

Non-Executive Report of the: General Purposes Committee 12 October 2017	
Report of: Heather Daley, Divisional Director Human Resources and Transformation	Classification: Unrestricted
Briefing Paper – Employment policies and procedures – diagnostic	

Originating Officer(s)	Heather Daley and Anna Finch-Smith
Wards affected	All wards

Reasons for Urgency

Due to requiring last minute changes, this report could not be attached to the main agenda pack.

Summary

This paper provides a briefing for Members following:

- the conclusions of the Independent Industrial Relation Review at the end of 2016 that was jointly commissioned with all recognised trade unions; and
- a Phase 1 review of a number of key HR policies and procedures undertaken by the HR and Transformation Team as a key recommendation arising from that review.

Appendix 1 of this report is the brief for that independent review setting out the objectives, scope and expected outcomes and benefits from the review. The brief sets out the following in relation to expected benefits:

- “Benefits that are expected as a result of the review include: improved industrial relations culture; fully embedded industrial relations framework; reduction in the average number of days to complete investigations/restructures; increased two way communication with Trade Unions and a collaborative approach to problem solving; more joint working; reduction in the number of disputes; and improved workforce morale and employee relations.”

Appendix 2 is the Summary Report (December 2016) of the independent review undertaken by the Institute of Employment Studies (IES) titled “London Borough of Tower Hamlets Review of Industrial Relations”. The review was overseen by a steering group of council officers and representatives of Unison, GMB and Unite. The steering group was chaired by the Corporate Director, Resources. The recommendations of the IES review were wide ranging and included:

- Integrating the CHAD and wider grievance and disciplinary process;
- Replacing the Joint Consultative Advisory Group (JCAG) and provision for Failure to Agree and reviewing feedback processes;
- Reviewing the staff-side so it worked as a single table in which all recognised trade unions participate;
- Simplifying and shortening procedures;
- Reviewing procedures, including sickness absence, so managers had flexibility to adapt them appropriately to individual cases.

The report provided a general sense that the relationship between the organisation and the Trade Unions needs to become more 'fleet of foot', agile and better at changing internally. This is also highlighted by employees who, through various engagement mechanisms, are telling us: that it is difficult to get things done, change processes are very procedural, slow (in particular processes relating to employment and employee relations) often inconsistently applied and working against the culture and best practice we are striving for; and Members will be aware of concerns about the excessive amounts of time it has taken on occasions to set up and hear Member appeals against dismissal.

The areas covered in this paper align with:

- An earlier report to GP Committee on 05 July 2017, where it was agreed that Part 5.4 (Member/ Officer Relations' Protocol) of the Council's Constitution would need to be further reviewed and recommendations for amendment brought back to this meeting of the GP Committee. This included to the section headed "Recruitment, Appointment and Other Senior Staffing Matters";
- The Council's HR Strategy - which is also under review. The Corporate Leadership Team (CLT) has previously considered a paper and supported an emerging new framework and priorities for this strategy in line with being an Employer of Choice;
- Organisational culture change as set out in the Best Value Improvement Board (BVIB) report of 11 September 2017 on the Corporate Improvement Journey;
- Changes proposed to the Council's Whistleblowing policy and procedure; a report in respect of which is also before tonight's Committee titled: "Whistleblowing – New policy, processes and the work of Grant Thornton";
- Proposed wellbeing provisions for employees which will significantly improve the offer and support for staff.

Recommendations:

The General Purposes Committee is recommended to:

- 1.1 Note the briefing within the report.

1. REASONS FOR ANY FUTURE DECISIONS

- 1.1 Some changes to employment policy, provision and procedure, were they to be made in the future, would require contractual changes that would need to be consulted with the trade unions; as well as changes to the Council's Constitution.
- 1.2 The rationale for any changes would need to be closely aligned to the Council's ambition to be an Employer of Choice with a drive to improve management practice and support managers and employees to think differently to achieve positive outcomes and move away from proceduralising employment issues. They should also overtly support managers and employees to try to resolve matters through dialogue where possible. If this were to happen then the proposed approach would be for many (or the majority) of employment issues to be managed by managers and employees informally through the day to day procedures, meaning less formal action.

2. ALTERNATIVE OPTIONS

- 2.1 This is a briefing paper for noting only.

