

Report to: **Governance Committee**  
Date: **19 September 2017**  
Report by: **Chief Operating Officer**  
Title of report: **Employment Appeal Panel - Member Appeal Hearings**  
Purpose of report: **To consider and make recommendations on the continuance of the Employment Appeal Panel**

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## **RECOMMENDATIONS**

**The Governance Committee is recommended to approve:**

**1) the amendment of the Grievance and Workplace Conflict Policy, Disciplinary Policy, Attendance Management Policy and Procedure, and the Procedure for the Management of Unacceptable Performance to replace the right of appeal against dismissal to an Employment Appeal Panel with a right of appeal to a senior officer at Assistant Director level or above**

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### **1 Background**

1.1 It is good practice to review key employment policies and procedures on a regular basis to ensure they remain appropriate to the organisation and its staff, as well as ensuring that any relevant changes in legislation have been incorporated appropriately.

1.2 The Council's Grievance and Workplace Conflict Policy and Disciplinary Policy were last reviewed early 2014 and prior to that, in 2010/11. No significant policy changes were made in 2014 other than replacing the previous first informal line manager stage with the use of Mediation in the Grievance and Workplace Conflict Policy. Currently, the Grievance and Workplace Conflict Policy, Disciplinary Policy, Attendance Management Policy and Procedure and the Procedure for the Management of Unacceptable Performance, all contain a right of appeal to a panel of County Councillors as the final stage of the procedure. In accordance with the Constitution of the County Council this function is undertaken by the 'Employment Appeal Panel' which is drawn from members of the Regulatory Committee. The terms of reference for the Employment Appeal Panel are:

"To hear and determine appeals by employees:

- (i) against the grading of their posts;
- (ii) against disciplinary action and the dismissal of employees;
- (iii) to hear and determine grievances lodged by staff in accordance with the County Council's grievance procedure; and
- (iv) to hear and determine disputes lodged by employees in accordance with the County Council's disputes procedure."

1.3 In considering the above, it should be noted that following the implementation of the national Single Status Agreement in 1997 and the adoption of a local pay and grading scheme in 2003, this Panel no longer has responsibility for hearing grading appeals. Likewise, following the Employment Act 2008 which repealed the minimum statutory procedures, the Council's Restructure and Redundancy policy was amended to provide a review of the decision by an appropriate senior manager, rather than an appeal to a panel of County Councillors.

### **2 Current Position**

2.1 Over the last few years, the number of appeals heard by the Employment Appeal Panel has been very small, as detailed in the table below:

	Grievance	Dismissal	Total
2014/15	1	4	5
2015/16	3	3	6
2016/17	2	1	3
up to July 2017	0	0	0

2.2 Set against the above, Member appeal panels are required on a very infrequent basis. This is potentially an issue in terms of the confidence of Members to undertake this role given the growing volume and complexity of employment legislation and with greater emphasis on procedural and technical issues. Whilst the number of Employment Tribunals has reduced significantly over the last few years following the introduction of fees, it is anticipated that numbers will now increase since the Supreme Court found, on 26 July 2017, the introduction of such fees was unlawful. Employment Tribunals will now be more accessible.

2.3 Organising and arranging appeal hearings is extremely resource intensive and finding a date that that is convenient to all parties frequently proves to be very difficult. This is particularly the case for Members given the demands on their diaries. As a result, there have been occasions where the earliest date that can be found for an appeal hearing is some two or three months after the decision against which the appeal is being made was taken. Clearly, such elongated timescales are unsatisfactory for all parties.

2.4 Given all of the above, it is therefore proposed to amend the Grievance and Workplace Conflict Policy, Disciplinary Policy, Attendance Management and Procedure Policy and the Procedure for the Management of Unacceptable Performance, all of which currently provide for a right of appeal to the Employment Appeal Panel and replace this with a right of appeal to an appropriate senior officer at Assistant Director level or above, who has had no prior involvement in the case, to ensure impartiality.

#### Position of Other Local Authorities

2.5 A survey of Councils in the Hay User Group (a benchmarking group that we participate in) has been undertaken and the results are attached at Appendix 1. Of the 14 authorities that responded, 9 have moved to a position of no Member involvement in any appeal hearings; 2 have Members hearing dismissal appeals but with grievance appeals delegated to officers and 3 continue to have Members involved in all appeals.

#### Trades Union Views

2.6 UNISON and GMB have been consulted on this proposal. The GMB have advised that they are content with the proposal for an appropriate senior officer to undertake the appeal as an alternative to a Member panel. UNISON, however, have indicated that they disagree with this proposal and believe that an appeal to a Member panel provides the opportunity for an objective and independent consideration that would not be achieved in the same way by a senior officer undertaking it. Attached at Appendix 2 is a written submission from UNISON setting out their views and response to this proposal.

### **3 Conclusion and Recommendations**

3.1 The termination of an individual's employment is a very serious matter, as is the full consideration of employees' grievances. It is therefore essential – and a legislative requirement – that an appropriate appeal mechanism exists. However, for the reasons detailed in this report, it is proposed that this would more appropriately sit with senior officers as opposed to the Employment Appeal Panel.

3.2 The Governance Committee is therefore recommended to agree the proposal to amend the Grievance and Workplace Conflict Policy, Disciplinary Policy, Attendance Management Policy and Procedure, and the Procedure for the Management of Unacceptable Performance, to replace the right of appeal against dismissal to an Employment Appeal Panel with a right of appeal to a senior officer at Assistant Director level or above.

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