

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Employment in Hampshire County Council Committee
Date:	10 November 2016
Title:	Staff Dismissal Appeals
Reference:	7870
Report From:	Chief Executive

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1. Executive Summary

- 1.1. The purpose of this paper is to seek a decision from the Employment in Hampshire County Council (EHCC) Committee to recommend to Full Council that the Constitution and Staff Disciplinary Procedures are amended.
- 1.2. The amendments relate to the hearing of staff disciplinary appeals against dismissal for misconduct. Responsibility for determining these appeals is currently delegated to Regulatory Committee. These appeals are currently heard by sub-committees of Regulatory Committee.
- 1.3. The proposed amendments to the Constitution and procedure will delegate responsibility for hearing these appeals to officers.
- 1.4. The proposals set out in this paper only affect misconduct dismissal appeals for staff below Chief Officer level. The process for dismissal of Chief Officers will remain a member function.

2. Contextual information

- 2.1 EHCC Committee considered a paper on 6 July 2016 regarding proposed changes to the County Council's Staff Disciplinary Procedure. A copy of the paper considered by the EHCC Committee is attached at Appendix 4 for ease of reference.
- 2.2 At its meeting on 6 July 2016, EHCC Committee decided to commence consultation with the Trades Unions and staff, and Members of Regulatory Committee about the proposed changes.

- 2.3 Consultation with Trade Unions' staff and Regulatory Committee Members has been undertaken.

3. Consultation

Members

- 3.1 Consultation with members of Regulatory Committee has been undertaken in the form of the survey attached at Appendix 1. This was sent to all 20 members and substitute members on Regulatory Committee on 5 September 2016, with a closing date of 16 September. Due to the holiday period in August, it was considered that sending the questionnaire in early September, was the best way of ensuring members would have the opportunity to respond.
- 3.2 The survey for members of Regulatory Committee was designed to gather both qualitative and quantitative data about relevant matters relating to the proposals to change the appeal process. It allowed for free text comments to be added as part of the response to a number of questions. Also, a general question asking for any comments was included.
- 3.3 5 out of the 20 members (25%) of Regulatory Committee responded to the survey. This is not a particularly representative sample. However, the responses in full are set out at Appendix 1. Two of the five respondents agreed with the proposal for misconduct dismissal appeals to be heard by officers, and three of the five disagreed with the proposal. More detail, including members' comments are set out in the full report at Appendix 1.
- 3.4 In addition to the 5 members who responded, two members sent emails indicating that they would not be completing the questionnaire. In one case the member did not agree with the format of the questionnaire, could not recall certain information and therefore felt unable to respond. In another case, the member felt that the survey was premature and that the option of extending the pool of members who can sit on appeals to all members should be explored further. (NB – the option of expanding the pool of members who could hear staff misconduct appeals has been explored, as set out in the paper to EHCC Committee on 6 July 2016, attached at Appendix 6 for ease of reference. For reasons of efficiency and cost, expanding the pool of members is not considered to be the best option).

Trade Union Representatives

- 3.6 At the same time, a similar survey was sent to the Trade Unions, albeit tailored to the role Trade Unions play in representing appellants in staff misconduct appeals. The survey is attached at Appendix 2 and was sent to

11 representatives from Unite, GMB, Prospect, Unison, CYWU, RCN, AEP and TLP.

- 3.7 Seven responses were received from Trade Union representatives (64%) covering all of the Trade Unions, except for GMB. Four of the seven responses (57%) support the proposal for staff misconduct appeals to be heard by officers, with three respondents disagreeing. The full responses are set out in the report at Appendix 2.
- 3.8 Because of the Council's broader consultation obligations with its recognised Trade Unions, this issue was also discussed at the Joint Consultative Group ("JCG") on the 21st September 2016 at the scheduled JCG meeting. JCG comprises representatives of the Trade Unions and HR Officers and is the standing body for Trade Union engagement and consultation. The Trade Unions are recognised by the County Council for collective bargaining purposes in respect of nearly all staff groups. They therefore represent the employees' perspective in respect of the proposals.
- 3.9 The Trade Union representatives positively welcomed the discussion, stating that it was long overdue. They are very concerned about the length of time it takes for a panel to be convened and for the appeal to be heard, particularly in relation to the impact this has on the wellbeing of their members. Trade Unions stated that their members might perceive a Member Panel to be more independent, however acknowledged that this has not been reflected in their experience of performance or attendance appeals (which are conducted by senior officers) which were conducted correctly and that appeals, where appropriate, have been upheld in favour of the employee. Going forward, the key aspect of note is that whoever conducts the appeal hearing is sufficiently senior, has not previously been involved and can demonstrate an independent mind-set when considering the appeal that they are hearing.

Wider Engagement

- 3.10 Wider staff engagement has been carried out with each Department through the HR Business Partners and Departmental Management Teams. This has shown that there is a consistent view to support the proposals in full.
- 3.11 Whilst dismissal isn't a regular occurrence given the size of our organisation, an appeal requires swift resolution. There is a view that the time taken to arrange and subsequently hear appeals has a detrimental impact upon the employee, their colleagues and the service.

