



POLICY AND RESOURCES SCRUTINY COMMITTEE - 19TH JANUARY 2010

SUBJECT: REVIEW OF CORE PERSONNEL PROCEDURES

REPORT BY: DIRECTOR OF CORPORATE SERVICES

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek Members views on the revised Disciplinary, Grievance and Managing Sickness Absence Procedures prior to its consideration by Cabinet.

2. SUMMARY

- 2.1 The new procedures are very different from the procedures currently in place and the revisions have taken into account recent changes in legislation, operational practices and issues that have been raised and the lessons learnt from the Employment Tribunal cases which have been filed against the Council. Indeed the new procedures on discipline and grievance have been developed around the new ACAS Code of Practice, which future Employment Tribunals will utilise to decide on the outcomes of decisions and practices adopted.
- 2.2 The revised procedures have been simplified in comparison to the procedures currently in place and they provide notes of guidance for Officers when using the procedures. All the main differences between the current procedures and the revised procedures are highlighted in the report for ease of reference.
- 2.3 In the past it has been felt that there is a lot of confusion and overlap between a number of the Council's policies and procedures, for example the Disciplinary, Capability and Managing Attendance Procedures and the Grievance and Bullying and Harassment Policies. These have now been streamlined and all matters of capability and job performance and the management of short-term sickness absence along with pure disciplinary matters relating to an employee's conduct will be dealt with under the Disciplinary Procedure. It is proposed that the revised Grievance Procedure replaces the current Grievance Procedure plus the Workplace Bullying and Dignity at Work Policies. This should help reduce the confusion that Managers and employees often face in deciding which policy they should be using to deal with a specific situation.
- 2.4 As Members are aware, the current Disciplinary, Grievance and Managing Attendance Procedures were introduced in 2004. In terms of managing attendance, since this date sickness absence levels have fluctuated greatly. The sickness absence level for 2008/9 was 13.48 days per full time equivalent, which is an increase over the previous year. This accounts for in excess of 96000 days lost during 2008/9.
- 2.5 A review of all the procedures was undertaken to ascertain whether they were fit for purpose and take account of all the recent changes in employment legislation and an amended draft procedures produced as a result. These new procedures are very different from the procedures currently in place and the reviews have taken into account changes in legislation, operational practices and issues that have been raised by Managers and best practice from other local authorities.

2.6 This report outlines the proposed changes to the above three procedures.

3. LINKS TO STRATEGY

3.1 The new procedures link to the People Management Strategy and therefore to all other strategies, including all equality strategies, policies and procedures, that rely on employees to deliver the strategy and service provision.

4. THE REPORT

4.1 As Members are aware the Council introduced its current Disciplinary, Grievance and Managing Attendance Procedures on 1st July 2004. Since that date, Managers and Personnel employees have dealt with a considerable number of cases under all three procedures. In fact, during the financial year 2008/9, 159 cases were dealt with under the disciplinary procedure and 49 cases were dealt with under the grievance procedure and a much larger number dealt with under the Managing Attendance Procedure. (These are not recorded in numbers). There are in addition cases which are dealt with informally under these processes, or where no action is taken as a result.

4.2 In addition to the figures quoted above, a small number of cases were dealt with under the Council's Capability Procedure.

4.3 The amount of employee time, both in terms of Personnel employees and Officers, that has been spent on these cases has not been calculated but suffice to say that it would add up to a considerable number of hours. In terms of the Disciplinary and Grievance Procedures, as a result of the complexity of some cases, it is not unheard of for some cases to take up to twelve months to resolve, which adds up to a considerable cost in terms of the time spent dealing with the actual cases but also the cost of the time an employee may spend on suspension, if that has been thought to be appropriate because of the issue under investigation and the environment in which the employee works.

4.4 Delays in cases are often caused by the work of external agencies (e.g. Police) and when this is the case, there is nothing that the Council can do to speed the process up. However, where these agencies are not involved in the issue, it is hoped that the revised procedures will streamline the process and reduce the length of time Officers spend on dealing with disciplinary and grievance matters and reduce the length of time that employees spend on suspension.

4.5 A review of both the Disciplinary and Grievance Procedures has been a high priority for a lengthy period of time and this has now culminated in the revised procedures. This review of the procedures has been running in tandem with the changes in legislation, which came into effect on 6th April 2009. The final legislation was delayed in Parliament and the final version of the ACAS Code of Practice was delayed in its production until earlier this year but all the changes in the Code of Practice have been incorporated into the revised procedures. The new ACAS Code of Practice sets out five key elements of fairness, all of which have been built into the revised procedures. These elements are: -

- Matters should be raised and dealt with promptly.
- Parties should act consistently.
- Employers should carry out the necessary investigations to establish the relevant facts.
- Employers should inform employees of the basis of the problem and allow the employee to put their case.
- Employees should be allowed to be accompanied at any formal disciplinary or grievance meeting.

