



## General Purposes Committee

**Tuesday 27 November 2012 at 7.00 pm**

Committee Room 4, Brent Town Hall, Forty Lane,  
Wembley, HA9 9HD

### Membership:

#### Members

Councillors:

Butt (Chair)  
R Moher (Vice-Chair)  
Beswick  
Brown  
Cheese  
Hirani  
Kansagra  
Long  
Lorber  
J Moher

#### first alternates

Councillors:

A Choudry  
Jones  
Arnold  
Beck  
Sneddon  
Van Kalwala  
Colwill  
Al-Ebadi  
Hopkins  
Chohan

#### second alternates

Councillors:

Krupa Sheth  
Kabir  
Mrs Bacchus  
Matthews  
Green  
Aden  
BM Patel  
Naheerathan  
Hunter  
S Choudhary

**For further information contact:** Anne Reid, Democratic Services Officer  
020 8937 1359, [anne.reid@brent.gov.uk](mailto:anne.reid@brent.gov.uk)

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[www.brent.gov.uk/committees](http://www.brent.gov.uk/committees)

**The press and public are welcome to attend this meeting**

# Agenda

Introductions, if appropriate.

Apologies for absence and clarification of alternate members

**Item** **Page**

**1 Declarations of pecuniary interests**

Members are invited to declare at this stage of the meeting, any relevant financial or other interest in the items on this agenda.

**2 Minutes of the previous meeting** 1 - 4

**3 Matters arising (if any)**

**4 Deputations (if any)**

**5 Restructure of Services to Schools** 5 - 20

This report sets out the arrangements for the restructuring of services supporting school improvement in the Children and Families Department. These arrangements need to be in place by 1<sup>st</sup> April 2013 to meet budgetary pressures. All the changes are taking place in accordance with the Council's agreed Managing Change procedure.

**Wards Affected:**

All Wards

**Contact Officer:** Krutika Pau, Director of Children and Families

Tel: 020 8937 3126

krutika.pau@brent.gov.uk

**6 Managing Capability Policy and Procedure** 21 - 34

This report provides details of the proposed Managing Capability Policy and Procedure. This will replace the current Capability Policy and Procedure.

**Wards Affected:**

All Wards

**Contact Officer:** Cara Davani, People and Development

Tel: 020 8937 1909

cara.davani@brent.gov.uk

This report provides details of the proposed Grievance Policy and Procedure. This will replace the current Fairness at Work Policy and Procedure.

**Wards Affected:**

All Wards

**Contact Officer:** Cara Davani, People and Development

Tel: 020 8937 1909

cara.davani@brent.gov.uk

8 **Appointments to Sub-Committees / Outside Bodies**

9 **Any Other Urgent Business**

Notice of items to be raised under this heading must be given in writing to the Democratic Services Manager or his representative before the meeting in accordance with Standing Order 64.



- Please remember to **SWITCH OFF** your mobile phone during the meeting.
- The meeting room is accessible by lift and seats will be provided for members of the public.
  - Toilets are available on the second floor.
  - Catering facilities can be found on the first floor near The Paul Daisley Hall.
  - A public telephone is located in the foyer on the ground floor, opposite the Porters' Lodge

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## LONDON BOROUGH OF BRENT

### MINUTES OF THE GENERAL PURPOSES COMMITTEE Thursday 13 September 2012 at 7.00 pm

PRESENT: Councillor Butt (Chair), Councillor R Moher (Vice-Chair) and Councillors Beswick, Brown, Cheese, Hirani, Kansagra, Long, Lorber and J Moher

1. **Declarations of personal and prejudicial interests**

None.

2. **Minutes of the previous meeting**

RESOLVED:-

that the minutes of the previous meeting held on 25 June 2012 be approved as an accurate record of the meeting.

3. **Matters arising**

None.

4. **Deputations**

None.

5. **Flexible working**

The report from the Director of Finance and Corporate Services provided details of the proposed flexible working policy and procedure designed to replace flexible working arrangements and give an improved offer for staff. The Interim Head of Human Resources, Cara Davani, advised that the existing arrangements were in need of review and had been updated to be easier to use and to formalise flexible working across the council to meet the requirements of the new Civic Centre. The trade unions viewed the changes positively.

In response to a question on support to managers and the impact on appraisals, Cara Davani advised that the focus would be on performance management with the emphasis on outputs. Communication was in place for the new arrangements to be rolled out between October 2012 and March 2013, a series of conferences on new ways of working was taking place and the managers would be supported by HR. Members heard that staff with disabilities would be proactively encouraged to be able to work under the new arrangements.

RESOLVED:

- (i) that approval be given to the draft policy with effect from 1 October 2012 to coincide with the introduction of the new employment contract for all employees;
- (ii) that it be noted that the flexible retirement policy would be amended due to legislative changes.

## 6. **Review of staff benefits**

Members recalled that in June 2012 approval had been given to the draft collective agreement on harmonised terms and conditions of employment. Cara Davani outlined, Interim Head of Human Resources outlined the outcome of the trade union ballots which had not resulted in universal agreement. As a result, it was now necessary to give those staff affected by the change, notice of the date on which new terms and conditions would come into effect.

Members expressed regret that the harmonisation implementation date would now have to be deferred from October 2012 to January 2013 reducing the level of savings achievable in 2012/13 to approximately £198,848. The view was put that efforts should be made to reduce this loss to the council particularly given the current council's current financial position.

RESOLVED:

that agreement be given to the implementation of the harmonisation package as set out in the detail of the report.

*(Councillors Brown, Cheese and Lorber asked that their dissent be recorded).*

## 7. **Disciplinary policy**

Cara Davani (Interim Head of Human Resources) introduced the report which detailed proposed changes to the council's disciplinary policy updated in line with recent changes in practice, procedures and caselaw and also with the general changes in the council's HR Policy Framework. Members' attention was drawn to the changes in the policy relating to appeals against dismissal and the proposal to retain member involvement for only those posts to which they had responsibility to appoint, that is, assistant director level and above. For posts below assistant director level, it was proposed that dismissal approval be signed off by the Assistant Director of People and Development or the Head of People Services and appeals against dismissal heard by senior officers in the same way as dismissals for other reasons such as absence, capability and redundancy. Separate arrangements would be in place for statutory posts. Cara Davani advised that to date, members serving on staff appeals committees had avoided being called to attend employment tribunals but this was increasingly being considered to not be acceptable.

In discussion, members considered the extent to which it was important to have a consistent approach for all staff and also whether the existing provision for a member level independent appeal process should continue to be retained or at least, subject to wider discussion. Cara Davani advised that the trade unions were not likely to support the proposals and that most cases were dealt with through

litigation. Members queried what the arrangements were in neighbouring boroughs. The committee heard that a meeting of the Employees Joint Consultative Committee was due to be convened in October 2012 and that the proposals to revise the policy were likely to be the subject of discussion.

RESOLVED:

that further consideration of the draft disciplinary policy be deferred until after the forthcoming meeting of the Employees Joint Consultative Committee.

8. **Appointments to Sub-Committees / Outside Bodies**

None.

9. **Any Other Urgent Business**

None.

The meeting closed at 8.02 pm

M BUTT  
Chair

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## General Purposes Committee 27 November 2012

### Report from the Director of Children and Families

For decision

## Restructure of Services to Schools

### 1.0 Summary

This report sets out the arrangements for the restructuring of services supporting school improvement in the Children and Families Department. These arrangements need to be in place by 1<sup>st</sup> April 2013 to meet budgetary pressures. All the changes are taking place in accordance with the Council's agreed Managing Change procedure.

### 2.0 Recommendation

That the Committee agree the restructuring of the Services to Schools team in Children and Families to form a new School Improvement Service

### 3.0 Background

3.1 Services to Schools is a group of services under single management within the Children and Families Department. It is facing a series of significant challenges which result from changes in national policy in relation to public services generally and to education more specifically. In relation to the former, Brent Council is faced with very significant budget reductions across all its services and, to achieve this, has reviewed many of its services, including Services to Schools. In relation to the latter, the Government is encouraging greater autonomy for schools; is setting out a new role for local authorities in relation to schools; has ended ear-marked grants which have historically flowed through local authorities; is encouraging schools to provide services to other schools, and is proposing changes to the way schools are funded.

3.2 Other than providing statutory guidance on the role of the director of children's services and the lead member, the Government has been reluctant to spell out a new role for the local authority in relation to education, preferring to allow councils to

determine the scope of this aspect of their role for themselves. Such a debate took place in Brent during the first half of 2012 and was supported by meetings with headteachers, governors, staff, senior council officers, and elected members. The Council considered the range of functions currently undertaken by the service and levels of funding. A key consideration was the proportion of Brent schools which have, or may, convert to academy status. When a school converts it receives additional funding (equivalent to 7-8% of its budget) which is diverted from local authority services to the school itself. The Council wishes to design a future model for its schools related functions that is sustainable even if the majority of Brent schools convert and which is affordable in light of the overall budget pressures it faces

Furthermore, school in Brent are currently establishing a Brent Schools Partnership which aims to support mutual development and improvement. In common with other local authorities, Brent needs to move toward a jointly commissioned, more school-led model of school improvement and this new structure will facilitate that.

3.3 In 2012/13, Services to Schools obtains its income from various sources; including:

- the Council's General Fund;
- the Dedicated Schools Grant (DSG);
- individual schools which purchase services; and
- grant income from Health bodies and the DfE which pays for specific programmes

3.4 In relation to the general fund, and in light of the considerations described above, there is an indicative budget for 2013/14 of £1,579,800 compared to £2,130,000 in the current year, a reduction of £550,200. These resources will fund a new core service which will undertake the school improvement related role of the council. Officers propose that the new core school improvement service will employ 7.49 FTE staff funded by Council General Fund (see Appendix 3) plus 13.2 FTE staff funded by Dedicated Schools Grant (DSG) subject to confirmation of funding by the Department for Education in January 2013. Benchmarking data comparing the resourcing of this team with similar teams in other councils shows that the proposed resourcing level per school is at or above that in other areas.

