

READING BOROUGH COUNCIL

REPORT BY HEAD OF HR AND ORGANISATIONAL DEVELOPMENT

TO:	PERSONNEL COMMITTEE		
DATE:	8 NOVEMBER 2018	AGENDA ITEM:	6
TITLE:	REVIEW OF THE COUNCIL'S EMPLOYMENT POLICIES		
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1. PURPOSE OF THE REPORT AND EXECUTIVE SUMMARY

- 1.1 This report presents a review of the Council's employment policy framework. The review aims to ensure that all employment policies are clear, easy to understand, up to date and reviewed regularly.
- 1.2 The review has commenced with seven policies which have been prioritised because they do not reflect current employment legislation and hence put the Council at risk. A Social Media Policy is missing from the current policy framework and therefore has been also been prioritised. The revised policies are being presented to Personnel Committee for approval, following consultation and negotiation with trade unions.
- 1.3 The report includes the following appendices:

- Appendix A: List of all existing employment policies
- Appendix B: Proposed Disciplinary Policy
- Appendix C: Proposed Grievance Policy
- Appendix D: Proposed Managing Sickness Absence Policy
- Appendix E: Proposed Managing Poor Performance Policy
- Appendix F: Proposed Bullying and Harassment Policy
- Appendix G: Proposed Flexible Working Policy
- Appendix H: Proposed Social Media Policy
- Appendix I: Equality Impact Assessment

2. RECOMMENDED ACTION

2.1 That Personnel Committee approve the following employment revised/new policies:

- **Discipline**
- **Grievance (including collective grievance)**
- **Managing sickness absence**
- **Managing poor performance**
- **Bullying and harassment**
- **Flexible working**
- **Social media**

2.2 That Personnel Committee give delegated authority to the Head of HR and Organisational Development to make minor revisions to HR policies to ensure they are kept up to date, in consultation with the Lead Councillor for Corporate and Consumer Affairs, for example to reflect changes in job titles or departments names. Also to make changes relating to administration of systems once iTrent self-service has been rolled out (for example to incorporate online sickness reporting when this replaces the paper-based system referred to in the Sickness Absence Management Policy).

3. POLICY CONTEXT

3.1 Good employment policies should support a culture based on trust, fairness and inclusion. They can also speed the decision-making process by ensuring that clear guidance is readily available to cover a range of employment issues. Further, they can assist in avoiding involvement with employment tribunal claims by providing guidance for managers that reflects accurately current employment law and good practice. It is therefore important that employment policies are clear, easy to understand, up to date and reviewed regularly.

3.2 Appendix A includes a list of all existing employment policies with a link to where each one can be found on the Council's intranet (IRIS) and the date it was implemented from or last reviewed.

3.3 In the majority of cases the policies have extended beyond their normal review date and have been updated to reflect changes in employment law and in the Codes of Practice and guidance issued by the Advisory, Conciliation and Arbitration Service (ACAS) which are not currently reflected in the relevant policies.

- 3.4 ACAS Codes of Practice give authoritative advice in key areas of employment practice. A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Tribunals will also be able to adjust any awards made in relevant cases by up to 25% for unreasonable failure to comply with any provision of the Code (by an employer or an employee).
- 3.5 Many of the current policies are also very long - in many cases over 20 pages. This is unhelpful for both managers and employees who may struggle to comprehend the key elements of the policy if they are unnecessarily lengthy.
- 3.6 There are also some significant gaps, for example a policy covering the use of social media by employees.

4. POLICIES COVERED UNDER THIS REVIEW

4.1 All employment policies will be reviewed by HR before the end of March 2019 and presented to Personnel Committee for approval, following consultation and negotiation with trade unions. The policies listed below have been prioritised because they do not reflect current employment legislation and hence put the Council at risk. A Social Media Policy is missing from the current policy framework so is included below.

- Discipline
- Grievance (including collective grievances)
- Managing Sickness Absence
- Managing Poor Performance
- Bullying and Harassment
- Flexible Working
- Social Media

4.2 The remaining existing policies and any new policies (where required) will be brought forward to Personnel Committee in March 2019.

4.3 Principles used for conducting this review

4.3.1 The policies have been re-written with the following principles in mind:

1. They must reflect current employment law and the ACAS Codes of Practice and/or guidance where relevant.
2. They must be easy to understand and written in plain English
3. They should be concise. Any information which is not germane to the operation of the policy has been removed. For example, management guidance notes are not included in the policies.

- 4. There should be a consistency of approach across related policies (e.g. same period of notice given to employees to attend formal meetings)
- 4.3.2 The redrafted policies broadly reflect the template policies available on the Unison website where available. (Template policies for other unions are not openly available on their websites).
- 4.3.3 In future, all employment policies will be reviewed every two years or sooner if legislation requires it.

