

REPORT TO EMPLOYMENT PANEL

Title: **Revised Disciplinary Policy and Procedure and Grievance Policy and Procedure**

Date: 16 March 2010

Member Reporting: Councillor Burbage

Contact Officer(s): Carol Naismith

Wards Affected: None

1. SUMMARY

- 1.1 Following the repeal of the Statutory Disciplinary and Grievance procedures in April 2009, it has been necessary to update the Council's Disciplinary and Grievance policies and procedures to ensure compliance with the Employment Act 2008 and the ACAS Code of Practice.

2. RECOMMENDATION:

- 2.1 **That the revised Disciplinary Policy and Procedure, and the Grievance Policy and Grievance Procedure are approved. The revised policies and procedures to take effect from 1 April 2010**
- 2.2 **Subject to consultation with the Teacher Trade Unions, the revised documents be recommended to schools for adoption.**

What will be different for residents as a result of this decision?
The Council can be confident that its policies and procedures comply with the law, ACAS code of practice and best practice. The revised documents seek to minimise the successful challenge via Employment Tribunals of Council decisions in cases of conduct and grievance, thus minimising unnecessary costs for residents.

3. SUPPORTING INFORMATION

Background

- 3.1 The Statutory Disciplinary and Grievance procedures were introduced in October 2004 with the express aim of reducing the number of cases progressing to Employment Tribunals. However, the lack of flexibility in the procedures resulted in an increased number of cases and employers organisations campaigned for reform.

- 3.2 The Employment Act 2008, repealed the Statutory procedures and introduced an ACAS Code of Practice. Whilst failure to follow the Code will not result in any liability, Employment Tribunals can adjust awards by up to 25% up or down if either side is judged to have unreasonably disregarded the Code.
- 3.3 In addition, there is a more comprehensive ACAS guidance booklet, which contains best practice advice, which Employment Tribunals are not required to take into account in their decision making.
- 3.4 The existing Council documents relating to discipline and grievance were reviewed and updated in the context of the removal of the statutory procedures, the new Code of Practice and the accompanying guidance. Many of the good practice advice in the guidance was already operated by the Borough and this has now been incorporated into the documents. Terminology such as job titles has also been updated as well as examples of misconduct and gross misconduct.
- 3.5 Since April 2009 the Advisory team in HR has been ensuring that cases are managed within the 'spirit' of the changes to minimise the risk of a challenge to any of the decisions made by the Council under these processes, pending the agreement of revised versions.
- 3.6 Appendix 1 shows a summary of the changes made to each process.
- 3.7 Appendix 2 contains the revised:
 Disciplinary Policy and Procedure
 Grievance Policy and Grievance Procedure
- 3.8 The new policies and procedures will come into effect from 1 April 2010. Any existing cases that have commenced prior to this date will be progressed under the previously existing processes nor will these changes apply retrospectively to any decisions made under the previously existing processes.

4. OPTIONS AVAILABLE AND RISK ASSESSMENT

4.1 Options

	Option	Comments	Financial Implications
1.	Members approve the revised documents <u>Recommended option</u>	The revised documents reflect legislative requirements, the ACAS code, best practice and RBWM's needs in order to be able to manage discipline and grievance matters effectively	N/A
2.	Members may suggest alterations to the documents	Any significant change to the documents would require a further consultation period with the Trade Unions.	N/A

	Option	Comments	Financial Implications
3.	Members reject the documents	See comments for Option 1.	N/A

4.2 Risk assessment

- 4.2.1 Compliance with the ACAS Code of Practice will minimise the risk to the Council of having any challenges to its decisions upheld on procedural grounds or having any awards adjusted up by 25%.

5. CONSULTATIONS CARRIED OUT

- 5.1 In updating the examples of Gross Misconduct the Information and Compliance Manager in Legal Services and the ICT Security Coordinator and Analyst in the ICT Unit were consulted.
- 5.2 All Trade Unions, excluding those covering teachers, were consulted. Only Unison responded, and they acknowledged the documents were being brought up to date and had no objections to the proposed changes.
- 5.3 The revised documents will be presented in due course to the Teacher Trade Unions via the Teachers Consultative Forum and recommended for adoption.