3.5 The DSG is largely passed on to schools for them to spend as they see fit. These resources are distributed on a basis determined by the Brent School's Forum, a statutory body representing the local school community. In recent years, after discussion at the Forum, it has been decided that funding for certain services will be held centrally and managed by Services to Schools. In the year 2012/13, these services are:

• schools causing concern	£184,800
• early years quality improvement;	£577,000
• early years SEN	£167,444
• primary and secondary teaching and learning;	£364,796
• SEN and inclusive education;	£162,959

• ethnic minority achievement; and support for Travellers, refugees and asylum seekers	£754,830
• Wembley Learning Zone	£81,000
<b>Total DSG</b>	<b>£2,292,829</b>

- 3.6 In 2012/13, these services received a combined budget of £2,292,829. At its meetings in July 2012 and September 2012, the Schools' Forum decided that the early years quality improvement service (£577,000) and the early years SEND service (£167,444) and the Learning Zone @ Wembley stadium (£81,000) would continue to be provided centrally at the same level of funding. In addition, the DSG to support the work of specialist SEN staff has been retained by the LA: (£162,959). At its meeting in September 2012 however, the School's Forum decided that funding for other services funded by DSG would be delegated to schools as part of their core budget. As a result of this decision, the budget formerly held for these other services (£1,119, 626) from this source will henceforth sit with schools as part of their delegated budgets.
- 3.7 In 2012/13, Services to Schools predicts that its income from services being purchased by individual schools will be c£830,000. These services are provided on an academic year basis. The Brent Schools Partnership (described above) is also planning to develop a range of services through their own arrangements. Whilst it is highly likely that schools will nevertheless continue to purchase services from the Council, the extent of this buy-back will not be known until March 2013 and is likely to be lower than current levels.
- 3.8 The education welfare service, the pre-exclusions team and the behaviour support team, all currently managed within Services to Schools are out of scope of this reorganisation and will instead be located elsewhere in the Children and Families Department alongside the Pupil Referral Units and other educational services for vulnerable pupils. That area too will be subject to a staffing reorganisation in 2013.
- 3.9 Similarly the Brent Music Service (BMS) is out of scope. Although a number of BMS staff are Council employees, it does not receive any funding from the Council's general fund or via the DSG. BMS income flows from the Government and individual schools and parents.
- 3.10 The Council is also undertaking two Council wide reviews which will have implications for staff currently within Services to Schools. The first is a review of all business support functions which will affect the following posts in Services to Schools: business support officer, business support assistant, office manager and the executive assistant team. The second is a review of building support functions which will affect the posts of lead service officer and two service officers. In the light of these Council-wide reviews, it has been decided that all the administrative and facilities management posts in the current structure are out of the scope of this proposal.
- 3.11 As described above, Services to Schools is facing a very significant decrease in its funding for 2013/14 and there are implications for a number of staff. A total of 28

posts will be affected by these proposals, of which 17 are currently filled by postholders (15.37 FTE) and 11 are vacant.

- 3.12 The services affected by this proposal do not include all the Council's services which Brent Council provides or offers to schools. Nor do they cover all the school-related statutory duties of a local authority. Virtually all the Council's other such services are also subject to review

#### **4.0 Current Structure**

The current structure of Services to Schools is set out at Appendix 2 where the organisation charts show all the posts which are within the scope of this project.

#### **5.0 Budgets/Savings**

- 5.1 As well as the reduction in council funding of £550,200 described at paragraph 1.4 above, Services to Schools will lose £1,119,626 of income as a result of the resources for services currently being funded through the DSG being delegated to schools. In addition, and as a result of the downsizing of the service, the income from traded services is likely to reduce significantly from the current level of £830,000.
- 5.2 Given the nature of the work carried out by such staff as are displaced by the review, the most likely employment opportunities are in schools. While staff cannot be formally redeployed to schools, such opportunities can be sought on a voluntary basis. This may be helpful to schools as they work, through their emerging partnership arrangements, to establish some school-owned services to schools.

#### **6.0 Proposal for new structure**

- 6.1 The proposed structure of the new core service is set out at Appendix 3. It is designed to undertake the Council's statutory duties in relation to school improvement within the resources the Council has made available. These core services are explained in a list as Appendix 4. The structure includes generic posts whereby each school improvement lead will be expected to undertake some common general duties as well as to provide specialist leadership in one or more of overall co-ordination of the work of the team:

- SEN
- Ethnic minority achievement and equalities
- Statutory assessment
- Behaviour, safety and wellbeing

- 6.2 The new post of commissioning and systems manager has been created to enable the team to build a quality assured database of expert practitioners, commission specialist support from the market, and implement appropriate business processes. This will enable the team to operate effectively in the new legislative framework.

6.3 The local school and early years provider community has already been consulted, via the Schools Forum, about the future funding, through the DSG, of the early years quality improvement and early years special educational needs services. As a result, the funding for both services will continue on the current basis for 2013/14 subject to confirmation by the Department for Education in January. Therefore, there are no proposals at this stage to change the size, structure and function of these teams.

6.4 Five posts have been identified as subject to further review by 1st April 2013. The rationale for placing these particular posts in this category is that more than one of the following criteria apply:

- in recent years, the service fulfilled by the post has attracted a significant level of buy-back from schools and established service level agreements are in place;
- there is evidence that this pattern of buy-back will continue in 2013/14;
- the post is funded by resources provided by the Council from outside the Children and Families service area and continued funding will be determined by that service area;
- the post is part-funded by an external agency.
- the function undertaken by the postholder is a Council priority.

The Council will make a final decision on the future of these posts by 1 April 2013. Until then, they will remain in the scope of this review.

The number of posts affected by the restructuring are as follows:

<b>NUMBER OF POSTS IN CURRENT SERVICE</b>	<b>73</b>
<b>TOTAL FTE</b>	<b>64.89</b>
<b>NUMBER OF POSTS IN SCOPE OF THIS REVIEW</b>	<b>50</b>
<b>TOTAL DELETED POSTS IN SCOPE</b>	<b>27.5</b>
<b>TOTAL POSTS TO BE DELETED WHICH ARE VACANT</b>	<b>10.5</b>
<b>TOTAL POTENTIAL STAFF REDUNDANCIES</b>	<b>17.5</b>

## 7.0 The Process

7.1 Staff have been invited to comment on the structure and the new roles according to the timetable set out at Appendix 1 and a full consultation document has been issued, complete with draft job descriptions, structures and a listing which explains what is happening in respect of each of the existing posts. All relevant trades unions

are involved and the reorganisation is being carried out fully in line with the Council's Managing Change Policy.

- 7.2 Posts in the new structure are to be filled in line with the Council's Managing Change Policy i.e. where appropriate through assimilation (straightforward or competitive) or where vacancies arise, through internal and external recruitment.

## **8.0 Financial Implications**

- 8.1 The detailed financial implications are covered in the body of the report and the proposals are within the Department's current budget and budget plans for next year.

## **9.0 Legal Implications**

- 9.1 The changes proposed in the report will result in a mid-size redundancy exercise and as such the Council's Managing Organisational Change Policy and Procedures will be applicable. A clear basis for the rationalisation of the service has been set out which justifies clearly the need for the redundancy exercise to take place. Further, the proposed timescales and processes for effecting the changes are in line with the provisions of the Council's policy framework and as such represents an appropriate way of managing the potential risks involved in a downsizing exercise of this type.

- 9.2 The Equalities Impact Assessment has identified a potential indirect discrimination issue in respect of women, as set out in the Diversity Implication section of this report. It is clear that a potentially indirect discrimination impact is capable of being rendered lawful if it can be established that any potential discriminatory effect is a proportionate means of achieving a legitimate aim. The body of this report sets out what is an extremely convincing case for why the proposed decisions need to be made and the actions that the management have taken to ensure adequate levels of support are offered to affected staff indicate that the test of proportionality has been met.

## **10.0 Diversity Implications**

- 10.1 A predictive Equality Impact Assessment has been undertaken in respect of this review. This identifies that the majority of all the staff in the team are female and a significant proportion are over 50. The main action identified in this assessment is that all reasonable steps should be taken to obtain alternative posts of the redundant staff in Brent schools and across the council. In addition, specialist support will be identified for staff over 50 who may find it more challenging to obtain alternative employment.
- 10.2 In addition, the new service will continue to track performance of schools in terms of ethnicity and other equalities dimensions to help ensure that issues around ethnic minority achievement and travellers continue to be addressed now that this funding sits with schools rather than the council.

## 11.0 Staffing/Accommodation Implications (if appropriate)

- 11.1 The staff affected by this reorganisation currently work at the Centre for Staff Development (the Gwenneth Rickus Building). All the continuing staff and activities will move to the new Civic Centre by July 2013.

Background papers:

Restructuring Consultation Paper: Services to Schools November 2012

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Krutika Pau, Director of Children and Families, Children and Families Department.  
[Krutika.pau@brent.gov.uk](mailto:Krutika.pau@brent.gov.uk)

## Appendix 1: Timetable for Achieving Restructure of Services to schools

To/by Whom	Via What	When/by	Documents
Management	Prepare consultation document	w/c: 15/10/12	Draft Consultation document
Management & Unions	Hold initial meeting with management and unions to discuss consultation proposals with a view to incorporating feedback	26/10/12	Draft Consultation Document
Trade Unions & Staff	Start 30 day formal consultation. Issue Consultation Document with staff & Trade Unions at formal meeting inviting feedback in writing by the deadline stated in the document (05/12/12)	5 November 2012 @ 4:00pm	Consultation document (shared at meeting and by email)
Management, Staff & Unions	Hold formal staff group meeting	12/11/12 @ 4:00 pm	
Management & Staff	Hold individual meetings with staff affected upon request (staff to email Faira Ellks)	13/11/12 @ 10am – 4:00pm; 19/11/12 @ 2pm	
	Deadline for staff to express an interest in Voluntary Redundancy (where applicable)	19/11/12	VR Application Form
	<b>Close of formal consultation period</b>	<b>05/12/12</b>	
Management	Consider the feedback from the consultation process and amend proposals as considered necessary.  Consider and make decisions on VR applications	06/12/12 – 07/12/12	
Management	Respond in writing to Trade Unions & staff to confirm final structure	10/12/12	Outcome document
Staff	Deadline for staff to complete statement of interest		Statement of interest
	Selection process for new structure i.e. Assimilation/ring-fence interviews; assessment	w/c: 17/12/12	
Management, Staff & Unions	Individual determination meetings with staff and issue notices of redundancy according to length of service; individual letters to staff confirming appointment in new structure	From: 19/12/12 onwards	Letter
Management, Recruitment Service	Displaced staff entered onto Council's redeployment register and support given to identify suitable alternative employment within the Council	From: 19/12/12	
	<b>New structure in place</b>	<b>01/04/13</b>	