- 4.6 The legislation repealed the Statutory Disputes Procedure, which has been in place for a number of years and this has simplified the process that employers are required to follow when dealing with disciplinary and grievance matters. The Code of Practice no longer covers the termination of fixed term contracts and redundancy situations but it does expect an employer to have procedures in place to deal with these cases. The Council has processes in place to deal with the termination of fixed term contracts and the Head of Human Resources and Organisation Development will be bringing a report on redundancy arrangements to Cabinet in the next few months. However, as Members are aware there is currently a principle being operated that no compulsory redundancies take place across the Council. Copies of the revised Disciplinary and Grievance procedures are attached as Appendices.
- 4.7 The revised procedures have also sought to address many of the operational issues with the current procedures that have been highlighted by both Officers and Personnel employees. In addition feedback from Employment Tribunal cases has also been built into the revised procedures.
- 4.8 One of the major criticisms of the current procedures is the fact that there is so much overlap between a number of the policies and procedures, for example the Disciplinary, Capability and Management Attendance Procedures and the Grievance and Bullying and Harassment Policies. These have now been streamlined and all matters of capability and job performance and the management of short-term sickness absence along with pure disciplinary matters dealing with an employee's conduct will be dealt with under the Disciplinary Procedure. The revised Grievance Procedure will replace the current Grievance Procedure plus the Workplace Bullying and Dignity at Work Policies. This should reduce the confusion that Managers and employees often face in deciding which policy they should be using to deal with a specific situation.
- 4.9 In terms of Managing Attendance, one of the most crucial issues about introducing an amended Managing Attendance Procedure is the fact that a consistent approach is required from all Managers across all Directorates. Although sickness absence cases can vary in the detail, in terms of the illness, a consistent approach is required to ensure fairness to all employees. If the Council were to be taken to Employment Tribunal for unfair dismissal, consistency of approach would be crucial to the outcome of the case.
- 4.10 Any Officer responsible for dealing with disciplinary, grievance and sickness issues within their role will require training in the revised procedures and the records that are required to be kept as outlined in the ACAS Code of Practice. It is envisaged that between eight and nine hundred employees across the Council will require training. Any Manager/Supervisor who has a responsibility for employees will need to be trained in the procedures. Therefore, as there is such a high number of employees requiring training, it is proposed that this training is undertaken by employees from the Directorate Personnel Units in large groups with the training taking the form of briefing sessions outlining the main differences between the current and the revised procedures. A request has also been received from the trade unions asking that trade union representatives attend any training that is undertaken on the new procedures so that the training received is consistent across the board. This request has been agreed in principle.
- 4.11 When developing the procedures, special attention was given to equality issues to ensure that no section of the workforce would be disadvantaged in any way. Care was taken to ensure that the procedures covered all acts of discrimination and harassment as well as ensuring that all accessibility issues were considered for any employee or their representative who was to be interviewed under the parameters of the procedures.
- 4.12 There is one area where the revised Disciplinary Procedure does not strictly follow the ACAS Code of Practice. This is the fact that the penalty for a disciplinary offence may go up on appeal. The ACAS Code states:-

'An appeal must never be used as an opportunity to punish the employee for appealing the original decision, and it should not result in any increase in penalty as this may deter individuals from appealing.'

However, it is felt that the fact that an appeal could increase the penalty should be included in the new procedure because of the operational issues that the Council has faced in the past. Employees appeal every disciplinary sanction that is awarded, which takes up a large amount of resource, as there are no consequences of them doing so. Managers have asked that the fact that the penalty be allowed to be increased is included in the revised procedure to help deal with situations where all sanctions are appealed. If a penalty is increased on appeal, there will be no further right of appeal unless the increased penalty is dismissal. If dismissal is the outcome of the appeal, a further appeal against the dismissal will be allowed.

- 4.13 Running concurrently with the revision of the Disciplinary and Grievance Procedures was the development of a Managing Under Performing Procedure, which will replace the current Capability Policy. This outlines the steps that Managers need to take to address any issues of under performing that they may have with their employees in terms of achieving an acceptable performance level. If, however, the employee's performance does not improve, after a reasonable time period and after additional support has been provided to the employee, the matter will be dealt with under the Disciplinary Procedure and a warning plus a financial penalty such as the withholding of an increment may be imposed. The withholding of an increment will not occur until a full investigation into the employee's job performance has taken place. If this sanction is imposed, a plan will be developed and agreed with the employee to ensure that the employee's job performance reaches acceptable levels in the future. This procedure is in the final stage of development and will be added to the Disciplinary Procedure as an Appendix as soon as possible. The trade unions have agreed to the introduction of the withholding of increments in principle although they are not aware of the detail of the Council's proposals at the current time.
- 4.14 The draft procedures have been consulted upon with the Council's recognised trade unions and the Council's Equality Groups. A consultation exercise with non trade union member has also been undertaken via the Council's Intranet site. Some of the views put forward have been incorporated into the procedures, others have not been agreed and not reflected within the procedures. In the context of the new procedures, a detailed consultation log, with all the detailed feedback is available for inspection (it is too lengthy for inclusion in this report). In terms of school-based employees, the procedures in relation to Grievance and Managing Sickness Absence have been adapted for use within the school environment. The Disciplinary Procedure has not been adapted for this purpose as the schools are bound to use a procedure produced by the Welsh Assembly Government. This procedure is currently under review and until such time that it is available, the schools will continue to use their current procedure.
- 4.15 To allow Members to see the main differences between the old and proposed procedures a detailed analysis of the each of the procedures is included below. Copies of the draft procedures are attached as an Appendix.

