

Appendix 2 - Appeals

CONSIDERATION OF CHANGE IN RESPECT TO DELEGATED AUTHORITY

Background

The Scheme of Delegation for Appeals is currently through approval at Council and a panel of members.

Following the recent amendment to the scheme of delegation in respect of approval for Employment Policies, the need for a separate delegation in respect of appeals would appear unnecessary on the basis that each employment policy will identify the appeal process to be followed and the appropriate hearing officer.

All Employment policies go through a rigorous process before being amended. This process includes the involvement of working groups at the beginning of any change process, informal consultation with Trade Unions, discussion and approval by the Corporate Management Team, and discussion and approval by the Portfolio Holder and Leader. In addition, all H&S specific policies are presented to the joint Health and Safety Committee. All contractual employment policies are also subject to formal consultation with the Trade Unions.

The Disciplinary, Grievance and Sickness Absence Policies are all currently under review. It is proposed that within these policies the right of appeal would lie with a director, rather than any other level of management or Members. Such a change is in line with ACAS guidance and members are further advised that in agreement with the Trade Unions it is intended that investigations be carried out by third, independent, parties.

If the constitution is amended as suggested, Members can be reassured that the current employment policies will remain in place (including the relevant appeal processes) until such time as replacement policies have been formally approved. All policies that currently have a right of appeal to members are contractual in nature and cannot therefore be changed without first having been subject to formal consultation with the trade unions with a view to reaching a collective agreement.

Current Position

ACAS guidance states that *“The appeal should be heard without delay and, where possible, by a manager preferably more senior and not previously involved in the case”*

The current situation with member appeals is unsatisfactory and unlikely to comply with ACAS guidance. Indeed recent examples have highlighted significant problems with the appeal process and these are likely to be impacting adversely on both the appellant and the Council. It can take a considerable amount of time to arrange the hearing due to the number of members involved, particularly as appeals take place during the working day which adds a level of complexity when arranging diaries, all of which can result in the appeal taking place some months after a dismissal. This has been identified as a significant issue in respect of procedural unfairness exposing the Council to unnecessary risk.

In addition, there are very strict time limits for making a claim to an employment tribunal. In most cases, the employee has three months less one day from the date of dismissal. The current difficulties with arranging member appeals can mean that this deadline has already passed, or is uncomfortably close, at the point at which the appeal is heard. In some circumstances, the existence of a member appeal may lead to dismissed employees either missing the relevant time limit or, alternatively, issuing tribunal proceedings before an appeal is heard, thereby potentially incurring significant costs which they may not otherwise have needed to incur (either because their appeal is successful or because they have reconsidered their prospects of being successful when the original decision is confirmed).

Again these risks are to the appellant and the Council and members are advised that these points have been raised specifically by appellants.

Additional Detail

Having taken advice and having examined the best practice models that exist nationally officers advise that it would be more appropriate for the final decision in respect of individual employment matters to rest with our Chief Executive as the Head of Paid Service. The Head of Paid Service is the most senior officer within the Council and it is he/she that has the responsibility for the establishment. The post has appropriate authority to make all necessary decisions regarding such matters and the post has the appropriate training and experience in relation to these issues. It is fair to say that the fact that this process is currently being undertaken by inexperienced persons is creating a difficulty in the administration and the delivery of the process itself. Again appellants have criticised the apparent lack of training as a problem and this can lead to inconsistent decision making and decision making that sits outside of policy. Administratively the current arrangements for member appeals are unnecessarily cumbersome and, because of the way appeal panels are constituted, and the delays that are likely to occur, the Council is potentially compromising its own position by continuing to deal with appeals in this way.

These proposals also go some way towards supporting the recommendations from the Peer Review Challenge, which recommended that the Councils establish a single workforce and reduce duplication and time spent navigating two structures and systems of governance. We are already working towards this in respect of issues such as the recent review of pay spines, and the current review of employment policies is merely a continuation of this journey.

In light of the advice received regarding the appropriateness of members involvement in employment matters, together with the messages we hear from our employees and Trade Unions in terms of fairness and consistency, reviewing the constitution and employment policies presents an opportunity to ensure that whilst policies remain individual to Redditch, the content is mirrored across the two authorities and, therefore, consistent for our joint workforce and the single culture that we seek to achieve.

Trade Union View

We have approached the trade unions for a view in respect of the appeals process.

GMB are supportive of changing the current approach so that appeals are dealt with by directors.

Unison take the view that appeals should remain with members on the basis that they are independent.

Unite have a divided opinion, for clarity, the reps were previously separate for Redditch and Bromsgrove but now cover both Councils. One rep's view is that Director Level is appropriate and works well; the other rep's view is that members should hear appeals to enable employees to go as high as they can within the organisation.

Proposal

It is recommended that:

- Directors should be delegated with the power to consider appeals by employees in respect of discipline and dismissal for staff below the level of Head of Service; and
- the current employment policies remain in place (including the relevant appeal processes) until such time as replacement policies have been formally approved.