


<p>Non-Executive Report of the:</p> <p><b>General Purposes Committee</b></p> <p>24 June 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 GPC previously considered a report on alternative models for an Employee Appeals Sub-Committee on 23 February 2021. This updated report incorporates feedback from that meeting, namely revising the composition of the Appeal Panel and including equalities data relating to dismissals.
- 1.2 The Council's Disciplinary Policy, Attendance 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. The sub-committee 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. The proposal supports in building the foundation of an improved culture for our organisation and to strengthen the requirement for 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 reconfirms current alignment of accountability for organisational performance to the Chief Executive as Head of Paid Service. It is proposed that members will continue to participate on Appeals Panels, maintaining responsibility for, and an oversight of, the effectiveness of the relevant policies and procedures through an annual report produced by HR & OD to the Committee. This proposal will re-emphasise the role of members in policy setting in relation to staffing, and continue the Committee's 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, supported by a Member as set out in the report.
- 2.2 Consider and agree the pool from which selection of the advisory member on the appeals panel is chosen.
- 2.3 Agree that amendments can be made to the relevant policies and procedures to reflect the changes to the appeals process for dismissals.
- 2.4 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 and have accountability for their decision making. This includes explaining the rationale for management decisions at employment tribunals as necessary rather than, as currently, only being accountable for staffing up to the point of dismissal. If an appeal against dismissal is submitted by an individual, a member panel, and specifically the chair of an Appeal Panel, assumes accountability in this regard for staffing matters on behalf of the council and on behalf of the Head of the Paid Service.
- 3.2 The proposed change will reinforce the role of the Chief Executive as the Head of Paid Service in both developing and being accountable for a culture of performance management in our council and reinforcing the discipline needed to support that culture. It is the post of Head of Paid Service which carries the statutory responsibility for all aspects of staffing and in this regard, officers hearing dismissal appeals retain full accountability. This 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 can create unintended tensions within those lines of accountability.
- 3.3 The role of elected members is to set and agree the outcomes and direction for the organisation, to define the policies through which those outcomes are delivered and oversee and monitor performance against those defined outcomes.
- 3.4 At the GPC meeting on 23 February 2021, members were supportive of having a hybrid Appeal Panel chaired by a Chief Officer (who is the decision maker) and have one Member as part of the panel in an advisory role. This paper proposes a model that enables members to participate in dismissal appeals in an advisory capacity only and to provide an independent overview and scrutiny of the decision-making processes.
- 3.5 Within London, Tower Hamlets is one of 13 boroughs that have members involved in dismissal appeals (two others are also considering revising their process). 20

boroughs have removed members entirely from the appeals process.

#### **4. ALTERNATIVE OPTIONS**

- 4.1 Continue with current arrangements.
- 4.2 Introduce officer only appeals panels.

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

- 5.1 The current arrangements for the right to appeal a management decision to dismiss are set out in those policies that include this provision, and specifically, any appeal against dismissal to a Members panel.
- 5.2 Currently, the dismissal appeal panel is a sub-committee of the General Purposes Committee. The panel hears all final appeals against dismissal involving the Council's Disciplinary, Attendance Management, Performance Management, Capability, Redeployment and Redundancy policies. Each appeal panel is made up of three elected members, including a member of the Executive.
- 5.3 It is a necessary requirement for the members of the appeals 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.
- 5.4 It is also significant that the sub-committee provide the final stage for appeal against dismissal within relevant HR policies and process and, as such, members of the appeal panels can then be called to provide evidence at Employment Tribunals where dismissal decisions are challenged through the legal process. This has, on occasion, necessitated members' attendance at tribunals for significant amounts of time, requiring them to set aside dates scheduled for tribunal hearings.
- 5.5 The proposal set out in this report 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 5.10 below). In its place the panel would comprise of a member of CLT, as chair and decision maker, one further member from the Senior Leadership Team (including Directors and Heads of Service) and one elected member in advisory roles. This enables CLT to carry collective responsibility for their decision-making. A legal and/or HR adviser will support the panel in a similar way to the current member appeal panels.
- 5.6 All members of the appeal panel will have had no previous involvement in the case. Corporate Directors and the second SLT member will be selected on a rota basis, subject to availability and having no previous involvement in the case. In order to limit the risks of delay in convening appeal panels, CLT should have the facility to nominate a Director to serve as the decision-maker, only when a member of CLT is not available to do this within a reasonable timescale.
- 5.7 The member in an advisory role will be drawn from the membership of the General Purposes Committee on a rota basis, subject to availability. If no member is available then a substitute member of the Committee may be used.