DISCIPLINARY PROCEDURE

No Verbal Warning

- 4.16 There is greater emphasis in the revised procedure, and the ACAS Code of Practice, on informal resolution of minor misdemeanours and disputes and as a result it has been decided that these should be dealt with outside of the formal disciplinary procedure. In the current procedure, employees who commit minor 'offences' are often issued with a verbal warning. As these 'offences' are now being dealt with outside of the formal disciplinary procedure, the verbal warning has been withdrawn from the formal procedure as a sanction. Therefore under the formal procedure, the first level sanction will be a written warning, the second level a final written warning and this will be followed by dismissal or action short of dismissal. The

disciplinary procedure can be entered into at any level depending on the 'offence' that is being investigated and managed, it does not have to be a progressive penalty.

- 4.17 The ACAS Code of Practice does not lay down any specific timescales that warnings must remain current on an employee's employment record. It states that the time limits must be agreed and be clear and laid down so that all employees are aware of them. Currently the length of time that the warnings remain 'live' on an employee's record is five months for a verbal warning, ten months for a written warning and fifteen months for a final written warning. As only more serious issues are now being dealt with under the formal disciplinary procedure, the time limits have been extended on the written and final written warning to twelve and eighteen months respectively. This reflects the fact that the 'offence' that has been committed is of a more serious nature and the fact that the employee is being given sufficient time to improve their behaviour, job performance or attendance record.
- 4.18 Warnings will remain on employees' records but they will be discounted for disciplinary purposes once the warning has expired.
- 4.19 There are cases where warnings will never expire from an employee's record, e.g. child protection and protection of vulnerable adults cases, and these cases are laid down in the ACAS Code of Practice. These cases should be kept to a minimum.

Representation

- 4.20 Under the current procedure, employees have the right to be accompanied by a colleague, trade union representative, spouse, friend or by a legal representative. This is out of step with, and over and above, the requirements of the ACAS Code of Practice. The revised Disciplinary Procedure has replicated the requirements of the Code of Practice and employees are allowed to be accompanied by a colleague or a trade union representative, either a lay member or a trade union official.
- 4.21 Recent case law has suggested that in certain circumstances, legal representation should be allowed. These are cases where the decision of an internal disciplinary process could lead to a decision by an external regulator which could result in an employee being excluded from working in their chosen field, such as solicitors, teachers, etc. Where disciplinary cases involve these types of issues the relevant level of representation will be permitted.

Simplified process

- 4.22 Much of the criticism of the current Disciplinary Procedure has been that it is a convoluted procedure, which overlaps with a number of other Council policies and procedures. The removal of the legislative requirements of the Statutory Disputes Procedure has meant that processes can be simplified.
- 4.23 The opportunity has been taken to simplify the procedure and place greater emphasis on the resolution of issues informally as well as speeding up the process.
- 4.24 Under the current arrangements, employees could be given disciplinary warnings under a number of Council policies and procedures, for example the Managing Attendance Procedure and the Capability Policy, in addition to the Disciplinary Procedure. This quite often led to confusion so now job performance, disciplinary matters and the management of short-term sickness absence are to be dealt with under the same procedure. However, there will be separate sanctions for misconduct, job performance and managing attendance. The same principles apply to all three areas of management, i.e. investigation of the issue, speaking to the employee, deciding on a course of action and the granting of an appeal. It is hoped that this will lead to the more effective management of all three areas, as there is no overlap of policies, which can lead to confusion.

Provision of information

- 4.25 Under the current procedure, the Disciplining and Appeals Officers do not receive the case papers from either the employee or the management side until the time of the hearing. This has led to much criticism from both Officers and employees as the Disciplining/Appeals Officer is presented with a large quantity of often quite complex information to read on the day that the case is due to heard. This has led to adjournments in the hearing of the case because of the need to read the papers prior to hearing the case or a delay in the decision being provided because the Disciplining/Appeals Officer has to read all the evidence prior to making a decision.
- 4.26 In order to overcome this, the revised procedure allows for the information relating to the case, from both the employee and management, to be provided to the Disciplining/Appeals Officer a minimum of three working days prior to the hearing taking place. This will allow them to read the documentation prior to the day of the hearing and gain a better understanding of the case that they are being asked to make a decision on and thus avoid any further delays in the process.
- 4.27 The exchange of information between management and the employee remains at ten working days prior to the hearing for management to provide their information to the employee and five working days for the employee to provide any evidence that they wish to provide. At the time that the information is exchanged the names of any witnesses to be called at the hearing should also be declared. No one can appear as a witness at the hearing if they have not provided a signed witness statement to the investigation.

Appeals

- 4.28 As mentioned above, any appeal against a disciplinary sanction would be a re-hearing of the case with any new evidence being produced at this stage. The current procedure offers the option of a re-hearing or a review of the original case. However, as the decision has been taken that penalties are to be increased or decreased on appeal, for a penalty to be increased a re-hearing must have taken place and all the evidence heard by the Appeals Officer prior to them making the decision to increase the penalty. If the penalty is increased at the Appeals stage, there is no further right of appeal against this decision, except in the case of dismissal. An Appeals Panel will still hear appeals against dismissal.

