

LONDON BOROUGH OF BRENT

GENERAL PURPOSES COMMITTEE – 14 OCTOBER 2004

REPORT FROM THE DIRECTOR OF HUMAN RESOURCES & DIVERSITY

The New Disciplinary and Grievance Procedures

SUMMARY

- 1.1 This report sets out the reasons for developing the new Disciplinary and Grievance Procedures, explains their key components and benefits, and seeks approval from General Purposes Committee to implement the new procedures in accordance with the recommendations set out below.

2 Recommendations

The General Purposes Committee is recommended to:-

- 2.1 Agree to the content of the new Disciplinary and Grievance Procedures and to their implementation with effect from 1st November 2004.
- 2.2 Agree in cases where employees are already in procedure, and where the existing Disciplinary and Grievance Procedures are in use, that where considered practical by the managers operating those procedures those cases are converted to the new procedures as soon as is practicably possible.
- 2.3 Agree that the Director of Human Resources, in consultation with the Borough Solicitor, be given delegated authority to develop and adopt grievance and disciplinary procedures in respect of staff not covered by the new procedures.

3. Financial Implications

- 3.1 The proposed changes in the Disciplinary and Grievance Procedures will be managed by units within their existing resources.
- 3.2 Any additional corporate costs arising from the dissemination of the new procedures to staff and the briefing of management teams will be met from within the Human Resources and Diversity budget.

4. Staffing Implications

- 4.1 The new Disciplinary and Grievance Procedures aim to promote orderly employment relations. They demonstrate a commitment to fair, reasonable and consistent treatment for employees in accordance with the latest legislative requirements and best practice in employment. They are written in clear and concise language and are user friendly for management and employees alike. They clearly set out the roles of management and their responsibilities in dealing with individual disciplinary and grievance cases, and at the same time specify employee entitlements if they are subject to management action in accordance with the disciplinary procedure, or if they are initiating the process because they have a complaint in connection with their employment that they wish to be dealt with in accordance with the Grievance Procedure. Through the Employee Relations Manager it is planned to roll out detailed briefing sessions for management teams to ensure managers are aware of their responsibilities and how to effectively implement the new procedures, and importantly to engage in good communication with staff to ensure they are aware of the procedures, how they apply to them, and to make them widely available to staff.

5. Legal Implications

- 5.1 The Employment Act 2002 contains statutory dismissal and disciplinary and grievance procedures. These procedures came into effect on 1st October 2004. Although the provisions of the Act permit the statutory procedures to be made contractually binding on the employer and employee, these provisions have not yet been brought into effect. Currently the position under the statute is that where an employee is dismissed without the statutory dismissal and disciplinary procedure having been followed, then if this failure was wholly or mainly the fault of the employer the employee will be treated as being unfairly dismissed provided the employee had 12 months continuous employment with the employer. The Act also provides that where an employee has successfully brought an Employment Tribunal claim of a type defined in the Act (such as a claim for unlawful race, sex, disability, religious or sexual orientation discrimination) concerning a matter to which one of the statutory procedures applies, and the relevant procedure was not completed before the case started wholly or mainly as a result of the fault of the employer, then the Tribunal must, save in exceptional circumstances, increase any award of compensation by 10% and may increase the award by up to a further 40%.
- 5.2 The attached new Disciplinary and Grievance Procedures substantially comply with the statutory dismissal and disciplinary and grievance procedure in respect of these matters and the employees covered by these Procedures. Provisions in respect of three minor matters are still

being finalised and should be available to Members at the meeting which considers this report. Employees outside the coverage of the new procedures (e.g. those with less than 6 months service) will be covered by separate procedures to be developed in due course by the Director of Human Resources. It is recommended that the Director of Human Resources, in consultation with the Borough Solicitor, be given delegated authority to develop and adopt grievance and disciplinary procedures in respect of staff not covered by the new procedures.

