



General Purposes Committee
22 January 2013

**Report from Assistant Director of
People and Development**

Proposed Changes to the Disciplinary Procedure

1.0 Summary

The General Purposes Committee at its last meeting took a decision to update the Council's Disciplinary Policy to provide that appeals by staff against dismissal for Gross Misconduct should be heard by a senior officer and not a member Committee. The trade unions requested that this decision be tabled as an item at the Council's JCC for discussion. As a result of that meeting the JCC requested that the GP consider the representations that were made to it by the unions and this report sets out the issues raised at that meeting for members further consideration.

2.0 Recommendations

- 2.1 Members are asked to note the concerns raised at the Council's Joint Consultative Committee on 26th November 2012 and confirm their decision to amend the Disciplinary Procedure as previously agreed; Alternatively,
- 2.2 Members are asked to agree a pilot scheme to trial a change to the policy to allow the Assistant Director of People and Development to determine whether an appeal to members should be appropriate on an ad hoc basis.

3.0 Detail

The trade unions objected strongly to the change in policy as agreed by the GP Committee. The arguments put forward by the unions against the change are essentially that the change in appeal venue amounts to an attack on employee rights as statistically appeals to members are more likely to be successful than appeals to senior officers. The unions also felt that appeals to

Directors were inherently unfair to staff as it was considered that Directors would be less likely to overturn a decision of another member of staff than a Committee of elected members.

A compromise position was proposed whereby appeals against dismissal for gross misconduct would be heard by senior officers unless an employee was able to make a case to the Assistant Director of People and Development that it was necessary for a Committee of members to determine the matter. This suggestion is also opposed. The principal reason for the trade unions opposition in this respect is that it essentially concentrates a disproportionate amount of power in the hands of a single officer.

Concerns expressed by members were that given the strength of feeling expressed by the trade unions there was a concern that industrial relations could be damaged. Also, concern was expressed that there may be human rights issues in removing the appeal to members. A view was expressed that the assertion that appeals to members was not reflective of current practice within other London boroughs had not been evidenced.

There was a collective concern shared by officers, members and the trade unions that the appeal process generally took a disproportionate amount of time to conclude.

The Rationale for Change

The Council continually reviews its HR policy framework to ensure that the policies governing the relationship between the Council and its staff represent current HR practice. The law relating to discipline and misconduct was constantly changing as a result of developments in case law as well as legislative changes and it was therefore imperative that the policies which the Council use were regularly reviewed so as to ensure that the decision making framework for dealing with matters of staff discipline accorded with current practice.

Having undertaken such a review the Assistant Director of People and Development proposed the change in policy which the Committee has previously ratified. The main reasons behind the recommendation to change the policy are as follows:

- (i) To give greater flexibility and responsiveness to managers to deal with a whole range of proven misconduct and breaches of discipline other than the simple warning and dismissal system.
- (ii) To give managers ownership of the dismissal arrangements associated with staff they are responsible for recruiting.
- (ii) To streamline the procedural stages of the policy so as to be less repetitive and prescriptive to allow disciplinary process to be dealt with more efficiently and proportionately.
- (iii) In order to maintain fairness in the event of a challenge, a record of all investigatory meetings and hearings would be kept and the employee given an opportunity to confirm them as accurate
- (iv) The dismissal approval process would require that all dismissal decisions would be signed off by the Assistant Director of People and Development or the Head of People Services.

- (v) To retain the Staff Appeal Sub-Committee jurisdiction but which would hear only appeals against dismissals from Assistant Directors and above. Appeals against dismissal for staff below Assistant Director level would be heard by senior officers in the same way as dismissals for all other reasons such as absence, capability and redundancy. The rationale being Members were responsible for the appointment of Assistant Directors and above.

Response to the concerns that have been raised.

A principal concern of members was that there was no evidence to suggest that the member appeal system for disciplinary dismissal was against current pan London practice. Statistics collated by London Councils, in September 2011 are the most recent set of statistics in this area. Last time members considered this matter there was a broad fifty fifty ratio between London Borough's that had a member appeal system and those that did not. The statistics referred to above show that of 32 London Borough's now only 13 have a member appeal process for disciplinary dismissals. Also, of note is that 7 of those 13 Borough's that still had a member appeal process were proposing a review with a view to amending the policy as this Committee has previously agreed. This indicates clearly that the Committee's previous decision was entirely in line with current modern practice.

