
Manchester City Council
Report for Resolution

Report to: Resources and Governance Overview and Scrutiny Committee,
Human Resources Subgroup

Report of:: Head of Personnel

Date: 30 June 2009

Subject: Disciplinary and Dismissal procedures

1. INTRODUCTION

- 1.1 The current City Council Disciplinary Policy and Procedure was introduced in April 2005. The purpose of the Policy and Procedure is to:
- Promote high standards of behaviour on the part of all staff;
 - Ensure consistent and fair treatment to all;
 - Promote efficient and safe performance of work through regulating employee conduct;
 - Maintain good employee relations within the Council by making explicit the Council's expectations;
 - Help and encourage staff to achieve and maintain the appropriate standards of conduct that the Council expects of all its staff; and
 - Provide a framework for dealing with incidents of misconduct.
- 1.2 The Policy and Procedure was agreed with the Trade Unions and is incorporated into all employees' contracts of employment.
- 1.3 Dispute resolution provisions in the Employment Act 2008 came into force on 6 April 2009 and the Disciplinary Procedure has recently been examined by officers in the Employee Relations Team to ensure that it complies with employment legislation and with the provisions of the new ACAS Code of Practice on Disciplinary and Grievance which was also introduced in April 2009. It was concluded that the procedure remains fit for purpose and ensures that it meets statutory requirements and that incidents of misconduct are dealt with in accordance with the principles of fairness and natural justice.

2. EMPLOYEE CONDUCT

- 2.1 In line with the new governance arrangements a revised Employee Code of Conduct was implemented in February 2009, to enhance and maintain the integrity of local government, including setting out standards and expectations of personal conduct.
- 2.2 However, as in any organisation, there will be times when these standards are breached and disciplinary action will need to be taken. The Disciplinary Policy and Procedure provides a framework which enables managers to maintain discipline and promote high standards of behaviour.

3. THE ROLE OF MANAGERS

- 3.1 The People Strategy sets out the City Council's strategic aims and objectives for developing the Council's current and future workforce and is a fundamental part of increasing our capacity and capability to deliver the Community Strategy. The role of managers in providing leadership of their services, including developing and motivating the people to deliver them staff is a key part of the People Strategy.
- 3.2 Pivotal to the role of managers is the ability to manage their workforce and working relationships through setting standards/expectations of both the performance and behaviour of their staff. There is also an expectation that managers deal with staffing issues in a sensitive and proportionate manner, including acting in accordance with the principles of fairness and natural justice.
- 3.3 The City Council's Disciplinary Policy and Procedure provides a framework for managers to deal with incidents of misconduct in the workforce. Further developments in the practical application of regulating conduct have aimed at ensuring that employees are aware of their rights and obligations and those of management, in order to reduce reliance on the formal disciplinary process through effective people management.
- 3.4 Issues of capability (performance) are dealt with under a separate procedure and a new policy and procedure addressing the Management of Attendance is currently being finalised and was the subject of discussion at an earlier meeting of the Sub Group.
- 3.5 Personnel Advisory Teams reporting to the Head of Personnel are located within each service Directorate and provide professional personnel support and advice to managers. This role includes challenging assumptions, agreeing a way forward and working collaboratively to find possible solutions. As well as ensuring that cases are assessed and managed effectively, Personnel Advisors provide training and coaching for managers, and work towards achieving consistency in the application of the Disciplinary Policy and Procedure.

4. THE PROCESS

4.1 The City Council's Disciplinary Policy and Procedure ensures that where there is an allegation of misconduct:-

- a full investigation is undertaken,
- a hearing to consider the allegations is conducted; and
- the employee is given the right to appeal against any sanction awarded.

4.2 The following formal sanctions may be applied under the Disciplinary Procedure:-

Stage 1 - (verbal) warning
Stage 2 - written warning
Stage 3 - final written warning
Dismissal - with notice
Dismissal – summary (in cases of gross misconduct)

4.3 An employee has the right to appeal to their Head of Service against any sanction issued to them and the appeal will constitute a full rehearing of the facts, and should take place within one month of the outcome. In cases of dismissal (only) employees have a further right of appeal to the Employee Appeals Committee, which is held at the earliest opportunity and wherever possible within three months of the date of dismissal.

