

East Herts Council Report

Human Resources Committee

Date of Meeting: 16 February 2021

Report by: Head of Human Resources and Organisational Development

Report title: Employment Policies Developed Report x 7 (Discipline, Grievance, Code of Conduct for Employees, Probation, Bullying and Harassment, Absence Management and Appeals Policy)

Ward(s) affected: None

Summary

RECOMMENDATIONS FOR HUMAN RESOURCES COMMITTEE MEMBERS:

- (a) To approve the revised Disciplinary Policy**
- (b) To approve the revised Grievance Policy**
- (c) To approve the revised Code of Conduct for Employees**
- (d) To approve the revised Probation Policy**
- (e) To approve the revised Bullying and Harassment Policy**
- (f) To approve the revised Absence Management Policy**
- (g) To approve the revised and reduced Appeals Policy in line with the changes made to the policies (a), (b), (d), (e) and (f) above**

1.0 Proposal(s)

- 1.1 The proposals are set out in the recommendations above. 6 key HR policies have been updated in line with legislation and best practice. Appeals processes have been incorporated back

into these policies as the 'one size fits all' approach we currently have with a generic Appeals Policy does not work well so the appeals processes have been tailored to each individual policy. As such, the Appeals Policy has been updated to remove reference to these policies. Once the remaining policies still covered in the Appeals Policy have been updated, the Appeals Policy will then be deleted.

2.0 Background

- 2.1 Upon starting at East Herts Council the new Head of HR and OD identified the need to update the full suite of HR policies and in particular, the key formal policies to incorporate further best practice. This work was then delayed in order to establish the East Herts Together (E.H.T) Group who have worked with HR, LT and Unison to develop the policies and serve as a further cross service group to engage with and consult with to ensure the policies are fit for purpose and user friendly.
- 2.2 The East Herts Together also agreed some terms of reference to be used when developing policies which has been followed:
 - To take the employee through their career journey
 - Should be joined up, not in isolation to each other
 - Include good examples and flow charts
 - Legally compliant
 - Include who to contact for more information
- 2.3 These policies are the first tranche of HR policies to be reviewed by the team, with the remaining policies to be updated throughout 2021.
- 2.4 The policies have been updated in line with best practice and legislation.

2.5 The policies were approved at the Local Joint Panel meeting on 21 January 2021 with the following changes to be made:

- The removal of the reference to MEPs in the Code of Conduct.
- The addition of the word 'reasonable' to paragraph 6.2.1 in the Disciplinary Policy so that it reads "Where a matter arises which is suspected or believed to be a disciplinary matter, an investigating manager will be designated to investigate the matter promptly, reasonably and adequately"

3.0 Summary of changes to policies

Disciplinary

3.1 General

- More concise wording, making the policy shorter.
- The procedure is less prescriptive to ensure more ability to adapt to circumstances.

3.2 Examples of the types of misconduct

- Examples of the types of misconduct are now in the main body of the policy and not in an Appendix.
- Misconduct is now categorised into two areas general and gross rather than three (serious has been taken out).

3.3 Informal stage

- Informal stage is simpler and less prescriptive.
- Removes reference to keeping a written record of informal meetings on the employee's file for a defined period of time (i.e. 6 months).
- Removes reference to an improvement note and giving a verbal warning at the informal stage as it better for an

informal warning to be issued.

3.4 Investigation

- Removes the wording that states the investigating manager is normally the employee's manager to ensure it is less prescriptive and another appropriate manager could be used depending on the circumstances.
- Remove the requirement to complete investigations within 10 working days and change it to say the matter will be investigated promptly and adequately in line with ACAS guidance.
- Removes the requirement that the investigating manager must meet with the employee at the end of the investigation to explain the findings and the option to give them a verbal warning which was inappropriate and not in line with ACAS guidance.

3.5 Disciplinary Hearing

- Removed the requirement to hold the hearing within 10 working days and changed it to say it will be arranged promptly in line with ACAS guidance.

