

ITEM FOR STAFFING COMMITTEE – 8 APRIL 2014

CAPABILITY POLICY AND PROCEDURE

Submitted by: Executive Management Team

Portfolio: Finance and Resources

Purpose of the Report

To obtain the Committee's approval for a proposed procedure to be followed at appeal hearings relating to capability.

Recommendation

That the proposed procedure detailed at Appendix A be approved.

1. Background

- 1.1 The Staffing Committee has responsibility for making arrangements for members of the Committee to determine appeals of employees in accordance with appropriate policies.
- 1.2 At its meeting on 13 March 2013, the Committee approved the establishment of a sub-committee to deal with such appeals in respect of Bullying and Harassment, Disciplinary, Grievance, Selection for Redundancy and Capability issues. The relevant policies/procedures were subsequently revised accordingly.
- 1.3 However, while the first four of the above policies incorporate a procedure to be followed at an appeal hearing, the Capability Policy and Procedure currently does not.
- 1.4 A proposed appeal hearing procedure in relation to capability issues has therefore been produced and is attached at Appendix A for your consideration.

2. Issues

- 2.1 The proposed procedure was considered at the Employees Consultative Committee meeting on 24 March 2014. The Committee recommended that the procedure be adopted.

3. Legal and Statutory Implications

- 3.1 The council is required to comply with the ACAS Code of Practice on dealing with grievances and this includes provision of a fair appeal process.

4. Equality Impact Assessment

- 4.1 No differential impact has been identified.

5. Financial and Resource Implications

- 5.1 None.

6. Major Risks

- 6.1 The council requires fair and effective employment policies and procedures to avoid possible financial and reputational damage of failing to properly address employment issues.

7. List of Appendices

Appendix A – Proposed Capability Appeal Procedure.

8. Earlier Committee Resolutions

Employees Consultative Committee – 24 March 2014

Capability Policy and Procedure

Appeal Hearing Procedure

- (a) The appeal will be heard by a Sub-Committee established by the Council's Staffing Committee for this purpose, supported by a representative to give legal advice. The Sub-Committee's decision shall be final and there is no further right of appeal.
- (b) The purpose of the appeal hearing will normally be to consider an employee's grounds for appealing against any action taken and whether or not the decision should be amended.
- (c) The employee should submit their grounds of appeal to the Head of the Paid Service (Chief Executive) in writing, at least five working days in advance of the hearing, with any supporting documentation and details of the name of the trade union representative or work colleague who will be accompanying them at the hearing and also the names of any witnesses they wish to call.
- (d) The employee has the right to be accompanied by a trade union representative or a work colleague.
- (e) The hearing will be tape recorded to provide a contemporaneous record.
- (f) The Chair conducting the hearing will explain that the hearing is being conducted as part of the council's formal Capability Procedure, explain the purpose of the hearing and how it will be conducted.
- (g) The parties present at the appeal hearing will introduce themselves and confirm their respective roles in the appeal hearing.
- (h) At any point during the hearing, the Chair may adjourn the proceedings if it appears necessary or desirable to do so, including for the purpose of gathering further information.
- (i) The Council's representative(s) will state the management case leading to the decision made at the Capability Hearing, referring to any documentation submitted. The Sub-Committee will also refer to any documentation submitted related to the management of the case and the Capability Hearing and also documentation submitted by the employee.
- (j) The Chair and the members of the Sub-Committee may ask the Council's representative(s) (and any witnesses) questions to establish/clarify all the relevant facts, background and circumstances.
- (k) The Chair will invite the employee to state their case, ie the grounds for the appeal against the decision made at the Capability Hearing, what outcome they are seeking and why. The employee may do this personally, or the employee's trade union representative/work colleague may do this on the employee's behalf.
- (l) The employee will refer to any documentation they have submitted and on which they are seeking to rely. The Sub-Committee will also refer to any documentation submitted by the employee and documentation submitted relating to the management of the case and the Capability Hearing.
- (m) The Chair and the other members of the Sub-Committee may ask the employee (and any witnesses) questions to establish/clarify all the relevant facts, background and

circumstances. The Sub-Committee has the right to ask the employee personally to answer such questions, although the employee may on request confer with their representative at any time during the appeal hearing.

- (n) The employee (or their representative) and the Council's representative(s) will then be invited to sum up their cases if they so wish.
- (o) The Chair will then sum up the key points of the appeal hearing.
- (p) The Chair will explain that a decision will be made after full consideration and reflection, that the employee will be informed of the decision in writing within five working days of the appeal meeting and that there is no further right of appeal against the outcome.
- (q) The Chair will then thank the parties for attending and close the meeting.