

## ABERDEEN CITY COUNCIL

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COMMITTEE	Council
DATE	5 March 2018
REPORT TITLE	Equality figures – progress on actions
REPORT NUMBER	CG/18/026
DIRECTOR	Morven Spalding
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### **1. PURPOSE OF REPORT:-**

- 1.1 At the Council meeting of 11 October 2017, the Interim Head of Human Resources was requested to report back to Council in approximately 6 months in terms of progress with identified actions from that meeting in relation to report CG/17/115 on 'Equality figures – response to questions'. This report provides the required details.

### **2. RECOMMENDATION(S)**

- 2.1 It is recommended that Council notes the progress with the identified actions from the Council meeting of 11 October 2017.

### **3. BACKGROUND/MAIN ISSUES**

- 3.1 At the Council meeting of 11 October 2017, the Interim Head of Human Resources was requested to report back to Council in approximately 6 months in terms of progress with four identified actions from that meeting in relation to report CG/17/115 on 'Equality figures – response to questions'.

- 3.2 The four identified actions were as follows:-

- to note that the Chief Executive would look at the disciplinary cases involved;
- to note that the Interim Director of Communities, Housing and Infrastructure would work with the Interim Head of Human Resources to address any specific issues relating to the Directorate;

- to note that the Head of Legal and Democratic Services would work with the Interim Head of Human Resources to carry out a review of the relevant policies and procedures to ensure that they complied with the Council's obligations in terms of legislation with particular reference to equalities legislation;
  - to request the Interim Head of Human Resources to investigate whether equivalent data was available from other local authorities on a national basis for comparative purposes;
- 3.3 To recap, the report which was presented to members on 11 October 2017 highlighted that 14 employees with a disability had been subject to the disciplinary procedure in 2016 out of 148 disciplinary cases in total (which is 9.5% of cases). This compares to a figure of 2.9% of disabled employees in the workforce.
- 3.4 Action 1 – Review of Chief Executive
- 3.4.1 With regard to the first action above, the Chief Executive arranged for a review of the cases. From the review undertaken there was no evidence found which suggested that dealing with the types of alleged misconduct through the disciplinary process was inappropriate, with the subject of the cases concerning issues such as health and safety infringements, unauthorised absences and abusive behaviour. It was indicated to Council that 10 of the 14 cases related to employees within the Communities, Housing and Infrastructure (CH&I) Directorate.
- 3.4.2 In looking into these cases in more detail it was found that:
- In 9 of these 10 cases, no reference was made to an individual's disability during the disciplinary process.
  - In the case where reference was made to a disability there was mention of reasonable adjustments in the process and mitigation in relation to the allegations.
  - In 4 of the 10 cases there was no disciplinary hearing with matters dealt with through counselling or no sanction.
  - A further case had no sanction.
  - 2 of the 10 cases involved a group breach of procedure and the disciplinary action had applied to the whole group.

No equality issues were identified from the review in respect of these cases.

### 3.5 Action 2 – Addressing Specific Issue

- 3.5.1 With regard to the second action above, in light of the fact that no evidence was found of any unfair practice having been applied in relation to the discipline cases involving employees with a disability in CH&I there was not a need for the Interim Director of Communities, Housing and Infrastructure to work with the Interim Head of Human Resources to address any specific issues relating to the Directorate.

- 3.5.2 However, the HR Business Partner for Communities, Housing and Infrastructure still proceeded to liaise with the Interim Director of Communities, Housing and Infrastructure to discuss whether there were any other equality related measures that could be applied in relation to disabled employees, to try to prevent or limit them being subject to the disciplinary procedure in the future.
- 3.5.3 In this regard, the Directorate have indicated that they will contact the Organisational Development section in HR to discuss the need for equality related training options for managers and employees.

### 3.6 Action 3 – Review of Relevant Policies

- 3.6.1 In respect of the third action above, the Interim Head of Human Resources asked the Head of Legal and Democratic Services to carry out a review of relevant Council policies and guidance, to ensure that they were legislatively compliant, in particular in relation to equalities legislation. The relevant policies/guidance reviewed were the 'Diversity and Equality policy', the 'Disability in the Workplace guidance' and the 'Managing Discipline policy and procedure'.
- 3.6.2 Following review of the three documents Legal Services confirmed that they were legislatively compliant.
- 3.6.3 The policies/guidance accord with the Equality Act and the nine protected characteristics specified in the Act, one of which is disability.