3.6 Disciplinary Outcomes (sanctions)

- Removed the verbal warning as an outcome under the formal procedure in line with ACAS practice instead the informal stage should be used fully.
- Final warning is now live for 18 rather than 12 months as it is usual for this to be higher than written warning which was and remains 12 months.

3.7 Appeal

- The appeals procedure is now included within the policy rather than there being a separate Appeals Policy.

3.8 **Review**

- As with all we are removing the 3 year review and instead stating will be reviewed in line with best practice and legislation, this allows policies to be focused on when appropriate rather than just because time has passed.

3.9 **Unison Comments**

- Unison had no comments except to say that the policy had been improved on a number of grounds.

Code of Conduct

3.10 **General**

- It should be noted that this is part of constitution and will therefore require further approval by the Monitoring Officer to incorporate back into the constitution. The Monitoring Officer has confirmed it appropriate for HR, LT, LJP and HRC to develop and update.
- The title has changed from 'Officer's Code of Conduct' to 'Code of Conduct for Employees'
- The Declaration of Secondary Employment form has been added as an appendix to support timely access and action.
- Inclusion of a statement to make it clear that any breach of the Code of Conduct will be investigated and may lead to disciplinary action.
- Includes a separate sign off for new starters to confirm they understand and agree to abide by the Code of Conduct.

3.11 **There is a new introduction which:**

- Highlights that all groups engaged by the council (e.g. agency workers, contractors, volunteers) must abide by the

Code of Conduct, not just employees.

- Makes reference to the council's values and behaviours.

3.12 A new section has been added called 'Work Performance and following East Herts Council's procedures'

- This section highlights the expectations that employees should perform to a high standard, carry out reasonable management instructions and follow council procedures. There was previously no reference to this in the Code of Conduct.

3.13 A new section has been added called 'Attendance and Timekeeping'

- This section covers the expectations regarding absence notification and authorisation, and punctuality in attending work and meetings.

3.14 A paragraph has been added to the 'Violence, Bullying and Harassment' section

- This makes it clear that a manager discussing with an employee concerns regarding their performance or behaviour where legitimate and constructive criticism is made (or a reasonable request/instruction given) does not constitute bullying behaviour.

3.15 Additional wording has been added that makes the writing of a reference process clearer for managers

- In particular, the revision makes it clearer that managers must seek guidance from HR before sending a reference to ensure data is in line with employee records and for a copy to be placed on the employee's file for reference.

3.16 Clearer process on declaring personal relationships has been added

- The revised Code outlines in more detail the process for declaring and managing personal relationships within the workplace, highlighting the requirement to act professionally at work.

3.17 Clarification has been given on accepting gifts and hospitality

- Makes the process of accepting gifts and hospitality clearer and a declaration form is now included as an Appendix.

3.18 Changes regarding Alcohol and Smoking

- The wording on drinking alcohol in the workplace has changed to say that alcohol should not be consumed in the workplace (please note this is an employee/officer code so this does not prevent members from consuming in the workplace).
- The wording on smoking now includes reference to vaping and e-cigarettes.

3.19 Safeguarding

- A new paragraph has been added on safeguarding to say that 'Employees should take steps to protect children, young people and adults at risk so that they are safe when using our services'. A link to the safeguarding policy will be included.

3.20 A new section has been added entitled 'Use and Monitoring of East Herts Council Property, Equipment and Time'

- This section has brought together several sections from the

current policy. It provides clarification regarding how council property and equipment should be used and what monitoring the council may legitimately use. It is aligned to the Acceptable Network Use Policy.

3.21 A new section has been added on mobile phones while driving

- There was previously no reference to this in the current policy. It makes it clear that hand held mobile phones should not be used whilst driving, this is important if the act happens as it ensures East Herts is not liable.

3.22 A new section has been added entitled 'East Herts Council's Profile and Reputation'

- In particular, it makes it clear that employees should not give information to the media about the organisation and its work without the agreement of a member of the Leadership Team.