4.4 In cases of alleged gross misconduct an employee is suspended pending the findings of the investigation. Notwithstanding the requirement to undertake a full and fair investigation, the investigation is intended to be completed within two months, and departments are required to report to the Head of Personnel with extended reasons for needing to continue a suspension beyond two months.

5. EMPLOYEE APPEALS COMMITTEE

5.1 An appeal to the Employee Appeals Committee is the final stage of appeal for employees who have been dismissed and represents the Council's final opportunity to review a decision to dismiss and to rectify any flawed decisions. The Committee has authority to review whether a decision to dismiss was reasonable in all of the circumstances, and can uphold the appeal in full or in part.

5.2 Unlike the first appeal, an appeal to the Employee Appeals Committee concentrates on the specific grounds of appeal submitted by the employee, for example the proper procedures had not been followed or the sanction of dismissal was too harsh.

5.3 Reports to the Employee Appeals Committee are prepared by Departments to correspond to the grounds of appeal, highlighting the significant issues of the

case, the reasoning behind the decision to dismiss and the procedure that was followed.

- 5.4 Similarly, verbal submissions on the day are confined to evidence and witnesses which address the grounds of appeal.

6. PERFORMANCE

- 6.1 Instances of disciplinary action for the years April 2007 – March 2008; and April 2008 – March 2009 are detailed in Appendices 1 and 2.
- 6.2 There has been a decline in numbers of cases being progressed through the City Council's Disciplinary process, dismissals and appeals to the Employee Appeals Committee. This would suggest that discipline is being used more selectively and managers are adopting informal methods to solve problems at an early stage. This could be a result of managers being encouraged to act more proactively and positively in dealing with people management issues so that there are fewer instances of escalated action, and setting clear standards and/or 'nipping problems in the bud' to mitigate development of more serious forms of misconduct.
- 6.3 Timescales for completing the entire disciplinary process, from incident through to the appeal to the Employee Appeals Committee whilst improving, continue to be of concern. The time elapsed means that direct comparisons can be made with the dismissal cases in Appendix 2, however based on analysis of the last six cases that have progressed through to Members as set out at Appendix 3, the average time for completing the dismissal process, from end-to-end is as follows:

Whole Process	15.8 months
Suspension to Hearing	4.6 months
Dismissal to Strategic Director Appeal	3.0 months
Strategic Director Appeal to EAC Appeal	9.6 months

- 6.4 There are a variety of factors that have contributed to these delays, including the appellant lodging their right to appeal but delaying stating the grounds (which means the case cannot be 'answered'); medical fitness of the appellant; mutually convenient dates of the parties/witnesses; all of these can be addressed and improved by working towards speedy resolution of conflict when it arises, and focussing on prioritising and controlling the disciplinary process when disciplinary action is required
- 6.5 However, there has been a marked decline in time taken from Departmental Appeal to Appeal to Members over the two years. For Departmental Appeals that took place in 2007/08 the time taken to reach the Employee Appeals Committee averaged at 11 months. This has significantly reduced to 5 months for Departmental Appeals that took place in 2008/09.

7. DEVELOPMENT OF MANAGEMENT PRACTICE

7.1 As a result of concerns identified during some of the appeals to the Employee Appeals Committee, an examination of existing practices was undertaken in Spring 2008 focussing on three key areas:-

- managerial ownership;
- the role of Personnel in the provision of support and advice to managers; and
- the application and administration of the disciplinary process.

7.2 As a result of this examination, the Head of Personnel identified a need to strengthen and establish more consistent practice in the management of the disciplinary procedure across the authority and a new more rigorous regime was endorsed and ratified by the People Strategy Board in March 2008. In particular revised arrangements were introduced in three key areas:-

7.3 Managerial Ownership

7.3.1 The role of managers in embedding City Council values and motivating and leading their staff is critical. Very minor instances of misconduct can often be picked up through normal supervision and/or by taking small corrective measures through regular, informal contact between managers and their staff. Where managers fail to set clear standards, identify and/or deal with people issues then there is potential for otherwise low-level conduct issues to escalate into more complex problems that require considerable management time to unravel and resolve.

