

EAST HERTS COUNCIL

LOCAL JOINT PANEL - 16 JANUARY 2006

REPORT BY SECRETARY TO THE EMPLOYER'S SIDE

7(B) REVIEW OF PROGRESS ON HUMAN RESOURCE POLICIES AND PROCEDURES AUTUMN 2005

RECOMMENDATION – that a decision is taken on the matter for consideration in 4.3 below and the 3 new draft policies in 4.2 below are agreed.

1.0 Purpose/Summary of Report

1.1 A review of HR policies and procedures currently in use within the Council has recently been undertaken and has uncovered various problems. Therefore a project has begun to redraft the H R policies, to ensure that they are fit for purpose and to address the issues set out below.

1.2 The work in this area is ongoing and members will be kept informed of progress over the coming year. The intention is that H R policies will be reviewed, rewritten and agreed by the end of 2006 and in future a proactive approach will be adopted

2.0 Contribution to the Council's Corporate Objectives

2.1 Improve the health and sustainability of the organization.

3.0 Background

3.1 The main concerns were that over the last few years there has been a rash of new Acts of Parliament that place statutory obligations on employers. These have not been incorporated into existing documentation nor have new policies been issued to address certain new legal requirements. Additionally the status of current policies is debatable because it is unclear which version of a policy is most current and whether a formal decision was taken to adopt the particular version. The result is that the Council has been left open to challenge.

4.0 Report

4.1 Work has started to ensure/address the following:

The Council meets its duty of care to all employees

Because the Government has enacted much more legislation affecting work place practice over the last few years, existing policies no longer comply with the duty of care towards employees so that for example, the absence management policy has been rewritten to incorporate the Disability Discrimination (Amendment) Regulations 2003.

Furthermore the need for an Employee Assistance scheme is being revisited with the intention to award a contract in the first quarter of 2006.

A further related project will be to produce a Stress Policy and undertake a stress audit to identify areas of concern and offer assistance to employees. The intention is that this will also be carried out during the first quarter of 2006.

Provide a workable, effective and fair framework for managers

The redrafted policies provide a consistent approach to dealing with employee relations issues. They are designed to uphold the principles of natural justice; to provide essential information and a step by step guide to working through them.

Where it is appropriate to be less prescriptive, the procedures have been drafted to enable a more pragmatic approach to achieving a resolution to issues.

To reduce bureaucracy and shorten timescales

Previous procedures have involved management and employees going through sequential steps before reaching a conclusion and prolonging the process. This was felt to be inflexible and unfair to both parties and has been altered so that each case can be approached according to the particular requirements thereof.

Similarly, the current disciplinary procedure has 4 different levels of misconduct. This is felt to be too prescriptive and unnecessary. Unacceptable conduct is now split between misconduct and gross misconduct thus empowering the hearing officer to take account of

mitigating circumstances.

Managers are given guidance, training and support

During the course of 2006 written guidance for managers will be produced to supplement each policy. Additionally HR Officers will be available to provide support and coaching to build confidence in the management skills required in dealing with employee relations issues. Training workshops will also be commissioned as necessary to meet needs in this area.

See also 6. and 7. below.

4.2 Procedures to be discussed at LJP

The Data Protection Policy (Appendix 'C', pages 66 - 76)

The Grievance Policy and Procedure (Appendix 'D', pages 77 - 87)

The Ending of Fixed Terms Contracts Procedure
(Appendix 'E', pages 88 - 93)

4.3 Matter for Consideration

At the December 2005 meeting with Unison the Grievance and Ending of Fixed Term Procedures were agreed with the exception of who should hear the final appeal. Management would like the LJP to consider this matter and make a recommendation bearing in mind the following points.

- i. Previously any procedure which includes the right of appeal has been heard by members of the H R Sub-Committee. In the draft of the Grievance Procedure (Appendix 'D', pages *) the responsibility for hearing the final stage of the procedure, the appeal, has been set out as follows: "the appeal hearing should be conducted by the Director of the Service, The Executive Director or a sub-committee of Members, depending on who heard the matter at stage 2."
- ii. Under the Ending of Fixed Term Procedure "If the employee decides to exercise his/her right of appeal, the line manager concerned should refer the matter to his/her head of service/service director (hearing officer stage 3) as appropriate and arrange an appeal meeting."

- iii. Unison would like to retain the right for the appeal to be heard by Members regardless of who took the previous decisions.
- iv. Management would like a decision to be made on this point as it will impact on other procedures currently at drafting stage.
- v. The alternative options for hearing appeals for consideration are:-
 - a) Director of Service, Executive Director/Chief Executive or sub-committee of members.
 - b) Panel of Members from the HR Sub Committee.
 - c) Panel of Executive Director and Members of HR Sub Committee.
 - d) As (a) above unless Unison decide the grievance is an important matter of principle for Council employees, in which case a panel of Members from the HR Sub Committee will be asked to hear the case.
- vi. ACAS guidance is that the appeal hearing should be handled by a more senior manager if possible.

