

Human Resources Committee
Tuesday 13 December 2022
2.00 pm Luttrell Room - County Hall,
Taunton



SUPPLEMENT TO THE AGENDA

To: The Members of the Human Resources Committee

We are now able to enclose the following information which was unavailable when the agenda was published:

Item 5	LGR HR Policies for approval (Pages 3 - 22) <ul style="list-style-type: none">- Policies to be considered to follow:<ul style="list-style-type: none">o Parental Bereavement Leaveo Fosteringo Disclosureo Recruitment of Ex-Offenderso Flexible Working Requests
--------	---

Published on 09 December 2022

Democratic Services, County Hall, Taunton

This page is intentionally left blank

Somerset County Council

Human Resources Committee – 13 December 2022

Somerset Council Employment Policies for Approval

Executive Member: Cllr Liz Leyshon, Deputy Leader and Lead Member on Finance and Human Resources

Lead Officer: Chris Squire, HR&OD Director

Authors: Sarah Welland – Service Manager HR Policy & Projects & Sari Brice, Strategic Manager - HR Practice

Contact Details: 01823 359822 sarah.welland@somerset.gov.uk

<i>Please complete sign off boxes below prior to submission to Community Governance</i>			
	Seen by:	Name	Date
Report Sign off	Legal	Tom Woodhams	9/12/22
	Corporate Finance	Jason Vaughan	8/12/22
	Human Resources	Chris Squire	02/12/22
	Executive Member	Liz Leyshon	04/12/22
	Monitoring Officer	Scott Wooldridge	9/12/22
	Summary:	This report provides details of the policies for the new Somerset Council which are ready for sharing with HR Committee for information purposes only. As agreed previously at HR Committee, policies meeting certain criteria (these are detailed below) would be presented to this Committee for information or, where appropriate consideration and approval. Other policies would be approved via delegated authority to the Director of Customers, Digital & Workforce.	
Recommendations:	<p>The members of the HR Policy Committee are asked to:</p> <p>Formally approve the new employment policies as detailed below which meet the previously agreed criteria for use in the new Somerset Council with effect from 1 April 2023.</p> <p>Note for information purposes only, the new policies listed below, fall into the category of being a change to one or more of the District Council’s existing policies, but no significant change to the existing SCC policy.</p>		
Reasons for	To ensure that a pre-agreed list of key employment policies are		

Recommendations:	in place for the new Somerset Council on 1 April 2023.
Links to Priorities and Impact on Service Plans:	Part of the People Workstream for Local Government Reorganisation.
Financial, Legal and HR Implications:	<p>Financial – there are a handful of employment policies that have clear financial implications. As previously agreed therefore, any employment policies that have potential financial implications are being brought to HR Committee.</p> <p>HR – one clear set of employment policies, terms and conditions for new and existing staff. The new policies will apply to transferring staff where such policies are not contractual (i.e., have not been incorporated into the contracts of employment) and so do not fall within the protection provided under the Transfer of Undertakings Protection of Employment (TUPE) Regulations. Having a single set of HR policies will greatly assist line managers and staff and help define the organisation’s culture and values regarding our workforce.</p> <p>Legal – Where a contract of employment transfers to a new employer by virtue of the TUPE Regulations the employee’s terms and conditions of employment are protected despite the change of employer. This can sometimes result in a workforce where several different sets of terms and conditions apply.</p> <p>Changing terms and conditions can create risks of legal challenges particularly where employees are affected who have transferred under TUPE due to the protection afforded by the TUPE Regulations. To mitigate any such risks, consultation and negotiations will be carried out with Trade Unions to seek agreement to any changes.</p>
Equalities Implications:	The Council’s duty under Section 149 of the Equality Act 2010 is to have “due regard” to the matters set out in relation to equalities when considering and making decisions. A full Equality Impact Assessment is being completed for each of the new employment policies.
Risk Assessment:	N/A
Scrutiny comments / recommendation (if any):	N/A

