

REVIEW OF APPEALS AGAINST DISMISSAL POLICY

To: **Staffing and Appeals Committee**

Date: **23rd September 2015**

From: **Mark Lloyd, Chief Executive**

Electoral division(s): **All**

Purpose: **The purpose of this report is to request a review of the Appeals Against Dismissal Policy, specifically altering the panel composition.**

Recommendations: **Strategic Management Team recommend members consider option 1. Section 4 details the safeguards that would be put in place to ensure an effective and robust decision making process, including receiving a report to enable the committee to adopt an overarching scrutiny approach to dismissal appeals.**

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1.0 BACKGROUND / INTRODUCTION

1.1 An employee's right to appeal against dismissal is a matter of natural justice and the Council's dismissal appeals procedure reflects the ACAS Code of Practice. Whilst the ACAS Code itself is not primary legislation, any Employment Tribunal would query why any procedure did not comply with the code.

1.2 There are a range of reasons for which an employee may have been dismissed:

- lack of capability or qualifications to carry out their work (this includes ill-health capability)
- unsatisfactory conduct
- redundancy
- statutory ban
- some other substantial reason.

All employees are advised in writing of their right to appeal.

1.3 Appeals against dismissal are currently heard by either:

- a Staffing and Appeals panel comprising three elected members
- an independent Corporate Director and a relevant adviser (*some redundancy situations and expiry of fixed contracts only*)

1.4 A key component of an effective appeals process is for the person(s) hearing the appeal to be independent and of sufficient authority to come to their own view on whether, given all the circumstances of the case, to conclude that the decision to dismiss was sound, i.e. it was a reasonable conclusion for the Employer to have reached.

1.5 The number of appeals is relatively low. Recent appeals against dismissal and the outcomes can be summarised as

		Outcome	
Year	No. Appeals	Upheld	Dismissed
2012/13	3	1	2
2013/14	2	1	1
2014/15	3	0	3

1.6 Members may be aware that nationally there were changes to the Employment Tribunal system (driven partly by efficiency requirements) which came into effect in July 2013. This includes the change from a 3 member panel hearing cases to a judge sitting alone in some cases..

2.0 REVIEW PRINCIPLES AND REASONS

2.1 The review principles are to enable the appeal process to become more efficient whilst maintaining the principle of natural justice, remaining compliant with the ACAS code and continuing to ensure robustness of the decision making outlined.

The reasons for review are:

1. The Council will shortly implement a revised HR Policy “Improving Performance”. The revised policy facilitates a definite cultural shift where performing to the required standard “doing your job well” is the expected norm, and allows for performance concerns to be addressed quickly and firmly. This is in response to perceived barriers to dealing with employees whose performance is lacking.

Strategic Management Team (SMT) considered feedback on the current policy including that it does not enable managers to swiftly resolve poor performance, and that the process takes a disproportionate amount of management time. Even when an employee is dismissed there is a lengthy period of time if the individual appeals, which has an impact on services (as arrangements cannot be made to replace the individual as the appeal decision may result in them being reinstated). Compared to other HR case work, there are fewer performance cases where HR advice is sought.

2. SMT want to deliver a clear message to all managers and directors that they are expected to manage employees who are not meeting the required standard and that they will be held accountable for their actions.
3. In the context of Council resources reducing by 40% over the next five years, and the new operating model, the Council has identified that one of the key enablers to help the Council meet its agreed outcomes is to “haveofficers who are equipped for the future”. In line with the Council’s constitution, it is officers who are responsible for making decisions and to manage the day to day delivery of its services. Given that employment issues (other than for the most senior officers) are the responsibility of officers, it would follow that senior managers and directors should be empowered and accountable for their actions. In addition, in considering altering the appeal panel, it needs to be weighed up as to whether it achieves a balance between resources and risk.
4. The time and resources taken to arrange appeals (due to the number of participants and their seniority). The current procedure states that appeals should be heard within 40 working days. This time period is already at the upper end of what would be considered by Employment Tribunals as reasonable. Last year, the average time between the date of dismissal and the date of the appeal was 78 days which equates to 9.75 weeks. (It is particularly difficult to arrange appeals at certain key times e.g. budget setting /election time when councillors have more limited availability). Should an individual proceed to an Employment Tribunal, the Council would have to justify why an appeal was not held within the policy time limits (a procedural breach) especially given the time limits are already very lengthy and the ACAS code is clear “*Appeals should be heard without unreasonable delay*”.
5. The panel size and composition is daunting for employees who are unlikely to have contact with Councillors previously, and in many cases are unfamiliar with such formal meetings and settings. (It can also be off-putting for some managers to present to members if their role does not involve member contact.)

