

## Management Comments To UNISON Response Regarding the Report Entitled Member Involvement in Appeal Panels

1.1 No comment

2.1 No Comment

2.2 It is not suggesting that involvement of Elected Members in appeals is contrary to the ACAS Code. Section 8.4 of the report is clarifying the guidelines from ACAS. ACAS is governed by an Independent Council, including representatives of employer and employee organisations and employment experts and therefore offer and provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. RDC have and do endorse the Code of Practice at all times to ensure compliance and the ACAS guidance endorses senior manager involvement. It does not reference Elected Members as ACAS supports a broad spectrum of employers. *The NJC for Local Government Services, National Agreement on Pay and Conditions of Service states in Part 2 17.1 " Disciplinary Procedures - The employing Authority should ensure that all employees are aware of the disciplinary rules and procedures that apply. All employees should also be aware to whom they can apply if they are dissatisfied with any disciplinary decision. These procedures should accord with legal requirements and with the ACAS Code of Practice and guidance."*

2.3 RDC is not indicating there has been any breach now or at any time at all. The report is intending to respond to the request from Elected Members as stated in the main body of the report. As referred to in 2.2 it is recognised that ACAS does not make any reference to Elected Members. Council's are able to undertake their own decision making process to determine how appeals are heard.

2.4 No Comment

2.5 There is no suggestion that the policies are incompatible with the ACAS code, the request from Elected Members is being responded to and it is seen as an opportunity to modernise the approach whilst remaining in line with ACAS guidance.

2.6 Mr. Edward Legard is no longer an Elected Member. A current Elected Member has raised this matter and it will be for the relevant committee(s) to make the decision. The outcome from P & R refers as follows: **Sub Committee – Appeals Panel**

*That Councillors Farnell, Keal and Oxley be appointed the interim, pending officers bringing a report back to Policy and Resources Committee, following consultation with Unison regarding revision of the disciplinary policy. The report is to consider the Head of Paid Service or a nominated Senior Management representative being the final stage of the appeals process, in all cases, except where the Head of Paid Service or nominated representative have previously been involved in a case.*

2.7 Management can review a policy and procedure when it is appropriate to do so to update or keep in line with ACAS guidance, or changes in employment law and legislation. This report is following an Elected Member request. Consultation has been undertaken with Unison. There are no collective disputes to consider. There is not a need to look at the procedures in their entirety at this stage and this is not what the Elected Member has requested. See also 2.6 above.

2.8 Intelligence from the Yorkshire and Humber region indicate the current split is around 50:50 and that to modernise approaches and seek a more efficient practice the remaining

authority's are looking to propose removal of Elected Member Appeal Panels at the time of reviewing their procedures when seeking efficiencies in their business model. See also 2.6 above.

**2.9** Management have not said in the report that such an approach would help ensure that procedures are carried out promptly. There have been sensitive and extenuating circumstances relating to such matters in the past which had an impact upon being able to process a hearing/appeal in a more timely way. The matter in question here is regarding the appeal process. Any modernisation of approach can only be viewed constructively.

**2.10** The report is regarding appeals, and who hears. There have only been a very small number of appeals and convening an appeal is involved and multifaceted. In undertaking appeals with officers they can have access to regular training and development to ensure they are fully up to date in employment relations matters whilst being accountable and open to scrutiny. The Elected Member request continues to support natural justice, reasonableness and fairness by officers operating under the code of conduct.

**2.11** There has not been and it is not envisaged there will be a 'procession of employees dismissed on disciplinary/capability grounds' and to imply so gives a poor impression of how Unison perceive standards of performance with employees. Further, there has never been any indication that an appeal process is 'inconvenient' - an appeal is a part of natural justice, is referenced in ACAS guidance, is a requirement in employment law terms and affords best practice - for Unison to say this otherwise is extraordinary and would seem to go against the 'Collective dispute' approach which was referred to earlier. There is an ideal opportunity to refresh processes and enhance best practice.