3.23 Unison comments

- Unison agreed with the above changes. They requested a revision to the absence notification section to add that where there are exceptional circumstances employees should contact their line manager as soon as possible.

Grievance

3.24 Main changes

- There is now a link to Bullying and Harassment policy which is important to ensure matters have one pathway overall.
- A formal bullying or harassment matter is heard through this procedure at stage 2.
- As with all we are removing the 3 year review and instead

stating will be reviewed in line with best practice and legislation, this allows policies to be focused on when appropriate rather than just because time has passed.

3.25 Unison comments

- Unison requested we made it clearer that the Hearing Manager may consider ending the grievance meeting and resume it at a later date if they need to investigate statements and facts from the meeting and/or any new evidence that arises during the meeting
- Unison requested that it was made clear that where the actions that follow an informal grievance are unsuccessful, the employee has recourse to the formal procedure. The flowchart in the appendix has been amended accordingly.

Probation

3.26 Main changes

- The most significant change is that the policy now includes absence and conduct as well as performance, this was previously removed in error, probation must cover all three. The whole process is covered within the policy, there is no separate procedure.
- The policy now covers employees new to a role where they have not previously passed probation at East Herts, not just new starters to the council.
- The formal monthly meeting form has been removed and managers can take their own notes instead which means no signing by the employee is required.
- A new probation appraisal form will be developed to assess performance at the end of the probationary period – this will be developed before implementation.
- The ability to extend probation more than once has been built in so it can be considered where appropriate by in line with Unison feedback this is limited to a further 6 months

in total.

- There is now a probation hearing rather than a termination meeting which gives the employee the opportunity to state their case before a decision is made (the previous title implied termination rather than a hearing to decide, the line manager can still recommend).
- The ability to link back to the absence management policy if attendance issues arise in probation but the employee is then confirmed in post. If their probation is confirmed but absence deteriorates within 12 months, they can be moved to Level 2 rather than starting again.
- The Recruitment, Induction and Probation Policy has been updated to signpost to the new Probation Policy rather than previous procedure (this is not included for reference as it is a simple change to signpost correctly).
- As with all we are removing the 3 year review and instead stating will be reviewed in line with best practice and legislation, this allows policies to be focused on when appropriate rather than just because time has passed.

3.27 **Unison feedback**

- Unison requested that the policy made it clear that probation (in terms of being able to use the policy as opposed to the 3 formal procedures) will only apply to existing employees where they have not undergone a probationary assessment and have not therefore been confirmed in their previous post.
- Unison requested that wording was added to say that objectives will be set during the induction stage as soon as practicable but within the first month.
- Unison requested that the total probation extension cannot exceed 6 months as they felt it was important that probation must have a maximum (maximum total is therefore 6 + up to 6 months = 12 months).
- Unison requested an addition that there could be an option to downgrade an employee rather than dismiss. This was

not considered appropriate to include because East Herts is unlikely to have position to downgrade to and if the employee cannot pass probation in the job they were recruited to they are unlikely to be suitable for redeployment.

- Wording was adjusted upon Unison's request to emphasise that extension is not taken lightly and the LT member has to authorise such an extension. Wording was also changed to make it clear that the LT member decides whether a formal probationary hearing should be held.
- Unison were concerned that the only two outcomes of a probation hearing were a warning or dismissal and requested a third option was added which is to not dismiss or provide a warning i.e to determine there is no case and the employee can continue in their current probation.

Bullying and Harassment

3.28 Main changes

- Reference to the dignity at work statement which was Appendix A and written by a former CEO has been removed as this caused issues in terms of updating and also was an unnecessary duplication in terms of commitments and principles.
- The policy now has a combined list of forms of bullying and harassment as the previous lists were quite vague and often the same.
- A section has been added which makes clear bullying does not include professional management conversations which include constructive criticism.
- The policy now makes clear that a complaint is a grievance and therefore does not allow matters to have two separate pathways. The policy is described as a specialised version of the EHC grievance policy – therefore matters will count as grievance hearings and grievance decisions.
- The old policy was overly prescriptive, this has been

reduced to ensure the policy is easier to follow. This includes the informal stage which was previously very prescriptive and too formal i.e. around investigation. This has been reduced significantly to make a truly informal stage and encourage more use.