3.0 OPTIONS

- 3.1 All the options comply with the ACAS code which states “*The appeal should be*

dealt with impartially and ideally, wherever possible with a manager who was not previously involved in the disciplinary meeting.”

3.2 Option 1

All dismissal appeals to be heard by a Director sitting alone who is completely independent of the case.

The policy will continue to exclude appeals from The Head of Paid Service and Chief Officers.

The benefit of having a director from within the service, or a closely aligned service, would be that they would have expertise and a sound level of understanding of the context and prevailing circumstances to enable an appropriate decision to be made. It clearly makes the service responsible and accountable for their actions and would enable SMT to reinforce the message to Directors and managers that improving employee performance to achieve better outcomes is key to improving services in a period when resources are reducing.

This would also reflect the employer norm, where most appeals are heard at an executive level rather than at board level. It would have the advantage of releasing councillors' time spent at both appeal stage and as a witness for any subsequent employment tribunals, and move to a position where Councillors provide overarching scrutiny on employment matters, rather than becoming directly involved in individual employee cases.

It would also enable employees to have their appeal held more quickly (reducing the likelihood of any procedural breaches) and require a reduction in resources required.

3.3 Option 2

All dismissal appeals to be heard by a Panel of 3, comprising of two members and a Director who it is proposed would act as chair of the panel (where currently these are heard by a panel of three members).

The benefit of having a Director from within the service, or a closely aligned service, would be that they would have expertise and a sound level of understanding of the context and prevailing circumstances to help support the decision making process.

This would begin to move to a situation where senior officers are held accountable for all individual employment decisions and the Director would act as a witness at any Employment Tribunal proceedings thus removing the need for Councillors to be involved in such proceedings. It would not however address the time taken to arrange appeals nor the resources involved.

3.4 Option 3

No change (i.e. 3 members)

The benefit of having a panel comprising of members only is that they will be perceived as more independent of any prior employment decisions.

The disadvantages of not making any changes can be summarised as:

- Directors/managers are not ultimately accountable for their decisions.
- Members may be required to participate in Employment Tribunal proceedings.
- The time taken to hear appeals is not likely to reduce nor would it reduce the resources required.
- Managers may be more hesitant to take firm decisions to help improve how performance is managed.

4.0 SAFEGUARDS TO ENSURE A REASONABLE CONCLUSION IS REACHED

- 4.1 Members who have undertaken the Appeals Against Dismissal training will be fully aware that decisions on employment matters are based on a test of reasonable belief probability rather than the “beyond all reasonable doubt” test. This will continue.

The Council will continue to aim to ensure all appeals are heard and decisions made based on the merits of each case. This does not mean that if an appeal decision is subsequently successfully challenged via an Employment Tribunal claim that the appeal decision made was necessarily flawed.

Should members agree to the recommendation, a number of safeguards will be in place to ensure that the appeal process remains robust, transparent and fair:

- Training for Directors who hear appeals will be mandatory.
- A senior member of the HR Advisory Team will still be present to advise Directors at an Appeal, and Legal advice can be sought where necessary (in addition to when dismissal is being considered).
- Appeals will still be submitted to the Head of People for corporate oversight.
- An annual report will be submitted to Staffing and Appeals Committee detailing the number of appeals, reasons, outcomes etc, in order that the Staffing and Appeals Committee are able to scrutinise the process and retain a strategic oversight.

5.0 CONSULTATION

Consultation with the recognised Trade Unions would commence after the Staffing and Appeals Committee have considered the matter.

Source Documents	Location
None	Martin Cox, Head of People, LGSS Cambridgeshire County Council, Shire Hall