

HERTFORDSHIRE COUNTY COUNCIL

CABINET
MONDAY 13 SEPTEMBER 2004 AT 2.00 P.M.

Agenda Item No.

6

EMPLOYMENT POLICIES

Report of the Corporate Director (People & Property)

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Executive Member:- David Beatty

1. Purpose of report

To inform Cabinet of key developments in statutory employment rights and to propose the adoption of new/revised employment policies for the County Council as follows:

- Dispute Resolution Procedures:
 - Discipline
 - Performance Capability
 - Probationary Service
 - Grievance
- Flexible Retirement
- Harassment & Bullying at Work

2. Summary

Disputes Resolution Procedures

The Employment Act 2002 established a new legal framework for promoting the resolution of employment disputes in the workplace. The detail of how these procedures would operate in practice was set out in secondary legislation, The Employment Act (Dispute Resolution) Regulations 2004 which will come into force on 1 October 2004. From that date, all employers and employees will be required to follow statutory minimum dismissal and disciplinary procedures and statutory minimum grievance procedures, in the circumstances set out in the new Regulations.

This report therefore proposes new arrangements for Discipline, Grievance, Performance Capability and Probationary Service which will ensure that the County Council meets the new requirements.

Flexible Retirement

There is no age discrimination legislation in the UK at present. However, new legislation is due to be introduced by October 2006, stemming from the EC General Framework for Equal Treatment Directive. Current Government proposals would mean that mandatory retirement ages are likely to be unlawful by that date unless they can be justified by the employer. The Government looks set to identify a 'default' retirement age, possibly of 70, at or after which an employer could retire an employee without having to justify the decision. Although this will not be the case until 2006, this report proposes more immediate changes to HCC policy on retirement to enhance diversity and respond to recruitment and retention pressures.

Harassment Policy

The County Council has had a Harassment Policy since 1999. Developments in equalities legislation and experience with the Policy itself have led us to review its content and operation.

3. Conclusion

Cabinet is asked to consider approving the principles of:

a) A set of Dispute Resolution Procedures:

- A revised Discipline Policy
- A new Performance Capability Policy
- A revised Probationary Service Policy
- A modified Policy for resolving Employee Grievances

b) A new Flexible Retirement Policy

c) A modified Harassment at Work Policy

Copies of the full policies and key documentation relating to the above are available in the Members Lounge or on request from the Corporate Director (People & Property).

4. Background

a) Disputes Resolution Procedures

• Discipline Policy

The new discipline policy provides a simplified approach to managing conduct and behaviour in the workplace as well as adhering to new legislation and best practice. It is based on the revised ACAS code of practice and

incorporates the requirements of the new Dispute Resolution Regulations, which both come into force this October.

Main changes in the new Procedure

- **Timescales**
Recent Case Law has demonstrated that unjustifiably lengthy delays in disciplinary processes can lead an Employment Tribunal to determine that a dismissal is automatically unfair as natural justice cannot be served. Clear accountabilities for management of cases and specific timescales have therefore been introduced to ensure that investigations are concluded quickly and the duration of any suspension is kept to a minimum.
- **Roles and Responsibilities.** To improve consistency across departments, formal roles in the process have been clarified and comprehensive guidance written.
- **Formal Verbal Warning.** An additional disciplinary sanction is now available to managers.
- **Removal of "Appendix 2".** The existing disciplinary policy provides opportunity for alternatives to dismissal in cases of gross misconduct. This provision has caused difficulties in its operation and has also been criticised at Employment Tribunal. It has therefore been removed.
- **Comprehensive Toolkit.** To simplify the process for managers and to support consistency, a practical toolkit has been developed which includes guidance, responses to "frequently asked questions" and standard letters.

Financial Implications

Some training costs will be incurred, but all can be contained within existing budgets.

Consultation

Officers have met with UNISON on a number of occasions to discuss the new policy and many of UNISON's comments have been taken on board in the final draft of the policy as presented.