- A responsibility section has been added to set out roles and responsibilities for the complainant, the manager and colleagues.
- Previous sections in the old policy regarding victimisation, monitoring following a formal harassment/bullying complaint, and malicious complaints have been removed as they are unnecessary as separate as covered in the main body.
- The appeals area has been developed to ensure that if a complaint is upheld by informally acted upon i.e. by a inform disciplinary warning the complaint cannot appeal as the matter has been resolved. The policy makes clear that appeals will be managed through the grievance procedure.
- As with all we are removing the 3 year review and instead stating will be reviewed in line with best practice and legislation, this allows policies to focused on when appropriate rather than just because time has passed.

Absence Management Policy

3.29 Significant redevelopment of both procedure and absence triggers to ensure greater consistency and clearer framework which allows matter to move from short-term to long-term and vice-versa.

This Policy has been significantly redeveloped and may appear a lot longer but this is to ensure there is a clearer framework for both short-term and long-term sickness absence. The policy itself is 23 pages long (the font size is 14) but it shows as 63 pages this is because it has a number of appendices (40 pages) including Flow charts, Stress Risk Assessment form, Level 1 and 2 forms for managers to use to ensure consistency

(all of which Unison welcomed and E.H.T as stated above would like flow charts where appropriate and possible). When the policy is built on the intranet it will look better and appendices will be links rather than one document. If approved the policy will go to HRC in February, HR will then look to roll out management training on managing absence and use the new policy as part of this (this will ensure it is successfully implemented and ensure the consistency and join up to HR required).

3.30 Main changes

- Short-term absence triggers have been changed from 7 days sickness absence within any twelve-month period and 3 separate periods of sickness absence in a 6 month period to 3 spells or more in any 3-month period, and/or where an employee has been absent for 10 days or more over the previous 12 months. The days will be pro-rate for part-time staff where they do not work 5 days per week. The triggers were previously too low compared to employment averages and managers had the option not to act informally meaning consistency harder to achieve and issues more likely to arise.
- Removal of the term warnings in formal stages – now called level 1, 2 and 3. Absence management should be supportive first, the levels do warn what next step could be but not really appropriate to call it written warning, final warning etc. as this implies discipline warnings and this is not a conduct matter as illness is genuine when managed through this policy.
- Stress management guidance (appendix in previous policy) has been incorporated into the policy itself with addition of the stress risk assessment form to ensure transparency (this was welcomed by Unison).
- Self cert and return to work form removed from appendices, this is now done through MyView and this is made clear.

- Level 2 meeting can be held by line manager, this was previously Head of Service level who now comes in at Level 3 where a hearing is required, with the line manager presenting the case at Level 3 hearing.
- Now specified that employees should not text or email their manager to tell them they are off sick to ensure sufficient cover is put in place.
- Addition of 4-weekly face-to-face catch up (on top of weekly telephone calls) for long term sickness cases to ensure employees are supported appropriately.
- Removal of the informal stages for both short and long term sickness, the Level 1 meeting is the first action in the procedure.
- Increase in length of review periods for short-term sickness - from 3 months to 4 months at stage 1, 6 months at level 2 (was unspecified in old policy) and 12 months at Level 3. This ensures the review is more meaningful and appropriate to the history of absences.
- Link between short and long term levels (stages) is now established i.e. if an employee goes to Level 1 in long-term and then subsequently comes back to work but hits short-term triggers they can move to Level 2 rather than re-starting at Level 1. Previously short term and long term were not linked but as it all absence management they should be.
- Employees referred to Occupational Health at 4 week point for long-term sickness. The old policy was not as prescriptive to use Occupational Health but the medical opinion is best sought at this stage to inform reviews so is sought up front (this was a possible outcome at the informal stage if considered appropriate previously).
- Ill health redeployment was considered at stage 2 of the previous policy, in the new policy it is a potential outcome of level 3 which is the hearing stage.
- Capability hearing was heard by a Director in the previous policy, due to changes in our structure this is now an Leadership Team member.