6. Diversity Implications

- 6.1 In order to demonstrate the Council's intent to ensure that its policies and procedures do not impact unfairly on employees in equality and diversity terms, the new Disciplinary and Grievance Procedures each contain a specific section on considering any adverse impact. They direct managers to ensure that their application of the procedures do not have any adverse impact, for example in the unbalanced use of the Disciplinary Procedure on particular groups of employees compared to the informal process. In regard to the Grievance Procedure managers are directed to ensure that their application of this policy is impartial and that no staff group is disadvantaged, either because of their invoking the procedure, or in terms of the management response to the issues raised.

7. Detail

- 7.1 The Council's existing Disciplinary and Grievance Procedures have been in place since April 1998. They are incorporated in the Human Resources Technical Standards. They are fundamental procedures, always in use, and have been in need of review. In particular, the Disciplinary Procedure has in the past served the Council well in employment relations terms, however, as with all employment procedures, it needed to be reviewed as part of the Human Resources overall commitment to develop and review its employment policies to ensure they respond to new organisational requirements and comply with changing legal requirements.
- 7.2 The new Disciplinary Procedure provides managers with a structured framework that will enable them to remedy any problems of misconduct or gross misconduct promptly and effectively. It has mechanisms for keeping staff informed of the action they face if they fail to meet the Council's standards of conduct by breaking the disciplinary rules, and enables disciplinary matters to be dealt with lawfully, fairly, consistently and in accordance with the principles of natural justice. In that context the new procedures set down clear timescales for action and regular review of disciplinary action being taken, a high degree of clarity about when and how to apply particular stages, the option to temporarily transfer an employee during a disciplinary investigation rather than suspend in appropriate circumstances, a wider range of disciplinary

sanctions to facilitate management flexibility and discretion and the introduction of specified grounds under which employees can appeal against disciplinary sanctions taken against them.

- 7.3 Importantly as well as setting out a disciplinary policy and procedure, which will be mandatory, the new procedure has accompanying management guidance to equip managers with the detailed information they may need to conduct the disciplinary hearing itself – a step by step guide for the effective conduct of a disciplinary hearing and employee appeal, advice about the issues to consider in order to reach a safe conclusion, and a checklist for managers to ensure that all necessary stages of procedure had been followed, and all essential considerations have been addressed.
- 7.4 The new Grievance Procedure is a clear, effective and streamlined process that makes it easy for employees to raise their concerns with management and enables managers to promptly address and resolve employee grievances in a speedy, reasonable, fair and lawful way. In particular it sets down a framework to ensure most grievances will be dealt with and resolved informally and only if a grievance cannot be settled informally will the formal stages be applied. This will have advantages for all workplaces, but particularly where there might be close working relationships between a manager and employee. It also allows for disagreements at work to be settled quickly so as to not allow matters to fester and therefore more difficult to resolve. In the interests of effective conflict resolution the new procedure introduces the opportunity for an aggrieved employee to be party to an agreed action plan to resolve matters and to give consideration as to whether alternative disputes resolution in the form of externally facilitated mediation might be helpful in setting the matter and restoring harmonious working relations.
- 7.5 The Employment Act 2002 contains statutory dismissal & disciplinary and Grievance Procedures. Human Resources and Legal Services have worked together on the Council's new Disciplinary and Grievance Procedures and Members are referred to the Legal Implications section of the report.
- 7.6 The attached procedures have been welcomed by the Strategic Human Resources and Organisational Development Group and by Corporate Management Team as highly effective tools for managing disciplinary and grievances processes. Both groups have given their full endorsement to the new procedures.
- 7.7 In order to gain maximum impact from the implementation of the new procedures it is proposed that a seamless changeover from the existing procedures to the new ones take place, and that where the existing Disciplinary and Grievance Procedures are currently in use in particular cases, that where practical the new procedures are applied to those cases as soon as is practicably possible.

7.8 There has been considerable consultation over a period of time with the Council's recognised trade unions following which they have agreed the content of the new Disciplinary and Grievances Procedures substantially as attached.

8. Background Information

8.1 This report is based on the following documents that are in the possession of Pat Keating, Employee Relations Manager.

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The Human Resources Technical Standards
The ACAS Code of Practice on Disciplinary and Grievance Procedures
The Revised Draft ACAS Code of Practice on Disciplinary and Grievance Procedures.

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