3. DETAILS OF REPORT

- 3.1 As part of the Council's ambition to be an Employer of Choice and to address issues and concerns raised by staff, managers and the recognised Trade Unions a specification to undertake an Independent Industrial Relation Review was drafted and jointly approved by the recognised Trade Union. The purpose of the review was to have an independent assessment of the current industrial relations and to identify the areas of improvement and change and to highlight and adopt best practice. It was considered essential that the review be independent and be jointly overseen by both the council and recognised Trade Unions (Unison, GMB and Unite) the review was extensive and took place over a 4 to 5 month period with regular liaison and oversight by a joint Project Steering Group that discussed and agreed all the findings

and recommendations and approved the final report before its presentation to the Council's Corporate Leadership Team. The recommendations arising from the review have been used as the basis for the phase 1 review of HR policies and procedures.

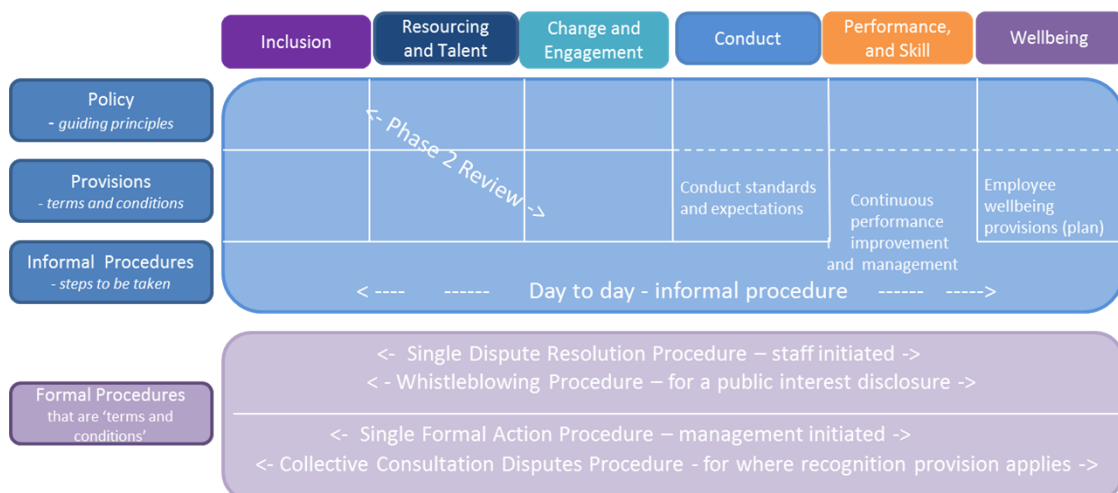
- 3.2 Positive Employee Relations: The Council's aim is to be an 'employer of choice', putting the employee/manager relationship at the heart of the employee relations culture. We aim to lead in best practice and ensure an open and honest culture where staff and managers feel supported and motivated; and where we support the wellbeing of our employees.
- 3.3 It is important that we remove any procedural or practice barriers to achieving improved employee relations, that concerns are considered with little or no undue delay and employees are treated fairly and consistently. We want to ensure that this forms part of our next steps in the Council's journey to becoming a 'best in class' employer. The conclusions following the Phase 1 review of some key employment policies and procedures were that we need to:
- Draw a distinction between, and have a common understanding of, the difference between: policy, provisions, procedure and guidance;
 - Address unnecessary delays in: undertaking and concluding investigations, and convening hearing and appeals;
 - Work to avoid disputes as far as possible and if they arise, ensure they are resolved as fairly and swiftly as possible;
 - Work with trade unions and Members to, for example, streamline our industrial relations procedures, including reviewing the Joint Consultative Advisory Group (JCAG) and Failure to Agree mechanisms;
 - Ensure we dovetail and align any changes with other employment initiatives including: the Whistleblowing Policy and Procedure; provisions for the wellbeing of employees; mechanisms for implementing organisational change;
 - Align any changes with the Council's refreshed core values;
 - Emphasise in any changes the importance of regular two-way conversation and constructive, honest dialogue between managers and employees – and for this to be the preferred route as opposed to formal action where possible;
 - Provide uncomplicated policies and procedures for both every day, and for when matters need to be formalised, both from a management and an employee perspective;
 - Change the way that employee performance is planned, discussed and monitored so there is a culture of continual performance management;
 - Identify where, if subsequently provisions/procedures were to change, those changes would result in enhanced arrangements for employees;
 - Be very clear that any changes impacting the code of conduct, disciplinary procedure and grievance procedure would need to be discussed and consulted with the trade unions;
 - Be very clear if any changes require amendments to the current Constitution.

