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To: Personnel Committee

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Subject: Disciplinary & Grievance Activity

Classification: **Unrestricted**

SUMMARY: This report updates Personnel Committee on employee case work activity for the period 2012-13.

The report also sets out changes to the Disciplinary Procedure and asks the Committee to agree revised Disciplinary Policy, Policy and Hearings Procedure.

The report sets out the intended approach to changing the Council's Grievance procedure.

1. INTRODUCTION

- 1.1 Personnel Committee has previously received reports on discipline and grievance activity which provided an overview of the distribution of cases. This report updates the Committee on the current figures and their comparison to the previous year.
- 1.2 The figures are provided in the context of there being increasingly less HR resource and a greater focus on KCC managers leading performance management successfully. The case team part of the HR Advisory Team has taken a lead in working with managers to raise standards and manage confidence in dealing with employee relations.
- 1.3 This activity provides a context to the review of Kent County Council's collective agreements with the trades unions. This report presents changes to the County Council's disciplinary procedure, which the unions have agreed, and sets out a suggested approach to changing the Council's Grievance Procedure and Harassment Procedure.

2. CASE ANALYSIS

- 2.1 The greatest volume of cases for the years ending March 2012 and March 2013 are those concerning ill health. This does not reflect greater levels of ill health but is indicative of managers addressing sickness absence at an early stage. This preparedness to manage sickness absence is shown in the continuing reduction in the levels of sickness absence throughout the Council – over this period sickness absence reduced from 7.78 to 7.38. The half year figure at October

2013 suggests a similar level of activity for ill health cases for 2013/14 (Appendix 1).

- 2.2 The number of disciplinary cases has fallen by about 10% but the number of cases does show that managers are dealing with misconduct when it arises. There has been an increase in grievances of about 20% to 59 cases in 2012/13. That said, harassment cases have fallen over this period by just under 50% to 16. The half year figures suggest grievances may be on the increase in 2013/14.
- 2.3 The number of Employment Tribunal cases against KCC remain relatively few for an organisation of its size. Of the claims that went to tribunal only 7 were heard by an Employment Judge of which KCC was successful in all but one of the cases. This is in no small part attributable to the business focused, risk aware advice given by KCC's HR Advisers in liaison with their Legal Services colleagues.

3. SENIOR OFFICER APPEALS

- 3.1 Appeals against dismissal are managed through the HR Advisory Team. Appeals are arranged with the support of the Challenger Group which has resulted in this task being better distributed across the management population.
- 3.2 13 senior officer dismissal appeals were heard in 2012/13. The table below illustrates the distribution between directorates, case type and outcomes.

Directorate	No. of Appeals	Case Type	Outcomes
FSC	6	4 conduct 2 capability	4 dismissals upheld 1 withdrawn 1 dismissal overturned
C&C	3	2 conduct 1 capability	2 dismissals upheld 1 withdrawn
ELS	1	1 conduct	1 dismissal upheld
E&E	3	1 conduct 1 capability 1 SOSR	3 dismissals upheld
BSS	0		
TOTAL	13		10 dismissals 2 withdrawn 1 dismissal overturned

- 3.3 Only one case was overturned resulting in the reinstatement of a member of staff who had been dismissed. These results endorse the quality of advice given and the robustness of the decisions made by dismissing managers.

4. DISCIPLINARY POLICY & PROCEDURE

- 4.1 As part of the review of collective agreements with the trades unions a number of changes have been made to the Council's Disciplinary Procedure. These changes have been worked on with the Council's recognised trades unions and have been agreed with them.

4.2 One of the most significant changes has been how the procedure is set out. The previous version incorporated in one document the policy, procedure and guidance on how a disciplinary hearing is conducted. This has changed in the revised version with the policy aspects being set out in a short policy document so that it is clear what the Council's policy is on managing employee conduct. The separate procedure document supports how the policy is delivered (Appendices 2-4).

4.3 There is now also a separate hearings document which is universal for all the type of hearings that are conducted. By separating it out it means that we do not have to embed the procedure in all our documents and it also sets out how we will hold hearings that do not necessarily relate to one of the council's employment procedures, e.g. some other substantial reason (SOSR) dismissals.

4.4 The other key changes in the documents are:

- Changes to timescales to better facilitate the expedition of disciplinary investigations and to better reflect practice
- Incorporation of wording to reflect the role of the counter fraud team in Audit and the powers they have to interview under caution
- Added section on partnership working
- Added to the existing examples of what constitutes misconduct and gross misconduct
- Included a flowchart within the procedure to make the process steps easier to follow
- Improved the scope for the management of non-attendance by the employee (whether they are unable to attend or choose not to)
- Set out expectations of what constitutes an appeal.

5. GRIEVANCE PROCEDURE

5.1 The proposal for changing the Grievance Procedure is focused on dispute resolution. This would shift the focus of the procedure much more towards finding mutually acceptable outcomes for all parties than using more formal hearings in which a manager presides over a solution.

5.2 The emphasis would be on using informal approaches and mediation to resolve disputes with formal hearings only being used when a resolution cannot be found in other ways. The proposed approach is based around a model policy produced by the TCM Group (an organisation with experience of working in this field with large private and public sector bodies) which was launched in May 2013. This approach fits well with ACAS's code of practice on discipline and grievance and mirrors the government intentions in finding ways to resolve disputes in advance of them coming to Employment Tribunals.

5.3 The benefits to the Council of this approach are:

- Speedier resolution achieved through more emphasis on an informal approach
- Provides for a less adversarial approach in seeking to resolve conflicts
- Reduces the likelihood of further damaging working relationships between the parties involved.

5.4 This approach would support the self sufficient manager by ensuring they are not embroiled in formal grievance activity and can resolve matters more readily and at the point the disputes arise. It reinforces the Council's behaviours in that it encourages people to be open and accountable for their actions and the remedial interventions identified.

5.5 The next steps require a policy and procedure to be produced. This will need to be supported by arranging a pool of mediators in the organisation (it is intended to up skill the current network of coaches as many of the skills they use are commensurate with those needed as a mediator), further build on the work underway to support managers in having difficult conversations and work with unions, managers and employees to seek a cultural shift away from escalation to finding solutions to disputes.

6. RECOMMENDATIONS

- a) Personnel Committee notes the report of employee relations activity including senior officer appeals hearings.
- b) Personnel Committee agree the Disciplinary Policy and Procedure and the Hearings Procedure.
- c) Personnel Committee agree the proposed approach to dispute resolution.

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