The concern that Human Rights issues may be involved in removing the appeal to members do not appear to be justified having taken legal advice on the matter. The Human Rights Act does not apply to internal disciplinary proceedings. The threshold at which the Act begins in relation to issues of discipline is only reached when issues of professional regulation are engaged. This means essentially that it is only professional regulators such as the GMC, who have obligations under the Act. Members should also be aware that the proposed change is entirely legal and in line with the ACAS Code in respect of discipline.

The concern over the impact the change would have on industrial relations is an issue which will clearly be a concern to members as it is to officers. Officers work hard to establish and maintain good industrial relations and it is the view of officers that the Council does enjoy a productive and genuine relationship with the recognised unions. This has been the case even in recent years where there have been difficult and challenging decisions that the Council has had to take. Whilst officers would not wish to propose a course of action that could lead to a worsening of industrial relations it must be borne in mind that this is only one consideration in an issue that has many other considerations as set out above. It is sometimes necessary to take decisions that will not please all stakeholders involved in that decision and it is suggested that the current decision is one example of such.

The unions principal argument against change appears to be that they are more likely to overturn a dismissal decision if an appeal is made to members as opposed to officers. This may well be the case but does not present itself as an argument for the preservation of the status quo. It is quite right to acknowledge that it is the trade unions proper function to defend its members accused of gross misconduct, it is also acknowledged that some unions will not act in certain circumstances where there is clear fault on the part of an employee. However, just because appeals to members are statistically more

likely to result in a reinstatement is not an argument for the Council maintaining this position. There are numerous practical reasons set out elsewhere in this report that set out why change is appropriate and those reasons are clear and compelling as members have previously recognised. It is suggested that maintaining a practice on the basis that it is more beneficial to staff is not a relevant consideration.

The concern that is shared by all is the length of time that it usually takes to resolve an appeal before members. The reason that this is the case is that members are busy politicians who have many Council, political and other engagements. As such, it is very difficult to establish a Committee within a reasonable time of an employee being dismissed and there have been delays of some months before a panel has been convened. This is a matter of some concern as the Council is under a legal duty to hear an appeal expeditiously and a failure to do so can render a dismissal unfair as well as attract punitive damages.

Appeals to officers against dismissal for reasons other than discipline are able to be heard much sooner as it is practically easier to convene a hearing with a senior manager and an advisor as opposed to a panel of five elected members. Accordingly, the shared concern of the delay in hearing appeals can be alleviated if members confirm their original decision to amend the disciplinary policy to allow officer based appeals.

A Compromise Solution

If members are minded to reverse their previous decision officers propose an alternative which is essentially to retain member appeals for cases where an employee can demonstrate that it would be more appropriate for a panel of members to hear an appeal than a senior officer. It is proposed that the Assistant Director of People and Development would make the decision as to whether or not any appeal should be heard by members or an officer after representations have been made to her. Although the trade unions do not support this proposal as it places too much power in one officer, it actually involves two senior officers in any dismissal decision as opposed to one and as such does provide an independent check on the dismissal process. The trade unions have however acknowledged that this is a better alternative for them than to remove the appeal route to members entirely.

Officers would propose that if members are minded to reverse their decision this policy should be piloted for a year and then a further report on its effectiveness brought back to this Committee at the end of the pilot for members to take a decision to confirm the policy or make such further changes as may be necessary.

4.0 Financial Implications

4.1 There are no direct financial implications involved in this report.

5.0 Legal Implications

5.1 The proposed change to the disciplinary policy is in accordance with the ACAS Code of Practice on discipline in the work place.

6.0 Diversity Implications

6.1 No diversity implication have been identified.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 The body of this report concerns itself with matters relating to staffing.

Background Papers

Disciplinary Procedure
Minutes of the JCC 26th November 2012

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