

MERSEYSIDE FIRE AND RESCUE AUTHORITY			
MEETING OF THE:	MERSEYSIDE FIRE & RESCUE AUTHORITY ANNUAL GENERAL MEETING		
DATE:	26 JUNE 2014	REPORT NO:	CFO/076/14
PRESENTING OFFICER	DEPUTY CHIEF FIRE OFFICER (ON BEHALF OF THE TASK & FINISH GROUP)		
RESPONSIBLE OFFICER:	DCFO PHIL GARRIGAN	REPORT AUTHOR:	NICK MERNOCK – DIRECTOR OF PEOPLE & ORGANISATIONAL DEVELOPMENT
OFFICERS CONSULTED:	JANET HENSHAW – CLERK TO THE AUTHORITY CLLR STEVE NIBLOCK (CHAIR OF TASK & FINISH GROUP) CLLRS TONY NEWMAN, ROY GLADDEN & LESLEY RENNIE – MEMBERS OF THE TASK & FINISH GROUP)		
TITLE OF REPORT:	FEEDBACK OF TASK & FINISH GROUP - HR POLICIES		

APPENDICES:	APPENDIX A:	CONDUCT AND CAPABILITY POLICY *
	APPENDIX B:	CONDUCT (DISCIPLINE) SERVICE INSTRUCTION
	APPENDIX C:	CAPABILITY SERVICE INSTRUCTION
	APPENDIX D:	ABSENCE AND ATTENDANCE SERVICE INSTRUCTION
	APPENDIX E:	FIREFIGHTER HEALTH AND FITNESS SERVICE INSTRUCTION
	APPENDIX F:	POSITIVE MENTAL HEALTH AND WELLBEING SERVICE INSTRUCTION
	APPENDIX G:	MEDICAL DISCHARGE PROCEDURE
	APPENDIX H:	COMMITTEE REPORT 17TH JANUARY 2005
	APPENDIX I:	EQUALITY IMPACT ASSESSMENT

* Please see background papers

Purpose of Report

1. To request that Members consider the feedback from the Task & Finish Group, established to review HR Policies and Procedures and the recommendations of the Performance and Scrutiny Committee in relation to sickness absence and discipline; and approve the adoption of the new Policies and Procedures which have resulted from the review.

Recommendation

2. That Members;
 - a) Note the work undertaken by the Task and Finish Group and agree that its function is ceased should the Authority approve the recommendations within this report.
 - b) Approve the recommendation of the Task and Finish Group and the Performance & Scrutiny Committee, to endorse the introduction of the following Policies and Procedures:
 - Conduct & Capability Policy
 - Absence & Attendance Service Instruction
 - Capability Service Instruction
 - Conduct (Discipline) Service Instruction
 - Firefighter Health & Fitness Service Instruction;
 - Medical Discharge procedure
 - Positive Mental Health and Wellbeing – Service Instruction
 - c) Agree the recommendation of the Task and Finish Group and Performance & Scrutiny Committee, to revoke the local agreement of 2005 in respect of Disciplinary Management Levels and in doing so agree to the reversion back to those stipulations contained within the Grey Book for ALL staff.
 - d) Approve the attendance of Members of the Task & Finish Group, at training sessions with Managers around the new procedures.
 - e) Approve the submission of regular update reports to the Performance & Scrutiny Committee, regarding implementation of the policies and procedures.

Introduction and Background

3. At its meeting on 6th December 2012, the Performance & Scrutiny Committee requested that a Task & Finish Group be established to scrutinise the Authority's sickness absence levels and review its policies and procedures in relation to the management of sickness absence.

4. This initial Task & Finish Group consisted of Cllr Steve Niblock (Chair of the Task & Finish Group), Cllr Roy Gladden and Cllr Tony Newman. The Group met on four occasions between January 2013 and May 2013, to consider and scrutinise the question:

“Why are the current levels of sickness absence across the Authority not reducing and can any action be taken to reduce this?”

