

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Staffing and Communications
Portfolio Holder
AUTHOR/S: Chief Executive / HR Manager

27 June 2007

REVISIONS TO THE DISCIPLINARY AND GRIEVANCE POLICIES AND PROCEDURES FOR EMPLOYEES

Purpose

1. The purpose of the report is to consider revised disciplinary and grievance policies and procedures for employees. This follows the review of the current procedures in the light of recent senior management and service area restructures. The procedures have been modified to take account of the requirements of the Employment Act 2002 (Dispute Resolution) Regulations 2004.

Background

2. The Employment Act 2002 (Dispute Resolution) Regulations 2004 applies to both disciplinary and grievance processes. The regulations stipulate a statutory minimum process which must be available to employees. The statutory minimum process must have three stages; an investigatory hearing; a formal disciplinary hearing; an appeal hearing. There are financial sanctions that can be applied to employers who fail to meet the statutory minimum requirements.
3. The introduction of the new role of Corporate Manager has meant that the formal stage (2nd stage) of the Grievance process will, in the majority of cases below 2nd tier, be handled by the Corporate Manager of the service area in question. Appeals will be heard by the independent panel of members from the Employment Committee as is currently the case. The policy has been amended to take account of this change, see appendix A which shows tracked changes.
4. The procedures in respect of Disciplinary cases involving staff below 2nd tier level have also been revised to take account of the new Corporate Manager roles and senior management team structure. Appeals against disciplinary decisions will be heard by a Chief Officer and appeals against dismissal or summary dismissal will be heard by the independent panel of members from the Employment Committee as is currently the case.
5. In the case of a disciplinary matter in relation to a corporate manager, either the Chief Executive or Executive Director will investigate the allegations. The Chief Executive or Executive Director, plus one member from the Employment Committee, will conduct the disciplinary hearing and determine the action to be taken. The employee will have the right of appeal to a panel of members from the Employment Committee. The Employment Committee panel members will have the power to apply disciplinary actions other than dismissal. A recommendation to dismiss will have to be approved by full Council. The Policy and procedure has been amended, appendix B which shows tracked changes.

Considerations

6. The Council's policies must adhere to current employment legislation and best practice and they should allow for a fair hearing and right of appeal for all employees following the rules of natural justice. Processes for staff at Corporate Manager and below should follow the statutory three-stage procedure.
7. The Council's procedures must meet the needs of staff and be implemented with the agreement of staff representatives and trade unions.
8. Legal Implications – Failure to comply with the requirements of the Employment Act 2002 (Dispute Resolution) Regulations 2004 will certainly leave the Council in a vulnerable position should an employee challenge the fairness of the Council's procedures. A dismissal could be deemed to be 'automatically unfair' by an employment tribunal if the council has not followed the three stage requirement.
9. Risk management – The council's failure to follow the statutory minimum procedures could lead to a claim of automatic unfair dismissal. Employment tribunals have the option of making an award in these circumstances, currently employers who do not comply with the statutory procedures or, who fail to follow their own procedures could be required to pay a penalty. This would be a basic and compensatory award of up to £9,300 (basic award) and £60,600 (compensatory element).

Options

10. The Council could continue with the status quo and current policies relating to disciplinary and grievance procedures.
11. However, this route ignores the minimum statutory requirements of the Employment Act 2002 (Dispute Resolution) Regulations 2004 and practice in other local Councils and leaves this Council open to challenge.

Implications

12. The legal and risk management implications have been highlighted above.

13. Financial	There are financial implications if the council does not satisfy the statutory minimum dispute resolution regulations.
Legal	See body of report
Staffing	
Risk Management	See body of report
Equal Opportunities	

Consultations

14. The HR Manager has consulted with the local and regional union representatives from UNISON and GMB. UNISON has raised no concerns, the GMB has not responded to date. The Corporate Managers have been consulted and no concerns have been raised.

Recommendations

15. It is recommended that the Portfolio Holder

- (a) Consider the current procedures for staff and in particular, Corporate Managers;
- (b) Note the requirement for a three-stage process in disciplinary and grievance cases;
- (c) Endorse the revised Disciplinary and Grievance Policies and procedures.

Background Papers: the following background papers were used in the preparation of this report:

Employment Act 2002 (Dispute Resolution) Regulations 2004
Joint Negotiating Committee for Chief Officers (JNC) Conditions of Service

Contact Officer: Susan Gardner-Craig – HR Manager
Telephone: (01954) 713285