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WEST SUFFOLK
JOINT STAFF
CONSULTATIVE
PANEL

23 SEPTEMBER 2013

JSP13/004

Report of the Head of Human Resources and Organisational Development

JOINT GRIEVANCE POLICY AND PROCEDURE (Decision Plan Reference: OCT13/02)

1. Summary and reasons for recommendation(s)

- 1.1 The Human Resources Service is currently working through the HR Policies that are in place at each Council, in order to produce and agree new joint policies for West Suffolk. This report proposes a new joint Grievance Policy and Procedure.
- 1.2 The new Policy and Procedure are in accordance with current employment legislation (specifically the Trade Union and Labour Relations (Consolidation) Act 1992) and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.3 Both existing policies and procedures, in place at Forest Heath and St Edmundsbury, have been reviewed and changes made to ensure that managers have a sound and effective single policy for dealing with employee grievances.
- 1.4 The new joint Policy and Procedure ensures that issues that employees raise as a grievance, can be dealt with in a fair and timely way, to achieve an effective resolution.
- 1.5 The Joint Leadership Team, Unison and the Portfolio Holders have been consulted.

2. Recommendation(s)

- 2.1 **That the Joint Staff Consultative Panel recommend to both Forest Heath District Council and St Edmundsbury Borough Council Cabinet and Council, that the Joint Grievance Policy and Procedure is adopted.**

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3. Corporate priorities/Strategic Priorities

3.1 The recommendation meets the Councils' priorities to work together to be efficient councils in the effective management of human resources.

4. Key issues

4.1 The two Councils have a Joint Leadership Team, a single pay and reward strategy, and are bringing together a shared workforce. HR Policies and Procedures underpin the terms and conditions of employment, and are tools for both managers and employees to utilise to deal with matters when they arise.

4.2. It is important for everyone to have absolute clarity, fairness and consistency in regard to resolving employment concerns and disputes, the adoption of this joint and up-to-date policy will be supported by information sharing and training for managers and staff, as appropriate.

5. Other options considered

5.1 To retain existing, different policies that need reviewing is not an effective option.

6. Community impact

6.1 **Crime and disorder impact** *(including Section 17 of the Crime and Disorder Act 1998)*

6.1.1 None.

6.2 **Diversity and equality impact** *(including the findings of the Equality Impact Assessment)*

6.2.1 The adoption of a joint policy supports equity and consistency in approach between the two partner employers in West Suffolk.

6.3 **Sustainability impact** *(including completing a Sustainability Impact Assessment)*

6.3.1 Not applicable.

6.4 **Other impact** *(any other impacts affecting this report)*

6.4. None.

7. **Consultation** *(what consultation has been undertaken, and what were the outcomes?)*

7.1 This paper is the consultation document for the Joint Staff Consultation Panel; Unions and the Joint Leadership Team have been consulted during its development.

8. **Financial and resource implications** *(including asset management implications)*

8.1 Effective HR Policies mitigate risk of employment disputes. Training will be delivered as part of the HR Bite-size programme contained within the Corporate L & D/Training programme.

9. **Risk/opportunity assessment** *(potential hazards or opportunities affecting corporate, service or project objectives)*

Risk area	Inherent level of risk <i>(before controls)</i>	Controls	Residual risk <i>(after controls)</i>
Poor employment relations	Medium	Adoption of joint policy	Low
Delay in dealing with problems	Medium	Effective policy with clear and practical timescales	Low
Lack of management skill in solving workplace disputes	Medium	Training for managers	Low

10. **Legal and policy implications**

10.1 Compliance with TULR(C)A and ACAS Code of Practice on Disciplinary and Grievance Procedures.

11. **Ward(s) affected**

11.1 None directly.

12. **Background papers**

12.1 None.

13. **Documents attached**

13.1 Appendix - Joint Grievance Policy and Procedure – November 2013.

Forest Heath District Council and St
Edmundsbury Borough Council

Grievance Policy and Procedure

November 2013

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1. Introduction

- 1.1 This document sets out the joint grievance policy and procedure for St Edmundsbury Borough Council and Forest Heath District Council. Both Councils are committed to being fair and reasonable employers.
- 1.2 Grievances are concerns, problems or complaints that employees raise with their employers. All employees should feel comfortable and able to raise a grievance at any time.
- 1.3 A grievance may be about any employment matter raised by an individual employee or a group of employees. These may include matters relating to terms and conditions, health and safety, working relationships with managers or colleagues, working practices, working environment, organisational change, performance reviews.
- 1.4 The purpose of the procedure is to provide a means for dealing promptly with any grievance which an employee may have in the course of, and connected with, his or her employment.
- 1.5 The Councils' procedures are consistent with the ACAS Code of Practice and have been developed in full consultation with Unison.

