

<p>LONDON BOROUGH OF BRENT</p> <p>Meeting of the General Purposes Committee 12 July 2005</p> <p>Report from the Director of Human Resources & Diversity</p>	
For action	Wards affected: All Wards

Report Title: Capability Policy and Procedure For Managing Poor Work Performance

Forward Plan ref:

1.0 Summary

1.1 This report sets out the reasons for developing the new Capability Policy and Procedure for Managing Poor Work Performance and gives an overview of its contents and key benefits. The report also seeks the approval from the General Purposes Committee to implement the new Policy and Procedure as set out in the recommendations.

2.0 Recommendations

The General Purposes Committee is recommended to agree:

- 2.1 the content of the new Capability Policy and Procedure for Managing Poor Work Performance and its implementation from 5 September 2005
- 2.2 that where on 5 September 2005 employees are being considered at Stage 3 and the Appeal stage of the existing Incapability Code and Procedure that the management of the employee's work performance continues under the old procedure
- 2.3 that where on 5 September 2005 employees are being considered at Stages 1 and 2 of the existing procedure that these cases are transferred to the new Capability Procedure for Managing Poor Work Performance at Stage 1.
- 2.4 that the Director of Human Resources and Diversity, in consultation with the Borough Solicitor, be given delegated authority to develop and adopt Capability Policies and Procedures for Managing Poor Work Performance in respect of staff not covered by the new Policy and Procedure.

3.0 Detail

- 3.1 Following an earlier review of the Council's Incapability procedure for the management of sickness absence a similar review of the existing policy and advice for the management of poor work performance has been undertaken.
- 3.2 The Council's existing procedure for the management of poor work performance has been in place since April 1994 and is incorporated in the Human Resources Technical Standards. The procedure requires a review to respond to new organisational needs and to take account of changing legal requirements. A new Capability Policy and Procedure for Managing Poor Work Performance is attached to this report.
- 3.3 The new Capability Policy and Procedure for Managing Poor Work Performance provides managers with a structured framework that will assist them to prevent problems of poor work performance arising, or where this does occur, provide the remedy for dealing with this problematic area effectively. The procedure sets out clear timescales for action and regular review of action relating to poor work performance. There is also clarity of when and how to apply particular stages.
- 3.4 The Employment Act 2002 contains statutory dismissal procedures. Human Resources and Legal Services have worked together on the Council's new Capability Policy and Procedure for Managing Poor Work Performance and Members are referred to the Legal Implications section of the report.
- 3.5 The new procedures have been welcomed by the Strategic Human Resources and Organisational Development Group and by the Corporate Management Team as effective tools for managing poor work performance. Both groups have given their full endorsement to the new procedures.

The new Policy and Procedure

- 3.6 The revised procedure sets out 2 formal stages and an Appeal stage. The policy emphasises that the formal stages are usually preceded by informal action. The formal procedures give managers clear points for action, including a structured approach for conducting the formal capability meetings.
- 3.7 Particular emphasis is given to the informal stage as it is assumed that management action will take place at this stage in order to identify the reasons for poor work performance and to give the appropriate support to the employee to address under performance.
- 3.8 The new procedure permits managers to take formal action, including the option to give formal warnings. It also provides for senior managers to dismiss an employee in certain circumstances.
- 3.9 Appeals against dismissal will normally be heard by a manager senior to the manager who took the decision to dismiss. However, the new procedure only permits appeals on specific grounds.

- 3.10 The Capability policy and procedure (the terms of which are mandatory) is accompanied by management guidance to give detailed advice to managers throughout the informal and formal stages of the procedures. This includes: how to prevent capability problems, the procedure to be followed at the formal stages, suggested actions for the informal and formal stages (including the appeal).
- 3.11 The new procedure also provides a swift dismissal process where the authority would be justified in dismissing an employee without following a lengthy procedure. In such cases the advice of the Director of Human Resources & Diversity (or her authorised representative) is required before proceeding directly to Stage 2 of the procedure.