3.4 In line with best practice it seems sensible for there to be a clear distinction moving forward on the difference (and a separation therefore) between: policy, provisions, procedure and guidance. The distinction that ought to be made is as follows:

- Policy: Guiding principles
- Provisions: Contractual or non-contractual terms and conditions
- Procedure: The steps that are to be taken – both on a day to day basis as part of good management; and formally when continued employment is at risk; or employees (either directly or through their representatives) need to formalise matters
- Guidance: Advice; and day to day good practice

3.5 The diagram below details the HR strategy context; the parameters for the Phase 1 review and potential way forward; and the distinction between:

- policy, provisions, procedure and guidance;
- day to day processes/management; and
- formal action processes for: employees, managers and management/trade unions



3.6 In line with the recommendations arising from the joint Industrial Relations Review the Phase 1 review of HR policies and procedures identified a plethora of documents with varying titles and content relating to:

- Conduct (including code of conduct);
- PDR – performance, development and review;
- Sickness and wellbeing (including poor health and ill health capability);
- Employee grievance (including CHAD - combatting harassment and discrimination and employee whistleblowing i.e. a public interest disclosure) – informal and formal procedures;
- Managing: discipline, standards for [poor] performance, and sickness – informal and formal i.e. where continued employment is at risk;
- Collective consultation – including the disputes procedure.

- 3.7 Conduct: The Council's commitment as a public sector organisation to the Nolan Principles; and its own underpinning core values are the genesis for its employment policies, provisions (or rules), procedures and guidance in relation to employee conduct.
- 3.8 The touch points with the new Whistleblowing policy and procedure would need to be clearly spelt out in a revised Code of Conduct for Employees, or 'Conduct, Standards and Expectations document' so that all the processes that could lead to a whistle blow (i.e. a public interest disclosure) are joined up. Any changes to the current Code of Conduct for Employees would need an amendment to the Constitution; and any changes to the Code of Conduct for employees would need to be consulted with the recognised trade unions.
- 3.9 Performance, Development and Review (PDR): The links between the Council's corporate objectives, and employees' objectives need a clear and unbroken link. The current Corporate Performance, Development and Review Scheme comprises a mixture of:
- Policy – i.e. guiding principles – which includes every team or service having a plan (set of objectives); and every employee having related objectives and a formal performance review annually with their line manager, supported by a 6-monthly progress review meeting and regular one to one meetings.
 - Procedure - i.e. the day to day steps to be taken – which include:
 - o the completion of an online form (paper form where this is not possible) that should record at least 5 objectives and outputs for the coming year in line with an employee's team or service plan. These objectives must be SMART (specific, measurable, achievable, realistic and within timescales) and reviewed with/by an employee's manager at the meeting. At least one of these objectives should be related to equalities and diversity. These should also relate to the team or service plan objectives.
 - o The completion of a personal learning and development plan (PDP)
 - o Consideration of performance in line with the core values, and also in the case of managers, the managers leadership and management framework
 - Guidance – advice on how to undertake those procedural steps.
- 3.10 Changes to the Council's policy, procedure and guidance relating to day to day management of employee performance (i.e. where continued employment is not at risk) from the beginning of the performance year 2018/19 – moving to a process of 'continuous performance improvement and management' is something that is being considered and will be for discussion with the trade unions to enable an improved procedure for day to day discussions and agreed actions between employee and manager in relation to: near term objectives and performance; professional supervision; professional and generic learning and development, wellbeing, and any informal management/employee notes.

- 3.11 Sickness and Wellbeing - the effective management and reduction of sickness absence is a corporate priority. The HR and Transformation Team has applied the 'outcomes based accountability' methodology currently being rolled out across the council to determine the long term, medium term and short term outcomes needed; the immediate interventions required; and to identify key performance indicators to track and report on progress to demonstrate the impact being achieved.
- 3.12 The long term outcome is for a 'well workforce with low levels of sickness absence'; and, to achieve this, the medium term outcomes are:
- an honest and open culture
 - managers confidently dealing with staff wellbeing
 - resilient employees empowered to support their own wellbeing
 - employees taking responsibility for their own health and wellbeing
 - a clear employee assistance programme in place
 - employees accessing support regularly
 - consistent approach to sickness management
 - management of sickness absence compliant with procedures
 - managers adopting a supportive and sympathetic approach
 - employees confident in talking to managers about wellbeing/sickness absence
 - evidence-informed wellbeing interventions
 - employees having a wellbeing/sickness management plan
 - co-production of wellbeing/sickness plans for employees
- 3.13 The short term outcomes, as a stepping stone to the medium and long term ones, are:
- good relations between employees and managers
 - employees having access to mental, physical and financial management wellbeing support
 - issues identified early
 - regular health and safety assessments
 - accurate data available
 - robust systems in place to record and manage sickness absence/wellbeing
 - clarity of roles and responsibilities of stakeholders
- 3.14 The immediate interventions needed and that are being progressed include:
- review of the service delivery model for wellbeing
 - revision/provision of wellbeing/sickness absence management policy, procedures and guidance; and a coherent and well-resourced employee wellbeing provision plan
 - delivery or provision of training for managers and employees
 - production of a robust performance dashboard, measurable outcomes; and regular data analysis.
 - creation of an engagement and communications plan for the introduction of revised procedures and guidance for wellbeing/sickness management

