

Report to Employment Panel

Agenda
Item:

A.2

Meeting Date: 1st October 2015
Portfolio: Finance, Governance and Resources
Key Decision: No
Within Policy and Budget Framework YES
Public / Private Public

Title: REVIEW OF HR POLICIES – GRIEVANCE POLICY
Report of: Director of Resources
Report Number: RD28/15

Purpose / Summary:

A number of HR policies are currently under review in the light of minor legislative changes, best practice, management roles and contacts within the Council. Some HR Policies currently under review require only minor changes and amendments, which may or may not require approval by the Employment Panel.

The Grievance policy is the next policy to be reviewed in this process and a draft is appended to this report for consideration by the Panel.

Recommendations:

The Employment Panel is asked to approve adoption of the proposed changes to the policy in order to streamline the process for handling grievance matters within the Council, for consultation purposes.

Tracking

Executive:	Not applicable
Overview and Scrutiny:	Not applicable
Council:	Not applicable

1. BACKGROUND

- 1.1 The current Carlisle City Council grievance procedure has been in place since 2002 and does create some difficulties in its application; it is silent on timescales for appeal; an employee can have more than one appeal (and on occasion, multiple appeals) in addition to the provision of a final appeal to a member appeal panel. *'In the event of a grievance not being resolved at chief officer level the matter may be referred to an appeals panel of the Council if the employee so wishes'.*
- 1.2 Regard should be given to the extended timescales when arranging a member appeal panel (at least one month) including senior officer time along with the additional stress and anxiety of managers and employees.
- 1.3 The procedure is brief and provides little detail regarding the process and detail of the content of a grievance from employees to aid management consideration and includes no request for the employee to propose solutions.
- 1.4 The ACAS Code of Practice on Disciplinary and Grievance Procedures advocates fairness in dealing with issues, including prompt action and allowing an employee to appeal against any formal decisions. Larger organisations may wish to provide a further (second) appeal to Senior Management.
- 1.5 No other local authority within the region includes a Grievance appeal to Members with the majority allowing only 1 appeal to Senior Management.
- 1.6 Grievances are often resolved during the informal stage of the process, however on occasions this has not been effectively recorded and individuals have been known to raise the grievance again stating that it was never resolved, resulting in Trade Unions complaining about the time taken to resolve workplace issues.
- 1.7 The current Grievance Policy allows for collective grievances concerning more than one service to be raised by the appropriate trade union with the Chief Executive of the Council and *"..Failing resolution then the matter shall be raised at an appeals panel of the Council which shall use its best officers in an endeavour to resolve the issue."*
- 1.8 During the September CJC meeting, Unions were informed of the suggestions to amend the Grievance Policy and Unions were supportive of changes proposed with a suggestion of a 12 month trial of the removal of Members from the process.
- 1.9 The attached amended Policy has been developed in line with the ACAS Code of Practice and represents a modern approach to dealing with informal and formal grievance matters.

2. CHANGES PROPOSED

- 2.1 The introduction of a document to be used when raising a formal grievance, which will aid management understanding of the actual issue and includes a requirement for the employee to **suggest possible resolution**.
- 2.2 The above document will also aid consistency and ensure a written record is in place.

- 2.3 Inclusion of mediation as an additional stage to assist in early resolution of any grievance.
- 2.4 Remove Members from the appeal process to streamline the process whilst reflecting ACAS and regional standards, options include:
 - a) One stage appeal directly to Chief Executive (or nominated to Director)
 - b) Two stage appeal including one appeal to Director (or nominated senior manager) and final appeal to Chief Executive (or nominated Director).

Please note that the draft procedure supplied includes a two stage approach but can be amended to include the one stage appeal as above.

- 2.5 As with the current arrangements grievance appeals at Chief Officer level could be heard by a member appeal panel.
- 2.6 Grievances are often about miscommunication and policy interpretation. A reduced appeals process ending with the Chief Executive should contribute to the desired cultural changes of the Authority.
- 2.7 The Grievance Policy has been streamlined and fully reflects the ACAS Code; updates have provided more guidance which removes aspects that created confusion and expectation.