1 Background

- 1.1 As agreed previously by HR Committee, any employment policy which meets one or more of the criteria below would be brought to the HR Committee for approval:
- a) Where there is a significant/notable change to existing SCC policy
 - b) Something is contractual / is a term or condition
 - c) Where there is a cost implication – for example redundancy compensation scheme, sick pay, annual leave entitlement determination
 - d) Anything that the unions will not agree on/sign-off
- 1.2 It was also agreed that any significant impact to any District Council partner's existing policy is 'flagged' for the HR Committee's awareness.
- 1.3 All other policies will be approved via delegated authority, by the Director of Customers, Digital & Workforce.
- 1.4 Based on the criteria in 1.1 above, and highlighted in blue on the attached summary table at Appendix 1, the policy now ready for the HR Committee's consideration and if appropriate, approval is:
- Flexible Working Requests
- 1.5 In addition, based on 1.2 above, and highlighted in yellow on the attached summary table at Appendix 1, are the policies where there is a significant impact to one or more of the District Councils' existing policies. As agreed, these are 'flagged' for HR Committee's awareness only. Please note that none of the District policies referred to are contractual. These are:
- Parental Bereavement Leave
 - Fostering
 - Disclosure
 - Recruitment of Ex-Offenders

2 Options Considered

- 2.1 An alternative option would have been to have not made any changes to existing policies and with effect from 1st April 2023, to operate under five different sets of employment policies. This option was discounted, and the current approach agreed for the reasons set out in HR implications above.

3 Consultations Undertaken

- 3.1 All policies on the list have been consulted upon informally with trade union representatives in weekly working group meetings. These have also been formally approved by the LGR JNF (Joint Negotiating Forum).

4 Implications

- 4.1 The recommendations are made to ensure that Somerset Council has a set of employment policies in place which are legally compliant, fair, affordable and consistent with the values and culture of the new Council. In the event that approval is not achieved for an employment policy, Somerset County Council's existing policy would be used post vesting day, due to SCC being the continuing authority. This is with the exception of employees who TUPE transfer in from the District Councils and for whom existing terms and conditions are protected under the TUPE Regulations.

5 Background Papers

- 5.1 Appendix 1 Summary table of employment policies.
Appendix 2 – Parental Bereavement Leave
Appendix 3- Fostering
Appendix 4 – Disclosure
Appendix 5 – Recruitment of Ex-Offenders
Appendix 6 – Right to Request Flexible Working
- 5.2 Please note, each draft policy has various words/titles highlighted in yellow. This is because we do not yet know what titles, services, etc., will be called.

Summary Table for HR Committee December 2022

Key: **Yellow** means we have flagged for information / awareness as there is a change to one or more of the District Councils (4 policies)

Blue means a change to the existing previously agreed SCC policy requiring approval by HR Committee (1 policy)

Policy	Points to Note	Suggested Approval Route
Parental Bereavement Leave	This is based on SCC's current policy, as no DC policies on this are available, this follows legislative advice from the introduction of the Parental Bereavement Leave Act 2020.	Flagged for information as a (favourable) change / new policy to one or more District Councils only.
Fostering	The only stand-alone policy for this sat with SCC, as such this has been used as the basis for the new policy. SDC offer 5 days leave whilst SCC offers 8, as such we have offered 8 days leave.	Flagged for information as a (favourable) change / new policy to one or more District Councils only.
Disclosure	SCC, SDC, and SSSDC currently have this policy. All policies agree due to the legislative nature of this topic.	Flagged for information as a change / new policy to one or more District Councils only
Recruitment of Ex-Offenders	SCC, SDC, and SSSDC currently have a version of this policy. All policies are in agreement with the only consideration being whether we mention acting as an Umbrella Body as SDC does (an umbrella body is a Registered Body that gives other non-registered	Flagged for information as a change / new policy to one or more District

