

WEST DUNBARTONSHIRE COUNCIL

Report by Director of Corporate Services

Corporate and Efficient Governance Committee – 26 May 2010

Subject: Discipline, Grievance, Performance Management and Dignity at Work Policies and Procedures

1. Purpose

- 1.1 To seek approval from Committee for the implementation of the revised Discipline, Grievance and Dignity at Work Policies and Procedures. These documents have been reviewed and updated as appropriate to ensure compliance with the ACAS Code of Practice 1 - Discipline and Grievance which came into effect on 6 April 2009.
- 1.2 To further update Committee on progress on the development and introduction of a new Performance Management Policy and Procedure.

2. Background

- 2.1 The three-step statutory dismissal and grievance procedures, brought in under the Employment Act 2002 (Dispute Resolution) Regulations 2004, were repealed on 6 April 2009.
- 2.2 The Employment Act 2008 has replaced statutory dismissal, discipline and grievance regulations with a new ACAS Code of Practice on handling discipline and grievance. Although the Code is not legally binding an employment tribunal may take employers' and employees' adherence to the ACAS Code into account when considering cases, and can increase or decrease any award by up to 25% for an "unreasonable failure" to comply.
- 2.3 Unlike the previous statutory procedures the new Code does not cover redundancy, or the non-renewal of fixed-term contracts. Best practice is for an employer to have a clear process for such dismissals and the Council has such processes in place.

3. Main Issues

- 3.1 In light of the legislative changes, the Council's existing Discipline and Grievance Procedures have been reviewed to incorporate the changes in legislation and ACAS guidance. Consultation on the documents has taken place with departmental HR Officers, a number of managers and trades union representatives to seek views and feedback on proposed changes.

- 3.2** Concerns raised by the trades unions with regard to the current Dignity at Work Procedure have also been considered as part of the review exercise.
- 3.3** Consultation was carried out with the trades unions through a number of meetings and issues raised were fully considered. Agreement was not reached on the draft Performance Management Policy or the interim implementation of this Policy with monitoring of use being maintained over the first 12 months.
- 3.4** The ACAS Code has a number of key principles which require to be included in procedures such as:
- There is an onus on both the employer and the employee to raise and deal with issues promptly. Meetings, decisions or confirmation of decisions should not be unreasonably delayed.
 - Employers should act consistently when dealing with disciplinary or grievance issues and ensure fairness and treat such matters with confidentiality.
 - Necessary investigations should be carried out to establish the facts of cases.
 - Employees should have the opportunity to put their case before any decision is made.
 - Employees should have the right to be accompanied at any formal meeting.
 - Employees should have the right to appeal against any formal decision made.
 - Mediation should be considered, at any stage, if appropriate. ACAS views mediation as a successful tool to resolving issues within the workplace and mediation is the process *“by which an impartial third party helps people in dispute to find a mutually acceptable solution”*.
- 3.5** Critical and key to compliance with the ACAS Code is for matters to be dealt with promptly and without unreasonable delay. This will require Managers and Appeals Panels to deal with issues more expeditiously than in the past. Clear timescales have been built into the procedures to ensure that the ACAS Code is complied with.

Disciplinary Policy and Procedure

- 3.6** The Disciplinary Policy and Procedure have been revised to reflect the key principles of the ACAS Code of Practice and includes both an informal and formal process. Mediation is now included within the procedures, as there may be circumstances where it would be useful to prevent escalation of the procedure. Mediation will be provided by internal trained Mediators.
- 3.7** The procedure incorporates an informal stage for dealing with disciplinary issues, if appropriate, before progressing through the 4 formal stages:-

- Stage 1 – verbal warning
- Stage 2 – 1st written warning
- Stage 3 – final warning
- Stage 4 - dismissal

- 3.8** An important part of the disciplinary procedure is to ensure that where necessary an investigation is undertaken, and this should be thorough, objective, carried out promptly and confined to establishing the facts of the case and clarity on this area has been incorporated into the procedure.
- 3.9** To ensure that the disciplinary process is managed at an appropriate level a Scheme of Delegation has been developed and incorporated into the Policy as an Appendix.

Grievance Policy and Procedure

- 3.10** The current Grievance Procedure has been revised to reflect the key principles of the ACAS Code of Practice and includes both an informal and formal process for dealing with grievance matters. It is widely accepted that mediation is a particularly beneficial tool in resolving grievances and this has now been incorporated into the procedure.
- 3.11** The procedure provides employees with an opportunity to raise the matter on an informal basis and if not satisfied at that stage, or where they feel the informal approach would not be appropriate, the opportunity to move to the formal stage. The Scheme of Delegation outlines the level of authority to take action.
- 3.12** The revised Policy and Procedure has provided more robustness to the formal stages which are as follows:-
- Stage 1 - dealt with by appropriate Senior Officer
 - Stage 2 - dealt with at Manager level
 - Stage 3 - dealt with by Appeal Committee

This has provided a further opportunity for the matter to be dealt with at a formal departmental level before progressing to the Appeals Committee.

- 3.13** ACAS stress the importance of matters being dealt with promptly and without unreasonable delay. ACAS recommends that meetings should normally be held within **5** working days. There is therefore a clear responsibility on Managers to ensure that hearings are arranged within established timescales and not unnecessarily delayed to ensure that we are complying with the Code of Practice.