Suspension

- 4.29 Under the current procedure, there is a review process that should be undertaken to ensure that employees are suspended for the shortest possible time, which is beneficial to the suspended employee, their colleagues and the effective running of the service.
- 4.30 This process is not working correctly and a number of employees have been suspended for a considerable period of time. During 2007/08 there were 40 Council employees suspended and the total cost of this to the Council was £282710.50 with the longest period of suspension being the whole of the financial year. However, it is accepted that a number of these suspensions were linked to investigations undertaken by or undertaken in conjunction with external agencies, which prolonged the period of time, that the employees spent on suspension.
- 4.31 In the revised procedure, this formal review process has been amended in order that suspensions are kept to the shortest possible time. After an employee has been suspended for a period of six weeks a formal review will be undertaken. The Head of Human Resources and Organisation Development or his nominated representative will conduct this review. It will take the form of a report from the Investigating Officer giving the allegations against the employee, the progress to date and the reasons why the employee should or should not still be suspended from their duties. As a result of this report, the Head of Human Resources and Organisation Development will decide whether suspension is still the most appropriate course

of action. Managers are also being asked to decide whether suspension is always the best option and prior to suspension they are being asked to consider alternatives such as temporary redeployment for the period of the investigation and disciplinary process. If it is considered impossible for an employee to return to their post after the investigation and/or disciplinary process has been completed, a more permanent solution should be sought.

- 4.32 Whilst on suspension, an employee's terms and conditions will apply including the rules relating to requests for annual leave and the reporting of sickness absence. Suspension during the investigation process prior to the conducting of a disciplinary hearing will always be on full pay.
- 4.33 If a disciplinary sanction is applied that includes suspension for a period of days after a disciplinary hearing has taken place then this will be without pay.

Notes of Guidance

- 4.34 In order to help Officers who are required to invoke the Disciplinary Procedure, Notes of Guidance are attached to the Procedure. This guidance covers the role of everyone within the disciplinary process, outlines some of the timescales involved and the processes to follow at Disciplinary and Appeal Hearings.
- 4.35 At the start of any disciplinary investigation, the Investigating Officer should agree the terms of reference for the investigation. This will allow them to concentrate on the investigation and have a clear view of what direction the investigation should be moving.

Overlapping Grievances and Disciplinary Cases

- 4.36 It is not uncommon for employees to raise grievances during the disciplinary process to delay any disciplinary action being taken against them. The new ACAS Code of Practice allows for grievances and disciplinary cases to be dealt with concurrently.
- 4.37 If the employee raises a grievance during the disciplinary process that relates to the action being taken, the process may be temporarily suspended in order to deal with the grievance. Examples of circumstances where this should happen are included in the procedure. However, if the grievance does not relate to the disciplinary action, then there is no reason for the disciplinary process to be halted. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Employees Failing To Attend Disciplinary Hearings

- 4.38 Under the 'old' legislation there were complex rules on whether a dismissal that took place in the absence of the employee because of their failure to attend the hearing would result in an unfair dismissal. However, under the new legislation where an employee is persistently unwilling or unable to attend the hearing without good cause, the employer is able to take a decision on the evidence available to it.
- 4.39 As a result, the revised procedure has included a paragraph (3.12) to advise employees that they are expected to co-operate fully with all investigations.

'All employees will be expected to co-operate fully with all investigations. Employees involved in disciplinary investigations who are absent from work for reasons of ill health will be required to attend meetings at any stage of the disciplinary process and to respond to communications without undue delay. If employees are unable to attend these meeting, due to ill health, the disciplinary process will be progressed. In this circumstance the employee may be represented at meetings by their chosen representative. Alternatively the Council reserves the right to carry out the investigation and progress the disciplinary process in the absence of the employee.'

Employees may be referred to the Occupational Health Unit for advice on their sickness absence but the hearing can be progressed thus speeding up the outcome of process.

GRIEVANCE PROCEDURE

Emphasis on the informal stage

- 4.40 The new ACAS Code of Practice gives more emphasis to the informal resolution of grievances as near to the point of origin as possible. This concept has been incorporated into the revised procedure. It is more beneficial to the employee and the Line Manager if the grievance can be dealt with as close to the point of origin as possible. A process has been developed within the procedure to accommodate this aspect of grievance resolution. All grievances should be raised within three months of any incident or the final incident occurring and the informal procedure should be completed as soon as possible.
- 4.41 In these cases, the Line Manager should meet with the employee to try and resolve the grievance as soon as possible.
- 4.42 If the Manager and the employee are unable to resolve the grievance themselves, the ACAS Code suggests that mediation should be used to resolve the issues. Mediation is best suited to grievances surrounding relationships and behavioural issues, such as allegations of discrimination and bullying but it can be used for a wide range of issues. All the information discussed during a mediation session is confidential and the parties cannot raise matters discussed during mediation in any subsequent proceedings. Any agreements that are reached during mediation are binding although they are not part of a legal process. It is best practice to record any settlement in writing.
- 4.43 Mediation can be carried out in one of two ways
- By an external agency who is brought into the organisation and does not have any prior knowledge or experience of the people involved in the process.
 - By employees of the organisation who have been trained up to undertake the role of mediator.