5.0 Consultation

5.1 These Policies have been discussed with Unison representatives.

6.0 Legal Implications

6.1 All policies are being reviewed to ensure compliance with new legislation and where there is guidance from ACAS, this is being incorporated. The result of the review is that each policy has had to be extensively rewritten incorporating equalities considerations, statutory standard and modified procedures and statutory requirements on timescales. This has enabled HR officers to produce documents containing more consistent and straightforward procedures.

7.0 Financial Implications

7.1 None.

8.0 Human Resource Implications

8.1 As set out above.

9.0 Risk Management Implications

- 9.1 Failure to update HR procedures to comply with latest Employment Law will leave the Authority open to challenge at Employment Tribunals which may be costly and damaging to our reputation.
- 9.2 Currently for unfair dismissal awards may range from £8,400 to £65,200. Additionally, for refusal to comply with a reinstatement order, a further award of between £7,280 and £15,680 can be made. Awards against unlawful discrimination can be unlimited.

Background Papers

None

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East Herts HR Policy and Procedure on Data Protection and Information Exchange

1. Introduction

- 1.1 The Data Protection Act 1998 extends the law of data protection to cover the holding and processing of all personal data whether held in paper files (manually) or on a computer.
- 1.2 Paper files are defined as any set of information relating to individuals to the extent that the set is structured, either by reference to individuals or by reference to criteria relating to individuals in such a way that specific information relating to a particular individual is readily accessible.
- 1.3 In the course of HR's work a considerable amount of personal information is assembled about its employees. This document addresses the issues of security, transmission, access to information and information exchange.

2. The Data Protection Principles

- 2.1 The 1998 Act sets out eight principles relating to the processing of personal data. The principles specify that:
 - i. Personal data must be processed fairly and lawfully
 - ii. Personal data must be obtained only for one or more specified and lawful purposes, and must not be processed in any manner incompatible with that or those purposes.
 - iii. Personal data must be adequate, relevant and not excessive in relation to the purpose(s) for which they are processed.
 - iv. Personal data must be accurate and, where necessary, kept up to date.
 - v. Personal data processed for any purpose(s) must not be kept any longer than is necessary for that purpose or those purposes.
 - vi. Personal data must be processed in accordance with the data subject's rights under the Act.
 - vii. Appropriate technical and organisational measures must be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - viii. Personal data must not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an "adequate level of protection" for the rights and freedoms of data subjects in relation to processing personal data.

3. Key Definitions

- 3.1 **Personal Data** means information from which a living person (the **Data Subject**) can be identified (or can be identified from that data in conjunction with other information in the possession, or likely to come into the possession, of the data controller, i.e. the Council). Some is further classified as **sensitive**.

This can include any expression of an opinion about the individual and any indication of anyone's intentions in respect of that individual.

- 3.2 **Data Processing** includes: organising, adapting, altering, retrieving, consulting, using, disclosing, publishing, aligning, combining, blocking, erasing or destroying any data or the information contained in any data which contains personal data, whether or not the processing is undertaken by reference to the data subject.
- 3.3 The **Information Commissioner** is responsible for the enforcement of the Data Protection Act and has a duty to promote good practice, which he or she may support by publishing codes of practice or by endorsing codes of practice published by any body representing **Data Controllers** (people or organisations that determine the purposes for which and the manner in which any personal data is processed).

4. Notification of Data

- 4.1 The Information Commissioner must be notified of the personal data held and processed by data users and will enter the information on a publicly accessible register. The following information is required:
- i. A description of the personal data
 - ii. The categories of data subject to which they relate
 - iii. The purpose or purposes for which the data is being (or are to be) processed
 - iv. Details of the recipients to whom the data may be disclosed

It is an offence to process personal data unless the data controller has an appropriate register entry, except in respect of manual data.

5. Telephone Enquiries

- 5.1 Information must not be disclosed to any unidentified or unauthorised person. It is particularly important to guard against disclosure of confidential information in response to telephone enquirers.
- 5.2 The release of all personal information, whether held on computer or manual files, is strictly governed by the Data Protection Act 1998 and personal information must only be released to authorized persons identified in accordance with the provisions of the Act and of relevant agency policies.

6. Processing of Data

- 6.1 Individuals are entitled to be informed whether any personal data concerning them is being processed and, if so:
- i. The source of the data
 - ii. A description of that data
 - iii. A description of the purposes for which that data is being or is to be processed.

- iv. The recipients or classes of recipients to whom the data may be disclosed
- v. There is a statutory duty for the agency to comply with the request to see the data held on an individual within 40 days. The Council will aim to disclose personal data held in an individual's file within 10 working days.

