

WIRRAL COUNCIL

THE EMPLOYMENT AND APPOINTMENTS COMMITTEE

15 NOVEMBER 2012

SUBJECT:	EMPLOYEE RELATIONS PERFORMANCE
WARD/S AFFECTED:	ALL
REPORT OF:	SURJIT TOUR, ACTING DIRECTOR OF LAW HR AND ASSET MANAGEMENT
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to update members on the number and status of Employee Relation Cases and the Council's performance in managing these issues.
- 1.2 This is a new report and has been produced following the development of a HR casework system which has improved the quality of management information available on employee relations issues. This report will be submitted to The Employment and Appointments Committee on a quarterly basis. We are continuing to develop the reporting aspect of the system.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 The Committee will be aware that one of the recommendations of the independent report undertaken by Martin Smith into alleged bullying and abuse of power in Adult Social Services was that the Council developed a corporate casework system to improve the management of grievance, whistleblowing and other employment matters.
- 2.2 The system is currently used to record all formal cases in relation to discipline, grievance, attendance management, capability and Employment Tribunal cases.
- 2.4 Cases are recorded where formal action is being taken, considered or a formal investigation is in process in accordance with the relevant policy.
- 2.5 The casework system is a working system used by Human Resources to ensure progress and timescales for each case is monitored.
- 2.6 The management information available for Employee Relations cases will assist the Council to:
 - Identify issues across the workforce
 - Highlight trends and potential problem areas
 - Manage and improve performance for the Council in managing Employee Relations casework in a timely, consistent and quality manner

2.7 The following information has been recorded on the system:

- Disciplinary cases (since 1 April 2011)
 - Grievance cases (since 1 April 2011)
 - Attendance Management cases since 1 April 2012
 - Employment Tribunals (since 1 April 2011)
 - Appeals (since 1 April 2011)
 - Capability Cases since 1 April 2012
- 2.8 Detailed information is provided in Appendices 1-21. The intention is to get as much into the public domain without compromising individuals' privacy. If the Committee wish to have further details which could include information which would identify an individual it may be necessary to exclude the public to protect individuals

3.0 TRENDS AND ANALYSIS

Overall Activity

- 3.1 Appendices 1 to 21 provided a detailed breakdown of employee relations activity.
- 3.2 Appendix One shows that there are currently 189 'live' employee relations cases being managed across the Council across disciplinary, grievance, attendance management, Employment Tribunals, capability and Sub-Committee appeals. A member of the Human Resources Team has been allocated to support managers to each case on a casework basis. The total number of Council employees non schools is 4,897.
- 3.3 Absence management cases represent the largest area of activity with a total of 127 cases ongoing. There are currently 30 grievances and 21 disciplinary cases. The Council has 7 cases currently lodged with an Employment Tribunal.
- 3.4 Appendix Two sets out that the breakdown of this activity by department. Adult Social Services have the largest number of live cases of all categories (75) which represents 10% of that department. Children and Young People Department have 60 cases which is approximately 3% of the department. Finance Department have 11 cases which is 0.9%, Regeneration, Housing and Planning have 2 cases which is less than 1% and Law, HR and Asset Management has 10 live cases which is also less than 1%. Technical Services have 31 cases which is 4%.
- 3.5 During the first 6 months of the current financial year, a total of 95 cases (all categories) have been closed. A total of 25 of these were in DASS, 33 in CYPD, 9 in Finance, 3 in Law, HR and Asset Management, 11 in Regeneration, Housing and Planning and 14 in Technical Services.

Disciplinary

- 3.6 Appendices three to seven show the number of open and closed disciplinary cases, the outcome, level of alleged misconduct and average time taken to conclude. The key issues identified are:
- There are currently 21 live disciplinary cases.

