

Individual Executive Decision Notice

Report title	Disciplinary, Management of Attendance (MOA) and Performance Management (Capability) policies	
Decision designation	GREEN	
Cabinet member with lead responsibility	Councillor Paula Brookfield Governance	
Wards affected	Not applicable;	
Accountable Director	David Pattison, Chief Operating Officer	
Originating service	Human Resources	
Accountable employee	Sukhvinder Mattu	Service Lead – HR Policy and Strategy
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Report to be/has been considered by	Governance Leadership Team People and Change Leadership Trade Unions SEB	22 July 2021 – 14 October 2021 September 2021 December 2021 and January 2022

Summary

Engagement within the Council and our employee forums form an important part of policy improvement work. Key recommendations from the equality forums for change have already led to the introduction of diverse panels for formal hearings and the SeeHearSpeakUp initiative being implemented across the Council.

As a result, amendments to the following existing policies and supporting guides have been made to ensure that they are fit for purpose and coincide with current legislation as well as promoting our best practice. These documents are:

- Disciplinary Policy
- Management of Attendance Policy
- Performance Management (Capability) Policy

Trade Unions have reviewed the policies. They have also been circulated to each of the equality forums for information.

Recommendation for action or decision:

That the Cabinet Member for Governance, in consultation with David Pattison, Chief Operating Officer.

1. Approve the revised policies as detailed above to be made available to managers and employees of the council.

Signature

Name of Cabinet Member

Date:

Signature

Name of Director

Date:

1.0 Background

1.1 Disciplinary Policy

- 1.2 A review of the existing Disciplinary policy and management guidance was undertaken to ensure that it is still fit for purpose and in line with current legislation.
- 1.3 Best practice guidance has been considered from sites including XpertHR, Chartered Institute of Personnel Development (CIPD) and ACAS. Disciplinary policies from other local authorities have also been benchmarked.
- 1.4 The updated policy outlines a process on how to respond to employee behaviour/conduct that may be viewed as misconduct or gross misconduct.
- 1.5 Supportive management guidance is also available.

2.0 Management of Attendance Policy

- 2.1 A review of the existing Management of Attendance (MOA) policy and management guidance was undertaken to ensure that it is still fit for purpose and in line with current legislation. Best practice guidance has been considered from sites including XpertHR, Chartered Institute of Personnel Development (CIPD) and ACAS. MOA policies from other local authorities have also been benchmarked.
- 2.2 The updated policy provides a clear and coherent vision on how the Council will respond and act in relation to an employee sickness absence.
- 2.3 The guidance to managers provides information to help deal with employee sickness absence, the process and the support mechanisms available to help make reasonable adjustments where required.

3.0 Performance Management (Capability) Policy

- 3.1 The purpose of the Performance Management (Capability) policy is to ensure employees, managers and the organisation provide a consistent approach to managing performance of employees. It outlines the support, tools and process that should be followed when performance is below what is expected (informal stage, formal capability meeting, review meetings and then a final capability hearing).
- 3.2 The final capability hearing is held by an independent panel and can lead to employee dismissal where performance does not meet the required standard after support and training mechanisms have been provided.

4.0 Progress

- 4.1 Guidance has been sought when reviewing the existing policies to ensure the Council is legally compliant. Best practice has been reviewed, improved and implemented to ensure we as a Council continue to provide the tools for a fair and effective process.

4.2 Amendments to the Disciplinary policy/guide are as follows:

- The policy has been streamlined to detail key policy points, any procedure detail has been transferred into the manager's guidance
- A new section within policy refers to 'Exemptions' this refers to types of scenarios whereby the disciplinary policy would not come into effect.
- A non-exhaustive list of misconduct and gross misconduct allegations have been provided in the manager guidance
- Includes information on safe space – SeeHearSpeakUp and clarity that allegations raised via this tool may lead to disciplinary action being considered.
- Strengthen the advice in relation to suspended employees are entitled to take annual leave and the process to follow.
- Strengthen the guidance in relation to changes in allegation during the process and the required steps to inform the employee.
- Clarifying legally when an employee is under a criminal investigation, where deemed suitable the Council are in a position to continue to undertake an investigation concurrently- a decision will be made on a case by case basis.
- A section specifically on Uncontested Sanctions has been included in the policy – whereby an employee or their representative may accept the allegations presented and can prior to a disciplinary hearing request that a suitable sanction be awarded – either a First or Final Written Warning. The employee will have no right of appeal.
- The new policy details the panel should represent as many of the protected characteristics as possible with a minimum criterion of race and gender diverse to be met. All panel members are required to have undertaken Unconscious Bias training and sign a confidentiality agreement prior to participating on the panel.
- The managers guidance now includes a new section on virtual hearings.