7. Data Protection of Employee Details

- 7.1 This section of the document refers to the information stored on its employees that is relevant to their employment and for the purposes of this document is collectively referred to as the "Personnel File".
- 7.2 The Personnel File may comprise:
- i. Information about employees' records of employment held on paper or computer systems.
 - ii. Information and records of particular aspects of employees' employment (e.g. sickness records, attendance and annual leave records etc.), which may be held by line management and/or by central administrative on paper or computer systems.
 - iii. information about employees' records of employment held on paper systems or on the Council's personnel and payroll computer systems.
 - iv. Temporary, informal and unstructured diary notes, which line managers may make about particular employees from time to time on issues such as work performance or conduct are unlikely to fall within the scope of the Data Protection Act 1998. **Managers should be aware, however, that if they develop structured sets of information about their employees they will fall within the scope of the "Personnel File" and be subject to the controls and access requirements of the Act.**
- 7.3 It is very important that all employees should be aware that this information is being stored, the reasons for it being stored, the need to maintain and store personnel records appropriately, the rights of individual employees to access their personal data, and the potential risks of divulging confidential information to unauthorised persons.

8. Employees' right of access to information

- 8.1 Individuals are entitled to be informed whether any personal data concerning them is being processed and, if so:
- i. The source of the data
 - ii. A description of that data
 - iii. A description of the purposes for which that data is being or is to be processed.
 - iv. The recipients or classes of recipients to whom the data may be disclosed.
- 8.2 There is a statutory duty for employers to comply with the request within 40 days. The Council will aim to disclose personal data held in an individual's

personnel file within 5 working days (see checklist), other personal data will be disclosed within the statutory timescale. Confidential references given to the Council and confidential references given by The Council for the purposes of education, training or employment are excluded from this right of access.

9. Personal Data Held on Job Applicants and Employees

Job Applicants

- 9.1 Personal information submitted by job applicants is (or may be) used by the Council and any other person it appoints to assist, for:
- i. Selecting whom to appoint.
 - ii. Monitoring the effectiveness, efficiency and fairness of the selection process.
 - iii. Internal proceedings to consider a complaint about the selection process and/or to defend the Council against a legal challenge to the fairness of the selection process from any interested party.

Employees

- 9.2 The Council holds the personal information submitted with the application for appointment together with any further information provided before and during and personal information relating to the history of employment with East Herts for a range of personnel management functions in the legitimate interest of the Council (and any successor organisation) as a specified in an individual's contract of employment, including:
- i. Recruitment, promotion, training, deployment and career development.
 - ii. Equalities and other statistical monitoring.
 - iii. Business planning.
 - iv. Payroll administration.
 - v. For contacting next of kin and arranging medical attention in connection with death, illness or injury whilst at work.
 - vi. Compliance with statutory requests from the Inland Revenue, DSS, Benefits Agency and other relevant public authorities/agencies.
 - vii. Disciplinary, sickness absence management and capability action arising from the employee's conduct or ability to perform the job requirements.
 - viii. Selection for redundancy.
 - ix. The provision of references to potential future employers and other organisations who the employee has authorised to approach the Council for a reference.
 - x. Defending the Council (and any successor organisation) at Employment Tribunal and other legal proceedings as necessary.

- 9.3 If employment is transferred to another organisation under the provisions of the

Acquired Rights Directive and the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations, personal data held by the Council may be passed to the successor organisation.

Former Employees

- 9.4 The Council continues to hold personal data when individuals leave the Council's employment, normally for 5 years, unless specified otherwise in the contract of employment, and uses (or will use) that information for:
- i. Statistical monitoring purposes.
 - ii. Pensions administration.
 - iii. The provision of references to potential future employers and other organisations who you have authorised to approach the Council for a reference.
 - iv. Compliance with statutory requests from the Inland Revenue, DSS, Benefits Agency and other relevant public authorities/agencies.
 - v. Defending the Council (and any successor organisation) at Employment Tribunal and other legal proceedings as necessary.

10. Sensitive Data

10.1 Some elements of the personal data are further classified as "sensitive data" all of which the Council classifies as personnel related data. There are further restrictions on the processing of "sensitive" data. Sensitive data is personnel data regarding:

- i. Ethnic or racial origin
- ii. Political opinions
- iii. Religious beliefs
- iv. Trade union membership
- v. Physical or mental health
- vi. Sexual life
- vii. Criminal convictions, allegations and sentences.

10.2 Before sensitive information can be obtained or processed either the data subject must give **explicit** consent to the processing of the data **or** the processes must be necessary for certain specific purposes, including:

- i. The exercise or performance of any right or obligation, which is conferred or imposed by law on the Council in connection with employment, e.g. Sickness absence.
- ii. In connection with any legal proceedings or for the purpose of obtaining legal advice, for the administration of justice
- iii. Monitoring equality of opportunity or treatment of racial or ethnic groups.

iv. For the protection of vital interests of that data subject or another person

10.3 Employees are required to give consent to the Council gathering and processing personal data as a condition of their contract of employment.