- There are 12 cases of potential gross misconduct currently being investigated. Of these, one case has been ongoing for 18+ months, 3 cases have been ongoing for 7-12 months, 3 cases for 4-6 months and 5 cases less than 3 months. In 11 of 12 cases, employees remain suspended whilst investigation takes place.
 - A total of 38 cases (all levels) have been closed during the financial year to date. This compares to 44 for financial year 2011/12. Whilst this would suggest an increase in disciplinary cases, it may also reflect the revised arrangements under the HR casework system and also through allocation of HR Officers to each case which has improved recording.
 - Of the 44 cases closed in 2011/12, 25 were concluded within 3 months, 11 cases concluded within 4-6 months, 7 cases within 7-12 months and 1 case took longer than 12 months to conclude.
 - Of the 38 cases closed in the financial year to date, 8 were issues of gross misconduct, 4 of which resulted in dismissal. Warnings were issued in 22 cases.
- 3.7 Whilst the number of current cases is relatively small and a significant number are dealt with within a reasonable timeframe, there is significant room for improving performance in this area. Unless there are exceptional circumstances, disciplinary matters should be dealt with within 3 months. HR Officers are assigned to each case and will continue to promote speedy resolution of cases where this is possible. The Council's disciplinary policy and procedure are under revision as a priority.

Grievances

- 3.8 Appendices 8-12 show the number of live and closed grievance cases, the duration that cases have been ongoing and the outcome of closed cases. The key issues identified are:
- There are currently 30 grievance cases.
 - Of these 30 current grievances, 8 are in DASS, 9 are in CYPD, 6 in Technical Services and 5 in Law, HR and Asset Management.
 - At time this report was produced, 23 cases are at Stage 1 (Manager), and 7 cases at Stage 2 (Chief Officer/Head of Service). There were no Elected Member grievance appeals waiting to be heard.
 - A total of 3 cases have been ongoing for 13-18 months, 4 for 7-12 months, 12 are 4-6 months and 11 are less than 3 months.
 - A total of 33 grievances have been closed between 1 April and 30 September 2012. This compares to 23 that were recorded for 2011/12. Whilst this may be attributable to an increase in grievances it may also reflect the revised arrangements under the HR casework system and also through allocation of HR Officers to each case which has improved recording. Of the 23 cases recorded in 2011/12, 1 case took longer than 18 months to resolve.
 - Of the 33 cases closed between 1 April 2012 and 30 September 2012, 14 cases had been dealt with within 3 months and 4 had taken longer than 12 months. A total of 9 of

the cases were not upheld and 10 were partially upheld, 5 grievances were upheld and 4 were resolved via an informal resolution.

- Of the current grievances, the highest category (38%) relate to bullying and harassment and relationships at work and organisational change both account for 4%. Other categories are Equality and Diversity, Working Arrangement and Terms and Conditions.
- 3.9 Whilst the number of grievance is currently relatively small, there is room for improving performance in this area, particularly in the time being taken to deal with some cases. HR Officers are assigned to each case and will continue to promote speedy resolution of cases. The Council's grievance policy and procedure have been revised and have been submitted to the Employment and Appointments Committee for approval. The revised policy will be accompanied by detailed guidance for managers on how to handle grievances effectively.

Absence Management

3.10 Appendices 13-14 show the number of live absence management cases. The key issues identified are:

- There are 127 'live' absence management cases where formal action has been taken or is being considered. 63 of those cases are in DASS.
- There are 100 cases at Review Meeting Stage where managers have highlighted that an employee pattern of absence is a concern and/or they have breached triggers within the Attendance Management Policy
- Of 100 cases being managed at Review Stage, 78 employees have been given an informal warning that their attendance needs to improve.
- 50% of these cases are in DASS and 26% are in CYPD, with Technical Services accounting for 15% of cases at Review Stage.
- There are 6 cases being managed at Stage 2, 5 cases being managed at Stage 3 and 1 case at Stage 4 of the Attendance Management Policy.
- There is one appeal outstanding for an employee who has been dismissed on the grounds of their absence record.
- In the period 1 April – 30 September 2012, 17 attendance management cases were closed. 12 of these were closed at the Review Meeting Stage, 4 were closed at Stage 1 and 1 at Stage 2.

