

ABERDEEN CITY COUNCIL

COMMITTEE	Staff Governance
DATE	7 June 2021
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Managing Discipline Policy
REPORT NUMBER	RES/21/112
DIRECTOR	Steven Whyte – Director of Resources
CHIEF OFFICER	Isla Newcombe – Chief Officer – People and Organisational Development
REPORT AUTHOR	Kirsten Foley – Employee Relations and Wellbeing Manager
TERMS OF REFERENCE	2.5

1. PURPOSE OF REPORT

- 1.1 To seek approval of the revised Managing Discipline policy.

2. RECOMMENDATIONS

That Committee:-

- 2.1 approves the revised Managing Discipline Policy, attached as Appendix 1 to this report;
- 2.2 agrees that implementation of the revised policy will be delayed until such time as the revised Managing Grievances and Dignity and Respect at Work policies are agreed (the intention being that these policies are presented to Staff Governance Committee in September 2021 for approval);
- 2.3 notes the appended guidance document which supports the application of the policy; and
- 2.4 notes that a generic investigations procedure is being developed to cover all three policies.

3. BACKGROUND

- 3.1 As an employer, the Council seeks to promote and embed a positive workplace culture in which every member of staff feels valued, is empowered to meet their full potential and in which all individual circumstances and characteristics are respected and supported.
- 3.2 This culture is embedded in the Guiding Principles, Code of Conduct and Job Profiles of all staff, and all staff should be supported to meet required standards at all times.
- 3.3 It is recognised that on occasion some employees will not meet the standards expected of them; in such circumstances it is essential that a policy is in place

through which they can be encouraged and supported, as appropriate, to make any required improvements to their conduct.

- 3.4 The Managing Discipline policy provides a framework within which managers are supported to make a determination regarding any concerns raised about the conduct of an employee, and employees whose conduct has fallen short of the expected standards can learn from this and be supported to achieve these standards in future.
- 3.5 Issues will be dealt with at the earliest opportunity and wherever possible this will be through the provision of informal support.

4. Aims of the Review

- 4.1 The review of the Managing Discipline Policy is the first step in the review of the three policies that sit at the heart of employee relations processes within the Council, namely Managing Discipline, Managing Grievances and Managing Bullying and Harassment at Work.
- 4.2 Traditionally policies such as Discipline, Grievance and Bullying and Harassment have been viewed as punitive processes; the true aim of such policies, however, is to empower and support employees to comply with the cultural norms of the organisation as set out in the Guiding Principles and the expectations set out in the Code of Conduct and job profiles of staff.
- 4.3 Following feedback from an initial staff survey and focus groups (including employees, Trade Unions and managers, a number of key areas of improvement were identified. In relation to the Managing Discipline policy, these key improvements centred around the investigation process, increasing the use of informal processes wherever appropriate and highlighting the support available to employees involved with this policy. The review aimed to address these issues and ensure that the policy continues to comply with the requirements of the ACAS Code of Practice.
- 4.4 An additional key aim of the review was to ensure that a collaborative approach was taken throughout, seeking and addressing feedback from all stakeholders including unions, employees and managers.

5 Approach

- 5.1 A policy review group was set up in People and Organisational Development to progress the work on the revised policy, with the approach being to balance feedback from various stakeholders, working in a collaborative manner.
- 5.2 An employee survey was run to gather views on the operation of the current policy and on any proposed changes. Benchmarking was undertaken with other organisations to compare the content of their policies with the Council's.
- 5.3 Focus groups were also organised with managers, employees, and trade unions to obtain views on the operation of the current policy and what changes might be required to improve it.

- 5.4 A check was also made in relation to any legal issues to ensure that the revised policy was legislatively compliant. The ACAS Code of practice on disciplinary procedures and the accompanying guide on discipline at work were also referred to ensure that the policy continued to align with these.
- 5.5 Following the research phase, the information gathered was collated and evaluated.
- 5.6 A wide range of further engagement on the draft documents was undertaken including:
- 3 additional consultation events with the trade unions
 - officer attendance at all 13 Service Management Team meetings to gather feedback on the draft documents
 - further engagement with the teams within Legal and People and Organisational Development
 - feedback gathered from CMT.