11. Automated Decision Making

11.1 Where there are automated decision-making processes used by the Council now or in the future (e.g. Computer scanning of aptitude tests as part of the recruitment process), the Act gives particular rights to people who are subject to such procedures, but only if the decision is entirely automated and there is no right of review.

12. Risks of Non-compliance

12.1 Failure to comply with the provisions of the Data Protection Act could have grave consequences, up to and including the criminal prosecution of both the Council and individual Council employees. The Information Commissioner can also issue enforcement notices and instruct the Council to stop processing personal data or correct or erase personal data. It is therefore vital that the Council complies, and is seen to comply, with the Data Protection Act at all times.

13. Access to Personal Files

Scope

13.1 The Data Protection Act 1998 gives employees the right to view and/or receive a copy of their Personnel File (including confidential references given and received by the Council) on request and to demand that inaccuracies be corrected or removed. Personnel files also need to be accessed on occasions by authorised individuals. The Personnel File is defined in the Introduction to this statement and includes computer and paper records relating to any aspect of an individual's employment held within the organisation.

Arrangements for Employees

13.2 Employees wishing to see their personnel file may do so by appointment giving at least 5 days written notification. This appointment will be made via the Line Manager. The file will be inspected at the place where it is kept and may not be removed. If the employee wants a copy of the file the Council may make an administration charge of up to £10.

Telephone Enquiries

13.3 Personal information must not be disclosed to any unidentified or unauthorised person. It is particularly important to guard against disclosure of confidential information in response to telephone enquirers.

13.4 The release of all personal information, whether held on computer or manual files, is strictly governed by the Data Protection Act 1998 and personal information must only be released to authorized persons identified in accordance with the provisions of the Act. Levels of access are set out in paragraph 15.5, below.

13.5 Information relating to individuals, such as their address, marital status, etc. may be disclosed only by an employee specifically authorized by the data subject to do so, and where it has been clearly established that the enquirer is entitled to the information. This can only be established through verification from the data subject and written or faxed information from the enquirer. Personal data should not be released by telephone to anyone within or external to the Council who is not specified in paragraph 15.5, below.

14. Information held on Computerised Personnel Information Systems (CPIS)

14.1 The principles of the Data Protection Act 1998 apply to computers and manual records. In this context the personal information held on the Council's computer systems forms part of the personal file.

14.2 Personal data held on the Council's Personnel database, the Payroll and Pensions systems, and other computerised information is maintained with strict guidelines on the maintenance, confidentiality, security and access to the information held. The information is stored for the reasons stated in accordance with the Data Protection principles and for the purposes stated in Section 9, above.

15. Security of Personal Files

Overall Arrangements

15.1 The Head of HR is responsible for the security and maintenance of personal files. The contents of the files will include items on the following list and any other relevant documents necessary for a full and accurate record of the employee's employment.

15.2 The information kept as part of an employee's personnel record is "formal data" that the Council requires to carry out its business and meet legislative requirements, e.g. payroll information, recruitment documentation, contract of employment that may be held under the generic term as the Personnel File.

15.3 Other information on personal data is "informal" data that is required for day to day operational management purposes, e.g. internal working relationships, workload problems, etc. This information can often be of a personal nature, may not be sufficiently reliable and should not enter a formal record system and therefore become part of the personal file.

Security Arrangements

15.4 Files will be held in lockable cabinets, which are only left open during normal office hours. Personnel files may only be referred to by employees of the Council and other persons authorised by the Head of HR.

Access

15.5 Whenever possible, managers needing access to files should come to the HR Team for that purpose. It is not acceptable for personnel files to be placed in the internal post system.

Unrestricted Access

- Executive Directors/Chief Executive
- HR Staff
- Head of Internal Audit

Restricted Access

- Managers to staff in their own Team(s)
- The Director of Resources (to all staff, with non-financial data removed)
- Head of Accountancy (to all staff, with non-financial data removed)

16. Basic Contents of Personnel File (checklist)

- i. Initial Recruitment Documents
- ii. Advertisement
- iii. Job Description
- iv. Person Specification
- v. Interview Notes
- vi. Application Form
- vii. References
- viii. Medical Clearances
- ix. Criminal Records Bureau checks
- x. Contract of Employment
- xi. Statement of Particulars
- xii. Copy of necessary qualifications
- xiii. Asylum and Immigration Act check

17. Subsequent Employment and Leavers Record

- i. A printout of personal information kept on East Herts CPIS
- ii. Probation report
- iii. Recruitment documents for all promotions, secondments, acting up, etc.
- iv. Medical referrals
- v. Grievance and other complaint papers
- vi. Accident/investigation reports/RIDDOT form - Employers copy
- vii. Industrial injury form
- viii. Job review and supervision records
- ix. Notification of Recoverable expenses, e.g. car loans, relocation, car

leasing, post entry training, etc.

