

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Employment in Hampshire County Council Committee
Date:	6 July 2016
Title:	Staff Dismissal Appeals
Reference:	7649
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 commence consultation with Trade Unions and staff on proposed changes to the County Council's Staff Disciplinary Procedure.
- 1.2. The proposed changes relate to staff appeals against dismissal for misconduct, which are currently heard by Members. It is proposed to consult on changing this aspect of the disciplinary procedure so that such appeals will be heard by Officers. It is considered that this approach will create administrative efficiencies and will enable more effective use of Members' time. It will also ensure consistency with all other types of dismissal, where the responsibility for determining appeals sits with Officers (who are also already responsible for recruitment and line management). Finally, the proposed approach will bring the County Council's procedures into line with many other local authorities.
- 1.3. In order to implement the proposals it will be necessary to amend delegated authority in the County Council's Constitution. Therefore, it is proposed that EHCC Committee should consider the outcome of the consultation at a future meeting and decide whether to recommend to the County Council that it amend the Constitution.
- 1.4. The proposals relate only to staff below the level of Chief Officer. Procedures in respect of the appointment and dismissal of Chief Officers is set out in Standing Orders and is a Member function; a function that will continue to be exercised by Members and is unaffected by proposals in this report.

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- 1.5. Finally this paper seeks endorsement from the EHCC regarding clarification of the composition of advisory Panels appointed to advise the County Council on matters relating to the dismissal of certain specified statutory officers.

2. Contextual information

- 2.1 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 the Constitution, the County Council has determined that this function (in respect of 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. As indicated above separate procedures apply in the case of dismissal of a Chief Officer (which includes CMT Members and other senior officers reporting to a CMT Member).
- 2.2 Staff appeals against all other types of dismissal (e.g. poor performance, 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 that are heard by Members.
- 2.3 Aside from issues relating to preparation and presentation of cases, use of Member time and advice to the Member Panel, all of which are time consuming and resource intensive, 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.
- 2.4 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 a Member(s) becoming unavailable because other business demands have arisen. As a result, there is a tendency for the same Members to volunteer to sit on panels, which again has its own difficulties, as mentioned below.

2.5 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 a choice of two dates has been offered to Members of the Regulatory Committee, including Substitute Members. Notwithstanding the fact that training has been offered, difficulty has been encountered in getting all Members to commit to attend training, in some cases resulting in Members who are most likely to volunteer to sit on a panel not undergoing training. Subsequently, as a matter of good governance, and to avoid challenge to the process at an ET tribunal, informal arrangements have been put in place whereby only those Members who have undergone training will be asked to sit on dismissal appeal panels. This however only exacerbates the problem of availability as outlined in paragraph 2.4 above.

2.6 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.

2.7 Staff Dismissal Appeal Outcomes - 2010 to present:

A summary of the outcome of Dismissal Appeals since 2010 onwards is as follows:

Outcomes	
9	Unsuccessful appeal
5	Successful appeal
3	Settled before appeal
4	Withdrawn before appeal
2	To be heard

2.8 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, 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.

3. Options

3.1 The options available for dealing with Staff Dismissal Appeals in the future are as follows:

- A. Widen the pool of eligible Members
- B. Delegation of function to Officers
- C. Retain the status quo

3.2 **Option A:** The pool of Members could be widened by way of delegation to other Committee(s) of the Council. Whilst this would mean that more Members are eligible to sit on appeal panels, in practice this would mean that more Members would need to be trained. This would have significant resource implications for both Members and Officers. Also, notwithstanding training, a wider pool of eligible Members might mean that in practice many Members might seldom, if at all, sit on an appeal. This again has its risks at an Employment Tribunal, where evidence of competence and recent experience in dealing with appeals might be an issue.

3.3 **Option B:** There is no legal reason why the 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 be consistent with the approach taken in other types of dismissals, which are already heard by Officers. It would also potentially enable valuable Member time to be more effectively used. It is suggested that as a matter of good governance and to demonstrate independence of judgement an Appeal Panel under this approach would be constituted from officers outside of the former employee's department. Also, it will be important to ensure that suitably senior officers are selected to form appeal panels and that they are fully supported by professional HR and legal advice.