- Appeals procedure now incorporated within the policy. Can only appeal against dismissal as earlier action is only a review and will be consistent. You could previously appeal against warnings but warnings have now been removed. Appeals would be heard by a chief officer i.e. Chief Executive or Deputy Chief Executive.
- As with all we are removing the 3 year review and instead stating will be reviewed in line with best practice and legislation, this allows policies to be focused on when appropriate rather than just because time has passed.

3.31 **Unison Feedback which included regional input**

- Unison sought clarity on the hearing process which was provided and agreed covered well. Overall Unison welcomed the updates and the improvements to triggers, procedure consistency and the tone of the policy.
- Policy was developed further by adding in Level 1 and 2 forms for consistency and to ensure all matters covered (these were added to the appendices).
- Regarding clause 1.5 Unison said this must be handled with care, HR will ensure this, no change to policy but matter noted.
- Regarding clause 2.2. this was made clearer that principles of policy apply to Chief Officers but would be managed by Members in line with the constitution.
- Regarding 2.4 which states the council may, in its discretion, decide not to follow all the timescales and details set out in this policy. This has been developed to say HR will control/support this if appropriate, i.e. it will be handled carefully.
- Unison requested that weekly contact should not be expected where staff is off with stress as it may not aid recovery this was not agreed as it is important to keep in touch for both parties but accepted that it could be modified in cases if medical guidance suggests it is appropriate i.e. not aiding recovery.

- Unison requested to add back in Stress and Mental health section and signs to watch for (see 8.5), the section signposts to both EAP and MHFA.
- Regarding 8.11 re Stress Risk Assessment, this was talked through with Unison and it was agreed to add form as Appendix b so employees are aware and also make clear HR involvement in what can be a specialist matter.
- Regarding 10.5 and phased return Unison accepted that this should be funded from sick pay but are concerned if the employee is on half-pay that this may make the employee what to return without a phasing, the wording was changed to make less prescriptive and we agreed to review in line with case circumstances (i.e. EH could top up sick pay if really necessary for phasing) but the policy still makes clear it is funded from the sick pay pot and therefore use will reduce pot.
- Section 13.4 (a) has been developed re redeployment to include protected salary of up to 4 weeks where employee is redeployed due to capability to a less demanding role (4 weeks maximum and not 18 months like redeployment in relation to redundancy). Unison wanted this to reduce financial stress impact, although it should be noted this will only be an option where a vacancy exists. This was then further developed to make clear in line with redeployment policy that the employee has become disabled during the course of their employment with the Council and such redeployment to a lower graded post would constitute a suitable reasonable adjustment, in this circumstance the employee would receive 18 months of salary protection as set out in the redeployment policy.

Appeals

3.32 The Appeals Policy has been updated to remove the appeals process for the Disciplinary, Grievance, Probation, Bullying and Harassment and Absence Management policies as these have been incorporated back into these policies. The 'one size fits

all' approach we currently have with a generic Appeals Policy does not work well as generic framework across all areas so the appeals processes have been tailored to each individual policy.

4.0 Implications/Consultations

Community Safety

No

Data Protection

No

Equalities

The policies have been updated in line with equalities legislation and with consideration to the Council's Equality Policy.

Environmental Sustainability

No

Financial

No

Health and Safety

No

Human Resources

Yes as set out this is an employment matter and the report has been produced by HR

Human Rights

No

Legal

The policies have been updated in line with employment legislation.

Specific Wards

No

5.0 Background papers, appendices and other relevant material

5.1 The updated policies are attached as Appendices 1 to 7.

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