2. Principles of the Policy

- 2.1 This policy and procedure applies to all employees of both Forest Heath District Council and St Edmundsbury Borough Councils.
- 2.2 No employee will be discriminated against (directly or indirectly) on the grounds of gender, ethnic origin, marital status, disability, sexual orientation, faith, age, trade union activities or any other irrelevant factor.
- 2.3 Employees may pursue a grievance if they have a problem or concern relating to their work, working conditions or relationships with colleagues or managers.
- 2.4 It is in everyone's interest to try to resolve problems before they develop into major difficulties for all concerned.
- 2.5 Employees should aim to settle most grievances informally with their line manager. This allows for problems to be resolved quickly.
- 2.6 However if the informal approach fails to resolve the issue, the Grievance Procedure enables the employee to raise their grievance through the formal route to resolve the dispute internally.

3.

- 2.7 Where complaints are raised using the formal procedure or where serious issues are raised informally, managers should seek advice from HR as soon as possible.
- 2.8 The details of the grievance should be kept confidential by all parties, unless otherwise agreed. In some circumstances breaches of confidentiality may result in disciplinary action.
- 2.9 Where a grievance applies to more than one employee, it may be more appropriate for the union to raise the matter through the collective disputes procedure.

3. Informal Grievance Procedure

- 3.1 Wherever possible grievances should be aimed to resolved informally, for the benefit of both employee and employer
- 3.2 There are a number of options available for employees for raising concerns problems or complaints informally, they include:
- informal discussion between employee and line manager
 - communicating the concern in writing to the line manager
 - at the employee's PDR/Personal Review (although employees shouldn't wait too long before raising issues that are causing them concern)
 - speaking informally to a more senior manager
 - asking a colleague to speak to the manager on the employee's behalf
 - raising the matter via the employee's trade union
 - speaking confidentially to a human resources officer for advice.
- 3.3 Managers should respond to issues raised by employees calmly and as soon as practically possible. There may be circumstances when a manager needs to seek further advice. If this process takes longer than 5 working days, the employee should be kept informed of when the outcome is likely.
- 3.4 Correspondence with employees should be kept on record, to be held by a manager for a reasonable period, in accordance with the principles of the Data Protection Act.

4. Formal Grievance Procedure (3 Step)

- 4.1 The following procedure will be implemented when an employee has tried to raise a grievance informally with his/her line manager and the process has failed. In addition, the procedure will be used if the informal process is inappropriate and when the employee is still employed by the council.
- 4.2 **Step 1- Formal Statement of Grievance**

- 4.2.1 The employee must submit a formal complaint in writing to their manager. The complaint must be headed 'Formal Statement of Grievance'. Setting out a grievance may not be easy for some employees for whatever reasons. If the complaint is regarding the manager, the submission should be made to the next level of manager or Head of HR. Should an employee have difficulty in expressing their grievance in a written manner they should be encouraged to seek help from either a fellow worker or a trade union official. They should state the reasons for raising a formal grievance and the resolution they are seeking to achieve. An acknowledgement of receipt of the grievance will be made within 5 working days.
- 4.2.2 The employee will be required to provide as much information as possible in the Formal Statement of Grievance. It must set out:-
- i) what or who the grievance is about
 - ii) the nature of the complaint
 - iii) dates/examples
 - iv) details of any witnesses who will support the grievance
 - v) the solution the employee is seeking