4.4 Right of appeal

- 4.4.1 The appeal process is an essential mechanism for ensuring that natural justice is applied by giving employees the right to challenge action taken through a review of the decision by an independent manager who has had no previous involvement in the case. The appeal stage also helps to protect the Council from potential legal action and reputational damage by ensuring that all decisions taken are sound, reasonable and lawful.
- 4.4.2 Under the Council's current policies, appeals against dismissal for capability, sickness absence or discipline, or against a grievance outcome or flexible working request, are heard by Personnel Committee. This is currently the final of at least two rights of appeal in all cases.
- 4.4.3 However, the ACAS Code of Practice on Disciplinary and Grievance Procedures states that an appeal should be dealt with "*impartially and wherever possible, by a **manager** who has not previously been involved in the case*" (Paragraph 27). It accords with the statutory role of the Head of Paid Service who is ultimately responsible for all operational management matters.
- 4.4.4 In addition, it is recognised that preparing for and hearing appeals places a significant burden on members' time as would any additional time required in preparing for and attending an employment tribunal should that ever prove necessary.
- 4.4.5 Consequently, it is recommended that appeals against dismissal are no longer heard by Personnel Committee, but by a panel comprising a senior manager of at least Head of Service level, the Chair of Personnel Committee and one other member of Personnel Committee or their substitute(s). Therefore, the only appeals heard by Personnel Committee under the new policies will be those submitted by a Head of Service or Director. There will be only one right of appeal in each case, in accordance with the ACAS Codes of Practice. However, by the time a case reaches appeal stage, a significant amount of officer time will have been spent in reviewing the case and ensuring it has been dealt with appropriately and in compliance with employment law and

the Council’s policies. This is essential to safeguard the Council’s reputation as an employer of choice and to protect against potential legal challenge. In all cases the manager hearing the case/appeal will also have received expert advice from a qualified HR professional.

4.4.6 It should be noted that the Disciplinary and Capability Policies do not apply to the Head of Paid Service, Section 151 Officer, and the Monitoring Officer, who are excluded as per the Local Authorities (Standing Orders) (England) Regulations 2001.

5. THE PROPOSED POLICIES - KEY ISSUES AND CHANGES REQUIRED

5.1 For each of the existing policies which need to be revised, the table below highlights issues which need to be addressed, and additional key changes being proposed. In all cases, any issues highlighted have been addressed in the revised policy. Once the policy review is complete, hyperlinks will be added to the policies where these are cross-referenced.

Issues to be addressed	Additional key changes
Disciplinary Policy - Appendix B	
<ul style="list-style-type: none"> • States that Directors are not covered as they are covered by the provisions of the JNC Conditions of Service for Chief Officers (i.e. same provisions as the Head of Paid Service, Section 151 Officer and Monitoring Officer). This does reflect the contracts of employment for Directors who are not statutory officers, which confirm that the Council’s Disciplinary Policy will apply. The contracts reflect the correct position; it is not necessary for the statutory procedure to apply. • Includes provision for a verbal warning or verbal reprimand to which there is no right of appeal. Employees must have a right of appeal against a warning. • There is no clarity on the nature of the employee’s representative - so potentially an employee could be represented by a solicitor. This is not appropriate for internal proceedings and not in accordance with the ACAS Code of Practice. • There is provision for a second formal warning. This is not in line with the ACAS Code of Practice which provides for a first formal warning, final warning and then dismissal. 	<ul style="list-style-type: none"> • The level of manager who can make decisions to dismiss/hear appeals has been devolved downwards. An officer authorised by the Head of Service will make dismissal decisions where needed for most employees, with appeals heard by a Head of Service (instead of the Chief Executive). This has also been reflected in the Sickness Absence Management and Managing Poor Performance policies. • An HR professional will support the manager chairing the meeting/appeal in all formal meetings. This has also been reflected in the Sickness Absence Management, Managing Poor Performance and Flexible Working policies.

Issues to be addressed	Additional key changes
Grievance Policy - Appendix C	
<ul style="list-style-type: none"> • Refers to the ‘Statutory Grievance Procedure’ which was repealed in 2009 and replaced with the ACAS Code of Practice. • States that ex-employees may use the Grievance Procedure to raise concerns. There used to be a legal requirement for this through a modified version of the Statutory Grievance Procedure but it has also been repealed. • No reference to mediation as an alternative to the formal process • Contains three rights of appeal. ACAS Code emphasises the need to seek to resolve grievances quickly and fairly for all (including the individual who the aggrieved person is complaining about). The current process is not conducive to this 	
Managing Sickness Absence Policy - Appendix D	
<ul style="list-style-type: none"> • Refers to the Disability Discrimination Act which has now been replaced with the Equality Act 2010 • The trigger points used to monitor absence are not clear 	<ul style="list-style-type: none"> • The need for managers to carry out effective return to work interviews following every period of absence has been made more prominent • Addition of a section on sick pay and reference to special considerations for pregnancy and disability related absences
Managing Poor Performance Policy - Appendix E	
<ul style="list-style-type: none"> • States that the policy does not apply to Directors who are not statutory officers - this does not reflect their contracts of employment • Includes provision for a verbal warning or verbal reprimand to which there is no right of appeal. Employees must have a right of appeal against a warning 	
Bullying and Harassment Policy - Appendix F	
<ul style="list-style-type: none"> • Only refers to harassment in the current policy title • The definitions section needs updating and expanding 	<ul style="list-style-type: none"> • In 2017, ACAS released new guidance on sexual harassment, including how to report any incidents of unwanted conduct of a sexual nature. This has been incorporated.