5. A significant amount of information was considered and reviewed by the initial Group, such as:
 - Current policies and procedures in relation to Sickness Absence, Mental Health, Ill Health Retirement, Other duties roles and Discipline.
 - Breakdown of sickness absence statistics for long-term and short-term sickness
 - Costs to the Authority associated with sickness absence
 - The impact on appliance availability due to long term and short term sickness absence
 - The support services available to staff through the Authority’s Occupational Health Services.
6. The Group concluded that the introduction of a Capability Procedure may support and assist the Authority as it seeks to respond to long-term or persistent absence, but that any such procedure could not be viewed in isolation from other related procedures.
7. The Group therefore recommended that:
 - Officers complete a review of all policies and procedures related to the management of sickness absence and discipline in the Organisation.
 - A further Task & Finish Group be established to reflect the expanded Terms of Reference, in order to scrutinise all new or amended policies and procedures, prior to recommending or otherwise, the associated policies/procedures for formal approval and implementation by the Authority.
8. At a meeting of the Authority on 27th June 2013, Members approved these recommendations; and resolved that the Group be re-established and expanded to include Cllr Lesley Rennie, taking the Membership of the Group to four.
9. Following a comprehensive review of all relevant policies and procedures by Officers, a briefing was held for all Authority Members on 3rd December 2013, to inform the Authority of the emerging issues, prior to the Task & Finish Group re-convening.
10. The Task & Finish Group re-convened on 19th December 2013. At this meeting, the Group considered a number of draft policies, Service Instructions and other documentation prepared for them, in relation to:

- Conduct (Discipline) procedure
 - Absence & Attendance
 - Capability
 - Firefighter Health & Fitness; and
 - Medical Discharge
11. The Group met again on 14th January 2014 to consider each DRAFT document in detail. The group considered the Policies and Procedures and the training that would be delivered to first line managers as part of the implementation process. At this meeting, the Group suggested changes to the procedures and recommended that an 8 week consultation period commence with Representative Bodies regarding the DRAFT documentation.
 12. A third meeting of the Group took place on 11th February 2014, for the Group to receive an update on progress in relation to the consultation.
 13. The final meeting of the Group took place on 6th May, following conclusion of the Consultation period (extended to a full 12 weeks at the request of the representative bodies), where the Group considered the outcomes of the Consultation and agreed their recommendations.
 14. A report concerning the feedback and recommendations of the Task & Finish Group was subsequently considered by the Performance & Scrutiny Committee on 29th May 2014, at which it was recommended that the report and the draft new policies and procedures, be submitted to the full Authority for approval.

Construction of the Revised Policies

15. The Task and Finish group were presented with a suite of policies and procedures that not only addressed the two key areas of focus, but enhanced the current procedures to ensure transparent and consistent application for all employees, irrespective of the conditions of service they are aligned to.
16. The policies have been constructed to reflect statute and case law and include capability for managing performance and attendance issues and conduct to manage discipline issues.
17. The Absence and Attendance policy has been refreshed and rewritten to complement the capability procedure.
18. The Firefighter Health and Fitness Policy and Service Instruction reflect national guidance and encourage a healthy lifestyle for all operational teams via fitness routines, lifestyle and dietary support.
19. The medical discharge process has been refreshed to reflect the capability procedure.