4.3 **Step 2- Grievance Meeting**

- 4.3.1 The grievance meeting is a meeting which deals with any grievance raised by an employee. Any meeting should be held in private and without interruption. Notes should be taken for future reference.
- 4.3.2 It is important to remember that a grievance meeting is not the same as a disciplinary hearing.
- 4.3.3 The manager should refer the matter to Human Resources, who will invite the employee to a meeting with the Head of HR (or designated substitute) and a Head of Service to discuss the grievance. The employee will have the right to be accompanied by a trade union representative or fellow worker. The meeting will normally take place within 15 working days of the receipt of the grievance. The meeting will be reconvened within 5 working days if the employee is unable to attend the first meeting.
- 4.3.4 The timing and location should be, where possible, agreed with the employee. The employee should make every effort to attend the meeting, however if they are unable to, a second meeting should be arranged. Unless there are exceptional circumstances, the council are not obliged to re-arrange a third meeting.
- 4.3.5 It may be necessary to carry out an investigation either before or after the grievance meeting. This may cause a delay in the process, in which case the employee will be made aware of any new timescale necessary.

- 4.3.6 The Head of Service will be accompanied by the Head of HR & OD or a senior member of the HR team, whose role is to advise on procedure and ensure consistency and equity of treatment.
- 4.3.7 The Head of Service will ensure that everyone has all the documentation to be considered.
- 4.3.8 The employee or companion will be invited to state their grievance and how they would like to see it resolved.
- 4.3.9 After summing up by the Head of Service the meeting may be adjourned in order that consideration can be given to the resolutions available to the situation.
- 4.3.10 The meeting will recommence and, where possible, inform the employee of the decision and also explain, if necessary, the details of the right of appeal. In some cases the Head of Service may require additional information and guidance to make the decision. The decision will be followed up in writing and will be received within 10 working days of the meeting.

4.4 **Step 3- The Appeal**

- 4.4.1 If the employee is still aggrieved at the outcome of the Step 2 meeting they may appeal against the decision. The employee must inform the Director that they wish to appeal, the grounds of their appeal and why they are not satisfied with the decision reached at the Step 2 meeting. An appeal hearing will be arranged (see Appeals Procedure) and following the hearing the employee will be notified of the final decision insofar as the internal procedures are concerned.

5. **Grievance Procedure upon Resignation (2 Step)**

- 5.1 If an employee raises an issue in their resignation and there is insufficient time to follow the standard procedure, a modified 2 step procedure will be followed. The grievance will be considered, investigated when necessary, and a written response given by the Head of Human Resources and Organisational Development.
 - 5.1.1 Any comments made by an employee in an exit interview will not be classed as raising a grievance. Grievances must be raised formally using this procedure.

6. Grievances Raised During Formal Disciplinary/Incapability Procedure

- 6.1 If a grievance is raised while an employee is subject to formal disciplinary/incapability proceedings, management should consider whether suspension of the proceedings is necessary while the grievance is dealt with.
- 6.2 The statutory grievance procedure doesn't apply, if the action taken or complemented by the employer is dismissal or other action, short of dismissal which is related to an employee's conduct or incapability.
 - 6.2.1 In such cases, the employee has the opportunity to raise their grievance at the disciplinary hearing or an appeal hearing. Therefore, there is no requirement to set up a separate grievance hearing.
 - 6.2.2 In such cases, if the grievance is submitted any time prior to the appeal hearing then the appeal hearing can deal with the grievance. If the grievance is raised after the appeal hearing a modified 2 step grievance procedure should be implemented.

7. Other Information

- 7.1 If the grievance raised is regarding the Head of Service or Director, who is the immediate manager, and the employee does not wish the grievance to be heard by them, the meeting will be heard by an impartial Head of Service or Director
- 7.2 A Director may nominate a senior and impartial manager to act on their behalf in a grievance meeting; however the senior manager must agree with the Director any action which is to be taken before advising the employee.
- 7.3 **Exclusions to the procedure are as follows:-**
 - 7.3.1 If an employee has failed to attend a second rearranged meeting, unless there are exceptional circumstances.
 - 7.3.2 If an employee wishes to complain about an actual or threatened dismissal.
 - 7.3.3 If the grievance regards a matter which the employer has no control over.
 - 7.3.4 If the alleged grievance is the subject of, or appropriate to a collective disputes procedure between the employer and trade union.