Implementation

- 3.13 It is proposed that the new procedure becomes effective from 5 September 2005. In order to assist the smooth implementation of the new procedure it is proposed that where on 5 September 2005 employees are being considered at Stages 1 and 2 of the existing procedure that these cases are transferred to the new Capability procedure for managing poor work performance at Stage 1. Where on 5 September 2005 employees are being considered at Stage 3 and the Appeal stage of the existing Incapability code and procedure, that the management of the employee's work performance continues under the old procedure.

Consultation with trade unions

- 3.14 Consultation has been carried out with the Council's recognised trade unions. The attached Capability Policy and Procedure for the Management of Poor Work Performance now incorporates the amendments agreed with the unions.

4.0 Financial Implications

- 4.1 The cost of implementing the proposed new Capability Policy and Procedure for Managing Poor Work Performance will be managed by service units within their existing resources.
- 4.2 Any additional corporate costs arising from the dissemination of the new procedure to staff and the briefing of management teams will be met from within the Human Resources & Diversity budget.
- 4.3 Additional skills development training in the management of poor work performance is to be arranged for managers requiring this. The costs will need to be charged to service units as there is currently no provision for this in the Human Resources & Diversity budget.

5.0 Legal Implications

- 5.1 The Employment Act 2002 contains statutory dismissal and disciplinary procedures. These procedures came into effect on 1 October 2004. Currently the position under the statute is that where an employee is dismissed without the statutory dismissal and disciplinary procedures

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 Employees dismissed on the grounds of poor work performance are entitled to bring to an Employment Tribunal a claim of unfair dismissal against the Council if they have the necessary continuous employment of one year.
- 5.3 The attached new Capability Policy and Procedure for Managing Poor Work Performance complies with the statutory dismissal and disciplinary procedures in respect of those matters and the employees covered by the Policy and Procedure. It also meets the procedural requirements developed in case law that have to be met for such a dismissal to be considered fair by an Employment Tribunal. When considering whether to dismiss under the Policy and Procedure managers should consider with their advisers the likelihood of a successful unfair dismissal claim being brought should a decision to dismiss be made.
- 5.4 Employees outside the scope of the new Policy and Procedure (eg temporary employees with less than 6 months continuous employment with the Council) will be covered by separate procedures to be developed in due course by the Director of Human Resources and Diversity. It is recommended that the Director of Human Resources and Diversity in consultation with the Borough Solicitor, be given delegated authority to develop and adopt Capability Policies and Procedures for Managing Poor Work Performance in respect of staff not covered by the new Policy and Procedure.

6.0 Diversity Implications

- 6.1 To demonstrate the Council's intent to ensure its policies and procedures do not impact unfairly on employees with regard to equality and diversity, the new Capability procedure for managing poor work performance contains a specific section on considering any adverse impact. The procedure directs managers to ensure that their application of the procedures does not have an adverse impact, for example the unbalanced use of formal processes on particular groups of employees compared to the informal processes.

7.0 Staffing

- 7.1 The new Capability Policy and Procedure for Managing Poor Work Performance demonstrates a commitment to fair and consistent treatment of employees in accordance with the latest legal

requirements and best practice in employment. They are written in clear and concise language and are user friendly. They set out the responsibilities of management in dealing with individual capability cases for managing poor work performance. Where employees are subject to management action in relation to these procedures, their entitlements are also specified.

- 7.2 It is planned to give detailed briefing sessions for management teams to ensure managers are aware of their responsibilities and how to implement the new procedures. Managers will also be advised of the importance of ensuring that all staff are aware of the new procedures and how they apply to them.

Background Papers

The Human Resources Technical Standard
(Incapability Code and Procedure)
Good Practice Guidance Note for managers
(Advice on dealing with poor work performance)
ACAS Advisory Handbook – Discipline & Grievances at Work
The Employment Act 2002 (Statutory Dismissal and Disciplinary procedure)

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