

<b>EMPLOYMENT COMMITTEE</b>	<b>AGENDA ITEM No. 4</b>
<b>23 FEBRUARY 2016</b>	<b>PUBLIC REPORT</b>

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## APPEALS AGAINST DISMISSAL

R E C O M M E N D A T I O N S	
<b>FROM : Director of Governance</b>	
That Employment Committee:	
<ol style="list-style-type: none"> <li>1. Consider the proposal that appeals against dismissal by staff below Deputy Chief Officer are heard by Officers; and</li> <li>2. Make a recommendation to Council to accept the change to the Council's Constitution Terms of Reference No. 2.3.1.2</li> </ol>	

### 1. ORIGIN OF REPORT

- 1.1 Since 2001, the law has prevented members from having an involvement in staffing matters below deputy chief officer level (save for being able to hear appeals against dismissal). The purpose of this has been to enable members to spend less time on operational matters which in turn gives them a greater ability to focus on their roles as community leaders. Consequently many Councils have moved the dismissal appeals process to Officers as it fits in with the model of officers managing operational matters

### 2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to propose that the City Council also move appeals against the dismissal process to senior officers.
- 2.2 This report is for the Committee to consider under its terms of reference No. 2.3.1.2 to determine employee procedures, including dismissal procedures.

### 3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	<b>N/A</b>
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### 4. BACKGROUND

- 4.1 Employment issues for staff other than senior officers are the responsibility of the Chief Executive as the Head of Paid Service. At Peterborough City Council we do however allow non-senior employees to appeal to a sub-committee of the Employment Committee against the decision of a senior officer.
- 4.2 The current arrangements for appeals against dismissal by City Council employees are as follows:

Type of Employee	Type of Appeal	Appeal Heard by	Comments
PCC non-school based	Redundancy dismissal	Senior Manager	

PCC non-school based	Sickness dismissal	Senior Manager	
PCC non-school based	Disciplinary Dismissal	Employee Appeals Committee	
PCC non-school based	Dismissal within Probationary period	Senior Manager	
Chief & Deputy Chief Officers (excluding Chief Executive, S151 Officer & Monitoring Officer)	All dismissals	Employee Appeals Committee	These officers are appointed and dismissed by Members
School Based Staff	All dismissals	Governing Body	Under School Staffing Regulations 2009, Governing Body are required to deal with such matters

- 4.2 Previously Employment Appeals Committee heard regrading appeals and final stage grievance appeals. However changes to statutory and contractual processes nationally meant that these must be dealt with by officers and therefore the Appeals Committee remit has reduced over recent years so that only appeals against disciplinary dismissals remain.
- 4.3 Although members hearing appeals against dismissal was once common practice in Councils, many have stopped the practice for a number of reasons but principally:
- (a) Members of the committee may be required to attend tribunals to explain the reasons for their decision (similar to member attendance at planning inquiries).
  - (b) Members of the appeals sub-committee are not trained in employment law and this has resulted on occasion in a lack of understanding of the reasons for the officer decision and is a disadvantage in any tribunal case (for this reason planning law training is compulsory for committee members).
  - (c) Non senior officers would still have the right of appeal internally before the opportunity of direct appeal to a tribunal from the senior officer's decision. There is therefore, sufficient opportunity to have any issues heard internally.
  - (d) The appeal to the sub-committee adds further delay and cost to a process which can already take a considerable amount of time to resolve which benefits neither the Council nor the employee.
- 4.4 Therefore proposals are outlined in this report to revise the arrangements for the hearing of appeals against dismissal by employees.

## 5. EMPLOYMENT LAW DEVELOPMENTS

- 5.1 In March 2015 ACAS issued a new Code of Practice on Disciplinary & Grievance Procedures. Within this code of practice it states that "appeals should be heard without unreasonable delay"
- 5.2 Currently the time taken for an appeal against dismissal to be heard by the Employee Appeals Committee is over 3 months. By comparison officer appeals on all other employment matters are normally heard within 28 days. Employment tribunals are often critical of employers who do not deal with appeals quickly and this can (and often is) a factor taken into account when considering whether or not the employer acted reasonably. Consequently many Councils have moved the right of appeal to officers for this reason.
- 5.3 Given that an employee's right to appeal is a legal entitlement, the conduct and the outcome of any appeal is considered by the Tribunals. This has often resulted in Members being summoned to attend Tribunal to account for their decisions. In more than one case, a Tribunal has found against a Council where Members have not been able to evidence training in employment matters.

## **6. OPERATIONAL MATTERS & BEST PRACTICE**

- 6.1 The time taken for an appeal to be heard not only puts the City Council at risk of not being able to successfully defend an otherwise sound case, but also the delay creates uncertainty for the service and for colleagues within the workplace.
- 6.3 Clearly it is important that the Council acts consistently and fairly at all times. Experience in many Councils has shown that due to the fact that Members are in effect “lay people” when it comes to such matters consistency, is often difficult for them to ensure (particularly where appeals are heard by different members).
- 6.4 Whilst Members are not precluded from hearing appeals against dismissal, the matter has been discouraged by external inspection regimes. For example, following an inspection of Social care in one Council, the inspectorate recommended that appeals against dismissal be heard by senior officers.

## **7. PROPOSAL**

- 7.1 It is therefore proposed that the appeals procedure is amended so that employees who are dismissed would have the right of appeal to a senior officer.
- 7.2 The senior officer would be either:
- A corporate director
  - A director
  - A service director
  - An assistant director or
  - A head of service who reports directly to a corporate director or director.
- 7.3 The senior officer hearing the appeal would have had no prior involvement in the case and, normally would be from a different service area from which the employee who appeals is based.
- 7.4 In order to hear appeals the senior officer must be trained in handling appeals. Internal courses will be arranged to facilitate this. They would be supported throughout the hearing by a Human Resources officer in any case.

## **8. CONSULTATION**

- 8.1 Trades Unions have been consulted on the proposals and their comments are appended to this report.

## **9 REASONS FOR RECOMMENDATIONS**

- 9.1 The recommendations would ensure that appeals against dismissal are handled quickly and fairly.
- 9.2 The Employment Committee as the Committee responsible for determining HR policies is therefore asked to comment on these proposals prior to their submission to Full Council.

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015)

## **11. APPENDICES**

Appendix A – Joint Union Response to Consultation on Appeals Against Dismissal

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