- 3.15 Employee Grievance: (including CHAD - combatting harassment and discrimination and employee whistleblowing i.e. a public interest disclosure). The focus for any updated policy and procedure would be to resolve as many issues as possible at an informal stage or through informal dispute resolution methods, such as mediation. The Grievance Procedure for employees is contractual and changes would need to be consulted with the Trade Unions.
- 3.16 Discussions have started informally with the trade unions about the provision of a single Dispute Resolution Procedure for employees (as opposed to the two current procedures) to address issues being raised of such a serious nature that warrant formal action, or where resolution through informal routes has not been achieved. Any changes to the Grievance Procedure for Employees would need to be consulted with the recognised trade unions.
- 3.17 The revised Whistleblowing Policy and Procedure, which is the subject of a separate report to tonight's GP Committee titled "Whistleblowing – New policy, processes and the work of Grant Thornton" would align with the new proposed approach, with touch points in all related policies and procedures having clear links and reference to whistleblowing.
- 3.18 Managing Discipline, Standards for [Poor] Performance, and Sickness and Health Incapability – informal and formal. An organisation's Disciplinary Procedure for when formal action is being taken is contractual and so changes to it would need to be discussed with the Trade Unions.
- 3.19 Having a coherent approach to the day to day management of all the above, including the handling of employee grievances is considered to be the best way forward; including ensuring a clear expectation that managers and employees try and resolve matters without formal escalation wherever possible. For this to be the case there needs to be a simplified formal action procedure or procedures; regular dialogue between employees and managers, and additional guidance and training, including via the learning management system for employees and managers.
- 3.20 Member Involvement in Appeals against Dismissal - The involvement of Members in appeals against dismissal could also be reviewed and this was one of the recommendations of the independent review of Industrial Relations by the IES.
- 3.21 The main findings from the joint Industrial Relations Review covered four areas: -
- Strategy - the development of, and agreement on, a clearer, defined employee relations strategy and set of principles;
 - Industrial Relations Procedures - to be streamlined and made more transparent;
 - Consultation and Communications - wider and informal consultation and communications processes with all staff should be developed in order to develop their understanding of and contribution to the Council's strategic

agenda and engage all staff, not just trade union members. This should be integrated into the wider employee relations strategy.

- Management Development - development of management skills and competence in staff communications and dispute resolution and wider development and promulgation of positive behaviours.

3.22 The specific suggestions that could help achieve the change set out in the review re Strategy are: -

- Development and dissemination of a concise set of values that relate to employment relations – including clear linkages to the wider HR strategy and relationship to the Council’s values;
- Linked to this, a clear definition of the positive employee relations climate that the Council seeks in order to deliver its strategy;
- Definition of the channels for achieving a positive employee relations climate. This centres on clear definition of which issues fall under negotiation, consultation and communication, and the various mechanisms to involve people available under each area;
- Recognition of the importance of the formal representation role and partnership with trade unions;
- Involvement of line managers, staff and trade unions in developing the Council’s employee relations strategy to ensure understanding and support;
- Ensuring councillors and all key stakeholders are engaged with and buy into the shift in IR approach.

3.23 The review sets out changes to Industrial Relations Procedures which might include options such as: -

- Integrating the CHAD and the wider grievance and disciplinary process;
- Replacing the Joint Consultative Advisory Group (JCAG) and Failure to Agree with a feedback process to the Council HR Committee, with clear milestones and timescales for issues to be addressed; the Mayor and councillors are obviously critical to reforms in this area;
- And/or considering the use of external/independent mediation in that process in order to ensure fair and timely outcomes;
- Enabling the staff-side structure to work in practice as a single table in which all recognised trade unions participate;
- A general ‘tidying up’/updating/simplifying/shortening of employment procedures and guidance;
- A review of the implementation of employment procedures, including sickness absence, in order to ensure that they have enough built-in flexibility in order to permit managers to adapt them appropriately to individual cases and to make a judgement about when, and when not to, to formalise matters.