3. CONSULTATION

- 3.1 Consultation with Unions to start at the CJC meeting 11th September 2015.
- 3.2 Consultation to take place with staff during October 2015.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1 The Employment Panel is asked to approve adoption of the proposed changes to the policy in order to streamline the process for handling grievance matters within the Council, for consultation purposes with both Union representatives and employees.

5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 5.1 The Grievance Procedure and Process exists to provide Managers and Employees with a clear framework in which to handle issues in a fair and consistent way. Secondly, instil confidence in the public on the process for managing high expectations and performance expected of Council employees.

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Appendices **Appendix – Grievance Policy**
attached to report:

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's – Not applicable

Deputy Chief Executive's – Not applicable

Economic Development – Not applicable

Governance – It is important that the Council maintains up to date employment policies. As this will be a change to staff terms and conditions it will need to be subject to consultation as explained within the body of the report.

Local Environment – Not applicable

Resources – Not applicable

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GRIEVANCE POLICY AND PROCEDURE

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1. Policy Statement

- 1.1. Carlisle City Council strives to promote harmonious working relationships between managers and employees. However there will be occasions when employees will wish to raise a grievance about work related matters. The Council accepts that its employees have the right to express a grievance and for the Council to respond to it and keep proceedings confidential. This procedure provides a clear framework to deal with grievances fairly, consistently and speedily. The procedure takes into account current employment legislation together with the ACAS Code of Practice. The Code defines grievances as concerns, problems or complaints that employees raise with their employers.
- 1.2. The Council will take appropriate steps to ensure that all employees understand the grievance procedure and related statutory requirements and that it is publicised within Carlisle City Council and is available in alternative formats upon request. Appropriate training will be provided to managers.

2. Scope

- 2.1. This policy applies to all Carlisle City Council employees. In grievance matters that involve Chief/Statutory Officers of the Council these procedures will be read in conjunction with Carlisle City Council's Constitution (Officer Employment Procedure Rules) .

3. Aim

- 3.1. The aim of the procedure is to promote effective employee relations by trying to resolve grievances, either individual or collective, as promptly and amicably as possible ensuring fairness and transparency is applied at all times.
- 3.2. Many potential grievance issues can be resolved informally without the need to progress to the formal stage. Both managers and employees are expected to approach the procedure with the commitment to engage in constructive discussion and to adopt a positive approach in order to resolve the grievance wherever possible, at the Informal Stage.

4. Introduction

- 4.1. This policy sets out the procedure to be followed both at the informal and formal stage. Issues that may cause an employee to raise a grievance include but are not limited to the following:
 - Terms and conditions of employment
 - Health and safety
 - Work relations

- New working practices
- Working environment
- Organisational change
- Equality of opportunities
- Discrimination

As this list is not exhaustive, advice should be sought on any complaints not listed above from the Human Resources Section.

- 4.2. This procedure shall not apply to matters where separate procedures exist for example allegations of bullying and harassment will be dealt with in accordance with the Council's Encouraging Mutual Dignity and Respect Policy.
- 4.3. In addition, it will not apply where an employee decides to make a protected disclosure in accordance with the Council's Confidential Reporting Policy and Procedures (whistle blowing procedure).
- 4.4. It may be appropriate, in some situations, that mediation could help resolve grievances at an early stage.
- 4.5. Appropriate investigations, depending on the nature of the grievance, will be made to establish the facts of the case. Any grievance investigation will be conducted by a nominated officer who is not involved in the matter giving rise to the dispute.
- 4.6. No employee will be victimised as a result of instigating/ starting a grievance brought in good faith and employees are protected under the Encouraging Mutual Dignity and Respect policy and other policies if this occurs.
- 4.7. Where more than one employee has the same grievance this may be dealt with collectively and should be raised with the management directly responsible for the area concerned, following the City Council's management structure. Representation may be made by a trade union official or a maximum of two individuals from the group raising the collective grievance.
- 4.8. Where a grievance becomes an issue concerning more than one service, the matter shall be raised by the appropriate trade union with the Chief Executive of the Council who shall deal with the matter promptly and give a reply as soon as possible. Failing resolution then the matter shall be raised at an appeals panel of the Council which shall use its best officers in an endeavour to resolve the issue.
- 4.9. The time limits referred to in the procedure are guidelines and may be varied provided that all parties agree. However, the procedure should be conducted in a reasonable time to ensure compliance with statutory obligations and to ensure fairness.

