

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 comments to add.

BACKGROUND PAPERS

Policies and policy amendment tracker are appended.

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