6. COMMENTS FROM OVERVIEW AND SCRUTINY PANEL

- 6.1 N/A

7. IMPLICATIONS

The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
N/A	✓	N/A	N/A	✓	✓

Background Papers: Disciplinary Procedure

Appendix 1

Summary of changes and comments

Changes	Comments
Disciplinary Policy and Procedure	
Added new definition of who can accompany an employee and their role	Requirement of Act and Code of Practice
Confirmation that the Council allows representation at all stages of the process, which is in excess of the Statutory right to be accompanied only to a hearing.	Best Practice from ACAS Guide
Reduces the time limit for Final Written Warnings from 18 months to 12 months in line with ACAS guidance.	Best Practice from ACAS Guide (Will only apply to cases from 1 st of month following EP decision)
Rules now include reference to the Council's Code of Conduct and defines 'information' as a Council resource	Best Practice RBWM
Example's of Gross misconduct and misconduct now in appendix and updated to reflect current working environment/methods.	Best Practice RBWM and reflects current working environment
Clarifies impact of behaviour outside work and gives a further example.	Best Practice from ACAS Guide
Clarifies that investigation process will be support by an HR Advisor, that a statement summarising the evidence given by the employee will be produced and that any investigation will happen as quickly as possible.	Best Practice RBWM

Suspension – includes requirement that no suspension will occur without the prior consultation of the Head of HR, clarifies the circumstances when suspension would be a suitable action, that suspension is kept under review, is not a presumption or prejudgement of guilt, required content of suspension letter and matters relating to contractual and other payments.	Best Practice from ACAS Guide and RBWM
Clarifies that an HR Advisor will attend any hearing.	Best Practice RBWM
Clarifies that the hearing will be chaired by an officer not involved in the investigation.	Best Practice from ACAS Guide
Clarifies what happens in the event that an employee and/or their companion is unable to attend hearing on the specified date	Best Practice from ACAS Guide
Clarifies the arrangements for documentation/paperwork associated with the hearing	Best Practice RBWM
Clarifies notice arrangements for dismissal following Final Written Warning.	Best Practice RBWM
Clarifies the dismissal status during an appeal process	Best Practice RBWM
Clarifies that an appeal is a review of the decision made at the original hearing, not a re-hearing of the case. Allows a rehearing in the event that new evidence available that materially changes the case.	Best Practice from ACAS Guide
Clarifies records kept in line with Council policy and DPA	Reflects the law and best practice RBWM
Includes information on the support available to staff through the Council's Employee Assistance Programme	Best Practice RBWM
Clarifies that a disciplinary or appeal decision will normally be given verbally on the day of the hearing.	Best Practice RBWM

Changes	Comments
Grievance Policy and Procedure	
Includes the new definition of who can accompany an employee and their role.	Requirement of Act and Code of Practice
Confirmation that the Council will allow representation at all stages of the process and for any type of grievance, which is in excess of the Statutory right to be accompanied only for qualifying grievances (ie a duty owed to the employee by the employer including statute or common law issues)	Best Practice from ACAS Guide and RBWM
Clarifies situations when the procedure does not apply.	Best Practice from ACAS Guide and RBWM
Clarifies what happens when a grievance is raised during the disciplinary process and when an employee has left the Council.	Best Practice from ACAS Guide
Adds in provisions for dealing with collective grievances, which was previously missing from policy/procedure. Includes facility to refer any unresolved issues to ACAS	New arrangements in line with Best Practice
Clarifies the use of external mediation	Best Practice from ACAS Guide
Includes information on the support available to staff from the Employee Assistance Programme.	Best Practice RBWM
Clarification on timescales and what happens in the event that that an employee and/or their companion is unable to attend a meeting on the specified date	Best Practice from ACAS Guide
Clarifies that an appeal is not a rehearing of the grievance, but a review of management action and the reasons for the continued dissatisfaction of the employee.	Best Practice from ACAS Guide

The procedure now allows for 2 appeals, which exceeds the ACAS Code of Practice requirements.

Previously procedure included 4 levels of appeal. Have retained final appeal to Members