	<p>organisations access to DBS checks). This has been left out of the policy as this would likely be mentioned in any contract with an external organisation.</p>	<p>Councils only.</p>
<p>Flexible Working Requests</p>	<p>Largely all partners in line with statutory entitlement.</p> <p>SCC's current Flexible Working Policy also covers business led contractual changes to hours or location. These types of changes are dealt with as a consultation exercise supported by the HR Advisory Team and therefore this policy has been amended to cover employee requests for flexible working only.</p> <p>Some DC's require the 26 weeks' service in line with the statutory entitlement, to request flexible working. As this service requirement is likely to be removed by the Government and other authorities do not require it anyway, we have proposed the more favourable position of keeping it as a day one right.</p>	<p>Committee to consider proposed removal of business led contractual changes from the SCC policy.</p> <p>Also flagged for information as a (favourable) change to one or more District Councils only.</p>

New Somerset Council

Parental Bereavement Leave Policy

Policy Statement

'Parental Bereavement Leave' applies to employees whose child has died (under the age of 18), parents who experience a stillbirth after 24 weeks of pregnancy or a late abortion (in very limited circumstances an abortion can take place after 24 weeks if the birth parent's life is at risk or the child would be born with a severe disability).

Parental Bereavement Leave is offered in addition to Compassionate Leave (and Maternity Leave in cases of stillbirth or late abortion).

This policy sets out our commitment to supporting bereaved parents through their grief by ensuring they can take parental bereavement leave.

Broadly, Somerset Council base the definition of 'parent' on the Gov.uk and ACAS (link) definition however if an employee is still unclear whether this policy applies to them they should contact HR.

For each child who has died, a bereaved parent can take up to two weeks' parental bereavement leave as a single block of two weeks; or two separate blocks of one week at different times. Parental bereavement leave is not available as individual days. There is no minimum service requirement for this leave, meaning that it is available to employees from day one of their employment with the Council.

This leave must be taken within 56 weeks of the date of death of the child.

To be eligible for statutory parental bereavement pay, employees who are on parental bereavement leave are required to:

- have at least 26 weeks' continuous employment with their employer by the week before the date of death of the child
- still be employed by that employer on the day on which the child passed away
- have normal weekly earnings in the eight weeks up to the week before the child's death that are no less than the lower earnings limit for national insurance contribution purposes

If an employee takes parental bereavement leave and qualifies for statutory parental bereavement pay, they will be paid at the rate set by the Government for the relevant tax year, or 90% of their average weekly earnings where this figure is lower than the Government's set weekly rate. A non-eligible employee's parental bereavement leave will be unpaid.

Process

1. The employee contacts their line manager making them aware of the situation and the need for them to take parental bereavement leave.
2. The manager and employee discuss and agree an amount of parental bereavement leave to be taken and complete the Parental Bereavement Leave Form. This is recorded in SAP.
3. Before the employee returns to work the line manager will discuss any further support and assistance as required. [LINK to support, guidance and relevant policies](#)

Version	1
Date	
Relevant Legislation	Parental Bereavement Leave Act 2020

New Somerset Council

Fostering Policy

Policy Statement

Somerset Council is committed to promoting a family friendly approach, striking a balance between business needs and the needs of the employee to meet their care obligations. As such a period of paid leave is offered to enable employees who are designated foster or approved kinship carers to attend appointments, planning meetings, reviews, training, and development events. These leave arrangements are designed to recognise the significant demands placed on foster and kinship carers time in addition to normal child caring responsibilities.

Applications for leave are open to all Somerset Council employees who are designated foster and kinship carers for children and young people looked after by a local authority.

This policy does not form part of the Somerset Council Terms and Conditions and may be subject to change.

Leave Entitlement

The employee will be allowed up to eight days paid leave per child fostered/or under a child arrangement order during any leave year, pro rata for part-time employees.

The following evidence may be requested before granting leave:

- Proof of foster caring responsibility
- Proof of kinship caring responsibility
- Proof and details of training course, assessment planning, review meeting, or specialist consultation

This time can be used to help the child(ren) to settle into the new environment. Foster, Kinship, or Connected Carers may also require time off to attend training courses, meetings with professionals, or appointments with the child(ren).

Ahead of fostering, individuals are required to undertake training and assessments. Employees are expected where possible to make appointments for training and assessment outside of paid working hours. Employees can request up to a further 36 hours paid leave for the initial training if this falls within normal working hours.