Mediators perform a more proactive role, are completely neutral and they help identify areas of common interest but the parties themselves reach their own solutions. Initially the parties have joint sessions then adjourn to separate rooms for a private session with the mediator until a solution is reached.

- 4.44 A further analysis of all mediation options will be conducted should the new procedure arrangements be adopted.

Collective grievances

- 4.45 The ACAS Code of Practice prescribes that grievance procedures no longer have to cover collective grievances. However, an organisation has to have a process in place to deal with collective grievances.
- 4.46 To this end it has been decided to follow the same procedure for collective and individual grievances. However, for collective grievances only one or two of the group members and/or a trade union representative may represent the group of employees at any meetings. Where there have been collective grievances in the past, and all the parties to the grievance have been allowed to be present at meetings, it has been counter productive as everyone is trying to put over their point of view at the same time. When a grievance has been submitted on behalf of a number of employees, the grievance must state the names of the employees raising the grievance, their employee numbers, their post titles and their work locations.

Definition of what is a grievance

- 4.47 A section has been included in the revised procedure giving the areas defined by ACAS as to what issues could give rise to a grievance. These areas may also give rise to the grievances about the actions of a third party. This is particularly the case in terms of grievances relating to discrimination, bullying and harassment. There is a statutory definition of harassment, which has been included in the procedure but there is no such definition of bullying. However the Chartered Institute of Personnel and Development have produced a definition of bullying and that is the definition that is being used for the purposes of this procedure. A list of example behaviours, which may be classed as bullying and harassment, has been included.
- 4.48 All grievances that fall into the above definitions, including those in relation to Equal Pay, will use the provisions of the revised procedure. Any issues that are raised that do not fall into the definitions outlined in the procedure will not be progressed as a grievance unless they could give rise to a complaint of either constructive or unfair dismissal to an Employment Tribunal. Where the grievance does not fall into the definitions outlined in the procedure, the Manager should meet with the employee to discuss the grievance with the aim of resolving the issue.

Formal process

- 4.49 If grievances have not been resolved at the informal stage of the process, an employee may wish to instigate the formal grievance procedure. Once the grievance has been lodged, the employee and their representative will meet with the person hearing the grievance. After this meeting, the person hearing the grievance will make a judgement on whether they need to make further investigations into the issues raised by the employee prior to making a decision. Once these investigations are complete, the person hearing the grievance will write to the employee with their decision and advising them of their right of appeal.
- 4.50 As a result of the grievance, if there is any action required, such as a change to working practices, a change to procedure, etc, the person hearing the grievance must ensure that the appropriate action is taken within agreed timescales and a record is kept of any actions taken.
- 4.51 Some grievances may be very complex in nature and in these circumstances, the person hearing the grievance has the discretion to convene a panel to hear the grievance.
- 4.52 The procedure to follow is shown diagrammatically in an Appendix to the revised Grievance Procedure.
- 4.53 Therefore, at the first stage of the formal process there is no requirement for a formal hearing in the way that the current procedure does. This should simplify and speed up the process for dealing with grievances.
- 4.54 At the appeal stage, the Appeal Hearing will be a formal hearing and the procedure to be followed is included as an Appendix to the procedure.

Grievance forms

- 4.55 Under the previous legislation employees had to submit their grievances in writing but they did not have to raise the grievance in a formal manner. Under the new legislation employees must now submit their grievances formally and in writing. In order to facilitate this, a Grievance Form and a Grievance Appeal Form have been developed for employees to submit when raising grievances. The Grievance Form asks the employee what their satisfactory outcome to the grievance would be and asks whether it has been raised informally or not. Any documentary evidence should also be included with the form. It is hoped that this will reduce the time it takes to deal with a grievance as all the relevant information is being provided to the Manager hearing the grievance at the commencement of the process. Another benefit of asking for all this information at the start of the process is that it focuses the employee on what they want as the outcome to the process as very often this is not clear

when they raise a grievance and this can change during the grievance process which can confuse and delay the process.

- 4.56 The Grievance Appeal Form asks the employee to state what further action they are seeking and give in detail the reasons why they are not satisfied with the original decision. A copy of the original Grievance Form, the decision letter and any documentary evidence to support the appeal is requested. Again it is hoped that the provision of all the information at the commencement of the process will reduce the time that it takes Managers to deal with grievance appeals.

Representation

- 4.57 Under the current procedure, employees have the right to be accompanied by a colleague, trade union representative, spouse, friend or by a legal representative. This is out of step with, and above, the requirements of the ACAS Code of Practice. The revised Grievance Procedure has replicated the requirements of the Code of Practice and employees may be accompanied by a colleague or a trade union representative, either a lay member or a trade union official.

Post employment grievances

- 4.58 Employees have a right to raise grievances once their employment contract has come to an end so a section on Post Employment Grievances has been included in the revised procedure. The Head of Human Resources and Organisation Development will make a decision on the validity of the grievance and if it is to be progressed through the process.

