



## General Purposes Committee

12th February 2014

### Report from HR Director

Wards affected:  
ALL

## Review of Disciplinary Appeals Process

### 1.0 Summary

The General Purposes Committee at its meeting on 13 September 2012 took a decision to update the council's disciplinary policy and procedure. Included in the policy was provision for appeals by staff dismissed for gross misconduct to be heard by a senior officer and not a member committee. The trade unions did not agree with this decision and requested that it be referred to council's Employee Joint Consultative Committee (EJCC) for discussion. Following consideration by the EJCC it was referred back to the next meeting of the General Purposes to consider the representations made by the trade unions.

A report was presented to the General Purposes Committee in January 2013 setting out the discussions at the EJCC meeting and making revised proposals for the council's disciplinary appeals arrangements. The Committee agreed that a pilot scheme be established to run for 12 months, under which appeals against dismissal for gross misconduct will be heard by a senior officer.

This report reviews the pilot of the new appeals arrangements and makes recommendations for the continuation of the arrangement in the future.

### 2.0 Recommendation

1.1 The General Purposes Committee is asked to:

- i. note the findings of the pilot; and
- ii. confirm that all appeals against dismissal for gross misconduct should be heard by senior officers, except where an application for the appeal to be heard by a member panel has been made and agreed by the HR Director.

### 3.0 Background

3.1 The General Purposes Committee at its meeting on 13 September 2012 considered a report which detailed the proposed changes to the council's disciplinary policy and procedure updated in line with recent changes in practice, procedures, case law and

the general changes in the HR policy framework. The report amongst other changes made proposals that the Staff Appeals Sub-Committee be retained but that its jurisdiction be brought into line with the Staff Appeal's Appointments Committee and therefore to hear only appeals against dismissal from assistant (operational) directors and above. Operational directors and above appointments are made by a Member Appointments Sub-Committee. Establishing parity with the Staff Appeal Sub-Committee it was considered reflected the member involvement in the employment decision of senior staff. Appeals for all staff below assistant director it was proposed would be heard by senior officers in the same way dismissals for all other reasons such as absence, capability and redundancy are managed.

- 3.2 Members considered the extent to which it was important to have a consistent approach for all staff and also whether the existing provision for a member level independent appeal process should continue to be retained or at least, subject to wider discussion. The HR Director advised the Committee that the trade unions were not supportive of the proposal. It was also acknowledged that a meeting of the EJCC was due to be convened and that the proposals to revise the policy were likely to be the subject of discussion at that meeting. It was therefore agreed that consideration of the changes to the appeals process be deferred pending the EJCC meeting.
- 3.3 The EJCC met on 26 November 2012. At that meeting the employees' representatives raised the proposed changes to the disciplinary policy appeals arrangements. Both GMB and Unison members made clear their opposition to the changes to the arrangements and their reasons for this. In response to the trade union concerns the HR Director explained the rationale for the proposed changes to the appeals process and set out the key principles that would underpin the new policy to ensure fairness in the application of the policy and greater efficiency. It was also considered the approach would ensure greater consistency allowing any challenge of a dismissal decision to be more successfully defended and reflected the practices in many other London boroughs.
- 3.4 The Committee acknowledged the reservations expressed by both parties and agreed that the report be referred back to the General Purposes Committee for re-consideration taking account of the discussion at the EJCC meeting.
- 3.5 The General Purposes Committee at its meeting on 22 January 2013 considered the representations made by the trade unions at the EJCC meeting in November regarding the proposed changes to the disciplinary appeals process and the arguments for and against maintaining the status quo regarding the appeal arrangements.
- 3.6 The Committee agreed an alternative proposal to retain member appeals for cases where an employee can demonstrate that it would be more appropriate for a panel of members to hear an appeal rather than a senior officer. The HR Director would be responsible for making a decision as to whether or not an appeal should be heard by members or an officer after representations had been made. To recognise the concerns that had been raised it was agreed that the revised appeals arrangement be piloted for 12 months and a report on its effectiveness be brought back to this Committee at the end of the pilot for members to take a decision to confirm the policy or make such further changes as may be necessary. After deliberations it was also considered that the proposed changes should be applied to all staff equally where possible and therefore, those at assistant director (now operational directors) level should not be excluded from the senior officer determined appeals process as the original proposal had suggested (appeals from statutory chief officers would continue to be heard by the Appeals Sub- Committee).

#### 4.0 Detail

The new disciplinary policy including the appeals procedure was introduced on the 1<sup>st</sup> February 2013. As agreed by the Committee the appeals arrangements have been piloted for a year. This report considers the results of the pilot and makes recommendations going forward.

Since the 1<sup>st</sup> February last year there have been 22 formal hearings of which 13 resulted in dismissal and 9 in another disciplinary sanction.

The table below sets out an analysis of the level of appeals and outcomes for the 13 cases where the employee was dismissed.

Appeal not upheld	Appeal withdrawn	No appeal Lodged
10	1	2

The ten appeals that were heard were in accordance with the new appeals arrangements. They were heard by a senior manager and none of the appeals were upheld. An analysis has been undertaken of representation at the appeal hearings. Out of the 10 cases 4 were represented by UNISON.

Not represented	Represented by UNISON	Represented by GMB	Other *
3	4	0	3

\*other: heard in absence of individual, represented by a union not recognised by the council.

Representation was not made in any of the cases for the appeal to be heard by a member appeals panel. In those cases where an appeal was lodged there were no issues raised after the hearing regarding the appeals panel arrangement.

The trade unions have been consulted as part of this review and have confirmed that they are content with the arrangements for appeals that were piloted to continue.

In conclusion it is considered that the process has not disadvantaged staff who have been dismissed and have lodged an appeal. The appeals process has provided staff with the opportunity to present their appeal in accordance with the procedure and the hearing officers who are senior managers have the skills and knowledge required to make a judgement based on the information presented. Staff also have the right to be represented if they wish.

It is therefore recommended that the arrangements as they stand remain in place which includes the option for the individual to make representation to the HR Director if they consider that there is good reason for the appeal to be heard by a Member Appeals Panel.

**4.1 Financial Implications**

None for the purpose of this report.

**5.1 Legal Implications**

The proposed changes to the disciplinary policy are in accordance with the ACAS Code of Practice on discipline in the work place.

**2.0 Diversity Implications**

4.1 No diversity implications have been identified.

**3.0 Staffing/Accommodation Implications**

5.1 The body of the report concerns itself with matters relating to staffing.

**Background Papers**

Disciplinary Policy and Procedure  
Analysis of appeals casework

**Contact Officer**

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