Flexible Working Policy - Appendix G	
<ul style="list-style-type: none"> • Does not reflect current legislation which gives <u>all</u> employees with at least 26 weeks service the right to request flexible working • Includes a second right of appeal to Personnel Committee. Appeals should be heard by managers in line with the prescribed business reasons and with full consideration of the impact of any changes on the particular service area. 	

5.2 Social Media Policy

5.2.1 The prolific use of social media in both a business and personal context means that this is a significant gap in the Council’s current policy framework. Employees need clear guidance on its appropriate use in both cases. The policy is based on the assumption that the current restrictions on accessing social media from Council equipment should be lifted. The policy clarifies what is regarded as unacceptable use of social media at work. It also clarifies that any inappropriate use of social media, either in or outside the workplace, could result in disciplinary action if it brings the Council’s reputation into disrepute or exposes it to potential liabilities. The proposed policy is attached in Appendix H.

6. **PROCESS FOR AGREEING THE REVISED POLICIES**

6.1 The policies must be approved by Personnel Committee in accordance with their terms of reference. With the exception of the Social Media Policy, they are also contractual and must therefore be agreed with the trade unions.

6.2 The process for seeking to agree the policies with trade unions has been as follows:

30 August	Policies emailed to trade union representatives with a covering report explaining the key changes and timescales for reaching agreement
3 September	First meeting with trade unions and Head of HR and Organisational Development to commence negotiation/consultation
12 September	Second meeting with trade unions and Head of HR and Organisational Development to discuss the policies and seek views
3 October	Personnel Committee scheduled to consider the revised policies but subsequently cancelled as trade

	union representatives requested more time to consider them
24 October	Meeting with trade unions, Head of HR and Organisational Development and Chair of Personnel Committee to discuss the policies and seek views
30 October	Meeting with trade unions, Head of HR and Organisational Development, Director of Resources and Chair of Personnel Committee to discuss the policies and seek views
8 November	Personnel Committee meeting

6.3 Trade union representatives have been unable to agree the policies with their members within the timetable set out above. However, at the meeting on 30 October, individual views of the full-time trade union officials from Unite, Unison and NEU were discussed and the policies have been amended to take account of their views.

6.4 A communication plan is being drawn up to communicate the revised policies, once agreed, to managers and employees. This will include:

- Daily news items to highlight the revised policies and who to speak to about any queries (i.e. their line manager or HR)
- Production of printed information for employees who do not have regular access to Council emails
- HR Partner/HR Officers will highlight the revised policies and their implications (for staff and managers) when they attend department management team meetings and 1-1 meetings with managers.
- Employees will be asked to confirm that they have read and understood the policies through NetConsent, the Council's policy management software which records compliance and can be used to flag up anyone who has not read the policies.

7. EQUALITY IMPACT ASSESSMENT

7.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.2 The policies reviewed in this report have been subject to an Equality Impact Assessment. No negative impacts on any employees with protected

characteristics have been identified. The Equality Impact Assessment is attached as Appendix I.

8. CONTRIBUTION TO STRATEGIC AIMS

- 8.1 The proposed policies support the achievement of a Council that is fit for the future.

9. LEGAL IMPLICATIONS

- 9.1 Certain employment policies and procedures are specifically needed to comply with legal requirements, for example, a written health and safety policy. Even where a policy or procedure is not specifically required by law, employers often find it helpful to have a policy in place to provide clear guidance that reflects the legal framework for handling the issue in question and it also helps employees to be clear about the organisation's stance on a particular subject. The proposed policies presented in this review reflect current employment law and ACAS Codes of Practice and/or guidance where relevant.
- 9.2 The Council's Constitution confirms that Personnel Committee is responsible for determining the terms and conditions on which staff hold office. The proposed policies will therefore be presented to Personnel Committee for approval, following consultation and negotiation with the trade unions.
- 9.3 It is also requested that Personnel Committee give delegated authority to the Head of HR and Organisational Development to make minor revisions to policies to ensure they are kept up to date, in consultation with the Lead Councillor for Corporate and Consumer Affairs, for example to reflect changes in job titles or departments names. Also to make changes relating to administration of systems once iTrent self-service is rolled out (e.g. to incorporate online sickness reporting when this replaces the paper-based system referred to in the Sickness Absence Management Policy).

10. FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications arising from this report.

11. BACKGROUND PAPERS

- ACAS Code of Practice on Disciplinary and Grievance Procedures - March 2015
- ACAS Code of Practice on handling in a reasonable manner requests to work flexibly - June 2014