3.24 Collective Consultation Disputes Procedure - At present the Council has a dispute resolution procedure that was introduced as part of the Employment Options programme in 2015 and which deals with disputes arising from restructures. There is the option to review and update this to take account of:

- The recommendations of the joint independent Industrial Relations Review;
- Recent local changes made to the format for the Corporate Trade Union Forum meeting which have been designed to ensure consistency and timely engagement between the recognised Trade Unions and the organisation.

3.25 Any update to the Collective Consultation Dispute Procedure that, for example, amends or removes the Joint Consultative Advisory Group (JCAG) meeting provisions (and reference locally to the term 'Failure to Agree') would require consultation (but not agreement) with the Trade Unions.

Trade Union Position

3.26 Informal engagement with the trade unions suggests they appear to be favourably disposed to the single resolution procedure for employees, but that more engagement and discussion is needed in relation to any possible changes elsewhere. A particular concern that trade unions have is for any change to the current facility for their members to be accompanied at informal stages, or investigation meetings.

3.27 The latest figures show the trade unions represent approximately half the workforce (please note these figures have been updated since those referred to in the I.E.S. review) but the current employment procedures and practices are lengthening the time it ought to be taking to address and conclude employee relations cases, and restructure consultation and implementation for all employees. The IES Review found, for example, that between 2010 and 2015 most employee relations cases from investigation to concluding hearing took between 100-200 days to resolve, compared to the typical timescale that our current policy and procedures should result in of 50-60 days.

3.28 There is a requirement for organisations that recognise Trade Unions to consult through collective agreement procedures in relation to terms and conditions of employment – and this includes any changes to the Code of Conduct for employees, the Disciplinary Procedure and the Grievance Procedure.

3.29 The main recommendations from the I.E.S review that impact on the relationship between the Council and Trade Unions include: -

- A clear definition of the positive employee relations climate that the Council seeks;
- Definition of the channels for achieving a positive employee relations climate, including clear definitions of which issues fall under negotiation, consultation and communication;
- Recognition of the importance of the formal representation role and partnership with Trade Unions.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The detail within this report are captured within the HR Transformation Programme and the comprehensive review of HR strategies/policies and procedures. These form a part of Phase 1 of the Policies, Procedures and Practice Review a key element of the Council's strategic plan.
- 4.2 This diagnostic review aims to generate thinking and potential subsequent efficiencies through the rationalisation and streamlining of current procedures and practices and the simplifying of management and employee interactions.
- 4.3 Any subsequent savings generated from the implementation of consequential changes will not necessarily be cashable if they result in the re-direction of employee time to other defined employee roles and activities. Any delay in the handling of the conclusion of an employee relations case has a financial and cultural cost to the organisation, so changes that will improve this are to be welcomed. Additionally, expenditure on legal fees should reduce in line with an improvement in employee relations.

5. LEGAL COMMENTS

- 5.1 As the report states, the aim would be to reach agreement with the trade unions on the contractual changes proposed, however should that not be possible, then in order to make the changes a process of dismissal and re-engagement of staff would need to take place to enforce the changes.
- 5.2 The Council's Code of Conduct, Grievance Procedure and Disciplinary Procedure are terms and conditions of employment and therefore the Council would need to consult with the Trade Unions to seek agreement to the new terms and conditions of employment.
- 5.3 Section 9P of the Local Government Act 2000 requires the Council to prepare and keep up to date a Constitution and which is also to contain such information as the Secretary of State may direct. A Constitution Direction (The Local Government Act 2000 (Constitutions) (England) Direction 2000) was issued by the Secretary of State in December 2000 sets out the broad themes to be included in a local authority's Constitution. One of these themes is the roles of officers of the local authority and this includes both the code of conduct for officers and the arrangements for recruitment, appointment, dismissal and disciplinary action for officers. Any review and adoption of a revised code of conduct for officers and a revised Officer Employment Procedure Rules would need to be in accordance with the Council's statutory responsibility.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Individual equality analyses would need to be undertaken before each of the new policies and procedures identified in the report are introduced to ensure that equality and diversity considerations are taken into account. Any new

proposed policies and procedures would also be shared with the various staff forums for their input.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The potential changes that this review might lead to would contribute to a change in the culture of the organisation and will ensure employee relations issues are managed at the lowest level by managers in an effective and efficient way.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 N/A

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The risks are set out in the Legal Comments section and the implications are covered in the linked report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 N/A

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Requirements Specification for Independent Industrial Relations Review
- Institute of Employment Studies – London Borough of Tower Hamlets Review of Industrial Relations Summary Report - December 2016

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- None

Officer contact details for documents:

- N/A