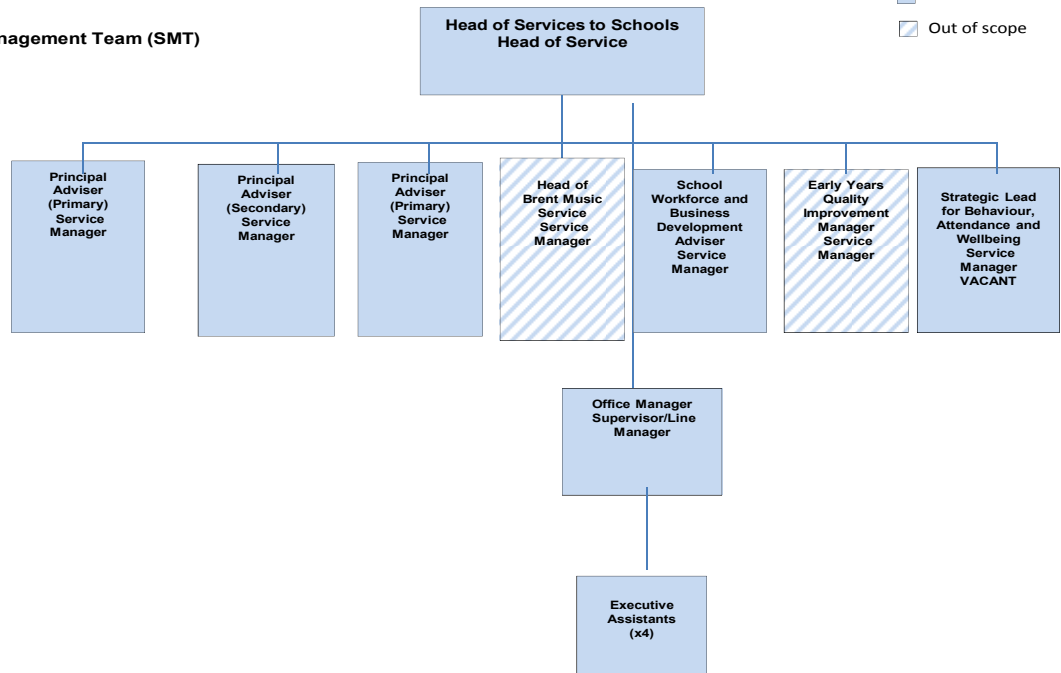


## Appendix 2: Current Structure Chart for Services to Schools

Current organisation chart 1

Team: Senior Management Team (SMT)

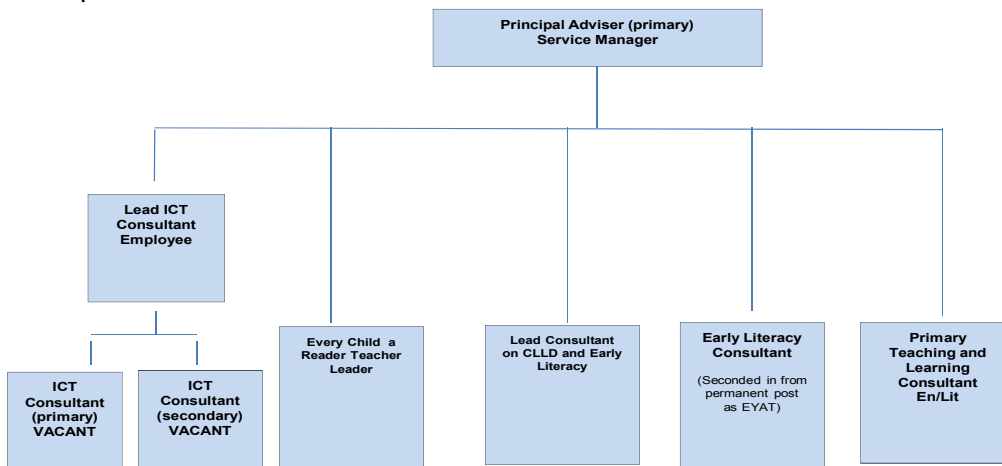
Key:  
 Permanent posts in scope  
 Out of scope



Current organisation chart 2

Team: School Improvement

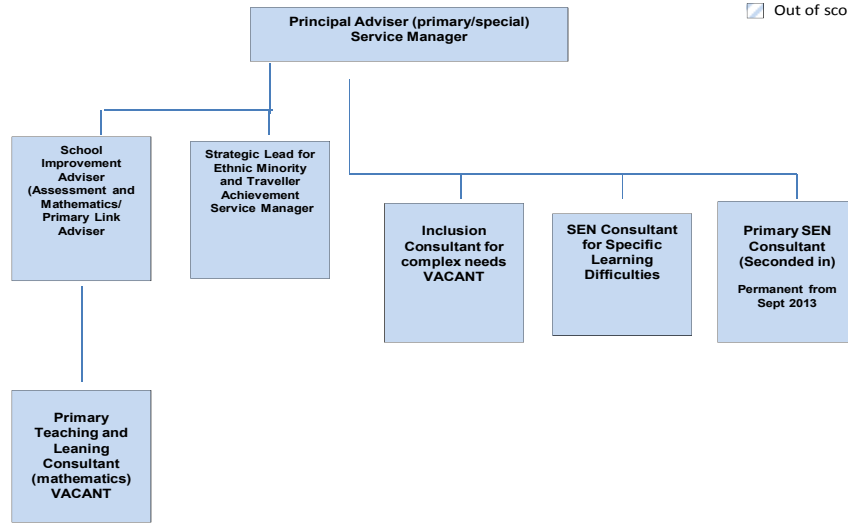
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### Current organisation chart 3

Team: School Improvement

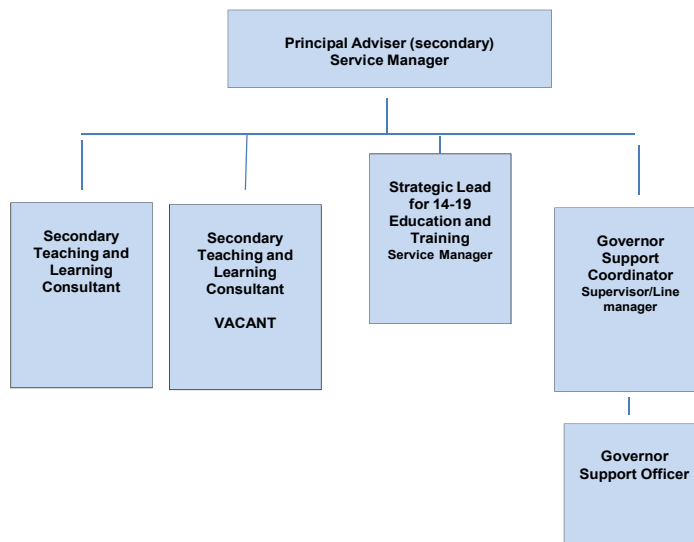
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### Current organisation chart 4

Team: School Improvement

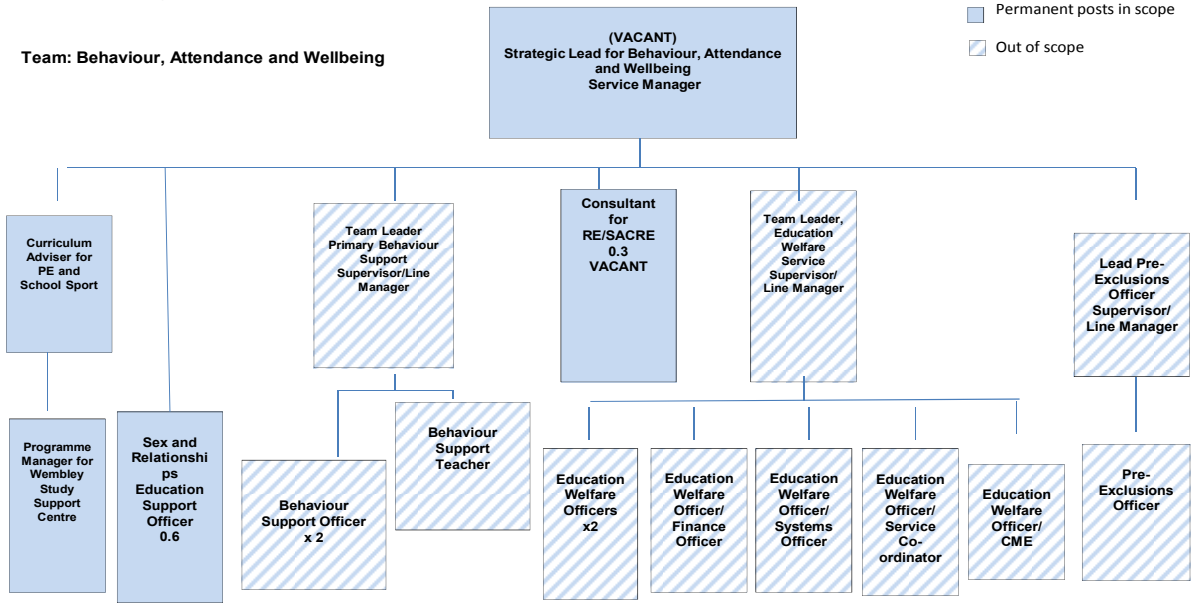
Key:  
 Permanent posts in scope  
 Out of scope



### Current organisation chart 5

Team: Behaviour, Attendance and Wellbeing

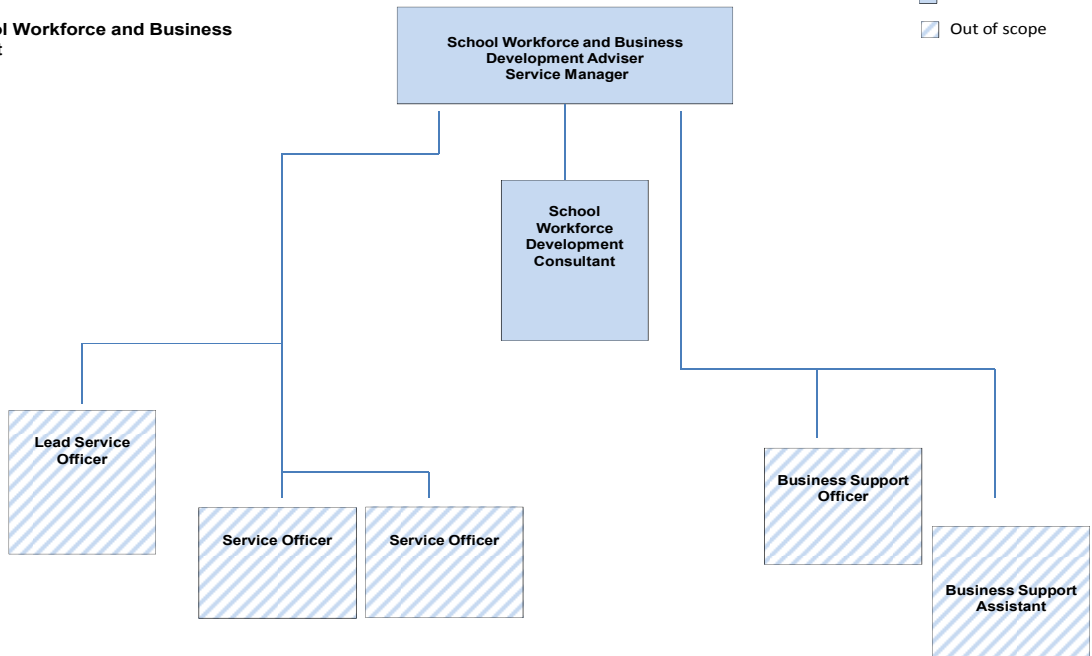
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### Current organisation chart 6

