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## **Governance Committee: Staff Appeals Panel – Proposals for Change**

### **Background**

- 1** The arrangements for (a) grievances raised by staff and (b) managing dismissals arising from disciplinary action against staff and through other HR processes are covered in a comprehensive set of policies supported by procedures. These procedures include provision for appeals against decisions.
- 2** Currently Boards of Appeal, made up of members drawn from the Appeals Panel, hear all final appeals against dismissal and the final appeal in relation to the grievance procedure. The Appeals Panel is a sub-committee of the Governance Committee. Each Board of Appeal is made up of between three to five members, drawn from the Appeals Panel of 18 members.
- 3** The numbers of appeal hearings are quite low – around four to six dismissal and one or two grievance appeal hearings per year.
- 4** Outcomes and learning from individual cases are dealt with through reviews by senior officers responsible for the policies and any significant action would be reported to the Chief Executive as head of the paid service. The members of the panel receive training in order to keep up to date with developments in employment law and fair process, internal policies and procedures, so as to ensure that hearings are conducted in a fair and proper manner.
- 5** As members currently provide the last internal forum for appeal, members of boards of appeal can be called to provide evidence at Employment Tribunals where dismissal decisions are challenged. This has, on occasion, necessitated members' attendance at tribunals, and needing to set aside dates scheduled for tribunal hearings even where the hearing is later adjourned or abandoned.

### **Reasons for considering changes**

- 6** The Constitutional position is that the Chief Executive is personally accountable to the County Council for all staff matters, including grievance and disciplinary arrangements. This is because, as a matter of law, the Chief Executive discharges the role of head of paid service. Within the County Council's current arrangements however the Chief Executive plays no part in the hearing or determining of appeals against dismissal or the final stage of staff grievances as these are dealt with through the Appeals Panel. The Council's Monitoring Officer advises that this needs to be corrected.
- 7** Within the context of staff appeals the Boards of Appeal which hear cases are acting as the employer and therefore discharging an executive function – effectively on behalf of the head of paid service. It is not a scrutiny function where members are holding the head of paid service to account for the effectiveness of staff disciplinary or other arrangements. This explains why members of a Board of Appeal may need to be available to act as witnesses should any case be appealed to an Employment Tribunal. This risk, and the fact that the function is an executive one, has also led to a number of members declining to chair a Board of Appeal.

- 8** The absence of a direct role for the head of paid service has also meant that concerns and issues connected with processes which have come before Boards of Appeal are addressed after the event – with Boards of Appeal making representations to the head of paid service following any hearing which has given rise to such concerns. The Chief Executive is responsible for the effectiveness of and compliance with HR policies and procedures but also carries responsibility for developing the culture of the organisation and for ensuring the performance management discipline needed to support it.
- 9** In addition to the potential for having to account for an upheld dismissal before a Tribunal the members of Board of Appeal may also face some challenges where, for example, a dismissal is overturned and a reinstatement ordered. The practical and service implications for this would be outside the control of the Board of Appeal taking such a decision, despite the members acting as the employer. The current arrangement has the potential to create tensions within those lines of accountability with no direct involvement for the head of paid service.
- 10** The role of elected members is to set the outcomes and direction for the Council, to define the policies (including HR policies) through which those outcomes are delivered and to oversee and monitor performance against those defined outcomes, calling out inconsistencies or poor practice when it is seen. These critical member roles can operate alongside operational decision making within the employment context but only if the tensions described above and the current anomalies are addressed.

### **Proposals for change**

- 11** At the recent annual meeting of the Staff Appeals Panel it was agreed that changes should be made as a result of the issues set out above. Accordingly the Governance Committee has considered a number of options which could enable members to continue the role of ensuring the Council's employment arrangements are fair reasonable and well managed. These options offer differing degrees of direct involvement in the decision making in individual cases whilst affording some involvement by the head of the paid service. It is not proposed that any other changes are made to the Appeals Panel. The option of no change would not address the concerns set out above.

#### **Option 1** (recommended by members of the Staff Appeals Panel)

That the Boards of Appeal comprise three elected members and the Chief Executive or his nominee who shall all have equal voting and decision-making rights. Boards of Appeal should normally be chaired by one of the elected members. This would address all of the issues including direct accountability for the outcome jointly by members and the head of paid service, with the latter being able to be responsible for the implementation of decisions and to address any issues that arise from a matter, as well as being available to attend any Tribunal on behalf of the Council.

