

Report to the Cabinet

Report reference: C-008-2018/19
Date of meeting: 6 September 2018



Portfolio: Technology and Support
Subject: Staff Appeals Procedure
Responsible Officer: Paula Maginnis (01992 564536).
Democratic Services: Adrian Hendry (01992 564246).

Recommendations/Decisions Required:

- (1) That the proposed Appeal Procedure be approved and adopted; and
- (2) That, pursuant to the adoption of the policy, a report be made to Council recommending that the Monitoring Officer removes reference to the Staff Appeals Panel from the Constitution.

Executive Summary:

Currently the Council's Short of Dismissal - Appeal Hearing Procedure which includes Stage 3 Grievances is usually heard by a Director as they are deemed to have 'sufficient seniority' to carry out this function, as provided by the Procedure.

Appeals made against a decision to dismiss an employee are heard by the member Staff Appeals Panel comprising of five members who are not members of the Executive Committee. The Presenting Officer at these appeals has been the Director of Governance.

The People Team are proposing that the Procedure is amended and as a consequence the member Staff Appeals Panel is removed from the Constitution at the next available opportunity.

It is proposed that officer dismissals and appeals (of employees below Chief Officer level) are dealt with by a wider number of senior managers rather than Directors and Members, subsequently freeing up Directors and the Chief Executive in order to chair any dismissal appeal hearings.

Reasons for Proposed Decision:

This is a change to the existing Procedure which the Committee is asked to consider. The proposal is timely due to the exit of the Director of Governance who was the Council's representative on the Staff Appeals Panel. The proposal adopts one procedure for all employees (below Chief Officer, as separate arrangements apply) appealing against any formal action or dismissal taken against them.

Other Options for Action:

The Committee could substitute other arrangements.

The Joint Consultative Committee proposed an alternative option whereby a member of the Executive is a joint Hearing 'Officer' with a Director or the Chief Executive at an Appeal Hearing for

dismissal.

Report:

1. The new Appeals Procedure is attached at Appendix 1 and it is proposed it will replace the Staff Appeals Panel and the Short of Dismissal - Appeal Hearing Procedure.
2. The People Team are proposing to change the appeals procedure so that senior officers have the authority to chair potential dismissal hearings and appeals.
3. The proposal will align with the Council's transformation programme reflecting the new Decision Making Accountability model. This model will see decision making clarified at each layer of management with some accountabilities moved further down the organisation. It is also hoped that the new procedure will avoid the management chain being placed in any potential compromises due to possible involvement in operational issues or the original investigation process.
4. The proposed changes will also ensure that the process will require less resource to support in terms of member training, committee processes, time and the number of people required to be involved in an appeal against dismissal.
5. The change will also present a more efficient and flexible process for an appeal hearing to be arranged which could also minimise the amount of stress added to an employee who would be required to appear before a member panel, specifically for more junior members of staff.
6. The employee will still have the right of appeal on the same grounds as the current procedure. ACAS guidance advises that the process should be impartial and wherever possible provide for the appeal to be heard by someone with higher authority than the person who took the original decision. The ACAS guidance also states that appeals should be dealt with speedily, particularly those involving suspension or dismissal. This guidance has been reflected in the process.
7. It is worth noting that employees must exhaust all internal procedures before bringing any case to an Employment Tribunal.
8. That the proposed changes will mean that the Staff Appeals Panel is no longer required. This will require a change to the current constitution and it is recommended that the council, consequent on the approval of the new policy, be requested to remove references to that Panel from its constitution.

Resource Implications:

There are no additional resource implications to the Council.

Legal and Governance Implications:

An appeal is not intended to be a substitution for, or prejudicial to, an employee's right of appeal to an Employment Tribunal. However, Employment Tribunals do expect internal appeals procedures to have been exhausted before a complaint is brought before them. The Procedure ensures that appeals are heard by an independent manager which is set out in ACAS advice and guidance.

Safer, Cleaner and Greener Implications:

N/A

Consultation Undertaken:

Consultation has been undertaken with Management Board and the Joint Consultative Committee.

Background Papers:

None

Risk Management:

The authority is at risk from complaints brought before them from an Employment Tribunal if a robust structured Appeals Procedure is not present. Under the procedure employees can appeal against a formal decision made against them and it is essential to natural justice. Defects in the original disciplinary procedure may often be remedied through a properly held appeal.

