

POLICY FOR DEALING WITH MATTERS OF DISCIPLINE AND CAPABILITY

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1. Purpose

- 1.1 To highlight the proposed changes to the Policy for dealing with matters of discipline and capability taking account of discussions between staff side and employer side representatives.

2. Summary

- 2.1 The principles underlying this policy have not been altered.
- 2.2 Changes proposed as a result of discussions are in *italic*.
- 2.3 Following discussions with the Staff Side representative, agreement has been reached on all but one issue. This regards the right of appeal against informal action.

3. Recommendations

- 3.1 That the view of UNISON be noted.
- 3.2 That the adoption of the revised policy for dealing with matters of discipline and capability, be approved.

4. **Background**

- 4.1 At its meeting on 4 January 2000, this Committee noted that a letter from UNISON listing a number of comments on the revised policy for dealing with matters of discipline and capability had been circulated at the meeting (Minute P29/00 refers). It resolved that consideration of the revised policy be deferred to this meeting of the Committee to enable further discussions between staff side and employer side representatives.
- 4.2 Since the last meeting of this Committee, further comments have also been received from senior managers of the Council.
- 4.3 As a result of all comments received, the policy has been revised and circulated to all Members of this Committee. The changes made have been agreed with the Trade Union Co-ordinator.
- 4.4 There remains one issue on which agreement has not been reached. This is with regard to the right to appeal against informal disciplinary action. Full details are given below.

5. **Issues and Choices**

Right of Appeal Against Informal Disciplinary Action

- 5.1 UNISON is of the view that an employee must have the right to appeal against all disciplinary action taken against him/her, including informal action. This is to ensure that an unfair picture of an employee is not built up. UNISON is also of the view that once a record is made of disciplinary action taken, the action itself becomes 'formal' as opposed to 'informal'.
- 5.2 Management's view is that the policy needs to clearly distinguish between informal day to day management issues and formal action taken under the Disciplinary Policy. To make this distinction as clear as possible, the Staff Side has been consulted regarding replacing the paragraphs under 'Informal Action' with the following (changes to policy previously circulated are in *italic*):

"Minor lapses from acceptable standards of conduct, performance or attendance should be dealt with by the employee's manager. *By taking informal action promptly, it can help to resolve a matter before it becomes a disciplinary issue. A written note of any issues should be made by the manager, a copy placed on the employee's personal file and copy given to the employee. The note may, for example, refer to any informal oral reprimands given, as well as any action deemed appropriate by the manager and employee to help improved conduct, performance, or attendance, such as counselling, training plans and monitoring arrangements. The employee should be made aware of the purpose of any meeting to discuss issues that may lead to informal action being taken before the meeting, together with the right to be accompanied by a Trade Union official.*

Where an employee disagrees with any informal action taken and recorded on the personal file, the employee can make a statement to that effect and this will be placed on the personal file with the management note.”

The Staff Side’s response is that if an appeal is not granted in respect of informal action, it is highly likely that UNISON will support a case put to an Employment Tribunal.

- 5.3 Management remains of the view that there should be no right of appeal against informal action and that it is sufficient that the employee be able to place a note of any disagreement with the action taken on file with the management record. If a right of appeal against informal action was introduced, it would be likely that the day to day supervision of staff would be made very cumbersome for managers. Issues would escalate and the principle of dealing with issues promptly as they happen would be in jeopardy.
- 5.4 The Head of Legal and Property Services has confirmed that it is for the Council to determine what constitutes ‘formal’ and ‘informal’ action within the Disciplinary Policy. This is not changed by the recording of an issue.
- 5.5 South East Employers have confirmed that there is no obligation to provide for appeal at every stage of the disciplinary process. They confirm that it is sufficient to allow the employee to put his/her statement on file.
- 5.6 The revised policy is in line with current legislation. It is also in line with the ACAS Code of Practice on discipline. The principles set out in the policy are designed to minimise the risk to the Council of any claim being brought to an Employment Tribunal.

6. **Implications**

6.1 Environmental

None.

6.2 Equalities

The revised policy will help the Council to deal effectively with any alleged disciplinary offence.

6.3 Financial

None.

6.4 Legal

See Paragraph 5.4 above.

6.5 Staff and Accommodation

None.

7. **Conclusions**

- 7.1 The revised policy presents a clearer and more logical format. It has been amended to remove any inconsistencies, to keep abreast of employment legislation and to distinguish between matters of misconduct and lack of capability.

Background Papers: Existing Policy Document
Report to Committee on provisions of Employment Relations Act of 29 June 1999
Report deferred by Committee on 4 January 2000.