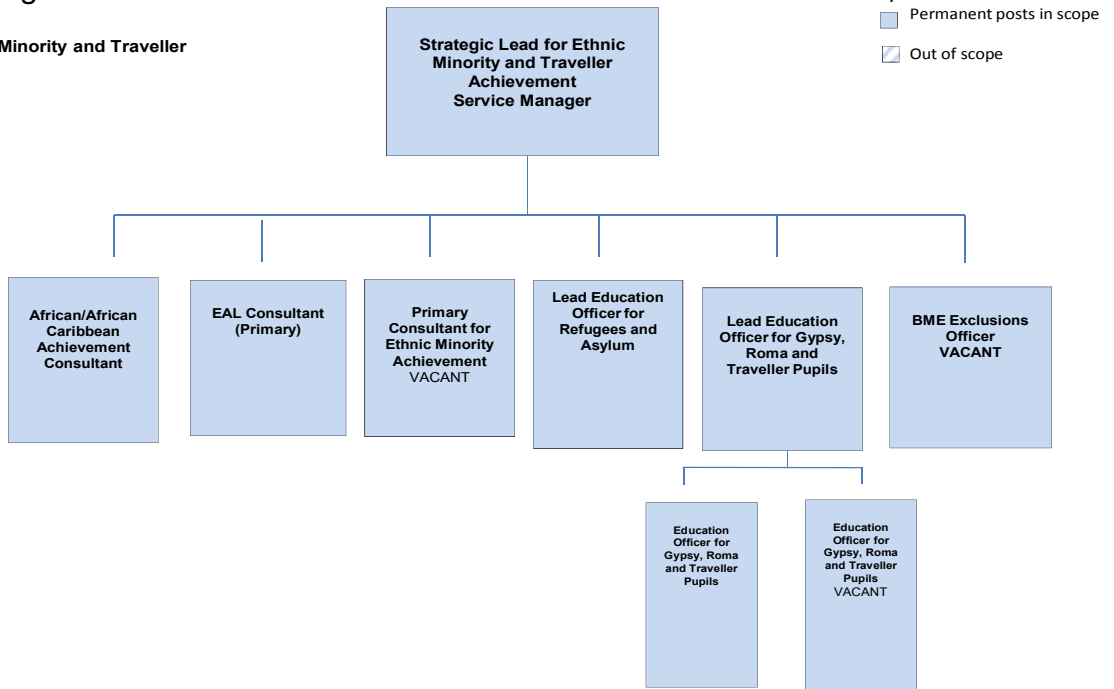
Team: School Workforce and Business Development

Key:  
 Permanent posts in scope  
 Out of scope



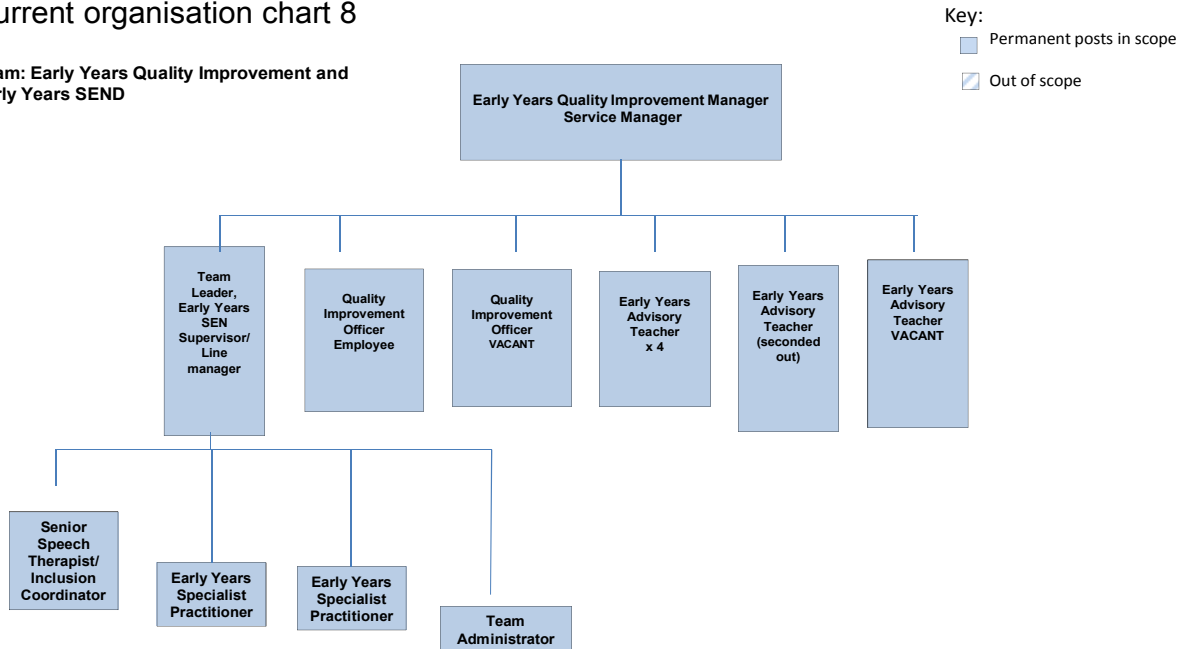
### Current organisation chart 7

Team: Ethnic Minority and Traveller Achievement



### Current organisation chart 8

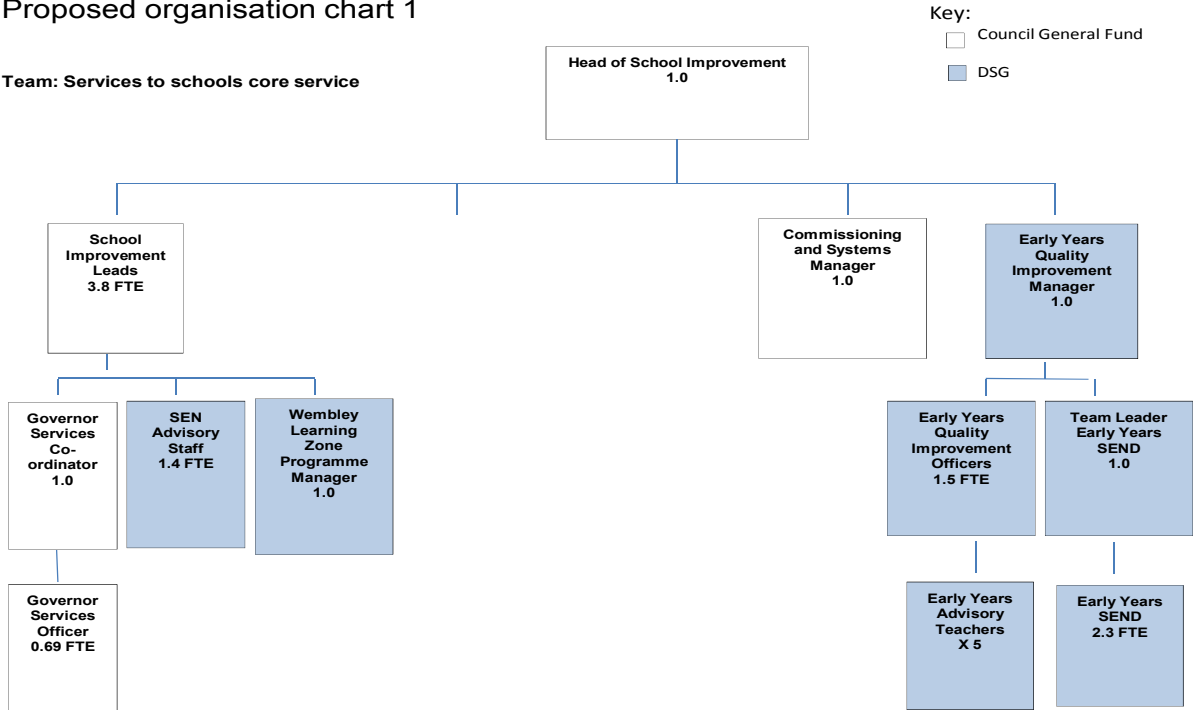
Team: Early Years Quality Improvement and Early Years SEND



### Appendix 3: Proposal for the structure of the new core school improvement service (plus staff funded by DSG, subject to confirmation in January 2013)

Proposed organisation chart 1

Team: Services to schools core service



Total FTE posts funded by Council General Fund:	7.49
Total FTE posts funded by DSG (subject to confirmation):	13.2
<b>Total FTE posts:</b>	<b>20.69</b>

## Summary of core school improvement functions from April 2013

<p>1. <u>Core school improvement</u></p> <ul style="list-style-type: none"> <li>• maintenance of a monitoring overview of quality and standards in all schools/educational settings in Brent</li> <li>• data analysis to anticipate risk</li> <li>• provision of data sets to inform data analysis and target-setting by schools</li> <li>• annual programme of four link adviser visits to all maintained schools</li> <li>• intensive monitoring, support and challenge for schools causing concern including through use of statutory intervention powers and other radical action</li> <li>• additional support and challenge for schools requiring improvement, to arrest decline and secure improvement</li> <li>• brokerage of support and partnerships for schools at risk, working in partnership with schools</li> <li>• advice and guidance on statutory curriculum developments</li> <li>• organisation of regular meetings for headteachers to promote consultation, debate and the exchange of information</li> <li>• provision of key information, advice and guidance to headteachers and governing bodies</li> <li>• support for the appointment of headteachers(one day) as the director's representative</li> <li>• specialist leadership on key development priorities for schools: Special Educational Needs, Ethnic Minority Achievement and Equalities, Behaviour, Attendance and Wellbeing, Statutory assessment</li> </ul>
<p>2. <u>Early Years Quality Improvement (Schools, maintained nursery schools/children's centres and PVI settings)</u></p> <ul style="list-style-type: none"> <li>• contribution to LA strategy and planning for quality improvement in the EYFS</li> <li>• leadership on quality improvement across the sector</li> <li>• maintenance of overview of quality and standards across all EY settings</li> <li>• quality assurance of all EY settings</li> <li>• support and challenge from the Early Years Quality Improvement Team</li> <li>• provision of EY SEND services to private, voluntary and independent nurseries</li> <li>• moderation of EYFS statutory assessment</li> <li>• key information, advice and guidance on EYFS matters</li> </ul>
<p>3. <u>14-19 Education and Training</u></p> <ul style="list-style-type: none"> <li>• Leadership on carrying out the LA's statutory duties for strategic planning of 16-19 education provision and raising the participation age</li> <li>• leadership and facilitation of the 14-19 partnership including the work of its strategic steering and implementation groups, in order to promote high quality, inclusive educational training opportunities for 14-19 year olds</li> <li>• monitoring the delivery of the 14-19 priorities and outcomes for young people</li> <li>• provision of challenge meetings for providers where there is underperformance in 14-19 outcomes</li> <li>• provision of advice, support and training on 14-19 statutory responsibilities and</li> </ul>