8. Statutory Rights

8.1 Right to be accompanied

- 8.1.1 The Employment Act 2002 (Dispute Resolution) Regulations 2004 provides employees with a statutory right to be accompanied by either a fellow worker or a trade union official when attending a grievance meeting.
- 8.1.2 It is not necessary for the trade union to be recognised by the Council for collective bargaining purposes.
- 8.1.3 It will not be reasonable for the employee to insist on being accompanied by a colleague whose presence could prejudice the hearing or who might have a conflict of interest, nor to request someone who is from a geographically remote location when someone suitably qualified is available on site. The request to be accompanied does not have to be in writing.
- 8.1.4 Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.
- 8.1.5 Fellow workers or trade union officials employed by the Council are entitled to take reasonable time off to fulfil the responsibility of accompanying an employee during the grievance meeting or appeal hearing, including time to familiarise themselves with the case and to discuss it with the employee.
- 8.1.6 If an employee or their representative is disabled reasonable adjustments must be made to enable them to participate fully and effectively in the proceedings. HR will be able to advise in this situation.
- 8.1.7 The right to be represented does not apply to informal discussions/ counselling sessions.

8.2 Compliance with the Equality Act 2010

- 8.2.1 If the employee, or their companion, has a disability, reasonable adjustments must be made to enable them to participate fully and effectively in the proceedings.
- 8.2.2 If either person has mobility problems, suitable accommodation will need to be provided. These issues will need to be considered in advance of the hearing date so that the necessary arrangements can be made.
- 8.2.3 In the case of a disabled employee, it may be helpful to allow them to be accompanied by an external friend or relative. This may be permitted, at the Council's discretion, as long as the

investigator or the manager chairing the hearing (as appropriate) is satisfied that this will not hinder or prejudice the proceedings.

GRIEVANCE HEARING PROCEDURE

Introduction

- The Hearing Manager will introduce the parties and ensure that everyone has all the documentation to be considered.

The Grievance

- The Employee (or their Companion) will present their case, with all relevant evidence, and call witnesses, as required.
- The Investigating Officer may ask questions after each witness has given evidence or following the appellant's presentation.
- The Hearing Manager may also ask questions.
- The Employee and/or Companion may re-examine the witnesses.

The Findings of the Investigation

- The Investigating Officer will present the findings of the investigation, with all relevant evidence, and call witnesses, as required.
- The Employee and/or Companion may ask questions after each witness has given evidence or following the presentation by the Investigating Officer.
- The Hearing Manager may also ask questions.
- The Investigating Officer may re-examine the witnesses.

Re-call of Witnesses

- Once the grievance and finding of the investigation have been heard in full, either party, or the Hearing Manager, may ask for a witness to be recalled for clarification of evidence. Documentary or other evidence may also be revisited at this stage, if required. The decision on whether to recall witnesses and/or re-examine evidence rests with the Hearing Manager.

Final statements

- Both the Investigating Officer and the Employee and/or their Companion may make final statements, if they wish to do so. The Employee and/or their Companion always has the final say.