- x. Leave record
- xi. Working Time opt out
- xii. Report of Act of Violence
- xiii. Resignation letter and confirmation of receipt
- xiv. Documentation relating to disciplinary matters, hearings, appeals and confirmation of outcome.

N.B. Expired warnings and papers relating to disciplinary investigations that do not result in formal disciplinary action will be placed on the personal file in a sealed envelope that may only be opened by the Head of HR.

- xv. Documentation relating to capability matters, meetings, appeals and confirmation of outcome.
- xvi. Mortgage and/or loan references
- xvii. MATB1 Form and applications for maternity leave
- xviii. Pay enhancement information, e.g. honoraria
- xix. Cross reference record for any other existing work file
- xx. Sickness absence record
- xxi. PDRS records
- xxii. Training and development records
- xxiii. Name changes, marital status, changes to home address
- xxiv. Outcome letter for Ill Health Retirements
- xxv. Other relevant information, e.g. management advice/file notes, acceptance of terms of use of e-mail/Internet

18. Statement for inclusion on application forms:

Data Protection Act 1998:

The personal information submitted by you on this application form and in any accompanying documents will be used by the Council, and any other person it appoints to assist, for the purpose of selecting who to appoint to the job applied for and to monitor the effectiveness, efficiency and fairness of the selection process. The information may also be used in internal proceedings to consider a complaint about the selection process and/or to defend the Council against a legal challenge to the fairness of the selection process from any interested party.

The information supplied by you will also be subject to verification and we may need to contact people and/or organizations to confirm some of the facts contained in your application, e.g. referees, previous employers, educational establishments, examination bodies, etc.

If you decline to give your consent as requested above the Council will be unable to consider your application for employment. Please sign the statement below indicating your consent to the information being held, used and verified as described above. I have read the above statement and consent to the personal data submitted with this job application being used for the purposes described.

Signed:

Date:

19. Statement for inclusion in contracts of employment:

Data Protection Act 1998:

The personal information submitted by you with your application for appointment together with any further information you provide and personal information relating to the history of your employment with the Council will be held on manual and computerised filing systems and used throughout your employment with the Council (and any successor organisation) for a range of personnel management functions in the legitimate interest of the Council (and any successor organisation), including:

- i. Recruitment, promotion, training, deployment and career development
- ii. Statistical monitoring.
- iii. Business planning.
- iv. Payroll administration.
- v. For contacting next of kin and arranging medical attention in connection with death, illness or injury whilst at work.
- vi. Compliance with statutory requests from the Inland Revenue, DSS, Benefits Agency and other relevant public authorities/agencies.
- vii. Discipline, capability and sickness absence management.
- viii. Selection for redundancy.
- ix. The provision of references to potential future employers and other organisations who you have authorised to approach the Council for a reference.
- x. Defending the Council (and any successor organisation) at Employment Tribunal and other legal proceedings as necessary.

Some elements of the above information are classified as sensitive personal data. In particular, information on ethnic or racial origin (if given freely by the member of staff at recruitment) and information on trade union membership (if known) and the physical and mental health of members of staff will be held by the Council and used for the purposes listed above.

It is a condition of this contract of employment with the Council that you agree to the processing of sensitive data that you have provided prior to your employment with the Council and during your employment with the Council.

If your employment is transferred to another organisation under the provisions of the Acquired Rights Directive and the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations personal data held by the Council may be passed to the successor organisation.

The Council will continue to hold personal data when you leave the Council's employment for 5 years and will use that information for:

- i. Statistical monitoring purposes.
- ii. Pensions administration.
- iii. The provision of references to potential future employers and other organisations who you have authorised to approach the Council for a reference.
- iv. Compliance with statutory requests from the Inland Revenue, DSS, Benefits Agency and other relevant public authorities/agencies.
- v. Defending the Council (and any successor organisation) at Employment Tribunal and other legal proceedings as necessary.



EAST HERTS DISTRICT COUNCIL
GRIEVANCE POLICY AND PROCEDURES
NOVEMBER 2005

November 2005

HUMAN RESOURCES

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GRIEVANCE PROCEDURE

1 Purpose

- 1.1 In the majority of cases employees can resolve their concerns through informal discussion with their line manager, however if this fails to resolve the issue, the Council Grievance Procedure enables individual employees to raise their grievance through formal processes to resolve disputes internally.
- 1.2 This updated Grievance Procedure takes account of the Employment Act 2002 (Dispute Resolution) Regulation 2004 and has been designed to uphold the principles of natural justice. (Other legislation relevant to this procedure is the Employment Act 1999.)