Leave Requests

Requests for leave should be made to the line manager as early as possible and must be agreed in advance. The leave entitlement should be flexible to account for special

circumstances or requirements for leave at short notice specifically linked to fostering or kinship carers. The leave would not normally be taken in less than ½ day blocks however it may be appropriate on occasions for leave to be taken in smaller blocks to meet the needs of the service and the carer.

Employees who would like to request leave for fostering or kinship carer responsibilities may make this request in SAP using the leave type 'Foster Carer (paid)'. Foster Carer Leave should not be used in place of other leave entitlements, for example to arrange care for dependants or parental leave, where policies and procedures already exist.

Fostering to Adopt

If an employee is a Local Authority foster parent who is also a prospective adopter (dual approved), and a child is placed with them in a Foster to Adopt situation they will be entitled to Adoption Leave and pay. Somerset Council requires notification of a child's placement in accordance with s.22C of the Children Act 1989. This is set out in the Paternity and Adoption Leave Regulations 2002 as amended by the Paternity and Adoption Leave (Amendment) (No.2) Regulations 2014 (SI 2014/3206). An employee is not entitled to take ordinary Adoption Leave in relation to a child in the capacity of his or her adopter if the employee has already taken ordinary Adoption Leave as a result of that child being placed, or being expected to be placed, with the employee under s.22C (i.e. as a foster parent). See the Adoption Leave Policy [\(add link\)](#).

Emergency Time off for Dependents

Foster or kinship carers are entitled to take a reasonable amount of unpaid time off to assist or to make care arrangements for fostered children under the Emergency Time Off for Dependents Policy [\(add link\)](#).

Version	1
Date	
Relevant Legislation	Children Act 1989 Paternity & Adoption Leave Regulations 2014

New Somerset Council

Disclosure Policy

Policy Statement

Somerset Council is committed to safeguarding children, young people, and vulnerable adults at every opportunity. As such the Disclosure and Barring Service (DBS) is used to help assess the suitability of applicants for positions of trust.

This policy does not form part of the Somerset Council Terms and Conditions and may be subject to change.

Somerset Council complies fully with the DBS Code of Practice established under section 122 of Part V of the Police Act 1997 and Protection of Freedoms Act 2012 regarding the correct handling, use, retention and disposal of Disclosures and Disclosure information ([add link – GDPR Policy](#)).

When considering the need for a DBS check or for any other queries please use the guidance document ([add link](#)). A criminal record will not necessarily prevent an applicant from obtaining a position, when recruiting ex-offenders please follow the policy for this ([add link](#)).

Somerset Council acts as an umbrella body (countersigning applications and receiving disclosure information on behalf of other employers or recruiting organisations). As such, all reasonable steps will be taken to check that these organisations fully comply with the DBS Code of Practice and ensure that they will handle, use, retain, and dispose of Disclosure information in full compliance with both the DBS Code and this policy. Somerset Council reserves the right to withdraw access to this service where an organisation fails to comply with the above conditions or where the level of Disclosure checks would warrant the organisation seeking their own DBS registration.

The Employee is responsible for providing suitable information and documentation to be used in DBS checks, to show the outcome certificate to their line manager when received, and to make their line manager aware of any new arrests, cautions, or convictions as they take place.

Process

- Recruiting Managers to use the DBS Guidance ([add link](#)) to consider whether the role requires a DBS Check and if so at what level
- Applicants will be asked to disclose any details of a criminal record at the application stage and will be made aware if a DBS is required as part of the pre-employment checks

- When a successful candidate has been found the necessary documents will be checked by the **Recruitment/Disclosure Team** and the DBS check will commence
- The DBS certificate will be issued directly to the employee who must show this to their line manager. An employee should not start in post without the necessary DBS check although on occasion this may be necessary and can be covered by particular working arrangements and a risk assessment, please see the DBS Guidance for further information (**add link**)
- Some roles require repeat DBS checks at regular intervals, administering these checks is the responsibility of the line manager

Version	1
Date	
Relevant Legislation	Police Act 1997 Protection of Freedoms Act 2012

New Somerset Council

Recruitment of Ex-Offenders Policy

Policy Statement

Somerset Council is committed to equality of opportunity for all, therefore job applicants are selected for employment based upon their skills, abilities, experience, knowledge and, where appropriate, qualifications and training. Somerset Council undertakes not to discriminate unfairly against any applicant on the basis of a conviction or other information revealed.

