

# 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.

### **Union:**

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Association of Educational Psychologists

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Royal College of Nursing

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Prospect

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UNITE

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TLP

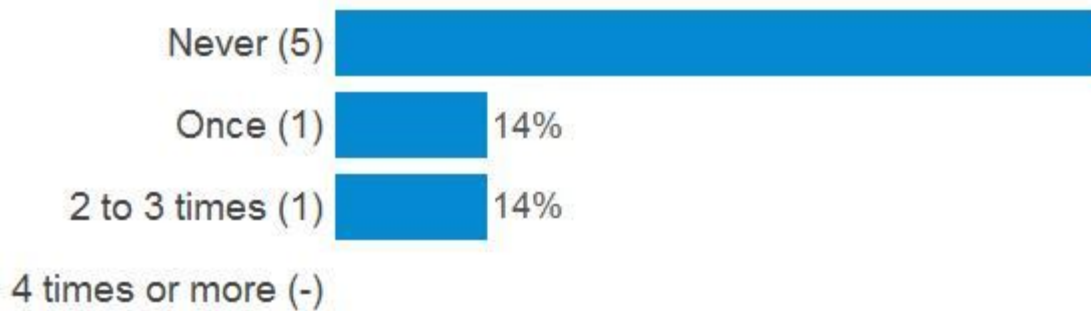
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Community, Youth and Play Workers (CYWU)

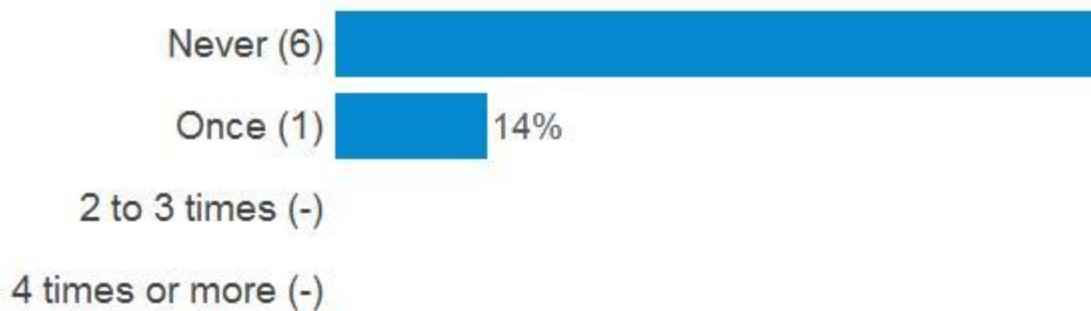
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UNISON

**How many times have you been asked to represent a staff member on a Members Appeal in the last 3 years?**



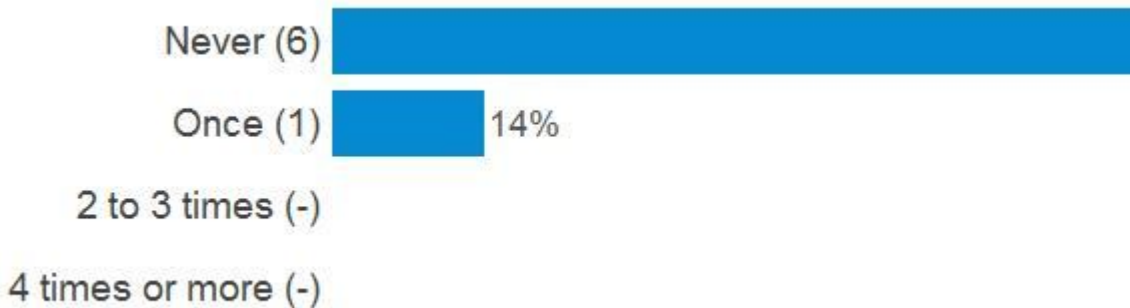
**Have you had to decline proposed dates of a Members Appeal where you have agreed to represent a staff member in the last 3 years due to diary commitments, and if so how many times?**



**Over the last 3 years, have you ever been informed that the proposed date of a Members Appeal where you had agreed to represent a staff member would need to be rescheduled due to the availability of Councillors, and if so how many times?**



**Over the last 3 years, have you ever had to ask for a Members Appeal to be rescheduled where you had earlier agreed to represent a staff member on that date, and if so, how many times?**



**Please confirm on each occasion how close to the date of the appeal hearing you sent your apologies.**

6 weeks

**Do you agree with the proposition that responsibility for staff misconduct 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 why you do not agree:**

Elected members are NEUTRAL in these matters. Senior Officers are less so. Removal of neutrality in a dismissal hearing is unfair to members.

I think that the wider the pool of people available to hear appeals, the better. That way, it is guaranteed that the Hearing is conducted by people who had nothing to do with the case and are impartial and fair. They will listen to the case entirely on its merits.

To maintain a level of independence that some UNISON members have expressed may not occur if appeal was heard by officers.

**Is there any other information which you wish to add?**

There would need to be reassurances that the officers who participate in the appeals are effectively independent and have no conflict of interest or personal involvement with the employee making the appeal (i.e. it can't really be their manager or the person who initiated the dismissal process).

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The RCN has no opinion, either for or against, a member of the council being a panel member or chair for any disciplinary processes including appeals. The RCN's only expectations in relation to the panel members of any disciplinary hearing and/or any subsequent appeal, is that they be of appropriate seniority and independence to either make a reasonable and fair decision. The only other pre-requisite we would expect HCC to impose in this regard would be in relation to disciplinary processes/investigations, and any corresponding appeals, which involve allegations or concerns regarding professional nursing matters or patient care and safety concerns. In regards to such processes, we would expect the chair panel member to be an NMC registrant as well as holding a post within HCC of appropriate seniority and being sufficiently independent to the issues or incidents.

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UNITE does not support this proposal.

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It is vitally important that the Trade Unions meet with HCC (eg in forums such as JCG) to discuss this important matter. I don't believe that this form of consultation is transparent, as we are unable to establish the views of all unions involved.