20. The proposed Policies recognise that the employer and employee have a responsibility to support staff to perform or to perform to the best of their ability.
21. The Capability procedure introduces a transparent process that is able to address sickness absence in a supportive manner, whilst recognising the need for employees to contribute to the day to day delivery of the Service by the identification of the areas of improvement required within employee's patterns of attendance or performance.
22. The procedure references the need to access equality and diversity advice when dealing with disability related concerns to ensure that all reasonable adjustments are considered and implemented in respect of the workplace environment and through the introduction of supportive applications were practicable.
23. The Conduct procedure, which broadly reflects the current Grey Book Discipline procedure, changes the range of sanctions available to Green and Red book employees, who have historically received a greater warning period than their grey book colleagues. The procedure also introduces alternative sanctions to dismissal which previously were not available. This harmonisation of the Discipline processes facilitates a singular transparent process that is equitable across all employees and thereby reduces the risk of discriminatory challenge due to unequal or inconsistent treatment.
24. The most fundamental change to this procedure is that it provides for a consistent approach to appeals against dismissal for all employees within the Service, with Grey Book employees no longer having a level of appeal to Members but now appealing to a Principal Officer which is consistent with current arrangement for Green and Red book employees. This places the final management decisions with the Deputy Chief executive, Deputy Chief Fire Officer or Chief Fire Officer.
25. Members should be aware that the Grey Book National conditions of service do not stipulate member involvement in the appeal process. This requirement was introduced as part of a local agreement in January 2005 and led to an inconsistency of treatment between Grey book, and Green and Red Book employees. Additionally a failure to address this difference will also undermine the introduction of the capability procedure, as there will again be different treatment for our employees at the final stage.
26. The revised Absence and Attendance procedure, maintains the initial absence trigger of 8 days sickness or 3 periods of Absence, however the outcome of breaching this trigger will be considered utilising the newly proposed capability procedure as opposed to the discipline procedure which is currently applied.
27. This will result in interventions which are instigated in order to support improvement, as opposed to the application a formal disciplinary warning which was the case under the original procedure. This is being revised to take account of the often unpalatable situation where an employee who has been off sick with genuine illness receiving a formal disciplinary sanction.

Outcomes of the consultation Process

28. All Trade Unions were fully consulted following the recommendation of the Task and Finish Group in order that the group could consider all comments made in relation to the proposed changes. This consultation has taken place over a full twelve weeks in order that the representative bodies were fully able to consider the views of their members, and to allow consideration of all suggested changes. Below is a summary of the key issues raised.
29. Unite put the proposal to their regional official who were content with the procedures, and re-emphasised the recognition that a Capability procedure was a more supportive mechanism to deal with absence than the current procedure.
30. The Fire Officers Association was also broadly content with the revised procedures, acknowledging the intent of the revisions proposed. They raised an amendment to the absence and attendance procedure – suggesting that the Authority only consider charging employees if they fail to attend planned medicals without just cause. This amendment has been incorporated within the final version
31. Unison accepted the revisions to the conduct policy as they benefited their membership, but proposed a hearing panel of 3 as is operated within organisations such as the NHS, as opposed to a single hearing manager. This has not been accepted as a change due to the disproportionate impact this would have on managerial effectiveness. For an organisation of Merseyside Fire and Rescue Authority's size it is unrealistic and impracticable to utilise 3 managers to hear one disciplinary case. An example of this would be that a level 3 hearing would require the attendance of 3 Area Managers or Directors as well as an HR advisor, a Group Manager to present the case, and a note taker.
32. Unison also proposed some amendments to the Hearing and Appeal timescales for both the Capability and Conduct procedures, and these have been incorporated into the revised procedures.
33. Unison suggested that the Service Instructions and guidance notes were incorporated into one document as a single point of information and to enhance the transparency of processes. This suggestion will be actioned in relation to the Conduct and Capability procedure.
34. The Fire Brigades Union also proposed some amendments to the construct of the policies which have been incorporated into the revised versions, and assisted in the balance of the Capability policy to ensure it improves on the current Absence procedure.
35. The only major area of concern raised by the FBU was the proposed revision of the scheme of delegation in relation to management levels for the management of Conduct and Capability. The proposed changes reflect those contained within the Grey Book and remove the stipulation that Appeals against dismissal

will be heard by elected members. Failure to revoke the current local agreement would conflict directly with the introduction of the Capability procedure. It is recommended that the appeals will now be heard by a Principal Officer.