7.3.2 Work is continuing to ensure that all new and existing managers achieve the necessary confidence and competence to address these issues and to defuse and resolve problems before they escalate. Management training addresses the need to develop the necessary management skills and qualities to meet the demands of disciplinary issues.

7.3.3 The use of formal procedures should be a last resort however, it is acknowledged that disciplinary action in accordance with the City Council's Disciplinary Policy and Procedure is always going to be necessary for repeat offenders or serious cases of misconduct, therefore support on procedural aspects will also continue to be provided. In addition to formal management training, Corporate Personnel staff provide practical support to managers through coaching, mentoring, updates on best practice and practical workshops.

7.4 Role of Personnel

7.4.1 Personnel Advisors have always provided professional personnel support and advice to managers, including challenging assumptions, agreeing a way forward, working collaboratively to find possible

solutions.

- 7.4.2 The move to a more centralised and co-ordinated human resource management service, responsible to the Head of Corporate Personnel, is enabling progress to be made in ensuring consistency in the support and advice offered, and timeliness in the management of disciplinary issues.
- 7.4.3 Officers in the Personnel Advisory Teams are now providing more proactive case management to each of the Strategic Directorates on issues associated with discipline and dismissal. They provide more proactive, practical support in resolving cases, including risk assessment and options appraisal particularly where more complex issues arise. There is also more learning through reflection, thereby ensuring that any matters arising are acted upon e.g. changes to processes, training content etc., and this knowledge is incorporated into good practice and then shared across the service.
- 7.4.4 In addition, the reorganisation of Personnel services in line with the principles agreed as part of the Personnel Service Improvement Project, which was recently agreed by the Personnel Committee, will enable the service to be more effective in developing personnel capacity and providing expert professional support and advice to managers in each of the Strategic Directorates.

7.5 Application and Administration of the Process

- 7.5.1 In the year 2007/08 126 employees were suspended and in the following year 71 employees were suspended. In order to address concerns with regard to the timescales involved in the management of disciplinary cases, all suspensions are now reported to the Head of Personnel at the point they are effected.
- 7.5.2 Authority must be sought and explanations given where it is anticipated that suspensions will run for more than two months. All requests for extension of suspension are to be endorsed by the Departmental Head of Personnel and approved by the Head of Corporate Personnel. 17 requests for extension of suspension were received in the year ending March 2009, of which three have been declined.
- 7.5.3 Cases are tracked by officers in the Employee Relations Team who scrutinise suspension reports, monitor progress, advise on the management and escalate cases where necessary in order to ensure that cases are managed effectively and in a timely manner.
- 7.5.4 In order to share experiences, reviews of how investigations have been handled are carried out at the conclusion of every disciplinary case that results in suspension or dismissal. This enables both positive and negative learning points to be identified and, in line with the move to a

more centralised and co-ordinated human resource management service, these can be shared across the Strategic Directorates.

- 7.5.5 In addition to formal management training on the application and administration of the disciplinary process, Corporate Personnel provides further support to managers through coaching, mentoring updates on legislation and best practice and practical workshops. . As well as ensuring that cases are assessed and managed effectively, the centralised Personnel Advisory function will provide more skills-based training and coaching for managers, and work towards achieving consistency in the application of the Disciplinary Policy and Procedure.

8. CONCLUSION

- 8.1 The Head of Personnel is satisfied that the City Council's Disciplinary Policy and Procedure remains fit for purpose and complies with all statutory requirements.
- 8.2 The new more rigorous management arrangements introduced to address disciplinary and dismissal procedures, endorsed by the People Strategy Board in March 2009, will support the embedding of a high performance culture across the organisation.
- 8.3 Placing greater emphasis on managerial ownership and equipping managers with the necessary confidence and competencies to enable them to discharge their responsibilities is critical and, with the necessary levels of support, should reduce further the number of instances where formal disciplinary action is applied. Where cases do move into formal procedure, support mechanisms are in place to ensure quicker turnaround times on casework and other managerial interventions to bring individual cases to sound conclusions at the earliest reasonable stage.