Having a criminal record will not necessarily bar an applicant from working for Somerset Council. Although failure to make a disclosure or provision of false information on the application form may lead to the offer of employment being withdrawn or if already employed, disciplinary action, not excluding dismissal.

This policy does not form part of the Somerset Council Terms and Conditions and may be subject to change.

Recruitment Process

All applicants for roles at Somerset Council will be asked to disclose any convictions or pending prosecutions on their application form unless they are 'spent' under the Rehabilitation of Offenders Act 1974.

If the role is exempt under the Rehabilitation of Offenders Act, then job applicants will be asked to disclose all convictions, orders and fines whether spent or not. In addition, the Council will request a standard or enhanced criminal records check via the Disclosure and Barring Service (DBS) ([link to be added](#)). This is in accordance with 'regulated activities' defined by the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.

It will be made clear in the job information if the role is exempt under the Rehabilitation of Offenders Act and therefore requires a criminal records check. For further information including a list of exempt job roles, rehabilitation periods, and exclusions to rehabilitation please follow this [link](#).

Examples of the jobs relevant to the Council that are exempt under the Act include:

- Solicitor, legal executive
- Chartered accountant, certified accountant

- Any employment as a teacher in a school or establishment for further education as to enable the holder to have access to persons under the age of 18
- Any employment in connection with the provision of care services to children and/or vulnerable adults
- Any employment involving a regulated activity with children or vulnerable adults within the meaning of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012

Process

1. All applicants are asked when making their application to disclose any convictions, cautions, reprimands, or final warnings that are not “protected” as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013).
2. If a disclosure is made this can then be discussed openly at interview with the candidate.
3. Depending upon the content of the disclosure, the job type, and the outcome of the interview process, a decision can be made on whether the job role can be offered to the applicant. **HR Advisory** support should be sought in cases where the recruiting manager requires assistance in making this decision.
4. Either outcome should then be discussed with the applicant and the usual recruitment processes (which may include DBS Check) are to be followed (**link to be added**).
5. Any information received as a disclosure will be used fairly, stored, and handled appropriately and in accordance with the provisions of the Data Protection Act 1998 (**link to be added**).

Version	1
Date	
Relevant Legislation	Rehabilitation of Offenders Act 1974 Safeguarding Vulnerable Groups Act 2006 Protection of Freedoms Act 2012 Data Protection Act 1998

New Somerset Council

Flexible Working Requests Policy

Policy Statement

This policy sets out the procedure to be followed in considering and responding to an employee's request for flexible working that results in a contractual variation. Flexible working can increase staff motivation, promote work-life balance, enrich employee wellbeing and improve performance and productivity.

The right to request flexible working is available to all employees from day one of employment.

This policy applies to all employees of Somerset Council. Locally managed schools are encouraged to adopt the principles behind this policy for their staff.

To be eligible to make the request an employee must not have made another application to work flexibly in the last 12 months. A **Senior Manager** may agree to accept more than one request in a year due to exceptional circumstances, for example a major change in the role or a change in personal circumstances.

A qualifying employee is able to ask for changes in their terms and conditions relating to:

- Reduction in hours of work
- Working pattern
- Location of work (i.e. contractual home working)

In reducing their hours an eligible employee may wish to also consider requesting accessing their pension through the Flexible Retirement Policy.

This policy does not cover dynamic working, which is a more informal arrangement relating to where or when the employee works.

Process

The process described below follows the statutory requirements and timescales where applicable.

Making an application

An employee wishing to make a request must use the Flexible Working Request form through Employee Self Service (ESS) on SAP. Submitting a request will automatically workflow through to the line manager who can make a thorough initial assessment

of the request. For those who do not have access to ESS the **Flexible Working Request form** should be completed in full and submitted to the line manager.