4.3 The MOA policy/guide has been reviewed with minimal overall change to content other than that detailed below:

- In conjunction with the Domestic Abuse Policy that is currently live, the MOA policy has been revised to include domestic abuse absences and the reasonable adjustments that need to be considered to support employees.
- An amendment has been made to the electronic return to work form to enable managers to select a tickbox if the absence is domestic abuse related. Managers can then complete a 'MOA sickness management group' form for that absence exemption and forward to the Human Resources Advice team. An alert has also

been created which will notify the HR Business partners that an employee has been absent for Domestic Abuse to ensure appropriate support can be given to managers and employees.

- A new Stage 3 and Stage 3 plus panel hearing consisting of 3 independent members is required; 2 senior managers at grade 9 and above and a Human Resources Advisor. Previously this panel consisted of a Head of Service or nominee and an independent Human Resources Advisor.
- The new policy details the panel should represent as many of the protected characteristics as possible with a minimum criterion of race and gender diverse to be met. All panel members are required to have undertaken Unconscious Bias training and sign a confidentiality agreement prior to participating on the panel.

4.4 Amendment to the Performance Management (Capability) policy are as follows:

- Panels should consist of three members, two senior managers (grade nine and above) and a Human Resources representative
- The panel should represent as many of the protected characteristics as possible with a minimum criterion of race and gender diverse to be met
- All panel members are required to have undertaken Unconscious Bias training and sign a confidentiality agreement prior to participating on the panel.

4.5 The draft policies are attached as appendices. They have been considered and endorsed by recognised trade unions.

5.0 Evaluation of alternative options

5.1 It is a legal requirement for any employer to act as reasonably as possible to protect staff and manage conduct issues, to a manager absence fairly allowing for reasonable adjustments and to ensure standards of performance are met

5.2 The revised policies enable the Council to ensure there is a clear commitment to support and process that will be followed throughout with reasonableness considered for any outcome.

6.0 Reasons for decision

6.1 By having these revised policies, the Council would demonstrate a commitment to the fair treatment of its employees, potential employees or users of its services. It will ensure that any allegations are fully investigated in a consistent and fair manner and where needed appropriate the disciplinary procedure will be followed.

6.2 The MOA policy will enable the Council to support and manage the absence process with key support tools ensuring legally the Council can evidence reasonable adjustments as required by the Equality Act 2010 and ensure a consistent approach.

6.3 The Performance Management (Capability) policy supports the improvement of employees to reach the required standards, however if the employee does not meet the required standard, there is a legal process that needs to be adhered to and therefore this policy ensures that the process is managed fairly and consistently.

7.0 Financial implications

7.1 There are no financial implications associated with the recommendation in this report.
[GE/24112021/J]

8.0 Legal implications

8.1 There are no direct legal implications arising from the report. The relevant legal obligations are contained within the body of the report.

[TC/24112021/C]

9.0 Equalities implications

9.1 The Council is committed to equality and fairness for all employees and will not discriminate because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.2 In developing the policies, Equality Analyses has been undertaken and the results of which indicate that it is lawful to proceed in the way described by the policies. The Council is committed to promoting equality and recognising the diversity of our communities and will work to ensure all parts of our community are treated fairly. Equality analyses can be requested from HR for review, if required.

10.0 All other Implications

10.1 Implications for HR – Human Resources will be required to provide quarterly management training sessions on the revised policies. Template letters/Standard Operating Procedures will also be updated to incorporate changes to the policies where required.

11.0 Schedule of background papers

11.1 There are no background papers

12.0 Schedule of appendices

12.1 Appendix 1: Draft Disciplinary Policy

12.2 Appendix 2: Draft Management of Attendance Policy

12.3 Appendix 3: Draft Capability Policy

This report is PUBLIC
NOT PROTECTIVELY MARKED