Equality Impact Assessment

Section 1: Identifying details

Your function, service area and team: **Human Resources - People Team**

If you are submitting this EqIA on behalf of another function, service area or team, specify the originating function, service area or team: **The procedure will be applied corporately**

Title of policy or decision: **Appeal Procedure**

Officer completing the EqIA: Tel: ext **4073** Email: **hpether@eppingforestdc.gov.uk**

Date of completing the assessment: **15 March 2018**

Section 2: Policy to be analysed

2.1	<p>Is this a new policy (or decision) or a change to an existing policy, practice or project?</p> <p>New procedure</p>
2.2	<p>Describe the main aims, objectives and purpose of the policy (or decision):</p> <p>Put in place a robust and structured Appeals Procedure to;</p> <ul style="list-style-type: none">▪ Allow employees the opportunity to appeal any formal decision made against them which is essential to natural justice.▪ Allow employees to raise an appeal on various grounds for example new evidence, undue severity or inconsistency of the penalty.▪ Allows defects in the original hearing outcome to be remedied through a properly held appeal.▪ Allow employees the opportunity for appeals to be dealt with as quickly as possible. <p>What outcome(s) are you hoping to achieve (ie decommissioning or commissioning a service)?</p> <ul style="list-style-type: none">• Changing the existing procedure for employees will present a quicker more efficient process for an appeal hearing to be arranged which could also minimise the amount of stress added to an employee who has raised an appeal against dismissal.

2.3	<p>Does or will the policy or decision affect:</p> <ul style="list-style-type: none"> • service users • employees • the wider community or groups of people, particularly where there are areas of known inequalities? <p>It will affect all employees who wish to raise an appeal against a formal decision made against them with the exception of those in statutory roles (and their deputies)</p> <p>Will the policy or decision influence how organisations operate?</p> <p>It will not affect partner organisations but will affect senior officers who will be required to chair formal hearings which could result in the dismissal of an employee.</p>
2.4	<p>Will the policy or decision involve substantial changes in resources?</p> <p>No</p>
2.5	<p>Is this policy or decision associated with any of the Council's other policies and how, if applicable, does the proposed policy support corporate outcomes?</p> <p>The new Appeals Procedure will align with the Council's transformation program reflecting the new DMA model when the new structure is in place.</p>

Section 3: Evidence/data about the user population and consultation¹

As a minimum you must consider what is known about the population likely to be affected which will support your understanding of the impact of the policy, eg service uptake/usage, customer satisfaction surveys, staffing data, performance data, research information (national, regional and local data sources).

3.1	<p>What does the information tell you about those groups identified?</p> <p>It will affect all employees who wish to raise an appeal against a formal decision made against them with the exception of those in statutory roles (and their deputies)</p>
3.2	<p>Have you consulted or involved those groups that are likely to be affected by the policy or decision you want to implement? If so, what were their views and how have their views influenced your decision?</p> <p>N/A</p>
3.3	<p>If you have not consulted or engaged with communities that are likely to be affected by the policy or decision, give details about when you intend to carry out consultation or provide reasons for why you feel this is not necessary:</p>

	<p>The right to appeal has not changed only who will chair the appeal hearing, as always any member of staff who has appealed will be given the appropriate information and be given an appropriate appeals hearing.</p>
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Section 4: Impact of policy or decision

Use this section to assess any potential impact on equality groups based on what you now know.

Description of impact	Nature of impact Positive, neutral, adverse (explain why)	Extent of impact Low, medium, high (use L, M or H)
Age	<p>The Procedure will apply to all employees regardless of characteristic.</p>	
Disability		
Gender		
Gender reassignment		
Marriage/civil partnership		
Pregnancy/maternity		
Race		
Religion/belief		
Sexual orientation		

Section 5: Conclusion

		Tick Yes/No as appropriate	
5.1	Does the EqIA in Section 4 indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups?	No X	No
			If ' YES ', use the action plan at Section 6 to describe the adverse impacts and what mitigating actions you could put in place.

Section 6: Action plan to address and monitor adverse impacts

What are the potential adverse impacts?	What are the mitigating actions?	Date they will be achieved.
N/A		

Section 7: Sign off

I confirm that this initial analysis has been completed appropriately. (A typed signature is sufficient.)

Signature of Assistant Director: Paula Maginnis	Date: 16 March 2018
Signature of person completing the EqIA: Hilary Pether	Date: 15 March 2018