Please note: It is possible to go straight to the formal stage if the employee or line manager considers it is not possible to resolve the matter informally. Guidance should be sought from Human Resources, before bypassing the informal stage.

5. Mediation

- 5.1. Mediation is a completely voluntary and confidential form of alternative dispute resolution. It involves an independent, impartial trained mediator helping two or more individuals, or groups, to reach a solution that is acceptable to all parties. Mediators do not make judgements or determine outcomes.
- 5.2. The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible. This means the focus is on working together to go forward, not determining who was right or wrong in the past.
- 5.3. Many kinds of dispute can be resolved through mediation if those involved want to find a way forward. It can be used at any stage in a dispute but is most effective if used early on.

6. Procedure

6.1. Informal Stage

- 6.1.1. If an employee has a grievance they should discuss the matter initially with their immediate line manager, having made it clear that it is a grievance. If the grievance is submitted verbally the employee may be asked to follow it up in writing, to assist the line manager in fully understanding the nature of the grievance. In most cases the line manager can resolve the grievance on an informal basis. Raising a concern to a line manager at an early stage may also assist in reaching a prompt and satisfactory outcome. The line manager should ensure that the employee has a copy of the grievance procedure and understands the process that will be followed.
- 6.1.2. If the grievance is against the line manager the employee should raise the grievance with the next senior manager within the service.
- 6.1.3. The relevant manager should keep a written record of the discussions and outcome and meet with the employee to confirm the outcome within 5 working days, unless there are reasons for a delay, which will be explained to the employee.
- 6.1.4. If the employee is dissatisfied with the response given they can escalate the matter to the Formal Stage of the procedure.

6.2. Formal Stage

- 6.2.1. In order to start the formal stage, the grievance must be submitted by the employee, using Section A of the Grievance Form, to their line manager (or if the grievance is against their line manager, to the next senior manager within the service) with a copy sent to Human Resources. Where possible this should include the proposed outcome

or a solution that the employee wishes to see along with relevant supporting evidence. An employee may wish to seek help from a work colleague or trade union representative. Under the Equality Act 2010, employers are required to make reasonable adjustments which may include assisting employees to formulate a written grievance if they are unable to do so themselves because of a disability. If this applies to an employee, they may seek advice and support from Human Resources.

- 6.2.2. Once an employee has submitted a written grievance the appropriate manager should respond as soon as possible by inviting the employee to a grievance hearing to discuss the grievance giving at least 5 working days' notice (or earlier with the consent of all parties). This should also include advising the employee that they can be accompanied by a work colleague or trade union representative. If the employee and/or their work colleague or trade union representative cannot reasonably attend on the proposed date they can propose an alternative date which must be within 5 working days of the original date proposed. The employee must take all reasonable steps to attend the grievance hearing and ensure relevant representation is available. A hearing should only be rescheduled once and may be held in the absence of the employee.
- 6.2.3. Any grievance hearing should be conducted by an appropriate manager who is not involved in the matter giving rise to the dispute.
- 6.2.4. It may be necessary to delay the hearing of the grievance in order that an investigation can be undertaken. The appropriate manager will ensure that the employee is kept informed of any delay in hearing the grievance and the progress of the investigation.
- 6.2.5. At the grievance hearing the employee will be given the opportunity to explain the grievance and say how they think it should be resolved. The manager will be advised by a representative from Human Resources. A meeting with the person against whom the grievance is brought will be arranged separately.
- 6.2.6. The employee's colleague or trade union representative may address the grievance hearing, and put forward or sum up the case on behalf of the employee if the employee wishes, but is not able to respond or answer any questions put to the employee.
- 6.2.7. After the grievance hearing the manager will give a written response with the outcome of the decision (using the Grievance Form) including the right of appeal, within 5 working days of the date of the hearing unless there are reasons for a delay, which will be explained to the employee. It is important to note that while it is important to have consistency in decision making, individual cases should be treated on their own merits.
- 6.2.8. If the employee is dissatisfied with the outcome they may raise the matter again through the appeal process.