ATTACHED AS APPENDICES

1. Disciplinary cases and sanctions over the last two years by Directorate.
2. Dismissals and Employee Appeals Committee hearings over the last two years by Directorate.
3. Disciplinary and Dismissal Procedures - Timescales

APPENDIX 1

**DISCIPLINARY CASES AND SANCTIONS OVER THE LAST TWO YEARS
BY DIRECTORATE**

	April 2007 – March 2008	1st Stage	2nd Stage	3rd stage	Dismissal	April 2008 – March 2009	1st Stage	2nd Stage	3rd stage	Dismissal
Neighbourhood Services	67	24	11	17	15	51	8	15	17	11
Children's Services	24	4	5	5	10	22	5	3	7	7
Corporate Services/ Chief Executive's	22	5	4	7	6	16	3	4	5	4
TOTAL	113	33	20	29	31	89	16	22	29	22

APPENDIX 2

DISMISSALS AND EMPLOYEE APPEALS COMMITTEE HEARINGS OVER THE LAST TWO YEARS BY DIRECTORATE.

	April 2007 – March 2008		April 2008 – March 2009	
	Dismissals	Employee Appeals Committee Hearings	Dismissals	Employee Appeals Committee Hearings
Neighbourhood Services	13	1	11	1
Children's Services	10	3	7	-
Corporate Services/ Chief Executive's	6	1	3	-
TOTAL	29	5	21	1

APPENDIX 3

Disciplinary and Dismissal Procedures - Timescales

	Date of Suspension	<u>Mths</u>	Date of Dismissal	<u>Mths</u>	Date of Appeal to Head of Service/ Strategic Director	<u>Mths</u>	Date of Appeal to Members	Length of Process Mths
1.	2/10/06	8	6/6/07	1	25/7/07	12	1/7/08	21
2.	23/2/07	2	11/4/07	9	15/1/08	6	24/7/08	17
3.	16/2/07	4	19/6/07	2	20/8/07	13	15/9/08	19
4.	16/2/07	4	19/6/07	2	20/8/07 & 15/11/07	15	21/11/08	21
6.	26/7/07	5	12/12/07	4	11/4/08 & 16/4/08	7	5/11/08	16
7.	n/a		2/9/08	2	7/11/08	3	26/2/09	5

Employee 1

The employee was suspended on 2 October 2006 following allegations that the employee had exhibited aggressive and abusive behaviour towards police officers, and had brought the Council into disrepute. Following an investigation, a disciplinary hearing was held on 8 February 2007 and was adjourned at the request of the hearing officer whilst reports were sought from the police. These could only be released by the police to the employee and there was a subsequent delay due to the employee's reported sickness and failure to request the required information from the police.

At the re-convened disciplinary hearing held on 5 June 2007 the Hearing Officer decided to dismiss. The employee appealed on the grounds that there was a failure to take account of the Council's policies and that insufficient weight was put on mitigating circumstances. The Appeal Hearing Officer, on 25 July 2007 upheld the decision to dismiss, having decided that mitigating factors had been taken into consideration and that a fair procedure had been followed. The employee appealed to the Employee Appeals Committee and at its meeting on 1 July 2008, the Committee determined that key documentation was missing from the case, there was a lack of corroborative evidence, that alternatives to dismissal had not been considered and that medical issues had also not been fully considered. Therefore the Committee decided to reinstate the employee, noting that the employee had admitted the allegation, expressed remorse and had reassured both management and Members that such behaviour would not be repeated.

Employee 2

The employee was suspended on 23 February 2007 following an allegation of deliberately misusing the electronic time recording system on at least three occasions for personal and financial gain. The employee accepted that he had breached expectations in terms of time recording but cited illness and personal circumstances in mitigation. The Hearing Officer did not accept that illness had caused the employee's deliberate actions and dismissed the employee on 11 April 2007.