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3.4 **Option C:** In light of the issues detailed earlier in this report, this option is likely to be the least effective going forward.

3.5 Should a delegated arrangement as per Option B be the preferred way forward, consultation with the Trade Unions would be advisable.

4. Consultation

4.1 If EHCC Committee agrees to pursue Option B, then consultation will be undertaken with the Trade Unions to gain their views. Consultation will include the proposal to delegate responsibility for hearing misconduct to Officers, as well as the options for how this can be achieved (e.g. the make up of officer appeal panels, procedures for hearings and so on. The outcome of this consultation would be brought back to a future EHCC Committee meeting for consideration before any decision is taken to recommend agreement of the proposals.

4.2 It is also proposed to undertake wider staff engagement to ensure that views from across the entire workforce are taken into account.

5. Other Key Issues

5.1 Allowing for consultation period with Trade Unions, the outline timeline is:

7 July 2016: Commence consultation with the Trade Unions and engagement with staff

20 July–21 Sept 2016: Consultation with Trade Unions/staff engagement, with a view to reaching agreement on changes to the process

8 Nov 2016: EHCC Committee – consider outcome of consultation with the Trade Unions and decides whether to make a recommendation to the full Council to implement the proposals

24 Nov 2016: Full Council Meeting considers the recommendation from EHCC Committee and decides whether to amend the constitution to implement the proposals.

6. Dismissal of Certain Statutory Officers

6.1. Notwithstanding the general position relating to the procedure appertaining to the dismissal of Chief Officers, certain specific statutory rules apply in the case of the proposed dismissal of the Head of Paid Service, Chief

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Finance Officer, and Monitoring Officer. The rules are set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (2015 Regulations), which amended previously existing disciplinary procedures in this regard. Prior to the 2015 Regulations, where disciplinary action was proposed against any of these posts the County Council was required to appoint a Designated Independent Person (DIP) to investigate and make a binding recommendation on any disciplinary action, including dismissal. The 2015 Regulations removed this requirement, and provide instead that in the case of the proposed dismissal of the Head of Paid Service, Chief Finance Officer, or Monitoring Officer, the County Council is required to appoint a Panel comprised of at least two Independent Persons (for the purpose of the 2015 Regulations this means Independent Persons appointed under the Members' Code of Conduct regime to advise on complaints made against Members under the Code of Conduct) whose views are required to be taken into account before dismissal of one of these Officers. It should be noted that a Panel appointed under the 2015 Regulations is an advisory rather than a decision making Panel, and that any decision to dismiss is required to be exercised by full Council.

- 6.2. There has hitherto been some uncertainty as to whether the requirement in respect of a Panel appointed under the 2015 Regulations incorporated a requirement to maintain political balance on, that is whether or not a Panel should consist solely of Independent Persons, or also include elected Members. Having consulted the Department for Communities and Local Government (DCLG), the Joint Negotiating Committee for Chief Executives of Local Authorities (JNC) has accepted that it is possible that a Panel can comprise only Independent Persons provided that is what an Authority resolves, and this is now reflected in the National Model Process. It is recommended that for clarity Standing Orders are amended to reflect the National Model.

7. Recommendations

- 7.1. That the EHCC Committee approve consultation with the Trades Unions and staff to be undertaken regarding a proposal to amend the disciplinary procedure and the Constitution to delegate responsibility for hearing dismissal appeals to Officers.
- 7.2. That authority is delegated to the Head of HR and Workforce Development to undertake the consultation and report back to a future meeting of the EHCC Committee.
- 7.3. That the EHCC Committee recommend to the County Council that approval be given to the Monitoring Officer to amend the Constitution to reflect clarification in respect of the composition of a Panel appointed pursuant to the 2015 Regulations so as to comprise Independent Persons only, as outlined at Paragraph 6 of this report.

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>
None.		
Direct links to specific legislation or Government Directives		
<u>Title</u>	<u>Date</u>	
Local Authorities (Functions and Responsibilities) (England) Regulations	2000	
Local Authorities (Standing Orders) (England) (Amendment) Regulations	2015	

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.