accountabilities.
<p>4. <u>Key Stage 1 and Key Stage 2 statutory assessment</u></p> <ul style="list-style-type: none"> <li>• Moderation of Key Stage1 assessment (statutory) in 25% of schools, including training of moderators</li> <li>• guidance on statutory assessment at Key Stage 2, including guidance on access arrangements</li> <li>• unannounced audit visits to 10% of schools with Key Stage 2 pupils during testing week (statutory)</li> <li>• moderation of Key Stage 2 writing in 25% of schools (statutory).</li> </ul>
<p>5. <u>Special Educational Needs and Disabilities</u></p> <ul style="list-style-type: none"> <li>• Contribution to LA strategy and planning for SEND, especially in the light of the Green Paper</li> <li>• leadership to schools on SEN policy and practice</li> <li>• key information, advice and guidance on SEND, on implementing the Code of Practice, and on compliance with disability regulations</li> <li>• annual monitoring of schools' SEND provision and recommendations for developing effective practice through the SEND audit and report</li> <li>• support and challenge for schools where concerns about SEND have been identified through audits, Ofsted inspections or other sources</li> <li>• promotion of sharing of effective practice across schools.</li> </ul>
<p>6. <u>Religious Education (RE) and Standing Advisory Council on Religious Education (SACRE)</u></p> <ul style="list-style-type: none"> <li>• Provision of professional advice and support to SACRE</li> <li>• leadership on review of Brent's Agreed Syllabus for RE</li> <li>• leadership to schools on the implementation of the Agreed Syllabus</li> <li>• key information, advice and guidance to schools on faith-related matters.</li> </ul>
<p>7. <u>Newly Qualified Teachers</u></p> <ul style="list-style-type: none"> <li>• Acting as 'Appropriate Body' for the induction of NQTs: <ul style="list-style-type: none"> <li>- registering and monitoring the progress of NQTs and reporting to the DfE</li> <li>- making decisions on the outcome of statutory induction for NQTs</li> <li>- quality assuring schools' systems for monitoring, supporting and assessing NQTs</li> <li>- advice and intervention for schools where NQTs are at risk of failure.</li> </ul> </li> </ul>
<p>8. <u>Behaviour and Safety</u></p> <ul style="list-style-type: none"> <li>• leadership on anti-bullying strategies and children at risk.</li> </ul>
<p>9. <u>Governor Services</u></p> <ul style="list-style-type: none"> <li>• Completion of Instrument of Government, as required</li> <li>• maintenance of database of governors and clerks</li> </ul>

- appointment of LA governors
- management of complaints about LA governors
- recruitment initiatives for new governors
- clerking brokerage
- support for governing bodies of schools causing concern or requiring intervention.

#### 10. Other duties

- contribution to LA strategic planning and the implementation and review of plans and policies
- providing education and curriculum expertise to the process of planning school places and expanding school provision
- supporting and co-ordinating the LA's partnership arrangement with schools
- participation in cross-council steering and working groups
- reports to Council on education standards in Brent; on outcomes for specific groups of pupils; and on the progress of schools/settings, including underperforming ones
- response to critical incidents, Freedom of Information requests, parental complaints, press/media queries and other matters as they arise
- advice to Members on LA statutory duties in the relevant field
- officers acting as nominated LA Trustees for Academies, to promote collaboration and partnership.



 <p>The logo of Brent Council, featuring a central coat of arms with a shield, a crown, and two lions, surrounded by the words 'BRENT COUNCIL' in a circular arrangement.</p>	<p><b>General Purposes Committee</b> 27 November 2012</p> <p><b>Report from the Interim Director of Human Resources</b></p>
<p>Wards affected: ALL</p>	
<p><b>Managing Capability Policy and Procedure</b></p>	

## 1.0 Summary

- 1.1 This report provides details of the proposed Managing Capability Policy and Procedure. This will replace the current Capability Policy and Procedure.

## 2.0 Recommendations

- 2.1 GP Committee is asked to agree the draft policy and procedure with effect from 1<sup>st</sup> January 2013.
- 2.2 GP Committee is asked to authorise the Assistant Director, Human Resources (or Deputy), in consultation with the Director of Legal and Procurement (or Deputy) and then consultation with the relevant trade unions, to make such other changes as may be necessary from time to time to all HR Policies and Procedures.

## 3.0 Detail

- 3.1 The Council continually reviews its HR policy framework to align its policies and procedures to the organisational objectives and to reflect current modern HR practice, in the context of legislative change.
- 3.2 Brent is committed to providing excellent, publicly accountable services that give real value for money. Brent recognises that its people are key to the delivery of excellent services.
- 3.3 The draft policy and procedure provides a framework of support for employees who require additional management intervention to enable them to carry out their roles effectively and in line with organisational objectives.
- 3.4 The key points to note are that the new policy and procedure:
- Recognises that under-performance may place the organisation at risk and allows for swift action to be taken.

- Expects that informal management action happens within the normal day to day management of staff.
- The procedure will be instigated where improvement in performance has not been demonstrated or sustained, or where serious issues of capability are raised that make informal management action inappropriate.
- Has a two stage process (as opposed to a three stage process).

3.5 The policy and procedure is designed to ensure that all employees are treated fairly and consistently and that high standards of performance are maintained.

3.6 The policy and procedure is underpinned by a strong focus on delivery of the highest level of service.

#### **4.0 Implementation date**

4.1 It is recommended that the policy becomes live on 1<sup>st</sup> January 2013. A communications plan has been developed to support roll out of the policy and guidance for managers to support implementation of new arrangements.

#### **5.0 Financial Implications**

5.1 There are no specific financial implications.

#### **6.0 Legal Implications**

8.1 The policy is underpinned by the Employment Act 2002 and the Equality Act 2010.

8.2 The policy adheres to the basic principles of fairness in the ACAS Code of Practice: Disciplinary and Grievance Procedures (April 2009).

8.3 The policy is non-contractual and may, subject to applicable legislation, be amended or withdrawn by Brent at any time.

#### **9.0 Diversity Implications**

9.1 The policy and procedure is applicable to all staff and provides a consistent approach to ensure employees perform their roles effectively and capably, and to support employees not performing in a fair and consistent manner. Capability action is in accordance with the Council's equality duties and will be continually monitored to ensure compliance.

#### **10.0 Staffing/Accommodation Implications**

10.1 Brent is moving towards a flexible workforce and this policy and procedure will assist in the organisation meeting its objectives through offering a framework to help employees meet or exceed the high standards of performance required. There are no other implications in addition to those otherwise set out in the report.

#### **Background Papers**

Draft Capability Policy and Procedure is appended to this report.

#### **Contact Officer**

Cara Davani

Interim Head of Human Resources

# **Managing Capability Policy and Procedure**

## **Draft 2 November 2012**

### **Introduction**

Brent Council is committed to providing our customers and colleagues with the highest level of service. The performance of our staff is key to ensuring the high standards we expect to deliver and managers are expected to proactively performance manage staff to maintain these high standards.

### **Our approach**

Employees are expected to perform their duties and responsibilities to the standards set by the Council, and to be supported and assisted in achieving these standards by managers who set, communicate and monitor performance of individuals.

The Managing Capability Policy provides a fair and coherent approach to addressing performance issues, with guidance on best management practice and how to achieve equitable solutions when performance falls below the Council's required standards. Throughout the informal stage emphasis is placed on support and regular feedback, addressing under-performance quickly and setting clear goals and targets. Performance improvement should be achieved through regular supervision, one to one meetings, coaching, mentoring, training and development.

This policy outlines the approach that managers should adopt if informal action has been unsuccessful in achieving performance improvement.

### **Policy statement**

#### **Policy summary**

Brent's Managing Capability Policy forms part of the council's performance management framework.

Where informal action does not achieve improvement formal action must be taken.

The policy is designed to work in conjunction with other Council policies (*Managing Alcohol, Drugs and Substance Misuse at Work Policy and Procedure, Attendance Management Policy and Procedure, Disability, One to One Discussions (Supervision), Individual Performance and Development Scheme (IPAD), Disciplinary Policy and Procedure, Grievance Policy and Procedure*). Advice should be taken from Human Resources when dealing with capability issues which are impacted on by any of the above policies.

The Council reserves the right to amend this policy from time to time, after consultation with trade unions recognised by the Council for collective bargaining purposes.

The Council will ensure that the policy is applied fairly to all employees and does not impact negatively on race, gender, religion or belief, sex or sexual orientation or age, gender reassignment, marriage and civil partnership and disability.

Managers should take primary responsibility for the effective implementation of this policy across the Council. They are also responsible for managing the equality impact of the policy and preventing adverse impact on any particular groups of employees wherever possible.

## **Definitions and general information**

### **Employees**

The policy applies to all employees of the Council with the exception of:

- Employees in their probationary period. Issues of under-performance during the probationary period should be handled under the Council's Probationary Procedure
- Teachers, and school based non-teaching staff where the school has a delegated budget
- Temporary employees with less than 12 months continuous employment with the Council
- Agency workers, who are not employees of the Council. Any capability issues should be addressed with the employing agency.

### **Managing capability policy**

Capability is concerned with an employee's inability to undertake and perform tasks to the required standard. This is different to misconduct where the employee is capable of carrying out the tasks but chooses not to.

Any disagreement between management and the employee concerning the interpretation of the policy should be referred to the Assistant Director, People and Development or their delegated representative whose decision will be final.

Deferral of this policy will be by exception as advised by an HR Adviser.

### **Contractual notice**

An employee who is dismissed from the Council's service will normally be entitled to contractual notice or pay in lieu. During the notice period if the employee has not attended work without good cause or has failed to co-operate whilst at work, they will not be paid for any period of non-attendance or lack of co-operation.

### **Confidentiality**

Confidentiality and privacy will be maintained at all times during the managing capability process. This applies to all correspondence, reports and other documentation. Circulation of information will be that which is necessary to ensure a fair process.