3.11 The level of activity is evidence that absence is being managed but there is inconsistency across the Council. The Council's absence figures remain in the upper quartile for Local Authorities which suggests that further work is required to ensure managers are consistently applying the policy.

3.12 HR resources has been put in place on a short-term basis to work with managers in areas where absence is not being managed, to develop understanding and to assist in developing action plans for current cases where required.

Appeals

3.13 Appendices 15-17 show the number of live and closed appeals due to be heard by the Appeals Sub-Committee. The key issues identified are:

- There were 4 appeals heard between 1 April and 30 September 2012. Of these, 2 were considered under the Disciplinary Policy as appeals against dismissal and on both occasions employees were re-instated. The other 2 appeals were heard under the final stage of the grievance procedure and one appeal was upheld and one disallowed.
- The Appeals Sub-Committee considered 7 appeals during 2011/12. Of these, 5 were under the disciplinary policy and 2 under grievance.
- There are 2 appeals scheduled to be heard under Attendance Management and Disciplinary Policy – both in November 2012.

3.14 Employment Tribunals

Appendices 18-20 show the number of live and closed Employment Tribunal cases the Council is dealing with. The key issues identified are:

- The Council is currently dealing with 7 cases which have been submitted to an Employment Tribunal.
- Three cases were dealt with between 1 April and 30 September 2012. One was settled and one claim was not upheld and one claim was withdrawn.
- There were a total of 5 cases in 2011/12. Of these, 2 claims were settled, 2 claims were not upheld by the Tribunal and one was withdrawn.

3.15 The number and outcome of Employment Tribunal cases can be unpredictable for any large organisation. However, by ensuring that the Council deals with issues when they occur reasonably, proportionately, in a timely manner and complying with policy and employment legislation as appropriate we can reduce the risk of Employment Tribunal Cases. Work is being undertaken to develop policy and improve practice in these areas.

Performance Capability

3.16 Appendix 21 show the number of live Capability Cases. The key issues identified are:

- There are two cases current being managed under the Capability Process.

3.17 For an Organisation of the Council's size, this is a very low return. The current capability policy is under review and a revision of this policy, aligned to the development of a performance appraisal process, is required to drive performance

management and accountability of managers. The capability policy has been identified as a priority and work has commenced.

Whistleblowing Policy

- 3.18 In accordance with the Council's policy, on behalf of the Monitoring Officer, a record is maintained of concerns raised and the progress of investigations recorded. There are currently 6 concerns, raised under the Whistleblowing Policy, under investigation and are open.
- 3.19 The HR Casework system is still being refined to ensure the appropriate security permissions are in place for this data to be stored confidentially.

Comparative Analysis

- 3.20 There is very little data currently available from other Local Authorities to enable benchmarking of the Council's performance in this report. It is not possible to provide any evidence whether the number of cases, particularly around grievance, is typical compared to other Local Authorities of a similar size. We are working with other a number of other Merseyside authorities to establish if this data can be made available.
- 3.21 An IRS Survey of 197 organisations in 2010 does provide some context for number and nature of grievances. It looked at the instances of formal employee grievances per 100 employees per year in organisations of 100 employees or more, It found that in private sector services - a median of 0.61 employee grievances per 100 employees; manufacturing and production - 0.40; and public sector - 0.38.
- 3.22 For the Council, based on last year's recorded grievances of 23, our median is 0.47 per 100 employees, which is higher than the public sector figure from the IRS Survey.
- 3.23 The research also investigated whether or not any unresolved grievances resulted in an employment tribunal claim within the past two years. Over a quarter (26.6%) of organisations indicated that this was the case.
- 3.24 The Survey found that every type of workplace issue is more likely to be raised through a formal grievance procedure in public sector organisations compared to private sector services and manufacturing and production companies. This is to be expected given the typically larger size of public sector organisations compared with private sector services and manufacturing and production organisations.
- 3.25 The IRS suggested that another reason for the greater likelihood of discrimination issues being raised in the public sector as opposed to private sector and manufacturing and production organisations could centre on the equality duties on public sector organisations. This means there is heightened awareness of people's discrimination rights in the public sector.
- 3.26 The same survey found that between 2008 and January 2010, 171 organisations dealt with 9,170 instances of disciplinary action, with 8,874 progressing through a formal disciplinary procedure. This shows that just 3.2% of disciplinary incidents were handled without recourse to a formal process.