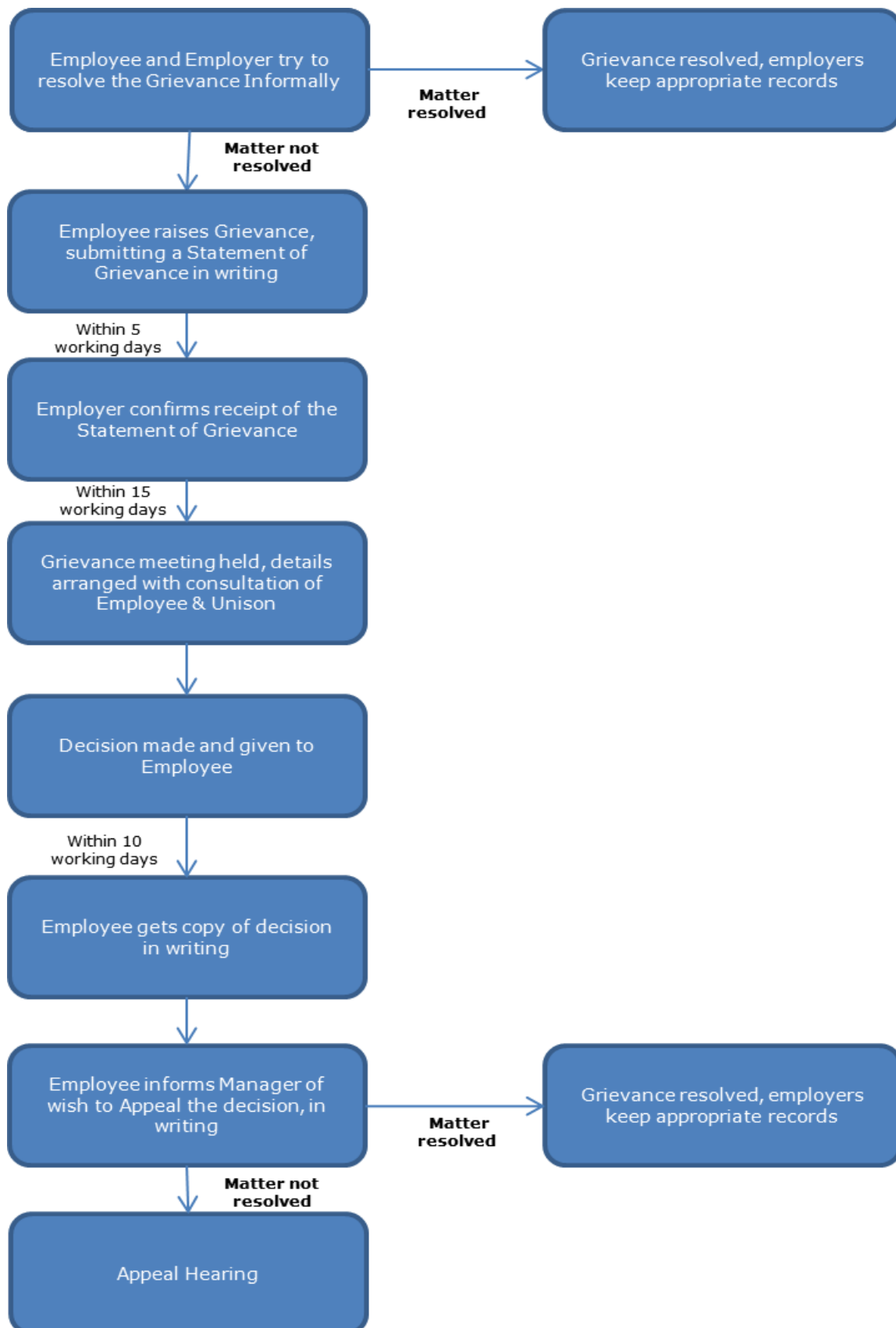
Consideration of the case

- All parties to the hearing will then withdraw.
- The Hearing Manager, assisted by the Hearing Clerk, will then deliberate.
- If it is necessary to clarify any of the evidence presented, including recalling witnesses, all parties will be recalled, even if the point of clarification only concerns one party.
- If the Hearing Manager considers that further information is required before a decision can be reached, the hearing will be adjourned until another date and the Investigator will be asked to gather the further information required.

Decision

- The Hearing Manager will consider all the evidence that has been presented and make their decision, taking into account the particular circumstances of the case plus the wider implications of any proposed solution, for example:
 - the impact on the employee and other parties affected
 - the need to restore good employee relations/productivity
 - the need for consistent treatment across the organisation
 - compliance with Council policies and procedures
 - financial and legal implications.
- Has there been as much investigation as is reasonable in the circumstances.
- Have the Council's procedures been properly complied with.
- Is the decision within the band of reasonable responses of a reasonable employer in the circumstances.
- If required at a later stage, written evidence of the Hearing Manager's rationale will help an Appeal Panel or Employment Tribunal to see that a structured and reasonable approach has been taken.
- The Hearing Manager will, if possible, recall both parties and give them the decision immediately after the hearing. In any case, the decision will be confirmed in writing together with information about the Employee's appeal rights within 10 working days.

Grievance Policy and Procedure- Flow Chart



Revisions

Date of review or revision	Reason	Author
June 2009	Change in legislation – Employment Act 2008	Wendy Canham
June 2013	Alignment of SEBC + FHDC/Change in legislation	Karen Points