Overlapping Disciplinary and Grievances

- 4.59 This has been dealt with under the above section on the Disciplinary Procedure.

MANAGING SICKNESS ABSENCE PROCEDURE

Change of Name

- 4.60 One of the first things Members will notice is that the name of the procedure has changed. This has been done to focus Managers' attention on the management of sickness absence.

Use Of The Disciplinary Procedure

- 4.61 This is a major change as action is currently taken under the current Managing Attendance Procedure. The attached Managing Attendance Procedure is cross-referenced to the Disciplinary Procedure with the processes to be followed, during the taking of formal action, being detailed in the Disciplinary Procedure with regard to hearings and appeals. Any formal warnings issued for absence related issues will be issued under the Disciplinary Procedure and the timescales that the warnings remain live will be those stated under the Disciplinary Procedure. Any appeals against disciplinary action or dismissal will be heard under the Disciplinary Procedure.

RAF Factor

- 4.62 One of the major changes to the procedure is the fact that the RAF factor will no longer be used as a trigger point for dealing with short-term absence. Feedback has shown that Managers and employees find using the RAF factor as a trigger point confusing and difficult to explain. However, trigger points for managing absences are required and new trigger points relating to the number of spells or a set number of days within a prescribed period or particular patterns of absence have been introduced.

- 4.63 It is hoped that these trigger points will be easier for everyone to understand. The action to be taken at each of the levels increases as the trigger points increase. One of the important things to bear in mind is that even though the trigger points are within specified periods of time, a Manager does not have to wait until the end of that period to take action if the trigger point is reached. In fact, if a Manager was to wait until the end of the specified period, the time for taking action has passed and the employee's record could now be outside of the trigger points.
- 4.64 There are still a number of stages to the procedure, counselling, first formal stage, final formal stage and dismissal. The employee is entitled to be accompanied at the formal stage of the procedure by the same level of representation as identified under the revised Disciplinary Procedure.
- 4.65 It is suggested that the trigger points are reviewed on an annual basis as the sickness absence levels change across the Council.
- 4.66 The trigger points for part time employees will be pro rata'd according to the number of hours/days per week that they are contracted to work.

Reports

- 4.67 Currently Managers receive reports compiled within the Directorate Personnel Units either by a dedicated Managing Attendance Team or by the Directorate Personnel Unit employees themselves. This data is entered into an excel spreadsheet and the reports compiled on a monthly basis. This information is also entered into the Council's HR/Payroll Information system (Trent) for payment and record purposes, which means that there is a large amount of double entering occurring.
- 4.68 This double entering is very inefficient and the resources could be used more effectively. Therefore, as a result Managers will be receiving reports from the information that is entered directly into Trent. These reports will detail the employee's absences, the number of days, the dates, the reasons and the % absence for the employee and the Service Area as a whole. Work is currently being undertaken on these reports and it is hoped that these will be available shortly.
- 4.69 At the moment these reports will be made available on a monthly basis but in the future, as the technology develops, it is hoped that Managers will be able to access and enter the information themselves so that they can see their employees' records in a more timely manner.

Medical Suspension

- 4.70 At the moment if an employee has to refrain from the workplace because of the nature of their illness, even though they may actually be fit to return, the absence is counted as sickness absence against the employee's record, the Service Area's record and for the Council as a whole. For example a Catering Assistant who presents with the symptoms of a stomach bug is not allowed, under Food Hygiene Regulations, to return to the workplace until 48 hours after the symptoms have subsided even though they are technically fit for work. These additional two days are added to the employee's sickness record. There are numerous other examples across Directorates where employees are asked to refrain from attending work and these additional days are being added to sickness absence records.
- 4.71 It is now proposed that these periods of time when employees are asked to/or have to refrain from work are to be classed as medical suspension and as such do not count towards the employee's sickness record, the Service Area's sickness levels or the overall level for the Council. Therefore counting these days, as medical suspension should reduce the levels of sickness absence across Directorates. It may also be possible in certain circumstances to arrange for employees to return to the workplace to undertake different duties to the norm.

However, this will depend on the nature of the employee's job and skills.

- 4.72 In terms of payment, most employees are currently paid for the absence under the occupational sick pay scheme so there will be no reduction in terms of cost. The benefit will come in reduced overall levels of sickness to meet targets, a reduction in the bad press that the Council receives because of high levels of sickness and the motivational effect that it will have on employees when they realise that their own sickness absence levels are not being increased.

Reporting And Notification Procedures

- 4.73 It is not proposed to change the current reporting and notification procedures although it is suggested that if an employee does not comply with the correct reporting and notification procedures a deduction from salary will be made as they will be deemed to be absent from work without pay.
- 4.74 Notification of an absence by e-mail or text will be acceptable as long as the employee leaves a contact number of the Manager to ring the employee back.
- 4.75 In terms of completing the paperwork for the notification of absences, if the paperwork is not received by the time that the payroll is run for a particular month a deduction from salary will be made. If the paperwork is provided at a later date, and it covers the relevant period, the pay will be reinstated in the next pay period. Currently no deduction from pay is made when the procedures are not followed. If an employee persistently fails to follow the procedure, the Disciplinary Procedure may be invoked.