**3.1** Any insinuation managers do not act with integrity is refuted. Managers act with fairness and objectivity given they are representing the Council in their decision making. Managers are comfortable with the proposal of undertaking appeal hearings and as in their day to day service requirements are fair and objective. It would be viewed that given the report is based on Elected Member request - Elected Members have every confidence in Officers undertaking the appeal process. All Officers must adhere to the Code of Conduct and reference is made to section 4.16.1 *It is important that local government Officers are exemplary in their conduct at work.*

**3.2** Fairness, equality and confidentiality is crucial in all employee relations matters. To have any appeals heard by Officers keeps sensitive matters contained and any bundles of documents that need to be shared are retained at Ryedale House, securely, so reducing the risk of personal data being lost etc. It is refuted that managers would not be impartial and the Code of Conduct underpins expected standards of behaviour.

**3.3** There have been no problems with hearings and appeals to date. This is speculation from Unison and an attempt to detract from the request from Elected Members. If we consider any small business where the Manager may hear the case and also undertakes the appeal - an Employment Tribunal would not deem this to be unfair. ACAS advise as per 8.4 in the main body of the report and such an approach is not unfair.

**3.4** In supporting the request of Elected Members this is not taking away any accountability and scrutiny. Members have trust and confidence in Officers otherwise they would not be requesting this approach.

**3.5** All employee relations matters are carefully considered and an appropriate measured approach is taken in light of the nature of the concern. Each case is considered on its own merit and any outcome taken is based 'on the balance of probabilities' from a robust administration process along with evidence and information provided at the time.

Under the Council procedure and under general expectations in employment law an employee subject to a disciplinary sanction is entitled to an appeal to another person or body separate from the person or body that made the original decision. 3.4 also applies.

**3.6** The time and resource that all managers input to ensuring a high quality and proficient standard of performance is achieved for cost effective service delivery and customer satisfaction is being questioned here and to imply a 'trigger happy approach' is a sad reflection of Unisons opinion of managers. There is no evidence nor is it justifiable to say that 'member involvement is an incentive for management to do its job in a scrupulous manner'.

**3.7** This is fact the Chief Executive is Head of Paid Service. Along with the Corporate Director they are Elected Member appointments. The constitution details "The Chief Executive has overall corporate management and operational responsibility (including overall management responsibility for all officers)", and "together with the Corporate Director they contribute to the corporate management of the Council through membership of the Management Team". hence they are correctly placed to hear appeals.

**3.8** This is refuted - and reference is made to the P & R minute as follows:  
***Sub Committee – Appeals Panel***

*That Councillors Farnell, Keal and Oxley be appointed the interim, pending officers bringing a report back to Policy and Resources Committee, following consultation with Unison regarding revision of the disciplinary policy. The report is to consider the Head of Paid Service or a nominated Senior Management representative being the final stage of the appeals process, in all cases, except where the Head of Paid Service or nominated representative have previously been involved in a case.*

#### **4.0 Conclusions**

**4.1** The present arrangements have not been reviewed since 2010 and need to be updated.

**4.2** The request for a review has been generated by Elected Members and is timely following 2010. The term 'favoured' is not in any ACAS guidance. The request from Elected members is compliant with the ACAS code.

**4.3** There is a different set of Elected Members. There is a need for a more modern approach to appeals and managers are better placed to undertake this role. This report has come as a request from a different set of Elected Members.

**4.4** The proposed change is valuable in modernising approaches. There is no additional risk to any breaches of the ACAS code or employment law matters and does not render the Council's procedures unfair.

**4.5** In the Yorkshire and Humber region, this is not the case and for other Authorities there is the intention to review as when policy and procedures and being refreshed. Locally, Selby do not have appeals going to Members. NYCC have appeals including dismissal appeals chaired by an officer of appropriate seniority and not an Elected member.

**4.6** It has not been suggested anywhere in the report that the proposal is justified through the ACAS code or will speed up proceedings. This is as a result of Elected Member request and is viewed as an opportunity to modernise the process and enable a more efficient and economic approach and does stand up to scrutiny.

**4.7** At the request of Elected Members the change to the appeal process will still continue to ensure a fair and objective approach whilst maintaining confidentiality and security of sensitive and personal data/information at all times. Any suggestion that such matters undertaken by managers would not be dealt with fairly is unjust and unmerited.

Draft