



Haringey Council

General Purposes Committee

On 12 January 2010

Report Title. **Disciplinary Procedure update in accordance with recent employment Case Law**

Report of **Stuart Young, Assistant Chief Executive (People & OD)**

Date

Contact Officer : **Steve Davies, Head of Human Resources, 020 8489 3172**

Wards(s) affected: **ALL**

Report for: **Key decision**

1. Purpose of the report

1.1. To approve the update of the Disciplinary Procedure in light of changes to employment case law.

2. Introduction by Cabinet Member – Cllr Bob Harris

I concur with the recommendations.

3. State link(s) with Council Plan Priorities and actions and /or other Strategies:

3.1. Links with People Strategy – Ways of Working theme to get the best out of our people and support continued and sustained improvement in performance and reviewing HR Policies and Procedures.

4. Recommendations

4.1. To agree the changes to page 6, para 3.8 and page 7 para 3.14 of the Disciplinary Procedure with immediate effect which are highlighted in bold as follows:

Para 3.8 - Following initial fact finding, when an employee is requested to attend an investigatory interview he/she will be given notice of that interview. A trade union official or workplace colleague can also accompany him/her **(in exceptional circumstances an employee may have legal representation – see para 3.14).**

Para 3.14 - At all stages of the procedure, except the initial fact finding interview and suspension stage, an employee will have the right to be accompanied, by a trade union official or work colleague. ~~This excludes legal representatives.~~ **Where there is potentially a serious ongoing consequence of a disciplinary decision in respect of future employment or career of the employee then the employee may choose to have legal representation. This consequence would need to be much greater than, for example a finding of gross misconduct. The consequence must be one where a further restriction in employment would flow from the disciplinary decision such as de-registration from a professional body. All requests for legal representation will be considered by the Head of Human Resources. Legal representation for the employee may mean that both the person hearing the case and the person presenting it should consider whether they require a legal advisor or some form of legal support. One outcome of such an arrangement is that of a greater formality in the proceedings.**

5. Reason for recommendation(s)

- 5.1. Following a recent High Court decision it has been necessary to update the Council's Disciplinary Procedure to allow an employee to have legal representation during the disciplinary process where there is potentially a serious ongoing consequence of a disciplinary decision in respect of future employment or career of the employee such as deregistration from a professional body.
- 5.2. Where an employee has legal representation then the person hearing the case and the person presenting the case should consider whether they require a legal advisor/support.

6. Other options considered

- 6.1. The council need to implement this update to the Disciplinary Procedure to mitigate any risk of unfair dismissal claims in this circumstance. There is no viable alternative.

7. Summary

- 7.1. The Council's current Disciplinary Procedure only allows for an employee to be represented by a trade union official or work colleague during the process.
- 7.2. A recent High Court decision outlined that an employee should be allowed to have legal representation where there is potentially a serious ongoing consequence of a disciplinary decision in respect of future employment or career of the employee such as de-registration from a professional body.
- 7.3. Where an employee has legal representation then the person hearing the case and the person presenting the case should consider whether they require a legal advisor/support.
- 7.4. Paragraph 3.8 & 3.14 of the Disciplinary Procedure have been updated to take account of the High Court decision – (as in point 4 above).
- 7.5. The trade unions are in agreement with this update to the disciplinary procedure.

8. Chief Financial Officer Comments

8.1. There should be limited financial implications arising from the proposed changes as the changes should apply to very few cases as set out in paragraph 3.14. For any case where the employee chooses legal representation, the Council should factor in the costs of legal support for those officers hearing and presenting the case.

9. Head of Legal Services Comments

9.1 The Head of Legal Services has been consulted on the content of this report. The proposed change to the Disciplinary Procedure is necessary to take into account recent changes in employment case law and it is noted that the trade unions have agreed to the update to the procedure.

10. Head of Procurement Comments –[Required for Procurement Committee]

10.1. Not applicable.

11. Equalities &Community Cohesion Comments

11.1. There are no equalities implications

12. Consultation

12.1. This update to the Disciplinary Procedure was presented at the Council's Corporate Industrial Relations meeting and was agreed by the Trade Unions.

13. Service Financial Comments

13.1. There are no direct financial implications arising from this report

14. Use of appendices /Tables and photographs

14.1. None

15. Local Government (Access to Information) Act 1985

No documents that require to be listed were used in the preparation of this report