#### **Option 2**

That the Boards of Appeal comprise three elected members and the Chief Executive or his nominee who shall chair and take the decision as head of paid service, the members acting as advisers or observers. This also addresses all

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of the concerns set out above but does of course provide members with a consultative role rather than one of direct decision making. It does however emphasise the accountability of the head of paid service whilst allowing members direct oversight of individual cases.

**Option 3**

That Boards of Appeal comprise up to four elected members with the Chief Executive or his nominee acting as adviser or observer. This option would fall short in addressing all of the issues set out above as the head of paid service would not be accountable for the decision either in terms of implementation or before a Tribunal. It would also cause potential confusion or conflict with HR and legal advice also being given to the panel by other officers.

- 12** The Committee supports the view of the Staff Appeals Panel which recommended the adoption of Option 1 which was slightly amended by the Committee - to confirm that the membership of Boards of Appeal should be three elected members rather than 'up to three' and that Boards of Appeal should normally be chaired by one of the elected members. The latter change allows for an instance when none of the elected members wishes to chair a particular Board of Appeal. The Committee has also requested that there should be specific training in chairmanship skills for members of the Panel.
- 13** The proposed changes will take effect following the Council meeting, with any amendments needed to policies and procedures being made to give effect to the changes. This will include ensuring that changes keep or bring them in to line with ACAS minimum requirements. The constitution set out in the terms of reference of Boards of Appeal as set out in Part 3 of the Constitution will be updated.
- 14** The proposals do not affect school based staff as they currently do not have a right of appeal to the member appeal panel. It should also be noted that separate arrangements apply in relation to disciplinary action concerning the Chief Executive and members of the Executive Leadership Team as these require member involvement as provided in Council Standing Orders and there is no plan to change those arrangements.
- 15** Arrangements will continue for a regular annual report to be presented to the Governance Committee in relation to its responsibility for overseeing the effectiveness of and compliance with disciplinary and grievance arrangements. This helps to enable the County Council to meet its objectives in terms of staff performance and in meeting corporate expectations in terms of standards of behaviour. It will remain the responsibility of the Committee to consider and approve any changes to policies that may arise from any learning or performance monitoring.
- 16** Enquiries have been made of similar authorities to identify whether the County Council's current and planned arrangements are out of line in terms of member involvement. The information is set out in the table below.

<b>Authority</b>	<b>Member role</b>	<b>Type of HR process</b>	<b>Form of member role</b>
Devon	Yes	Dismissal and grievance appeals for statutory chief officers only	To hear chief officer cases
Dorset	Yes	Dismissal and grievance appeals for chief officers only	To act as consultee in chief officer cases
East Sussex	No	N/A	N/A
Essex	Yes	Dismissal and grievance appeals for chief officers only	To hear chief officer cases
Hampshire	Some	Staff Dismissal appeals	Option to sit in on hearings as observer
Herts	Yes	Dismissal and grievance appeals for chief officers only	To hear chief officer cases
Kent	Yes	Dismissal and grievance appeals for chief officers only	To hear chief officer cases
Surrey	Yes	Dismissal and grievance appeals for chief officers only	To hear chief officer cases

**17** This shows that no other comparator authorities have elected members hearing grievance or disciplinary matters other than those relating to the senior leadership team. In one authority members are able to observe appeal hearings conducted by the head of paid service or their nominated person.

### **Consultation**

**18** The members of the Appeals Panel met on 15 May 2018 as their annual meeting to review the year's activity and to approve the annual report. The preference of the majority of the members present was for Option 1. Members agreed the need to change for the reasons set out in this paper were keen to maintain the member role in individual case decisions.

**19** Comments from UNISON and FBU were considered by the Governance Committee. Neither union believes there is a case for any change to the existing arrangements and support the retention of the status quo. Of the options available the unions view Option 3 as the most desirable.

### **Resource Implications**

**20** There are no financial resource implications of any of the options for change. The implementation of an option that would include a role for the Chief Executive or his nominee at all staff appeal hearings would mean additional time commitment and would require some planning but should not add to the overall senior staff resource.

**Recommended**

- (1) That the changes to the constitutional arrangements for the Appeals Panel to deal with staff disciplinary or grievance appeals, as set out in Option 1, be approved; and
- (2) That the Discipline and Grievance policies, and other relevant procedures and guidance be amended accordingly.

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**Background Papers**

None