

Results of the survey of Members

Proposed changes to Hampshire County Council's process for determining staff appeals against dismissal

Contextual information

The function of determining appeals against dismissal is known as a 'local choice function' in that it can be either an Executive or Non-Executive function. In its Constitution, the County Council has determined that this function (in respect of staff appeals against dismissal for misconduct only) is delegated to Regulatory Committee, which is proportionally constituted and comprises 16 Members. An Appeal Panel is, in effect, a Sub-Committee of Regulatory Committee and in consequence by law is also required to be proportionally constituted. (Separate procedures apply in respect of the dismissal of Chief Officers. These are set out in Standing Orders and are a member function. There is no proposal to change these functions).

Staff appeals against all other types of dismissal (e.g. poor performance, attendance, redundancy and so on) are dealt with entirely by Officers in accordance with relevant HR policies. This is consistent with the principle that recruitment and management of staff is an operational matter which is dealt with by Officers. Staff appeals against dismissal for misconduct are the only staff appeals within the County Council that are heard by Members. All other matters relating to personnel management are dealt with by Officers, through normal line management arrangements. Officers have the necessary training, skills and experience to deal with the full range of personnel issues that arise in the course of the employment relationship.

There are two issues arising from the current arrangements which can create difficulties: (i) the composition and pool of eligible Members and (ii) Member training.

(i) Composition and pool of eligible Members:

Taking into account the fact that some Members have more time and are more willing to sit on appeals, and the fact that a panel needs to be proportionally constituted, the logistics of arranging panel hearings can be very difficult. In complex cases, particularly where more than one member of staff is involved, arranging a Member Appeal Panel can present significant logistical difficulties, as quite often Members will need to commit to two or more days at a time meaning that there can be considerable delay between dismissal and an appeal date being set. There have been occasions when an Appeal Panel has had to be rescheduled due to Member(s) becoming unavailable because other business demands have arisen. In some cases this has resulted in very long delays before the appeal has been heard (see below for more information about timescales of appeals). This is both unfair to the appellant and has the potential to lead to unfair dismissal claims against the County

Council.

(ii) Member training:

Historically dedicated training sessions have been organised to ensure quality and consistency of Member training. It is important that all Members sitting on an Appeal Panel are able to demonstrate that they have proper, up to date training, and that they can provide evidence of this to a subsequent Employment Tribunal (ET), should an appeal against dismissal fail, and a subsequent claim be made to an ET. Recently, training has been offered to Members of the Regulatory Committee, including Substitute Members. Not all members have been able to attend this training, in some cases resulting in those Members who are most likely to volunteer to sit on a panel not undergoing training. Expanding the pool from which appeal panels can be selected to include all members has been considered. However, training all members would not be practicable or efficient and would be costly.

The limited number of Members who are trained and available to be on an Appeal Panel at any one time is a longstanding issue. Some Members have expressed concerns regarding the difficulties posed by setting aside consecutive days for this activity and the impact this has on their other work. This can be exacerbated for 'twin-hatted' Members. The amount of time taken to set up and/or reschedule an Appeal Panel impacts on resources and impedes business efficiency. There are also concerns regarding the impact of delay (and impact on the fairness of the dismissal) on an officer whose dismissal is subject of an appeal.

The approach taken by other Local Authorities:

Research has been undertaken to determine how other Local Authorities currently deal with misconduct dismissal appeals. Out of 10 other Local Authorities in the South of England, only three have panels of Members that hear misconduct dismissal appeals. Six have no Member involvement, and one has a panel comprising Officers and Members. The latter approach is not considered appropriate for the County Council, given legal restrictions on membership of Committees and rules about delegation of functions.

