



**Ryedale UNISON Branch**  
**Response to Proposed Scrapping of Elected Member Appeals Panels**

**1.0 Introduction**

- 1.1 On 12 August 2015 Unison branch representatives were advised verbally by the Corporate Director of a proposal to end the use of Elected Member panels for determining appeals against dismissal. The matter was discussed briefly with the Corporate Director and Human Resources Manager, by the Branch Secretary and Service Conditions Officer, on 10 September. Subsequently, on 23 September, a copy of a draft report scheduled to be taken to P&R Committee on 26 November, was provided to the branch committee.
- 1.2 On 8 October 2015 the report and UNISON's draft response were discussed at a further meeting with the Corporate Director and Human Resources Manager. It was clear following this meeting that there was fundamental disagreement on the reports recommendation to get rid of the elected members appeals panels for cases of dismissal arising under disciplinary, capability and absence management proceedings .

**2.0 Comments on Report to Committee by Corporate Director**

- 2.1 The Corporate Director's report sets out several reasons for recommending approval of the proposal to scrap Member Appeals Panels for appeals against dismissal and to replace them with a panel of Officers.
- 2.2 Section 8.4 of the report states that the proposed change is based on Guidance from ACAS, citing the ACAS revised statutory code (issued in 2009) as being the appropriate document to consider prior to revision of disciplinary and grievance procedures. A quote taken from the Code and included in the report states: "*the appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case.*" This wrongly suggests that the involvement of Elected Members in appeals is contrary to the ACAS Code.
- 2.3 It should be noted that the Code applies to all employment sectors and the fact that the Code refers to managers and not Councillors is not significant. On 23 October 2015 the branch sought the opinion of an ACAS Conciliation Officer on this issue. The Officer, who has nearly 20 years experience in his role, expressed the view that the use of Member Appeals Panels was not in breach of the ACAS Code and said that he knew of no case where it had been deemed to be so. He was not aware of any case where the use of a Members Panel by a local authority had been challenged on such grounds. Clearly then, neither the ACAS Code or ACAS itself opposes the involvement of Elected Members appeals panels.

- 2.4 The significant part of the Management report quote from the Code is the requirement for appeals to be dealt with impartially and the desirability that this is by someone not previously involved in the case.
- 2.5 Section 5.8 of the Corporate Directors report states that "*All three policies (Disciplinary, Grievance and Absence Management) have been subject to a joint review with UNISON, though the matter of appeals being heard by Officers was not agreed with Unison.*" To clarify, this is a reference back to 2010 when the present policies were reviewed in consultation with UNISON prior to approval by Elected Members. The review was undertaken having regard to the revised ACAS Code (issued in 2009). Current policies do therefore have regard to the revised ACAS code and any suggestion that they are incompatible with the Code in respect of who deals with appeals is incorrect.
- 2.6 It is particularly significant that we have been here before. The appropriateness of Member Appeals Panels was considered by the Councils Policy and Resources Committee on 1 April 2010. A proposal to scrap the member panels for dismissal appeals was rejected by the committee. Strong support for retention of Members Appeals Panels was voiced at the meeting by Cllr. Edward Legard, who we believe was the Committee Vice-Chairman at that time. Cllr. Legard, no doubt calling upon his own professional expertise and insight as an employment law barrister with considerable experience of Employment Tribunal cases, defended the present arrangements. There have been no changes in the ACAS Code or relevant employment law since then and Cllr. Legard's views on the merits and safeguards afforded by the Members Appeals Panels should not be disregarded now.
- 2.7 Given the fact that the ACAS code has not been revised since then, there is no obligation for the Council to revisit this matter. However, if it is to be looked at again this should only be done as part of a joint review of the procedures in their entirety. This would be consistent with the principles set out in the Joint Collective Disputes Policy agreed between the Council and UNISON in 2010.
- 2.8 Section 7.3 of Corporate Directors report states that those authorities where members are still involved in appeals will be reconsidering their existing policies when they are due for review. This seems to imply that Member involvement in appeals is on borrowed time elsewhere. In fact what it really means is that if/when procedures are reviewed this aspect of the procedures will be looked at alongside all other aspects of existing procedures – that is after all what a review is. It could just as legitimately be said that those Councils that do not currently involve Members at the appeal stage will reconsider their position when their policies are reviewed. It would certainly be mistaken to believe that direct involvement of Elected Members in dismissal appeals is not common practice in local government and that it will not continue to be so. When we carried out a



'Google' search on this subject we found that the vast majority of the local authorities were using Member Panels for appeals.

