

Full Council Report

5 October 2017

Employee appeals against dismissal

Lead director: Miranda Cannon

Useful information

- Ward(s) affected: N/A
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1. Summary

1.1. This report presents a proposal that appeals from employees against dismissal under the council's disciplinary, capability and absence management procedures should no longer be heard by the Employees Committee. Instead, it is proposed that such appeals are heard by officers.

2. Recommendations

2.1 It is recommended that:

- a. The function of determining appeals from employees against dismissal under the council's disciplinary, capability and absence management procedures should, in future, rather than being heard by the Employees Committee, be delegated as an officer decision heard by a manager outside of the immediate service area and with no prior involvement in the case, and who will normally be more senior than the manager taking the decision to dismiss.
- b. A review of the new arrangements is completed after 12 months of operation and reported to members.
- c. The disciplinary, capability and absence management procedures be amended accordingly and those amendments to be subject to appropriate consultation with the recognised Trade Unions.
- d. The Terms of Reference for the Employees Committee contained within Part 3 of the Council's Constitution are amended to remove the role of members in appeals.

3. Main report

3.1 Background

3.1.1 Currently, under the council's disciplinary, capability and absence management procedures, appeals against dismissal are heard by the Employees Committee which consists of any three elected members. Appeals against warnings issued under these procedures are heard by officers (a manager with no prior involvement in the case, normally more senior than the manager who issued the warning). Appeals against dismissal under the redundancy and probation procedures are also heard by officers.

3.1.2 The role of members in the appeal process is contained within the Terms of Reference for the Employees Committee contained in Part 3 of the Council's Constitution.

3.2 Implications of current appeal arrangements

3.2.1 A HR Adviser is assigned to provide advice to members of the Employees Committee when hearing appeals. In the event of an employment tribunal claim resulting from the appeal decision it had been usual practice for the HR Adviser to be a witness at the tribunal hearing. This practice has previously been criticised by employment tribunal judges who argue that the decision maker should be called rather than the HR Adviser.

3.2.2 In an Employment Appeal Tribunal (EAT) case in 2015, it was held that the role of a HR Adviser should not extend to advice on the appeal decision itself and failure to adhere to this may render the dismissal unfair. Following on from this case the council has been required to call the chair of the Employees Committee (and potentially other members of the Committee may also be called) to provide evidence as to the decision making in the appeal process. Members have, therefore, been required to attend employment tribunal hearings. This has involved a significant amount of time preparing for and attending tribunal, and detailed questioning by a lawyer. Limited notice is provided of the time of appearance at tribunal so the member has needed to be available for the duration of the hearing. This can be particularly problematic for members, for example, during an election campaign.

3.2.3 It is worth noting that the Supreme Court recently ruled that employment tribunal fees (introduced in 2013) are unlawful and discriminatory and so these have been abolished. It is anticipated that this ruling will result in an increase in the volume of claims and, consequently, the number of hearings and, therefore, demands on Employees Committee members.

3.3 Proposal

3.3.1 In light of the issues outlined above it is proposed that the Employees Committee no longer hears any appeals, eliminating the need for elected members to attend tribunals. Instead, it is proposed that appeals against dismissal under the disciplinary, capability and absence management procedures are heard by a manager outside of the immediate service area and with no prior involvement in the case, who will normally be more senior than the manager taking the decision to dismiss – as per appeals against warnings. It would be this manager who would then attend the employment tribunal in the event of a claim arising from the decision. It is likely that, in the majority of cases, the appeal would be heard by a director given the level of manager normally making a decision to dismiss.

3.4 Trade union consultation

3.4.1 The necessary amendments to the applicable policies would, in accordance with standard procedures, be the subject of consultation with the recognised trade unions.

3.4.2 It is proposed that the new arrangements are reviewed 12 months after implementation and that, as part of this, the views of stakeholders, including trade unions and senior managers, are sought. The outcome of the review would be reported to members.

3.5 Appeal data

3.5.1 In the three year period April 2014 to March 2017:

- 126 employees were dismissed under the disciplinary, capability and absence management policies.
- 28 of these appealed to the Employees Committee.
- 4 appeals were upheld.

3.5.2 The annual breakdown is shown below:

Year	Disciplinary, capability & absence dismissals	Appeals	Appeal upheld
April 2014 - March 2015	35	9	2
April 2015 - March 2016	50	8	0
April 2016 - March 2017	41	11	2
Total	126	28	4

3.6 Practice in other local authorities

3.6.1 The practice in 11 similar unitary and metropolitan councils has been ascertained. In summary, appeals are heard by:

Officers: 7 authorities (with one reserving gross misconduct hearings only to members).

Elected members: 4 authorities of which one considering a change to officers.

Details are below:

Authority	Dismissal appeals heard by	Notes
Nottingham	Officers	Panel of 2
Coventry	Elected members	Panel of 3. Considering changing to officers.
Stoke	Assistant Director unless gross misconduct which are heard by Elected members	
Wolverhampton	Officers	Director chairs, 1 elected member can observe (not involved in decision making)
Leeds	Officers	Officer led for over 10 years. Used to be a panel of 3, recently changed to 1 officer only.
Sandwell	Officers	Directors, legal + senior management
Doncaster	Officers	Director or Asst Director
Peterborough	Officers	Senior manager from another department
Derby	Elected members	
Birmingham	Elected members	Panel of 3.
Telford & Wrekin	Elected members	

3.7 Implementation

3.7.1 From the point at which any final decision is made to implement the proposal, following consultation, it would be appropriate to apply the change in respect of employees dismissed from that date. This means that a small number of appeals – where employees have been dismissed before that date – could still need to be heard by Employees Committee.

4. Financial, legal and other implications

4.1 Financial implications

4.1.1 There are no direct financial implications arising from this report.

Paresh Radia, Finance

4.2 Legal implications

4.2.1 When an employee is dismissed from their employment both natural justice and the law of unfair dismissal require the employer to offer them an appeal against the decision. Failure to offer this would likely result in a successful unfair dismissal claim at employment tribunal. The appeal should be to an independent person/body with no prior involvement in the case that is senior to the original decision maker.

Julia Slipper, Principal Lawyer (Education & Employment)

4.3 Climate Change and Carbon Reduction implications

4.3.1 No climate change implications.

4.4 Equalities Implications

4.4.1 There are no equality implications arising from the proposal.