### **Records retention**

Records must be kept detailing action taken in relation to the Managing Capability Policy and will be retained on the employee's HR file. These will include:

- The nature of the under-performance
- Action taken and the reasons for it
- Whether an appeal was lodged, and its outcome
- Any subsequent developments.

## **Correspondence**

All correspondence with employees subject to the Managing Capability Policy (including letters convening meetings/hearings, documentary evidence and decisions of hearings) should be delivered either by hand on behalf of the Council, or by recorded or registered post. A further copy should also be sent through the ordinary post.

## **Qualifications and compliance issues**

For certain occupations there is a requirement for an employee to hold a specific regulatory classification and/or to maintain a certain standard in order to carry out their job, (e.g. registration with a professional organisation). Formal action under this policy may have implications for such an employee's membership of a professional organisation and/or their ability to carry out the job.

In such circumstances, formal action may have implications for an employee's ability to continue to undertake the duties/responsibilities of the post. If the employee's continued fulfilment of their job would be compromised, the manager must seek the advice of a Human Resources Adviser either before the meeting is held or during an adjournment.

If a statutory body, such as the Healthcare Professionals Council, is involved (for compliance/ regulated posts), serious under-performance issues may need to be reported whilst steps are being taken to improve performance. This will not preclude matters from being dealt with internally as normal. However, if registration is withdrawn by external regulators, the case will need to be reviewed in order to assess the impact on the individual's ability to continue to do their job.

Where qualification and/or compliance issues may be involved, the relevant Assistant Director and Assistant Director of People and Development or Head of People Services must be consulted before formal action commences.

## **Swift action**

There may be occasions where an employee's level of under-performance exposes the Council to significant risk if the under-performance continues and swift action is therefore necessary. There may be other circumstances which may also warrant prompt action, e.g. an employee refuses to accept that there is a problem with their performance, and refuses to co-operate with attempts to achieve an improvement, or where the employee is grossly incompetent. In such instances, a decision may be made to proceed directly to Stage Two of the policy without taking action under Stage One. In such circumstances advice should be sought from the Assistant Director of People and Development or Head of People Services before any action is taken.

## **Alternative employment**

When managing capability, the manager may consider and discuss with the employee suitable alternative employment with the Council as a means of dealing with under-performance. This may include looking for jobs requiring different skills which are compatible with those possessed by the employee, or for less responsible jobs. If the manager believes that this is an appropriate measure but the employee is reluctant to consider this option, the manager should seek advice from a Human Resources Adviser.

Any offer of alternative employment will be made in writing, setting out why the offer is being made and the consequences of refusing the offer. The employee should be given at least seven working days notice to consider the offer and discuss it with their representative.

Any offer of alternative employment will be made on a salary equivalent to the rate for the new job. Where the grade of the job being offered is lower, the starting salary will be the minimum spinal column point on the new grade and no period of pay protection will apply.

### **Review meetings**

Capability Review meetings provide the opportunity to set and revise targets, review progress, provide feedback and consider any other action that may be required.

Where early intervention and good management practice through the normal channels does not achieve the required improvement in performance, or the under-performance is more serious, the manager must proceed to the next stage (i.e. first formal stage or first formal stage to second formal stage).

### **Temporary employees**

Where performance issues arise which involve temporary employees with less than 12 months continuous service, the procedure set out in below will apply.

Stage One and Two of the capability policy and procedure will be followed in all respects with review periods of between two to six weeks normally. The following factors will be taken into account in deciding the viability of continuing the contract:

- The complexity of the job
- The gap in performance
- The scope for improvement
- The length of the contract remaining.

Where a meeting is convened involving the potential dismissal of the employee, the employee will:

- Be given three working days notice of the meeting
- Have the right to be represented
- Be afforded the opportunity to comment on their performance, present evidence and submit mitigation
- Receive any documentation to be relied upon at the hearing and the names of any witnesses to be called at least three working days before the meeting.

A Human Resources Adviser will attend the meeting to advise the manager.

Where the manager concludes that the employee should be dismissed, but does not have the delegated authority to dismiss, a recommendation will be made to the Head of Service and the Assistant Director of People and Development.

An employee may be dismissed without being given a prior warning.

The employee will have a right of appeal to another Head of Service or Assistant Director.

## **Action involving trades union representatives**

Where concerns about performance involve an employee who is an official of a recognised trades union, the matter should be discussed at an early stage with an official employed by the relevant trades union. The Assistant Director of People and Development or Head of People Services should also be notified as soon as possible about cases involving trades union representatives and will advise if any other action is required. This should not delay managers taking the appropriate steps in the normal way under this policy.

## **Roles and responsibilities**

### **Employees**

Employees must have an understanding of the requirements set out in this policy and ensure that they achieve and maintain satisfactory performance levels. If they have any concerns about their ability to fulfil their duties, employees should inform their manager and co-operate with any strategies implemented to improve the standard of their work.

### **Line managers**

Line Managers are required to implement the capability management procedures fairly and consistently within their teams and ensure that any concerns about performance are addressed promptly and within the timeframes outlined in the procedure.

### **Directors, Assistant Directors and service heads**

Directors, Assistant Directors or Service Heads have authority to dismiss employees. Where the manager conducting the Stage Two hearing is not a Head of Service or more senior manager a recommendation to dismiss will be made to the Head of Service or more senior manager and the Assistant Director of People.

Directors, Assistant Directors or service heads also have authority to hear appeals against dismissal. They should be at the same level of seniority or at a higher level than the manager who took the decision to dismiss.

### **Human Resources**

Human Resources is available to give advice and support and will attend all meetings where dismissal is a possible outcome and appeal hearings.

### **Representation**

Employees have the right to advice and guidance at any formal stage in this procedure. Employees also have the right to be represented and/or accompanied by either:

- A trades union representative
- A work colleague (a person who is a Council worker) but not a legal representative.

It is the employee's responsibility to organise representation on the relevant date. However, as far as possible, employees and their representatives will be consulted on the timing of meetings/hearings.

The representative can put forward a case on behalf of the employee and can give advice and support during the process. The representative cannot, however, answer questions for the employee. The employee must at all stages respond to questions asked during a meeting held under this procedure.

### **Monitoring and review**

Monitoring reports will be presented to corporate and departmental management teams on a quarterly basis, and the Annual Workforce Monitoring report expanded to include full equalities monitoring information.

Application of the policy and decisions taken on capability matters will be monitored to ensure consistency and fairness.

### **Timescales**

All parties involved in the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this policy are followed. The only exception to this is where the outcome of a case would otherwise be prejudiced. Managers should discuss any variations to the timescale with a Human Resources Adviser and inform their manager before taking any action.

### **Records of interviews, meetings and hearings**

A written record of all interviews and hearings must be made. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing and the actions required to rectify performance in line with the requirements and standards for the job.

The manager is responsible for producing the record and, if necessary, may arrange for a note taker. Any dispute about the accuracy of the summary will be resolved by the manager with the individual employee. If the employee disagrees with the record of the meeting, they can ask for their comments to be noted for future reference.

Interviews, meetings and hearings will not under any circumstances be taped.

### **Formal Action**

#### **Stage One**

A meeting between the employee and the manager will be held. The manager will write to the employee setting out:

- Date and time of the meeting
- The requirement to attend a performance meeting giving seven working days notice
- Concerns about performance which have triggered the need to convene a Stage One meeting
- The right to be represented
- The requirement for the manager and the employee to provide any supporting evidence which they may wish to rely upon at least three working days before the meeting.

The aims of the meeting are to:

- Specify where performance falls short of the standard
- Set targets for improvement



- Identify measures against which performance will be assessed
- Put in place an action plan setting out the support to be provided
- Warn the employee of the consequences if their performance does not improve
- Set a date for a further meeting to review progress against the performance targets set for improvement. The length of the review period will be dependent on the nature of the job up to a maximum of three months, but will normally be for approximately one month.

### **Stage One outcomes**

There are three possible outcomes at the end of the review period.

1. Performance has improved to the required standard and no further action is required, other than to inform the employee of the need to sustain the level of improvement and the consequences of not doing so.
2. Where an employee's performance has not met the standard but there is evidence to show that a further period of monitoring and review is likely to achieve the standard, a decision may be taken to extend the initial review period for a further period of up to one month.
3. The employee's performance has not met the standard and a decision is taken to proceed to Stage Two.

If it is clear during the review period that the employee's performance will not reach the required standard by the end of the period then it is not necessary to wait until the review period is completed before proceeding to Stage Two.

Where a decision is taken to extend the review period, the manager and employee will revise the action plan based on progress made, and the arrangements set out in the plan for monitoring and reviewing performance will be followed.

Where the required level of improvement has been achieved performance will be monitored, and should it not be sustained in the following 12 month period, action may be reinstated at Stage Two of the procedure which could ultimately lead to dismissal. .

The line manager will confirm the outcome of the meeting in writing within five working days of the verbal notification of the decision.

There is no right of appeal against a Stage One outcome.

### **Stage Two**

The meeting will be conducted by the manager and a Human Resources Adviser will attend the meeting. The manager will give the employee seven working days notice of the meeting.

The written notification will set out:

- Date and time of the meeting
- The requirement to attend a Stage Two performance meeting
- The manager's continuing concerns about under-performance which have triggered the need to convene a Stage Two meeting
- The status of the meeting and that the most likely outcome is dismissal
- The employee's right to be represented.

Any supporting evidence to which management or the employee may wish to rely on at the meeting should be provided to the other party and to the manager in advance of the meeting.

The aims of the meeting are to:

- Review performance and the action taken to achieve the required improvement
- Where improvement has been unacceptable consider whether to dismiss or recommend dismissal
- Where it is decided the employee has demonstrated that with further support they are likely to achieve the required level of improvement, review and as appropriate revise, the targets and action plan designed to support the required improvement in performance and allow up to one month to improve
- Monitor progress
- set a date for a formal review meeting.

## **Stage Two outcomes**

There are four possible outcomes:

1. On completion of a Stage Two meeting the employee's performance has not met the required standard and they have not demonstrated that they are likely to achieve the desired improvement within a reasonable period of time. A decision is taken to dismiss or to recommend dismissal.
2. At the end of a Stage Two review period, performance has improved to the required standard and no further action is required. The employee will be informed of the need to sustain the level of improvement and the consequences of not doing so.
  - 3.1 At the end of a Stage Two review period, the required standard has not been reached. A decision may be taken to further extend the review period, by up to one month, where there is evidence to show that a further review period will lead to the required improvement. The employee will be warned that failure to reach the required standard will lead to dismissal.
  - 3.2 At the end of a Stage two review period (section 3.1), where the employee's performance has not met the required standard and there is no prospect of the standard being met. The manager will take a decision to dismiss or recommend dismissal.