6 Emerging Themes

- 6.1 In addition to the key issues identified and set out in paragraph 4.3 above, other suggestions put forward were:
- a. reviewing the level of management involved in the various stages of the process in order to widen the pool of managers available to undertake the various stages and thus ensure that a larger number of employees are supported to gain the transferable skills that are developed through undertaking such tasks whilst sharing the workload among a wider group of staff;
 - b. considering a generic investigations process to avoid situations that have arisen in the past whereby a complicated case can result in a number of investigations being undertaken under different policies at the same time;
 - c. considering what role mediation could play in the process, thus avoiding the need for formal processes to be invoked
 - d. making more use of aids such as flow charts, which visual learners in particular find more user friendly when navigating policy and procedural documents.
- 6.2 If approval is given by Committee, the intention would be to delay implementation until the two other employee relations policies mentioned under 2.2 above have also completed the review process and implement all three policies together. The benefits of having a single implementation plan are that it will allow the application of the generic investigation process to all three policies and a single communication plan and training plan can be put in place. Appropriate communication and training will be undertaken during the period October – December 2021 to ensure that employees and managers are aware of their content and trained in the skillset required to apply them appropriately. The policy documents and guidance will also be placed on the People Anytime portal on the Intranet and cascaded throughout services via ECMT and the Leadership Forum

6.3 A separate set of guidance notes will accompany the Managing Discipline policy giving fuller details on its application, including the procedure. This document is attached for noting.

7. Changes to the policy

7.1 From the employee survey, the focus groups and engagement sessions a number of issues were identified.

The table below details the issues raised, the change made to address the issue, and whether the change is part of the policy or the accompanying guidance.

Issue raised	Change proposed	Policy or Guidance
Early intervention – manage informally on first occasion	Emphasis placed on the use of informal counselling, where appropriate and there is also a new template for keeping a record of a counselling discussion. A reflective statement template has been added for managers to use as part of an informal counselling session.	Policy and Guidance
More assistance is required on developing allegations.	A link has been added to a video for managers to refer to on 'how to form allegations'.	Guidance
Manager/TU survey - would like easy step by step guidance - more flowcharts with links would be welcomed as well as diagrams and less text.	A flow chart has been added giving an overall summary of the procedure. Visuals have also been included showing the key steps in each part of the process.	Policy and Guidance
Clarity around timescales	A section has been included summarising the timescales for each part of the procedure.	Guidance
More templates / 'How To' Guides / Checklist	Checklists have been included on carrying out a suspension, a disciplinary hearing and an appeal hearing.	Guidance

Need to recognise the impact of these processes on all involved in terms of wellbeing	A new section has been added on employee wellbeing, emphasising that the health and wellbeing of all employees involved in the process should be a priority at each stage of the procedure, and signposting to where support can be accessed	Policy and Guidance
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- 7.2 The procedural elements in the current policy have been removed from the policy document and will be put into the guidance document, so that the policy is separate and standalone in the new corporate template format. A procedural summary will be retained as an appendix to the policy.
- 7.3 Sections on manager and employee responsibilities have been added to the documents, detailing what is expected of each, as well as a section on core principles.
- 7.4 The Council's Guiding Principles have been identified as setting the expectations in relation to the cultural norm of the organisation, thus providing a point of reference for employees when undertaking self reflection on their behaviours.
- 7.5 Reference has been made in the policy to the ACAS Code of practice on disciplinary procedures.
- 7.6 Examples of what constitutes misconduct and gross misconduct have been reviewed and placed in an appendix to the policy.
- 7.7 There is an increased emphasis in the policy that no disciplinary action will be taken until there has been a full investigation to help ensure fairness for those accused of misconduct.
- 7.8 Some terminology updating was required to the policy to take account of the changes in the organisation's structure.

8. FINANCIAL IMPLICATIONS

- 8.1 There are no direct financial implications arising from the recommendations of this report.

