

Human Resources Committee

21st February 2013

Review of Employment Policy Appeals Arrangements

Report of the Director of Human Resources and Organisational Development for Consultation

1.0 Purpose of Report

- 1.1 The purpose of the report is to provide options on alternative appeals mechanisms.

2.0 Description of Decision (Recommendations)

- 2.1 It is recommended that:
 - 2.1.1 the proposals for revised appeal arrangements, as detailed in the report, be approved as they will provide for ownership of the operational management of employee issues and concerns within the officer leadership and management structure of the Council, and enable an operational focus to be taken; whilst retaining member involvement in key HR processes.
 - 2.1.2 Council be recommended to authorise the Head of Law and Governance to amend Part 3 of the Constitution in respect of the functions of the Appeals Committee in order to reflect the arrangements proposed in this report, by removing the references to grievance and disciplinary appeals and providing for the committee to determine appeals and reviews in respect of matters relating to officers' employment where the Council has determined that there be a right of appeal or review to elected members.

3.0 Introduction/Background

- 3.1 At its meeting on 16 May 2012, Annual Council approved changes to the Executive and Committee arrangements including the disestablishment of the Appeals Committee arrangements following consultation upon options for an alternative appeals mechanism.
- 3.2 The new executive and committee arrangements were set up to enable the Council to manage an increasingly complex, challenging and fast developing policy agenda, maintain the momentum of the Sunderland Way of Working and meet increasing public expectations at a time of diminishing resources reflecting refreshed, streamlined and simplified arrangements for decision making on policy and operational issues. At that time, it was agreed that new appeal arrangements would be

implemented, following appropriate consultation, and existing arrangements would continue until that time.

- 3.3 At the current time, it is proposed that revised arrangements be implemented in respect of grievance and disciplinary appeals and that other employee related appeals against the delegated decisions of the Director of HR&OD continue to be heard by panels drawn from the Appeals Committee. This could include for example, appeals against decisions in relation to applications for early retirement and discretionary compensation payments.
- 3.4 The ACAS code of practice on disciplinary and grievance procedures is a statutory code and provides the standards by which disciplinary and grievance situations should be handled in the workplace. There is also non statutory guidance which accompanies the code. The hearing of appeals against any disciplinary penalty, or decision in relation to a grievance, is an important part of a fair procedure. All appeals should be dealt with impartially and heard without unreasonable delay.

4.0 Current Arrangements

- 4.1 Panels drawn from the Appeals Committee currently hear appeals from employees against dismissal on the grounds of conduct, capability, or redundancy and also consider appeals against decisions of the Director of HR & OD in relation to requests for early retirement. Appeals for refusal of applications under the recent severance scheme were also referred to these panels.
- 4.2 In addition, the Panel currently considers appeals from individual employees, or groups of employees, as the last stage of the Council's grievance procedure. Personnel Committee, at its meeting on 26 April 2012, considered and approved a revised 2 stage grievance procedure. At that meeting it had been proposed that appeals should be heard by the Chief Officer or their representative together with a representative from HR & OD. The Committee resolved that the new grievance procedure be agreed in principle, subject to further consultation regarding member involvement. At the meeting members gave consideration to the comments received from the Unions relating to the Grievance Appeal and proposed that these be heard by a representative from HR&OD in consultation with a Cabinet Member

5.0 Options

- 5.1 The context for considering revised appeal arrangements is the new executive and committee arrangements which are intended to strengthen the Council's capacity at a critical time in its development as a community leader. These arrangements are intended to enable Cabinet to manage an increasingly broad and complex agenda effectively and support increased devolution of decision making on the widest range of appropriate services to the most appropriate level.

- 5.2 It is also important to consider that in terms of appeal arrangements, one size doesn't necessarily fit all and different arrangements may be appropriate for different types of appeal. It is considered that grievance and dismissal appeals, relate to operational employee management issues which should be owned by the Directorates. The new proposed arrangements for these appeals strengthen this ownership whilst retaining member involvement. Wider Council decisions, taken under the delegated powers of the Director of HR&OD, are considered best heard by the Council's existing Appeal arrangements.
- 5.3 It is proposed that at the current time, the Terms of Reference for the Appeals Committee is amended to reflect that in future, grievance and dismissal appeals are heard under the new arrangements proposed below, but that members will continue to hear appeals relating to other employee related issues, such as in respect of early retirement.

Grievances

- 5.4 When the revised grievance procedure was considered by Personnel Committee on 26 April 2012 it had been proposed that appeals should in future be considered by Executive Directors with the support of a representative of the Director of HR & OD

Proposed Option

- 5.5 At the meeting members gave consideration to the comments received from the Trade Unions relating to the Grievance Appeal and proposed that these be heard by a representative from HR&OD in consultation with a Cabinet Member as opposed to a Chief Officer; in order to retain member involvement in the process. However in order to retain ownership for the management of employee issues within Services it is proposed that the hearing of Appeals should also involve the Chief Officer or their authorised officer. Consequently it is proposed that appeals should be heard and determined by the Chief Officer (or their authorised officer), after consultation with a Cabinet Member, and advised by the Director of HR&OD (or their authorised officer). This option balances the need to retain ownership of the management of employee issues and concerns within the officer leadership and management structure of the Council, in order to retain an operational focus, whilst retaining member involvement in the process.

Dismissals

Proposed Option

- 5.6 In relation to appeals against dismissal it is also proposed that member involvement should be retained in the process and the same model as for grievance appeals be adopted i.e. appeals against dismissal should be heard and determined by the Chief Officer (or their authorised officer), after consultation with a Cabinet Member, and advised by the Director of HR&OD (or their authorised officer), for the reasons given above.

- 5.7 The opportunity to appeal against formal action is essential to natural justice and appeals may be raised by employees on a number of grounds e.g. new evidence, undue severity of the penalty, unsound basis for the decision. The appeal will be a review of the original decision and any new information relevant to the matter. The Council's disciplinary and capability procedures have also been reviewed in the light of changes to the ACAS code of practice and to ensure that cases can be dealt with in an efficient and timely manner. The Attendance Management Policy also includes dismissals, therefore it was considered important that the three procedures are consistent. A separate report describes the proposed changes to these documents in more detail.

6.0 Consultation

- 6.1 The Trade Unions have been formally consulted about this report and no comments were received.