

REPORT OF THE
Employment in Hampshire County Council Committee
PART I

269. CONSTITUTIONAL AND PROCEDURAL MATTERS

1. Staff Dismissal Appeals

Allocation of the function of determination of appeals against staff dismissal (other than Chief Officers, which includes Corporate Management Team (CMT) members and other Senior Officers reporting to a CMT member) is set out at Part 2; Chapter 2, Paragraph 2.2 of the Constitution. Appeals against dismissal for misconduct are currently delegated to Regulatory Committee. 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 the recruitment and management of staff is an operational matter which is dealt with by Officers.

2. A review of the current arrangements in respect of the hearing of disciplinary appeals has recently been carried out, and papers in this regard have been considered by the Employment in Hampshire County Council (EHCC) Committee. Papers considered by the EHCC Committee on 10 November 2016 and prior to this 6 July 2016, including the recommendations of the EHCC Committee are attached at Annexes A and B to this report.

3. During the course of discussion at EHCC Committee, Members noted that there had been a low response rate to a consultation by Members of the Regulatory Committee and the views of those Members that had responded were mixed. The outcome of the Trade Union consultation was that the majority favoured the proposed way forward. A key aspect of the Trade Union Consultation was that officers hearing dismissal appointments should be appropriately senior, independent, and unconnected with the case. This point is addressed in the proposed revised arrangements. Some Members of the EHCC Committee favoured a wider pool of Members or a separate Committee to deal with these appeals. The EHCC Committee however noted discussion at the Committee's July meeting where it had been reported that having a wider pool of Members has training implications and could lead to Members not regularly hearing appeals and hence not building up the experience and knowledge a Member would need to have should an appeal against dismissal fail, and a subsequent claim be made to an Employment Tribunal. In all circumstances, there was a consensus of the importance for an appellant to have their appeal dealt with in a timely and effective manner.

4. Some Members of the EHCC Committee also expressed the view that there is a clear divide between the operational corporate management and accountability of the Council, and overall management responsibility for all Officers, which ultimately lies with the Chief Executive as Head of Paid Service (in accordance with the law and the Constitution), and the role of Members of the Council.

5. Members of the EHCC Committee noted strong reservations expressed by the Chief Executive, present at the EHCC meeting, about the current arrangements for dealing with appeals against dismissal for gross or serious misconduct. These matters will almost always involve very challenging circumstances and have profound implications for both the employer and the employee. Among the concerns with the existing system the Chief Executive highlighted the following.

- (a) Despite repeated efforts over years there had been significant difficulties in establishing a sufficiently strong pool of appropriately trained members to deal with often highly complex cases.
- (b) This issue of sufficiency also contributed to a challenge of delay as attempts are made to arrange appeal dates, usually requiring a number of days. Such delays can be damaging to individuals, the services and the principles of justice.
- (c) Even with a well trained panel to choose from, individual cases are tending towards increasing technical complexity in such areas as child protection, requiring additional senior management advice to panels yet still posing risks through the complexity of the decision making process.
- (d) In cases where appeals are rejected there is then the prospect of cases being brought before Employment Tribunals where the legality as well as the content of all decisions will be further tested. This can be an unreasonable expectation of Elected Members who are not professionally qualified or indeed empowered to defend managerial decisions.
- (e) There is a significant anomaly in that the current system breaks the link between “hiring and firing” for the staff concerned, who are appointed by senior officers in a clear and managerially accountable system but whose dismissals may then be considered outside of that accountability system.
- (f) None of these points are criticisms of the Elected Members who have served this process with commitment and skill over the years. They are reflections of a changing and more demanding legal context in such matters. Attention was also drawn at the meeting to the good track record of the organisation generally in managing good performance and good discipline. The overall performance of the organisation is strong largely because of a robust performance management framework. Consequently, the use of any formal disciplinary procedures is relatively rare and the recourse to dismissal as an outcome extremely so. In such rare cases there is a genuine concern that the existing approach is no longer adequate or safe for the organisation or employees.

6. Members of the EHCC Committee welcomed the suggestion that a monitoring report on application of the revised arrangements be included as a standard item as part of the annual workforce report presented to the EHCC Committee, in keeping with their function.

7. Following consideration of the paper dated 10 November 2016 contained at Annex A, and the previous paper considered by EHCC at Annex B, the recommendation of the EHCC Committee was that in future responsibility for hearing staff misconduct appeals (other than for Chief Officers, which would remain a Member function), be delegated to Officers.

8. Because responsibility for the delegation of functions is a County Council matter, the purpose of this report in this regard is to present the reports of the EHCC Committee to the County Council, and to seek the approval of the County Council to the recommendation of the EHCC Committee in respect of the revised delegation of the function of appeals against staff dismissal, and consequential changes to the Constitution.

9. **Dismissal of Certain Statutory Officers**

At its meeting on 6 July 2016, the EHCC Committee also considered whether there should be clarification in the Constitution regarding the composition of an Independent Panel required to be appointed by virtue of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (2015 Regulations), in order to advise the County Council regarding any proposal to dismiss any of the statutory posts of Head of Paid Service, Chief Finance Officer, or Monitoring Officer.

10. Detailed consideration relating to this matter is set out at Paragraph 6 of the report considered by the EHCC Committee dated 6 July 2016 attached at Annex B. It should be noted that any disciplinary procedures relating to any of these three statutory posts, whether resulting in a proposal to dismiss or not, is first considered by a Member Panel, in the same way as proposed disciplinary action relating to Chief Officers generally. The distinction being where there is a recommendation to dismiss any of the posts of Head of Paid Service, Chief Financial Officer or Monitoring Officer, notice of dismissal must be approved by the full Council. This is done after reference to an Independent Panel required to be constituted under the 2015 Regulations. Such a Panel must include at least two Independent Persons (this means Independent Persons appointed under the Members' Code of Conduct regime who advise on complaints made against Members under the Code of Conduct), whose role is to advise the County Council, prior to any decision being exercised by the full Council.

11. Having consulted DCLG clarification has now been received that an Independent Panel can comprise only Independent Persons and this is now reflected in the revised Joint Negotiating Committee for Chief Executives of Local Authorities (JNC) for Local Authority Chief Executives National Salary Framework & Conditions of Service Handbook (JNC Handbook). It is considered appropriate that for clarity Standing Orders should be amended to reflect the National Model for all three statutory posts.

12. Because responsibility for the amendment of the Constitution is a County Council matter, the purpose of this report in this regard is to seek the approval of the County Council to the recommendation of the EHCC Committee that the Constitution be amended to reflect clarification in respect of the composition of an Independent Panel.

RECOMMENDATIONS

That the County Council:

- (a) Approves the delegation of responsibility for hearing staff misconduct dismissal appeals to Officers (other than for Chief Officers).

- (b) Agrees that an Independent Panel appointed pursuant to the 2015 Regulations should comprise Independent Persons only.
- (c) Authorises the Monitoring Officer to make suitable amendments to the Constitution to give effect to recommendations (a) and (b).