- 2.9 A further reason given in the report to justify scrapping the Members Appeals Panels is the claim that this would help to ensure that procedures are carried out promptly. The implication is that having appeals heard by Elected Members causes excessive and unavoidable delay in disciplinary proceedings. Experience of recent years does not support this view. There have been some very protracted disciplinary cases at Ryedale DC in the last two years. In some cases the delays were unacceptably long. For example, in one case there was a delay of over 5 weeks following the occurrence of the incident giving rise to disciplinary action before an investigatory interview took place. There was then a further delay of 12 weeks before a disciplinary hearing was held, in total 17 weeks passed between the incident and the disciplinary hearing. In another case the delay between the incident and disciplinary hearing was 15 weeks.
- 2.10 The delays in both cases are attributable to management failings and there was a failure in each case to satisfy the ACAS Code in respect of employers being expected to deal with disciplinary issues promptly. The fact that in one of these cases there was then a further delay of several months before an appeal was heard by Members does not mean that Member Appeals Panels should be scrapped. Applying this logic it could be argued that management disciplinary panels should themselves be replaced by some other alternative. It is not the procedure that is the problem and in the two cases referred to it would have been possible to have a much quicker resolution without changing the procedure. The solution to undue delays is to ensure that the disciplinary procedure is managed fairly, efficiently and effectively at all stages rather than making radical changes to the procedure itself. The ACAS Code is indeed a very good basis for dealing with these matters properly. With good management there is no reason why the convening of a Members Appeal Panel cannot be undertaken in a timely manner and this is not a valid justification for scrapping the panels.
- 2.11 Even if it were envisaged that there might be a procession of employees dismissed on disciplinary/capability grounds in the coming months and years, ending the existing arrangements would not be justified. Good practices that work well should not be sacrificed simply because they are considered inconvenient.

### **3.0 Reasons Why UNISON Support Retention of Members Appeals Panels**

- 3.1 UNISON strongly supports the involvement of Elected Members in dismissal appeal cases. We have discussed this as a branch and our views reflect those of our membership. Elected Members, who are ultimately accountable for what Ryedale DC does, have the advantage of being part of the organisation and being familiar with its values, whilst at the same time



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having a significant degree of independence and detachment from day to day personnel matters. They are we believe better placed than managers, particularly in a small authority such as Ryedale, to ensure objective consideration of dismissal appeal cases. Their involvement gives a valued degree of integrity to the procedures and reassurance of fairness to staff.

- 3.2 We feel that retention of provision for the involvement of Elected Members in dismissal cases is particularly important because of the nature of this organisation. Ryedale DC is a small authority (smaller than it was in 2010 when members rejected similar proposals). Inevitably, members of a small, close knit management team will be familiar with each other. It is hard to envisage that the critical requirement for appeals to be dealt with impartially and by a manager or managers with no previous involvement or detailed knowledge of a case would be practicable. This would make the process unfair. Fairness and the perception of fairness are vital in these proceedings and the proposed change will remove this from the process.
- 3.3 The proposed change provides no safeguards to deal with a situation arising where prior involvement of both the Chief Executive and Corporate Director in a case renders the involvement of either of them in the appeal unfair. Notwithstanding the small number of member appeals there have been (less than 5 in the last six years) there was at least one case amongst these where this would have been a serious problem.
- 3.4 It is of course management's job to manage but managers should not be above the accountability and scrutiny that the current arrangements provide, particularly in view of the serious consequences of dismissal for employees, and potentially Ryedale District Council itself – in terms of reputation and costs that may arise as a result of any Employment Tribunal cases lodged.
- 3.5 In some cases dismissal may be unavoidable, that is not the basis of our objection, but we feel that it is vital that in all cases of dismissal management is accountable and decisions to dismiss employees are subject to appropriate scrutiny. We believe that the provision for a Members Appeal Panel does in itself give management cause to reflect very carefully in reaching decisions in cases where dismissal is being considered.
- 3.6 There is a suspicion amongst the workforce that removing the stage where management can be held accountable to elected members could encourage a more trigger happy approach by management. It would be perceived as a change intended to make it easier to dismiss employees. We think that the provision for member involvement in dismissal cases acts as an incentive for management to do its job in a scrupulous manner.
- 3.7 The Chief Executive has statutory responsibility for staff appointments and management, and as the disciplinary procedure states, disciplinary action is taken by the Chief Executive or her/his representative. This is a lot of power for one person to hold. It would not be in the interests of the Council to



eliminate the means by which, in relation to more serious disciplinary cases and cases of dismissal on capability and absence management grounds, this power can be held to account.

- 3.8 This proposal in effect says that Elected Members are not suitable for the task of hearing appeals. If Elected Members themselves agree to it and it is adopted then what will be missing in future is any provision for impartial internal scrutiny of employee dismissals.

#### **4.0 Conclusions**

- 4.1 The present arrangements for appeals have worked well for many years.
- 4.2 The current appeals procedures are compliant with the ACAS Code and are widely favoured by the workforce.
- 4.3 The procedures were reviewed in 2010 and Elected Members rejected a similar proposal then.
- 4.4 The proposed change is unnecessary. It would increase substantially the risk of breaches of the ACAS Code and in our view render the Councils procedures unfair. This would raise the prospect of dispute and increase the chances of dismissal cases ending up in the court system with consequential reputational and financial cost to the Council.
- 4.5 Most local authorities have procedures that involve elected members in appeals against dismissal and this will continue to be the case.
- 4.6 The reasons put forward to justify the proposal (the ACAS Code and to speed up proceedings) do not stand up to scrutiny.
- 4.7 Retention of the existing arrangements will help to ensure that employees have confidence that management is accountable for actions taken in relation to serious cases concerning matters of discipline, capability and attendance. This will provide assurance to the workforce that if they or any of their colleagues find themselves the subject of such proceedings they will be dealt with in a fair and objective manner.