

	<p style="text-align: center;">General Purposes Committee 12th May 2009</p> <p style="text-align: center;">Report from the Assistant Director of Human Resources</p>
For Action	Wards Affected: None
<p style="text-align: center;">Review of Disciplinary and Capability Procedures</p>	

1. SUMMARY

- 1.1 This report sets out details of the revised policies and procedures for managing discipline and capability and requests the General Purposes Committee's approval of the policies and procedures as set out in the recommendations below.

2. RECOMMENDATIONS

- 2.1 That the General Purposes Committee agree the following.
1. The new Disciplinary Policy and Procedure [copy attached at **Appendix 1**].
 2. The new Managing Capability Code [copy attached at **Appendix 2**].
 3. That the Assistant Director, Human Resources, is authorised to determine the effective date at which the new Disciplinary Policy and Procedure and the Managing Capability Code are implemented across the council, such as to ensure that briefing and/or training provision for managers on the practical operation of the procedure are put in place to ensure effective implementation.
 4. That in cases where formal action has been started under the existing Disciplinary Procedure by the date of implementation of the new Disciplinary Policy and Procedure, the existing Disciplinary Procedure will continue to apply.
 5. That in cases where formal action has been started under the existing Capability Policy and Procedure for Managing Poor Work Performance by the date of implementation of the new Managing Capability Code, the existing Capability Policy and Procedure for Managing Poor Work Performance will continue to apply.
 6. That the Assistant Director, Human Resources, in consultation with the Borough Solicitor, is authorised to make such other changes, whether to the Disciplinary Policy and Procedure or to the Managing Capability Code as may be necessary to ensure the effective implementation of these proposals, and/or to ensure the alignment of the Fairness at Work Policy and Procedure with the Disciplinary Policy and Procedure and the Managing Capability Code.

7. That the Assistant Director, Human Resources, is authorised, after consultation with the Borough Solicitor and then consultation with the relevant trade unions, to amend the Disciplinary Policy and Procedure and Managing Capability Code from time to time.

3. DETAIL

Background

- 3.1 One of the key objectives of the council's transformation programme is to equip managers to be able to fulfill their responsibilities for managing people. One element of this has been a review by Human Resources of the range of policies and procedures which underpin people management. The Fairness at Work Policy and Procedure amongst others was revised and up-dated some months ago, and work has now been completed on reviewing and revising the policies/procedures covering the management of discipline and capability. A copy of the revised polices/procedures are attached as appendices to this report.
- 3.2 The review of these policies/procedures has had a number of objectives:
 - to bring together all relevant information for managers in a single document rather than as at present in different documents;
 - to implement procedures which are user-friendly and easy to follow;
 - to streamline the processes so that action to deal with conduct and/or performance issues is not unnecessarily delayed or protracted;
 - to balance the legal risks against the benefits achievable from streamlining the procedures;
 - to ensure that the revised documents conform to best practice and statutory obligations on the council as an employer.

Key elements of the draft policies/procedures

- 3.3 The key changes to the procedures, by comparison with the existing documents, include the following.
 - Extension of the procedure for fast-tracking conduct/performance issues for temporary employees from the existing six months continuous service to twelve months.
 - Greater flexibility in who can hear cases, especially senior managers, to reduce the burden on managers and support the objective of completing cases within the required timescales.
 - Ability to withhold pay on suspension of an employee where that employee is not co-operating with disciplinary action, e.g. an investigation.
 - Disciplinary sanctions no longer make reference to "first" and "advanced" warnings as they imply a hierarchy of warnings before dismissal. The new procedure now refers to "warnings" with no implied requirement for a number of warnings before dismissal – these will be commensurate with the misconduct.
 - Introduction of a power to increase, as well as reduce, disciplinary sanctions on appeal. This is designed to minimise as much as possible the number of

vexatious appeals. However, dismissal may not be imposed on appeal where a lesser sanction has been given at the original hearing.

- Introduction of the ability, for managers who do not have the power to dismiss, to make a recommendation for dismissal to a relevant senior manager. This is particularly relevant to capability issues which will normally be managed by the line manager who in many cases will not have authority to dismiss. The ability to make a recommendation to dismiss once appropriate action has been exhausted will speed up the process and reduce the burden on more senior managers.
- Timescales at each stage of the procedures have been tightened up in order to effectively manage and conclude cases. Safeguards and flexibility have been built into the timescales to take account of more complex cases.