The detrimental impact includes:

- the health and wellbeing of the individual

- the impact upon those involved in the case
- the uncertainty felt by the wider team
- operational impact due to the inability of the organisation to be able to recruit to the role
- impact upon service users

3.12 Officers are confident that they have the ability to take on the responsibility for misconduct appeals and will operate in an unbiased, open-minded and independent manner as they already do when they are required to sit on an appeal panel for dismissal cases relating to performance or attendance.

Consultation summary

3.13 The consultation responses suggest that the Trade Unions (who are recognised by the County Council on behalf of all staff groups) are broadly in support of the proposal for misconduct dismissal appeals to be heard by officers. The Trade Unions have identified concerns about appeals being heard in a timely way. This can best be achieved by officers hearing appeals.

3.14 The Trade Unions have rightly pointed out that safeguards would be needed to ensure that those officers hearing appeals are sufficiently senior, independent and unconnected with the case. This echoes comments raised by some of the members who responded to the member survey.

3.15 The smaller number of members who responded to the member survey were not (overall) in favour of the proposal. However, the small number that responded (25%) cannot realistically be said to be a representative sample of Regulatory Committee.

3.16 One potential option raised by some members is to increase the pool of members from which appeal sub-committees can be drawn (possibly to include all members). This has been explored before and was considered by EHCC Committee at its last meeting in July 2016 (see attached paper at Appendix 4). This is not considered to be a practical way of addressing the current difficulties in arranging staff misconduct appeals. It has proved very difficult to get members of Regulatory Committee to attend training on staff disciplinary appeals (of the five members who responded to the survey, two had not attended the last training session). It is likely to be very difficult to get all members to attend training and to achieve this is likely to require several different dates where the same training course would be delivered. This will be very costly and inefficient. Given the Transformation to 2019 agenda, it is imperative that resources are used in the most efficient way and that "business as usual" processes are as lean and efficient as possible. Expanding the pool of members does not appear to be an efficient approach.

3.17 Members have very busy roles and so finding time in members' diaries for disciplinary appeals (often for two consecutive days) would still be difficult, even with a larger pool to choose from. Also, it is very important that those

hearing appeals are trained, and acquire relevant experience through hearing appeals regularly. With a larger pool, individual members would hear appeals only very infrequently and so would find it more difficult to develop the necessary experience of conducting hearings. Officers are already trained and experienced in all aspects of line management/HR as part of their roles as managers. Officers would therefore be able to bring greater levels of relevant experience to the conduct of appeal hearings.

- 3.18 It is important to remember that the employment relationship (including in the public sector) is rooted in private contract law and statute. A contract of employment is a private contract between the employer and the employee. Disciplinary matters are usually dealt with internally by the employer. Employees have a right (subject to meeting certain qualifying criteria) to challenge certain employer decisions in the Employment Tribunals. This provides the required level of external scrutiny. Employment Tribunals do not expect employers to “externalise” decisions in disciplinary proceedings. Generally, in almost all cases, the employer’s managers (who are the ones responsible for recruiting staff) are also the ones responsible for dealing with all types of dismissal. It is considered that having officers hear staff misconduct dismissal appeals would be consistent with this principle, and would be consistent with the procedure in respect of the appointment and dismissal of Chief Officers. It would also address the slightly anomalous position in Hampshire County Council where all dismissal appeals except for misconduct appeals are heard by officers.

4. Options

- 4.1 In light of the consultation responses, EHCC Committee has the following options:
- 4.1.1 Do not change the current misconduct dismissal appeal arrangements; or
 - 4.1.2 Recommend to the County Council that it amend the Constitution and Staff Disciplinary Procedure to delegate responsibility for hearing appeals against dismissal for misconduct to officers. Suggested amendments to the Staff Disciplinary Procedure, as shown in italics for ease of reference, are set out at Appendix 3. The proposed changes take into account the comments made by members and Trade Union representatives regarding appropriate safeguards to ensure appeals are dealt with fairly, by sufficiently senior officers who are unconnected with the particular case.

5. Recommendations

- 5.1 That EHCC Committee recommends to the County Council that it amend the Constitution to delegate responsibility for hearing staff misconduct dismissal appeals to Officers (other than for Chief Officers).
- 5.2 That subject to the agreement of the County Council referred to at Recommendation 5.1, that the Staff Disciplinary Procedure be amended to reflect the decision of the County Council, as set out at Appendix 3.
- 5.3 That the Trade Unions be informed that their representations have been considered and of next steps following the outcome of the EHCC Meeting.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision for the good governance of the County Council.

Other Significant Links

Links to previous Member decisions:

<u>Title</u>	<u>Reference</u>	<u>Date</u>
Staff Dismissal Appeals	7649	6 July 2016

Direct links to specific legislation or Government Directives

<u>Title</u>	<u>Date</u>
Local Authorities (Functions and Responsibilities) (England) Regulations	2000

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

Equality objectives are not considered to be adversely affected by the proposals in this report.

2. Impact on Crime and Disorder:

2.1 The proposals in this report are not considered to have an adverse effect on crime and disorder.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption? Not applicable.
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? Not applicable.