The employee appealed this decision and an appeal hearing commenced on 29 May 2007. Following an adjournment to allow for further investigation, the employee made several requests for the re-convened hearing to be postponed and the hearing was finally concluded on 15 January 2008. The Appeal Officer upheld the decision to dismiss and the employee appealed to Employee Appeals Committee on the grounds that the sanction was too harsh and he would submit further medical evidence in support of his mitigation.

This further evidence was not submitted until 7 July 2008 and the Committee heard the appeal on 24 July 2008. Having taken into consideration the mitigating circumstances put forward, Members agreed with the decision of the Departmental Appeal Hearing Officer that the further information did not sufficiently mitigate the offence, dismissal was a reasonable sanction in the circumstances and alternatives to dismissal had been considered.

Employees 3 & 4

These two employees were suspended on 16 February 2007 following allegations that they had slept whilst on duty on a number of occasions. Although the employees denied the allegations, evidence was gathered from two agency staff and entries in work records. The same Hearing Officer heard the cases separately and both employees were dismissed on 19 June 2007. The employees appealed this decision and the Departmental Appeal Hearing Officer deferred making a decision following the submission of a statement which cast doubt on the credibility of the witnesses. Following further investigations into claims made in this statement, the decision to uphold the dismissal was communicated to the employees on 3 December 2007.

The employees appealed to the Employee Appeals Committee on the grounds that alternatives to dismissal had not been considered and that relevant evidence had been discounted. Members, at two separate meetings on 15 September 2008 and 21 November 2008, were satisfied that, on the balance of probability, the employees had habitually slept whilst on duty and that this was an act of gross misconduct bearing in mind the nature of the duties, and that dismissal was an appropriate sanction.

Employee 5

The employee, was suspended on 26 July 2007 following an allegation that he failed to follow a reasonable management instruction, had exhibited intimidating behaviour and had been asleep on duty. Statements were taken from six witnesses and Occupational Health Unit reports were taken into consideration. The employee failed to attend two investigatory interviews and the disciplinary hearing was postponed on three occasions at the request of the employee. Two days prior to the hearing scheduled for 12 December 2007 the employee reported sick and it was decided to hold the hearing in the absence of the employee or his representative. The Hearing Officer concluded that, on the basis of the evidence available, the allegations were proven and constituted gross misconduct. The employee was informed of the decision to dismiss on 20 December 2007.

The employee appealed this decision and an appeal was arranged for 7 February 2008. However, due to personal circumstances of the Presenting Officer, the hearing was re-scheduled for 11 April 2008. The hearing was adjourned on two occasions in order to hear all the evidence submitted and on 13 June 2008 the Appeal Hearing Officer upheld the decision to dismiss.

The employee appealed to the Employee Appeals Committee on the grounds that a grievance had not been heard, a disability had not been taken into account and an important document went missing. Members heard his appeal on 5 November 2008 and were satisfied that the allegation constituted gross misconduct, that correct procedures had been followed, that alternatives to dismissal had been considered and that reasonable support had been given.

Employee 6

The employee was dismissed at a disciplinary hearing held on 2 September 2008 for failing to follow a management instruction to attend work and to attend an Occupational Health appointment. The employee had failed to attend work for some considerable

time and the Hearing Officer decided to dismiss having concluded that there was substantial evidence that the employee was fit to attend a medical appointment and to attend work. The employee had also failed to co-operate with management in attempts to achieve a return to work. The employee appealed and the decision to dismiss was upheld at an appeal hearing on 7 November 2008.

The employee subsequently appealed to the Employee Appeals Committee on the grounds that proper consideration had not been given to a disability, procedures had not been followed and he had not been given the opportunity to make his case. The employee failed to attend the meeting of the Committee on 26 February 2009, and his representatives failed to engage in the process sufficiently to allow the appeal to continue. The Committee indicated that it was prepared to reconvene the hearing at a later date or to determine the appeal following consideration of all the papers submitted. However the employee did not pursue either of these options.