

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

5 September 2011

Report of the Central Services Director

Part 1- Public

Delegated

1 UPDATES TO THE GRIEVANCE PROCEDURE AND THE ANTI-HARASSMENT POLICY

These two existing Council policies are presented in Annexes 1 and 2 of this report. As part of programmed Equality Impact Assessments some qualitative research was undertaken to ascertain the views of users and potential users of these policies. This report recommends some amendments that reflect the outcomes of the research, and also bring the policies into line with the Equality Act 2010 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

1.1 Amendments

- 1.1.1 It was generally felt that the format of both the Grievance Procedure and Anti-Harassment Policy should be amended to enable people to navigate their way through the policy documents. It was suggested that the recently updated Disciplinary Policy provided a useful model and this format has therefore been adopted in the recommended updated documents in Annexes 3 and 4 of this report.
- 1.1.2 Those questioned requested that, as there were overlaps between the two policies, and a potential overlap with the Council's Confidential Reporting Code, guidance should be given to explain what behaviour/set of circumstances each is intended to cover. This request has been addressed in the Sections entitled "Scope" in the updated documents in Annexes 3 & 4.
- 1.1.3 It was also suggested that as both the Grievance Procedure and the Anti Harassment Policy are subject to annual equality monitoring, this should be explicitly stated. This point has been added in the documents in Annexes 3 & 4.
- 1.1.4 The final suggestion about format was that there should be some reference to the applicability of the policy/procedure to staff employed by partner organisations etc. Therefore, annexes 3 & 4 contain sections entitled "Shared Service and Partnership Working".

- 1.1.5 Various practical issues were raised with reference to the existing Grievance Procedure. Firstly, it specifies a period of two working days to “deal with” each stage in the procedure. This has proven to be virtually impossible due to the busy schedules of managers. Consequently the amended procedure in annex 3 allows greater time to address each stage in the procedure.
- 1.1.6 The second practical difficulty in the existing Grievance Procedure concerns the phrase “whilst this Grievance Procedure is being followed, the status quo will be maintained.” This may present difficulties for two reasons. Firstly, in the event of a consideration of a serious complaint it might be necessary to temporarily re-deploy or suspend individuals whilst an investigation is underway. Secondly, there is a complication that arises from the crosswalk between the Council’s Employment Stability Policy and the existing Grievance Procedure. Section 8:3 of the Council’s Employment Stability Policy states:
- “If any affected employee believes this policy is not being complied with, or is being misinterpreted or otherwise misapplied, every effort will be made to resolve the matter through the appropriate procedure, normally the Authority’s Grievance Procedure.”
- The commitment in the existing Grievance Procedure to maintaining the status quo, could potentially delay the termination date for employees who are being made redundant who complain about the application of the Employment Stability Policy. In summary, for the two reasons set out in this section, the phrase “whilst this Grievance Procedure is being followed, the status quo will be maintained” has not been included in the updated procedure in Annex 3.
- 1.1.7 The third identified practical difficulty concerns the need for employees to state their concerns/complaints in writing. As it was felt that this could potentially disadvantage someone with an impairment that made writing difficult, the updated Grievance Procedure in Annex 3 makes provision for complaints to be taped.
- 1.1.8 On detailed scrutiny, the existing Grievance Procedure was found to be slightly out of step with the ACAS Code. Consequently the amended procedure in Annex 3 includes an option to consider workplace mediation before progressing to the formal stages of the procedure.
- 1.1.9 Those questioned during the qualitative research undertaken into the existing Anti-Harassment Policy expressed the view that the policy should be re-cast as a procedure, and that it should make provision for individuals to raise issues informally. Both of these requests have been incorporated in the document in Annex 4 to this report.
- 1.1.10 The existing Anti-Harassment Policy was felt to be out of date in its definition of harassment; the updated procedure in Annex 4 therefore reflects the definitions of harassment contained in the Equality Act 2010.

1.2 Legal Implications

- 1.2.1 As one of the lines of enquiry at an employment tribunal is the extent to which the ACAS Code of Practice has been adhered to, it seems prudent to amend the Grievance Procedure to reflect this Code.
- 1.2.2 The Anti- Bullying and Harassment Procedure needs to reflect the definitions of harassment in the Equality Act 2010.

1.3 Financial and Value for Money Considerations

- 1.3.1 One of the rationales for my recommendation in Section 1:1:6 of this report to delete the phrase “ whilst this Grievance Procedure is being followed the status quo will be maintained”, is to remove the potential necessity of retaining employees on the Council’s payroll beyond the date on which their substantive post has been made redundant.
- 1.3.2 As Employment Tribunals are able to adjust any awards made by up to 25% for unreasonable failure to comply with any provision of the ACAS Code, it is in the Council’s interest to ensure that its policies are compliant.

1.4 Risk Assessment

- 1.4.1 As argued in Sections 1:2 and 1:3 of this report, the updated procedures in Annexes 3 & 4 mitigate against the risk of the Council being deemed not to have complied with accepted best practice at an Employment Tribunal.

1.5 Equality Impact Assessment

- 1.5.1 See 'Screening for equality impacts' table at end of report.
- 1.5.2 The updated procedures in Annexes 3 and 4 have been considered and endorsed by both the Diversity Steering Group and the Joint Employee Consultative Committee.

1.6 Recommendations

- 1.6.1 That the Council adopts the updated Grievance Procedure in Annex 3 to this report, and the re-titled and updated Anti- Bullying and Harassment Procedure in Annex 4.

Background papers:

contact: Delia Gordon

Nil

Julie Beilby
Central Services Director

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	See the full Equality Impact Assessment in Annex 5.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		Implementing the recommendations of this report.

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.