



---

<b>PART B:</b>	<b>RECOMMENDATIONS TO COUNCIL</b>
<b>REPORT TO:</b>	<b>POLICY AND RESOURCES COMMITTEE</b>
<b>DATE:</b>	<b>1 APRIL 2010</b>
<b>REPORT OF THE:</b>	<b>HEAD OF ORGANISATION DEVELOPMENT LOUISE SANDALL</b>
<b>TITLE OF REPORT:</b>	<b>MEMBER INVOLVEMENT IN APPEAL PANELS</b>
<b>WARDS AFFECTED:</b>	<b>ALL</b>

---

## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

- 1.1 This report seeks Member approval for a principle change that affects three Human Resources policies: the Disciplinary Policy, the Capability (Capability Performance) and Management of Attendance Policy. The principle change is to replace the current provision for Member Appeals Panels, for appeals against dismissals, with Officer Appeals Panels.

### **2.0 RECOMMENDATION**

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

### **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 Management have followed new updated guidance from ACAS. Under the repeal of the Statutory Dismissal Procedures (SDP) in April 2009, ACAS produced a new Code of Practice guidance 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.

### **4.0 SIGNIFICANT RISKS**

- 4.1 There are no significant risks in approving the recommendation.

## **REPORT**

### **5.0 BACKGROUND AND INTRODUCTION**

- 5.1 The primary consideration for reviewing Human Resources policies and the procedural requirements is due to some fundamental changes to legislation and in particular, the introduction of a Code of Practice under the repeal of the Statutory Dismissal Procedures in April 2009.
- 5.2 Under the repeal of the Statutory Dismissal Procedures (SDP) in April 2009, ACAS produced a new Statutory Code of Practice for employers to consider prior to revising their policies and procedures along with extensive accompanying guidance. Employment Tribunals will 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 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 Statutory Code of Practice on Disciplinary and Grievance Procedures. 2009)
- 5.3 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.
- 5.4 All policies have been subject to a joint review with UNISON. Following extensive and constructive negotiations with Unison, there is agreement across the majority of revisions to the procedures which do not affect the agreed policy principles with the exception of this one issue. The proposal is to replace the facility for Member Appeals Panels with Officer Appeals Panels in line with the ACAS guidance.

### **6.0 POLICY CONTEXT**

- 6.1 The revised policy fits with corporate aim 5: to transform the Council and in particular objective 10: to develop the leadership, capacity and capability to deliver future improvements.

### **7.0 CONSULTATION**

- 7.1 Consultation on the proposed changes has been taking place with UNISON from between the 7 September 2009 up until 2 March 2010.
- 7.2 The revised Disciplinary Policy, Capability Policy and Management of Attendance Policy and procedures have also been considered by the Staff Focus Group.
- 7.3 Research has been undertaken into the approach taken by other Authorities in respect of member involvement in appeals. The results were that there is an even mix of member involvement and no member involvement. Many authorities stated that where members were still involved this element was to be subject to review and in many cases it only related to issues around the employment of Chief Officers.
- 7.4 Due to the nature of the Council's senior management arrangements, any appeals from Chief Officers, that is the Chief Executive or the two Corporate Directors, will continue to be made to Member panels in line with the Chief Officer's Handbook.

## 8.0 REPORT DETAILS

8.1 The policy principles contained within the Disciplinary, Capability and Management of Attendance policies have not significantly altered however the procedures have. When procedures alter Management consult with UNISON to seek agreement where possible. However, the policies are not joint policies with UNISON.

8.2 Following a period of negotiation, UNISON and Management have agreed the majority of the procedural changes to these policies. The only outstanding issue is the appeal process and in particular the role of Members.

8.3 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.*

8.4 The proposed amendment is:-

*A member of CMT, a member of SMT and a HR representative will hear all dismissal appeals.*

8.5 The reasons supporting the proposed change are:

- The revision is based on the revised guidance from ACAS who have produced comprehensive accompanying guidance to the Statutory 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 panel shall be made up of individuals who have had no previous involvement in the case. Stronger emphasis on a shorter process with only one right of appeal to a “more senior manager” is recommended by ACAS.
- To ensure that the procedures can be carried out and acted upon promptly. Appeal hearings should take place as soon as practicable to ensure there is no undue stress to the individual involved. The change will facilitate more timely resolution to appeals.
- There is support from the staff focus group and Managers in the Authority for a shorter more consistent process.
- The constitution makes it clear that the Head of Paid Service has ultimate responsibility for the appointment and proper management of the Councils’ staff.
- The Head of Paid Service is ultimately responsible to agree a settlement should an application to tribunal be made subsequent to the appeal process.

8.6 UNISON has submitted the following for Members to consider;

*“UNISON is opposed to removal of the entitlement for employees to have appeals against dismissal heard by Elected Members. The present arrangements work well and have broad support amongst employees. In view of the severe consequences of dismissal for employees, and potentially for the Council, we think that retention of Member involvement is important because it ensures that managers are accountable and that major decisions are subject to scrutiny.*

*No satisfactory explanation has been put forward for the proposed change and we think that retention of the existing appeals procedure will help to ensure that employees continue to have confidence that anyone finding themselves the subject of disciplinary proceedings will be dealt with in a fair and objective manner”.*

## **9.0 IMPLICATIONS**

### **9.1 a) Finance**

The purpose of the introduction of the changes to the procedures, from a financial perspective, mean that under the repeal of the statutory procedures in April 2009 and the introduction of the Code of Practice from ACAS employment tribunals will expect employers to ensure that matters are dealt with under fair, open consistent procedures, which take firm consideration of the content of the code of practice. Failure to follow due process and procedure, may result in Ryedale District Council incurring additional costs above the statutory awards / costs of up to 25%, where the Council has been found to not have carried out its full procedures in line with recommended practice from ACAS.

### **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 2009.

The stages of the procedures reflect the ACAS Statutory 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 the rewriting of all the policies, especially in relation to the unfair dismissal and discrimination strands.

**Louise Sandall**  
**Head of Organisational Development**

**Author:** Jean Palmer, HR Manager  
**Telephone No:** 01653 600666 ext: 227  
**E-Mail Address:** jean.palmer@ryedale.gov.uk

### **Background Papers:**

ACAS Statutory Code of Practice on discipline and grievance 2009.

### **Background Papers are available for inspection at:**

<http://www.acas.org.uk/CHttpHandler.ashx?id=1043>