Consultation

- 3.4 The process of reviewing these policies/procedures has involved extensive consultation with the various stakeholders, including managers (individually and through DMTs) and trade unions. It has not been possible to take on board all of the issues raised by the trade unions as to do so would involve a significant dilution in the effectiveness of the processes involved. However, where appropriate their views and comments have been incorporated into the final drafts. Copies of the revised drafts of the two documents have been circulated to the trade unions to allow them one final opportunity to comment. At the time of preparing this report the trade unions had not raised any further issues. If any issues are raised prior to the meeting of the Committee they will be reported orally.
- 3.5 The drafts have also been the subject of detailed discussion with Legal Services, and revisions have been made to the documents to take account of the legal comments/views received to ensure that they are legally compliant.
- 3.6 Drafts of these documents have been considered by SHRG on a number of occasions, most recently on 17th March 2009 and again their comments/views have been taken into account when finalising each of the drafts.
- 3.7 The revised policies and procedures were agreed at CMT on 2nd April 2009.

Changes to Fairness at Work (FAW)

- 3.8 As a consequence of the review of these policies and procedures a number of minor changes are required to align the FAW Policy and Procedure which was reviewed earlier. For example, in the FAW Procedure the way in which new evidence is dealt with at the appeal stage will be changed to be consistent with that proposed in the disciplinary and capability policies and procedures. These changes will be made under the authority delegated by the decision at 2.1.6.

Future Changes

- 3.9 Although the review of the policies and procedures has been completed there are a number of peripheral issues which still need to be resolved, for example, how long casework records should be retained on personal files. Steps are being taken to resolve these issues. However, to avoid any further delay in implementing the new policies the Committee is asked to delegate authority to the Assistant Director,

Human Resources, in consultation with the Borough Solicitor to conclude these matters after the meeting of this Committee.

- 3.10 It is also proposed that the Assistant Director, Human Resources, after consultation with the Borough Solicitor and then consultation with the relevant trade unions, be authorised to amend the Disciplinary Policy and Procedure and Managing Capability Code from time to time. The relevant trade unions will be those trade unions recognised by the council for collective bargaining purposes for any of the employees within the scope of the Policy and Procedure. The effect of this proposal would be that amendments to the Policy and Procedure would no longer require the General Purposes Committee approval. Officers consider that this proposal has the benefit of allowing desirable amendments to the Policy and Procedure to be made more quickly than would be the case now, and to free up Members' time to concentrate on other matters.

Roll-out of the policies/procedures

- 3.11 Subject to approval by this committee the procedures will be rolled-out to all managers over the next few months. This will involve targeted briefing for the different groups, and:
- provision of electronic (and as necessary 'hard') copies for all employees;
 - DMT briefings on the new provisions;
 - team briefings and/or council-wide employee briefing sessions;
 - information to publicise the launch of the policies/procedures on "What's New";
 - articles in "Insight" magazine;
 - skills-based coaching for managers;
 - investigation skills training (already in progress); and
 - development of 'e-Learning' packages.

It is proposed that the Assistant Director, Human Resources, be authorised to agree the effective date for implementation of the procedures to ensure that managers are properly briefed in advance of implementation.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the implementation of these revised policies/procedures. However, their effective application will contribute to improved performance, more effective case management and ultimately to the financial bottom-line through reductions in costs currently incurred through lengthy suspensions and Employment Tribunal referrals. The cost of any training would be met from the corporate Learning and Development budget.

5. LEGAL IMPLICATIONS

- 5.1 The draft procedures are legally compliant, taking account of legislation and all relevant case-law. They also incorporate the recent revisions to the ACAS Code of Practice on Discipline and Grievance which take effect on 6th April 2009.

- 5.2 There are a number of provisions within the revised policies/procedures which could involve limited legal risk to the council if challenged. For example, both the policies/procedures provides a fast-track process for handling performance and conduct issues involving temporary staff with less than twelve months continuous service. There is no specific legal requirement which prevents such a process, although it might be possible for an employee to mount a challenge to this under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. However, it is considered that the benefits to the council outweigh the limited risks.

6. DIVERSITY IMPLICATIONS

- 6.1 The council wishes to ensure that its policies and procedures do not impact unfairly on employees with reference to race, sex, age, religion or belief, sexual orientation or disability. An impact assessment has been undertaken and there is some evidence to suggest some disproportionality in the application of the current policies and procedures. Managers will be required to ensure that the application of the new policies and procedures does not have an adverse impact, for example in the unbalanced use of formal processes on particular groups of employees compared to the informal processes. In future Human Resources will monitor the application of the policies and procedures by managers.

7. STAFFING IMPLICATIONS

- 7.1 This report contains recommendations which will have a potential impact on management of staff employed by the council. These are covered in detail within the body of the report.

APPENDICES

Appendix 1: Disciplinary Policy and Procedure

Appendix 2: Managing Capability Code

BACKGROUND PAPERS

Existing policies and procedures

New ACAS Code

Local authority policies and procedures (London Councils Data Base)

CONTACT OFFICER

Tracey Connage

Assistant Director, Human Resources