

**APPEALS COMMITTEE – 13 SEPTEMBER 2013**  
**GENERAL PURPOSES AND LICENSING COMMITTEE – 13 SEPTEMBER 2013**

## **PROPOSED CHANGES TO DISMISSAL APPEALS PROCEDURE**

### **1. INTRODUCTION**

- 1.1 The Executive Management Team (EMT) reviewed the Council's disciplinary procedure on 2<sup>nd</sup> July 2013 in the light of changes to the ACAS code, Employment Tribunal cases and feedback from Unions and Managers.
- 1.2 A number of proposed changes were considered at EMT, including early disclosure of information to the employee, contacting an individual's GP in exceptional circumstances and further training for all parties involved in the disciplinary procedure. EMT also considered the Appeals Panel arrangements.

### **2. CURRENT ARRANGEMENTS**

- 2.1 Disciplinary matters and warnings are currently undertaken by officers under specified delegated powers. Heads of Service and authorised officers on Band 9 and above are also authorised to dismiss employees, except the statutory chief officers, executive directors and heads of service.
- 2.2 Appeals against dismissals are determined by an Appeals Panel, which comprises up to five (but usually three) members drawn from the Appeals Committee. If the Appeals Panel upholds an officer decision to dismiss, the employee concerned has a right of appeal to an Employment Tribunal.
- 2.3 The member chairing a particular Appeals Panel is expected to be the Council's main witness at any resultant Employment Tribunal and will be subject to cross-examination by the appellant and/or their legal Counsel. The member is supported by officers, and representation by external Counsel.
- 2.4 The reasons why an individual may appeal against a dismissal decision are as follows:
  - That the penalty is unfair/inconsistent under the circumstances (i.e. judgement)
  - New evidence has arisen which was not considered at the original hearing and which may have a bearing on the outcome (i.e. facts).
  - That the policy and procedure have not been applied correctly (i.e. process)

### **3. ISSUES TO CONSIDER**

- 3.1 In the recent employee survey, one of the main concerns expressed by staff was the 'poor management of staff'. A new performance management procedure has

recently been implemented and we believe this may result in an increase in the number of appeals to panels.

- 3.2 The majority of appeal panel decisions that uphold an officer decision to dismiss result in Employment Tribunal claims. This adds significantly to the responsibilities of the Appeals Panel chair and increases their requirement to be regularly updated and trained.
- 3.3 The number of appeals in any given year will vary, but averages 3-4 a year. Employment legislation has changed considerably over the last few years, with the new Equalities Act, frequent changes to case law, changes to unfair dismissal entitlement and the introduction of fees at Employment Tribunal all makes it a very changeable and complex environment and one with which all parties involved need to be up to date.
- 3.4 The Executive Management Team is currently not part of the process for appeals against dismissals. This is unusual as all other performance management and disciplinary matters are delegated to senior officers, except where decisions relate to Heads of Service and above (including the statutory chief officers), which are the responsibility of members.

#### **4. PROPOSED CHANGES**

- 4.1 It is proposed that dismissal appeals are brought in line with other procedures and delegations on performance management of employees. The proposal is that:
  - Appeals against dismissals, except where decisions relate to -
    - the statutory chief officers (head of the paid service, monitoring officer and Section 151 officer); and
    - executive directors; and
    - heads of service

be determined by an officer panel chaired by Chief Executive or an Executive Director (or an independent Head of Service in an Executive Director's absence or inability to act).

  - The officer who chairs the appeal hearing will be the key council witness in any subsequent Employment Tribunal.
- 4.2 The Head of Human Resources or his or her representative will continue to advise on all dismissal appeals.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 There are no direct financial implications.

## **6. ENVIRONMENTAL IMPLICATIONS**

6.1 There are no environmental implications arising from this report.

## **7. CRIME AND DISORDER IMPLICATIONS**

7.1 There are no crime and disorder implications arising from this report.

## **8. EMPLOYEE SIDE COMMENTS**

8.1 Unison have no objection to dismissal appeals being heard by officers, this is on the condition that it is agreed by both sides in proceedings. It is Unison's position that all employees should retain the right to appeal their dismissal to councillors.

## **9. VIEWS OF INDUSTRIAL RELATIONS COMMITTEE**

9.1 The view of the Industrial Relations Committee (which meets on 5 September) will be circulated later.

## **10. RECOMMENDATIONS**

### **10.1 For the Appeals Committee:**

That the Committee expresses a view on the proposal that appeals against dismissal from employees up to (but not including) Heads of Service be determined by a panel of officers rather than by a member Panel drawn from the Appeals Committee.

### **10.2 For the General Purposes and Licensing Committee**

That it be recommended to the Council:

(a) That the procedures for the dismissal of employees be amended to provide that appeals against dismissals from employees below the level of head of service be determined by a Panel of three officers made up from any of the Chief Executive, Executive Directors and Heads of Service; and

(b) That the Chief Executive, Executive Director or Head of Service in consultation with two other officers at either Executive Director or Head of Service level, be authorised to consider and determine appeals against dismissal by officers below the level of head of service.

(Note: an officer who was involved in the original decision to dismiss cannot participate.)

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**Background Papers:**

Proposed changes to Disciplinary  
procedure – EMT – 2<sup>nd</sup> July 2013