

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

07 September 2009

Report of the Central Services Director

Part 1- Public

Delegated

1 **REVISED DISCIPLINARY PROCEDURE**

This report presents a revised Disciplinary Procedure, attached as Annex 1, to the Committee for consideration and adoption. For the sake of comparison the Council's existing Disciplinary Procedure is attached as Annex 2 to this report.

1.1 **Introduction**

1.1.1 The Employment Act 2008 initiated new provisions governing the handling of discipline and grievance at work that have been in effect since 6 April 2009. The ACAS Code of Practice that accompanies The Employment Act 2008 sets out the principles that employers and employees should follow when dealing with disputes at work. These are listed below, with the key concepts emboldened :

Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.

Employers and employees should act **consistently**.

Employers should carry out any necessary **investigations**, to ascertain the facts of the case.

Employers should **inform** employees of the basis of the problem and give them the opportunity to **put their case** in response before any decisions are made.

Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.

Employers should allow an employee to **appeal** against any formal decision made.

These principles are explicitly reflected in the new Disciplinary Procedure.

- 1.1.2 The legislation also emphasises the concept that, when assessing claims for unfair dismissal, Employment Tribunals will take the view that procedural fairness is an integral part of the statutory test for assessing the reasonableness of a dismissal. As Members will note from a comparison of the existing Procedure with the proposed revised version, the former was almost totally lacking in detail about certain stages in the process e.g. investigations, suspension, and the process to be followed at disciplinary and appeal hearings. When revising the Procedure, it was deemed important to address this “information gap” so that the disciplinary process could be judged both fair and transparent.
- 1.1.3 The ACAS Code also highlights that employers and employees should seek to resolve disciplinary and grievance issues informally, before having recourse to formal action. This has actually long been the practice of this Council and is reflected in the first paragraph of the Revised Disciplinary Procedure.

1.2 Legal Implications

- 1.2.1 As Employment Tribunals are legally required to take the ACAS Code of Practice into account when considering cases, it is appropriate to revise the Disciplinary Procedure so that there is clarity about all of the constituent stages of the process.
- 1.2.2 The legislation and ACAS Code are limited in their scope and there are a number of other potentially fair reasons for dismissal which are not covered (although the Code does not expressly exclude them). These are redundancy and capability (for which the Council has separate policies, retirement (for which the Council has a separate Retirement Policy), statutory ban (e.g. disqualification from driving), and “some other substantial reason” (a catch all category of justifications that usually do not involve any fault on the part of the employee). In practice the reasons for dismissal may overlap and it may be that, acting on advice from Personnel Services, a decision is taken to follow the steps outlined in the Disciplinary Procedure. In other cases, however, it may be deemed more appropriate to follow the Council’s existing Dismissal Procedure, attached as Annex 3. Each case will be judged on its particular circumstances.

1.3 Financial and Value for Money Considerations

- 1.3.1 Employment Tribunals will be able to adjust any compensatory awards made in cases by up to 25% either way for failure of either party to comply with any provisions of the ACAS Code of Practice. As this could impact upon both the employer and the employee concerned, it is imperative that the Procedure is explicit about the steps to be followed in disciplinary cases.

1.4 Risk Assessment

- 1.4.1 Although the existing Disciplinary Procedure is in the spirit of the ACAS Code of Practice, it is rather too thin on detail concerning several stages within the

process. Failure to address this deficiency could place the Authority in risk of incurring additional penalties were an Employment Tribunal to award compensation for unfair dismissal.

1.5 Recommendations

- 1.5.1 It is recommended that the Revised Disciplinary Procedure in Annex 1 of this report be adopted.

Background papers:

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Nil

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