Dignity at Work

- 3.14** Many employees continue to use the Grievance Procedure when raising issues relating to dignity at work concerns rather than through the Dignity at Work Policy. A full review of this Policy will be undertaken in the future, however in the interim trades unions have sought agreement for two changes to the current process:-
- To provide further clarity within the policy that an employee can go immediately to the formal process and omit the informal process
 - Appeals would be heard by the Appeals Committee as in line with the grievance procedure.
- 3.15** These changes were considered to be reasonable and it is proposed that these revisions be made to the Dignity at Work Policy prior to a full review.

Performance Management

- 3.16** Prior to the development of the new Policy and Procedure, issues of poor performance could only be dealt with, if serious enough, under the Disciplinary Policy. Discipline deals with issues of “conduct” and the Disciplinary Policy should not be used for issues of capability/poor performance.
- 3.17** Performance management is about placing the emphasis on managing, supporting and developing employees at all levels within the organisation. An integral part of this is the need to monitor performance, recognise good performance and challenge poor performance.
- 3.18** Poor performance may be due to a number of factors which are wide ranging i.e. unclear objectives, lack of training or support for the individual: to inability to undertake the role. The Performance Management Policy and Procedure has been developed to provide a supportive framework for dealing with performance issues, identifying action plans and improvements sought and clear timescales for improvement.
- 3.19** The stages of the Performance Management Procedure mirror those of the Disciplinary Procedure but improvement is required through a series of “Improvement Notes”. The performance issue can be dealt with on process and can be dealt with on an informal or formal basis. The stages within the formal process are:-
- Stage 1 - 1st improvement note (action plan and timescale for improvement)
 - Stage 2 - 2nd improvement note (action plan and timescale for improvement)
 - Stage 3 - final improvement note

- Stage 4 - dismissal

3.20 The trades unions have indicated that they have concerns regarding the implementation of a capability (performance management) policy, without there being a robust personal development framework in place. It has therefore been agreed that the draft Performance Management Policy will be held back pending the introduction of a council wide performance management framework. In this interim period issues of poor performance will continue to be dealt with through the disciplinary procedure.

Training

- 3.21** Joint training for Managers on the new and revised policies and procedures will be undertaken by HR staff and trades unions and it is anticipated this will be rolled out from July 2010.
- 3.22** Proper investigations are a requirement of the process and it has been identified that there are a lack of trained investigators within Departments. Currently there are a number of HR Officers trained to undertake investigations, and very few trained management representatives. Going forward there will be a case management section within HR&OD and these officers will have a remit of supporting managers through the discipline and grievance process. There would therefore be a conflict for case management officers undertaking investigations and there will be a requirement for Departments to identify a number of key officers with the necessary skills who can be trained to undertake fair, objective and thorough investigations.

People Implications

- 4.1** It is a contractual requirement that employees are aware of the discipline and grievance process. The changes to the procedures will be communicated to managers and employees via the Core Brief, the intranet and the Westlife magazine. In addition managers will be invited to attend training as outlined above.

5. Financial Implications

- 5.1** Where the issue is escalated to an employment tribunal, the procedure followed will be taken into consideration, and if deemed to be unfair or failure to reasonably comply with the ACAS Code of Practice this can result in an additional award of up to 25% to the individual.

6. Risk Analysis

- 6.1** There is a risk to the Council that if timescales are not adhered to and discipline and grievance matters are not dealt with promptly there will be a breach of our own policy and procedures and ACAS recommendations.

7. Equalities Impact

- 7.1** An Equalities Impact Assessment has been undertaken on the revised Policies and Procedures and there is no evidence of disproportionate application of the policies to any equalities group.
- 7.2** The Policies are monitored by equality category and this allows any emerging patterns to be identified and appropriate action taken. As with all HR policies and functions these have been designed to operate in a fair and open manner.

8. Conclusions & Recommendations

- 8.1** A review of the Council's Policies and Procedures for dealing with issues of conduct, capability and grievance were necessary to ensure compliance with legislative changes and the ACAS Code of Practice.
- 8.2** Matters of poor performance were previously dealt with through the disciplinary process and ACAS recommend a separate procedure for dealing with these matters, providing a clear support framework. However, at this time the trades unions have concerns about the introduction of this Policy without a supporting performance management framework being in place.
- 8.3** It is recognised that a fair, objective and thorough investigation is a key element of the disciplinary and grievance procedures and there is a requirement for a number of departmental officers to be trained to undertake investigations in support of the process. Department Directors will be asked to identify a number of key officers who will be trained to be departmental investigators.
- 8.4** Committee is asked to approve:
- (a) The revised Discipline and Grievance Policies and Procedures
 - (b) Revisions to the Dignity at Work Policy

Committee is further asked to note:

- (c) joint training will be developed and delivered to Managers through HR and trades unions.

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Appendices: Appendix 1 – Revised Dignity at Work Policy
Appendix 2 – Draft Disciplinary Policy and Procedure
Appendix 3 – Draft Grievance Policy and Procedure

Background Papers: ACAS Code of Practice 1 – Discipline and Grievance (6 April 2009)
Impact Assessment - Summary Report Proformas

Wards Affected: N/A