2 Principles of the Grievance Procedure and Guidance in its Application

- 2.1 The Procedure is accessible to employees of the Council, regardless of length of service (except see 3.1 below). However, the employee should, where possible, attempt to resolve the grievance with their line manager informally.
- 2.2 If this proves impossible then the formal procedure should be invoked. It is important that all employees understand the procedure and are aware of their rights.
- 2.3 An employee whose first language is not English or who requires assistance because of a disability should ask for clarification from Human Resources, their union representative or line manager. Similarly those who have difficulty in setting out their grievance in writing are encouraged to seek assistance from a trade union representative, work colleague or friend
- 2.4 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.

- 2.5 The standard 3-step procedure must be used in the majority of cases.
- 2.6 The modified 2-step procedure will apply where employment has ended and either the employer was not aware of the grievance before employment ended or the employer was aware but the standard procedure had not commenced or had not been completed AND the parties agree in writing that the modified rather than the standard grievance procedures should apply.
- 2.7 All parties have the right to be accompanied and/or represented at any of stage of the Standard 3-step procedure by a union representative, a colleague or friend.
- 2.8 Management may be supported by Human Resources.
- 2.9 The employee raising the grievance will be required to specify what resolution they seek.
- 2.10 If an employee raises a grievance during the course of a disciplinary process which relates to the case, consideration will be given to suspending the disciplinary procedure for a short period to deal with the grievance.

3 Scope of the Procedure

- 3.1 The procedure does not apply to employees at chief officer level and above.
- 3.2 Employees may pursue a grievance if they have a problem or concern relating to their work, working conditions or relationships with colleagues or managers.
- 3.3 Where a grievance applies to more than one employee, it may be more appropriate for the union/s to raise the matter through the collective disputes procedure.

3.4 The following matters cannot be raised under this procedure:-

3.4.1 Matters relating to income tax, national insurance, pension scheme rules or other issues beyond the Council's control.

3.4.2 Issues that should be raised under other Council procedures. For example, concerns about matters of public interest, harassment or bullying, or job evaluation.

3.4.3 A grievance cannot be raised to appeal against a disciplinary decision.

3.4.4 Frivolous and/or vexatious issues.

3.4.5 Matters previously raised, unless management has not taken action on recommendations.

4 The Standard Formal Grievance Procedure

Where informal efforts have not resolved problems, or where an informal approach is inappropriate and the employee is still in employment then the following procedure may be used.

4.1 Stage 1: The employee must submit a formal complaint in writing to their manager. They should state the reasons for raising a formal grievance and the resolution they are seeking.

4.2 Stage 2: The manager should refer the matter to the Head of Service or appropriate senior manager who should invite the employee to a grievance hearing.

4.3 Stage 3: If the employee remains aggrieved at the stage 2 hearing, they may appeal the decision. They should advise the Head of Service upon what grounds on which they remain dissatisfied with the decision reached at stage 2.

5 The Modified Formal Grievance Procedure

- 5.1 This procedure will apply in situations where the standard procedure would have applied but employment with the Council has ended and either the Council was not aware of the grievance before the employment ended or the standard procedure had not been completed by the time employment ended and both parties agree in writing the modified procedure should apply.
- 5.2 Stage 1: Statement of Grievance. The employee should write to their manager setting out the grievance and the basis for it. The employee should provide as much information as possible in a document, which will form the "Statement of Grievance". It will set out: what or who the grievance is about; the nature of the complaint, giving dates examples etc. Details of any witnesses who are prepared to support the grievance and what they seek as a resolution.
- 5.3 Stage 2: On receipt the manager should advise the Head of Service who must investigate the complaint as fully as possible in order to reach an informed decision. They must provide, in writing, a "statement" setting out their response to the Statement of Grievance and their decision.

6 Timescales

6.1 Standard Formal Grievance

The timescales set out below are intended to ensure that matters are concluded as fairly and as quickly as possible. However they may be varied by management in circumstances beyond their control or by mutual agreement.

Stage 1	Employee writes to manager advising that they are aggrieved.	
Stage 2	Acknowledge receipt of grievance	within 3 working days
	From receipt of the grievance to the date of the hearing	15 working days
	Notification of date, time and place of hearing and copies of all supporting documentation	10 working days before the date of the Hearing
	Time allowable to reconvene meeting if the employee's companion is unable to attend	5 working days
	Any individual named in a complaint may submit evidence and call witnesses prior to the hearing	3 working days prior to the hearing
	Confirmation of Hearing decision in writing from date of hearing	5 working days from the end of the hearing
Stage 3	Employee writes to Head of Service invoking the appeal stage,	7 working days from date of letter
	Timescales for notification of dates, receipt of further statements etc..	as for stage 2 hearing

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7 Responsibility for Hearing a Grievance

- 7.1 Managers should make every effort to resolve grievances informally and are encouraged to seek advice from HR at any stage.
- 7.2 If they are unable to resolve the problem, and the employee decides to invoke for the formal procedure, then they should refer the matter to a senior manager. As a general this should be the Head of Service, or if the grievance involves the Head of Service, the hearing should be conducted by the relevant Director. If the grievance concerns a director then the case will be heard by the Executive Director.
- 7.3 Appeal hearing should be conducted by the Director of the Service, The Executive Director or a sub-committee of members, depending on who heard the matter at stage 2.
- 7.4 HR may provide support for management and will provide advice to officers hearing the case at stage 2 and 3.

