

REVIEW OF DISCIPLINARY POLICY

(including Grievance, Bullying & Harassment policies and associated procedures)

Reason for this Report

1. To present the Committee with an opportunity to consider the Disciplinary Policy Review, and the new Resolution Policy (formerly Grievance and Bullying and Harassment policies) and contribute to pre-decision policy development, prior to Cabinet's consideration of proposed recommended changes.

Background

2. The Committee has responsibility for scrutiny, monitoring and review of the effectiveness of all Council human resource policies.
3. A review of workplace Investigations in the Council was undertaken between October 2014 and December 2014. 260 disciplinary investigations over the previous 18 months (from April 2013 to October 2014) were examined.
4. A Report and Executive Summary was produced in March 2015 with nine key recommendations, and 25 sub recommendations for change. (see **Appendices 1 and 2** attached).
5. The Council is presently in the policy consultation phase following these published reports, including consultation with all Directorates, Trade Unions and Equality Networks.

Summary of Key Changes Proposed

6. *Disciplinary Policy (Corporate)*

- a. Reduce the length of the current corporate Disciplinary Policy by extracting the guidance information from it.
- b. Produce a series of five new comprehensive guidance documents for Hearing Chairs, Investigating Officers, managers, employees and witnesses to supplement the policy, ensure a more consistent approach /consistent advice, and to better support those dealing with investigations. (A draft sample can be found at **Appendix 3.**)
- c. Revise timescales regarding key decisions during an investigation.
- d. Introduce standardised preliminary assessment, to enable robust decision making regarding the appropriate course of action e.g. informal or formal procedure.
- e. Introduce a new formal 'fast track' disciplinary procedure available for misconduct issues.
- f. Introduce a standardised format for suspension from duty, which evidences clarity of decision making i.e. that all alternatives to suspension have been considered.
- g. Change the level for authorising suspension to Operational Manager (and above).
- h. Introduce a requirement to report and review a suspension, and the progress of an investigation every four weeks.
- i. Introduce a new code of conduct and confidentiality to govern the way Hearings will be undertaken.

- j. Introduce additional grounds for appeal to include "new evidence that has come to light".

Monitoring the Effectiveness of the Revised Disciplinary Policy

- 7. In addition to reviewing policies and developing new guidance material, the opportunity is being taken to ensure that robust monitoring data is captured and reported in the following way to ensure that accountabilities are clear and compliance monitored:
 - a. Disciplinary Investigations to be monitored and reported at senior management level within Directorates (Appendix 1a: Recommendation 6.1).
 - b. HR People Services will review and collate monitoring data on disciplinary investigations (Appendix 1a: Recommendation 6.2).
 - c. HR People Services will monitor that any improvement actions recommended by the Hearing Chair to a Directorate are actioned.

New Resolution Policy (formerly Grievance Policy and, Bullying & Harassment Policy)

- 8. The review of workplace Investigations highlighted a higher number of disciplinary cases than grievances which is seen to be indicative of a culture of formal, rather than early, resolution of disciplinary issues. A recommendation of that review was that the Grievance and Bullying & Harassment Policies will be replaced with a more progressive "*Resolution Policy*" to support the cultural change that is required.
- 9. Increased emphasis is intended to be placed on early resolution of matters, with managers up-skilled, and Trade Unions involved collaboratively, to resolve issues at an earlier stage, through a range of resolution methods such as additional training, support, coaching, advice, counselling and mediation.

10. The internal Mediation Service has been expanded, and referral to the Service is detailed in the new policy. Mediation, whilst voluntary, can be used to prevent escalation to a formal procedure, as well as “repair” damaged relationships within a team after an investigation has concluded.

Consultation Programme

11. Initial consultation on proposed changes took place between June and September 2015 and consisted of:-

- a. Consultation sessions with HR People Services staff
- b. Use of a “Virtual” Reference Group which comprised of 21 people who participated in the Workplace Investigations Review, attended the Review report feedback sessions in April 2015, and expressed an interest in being part of the group. They represented a number of Directorates, including Sports, Leisure and Culture; Environment; Education and Lifelong Learning; Childrens Services; Resources (including Audit); Communities; and Health & Social Care. They contributed suggestions to draft versions

12. The formal Consultation phase commenced at the end September 2015 and has continued to date. It consisted of:-

- Six consultation meetings with nominated representatives from Directorates
- Six consultation meetings with Trade Unions
- Three consultation meetings with Equality Networks

13. Consultation was scheduled to be completed by early November. However, the Trade Unions have requested an extended consultation period as there are 7 documents in total for consideration.

Pre- Policy Implementation Phase

14. The proposed implementation date for the policies is 1 April 2016.

15. Following Scrutiny consideration and Cabinet approval, a series of policy briefings for staff is planned between January and March 2016.

16. Formal skills training and e-learning modules are currently being developed.

17. Managers will be given additional skills training through the Cardiff Manager Phase 2 Development programme.

Setting up an Investigation Team

18. The Workplace Investigations Review recommended that options be considered for how more complex investigations could be better managed. It is proposed to establish an internal Investigation Team, to deal with, for example, more complex or potential gross misconduct investigations, those involving the police, safeguarding concerns, fraud and impropriety

19. A member of the Investigation Team would work solely on the investigation until it was concluded, to ensure investigations are undertaken as quickly as possible and reduce the mean length of investigations.

20. The Senior Management Team has considered options and proposes the establishment of a “virtual team” comprising staff nominated by Directorates, and released from their day job, to undertake the investigation, who would receive additional training. Directorates would manage their own cover arrangements. Investigations could be cross Directorate if required. This will be developed further in 2016.

Scope of the Scrutiny

21. The Committee will examine the proposals having been:

- a. advised of the key changes proposed to the Disciplinary, Grievance and Bullying and Harassment policies;
- b. updated on the current consultation programme with Directorates, Trade Unions and Equality Networks;

- c. advised of the pre-implementation phase of the policies;
- d. informed of the views of the Senior Management team, regarding the principle of establishing an internal Investigation team for complex workplace investigations, as recommended in the Review of Workplace Investigations report.

Way Forward

22. Councillor Graham Hinchey (Cabinet Member, Corporate Resources and Performance), Lynne David (Operational Manager, Human Resources), and Chris Synan, (Operational Manager) will attend Committee to explain to Members the changes that are proposed to the policy as a result of the Review, and answer any questions Members may have.

Legal Implications

23. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to the Cabinet/Council will set out any legal implications arising from those recommendations. All decision taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirements imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be taken having regard to the Council's fiduciary duty to its taxpayers; and (he) be reasonable and proper in all the circumstances.

Financial Implications

24. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial

implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATIONS

The Committee is recommended to:

- i. Note the information contained in these papers and presented at the meeting;
- ii. Consider whether it wishes to make any comments to inform the Cabinet's discussion and decision making.

MARIE ROSENTHAL
Director of Governance and Legal Services
28 October 2015