The Council's policies/guidance endeavour to:

1. Eliminate unlawful discrimination
2. Advance equality of opportunity between people who share a protected characteristic and those who don't; and
3. Foster or encourage good relations between people who share a protected characteristic and those who don't

- 3.6.4 The Council as an equal opportunities employer aims to apply any action that ought to be taken to meet the needs of employees who have a disability. When working with employees who have a disability the cases will differ and the way the Council carries out its duties to that employee may well vary as a result. What constitutes a disability can be variable and difficult to define. The Council is mindful that a reasonable adjustment may be necessary. The focus is very much on the employee's ability to function on a day-to-day basis rather than on medical diagnosis and what can be done to allow the employee to achieve this. Reasonable adjustments are made with the employee's involvement.
- 3.6.5 In each individual case due regard is had to removing or reducing disadvantages suffered by people because of a disability and to meeting their needs. The policies set out the steps as to how they are to be applied within the Council. However, more significantly it is the manner in which policy is carried out in practice that is of fundamental importance. When making decisions, as set out in section 3.4.1 above, managers require to observe

statutory equality duties, to prevent individuals with a protected characteristic being subject to unfair treatment or discrimination, and promote equal opportunities and fair treatment for all employees. Various equality related training is available for managers in the Council to help ensure compliance with these responsibilities including a computer based on-line module, an equality and diversity 'Pit Stop' session comprising scenarios covering discrimination and harassment, and a 'Pit Stop' session on the subject of 'unconscious bias'.

3.6.6 With particular regard to cases involving an employee with a disability, often a referral is made to Occupational Health or reasonable adjustments made in the first instance before cases proceed to disciplinary action. Furthermore, advice is sought from Human Resources and Legal Services, as required. Again, these steps help to ensure that the Council is complying with its equality duties.

3.6.7 It should be noted that an update is currently being made to the 'Disability in the Workplace guidance' to reflect the fact that the Council has recently met the criteria for the DWP's 'Disability Confident Employer' accreditation. The accreditation recognises the application of good employment practices in relation to disabled staff and provides evidence that the Council's managers are aware of their statutory duties.

### 3.7 Action 4 – Equivalent Data

3.7.1 With regard to the fourth action above, the Interim Head of HR was requested to investigate whether equivalent data was available from other local authorities on a national basis for comparative purposes.

3.7.2 Efforts were made to undertake benchmarking, with other local authorities contacted and Equality Mainstreaming Reports referred to and some figures were identified. The response rate to the written request was low and of those authorities who did reply there was an inconsistent picture identified in relation to what was being included in their figures; whether all those investigated under their procedure or only those who received a disciplinary sanction (e.g. a warning).

3.7.3 As the basis of compiling the data appears to be inconsistent between authorities, it is not considered valid to compare the percentage figures of other authorities with the Council's figure, and it is concluded that only the Council's year on year figures should be used for comparative purposes.

3.8 The four actions Council asked to be undertaken have therefore been completed with the findings contained in this report. Another measure that will be taken in response to member concerns raised at the Council meeting of 11 October 2017 will be the insertion of an appropriately worded paragraph in the guidance notes accompanying the disciplinary procedure giving advice to managers on what to take into account where an employee with a disability is being considered under the disciplinary procedure where their disability may have contributed towards the alleged misconduct. When the amended version of the guidance is implemented this will be appropriately communicated around the organisation including to all managers.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications arising from the recommendation in this report.

#### **5. LEGAL IMPLICATIONS**

- 5.1 The legal implications are contained within the body of this report.

#### **6. MANAGEMENT OF RISK**

##### **6.1 Financial**

Financial risk has been considered and there is no risk identified.

##### **6.2 Employee**

The investigations outlined in the report relating to the four actions indicate that the Council's disciplinary policies and practices relating to employees with disabilities are low risk.

##### **6.3 Customer / citizen**

Customer risk has been considered and there is no risk identified.

##### **6.4 Environmental**

Environmental risk has been considered and there is no risk identified.

##### **6.5 Technological**

Technological risk has been considered and there is no risk identified.

##### **6.6 Legal**

Legal risk has been considered and there is no risk identified.

##### **6.7 Reputational**

Reputational risk has been considered and there is no risk identified.

#### **7. IMPACT SECTION**

##### **7.1 Economy**

There are no identified Economic impacts associated with this report.

##### **7.2 People**

There are no identified People impacts associated with this report.

### 7.3 **Place**

There are no identified Place impacts associated with this report.

### 7.4 **Technology**

There are no identified Technology impacts associated with this report.

## 8. **BACKGROUND PAPERS**

There were no background papers referred to in the preparation of this report.

## 9. **APPENDICES**

There are no appendices associated with this report.

## 10. **REPORT AUTHOR DETAILS**

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