Timescales for dealing with appeals:

Data from appeals heard since 2010 shows that the average length of time taken to hear a misconduct dismissal appeal is 23 weeks from the date of receipt of the notice of appeal. The shortest length of time it has taken is 8 weeks. The longest it has taken is 56 weeks. This level of delay creates uncertainty for both the appellant and the County Council. In the event the appellant is reinstated, they are entitled to back pay, to the date of the original dismissal. This is costly where there has been a substantial delay in hearing the appeal. A lengthy delay can also turn what would otherwise be a fair dismissal into an unfair dismissal giving rise to an employment tribunal claim.

By contrast, the average length of time taken to hear attendance dismissal appeals is 5 weeks, with the shortest time being 2 weeks and the longest 12 weeks.

Performance dismissal appeals take on average 5 weeks, with the shortest length of time being 1 week and the longest time being 8 weeks. Attendance dismissal appeals and performance dismissal appeals are heard by senior managers, not members.

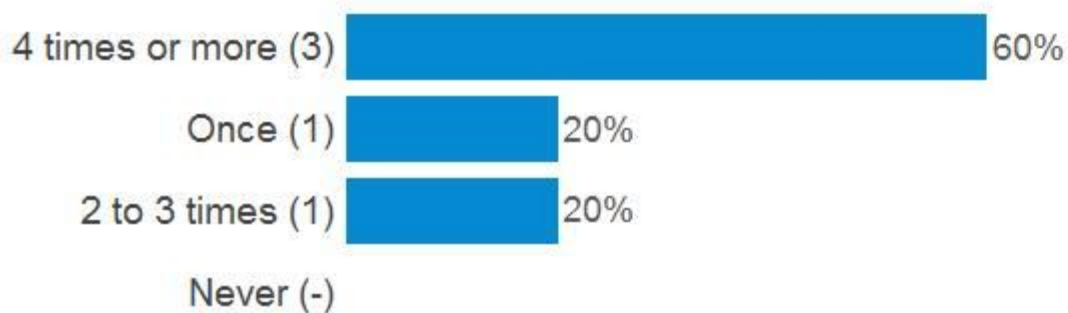
Proposal for consultation

It is proposed (subject to consultation with Trade Unions, Members and engagement with staff generally) to amend the County Council's disciplinary procedure and Constitution so that responsibility for determining staff appeals against dismissal for misconduct is delegated to officers. There is no legal reason why this function cannot be delegated to Officers in the same way that Stage 2 Internal Dispute Pension Appeals hitherto heard by Members have been delegated to officers, a move which has proved to be successful in terms of business efficiency.

This approach would be administratively efficient, in that Officers who already have responsibility for, and expertise in, recruitment and line management of staff would also have responsibility for determining disciplinary appeals. This would also be consistent with the approach taken in other types of staff dismissals, which are already heard by those Officers who are ultimately responsible for operational service delivery. As a matter of good governance, and to demonstrate appropriate independence of judgment, an appeal panel under this approach would be constituted from suitable senior officers outside of the appellant's former department. Also, the panel would receive suitable HR and legal support.

The proposed approach would potentially enable valuable Member time to be more effectively used, whilst at the same time ensuring full utilisation of existing skills amongst officers.

How many times have you been asked to sit on a staff disciplinary appeal panel in the last 3 years?



Training for members of Regulatory Committee on disciplinary appeals was last arranged on 22 February 2016. Did you attend the training?



Please explain why:

I was at work in my office and it was not appropriate to take the time off because of the amount not of time I had already taken on Council Business in the month.

I wasn't on the regulatory committee at that time

Have you had to decline a request to sit on a staff disciplinary appeal panel in the last 3 years due to diary conflicts?



How many times?



Over the last 3 years, have you ever had to send apologies to an appeal panel that you had earlier agreed to sit on?



Besides Regulatory Committee, do you sit on any other committees, groups or bodies, or hold any other roles as a Member of Hampshire County Council?

Yes (5)



No (-)

Please specify:

Pension Panel ETE River Hamble Board.