Consultation with UNISON is however continuing in the following areas:

- **Role of the Hearing Officer:** Unison's view is that to be impartial, the Hearing Officer can have no prior knowledge of the disciplinary case which is put before them. The Officers' view is that impartiality is not prejudiced by some prior knowledge of the case and that an Officer is not therefore compromised to hear a case if they were the officer who previously took the decision to suspend, instigate a formal investigation and/or determined, on the recommendation of the Investigating Officer that there is a case to answer.

- Expungement of Disciplinary Records: Unison's view is that once a disciplinary warning has become "spent", all record of it should be removed from the personnel file and destroyed. The Officer's view is that a record of a spent disciplinary warning should be retained but should be disregarded in future disciplinary proceedings.

In the light of the above ongoing consultation, Cabinet is asked to approve this policy but grant authority to the Corporate Director (People & Property) in consultation with the Executive Member to make any necessary minor changes should they be required following further discussion with UNISON.

- **Performance Capability Procedure**

Poor performance issues are currently dealt with in under the County Councils existing Discipline Procedure. The new ACAS Code of Practice lays out best practice in this area and this suggests that poor performance should be managed separately from misconduct.

Main features of the proposed new procedure

- **Emphasis on joint agreement to improve:**
The procedure emphasises that the management of performance is a joint responsibility between employee and manager with the focus being very much on improvement, not punitive action.
- **Support:**
Managers are directed to give reasonable support to assist the employees in improving their performance (i.e. training, additional supervision and time) before any formal action is considered.
- **Redeployment rights**
The ACAS code of practice states that if despite encouragement and assistance the required improvements in performance are not forthcoming, suitable alternative employment should be considered as an alternative to dismissal. Employees who are to be dismissed on the basis of (performance) capability will therefore be given access to the redeployment register for the length of their notice period.
- **Serious incapability**
A definition of serious incapability is given which provides for situations where an employee commits a single error or omission which has the potential for such severe consequences that it has to be viewed as a misconduct issue and investigated under the disciplinary procedure.

Financial Implications

A "Managing Poor Performance" training programme is already available to managers, this will be updated to reflect the introduction of this new policy. All costs can be met from within existing budgets.

- **Probationary Policy**

The new probationary policy provides a simplified approach to managing and assessing new employees as a precursor to confirming their suitability for longer-term employment.

Main features of the proposed revised policy

- **Policy Simplification:**
To improve consistency and thoroughness of approach, the following has been introduced:
 - Standard performance review dates at 8, 14 and 20 weeks of employment
 - Standardised review forms
 - Standardised letters for use by managers and HR teams

- **Right of Appeal:**
To accord with the minimum dismissal procedures set out in the Employment Act 2002, which come into effect in October 2004, a right of appeal against dismissal has been included. The appeal will be to the Director (not to Elected Members).

- **Fixed Term Workers:**
For employees on fixed term contracts, there is the introduction of a new requirement to serve a probationary period of employment. This is to ensure that fixed term workers receive the benefit of a structured and supportive period of probationary service on a par with permanent employees and is in accordance with the Fixed Term Workers Regulations.

Financial Implications

None

- **Grievance Procedure**

The County Council's existing Grievance Procedure has been in place since 2003. Minor modification is needed to bring it into line with the requirements of the Dispute Resolution Regulations.

Main changes in the new Procedure

- Access by ex-employees to the Grievance Procedure. The Disputes Resolution Regulations give employees the right to raise grievances with their employer up to three months after they have left employment.

Financial Implications

None

b) Flexible Retirement Policy

The new Flexible Retirement Policy replaces an existing "Extension of Service Beyond Age 65 Policy". This will enable more employees to work up until the

age of 70 and it offers further options and support in the run up to retirement, including the right to request more flexible working.

Drivers for change

In 2006 legislation is due which will outlaw age discrimination. At this point, the indications are that the government is likely to extend normal retirement age from 65 to 70 years. This policy would be a proactive response to ensure Hertfordshire County Council fulfils its legal and best practice requirements in this respect.