9. LEGAL IMPLICATIONS

- 9.1 Section 3 of the Employment Rights Act 1996 requires the Council to provide employees with a note specifying any disciplinary rules applicable to them or referring them to a document specifying the rules; specifying any procedure

applicable to the taking of disciplinary decisions and dismissal or reference to a document so specifying and also specifying by description or otherwise a person to whom the worker can apply if dissatisfied with any disciplinary decision or dismissal. The Managing Discipline Policy, Procedure and Guidance will fulfil these documentary requirements.

9.2 Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 confers powers to Employment Tribunals to increase or decrease compensation awarded by up to 25% if they find that a party has unreasonably failed to follow relevant provisions of the ACAS code of practice on disciplinary procedures. By aligning this Policy and associated procedure and guidance with the ACAS code mitigates the risk of increased compensation.

10. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk	N/A	N/A	N/A
Compliance	The revised policy has been examined to ensure that it is legally compliant and aligns with the ACAS Code of practice on disciplinary procedures, which reflects good employment practice and is often referred to in employment tribunal cases. If the revised policy was not applied, then there may be a risk that the most up-to-date good practice in the ACAS Code is not reflected and this could be detrimental to the Council in an employment tribunal situation.	M	The approval and implementation of the revised policy and accompanying procedure and guidance should help to mitigate this risk as they have been checked for legal compliance and alignment to the ACAS Code.
Operational	The changes made to the policy should result in its more efficient application,	M	The approval and implementation of the revised policy and accompanying procedure

	<p>which will be a benefit to the operation of the Council, assisting with employee relations and performance levels, and helping meet customer and service requirements. If the revised policy was not applied, then these benefits may not accrue.</p>		<p>and guidance should help to mitigate this risk.</p>
Financial	<p>If the revised policy, which reflects up-to-date good practice was not applied, there is a risk that instances of misconduct are not dealt with as efficiently as possible, meaning that employment tribunal or other claims against the Council may be more likely to occur, which can be costly.</p>	M	<p>The approval and implementation of the revised policy and accompanying procedure and guidance should help to mitigate this risk.</p>
Reputational	<p>If the revised policy, which reflects up-to-date good practice, was not applied, there is a risk that instances of misconduct are not dealt with as efficiently as possible, meaning that employment tribunal or other claims against the Council may be more likely to occur, which can lead to adverse publicity for the Council and also affecting the Council's reputation as a good employer.</p>	M	<p>The approval and implementation of the revised policy and accompanying procedure and guidance should help to mitigate this risk.</p>

Environment / Climate	N/A	N/A	N/A

11. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
Impact of Report	
Aberdeen City Council Policy Statement	N/A
Aberdeen City Local Outcome Improvement Plan	
Prosperous Economy Stretch Outcomes	The Prosperous Economy theme in the LOIP makes mention of the importance of retaining talent and expertise in City organisations. This would include the Council. Having this revised policy in place should assist with employee relations in the organisation and with the retention of trained and valued employees. This would mean that they can continue in post and contribute to delivering effective services to citizens and businesses, indirectly contributing to the City's economy.
Prosperous People Stretch Outcomes	The Prosperous People theme in the LOIP indicates that all people in the City are entitled to feel safe, protected from harm and supported where necessary, which would include employees of the Council. Having this revised policy in place should assist with employee relations in the organisation, ensuring that conduct issues are efficiently addressed and that employees are supported when undergoing the procedure. This should indirectly assist with employee mental health and wellbeing allowing them to function both in employment and at home.
Prosperous Place Stretch Outcomes	N/A
Regional and City Strategies	N/A
UK and Scottish Legislative and Policy Programmes	N/A

12. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	Full impact assessment required – an Integrated Impact Assessment has been compiled in respect of the revised policy and no negative impacts have been identified.
Data Protection Impact Assessment	Not required.

13. BACKGROUND PAPERS

ACAS Code of practice on disciplinary procedures and the Managing Discipline Procedure and Guidance are appended to provide further clarity and for noting.

14. APPENDICES

Appendix 1 - Managing Discipline policy

Appendix 2 – Managing Discipline Procedure and Guidance

Appendix 3 – ACAS Code of Practice on Disciplinary Procedures

15. REPORT AUTHOR CONTACT DETAILS

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