The manager will confirm the outcome of the meeting in writing within five working days.

Where the required level of improvement is achieved the employee's performance will be monitored and should it not be sustained in the following 24 month period, action may be reinstated at the Stage Two of the Code which is likely to lead to dismissal.

## **Dismissal approval process**

Where the manager does not have the delegated authority to dismiss approval will be sought from a Senior Manager (Director, Assistant Director or Head of Service) and the Assistant Director of People and Development and the employee informed within five working days of the last review meeting.

## **Appeals**

All employees have a right to appeal against dismissal. An appeal lodged against dismissal does not require the employee to be reinstated pending appeal.

An appeal may be lodged on one or more of the following grounds:

1. Procedure – where failure to follow the correct procedure had a material effect on the decision

2. The facts of the case – where the Hearing Manager came to the conclusion on a material point of fact, which no reasonable person could have reached
3. Sanction – where the decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable Hearing Manager
4. New evidence is available that could not have reasonably been raised at the Stage Two performance meeting and the absence of which had a material effect on the decision.

Appeals will not be allowed on any other grounds.

Appeals must be lodged within 10 days of the date of the letter informing the employee of the outcome of the Stage Two performance meeting. The appeal should be submitted to the manager who took the decision either using the Appeal Registration Form which can be obtained from the Intranet, Human Resources, or the local offices of the trades union or providing in writing the information sought by the form. The manager will copy the appeal to the HR Service Manager.

The appeal notification must set out clearly:

- The grounds for the appeal (i.e. one or more of the four listed above)
- The detailed basis, as far as possible, for each ground of appeal to be relied on
- In the case of new evidence, details of the evidence must be included when lodging the appeal.

The conduct of an appeals hearing is as follows:

- Manager's case examined and questioned
- Case for the employee examined and questioned
- Further questioning and clarification as requested by the Hearing Manager
- Closing statements
- Decision.

Appeals against dismissal on grounds of capability will be heard by a Director, Assistant Director or Head of Service, subject to the Appeal Hearing Manager being at the same level of seniority as, or more senior to, the manager who took the decision to dismiss. Where a Director has taken the decision to dismiss the employee, the appeal will be considered by a Director from another department. The Appeal Hearing Manager will have had no previous involvement in the case.

The employee and (where necessary) their representative will be given in writing giving at least seven working days notice of:

- Date, time and place of the appeal hearing
- Details of the person hearing the appeal and the person presenting the management case
- Their right to attend and be represented at the appeal
- The requirement that any documentation to be relied upon and the names of any witnesses it is proposed to call must be provided to the Appeal Hearing Manager and presenting manager at least three working days prior to the hearing.

The Appeal Hearing Manager is responsible for communicating this information to the employee and their representative.

The Appeal Hearing Manager, in consultation with a Human Resources Adviser where appropriate, will arrange for the employee to receive any documentation to be relied upon by management at the appeal hearing, including the summary record of the

Stage Two meeting at which the decision to dismiss was taken and names of any witnesses to be called, at least three working days before the appeal hearing.

Provided the employee has been given the appropriate notice of the date of the appeal hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual, unless there are acceptable reasons to defer the hearing.

The appeal hearing will not be a full rehearing of the issues, but will only address the specific grounds of appeal set out in the employee's letter of appeal.

The possible outcomes of an appeal hearing are as follows:

1. Uphold the original decision
2. Allow the appeal in its entirety
3. Reduce the severity of the management action.

There is no further right of appeal.

Where the Appeal Hearing Manager decides to uphold the appeal on the grounds of procedure or new evidence, they will have the discretion to either:


- Refer the case back to the original Hearing Manager with advise from an HR Adviser

## **Appendix One**

The following template forms and letters can be found on the intranet or obtained from Human Resources.

1. One to One Discussions (Supervision) Meeting Record Form
2. Model Letter : Stage One Performance Meeting Invite
3. Model Letter: Stage One Performance Meeting Outcome
4. Model Letter: Stage One Outcome – End of Review Period
5. Model Letter: Stage Two Performance Meeting Invite
6. Model Letter: Stage Two Performance Meeting Outcome Pre-Review Period
7. Model Letter: Stage Two Outcome – End of Review Period
8. Model Letter: Stage Two Performance Meeting Dismissal Approval Invite
9. Model Letter: Stage Two Performance Meeting Dismissal Approval Outcome
10. Capability Appeal Registration Form
11. Model Letter: Capability Appeal Hearing Invite
12. Record of Appeal Decision Form
13. Model Letter: Capability Appeal Hearing Outcome

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 <p>The logo of Brent Council, featuring a central coat of arms with a shield, a crown, and two lions, surrounded by the words 'BRENT COUNCIL' in a circular arrangement.</p>	<p><b>General Purposes Committee</b> 27 November 2012</p> <p><b>Report from the Interim Director of Human Resources</b></p>
<p>Wards affected: ALL</p>	
<p><b>Grievance Policy and Procedure</b></p>	

## **1.0 Summary**

- 1.1 This report provides details of the proposed Grievance Policy and Procedure. This will replace the current Fairness at Work Policy and Procedure.

## **2.0 Recommendations**

- 2.1 GP Committee is asked to agree the draft policy and procedure with effect 1<sup>st</sup> January 2013.
- 2.2 GP Committee is asked to authorise the Assistant Director, Human Resources (or Deputy), in consultation with the Director of Legal and Procurement (or Deputy) and then consultation with the relevant trade unions, to make such other changes as may be necessary from time to time to all HR Policies and Procedures.

## **3.0 Detail**

- 3.1 The Council continually reviews its HR policy framework to align its policies and procedures to the organisational objectives and to reflect current modern HR practice, in the context of legislative change.
- 3.2 Brent is committed to providing a working environment which promotes the dignity at work of all employees.
- 3.3 This report deals with a grievance procedure for all employees. Its purpose is to ensure that questions and problems arising in the course of employment can be raised and resolved quickly, in a fair and reasonable manner.
- 3.4 The proposed policy and procedure, whilst more succinct than the current policy and procedure, clearly states the process that needs to be followed to resolve concerns. The focus is on informal resolution.
- 3.5 The key points to note are that the new policy and procedure:

- Recognises that honest and open communication is key to maintaining a workplace which promotes the dignity at work of all employees.
- Promotes the use of informal resolution and raising concerns at the earliest opportunity.
- The policy and procedure will be instigated where matters cannot be resolved informally.
- Introduces a collective grievance procedure.

#### **4.0 Implementation date**

4.1 It is recommended that the policy becomes live on 1<sup>st</sup> January 2013. A communications plan has been developed to support roll out of the policy and guidance for managers to support implementation of new arrangements.

#### **5.0 Financial Implications**

5.1 There are no specific financial implications.

#### **6.0 Legal Implications**

8.1 The policy is underpinned by the Employment Act 2002 and the Equality Act 2010.

8.2 The policy adheres to the basic principles of fairness in the ACAS Code of Practice: Disciplinary and Grievance Procedures (April 2009).

8.3 The policy is non-contractual and may, subject to applicable legislation, be amended or withdrawn by Brent at any time.

#### **9.0 Diversity Implications**

9.1 The policy and procedure is applicable to all staff and provides a consistent approach to support employees raise grievances formally, where informal resolution is not effective or appropriate. Grievance action is in accordance with the Council's equality duties and will be continually monitored to ensure compliance.

#### **10.0 Staffing/Accommodation Implications**

10.1 There are no other implications in addition to those otherwise set out in the report.

#### **Background Papers**

Draft Grievance Policy and Procedure is appended to this report.

#### **Contact Officer**

Cara Davani

Interim Head of Human Resources



# **Grievance Policy and Procedure**

## **Draft 2 November 2012**

### **Introduction**

This policy outlines the process an employee can follow where employees are concerned about issues at work which affect them personally which cannot be resolved informally.

### **Our approach**

Brent aims to provide a working environment which promotes the dignity at work of all employees. We believe that diversity should be valued and respected and that the workplace should be free from all forms of bullying, harassment and unlawful discrimination.

In order to accomplish this, there should be honest and open communication at all times between employees and managers about work and the working environment. When employees raise concerns they should be taken seriously and resolved as quickly as possible.

Most concerns will be resolved informally and every attempt should be made by employees to seek informal resolution where possible but if the need arises this formal procedure exists.

Employees should note that this policy should not be routinely instigated in response to any performance management issues being addressed.

### **Policy statement**

#### **Policy summary**

This policy provides employees and line managers with an approach for raising and resolving personal work issues, including allegations of harassment, bullying and unlawful discrimination. If at any stage the evidence and circumstances of a case indicate that the issue is potentially a disciplinary offence, the matter should be dealt with using the Disciplinary Policy and Procedure.

Employees should make every attempt to resolve concerns informally, before moving onto the formal process. However, an individual seeking to resolve an issue through a formal process must discuss the matter with their line manager and/or a Human Resources Adviser before doing so.

Where a formal allegation is found to be malicious, vexatious or otherwise unreasonable, disciplinary action against the employee will be taken.

Complaints by at least two employees should be pursued through a Collective Grievance.

For staff who have left the council, a grievance may be raised and will be dealt with in writing.

The Council reserves the right to amend this policy from time to time, after consultation with trade unions recognised by the Council for collective bargaining purposes.

## **Managing Grievances**

No employee will be victimised as a result of raising a concern under Grievance procedure. This policy and procedure will not be used to prevent a manager from managing conduct or performance.

If the complaint is against the employee's line manager they should discuss the matter with the line manager of their manager and/or a Human Resources Adviser.

Where the employee formally raises a grievance concern in response to an action or proposed action by management, a decision will be made by the Assistant Director, People & Development as to whether it is appropriate or not to delay the action pending conclusion of the grievance process.

Any disagreement between management and the employee concerning the application of this procedure, (e.g. where there are exceptional circumstances justifying the complaint being raised more than three months after the event), the Assistant Director, Human Resources will decide on the way forward and their decision shall be final.

## **Definitions and general information**

### **Employees**

This policy applies to employees of the Council who have a concern that they may have been unfairly treated by a colleague or a manager. It does not apply to employees of Brent Council based in schools with a delegated budget.

### **Grievance**

Concerns at work include but are not limited to a belief by an employee that:

- A policy or procedure has not been applied correctly
- Unfair work or working arrangements exist
- They have been harassed on the grounds of gender, gender reassignment, marriage and civil partnership, age, race, disability, religion or belief, sex or sexual orientation
- They have been bullied at work
- They have been unlawfully discriminated against or treated unequally on any of the above grounds.