Paperwork

- 4.76 Much of the feedback that has been received has been about the paperwork that is required for notification of absences and sick pay purposes. As a result of this we have combined the self-certificate and the Return to Work Interview form to reduce the number of forms employees and Managers are required to complete, it will also add to the Council's sustainability agenda. It is hoped that these can be made available electronically although they will need to be printed off so that both the employee and the Manager can sign them. Work will be undertaken with IT, Communication and Property Services to achieve this.
- 4.77 To ensure that the forms reach the Employee Service Centre in a timely manner, wherever possible, the documents should be scanned into the system and sent via e-mail to the Payroll section. Where it is not possible to use scanning technology, the forms will need to be sent to the Payroll Section by the traditional methods.

Return To Work Interviews

- 4.78 Return to Work interviews are to remain and increase in importance. Research has shown that they are the most effective tool in managing absence.
- 4.79 It is quite often during the Return to Work interview that employees are able to share any concerns that they have about their sickness absence record or their workplace with the Manager. This is valuable in not only reducing sickness absence levels but also helping to motivate and support an employee who may have issues which are preventing them operating effectively.
- 4.80 Ideally Return to Work Interviews should be undertaken on the day that the employee returns to work but it is accepted that this is not always possible. Where the interview is not carried out on the day of return it should be undertaken as soon as possible afterwards.

Long Term Sickness Absence Procedure

- 4.81 A large number of the 96000 days lost to sickness absence in 2008/9 were as a result of long-term absences. The new procedure sets down guidelines as to when action should be taken during an employee's absence, starting as soon as the Manager receives the first medical certificate through to what they must do after an employee has been absent for a period in excess of 26 weeks.
- 4.82 It is proposed that no employee should be still absent for a period of more than twelve months where there is no foreseeable date of return. If the employee's Doctor/Specialist and/or Occupational Health are unable to give a date of return or a date of return within a reasonable period of time, the employee's contract of employment should be terminated. The employee will be given their contractual notice so that their employment ends when they have been absent for a period of twelve months.
- 4.83 Prior to any decision being taken to terminate an employee's contract of employment, the Manager must have received medical reports from Occupational Health and the employee's GP or Consultant, if appropriate. No decision to terminate will be taken until the Manager has all the medical evidence available. Managers must remember that the decision to terminate an employee's contract of employment, if the employee is not being dismissed on the grounds of ill health, is theirs and they must do so on all the evidence available to them.
- 4.84 If an employee is to have their contract of employment terminated by the time that they have been absent for a period of twelve months, it is vital that the Manager starts the process within the timescales laid down in the revised procedure.
- 4.85 If an employee's prognosis indicates that they will return to work, Managers must review this information to determine whether they can sustain the absence and plan a programme for a return to work or terminate the employee's contract of employment.
- 4.86 Feedback that has been received has indicated that employees who have been absent for a period of four weeks are expecting a phased return to work irrespective of the reason for absence. There are a number of cases where a phased return would not be appropriate, as the absence would not warrant it. Phased returns will be for a maximum of four weeks, when deemed appropriate by Occupational Health. In exceptional circumstances a phased return may extend past four weeks. For any period of phased return after the initial four week period, any short fall in hours must be made up out of the employee's annual leave entitlement. Employees will receive their normal basic pay during the period of the return to work plan. However, this would not be appropriate for teaching employees because they do not receive an annual leave entitlement. Therefore, any phased return for a teacher should not extend past four weeks.
- 4.87 When an employee is referred to the Council's Occupational Health Unit, it is proposed that they will be asked to grant permission for access to their medical records at the same time as the referral. Occupational Health will not require the medical records on each occasion, or necessarily at this stage of the process but the permission will be obtained in case this should be required. This should speed the process of obtaining the records up, as there will be no need to go back to the employee and ask for the permission separately. (Further discussions on this are underway.)
- 4.88 The Council's Occupational Health Unit is changing its focus and will become more nurse led. This means that employees will be triaged and an Occupational Health Doctor may not see them but one of the Occupational Health qualified nurses. This will speed up the wait for appointments thus reducing the length of time it takes for an employee to be seen by the Occupational Health Doctor. The Council is now also offering a physiotherapy service for employees with musco-skeletal disorders, which is hoped, will reduce the number of employees that the Occupational Health Doctor is required to see. When this service was piloted last year, the feedback obtained was very positive on the treatment that was received

and the corresponding reduction in waiting times to see the Occupational Health Doctor.