36. This change is required in order to ensure conduct and capability issues are dealt with at the lowest possible management level. This change allow managers to manage at the appropriate level, and remove the need to deal with issues at an unrealistically high level as is currently the case due to the local agreement currently in place. It is widely recognised that Capability and Discipline is most effectively applied at the lowest possible managerial level – allowing for the earliest and most effective intervention possible.
37. The Authority Report to amend the Grey Book provisions and introduce a local agreement was approved by members on 17th January 2005, and that report is attached as attached as Appendix H. This included the scheme of delegated Powers to Officers contained in Appendix A ,paragraph 12 of that report, the stipulation *“this scheme of delegation shall apply with effect from 1st January 2005 until and unless further amended or revoked by the Authority”*
38. The recommendation of the Task and Finish group and the Performance and Scrutiny Committee is that Members now approve the revocation of this local agreement, and agree the revised policy document to facilitate the management of Capability and Conduct at the most appropriate managerial levels, aligning the procedure to that within the Grey Book

Implementation

39. The Capability procedure represents a fundamental change in the management of employee performance and sickness absence. As such the Task and Finish Group recommends that a training package is created to support the development of managers who are required to apply this process, as well as providing continued professional support to Service Managers through the introduction of Business Managers from within the People and Organisational Development Directorate.
40. As such a two day course has been developed by the Organisational Development Team, and this will be delivered prior to the full introduction of the Capability procedure. This will address the procedural knowledge and understanding required to respond to the changes, as well as the communication skills required to ensure a consistent approach is applied to the same circumstances taking full account of the implications of each case.
41. Mangers will be given a central point of contact within the People and Organisational Development Team with whom they can discuss cases in a confidential and safe environment to both verify, and confirm the preferred course of action.

Equality and Diversity Implications

42. All proposed policies and procedures have been subject to an Equality Impact Assessment (EIA) attached as Appendix I. The revised policy documents harmonise the terms and conditions for all employees, and ensure transparency and equal treatment. The previous policies whilst being established nationally differed greatly in the potential treatment of certain employees and consequently left the Authority at risk of legislative challenge.

Staff Implications

43. The proposed new suite of policies and procedures recommended following this review, have been the subject of consultation with all the relevant representative bodies.
44. The harmonisation of procedures across areas ensures the consistent treatment for all staff employed by the Authority.
45. The Authority will continue to provide comprehensive Occupational Health Services support to all its employees, in order to assist staff return to work as soon as practicable.

Legal Implications

46. The recommended policies and procedures, comply fully with all relevant legislation and will be delivered and implemented within the relevant legal parameters.

Financial Implications & Value for Money

47. The costs associated with sickness absence are a significant financial burden to the Authority, especially given the scale of the current financial challenge. The robust management of absence at all levels will assist in reducing this financial burden, as much as possible.
48. The total cost between January 2012 and January 2013 for sickness absence (excluding payments to cover absent posts) was £1,292,598.

Risk Management, Health & Safety, and Environmental Implications

49. The Authority place the highest importance on the health and safety of its employees, having extensive occupational health services, support and processes in place, which play a crucial role in maintaining the health and wellbeing of all employees.
50. The Authority will continue to manage sickness absence fairly and in a supportive manner.

51. Failure to manage sickness absence effectively will have an impact on the services provided to the public – with particular regard to response and prevention.

Contribution to Our Mission: *Safer Stronger Communities – Safe Effective Firefighters*

52. The Policies and Procedures introduced will ensure that staff availability is maximised to limit the impact on the Authority's resources in order to keep the communities of Merseyside and its Firefighters safe.

BACKGROUND PAPERS

CFO/082/13 FEEDBACK OF TASK & FINISH GROUP REGARDING SCRUTINY OF SICKNESS ABSENCE

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The titles of some of the Service Instructions have been changed following the consultation process to ensure that they are streamlined, consistent and form practical documents for ease of reference.

The Conduct and Performance policy has become the Conduct and Capability Policy

The Capability Procedure Service Instruction and Guidance notes has become the Capability service instruction.

Conduct (Discipline) guidance Notes has been incorporated into the Conduct (Discipline) Service instruction

GLOSSARY OF TERMS