6.3. First Appeal

- 6.3.1. If the employee disagrees with the grievance hearing outcome they may lodge an appeal, which must be in writing clearly stating the grounds for the appeal using Section B of the Grievance Form. This should be directed to the relevant Director (who may

nominate a senior manager to hear the appeal, who may not always be from the employee's Directorate) and copied to Human Resources. This should be within 10 working days on receipt of the written outcome.

- 6.3.2. As soon as possible (and in any event within 10 working days of the appeal being received, unless unavoidably delayed) the employee will be invited to an appeal hearing.
- 6.3.3. The employee and their representative will be given notice in writing at least 5 working days in advance of the time and place of the appeal hearing. Any extension on the time frames must be agreed in advance by both parties.
- 6.3.4. The appeal will be heard by a Director (or nominated senior manager), and a representative from Human Resources will be in attendance to provide advice. At the appeal hearing both parties may state their case and ask questions of each other. Both parties may call and question witnesses. The employee may be accompanied to the appeal hearing by a work colleague or a trade union representative.
- 6.3.5. The Director (or nominated senior manager) hearing the appeal may:
 - dismiss the appeal; or
 - uphold the appeal; or
 - allow the appeal and substitute a different outcome

The decision will be communicated to the parties either at the hearing or in writing within five working days of the hearing, unless there are reasons for a delay, which must be explained to the employee.

6.4. Final Appeal

- 6.4.1. If the employee disagrees with the outcome they can lodge a final appeal, in writing (using Section C of the Grievance Form) clearly stating the grounds for the appeal / why they are dissatisfied with the first appeal outcome. This should be directed to the Chief Executive (who in exceptional circumstances may nominate a senior manager to hear the appeal) and copied to Human Resources. This should be within 10 working days on receipt of the written outcome.
- 6.4.2. As soon as possible (and in any event within 10 working days of the appeal being received, unless unavoidably delayed) the employee will be invited to an appeal hearing.
- 6.4.3. The employee and their representative will be given notice in writing at least 5 working days in advance of the time and place of the appeal hearing. Any extension on the time frames must be agreed in advance by both parties.
- 6.4.4. The final appeal will be heard by the Chief Executive (or nominated senior manager), and a representative from Human Resources will be in attendance to provide advice.

At the appeal hearing both parties may state their case and ask questions of each other. Both parties may call and question witnesses. The employee may be accompanied to the appeal hearing by a work colleague or a trade union representative.

6.4.5. The Chief Executive (or nominated senior manager) hearing the appeal may:

- dismiss the appeal; or
- uphold the appeal; or
- allow the appeal and substitute a different outcome

There is no further right of appeal against this decision.

The decision will be communicated to the parties either at the hearing or in writing within five working days of the hearing, unless there are reasons for a delay, which must be explained to the employee.

6.4.6. Notes should be taken of all meetings throughout the grievance process and a copy provided as soon as practicable to each party.

7. Relationship between Grievance and Disciplinary Procedure

7.1. Where an employee raises a grievance during a disciplinary process the disciplinary process **may** be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

8. Status quo

8.1. When a grievance is raised the conditions existing prior to the grievance being raised will remain unless a continuance of this would contravene statutory requirements. Wherever practicable, a status quo arrangement will operate until either the grievance has been resolved or the procedure has been exhausted.

9. Representation

9.1. As stated throughout the Procedure, employees may be represented at any formal meeting, hearing or appeal by a trade union representative or a work-place colleague. It is the employees responsibility to arrange representation.

10. Malicious / vexatious complaints

10.1. Any malicious or vexatious complaints will not be condoned and may be dealt with under the Council's Dicipinary Policy.

11. Requirement to Keep Records

- 11.1. Appropriate records will be maintained. These should be treated as confidential and kept in accordance with the Data Protection Act 1998 (unless there is a legitimate reason not to do so i.e. the protection of witnesses).