

## **Staffing Committee**

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**Date of Meeting:** 24 January 2019

**Report Title:** Employment Tribunals – Overview of Lessons Learnt

**Portfolio Holder:** Paul Findlow – Corporate Policy & Legal Services

**Senior Officer:** Sara Barker, Head of Strategic HR

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### **1. Report Summary**

- 1.1. This report addresses an action identified at the last Staffing Committee meeting (4<sup>th</sup> October 2018) and provides an overview of lessons learnt from six Employment Tribunal claims against the Council in the last 12 months. These points will be embedded into normal practice to minimise the risk of Employment Tribunal claims being lodged and to support the Council in its defence of claims when they are made.

### **2. Recommendation/s**

- 2.1. Staffing Committee is asked to note the contents of this report and provide feedback.

### **3. Reasons for Recommendation/s**

- 3.1. The experiences of Human Resource services and Legal Services have been combined within this report to provide information that will be considered to both minimise the risk of future Employment Tribunal claims and to potentially place the Council in a stronger position in its defence of any future claims.

### **4. Background**

- 4.1. In the last 12 months, the Council has handled six employment tribunal claims from former and current employees. These are time consuming and costly to defend as well as having the potential for negative reputational impact for the Council.
- 4.2. Of these six employment tribunal claims, one case was found in the Council's favour, two cases were settled, one was withdrawn by the applicant and the other two are on-going.

- 4.3. The total external legal costs associated with these employment tribunal claims are £63,400 to date. There is likely to be additional costs associated with the two on-going cases.
- 4.4. At the conclusion of each Employment Tribunal case, a review has been undertaken to determine lessons learnt to improve the Council's position to reduce claims and to successfully defend future Employment Tribunals.

## **5. Overview of Lessons Learnt**

- 5.1. This is an overview of the lessons learnt to date resulting from a review of the six Employment Tribunals and a summary action plan is attached at Appendix 1.

### **5.1.1. Policy and Procedure**

- 5.1.1.1. The Council's HR procedures must be adhered to. These reflect best practice and legislative requirements and all such policies undergo review on a scheduled basis or sooner if there are legislative changes prior to the scheduled review.
- 5.1.1.2. A number of HR policies and procedures provide a right of appeal e.g. grievances, disciplinary and dismissal. This right of appeal should be consistently recognised in all cases.
- 5.1.1.3. The timescales set out within the procedures should be consistently adhered to. Where this is not possible, updates and reasons should consistently be provided to the employee on a regular basis so they are clear that progress is still being made and have an indication of the likely time frames for conclusion.

### **5.1.2. Resources**

- 5.1.2.1. There should be consideration given to training more internal investigators and the appropriateness of the appointment of external investigators. For example, it may be beneficial to appoint an in-house HR investigator for more lengthy/complex cases due to their relevant training, familiarity with the Council's policies and procedures, access to required officers and resources and likelihood to work within agreed timeframes.
- 5.1.2.2. Legal input should be consistently sought at an early stage if there is any uncertainty about the status of a matter; for example if it is not clear whether a matter raised is a grievance or a potential whistleblowing matter.
- 5.1.2.3. Through continued good working relationships between Human Resources and Legal Services, on-going dialogue about cases can

ensure that Legal Services are involved at the appropriate stage of a case.

### **5.1.3. Training**

- 5.1.3.1. Investigation training should be provided to all officers undertaking investigations in relation to allegations/issues under the Council's Disciplinary, Grievance and Dignity at Work procedures.
- 5.1.3.2. The Wider Leadership Team should be provided with whistleblowing training, guidance on the difference between whistleblowing and grievance matters and the protected status of whistleblowers.
- 5.1.3.3. This training should also be provided to the HR Delivery team to ensure they are well positioned to highlight matters that may be whistleblowing as opposed to grievance and the need to seek legal advice and pass to internal audit at the earliest opportunity.

### **5.1.4. Oversight and Good Practice during Investigations**

#### **5.1.4.1. Commissioning Managers**

- 5.1.4.1.1. Investigations are commissioned by an appropriate senior manager, known as the commissioning manager. The commissioning manager needs to:
  - 5.1.4.1.2. Provide oversight to an investigation through clear terms of reference with defined roles and responsibilities to ensure that all issues are investigated. The terms of reference should be agreed with Human Resources.
  - 5.1.4.1.3. Ensure that there are arrangements in place to store key documents including email retention to support the investigation and any subsequent employment tribunal claim.
  - 5.1.4.1.4. Familiarise themselves with policy and procedures to be followed.
  - 5.1.4.1.5. Seek HR and legal advice as appropriate.
  - 5.1.4.1.6. Provide Officers raising grievances with regular progress updates and reasons for any delays.

#### **5.1.4.2. Process**

- 5.1.4.2.1. Senior managers should ensure that comprehensive notes are taken at meetings with officers raising grievances/whistleblowing concerns. It is good practice to take a note taker to the meeting.