Flexible working requests must, by law, be dealt with in a timely manner and the consideration process completed within 3 months of first receiving the request, including any appeal. If for some reason the request cannot be dealt with within 3 months the employer can extend this provided the employee agrees.

Extending Time Limits

In the interests of enabling a mutually satisfactory outcome to an application any of the time limits listed above can be extended by mutual agreement.

The agreement to extend time limits should be in writing, signed by the manager and the employee and outline the reasons for the extension.

Meeting

The manager should meet with the employee to discuss the request within 28 days of the date it was received. If the manager intends to approve the request it is still good practice to meet with the employee to discuss the arrangements.

An employee will have the right to be accompanied at any meetings concerning a Flexible Working Request. The right to be accompanied can only be by a trade union representative or a work colleague of the employee's choice.

Outcomes of a request

There are 3 possible outcomes to a flexible working request, The manager must give written confirmation of the outcome within 14 days of the meeting.

- The request is accepted

If the manager is prepared to accept the flexible working request as it stands, the employee should be notified in writing. That notification must specify the agreed variation(s) in the contract, any other action required and the effective date. See the Confirmation of Agreed Contract Variation letter. Guidance may be sought from the HR Service before a decision is taken on the request.

- A compromise is agreed

There may be instances where the manager is unsure whether the arrangements requested are sustainable and it may be possible to mutually agree variations to the request, such as a temporary arrangement or trial period. This agreement should also

be put in writing to prevent confusion at a later date. It is also necessary to include any review points. See the Confirmation of Agreed Contract Variation letter.

- The request is rejected

If the manager does not feel able to agree the request to the contractual change then a meeting to discuss the reasons must be held.

The reason(s) for rejecting a flexible working request must be for one or more of the statutory reasons for rejecting flexible working request listed below. It cannot be for any other reason.

Where a request is rejected, the manager must provide the employee with a signed and dated declaration of the Statutory reason supported by an explanation of the business reasons, which apply in the circumstances of the application. See the Rejection of Request to Vary Contract letter. Advice should be sought from the HR Service prior to making a decision.

Statutory reasons for rejecting a request

The reason for rejecting a request must fall under at least one of the following eight statutory grounds:

- Burden of extra cost to the business
- A detrimental effect on the ability to meet customer demand
- Inability to organise work within existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficient work during the periods the employee proposes to work
- Planned structural changes

Trial Periods

On occasions it may not be clear what the impact of revised working arrangements will be, or whether it will be possible to sustain specific patterns over a period of time. Where this is the case it may be worth exploring the possibility of a trial period.

The length of the trial period should be long enough to give a true indication of any problems and also examine potential solutions. This would vary depending on specific circumstances but generally a period of between one to three months would enable a reasonable assessment.

If the employee and manager agree to a trial period it is important that this agreement is in writing. The agreement should state the following:

- The date the revised working arrangements will start
- The nature of the new working arrangement e.g. changed hours of work, days of work or place of work
- The planned end date of the trial period, and a statement that working arrangements will return to normal, unless otherwise agreed
- The trial period is to support finding a solution to the request
- How regularly the arrangements will be reviewed over the period
- The option to end the trial early and revert to current working practices - this should only occur when it becomes clear that the trial is not successful and to continue would have a significant impact on the delivery or quality of service. Sufficient notice should be given to allow an employee to make alternative arrangements when the trial is terminated early

The manager and employee should meet regularly to review the trial. At the end of the trial the options are:

- The trial is successful and the employee formally notified of any contractual change.
- The trial is extended by mutual agreement
- The trial is deemed unsuccessful and the request ejected under one of the Statutory Reasons for Rejecting a Request listed above.

The line manager should meet and consult with the employee regarding any decision.

Appeal process

An employee has the right to appeal against the decision to refuse a formal flexible working request. To do so the employee should refer to the [Somerset Council Appeals Policy](#).

Links

Managers Guide

Employees Guide – calculator etc

Version	1
Date	
Relevant Legislation	8A of the Employment Rights Act 1996 and the Flexible Working Regulations 2014 (SI 2014/1398).

DRAFT

This page is intentionally left blank