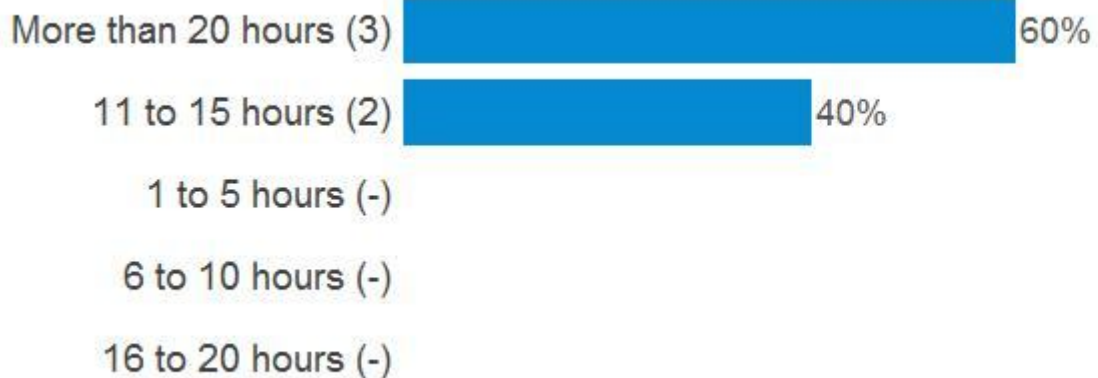
Children & Young People Committee: Pension Fund Panel & Board Committee: Policy & Resources Committee: Labour group Leader: HCC Representative on Basingstoke Voluntary Action.

Children and young people select committee HASC Children's committee HAPB

Policy and scrutiny Staunton park board West of Waterlooville committee

Econ Trans Env LD Spokesperson ETE HFRA

As an elected Member, how many hours do you spend per week (on average) on County Council/ Constituency matters other than Regulatory Committee staff disciplinary appeals?



In light of other commitments, is it reasonably practicable for you to make yourself available for 2 or more consecutive days at short notice (e.g. less than 4 weeks) to hear a disciplinary appeal?

Yes (4)



No (1)



Do you agree with the proposition that responsibility for all staff misconduct dismissal appeals (other than for senior officers) should be delegated to officers, who also have responsibility for recruiting staff and undertaking all other aspects of personnel management, including all other types of dismissal?



Please explain your reasons:

The perspective from Members is entirely different and can well benefit both the individual and the County. In my one case, it was my belief that the matter should never have reached the level of an appeal but should have been sorted by good management and members are best placed to express such thoughts.

I would like the Status Quo to remain There is no reason to change the structure as I have constantly suggested. It just needs to open the committee of members for appeals board to a wider selection of Councillors, There is no logical reason not to include ALL members of Regulatory and or other Committees to make available a wider choice

This is a very biased survey. The whole of the lead in is saying how difficult everything is. None of the data shows how often, if ever, an Appeal is successful at the councillor stage. This exercise appears to be looking at expediency rather than ethical justice. The answer is to make the Committee a committee of the Council and then all those who have undergone the training can be asked giving a potential pool of 78. I know that councillors have reinstated officers and clearly this saves losing at a Tribunal. It appears to me that occasionally the Officers get too close and may even know each other so tend to trust a colleagues judgement. Councillors, in my experience, tend to trust no one involved in the Appeal. Councillors can also spend a lot of time going through very long records and tease out all the facts. Officers, especially now there are less of them, inevitably have other duties they need to attend to. They will do their best but may not have the time due to the other demands the Council makes upon their time. I, and others, will frequently receive the case notes and read them over the weekend. Officers may do that during normal working hours thus detracting from the day job.

Is there any other information which you wish to add?

Ignore the "double hatters" and form a pool of members that can give the time required. Do not remove the input that can only come from members

I feel that as a member of the Regulatory Committee we should make ourselves available for these hearings as in the past we have questioned some of the evidence that has come from the officers, so it's seems to me that this makes it fair to come with an open mind with no attachment to the officers.

The Questions are LOADED towards removing the Councillors involvement

I think this is being rushed through and will cause problems down the line. Rather than more delegation it should be thinking of how to improve the system.