8 Other Considerations

- 8.1 The right of an employee to invoke the formal grievance procedure is statutory. However as already stated every effort should be made by both parties to reach a mutually acceptable resolution informally.
- 8.2 Managers should note that once an employee decides to pursue a formal grievance, this policy must be followed.
- 8.3 Managers should be aware that assistance may be required by some staff to ensure they have equal access to this procedure. If in doubt about this, please contact HR or Unison for further advice.
- 8.4 Employees should note that they must exhaust the grievance procedure before they seek other remedies.
- 8.5 Both parties should respect the confidentiality of the process in order to achieve an effective and lasting resolution. Failure to do so may result in disciplinary action.

Appendix 1

THE CONDUCT OF GRIEVANCE HEARINGS (STAGE 2)

1. The Hearing Officer should be accompanied by an HR officer, whose role is to advise on procedure, to advise on ensuring consistency and equity of treatment, to take notes of the proceedings of straightforward, non-contentious cases and to ensure that the letter setting out the decision of the hearing is sent to the employee. He/she may also ask questions of clarification of either side.
2. The Hearing Officer will give guidance to both sides on the level of formality required at the hearing with an emphasis on the need to achieve a mutually acceptable resolution.
3. The Hearing Officer will decide whether an additional note taker should be present.
4. The Hearing Officer will:
 - ◆ Ensure that all the relevant documents have been received by the parties.
 - ◆ Provide an opportunity for either side to raise any concerns about procedural matters.
5. The employee will present her/his case – either in person or through their representative – setting out what resolution they are seeking.
6. Management will then have the opportunity to respond.
7. At this point the Hearing Officer will invite both parties to participate in conciliation talks to resolve matters. The format of such talks will be agreed at this point and, where the grievance involves the behaviour of a work colleague, they should also be involved.
8. If conciliation process is unsuccessful the formal procedure will resume.

9. Witnesses, if any, will remain in the room only while they give their evidence. In matters where a grievance has been raised in relation to the behaviour of a work colleague, that person would normally be expected to attend as a witness. In such cases, a Trade Union representative, or a colleague or a friend may accompany them.
10. Witnesses will be questioned by the employee and then Management and by the Hearing Officer. The HR Officer will also be given the opportunity to ask questions.
11. At the conclusion of her/his case, the employee may be questioned by the employee or her/his representative, the Hearing Officer and the HR Officer.
12. Referring to any documentation submitted prior to the hearing and the verbal information from the employee and his/her witnesses.
13. Both parties will then be given the opportunity to sum up, starting with the employee and then management, without introducing any new evidence.
14. If the Hearing Officer feels that he/she needs further evidence, or to hear from a witness again, or to hear from a witness that neither side chose to call, before he/she can reach a conclusion, he/she may adjourn the hearing to make the necessary arrangements.
15. The Hearing Officer will then ask everyone, except the HR Officer to leave the room whilst he/she considers the matter, advised by the HR Officer.
16. Both sides will then be called back to be told the decision. If more time is needed to reach a decision, both sides may be informed of the decision in writing. Such delays should be avoided wherever possible and only in exceptional circumstances exceed 1 working day.

THE CONDUCT OF APPEAL HEARINGS (STAGE 3)

1. Appeal hearings will not rehear the whole case, but will focus on the basis upon which the decision at stage 2 has not been accepted. Except where the appeal is based on new evidence, therefore, appeal hearings will not take evidence from witnesses.
2. The Hearing Officer Stage 3 will ensure that all the parties have the relevant documents and ensure that both sides understand the grounds of appeal that that are to be considered.
3. The employee or her/his representative will set out the grounds of the appeal and their justification, referring to the documents that have already been submitted.
4. If witnesses are called they will be questioned by both sides. The hearing officer and the HR Officer may then ask questions.
5. At the conclusion of the case for the appeal, management, the hearing officer and the HR Officer may question the employee or her/his representative.
6. Management will then be offered the opportunity respond to the case for appeal in a similar fashion.
7. At the conclusion of her/his response she/he may be questioned by the employee or her/his representative, the hearing officer and the HR Officer.
8. The hearing officer will then ask everyone, except the HR Officer to leave the room whilst he/she considers the matter, advised by the HR Officer.
9. Both sides will then be called back to be told the decision. If more time is needed to reach a decision it may be given to both sides in writing. Such delays should be avoided wherever possible and only in exceptional circumstances exceed 1 working day.



