



PART B:	RECOMMENDATIONS TO COUNCIL
REPORT TO:	POLICY AND RESOURCES COMMITTEE
DATE:	16 JUNE 2016
REPORT OF THE:	CORPORATE DIRECTOR PHIL LONG
TITLE OF REPORT:	MEMBER INVOLVEMENT IN APPEAL PANELS
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To respond to a request from Councillor Ives which was made at P & R to alter the Policy relating to Member involvement in disciplinary appeals panels. This report seeks Member approval for a change that affects three Human Resources policies: the Disciplinary Policy, the Capability (Capability Performance) and Management of Attendance Policy. The change replaces the current provision for Member Appeals Panels, for appeals against dismissals, with Officer Appeals Panels.

2.0 RECOMMENDATION

- 2.1 Council is recommended to approve the replacement of Member Appeals Panels for appeals against dismissals with an Officer Appeals Panel.

3.0 REASON FOR RECOMMENDATION

- 3.1 The Head of Paid Service has statutory responsibility under Section 4 of the Local Government and Housing Act 1989 for the appointment and proper management of the Council's staff.
- 3.2 The Head of Paid Service has followed guidance from ACAS. Following the repeal of the Statutory Dismissal Procedures (SDP) in April 2009, ACAS produced a revised Code of Practice and 'Guide' for employers to consider prior to revising their policies and procedures. ACAS issued a further revision to the code under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 which was laid before both Houses of Parliament on 16 January 2015. This came into effect on 11 March 2015 and replaced the Code issued 2009. Employment Tribunals consider this information as a comparator against internal procedures should any claim be brought against the Council.

4.0 SIGNIFICANT RISKS

4.1 None.

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 The primary consideration for reviewing the appeal process is to enable a more efficient and economic approach as and when such situations arise.
- 5.2 The opportunity to appeal against a disciplinary decision is essential to natural justice, and appeals may be raised by employees on any number of grounds, for instance new evidence, undue severity or inconsistency of the penalty. Such appeals are heard by an Officer Panel, only appeals against dismissal are currently heard by members.
- 5.3 The purpose of an appeal is to enable an independent review of the 'reasonableness' of the outcome of the disciplinary hearing and is important to focus on reviewing the process followed and the appropriateness of the decision.
- 5.4 Historically, the National Joint Council for Local Government Services has not specified who should hear appeals. From 1984 The NJC did not issue detailed guidance on the formulation of disciplinary rules and procedures, but recommended local authorities to determine, by operation of the procedures normally adopted by local parties, arrangements appropriate to local circumstances which have full regard to the principles and standards set out in the ACAS Code of Practice.
- 5.5 Following Harmonisation in 1997 and to date, the NJC for LGS continues to affirm '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.
- 5.6 In April 2009, ACAS produced a revised Code of Practice for disciplinary and grievance procedures for employers to consider prior to revising their policies and procedures along with extensive accompanying guidance. Whilst revised March 2015, this remains in place and Employment Tribunals consider the Code of Practice and Guidance as a comparator against our internal procedures should a claim be brought against the Council. The Code of Practice from 2009 and 2015 states: "The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case." (*Ref: ACAS Code of Practice on Disciplinary and Grievance Procedures. 2015, point 27*)
- 5.7 The policies and procedures being revised to which the application of this change of policy principle is proposed are the Disciplinary Policy, the Capability (Capability Performance) and Management of Attendance Policy. Currently these policies allow in the procedural element for appeals against dismissals to be heard by an Appeals Panel of the Policy and Resources Committee.
- 5.8 All three policies still in their original format had been subject to a joint review with UNISON though the matter of appeals being heard by Officers was not agreed with UNISON. The proposal is to replace the facility for Member Appeals Panels with an Officer Appeals Panel.

6.0 POLICY CONTEXT

6.1 This proposed revision fits with corporate aim 5: to transform the Council.

7.0 CONSULTATION

7.1 Discussion and consultation on the proposed change has taken place with UNISON and is attached at Annex 1.

7.2 Research has been undertaken into the approach taken by other Authorities in the Yorkshire and Humber area in respect of member involvement in appeals. The results were that there remains an even mix of member involvement and no member involvement.

7.3 Those authorities whose members are still involved will be reconsidering their relevant policies/procedures when they are due for review.

7.5 This process would not apply to the Chief Executive or to Chief Officers as they are governed by different terms and conditions and any appeal would be made in accordance with those terms and conditions applicable at the time.

8.0 REPORT DETAILS

8.1 The policy principles contained within the Disciplinary, Capability and Management of Attendance policies nor procedures have not been altered to date.

8.2 The current procedures state:-

Appeals

Appeals against dismissals will be heard by the Appeals Panel of the Policy and Resources Committee. The employee has the right to be represented at an appeal by a trade union representative or other companion.

8.3 The proposed amendment is:-

A member of CMT and a HR representative, wherever possible, who have not been involved in the disciplinary process, will hear dismissal appeals.

8.4 The reasons supporting the proposed change are:

- Guidance from ACAS which is a Crown non-departmental public body of the Government of the United Kingdom whose purpose is to improve organisations and working life through the promotion and facilitation of strong industrial relations practice is acknowledged as the 'Best Practice' approach.
- ACAS produced comprehensive accompanying guidance to the Code of Practice for Disciplinary and Grievance Procedures. This guidance is provided for employers to consider prior to revising their policies and procedures. Employment Tribunals will consider the Code of Practice as a comparator against our internal procedures should a claim be brought against the Council.
- The Code of Practice states that "the appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case". When considering what should an appeals procedure contain the ACAS Guide says 'It should: wherever possible, provide for the appeal to be heard by

someone senior in authority to the person who took the disciplinary decision and, if possible, by someone who was not involved in the original meeting or decision".

- To ensure that the procedures can be carried out and acted upon promptly Appeal Hearings should be heard without unreasonable delay, and wherever possible by a manager who has not previously been involved in the case.
- There is support from Managers in the Authority for this approach.
- The constitution makes it clear that the Head of Paid Service has ultimate responsibility for the appointment and proper management of the Councils' staff and to take all actions and make all decisions not reserved to the Council relating to organisation (or any electoral) matters.
- The Head of Paid Service is ultimately responsible to agree a settlement should an application to tribunal be made subsequent to the appeal process after the Early Conciliation process has been exhausted.

9.0 IMPLICATIONS

9.1 a) Finance

There are no financial implications.

b) Legal

The principal legislation that relates to this policy is the Employment Act 2002 (Dispute Resolution Regulations 2004) and the repeal of the Statutory Dismissal Procedures (2009) and the ACAS Statutory Code of Practice 2015.

The stages of the procedures reflect the ACAS Code of Practice which has been approved by Parliament and are referred to by Employment Tribunals.

c) Environmental

No environmental issues for introducing this policy.

d) Equality Impact Assessment

All equality issues have been considered in consideration of appeals going to officers rather than Members especially in relation to the unfair dismissal and discrimination strands.

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Background Papers:

ACAS Statutory Code of Practice on discipline and grievance 2015.

ACAS Discipline and grievances at work - The ACAS Guide 2015.