

Constitution Committee – 5th November 2008

AGENDA NO:

REVIEW OF PROCESS FOR EMPLOYMENT RELATED APPEALS

Committee Date	5 th November 2008
Background Documents	None
Principal Consultees	The principal trade unions
Officers	Joint report from: Peter Bungard, Chief Executive and Sue Scrivens, Head of Human Resources

Purpose of Report	This paper proposes a change to the authority's current procedures for handling employment related appeals.
Recommendations	That the Scheme of Delegation within the Constitution be amended in accordance with the revised processes set out in paragraph 4 of this report, and the terms of reference for the Appointments and Appeals Committees be amended accordingly.
Resource Implications	The Head of Human Resources believes that the revised arrangements will make current processes more efficient, therefore reducing process cost. Existing training for managers will be revised to incorporate the new arrangements.

MAIN REPORT CONTENTS

1. Background

The current County Council arrangements for hearing appeals related to employment matters have developed over decades on a piece meal basis and have never been fully reviewed. Indeed our existing arrangements refer to Committees which no longer exist.

In 2001, the Government issued the Local Authorities (Standing Orders)(England) Regulations which regularised Member involvement in the recruitment and dismissal of staff. In essence, these Regulations specifically gave a role to Members in the appointment of 2nd Tier officers and above but clarified that the responsibility for appointments and dismissals at levels below 2nd tier was the responsibility of the Head of Paid Service or nominated persons.

In addition, further legal developments include the introduction of new statutory disciplinary and dismissal procedures, which for the first time require appeal mechanisms to be put in place as a matter of law. These dismissals cover a wide range of circumstances and include failed probation, dismissal at the end of a fixed term contract, refusal to allow an employee to work beyond the normal retirement age of 65 and variations to contracts of employment. The Council now needs to respond to these developments by putting into place the appropriate arrangements.

Members had also requested clarity on the ACAS guidance regarding numbers of people required to hear an appeal against dismissal. ACAS advice on this is that “as far as is reasonably practical a more senior manager not involved in the case should hear the appeal”.

A number of local authorities have taken the opportunity to review existing appeals procedures to reflect the Regulations and the changing legal framework and some have adopted the revised approach recommended in this paper.

2. Summary Proposed Revised Arrangements

In summary the proposal is for Members to hear employment related appeals for all officers at 2nd tier and above plus Directors of Service who directly report to a Group Director. In general, all other appeals will be heard by the appropriate senior manager. These proposals have been recommended by the Appointments Committee and have the support of the trade unions.

3. Current Employment Appeal Arrangements

The current arrangements are as follows. The constitution currently states that the Appeals Committee has a role to consider individual dismissal appeals and complaints by employees under the Council’s grievance, harassment, equal pay claims and other procedures relating to employees in the following circumstances:

- ❑ Capability
- ❑ Ill health Retirement
- ❑ Disciplinary
- ❑ Redundancy
- ❑ Probation
- ❑ End of a fixed term contract
- ❑ Retirement (at the Normal Retirement Age of 65)

A separate appeals process is already in place with respect to grievances and individual

grievances, which relate specifically to the grade of an employee's job.

4. Proposals

The proposal is to align the Council's employment appeal arrangements with the 2001 Regulations. This will mean that the Appointments Committee will continue to determine other employment related matters, hear appeals against dismissal as well as taking responsibility for the appointment of the following senior staff: Chief executive/Head of Paid Service, Chief Financial Officer, Monitoring officer/Director of Law and Administration, all Group Directors and Directors of Service reporting directly to a Group Director or the Chief Executive. All other appeals would in future be heard at officer level.

The proposed revised delegated authority for employment related appeals arrangements would be as follows:

a) Senior Management posts: Chief Executive Group Directors and Directors

Decisions to dismiss will be made by a Panel of Appointments Committee members. This retains and reinforces the existing arrangements.

Appeals following dismissal will be heard by a Panel of Appeals Committee Members (selected from Appointments Committee Members not involved in the dismissal).

b) Posts below Director (excluding school based staff) which relate to capability, ill health retirement, disciplinary, redundancy or 'efficiency of service'.

Decision to dismiss will be taken at 3rd tier level and above.

Appeals will be heard by an appropriate Director or Group Director or nominated Senior Officer, not involved in the case, as set out in the ACAS guidance.

c) Posts below Director (excluding school based staff) which relate to a failed probation, fixed term contract, or retirement at normal retirement age of 65

The proposed arrangements for these new types of appeal are as follows

Decision to dismiss will be by the appropriate line manager

Appeals will be heard by the appropriate senior manager, not involved in the case, as set out in the ACAS guidance.

5. Consultation with Trade Unions and Arrangements for Appeal Hearings for posts below Director

The Unions have been fully consulted on this review and the emerging proposals. Both Unison and the GMB fully support the revised proposals and have asked that their comments be included in this report.

UNISON has commented that the 'changes will support the implementation of the People Strategy and should ensure consistency and transparency in the process'.

'GMB support the principles underpinning these proposals which reflect legislation, ACAS guidelines and will assist with implementing the People Strategy'.

UNITE also supports the principles underpinning the proposals and asked that option iii) below be put forward for consideration whereby a trade union representative (not from the union representing the appellant) should sit on dismissal appeal hearings.

Following this consultation, Members are asked to consider the following options:

- i) Senior manager and HR officer (recommended option)
- ii) Two senior managers and HR officer
- iii) Senior Manager, Union representative and HR officer

The recommended option is (i) as this is consistent with the approach recommended by ACAS, reflects that these issues are primarily an operational and management responsibility and confirms the Council's expectation of senior management to have ownership and accountability for performance and people management issues. The addition of an HR officer ensures that the relevant expertise in employment related matters and legislation is available during the decision making process.

6. Conclusion:

The continuation of the existing processes is not an option. It is incompatible with emerging responsibilities and legislation; the principles set out in the 2001 Regulations; and of appointment and dismissals being handled at the minimum level of seniority which is appropriate. Member input to the appointment and dismissal of senior managers in the Council will be maintained at its current level.

7. Recommendations:

That the Scheme of Delegation within the Constitution is amended in accordance with the revised processes set out in paragraph 4 above, and the terms of reference for the Appeals and Appointments Committees is amended accordingly.

These revised arrangements will be reviewed after the first year of operation to ensure that they remain fit for purpose.