- 5.1.4.2.2. Officers should be offered the right to be accompanied to these meetings even if it is not a formal process.
- 5.1.4.2.3. Terms of reference should provide clarity in relation to grievance and whistleblowing allegations.
- 5.1.4.2.4. There needs to be clarity of roles and responsibilities in whistleblowing matters.
- 5.1.4.2.5. Consideration needs to be given to email access and storage for documents in relation to cases whereby information is readily accessible for disclosure in Employment Tribunal Claims; this needs to be relevant with appropriate retention period to give due consideration to GDPR requirements.
- 5.1.4.2.6. Where possible, there should be one HR representative handling a case to have oversight of all issues raised relating to an individual employee.
- 5.1.4.2.7. Ensure follow-up of actions; this is best achieved through a dual approach between the manager and HR representatives so there is clarity about what is/not being responded to.
- 5.1.4.2.8. There needs to be ownership of the grievance or disciplinary process by the commissioning manager to ensure that all documentation is provided to the claimant in good time before a hearing and to allow them the chance to provide documents.
- 5.1.4.2.9. Ensure recommendations from investigations are carried out and/or reviewed and recorded so that it is clear that they have been addressed.
- 5.1.4.3 Disclosure arrangements
- 5.1.4.3.1 Legal Services to review the arrangements and practices for disclosure of documents for Employment Tribunals, to ensure timely disclosure that supports file preparation.

#### **5.1.5. Future Actions**

- 5.1.5.1. As part of the overall HR policy review, the appropriate procedures and guidance will be reviewed to capture lessons learnt.

## **6. Implications of the Recommendations**

The implications of the recommendations from the report are:

### **6.1. Legal Implications**

6.1.1. The implementation of the actions from the lessons learnt from recent Employment Tribunals will ensure that the Council is;

6.1.1.1. In a good position to successfully defend claims through Employment Tribunals; and

6.1.1.2. At a reduced risk of receiving employment tribunal claims.

## **6.2. Finance Implications**

6.2.1. Failure to address lessons learnt could lead to increased legal costs for external legal advice and representation as well as increased cost that may be incurred due to settling or losing Employment Tribunals.

## **6.3. Policy Implications**

6.3.1. The policy implications will be incorporated into the overall HR policy review with on-going review to ensure legal compliance and in recognition of best practice.

## **6.4. Equality Implications**

6.4.1. There is no Equality Impact Assessment required for this report. All of the revised HR Policies and Procedures include an Equality Impact Assessment.

## **6.5. Human Resources Implications**

6.5.1. The policies, procedures and accompanying management guidance need to be reviewed to reflect the lessons learnt from the experience of recent Employment Tribunal Claims.

6.5.2. Appropriate investigation training should be organised to include employment law, best practice and the Council as a complex organisation.

6.5.3. The HR Delivery Team must embed the lessons learnt in their everyday interaction and support to managers and their services.

## **6.6. Risk Management Implications**

6.6.1. There are risk management implications of not acting on the lessons learnt from experiences from Employment Tribunal claims such as increased grievance and Dignity at Work complaints, the cost of not being able to adequately defend the Council's position in an Employment Tribunal as well as the potential reputational damage.

## **6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

## **6.8. Implications for Children & Young People/Cared for Children**

6.8.1. There are no direct implications for children and young people.

## **6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

## **7. Ward Members Affected**

7.1. There are no wards affected by this report.

## **8. Consultation & Engagement**

8.1. Any changes to HR Policies and Procedures are subject to agreement with the Council's recognised trade unions. Regular meetings are in place as part of the HR Policy Review currently being undertaken.

## **9. Contact Information**

9.1. Any questions relating to this report should be directed to the following officer:

Name: Sara Duncalf

Job Title: Acting HR Business Partner

Email: [sara.duncalf@cheshireeast.gov.uk](mailto:sara.duncalf@cheshireeast.gov.uk)

## Appendix One: Summary of Actions

	Action	Detail	Responsible	By When
1.	Implement training for internal investigators and senior managers.	Regarding appropriate procedures for commissioning managers and investigators. Regarding whistleblowing/ grievance differences and processes including the role of the Legal team.	Head of Strategic HR.	March 2019
2.	Ensure policy and procedure is updated, clear and understood.	Updated to incorporate learning, to show timeline and actions for commissioning managers and all involved including the role of HR, documentation requirements and clarity of actions.	Head of Strategic HR.	March 2019
3.	Establish agreement for availability of emails and documentation.	Access of emails and documents required in Employment Tribunals must align with GDPR requirements.	Head of Strategic HR and Director of Legal Services and Monitoring Officer.	March 2019
4.	Establish quality assurance.	Establish a method to ensure recommendations from investigations are reviewed and addressed.	Head of Strategic HR and Director of Legal Services and Monitoring Officer.	March 2019
5.	Review disclosure arrangements.	Review practices to ensure timely disclosure to support file preparation.	Director of Legal Services and Monitoring Officer.	March 2019