- 3.27 The median (midpoint in the range) number of disciplinary cases handled through a formal process is 12 per organisation. When the figures are analysed on a broad sectoral basis, the median number is seven disciplinaries for every private sector services company, 15 for manufacturing and production and 30 for every public sector organisation.
- 3.28 However, the typically larger size of public sector organisations means that more disciplinary cases are handled per organisation compared with most private sector and manufacturing and production companies. It is therefore a more accurate reflection of the incidence of disciplinaries to look at the instances of formal cases per 100 employees a year in organisations with 100-plus employees:
- manufacturing and production - a median of 1.85 formal disciplinary cases per 100 employees;
 - private sector services - 1.75; and
 - public sector - 0.72.
- 3.29 For the Council, based on last year's recorded disciplinaries, our median is 0.89 per 100 employees, which is higher than the public sector figure from the IRS Survey.
- 3.30 This ratio makes it clear that, when the size of the workforce is taken into account, public sector organisations have not experienced a higher level of formal disciplinary cases compared with manufacturing and production and private sector companies. On this measure, the incidence of formal disciplinaries is more than twice as high in manufacturing and production and private sector services.
- 3.31 The IRS research finds that around one in three (31.3%) organisations have faced one or more employment tribunal cases between 2008 and January 2010 as a result of disciplinary action. On average, these organisations experienced three tribunal cases, or a median of one.
- 3.32 When looking at the relative incidence of formal disciplinary cases per dismissal by sector, the typically larger size of public sector organisations means that more disciplinaries/dismissals are handled per public sector organisation compared with most private sector and manufacturing and production companies. It is therefore a more accurate reflection to look at the instances of formal disciplinary cases per dismissal per 100 employees a year in organisations of 100 employees or more:
- private sector services - a median of four disciplinary cases per dismissal;
 - public sector - five disciplinary cases for every dismissal; and
 - manufacturing and production - five cases for every dismissal.
- 3.33 This ratio makes clear that, when the size of the workforce is taken into account, there is little variation across sectors. So, while the nature of the disciplinary may be different, the incidence of disciplinaries is on a par across all sectors.
- 3.34 The HR casework system is being developed and its reporting capabilities enhanced. The information provided in this initial report will become more relevant and interesting over time so that the Council can compare past and present performance and set some ambition for the future. This will in turn highlight areas where work needs to be targeted.

4.0 POLICY DEVELOPMENT & TRAINING

- 4.1 A number of the Council's employee relations policies are being reviewed. Members will be aware that a revised Attendance Management policy was introduced in April 2011, the revised Whistleblowing policy was approved in September 2011 and a revised grievance policy has been submitted to this Committee for approval.
- 4.2 A revised Dignity at Work, Disciplinary policy and Capability (Performance Management) are under review and will be presented to Employment and Appointments Committee over the coming months.

5.0 RELEVANT RISKS

- 5.1 None identified

6.0 OTHER OPTIONS CONSIDERED

- 6.1 N/A

7.0 CONSULTATION

- 7.1 N/A

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1 N/A

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 9.1 N/A

10.0 EQUALITIES INFORMATION

- 9.1 Equality implications arising from employee relations cases will continue to be reported as part of Workforce Monitoring data.
- 9.2 An EIA in relation to the HR casework system which records all information in the report can be found at <http://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-2010/law-hr-asset-management>

11.0 CARBON REDUCTION IMPLICATIONS

- 10.1 N/A

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

- 11.1 N/A

13.0 RECOMMENDATION/S

- 13.1 The Employment and Appointments Committee to note information provided within the report about Employee Relations Cases.

13.0 REASONS FOR RECOMMENDATION/S

13.1 For the Employment and Appointments Committee to have detailed information about the Council's current position on employee relations cases.

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APPENDICES

Appendices 1-21

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date