### **Harassment**

Harassment is any unwanted behaviour usually linked to protected characteristics whether intentional or not that violates the dignity of men and women in the workplace or creates an intimidating, hostile, degrading, humiliating or offensive environment for another person.

### **Bullying**

Bullying involves offensive, intimidating, malicious or insulting actions and practices that are directed at one or more staff either deliberately or unconsciously.

## **Record Keeping**

All records connected to the grievance procedure must be retained and kept securely on the employee's HR file. These records will be retained in accordance with the Council's Record Retention Policy.

## **Roles and responsibilities**

### **Employees**

Any member of staff who feels they have been unfairly treated or been the victim of bullying, harassment or unlawful discrimination may experience feelings of anxiety and distress. Equally, any member of staff who is accused of unfairly treating another member of staff may experience similar feelings and should be provided with the same level support as the alleged victim. Both parties will need access to information about the options available to them, including the Council's procedures and support available. These can be obtained from a Human Resources Adviser or trade union representative.

All parties should be made aware of the support available through the Occupational Health counselling service or via the Brent Employee Assistance Programme (EAP).

Concerns should be discussed at the earliest opportunity and resolved between individuals wherever possible before pursuing formal action.

### **Line managers**

Line managers are responsible for ensuring the workplace is free from harassment, bullying or unlawful discrimination and that all employees are treated with dignity and respect. Managers should be familiar with how to implement the grievance policy.

### **Human Resources**

The role of Human Resources is to:

- Provide advice to managers on how to investigate issues of concern, how to assess the evidence and to take appropriate action
- Promote and advise on informal resolution options such as mediation and counselling
- Provide advice to managers and employees on progressing a concern using the formal grievance procedure
- Keep a record of complaints made under the grievance policy including the nature of the complaint, how the case was handled and the outcome and monitor the use of the policy

### **Trades unions**

The role of trade unions is to:

- Assist in bringing about a speedy resolution to concerns arising in the workplace
- Provide support and advice to staff on fairness at work issues
- Provide representation to staff during the grievance process.

## **Mediation**

To support the successful application of the Grievance Policy, the Council may use a Mediation Service.

Mediation is defined as a way of resolving a dispute. It is an intervention whereby a neutral and impartial third party intervenes and assists individuals to reach an agreement acceptable to both sides.

Advice should be obtained from a Human Resources Adviser on whether mediation is appropriate.

## **Applying the grievance procedure**

### **Informal action**

Every member of staff is expected to behave in accordance with the Brent Code of Conduct and to respect good working practices and the terms and conditions of employment. However, there may be occasions when an issue arises between colleagues. Wherever possible these concerns should be raised at the earliest opportunity and informal resolution is strongly encouraged in the first instance. Where this cannot be achieved this policy may be instigated.

### **Formal Procedure**

The complaint should be in writing, preferably on the appropriate form, and where it involves other employee(s) they must be named.

The complaint should outline the grounds of the complaint and the steps taken to resolve the matter informally.

The complaint should be submitted to the employee's manager or their manager's manager (if the complaint is about their manager). The manager receiving the complaint will undertake an initial investigation of the issues raised. If it is considered that there is a potential disciplinary issue the Disciplinary Policy and Procedure will apply and advice should be obtained from an Human Resources Adviser.

If the manager, (in most circumstances, the employee's manager), considers that it is an issue that can be dealt with under the grievance policy, the manager will advise the employee who will be undertaking the formal investigation. The manager should also write to all other parties involved in the complaint and advise them as to how the matter will be progressed.

However, there may be occasions when it is not appropriate for the line manager to undertake the formal investigation (ie the manager is the subject of the complaint or for another substantial reason). In this case a different

manager who is independent should be appointed to handle the case with the support of a Human Resources Adviser as appropriate.

The manager appointed to conduct the formal investigation should individually meet with the key people involved to understand the issues of the case, seeking advice from an Human Resources Adviser as appropriate.

The employee who has raised the concern, and any employee about whom the concern has been raised, will be advised that they may choose to be represented by a Brent Council worker or a trade union representative, (but not a legal representative) at the formal investigation meeting. The employee will be invited to submit to the manager any documents that they feel are relevant to their complaint.

If the employee's chosen representative cannot attend the meeting and cannot propose a reasonable alternative date and time for the meeting within five working days of the date for the meeting proposed by the manager then the meeting should proceed without the representative as it is in the interests of all parties that issues are addressed as soon as possible. Alternatively, the employee may elect to bring another representative.

Upon conclusion of the investigation a report should be written, containing the manager's findings and recommendations. The report should state whether the original formal complaint should be upheld in full, partly upheld or not upheld. The decision should be confined to the issues raised in the original formal complaint.

If the manager undertaking the investigation is not the manager of the complainant then they will present the report containing their findings and recommendation(s) to the relevant manager. This will be the employee's line manager or a more senior manager in the management line or a manager nominated by a senior manager to deal with the complaint who will be at the same level or more senior to the complainant's manager.

Where the investigating manager's recommendations are accepted and disciplinary action is one of the recommendations, the Disciplinary Policy and Procedure should be invoked. Where an independent investigator is involved, they will need to refer this matter to the manager of the employee who raised the concerns or a more senior manager, if the employee's manager is the subject of the complaint, for a decision. Advice should be sought from a Human Resources Adviser before this course of action is undertaken.

The relevant line manager or nominated manager will be responsible for feeding back and disclosing the findings and recommendations to the complainant and all relevant parties.

### **Timescales**

Complaints will not be considered except in exceptional circumstances if they are raised more than three months after the incident which is the subject of the complaint.

A decision to refuse to consider an issue on the grounds it is out of time should only be made by the manager after receiving advice from a Human Resources Adviser.

Every attempt will be made to progress any formal investigation promptly.

## **Appeals**

An employee who is dissatisfied with the outcome of their grievance has a right of appeal against the findings of the investigation. Any appeal must be submitted in writing within 10 working days of the date of the letter confirming the outcome of the investigation. Failure to abide by those timescales may result in an appeal being denied.

The appeal must be submitted to the manager who confirmed the outcome of the investigation.

An appeal can be lodged on one or more of the following grounds:

- Procedure – there was a failure to follow procedure and this had a material effect on the decision
- Redress – where no reasonable person, on the facts presented, would have decided on that re-dress
- New evidence is available that could not have reasonably have been raised during the investigation and the absence of which had a material effect on the decision.

The appeal submission must also set out clearly:

- The detailed basis, as far as possible, for each ground of appeal to be relied on
- Details of any new evidence and any supporting documentation to be relied on
- Specific grounds of appeal for each contributing factor to the complaint.

An appeal will only be considered if the above grounds are covered in the written appeal.

The manager hearing the appeal will either be a more senior manager than the manager who considered the findings of the investigation or a manager at the same level. They will not have been previously involved, directly or indirectly, with the case.

The manager hearing the appeal will write to the employee to confirm that the appeal has been received and investigate the relevant paperwork and will invite the employee to a Grievance Appeal meeting giving reasonable notice in writing of the:

- Date, time, place and purposes of the appeal
- Issues to be discussed
- Format of the appeal meeting
- Arrangements for exchanging documents and witness statements
- The opportunity to be represented by a Brent Council worker or an trade union representative (not a legal representative)
- The manager hearing the appeal has the discretion to postpone the appeal once only normally by up to five working days of the original date –if the employees representative is not available at the time proposed.

The presenting manager (who will normally be the manager who determined the outcome of the complaint and the employee will provide each other, and the manager conducting the appeal hearing, with any documents to be used by them and the names of any witnesses to be called in advance of the appeal hearing.

The manager will hold the Grievance Appeal meeting to consider the grounds of appeal and will take appropriate advice from a Human Resources Adviser. The appeal hearing will not be a rehearing of the issues and will focus the specific grounds of appeal set out in the employee's appeal submission.

Where the employee has lodged an appeal on the grounds of new evidence the presenting manager will also be entitled to present new evidence.

The presenting manager will also be able to seek to correct any deficiencies in the original decision by relying on his or her own new evidence.

The manager conducting the appeal has the authority to confirm, vary or overturn the original decision. The outcome could be:

1. Uphold the appeal in full
2. Uphold the appeal in part
3. Not uphold the appeal.

Where the manager decides to uphold the appeal on grounds of procedure or new evidence they will have to:

- refer the complaint back to the manager who considered the original grievance with advice from an HR Adviser. The content of the panels decision will be discussed with the manager and appropriate action taken.

The decision of the manager hearing the appeal is final and there shall be no further right of appeal.

The outcome, with reasons and any redress, will be confirmed in writing to the employee.

### **Collective Grievances**

Collective grievances should only be raised in the event of an industrial dispute between the Council and a group of its employees or between one group of the Council's employees and another group of its employees. A collective grievance cannot be raised by individual employees.

Informal resolution of any potential collective grievance is encouraged through normal line management arrangements however in the event of a formal collective grievance being raised this must be done in writing directly with the Assistant Director, People & Development.

On receipt of the grievance the Assistant Director, People & Development will send a copy to the branch secretary of the union concerned and will convene a meeting with the appropriate parties to discuss the grievance. If the group of employees is not represented by a union, then the employees will nominate a staff representative. If agreement is reached written outcomes will be provided to all parties by the Assistant Director, People & Development in writing. If there is failure to agree, either side may refer the matter to a Director and a meeting will be convened with the Director and all relevant parties. The Director will be advised by the Assistant Director, People &

Development. If there is agreement reached following this meeting this will be confirmed in writing to all parties.

If agreement is not reached the Assistant Director, People & Development will liaise with the Director and the Union to consider further options which would include:

- mediation
- involvement of a regional Trade Union official
- Conciliation by ACAS
- Declaration of a formal dispute

The Assistant Director, People and Development will determine and make arrangements in this respect.

Where a collective grievance is submitted by staff and does not involve an industrial dispute the same procedure will be followed without involvement of a trade union and the decision of the Assistant Director, People and Development on the grievance shall be final.

### **Criteria for collective grievances**

Collective grievances will normally be concerning one of the following issues, however this list is not exhaustive:

- Terms and conditions of employment
- Contractual issues
- Employment law
- Equal pay
- Fundamental breach of equality duties

It is anticipated that disputes concerning management and staff relations will be dealt with as a grievance, rather than a collective grievance.



**The following template forms and letters can be found on the intranet or obtained from Human Resources.**

1. Fairness at Work Formal Complaint Form
2. Model Letter: Formal Meeting Invite Letter (to complainant)
3. Model Letter: Formal Meeting Invite Letter (other parties)
4. Model Letter: Move to Disciplinary
5. Model Letter: Grievance Complaint – Outcome
6. Grievance Report
7. Grievance Appeal Form
8. Model Letter: Appeal Meeting Invite
9. Model Letter: Outcome of Appeal

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