Options to retire early are also likely to be affected proposed changes to the Local Government Pension Scheme. These changes will restrict access to most pension benefits until age 55 at the earliest. This may increase interest in part-time / flexible working for the age 50 – 70 working population given that their option to retire is removed.

Changing Workforce

The demographic trend is that there are fewer younger people entering the job market and life expectancy is increasing. A quarter of Hertfordshire's workforce is already over the age of 50.

Research by Age Concern suggests that 48% of people aged 50 or over intend to work beyond state pension age. This suggests that there is likely to be a significant demand for these new retirement options with Hertfordshire.

By retaining employees over the age of 65, Hertfordshire will be responding proactively to forthcoming age discrimination legislation and demographic trends. The council's reputation as an employer of choice will be strengthened and retention and transferring of skills within the organisation will be aided.

Main features of the proposed new procedure;

- Support for employees approaching retirement. A package of support will be available including financial and pensions advice and preparation for retirement courses.
- Flexible retirement options:
 - All employees will be entitled to request an extension of service beyond 65 (up to the age of 70).
 - All employees will be entitled to request flexible working in the lead up to their retirement date.

Decisions made under this policy will all be in accordance with the operational needs and exigencies of the particular department.

Financial Implications

None

c) Harassment at Work Policy

The revised harassment and bullying policy provides comprehensive and easy to follow procedures for dealing with cases of harassment and bullying in the workplace. It includes a practical toolkit in order to ensure consistency across all departments.

Legislative changes

The policy has been revised to take account of changes in legislation and good practice. The main legislative changes are:

- EU Employment Directives on Sexual Orientation, and Religion and Belief, which became law in December 2003 in UK. This made discrimination on the grounds of sexual orientation and religion and belief in employment unlawful
- New definition of harassment, to incorporate the impact and effect on someone, not just the intent
- Changes in definition of burden of proof, so that liability falls on employer and employee. Once a prima facie case of harassment has been demonstrated by employee, the employer now has to demonstrate what action they took to prevent harassment occurring.

Main features of the proposed new procedure

- Policy Simplification. Easy to follow procedures for dealing with formal and informal cases of harassment and bullying, to ensure consistency of approach across all departments.
- Strengthened informal processes, to encourage more complainants to use this route
- Bullying has now been incorporated into the title of the policy
- The role of the Volunteer Supporters is expanded to ensure that support is available to witnesses, the alleged harasser as well as the complainant.
- Clearer timescales have been set for the completion of investigations.
- Improved monitoring to comply with the requirement under Race Relation Amendment Act.

Financial Implications

There are no anticipated costs.

Consultation

Officers have met with UNISON on a number of occasions to discuss the new policy and many of UNISON's comments have been taken on board in the final draft of the policy as presented.

UNISON have however indicated that they may have some further comments which are not expected to be significant, but they would wish to be considered before the policy is launched.

In the light of the above, Cabinet is asked to approve this policy but grant authority to the Corporate Director (People & Property) in consultation with the Executive Member to make any necessary minor changes should they be required following further discussion with UNISON.

References:

- Guidance on the Employment Act 2002 (Dispute Resolution) Regulations 2004 and associated provisions in the Employment Act 2002.
Published by the Department of Trade & Industry, May 2004
<http://www.dti.gov.uk/resolvingdisputes>
- ACAS Code of Practice on Disciplinary & Grievance Procedures.
Draft Revised Version (effective October 2004)
<http://www.acas.org.uk/publications/pdf/cp01.2.pdf>
- General Framework for Equal Treatment Directive (2000/78/EC)
- Employers Organisation for Local Government Advisory Bulletins : No's: 473 & 481
<http://www.lg-employers.gov.uk/relations/index.html>
- Equality Standard for Local Government
<http://www.lg-employers.gov.uk/diversity/equality/index.html>