EAST HERTS COUNCIL

ENDING OF FIXED TERM EMPLOYMENT PROCEDURE

NOVEMBER 2005

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1. Purpose

- 1.1 The ending of a fixed term contract is a dismissal in law. Therefore the Council's Ending of Fixed Term Employment procedure has been produced to ensure that the ending of such a contract is carried out in a fair and reasonable manner.
- 1.2 This Procedure has been produced in line with the Employment Act 2002 (Dispute Resolution) Regulation 2004, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and The Employment Act 1999.

2. Principles of the Procedure

- 2.1 The process of ending a fixed term contract will be carried out under the statutory 3 step dismissal procedure and therefore have the right of appeal against the decision to terminate the contract.
- 2.2 The procedure will help to ensure that an employee in this situation can be kept fully informed of the situation relating to the post and the reason for termination of the contract, as appropriate. Thus misunderstandings and disputes about an individual's employment position may be avoided.
- 2.3 Managers should consult Human Resources for guidance on the use of this procedure to ensure consistency of approach.

3. Scope of the Procedure

- 3.1 The procedure will apply to:
 - 3.1.1 Any employee on a fixed term contract (including all types of temporary contract) who will have accrued at least one year's continuous service with the Council (including previous continuous service with other local authorities) at the date the contract will come to an end.

3.1.2 Situations where the contract is terminated for 'some other substantial reason'.

3.2 The procedure will not apply to;

3.2.1 conduct or capability where other procedures are in place.

3.2.2 in cases of redundancy and managers should be aware of the following:

- Under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 employees on a succession fixed term contracts totalling more than 4 years, if employed on such contracts after July 2002, will be deemed to have permanent employee status in law and therefore this procedure would not be appropriate.
- Under the Employment Rights Act 1996 after 2 years continuous employment there is an entitlement to redundancy, regardless whether the employee has a permanent or a fixed term contract.

4. Record Keeping

4.1 Human Resources will be responsible for monitoring such contracts and to provide advice but it will be for individual managers to advise whether the contract should be renewed or terminated and the grounds for non-renewal (e.g. no further funding or completion of project).

4.2 Human Resources will write to the employee on the manager's behalf advising renewal or termination of the fixed term contract.

5. The Statutory 3-Step Procedure

5.1 Step 1 Statement of Reasons for Termination of Contract and Invitation to Meet and Discuss

- 5.1.1 As soon as practical Human Resources will write to the employee explaining the reason for the non-renewal of contract and inviting them to a meeting with their manager to discuss the matter further. The letter will advise the employee of their right to be accompanied by a colleague or trade union representative.
- 5.1.2 The letter will ask the employee to contact their manager to set up a date to meet and will give a timescale by which they must do so. This will vary according to the circumstances of the situation but should give the employee time to consider what they want to do.
- 5.1.3 If the employee does not wish to meet and accepts the contract is to end, Human Resources will write to confirm that they do not wish to exercise the right to the meeting and confirm the end date.

5.2 Step 2 The Meeting

- 5.2.1 The employee should make all reasonable steps to attend the meeting. If the employee's companion is not available on the date set, the employee should propose an alternative date within 5 working days of the date set for the meeting. If the employee fails to do so, then management will set the date and the meeting will proceed without the employee's companion if they are unable to attend.
- 5.2.2 The manager is obliged to rearrange the meeting once.
- 5.2.3 At the meeting the employee should explain why s/he does not think it appropriate to terminate the contract.

5.2.4 Following the meeting the manager should write to the employee giving his/her decision and the reasons for it. The letter should also notify the employee of his/her right to appeal against the decision, the right to be accompanied and if s/he decides to exercise this right this should be communicated to his/her manager within 5 working days.

5.3 Stage 3 The Appeal

5.3.1 If the employee decides to exercise his/her right of appeal, the line manager concerned should refer the matter to his/her head of service/service director (hearing officer stage 3) as appropriate and arrange an appeal meeting. This need not take place before the termination of the contract takes effect. The employee is entitled to be accompanied.

5.3.2 The employee should take all reasonable steps to attend the meeting on the date and time arranged. However, if the hearing officer stage 3, the employee or his/her companion cannot attend for a reason that could not be reasonably foreseen, a further meeting should be arranged.

5.3.3 If the postponement is due to the employee companion being unavailable, the employee should propose an alternative date within 5 working days of the date set for the meeting. If the employee fails to do so the manager will set the date for the meeting, which will proceed without the employee's companion if they are unable to attend.

5.3.4 The hearing officer stage 3 is only obliged to rearrange the meeting once.

5.3.5 After the appeal meeting, the hearing officer stage 3 should inform the employee of their final decision and the reasons for it in writing. If the decision is to uphold the termination of the contract the date of termination of contract should be included in the letter, whether or not it has already taken effect.