

<p>Non-Executive Report of the:</p> <p><b>General Purposes Committee</b></p> <p>23<sup>rd</sup> February 2021</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Amanda Harcus, Divisional Director HR &amp; OD</p>	<p><b>Classification:</b> Internal</p>
<p><b>Title: Alternative models of Employee Appeals Sub-Committee</b></p>	

<b>Originating Officer(s)</b>	Pat Chen, Head of HR
<b>Wards affected</b>	

## 1. EXECUTIVE SUMMARY

- 1.1 The Council's Discipline Policy, Sickness Management, Standards for Managing Employee Performance, Redeployment and Redundancy procedures provide an appeal in cases of dismissal to a sub-committee of the General Purposes Committee. This is made up of three elected members. This paper sets out a proposal for the Committee's consideration which would align a new process to the responsibilities of the Chief Executive in his capacity as Head of the Paid Service. This will help to build the foundation of a new culture for our organisation and to reinforce the requirement of stronger performance management and accountability across the Council.
- 1.2 The clarification of officer responsibilities for operational staffing matters will demonstrate the organisation's commitment to management accountability among the officer leadership team and confirm the alignment of accountability for performance to the Chief Executive as Head of Paid Service. Members will maintain responsibility for and an oversight of the effectiveness of the relevant policies and procedures through an annual report to the Committee. It will mean that members are freed up from the operational process of staff management, re-emphasise the member roles in policy setting in relation to staffing, and continue the oversight of quality assurance in achieving outcomes and compliance.

## 2. RECOMMENDATIONS

The General Purposes Committee is recommended to:

- 2.1 Change the constitutional arrangements for the Appeals Panel to refer dismissal appeals to an officer panel as set out in the report.
- 2.2 Agree amendments to the relevant policies and procedures.
- 2.3 Receive, on an annual basis, a report on the performance of dismissal procedures and the outcomes of appeals.

### **3. REASONS FOR THE DECISIONS**

- 3.1 Within the council, there is increasing importance given to performance management and to individual senior officers taking accountability for their actions. In line with this, it is suggested that senior officers should be expected to hear final appeals in all staffing matters and to take accountability for their decision making. This includes explaining the rationale for their decisions at employment tribunals if necessary rather than, as currently, being accountable up to a point and then expecting an individual member as chair of an Appeal Panel to assume accountability on behalf of the council and the Head of the Paid Service.
- 3.2 This would reinforce the role of the Chief Executive as the Head of Paid Service in both developing the culture of our organisation and reinforcing the performance management discipline needed to support that culture. It is that post which carries the statutory responsibility for all aspects of staffing. That post also has accountability to the council for all staffing matters including performance and capability in the delivery of services and the effectiveness of and compliance with HR policies and procedures. The current arrangement has the potential to create tensions within those lines of accountability as appeal decisions are shared among the members on the Appeals Panel.
- 3.3 The role of elected members is to set the outcomes and direction for the organisation, to define the policies through which those outcomes are delivered and to oversee and monitor performance against those defined outcomes. This proposal reinforces that role.
- 3.4 Within London, Tower Hamlets is only one of 13 boroughs that have members involved in dismissal appeals (two others are also considering revising their process). 20 boroughs have removed members from the appeals process.

### **4. ALTERNATIVE OPTIONS**

- 4.1 Consideration could be given to inviting a Member to participate in dismissal appeals in an advisory capacity and to provide overview and scrutiny.

### **5. DETAILS OF THE REPORT**

- 5.1 The arrangements for appeals against management action is covered in various policies that include provision for appeal against decisions, and specifically, any appeal against dismissal to a Members panel.
- 5.2 Currently, the panel is a sub-committee of the General Purposes Committee. The panel hears all final appeals against dismissal involving the Council's Disciplinary, Sickness, Capability, Redeployment and Redundancy policies. Each appeal panel is made up of three members, including a member of the Executive.
- 5.3 The numbers of staff dismissals and the number of appeal hearings and their outcomes are set out in the tables below (using financial years).

*Number of dismissals (excluding redundancy)*

2019/20	9
2018/19	14
2017/18	21

*Appeals panel outcomes*

<b>Year</b>	<b>Number</b>	<b>Outcome</b>
2019/20	1	1 Reinstated
2018/19	6	5 Dismissals upheld 1 Reinstated
2017/18	16*	13 Dismissals upheld 3 Reinstated

\* 11 of these dismissals took place in 2016/17 but the appeal was heard in 2017/18

- 5.4 Outcomes and learning from individual cases are dealt with through reviews by senior officers responsible for the policies and any significant action would be reported to the Chief Executive as Head of the Paid service responsible for all staffing matters.
- 5.5 It is necessary for the members of the panel to receive training in order to keep up to date with developments in employment law and fair process and to be familiar with internal policies and procedures to ensure that hearings are conducted in a fair and proper manner.
- 5.6 It is also significant that, as members provide the last forum for appeal, members of appeal panels can be called to provide evidence at Employment Tribunals where dismissal decisions are challenged. This has, on occasion necessitated members' attendance at tribunals for significant amounts of time, and needing to set aside dates scheduled for tribunal hearings even where the hearing is later adjourned or abandoned.
- 5.7 The proposal is to change the arrangements for a member appeal panel in relation to all individual staff matters other than those for the Corporate Leadership Team (see 5.11 below). In its place a panel would be made up of a member of CLT, who will chair the meeting and be the decision maker, and two further members from the Senior Leadership Team (including Heads of Service). A legal adviser and an HR adviser will also be present. This would mean that CLT would carry collective responsibility for their decision-making.
- 5.8 In order to limit the risks of delay CLT should have the facility to nominate a deputy to serve only when a member of CLT is not available within a reasonable timescale.
- 5.9 This would require an amendment in the Constitution to change the appeals arrangements and confirm authority with the Chief Executive as Head of Paid Service to arrange for senior officers to hear final staff appeals. The Director of HR & OD will oversee the training of, and support given to officers responsible for hearing such appeals.
- 5.10 Officers are well placed to ensure consistency and have expertise in hearing appeals. There are opportunities to introduce consistency into the new processes more quickly (for example, reflecting on decisions made in appeals, lessons learned), and to ensure thorough training for those hearing cases.

- 5.11 It should be noted that separate arrangements apply in relation to disciplinary action concerning the Chief Executive and members of the Corporate Leadership Team as these require member involvement as set out in the Constitution. There is no plan to change those arrangements.
- 5.12 Arrangements would be put in place for a regular annual report to be presented to the General Purposes Committee in relation to its responsibility for overseeing the effectiveness of and compliance with dismissal appeal arrangements and to ensure the council meets its objectives in terms of staff performance and in meeting expected standards of behaviour. It would remain the responsibility of the Committee to consider and approve any changes to policies that may arise from any learning or performance monitoring.

## **6. EQUALITIES IMPLICATIONS**

- 6.1 There are no equalities implications arising from this proposal. An equality analysis of any revisions to relevant policy and procedures will be carried out separately.

## **7. OTHER STATUTORY IMPLICATIONS**

- 7.1 NONE

## **8. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 8.1 There are no direct significant financial implications arising from this report.

## **9. COMMENTS OF LEGAL SERVICES**

- 9.1 There is no legal requirement for appeals to be heard by members however, good practice requires that appeal hearings should be chaired by a officer of greater or equivalent seniority to the chair of the original panel who made the decision to dismiss to limit the risk of a challenge for procedural unfairness in any potential legal claims which might be brought by the employee.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- NONE