Monitoring Of The Procedure

- 4.89 As referred to earlier, Elected Members are very aware of the rising levels of sickness absence within the Council. As a result it has been agreed to introduce target sickness levels for the Council as a whole and for individual Service Areas. These targets will take the form of either a reduction of days sickness or a % reduction for the financial year. The targets will be reviewed annually based on the sickness absence levels within Service Areas.
- 4.90 CMT will set the targets during the annual budget setting process and every Manager will have a sickness target included in their PDR targets for the financial year. Progress towards these targets will be monitored at the regular Supervision sessions held between Managers and their employees, from the top of the structure down.
- 4.91 To ensure that the Managing Attendance Procedure is being fully implemented and is effective in managing and reducing sickness absence, a quarterly review will be held by Directors with their Heads of Service. At this meeting the Heads of Service will detail to the Director the level of sickness absence within their Service Area, the number of employees who are above a defined level of sickness absence, the number of employees on long-term sickness absence and the actions that have been taken to manage the case and the Service Area's progress towards their target sickness absence level.
- 4.92 Regular reports on sickness absence levels will be provided to the relevant Scrutiny Committee. These will look at the number of days lost, the number of employees who have no sickness absence, the number of employees on long-term sickness absence and identify any actions that have been taken to manage the absences.
- 4.93 It is suggested that an annual review of the trigger points is held to ensure that they have been set at the right levels.
- 4.94 Many of the other features of the current procedure have also been maintained, especially in areas such as the miscellaneous provisions, industrial injury, third party claims, playing of professional sport, etc. The Council is also developing a new policy in relation to annual leave and sickness in the light of recent legislative changes. These will be integrated into the procedure once the policy is complete.
- 4.95 In order to support the introduction of the new procedure, as stated above, training courses in both the procedure, but more importantly the skills to manage sickness absence situations is being developed and will be delivered to Managers as soon as the new procedure has been agreed.

Summary

- 4.96 The current Disciplinary, Grievance and Managing Attendance Procedures have attracted a large amount of criticism from Managers, trade union representatives and employees because of the complicated way in which they have been written and applied. This has led to an inconsistent approach across the Council. It is intended that the revised procedures will simplify the process for everyone involved and allow Officers to apply the procedures in a more consistent, effective manner which will be to the benefit of everyone involved in these processes.
- 4.97 It is intended that the Disciplinary, Grievance and Managing Sickness Absence Procedures become effective on 1st April 2010. The training process will commence as soon as approval has been granted in early 2010.
- 4.98 In addition to the consultation mentioned above with the trade unions and Equality Groups, consultation has also taken place with each of the individual Directorate Management Teams

on all the revised procedures.

5. FINANCIAL IMPLICATIONS

- 5.1 There are financial implications in terms of the time that will be required to brief employees on the changes between the current and revised procedures.
- 5.2 In addition there are financial implications in terms of the provision of mediation under the revised Grievance Procedure. These will be either in terms of the training required for our current employees or the provision of an external mediator.
- 5.3 However, it is envisaged that the costs mentioned in 5.1 and 5.2 will be offset by the streamlining of the process thus reducing the length of time that is spent by Officers across the Council dealing with disciplinary and grievance matters.
- 5.4 As the revised Disciplinary Procedure is also to be used to manage short term sickness absence cases in a more stream lined manner, it is envisaged that once again Officer time will be reduced in dealing with these cases and with more stringent and streamlined management of absences there is potential for a corresponding reduction in the number of days sickness absence taken by employees.

6. PERSONNEL IMPLICATIONS

- 6.1 There are Personnel implications for the training of Officers in the revised procedures but also the introduction of mediation. This will be offset by a reduction in the time spent on dealing with disciplinary, grievance and managing sickness absence cases.

7. CONSULTATIONS

Corporate Management Team
Head of Human Resources and Organisation Development
Head of Legal Services and the Council's Monitoring Officer
Directorate Management Teams
Council's recognised trade unions
Council's Equality Groups
Employees

8. RECOMMENDATIONS

- 8.1 The comments of Members are sought on the proposed procedures prior to the report being presented Cabinet for approval.

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 The new procedures
- Take account of recent legislative changes, which must be implemented by the Council.
 - Take on board operational issues that have been highlighted as being problematic in the current procedures.
 - Take into account feedback from Employment Tribunal cases that have been lodged against the Council.
 - Streamline the processes to be used thus reducing the amount of time spent on dealing with discipline and grievance issues across the Council.

- o Focus all employees' attention on the management of sickness absence, which must be undertaken in a consistent manner across all Directorates.

All of which reduce the risk that the Council faces in terms of litigation from employees.

- 9.2 Officer time will be reduced when dealing with discipline, grievance and managing sickness absence cases, which allows for a more effective use of the Council's resources.
- 9.3 A more structured approach to the management of sickness absence should also reduce the sickness absence levels amongst employees, which will also result in a more effective use of resources.

10. STATUTORY POWER

- 10.1 Local Government Act 1972
Local Government Act 2000
Employment Act 2008

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Consultees: Corporate Management Team
Head of Human Resources and Organisation Development
Head of Legal Services and the Council's Monitoring Officer
Directorate Management Teams
Council's recognised trade unions
Council's Equality Groups
Employees

Background Papers:

ACAS Code of Practice on Discipline and Grievance
ACAS Guidance on the Code of Practice
Caerphilly County Borough Council Disciplinary Procedure
Caerphilly County Borough Council Grievance Procedure
Caerphilly County Borough Managing Attendance Procedure
Local Government Employers' Employment Relations Advisory Bulletin Number 548 – February 2009
Various law bulletin updates and professional journals

Appendices:

Appendix 1 Draft Disciplinary Procedure
Appendix 2 Draft Grievance Procedure
Appendix 3 Draft Managing Sickness Absence Procedure