- 5.8 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 dismissal appeals. The Director of HR & OD or nominated deputy will oversee the training of, and support given to officers and members responsible for hearing such appeals.
- 5.9 Officers are well placed to enable consistency and develop expertise in hearing appeals. Going forward there are opportunities to ensure greater consistency in the application of performance management by officers as well as embedding culture change and accountability for decisions made in all staffing matters.
- 5.10 Outcomes and relevant organisational learning from individual cases are dealt with through lessons learned being undertaken by senior officers responsible for the relevant policies and any action arising from this are reported to the Chief Executive as Head of the Paid service responsible for all staffing matters as part of the Statutory Officer meetings .
- 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 will 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 expected standards of behaviour. It would remain the responsibility of the Committee to consider and approve any changes to relevant policies where there is the facility to appeal against dismissal.
- 5.13 The numbers of staff dismissals and appeals for the period 1/4/16 – 31/3/21 are set out below in Table 1. The outcomes and whether any claims were submitted to the Employment Tribunal is also included.

**Table 1**  
**Dismissals and appeals for the period April 16 to March 21**

Number of dismissals (excluding redundancy)	Number of appeals	Dismissal upheld	Reinstated	ET claim submitted
76	24	18	6	13

- 5.14 **Appendix 1** sets out equality data relating to the reason for the dismissal (sickness, discipline, capability/other). It also sets out the equality data by protected characteristics and how this compares to the overall composition of the workforce.
- 5.13 The data tells us that overall, more males are dismissed, although proportionally more females are dismissed for sickness. With regard to race and disability, dismissals are broadly in line with workforce representation, although slightly more BAME staff are dismissed for disciplinary reasons. With regard to age, more disciplinary or capability dismissals are in the younger age groups.

## **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 an 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

## Appendix 1 – Equality Data relating to dismissals

Table 1  
Dismissal reason by Race/Sex/Disability/Age

Dismissal reason	Race						
	BAME	%	Mixed	%	White/Other Missing*	%	
Sickness	24	12	50.00	1	4.17	11	45.83
Disciplinary	46	31	67.39	3	6.52	12	26.09
Capability/Other	6	3	50.00	1	16.67	2	33.33
<b>Total</b>	<b>76</b>	<b>46</b>		<b>5</b>		<b>25</b>	

\* 4 staff with details of race missing – all disciplinary dismissals

Dismissal reason	Sex			
	Female	%	Male	%
Sickness	24	15	9	37.50
Disciplinary	46	16	30	65.22
Capability/Other	6	2	4	66.67
<b>Total</b>	<b>76</b>	<b>33</b>	<b>43</b>	

Dismissal reason	Disability			
	Disabled	%	Non-disabled, or not stated*	%
Sickness	24	3	21	87.50
Disciplinary	46	2	44	95.65
Capability/Other	6	1	5	83.33
<b>Total</b>	<b>76</b>	<b>6</b>	<b>70</b>	

\* 15 staff who declined to state if disabled – 9 disciplinary, 6 sickness dismissals

Dismissal reason	Age			
	Under 55	%	55+	%
Sickness	24	10	14	58.33
Disciplinary	46	35	11	23.91
Capability/Other	6	5	1	16.67
<b>Total</b>	<b>76</b>	<b>50</b>	<b>26</b>	

*Table 2*

Total number of dismissals by Race/Sex/Disability/Age with comparison to workforce representation

<b>Race</b>	<b>Number of Employees</b>	<b>% of cases</b>	<b>Workforce representation</b>
Asian	6	7.89%	5.98%
Bangladeshi	22	28.95%	25.71%
Black	18	23.68%	20.68%
Missing	4	5.26%	4.03%
Mixed	4	5.26%	2.73%
White	22	28.95%	39.39%
<b>Grand Total</b>	<b>76</b>	<b>100.00%</b>	

<b>Sex</b>	<b>Number of Employees</b>	<b>% of cases</b>	<b>Workforce representation</b>
Female	33	43.42%	58.99%
Male	43	56.58%	41.01%
<b>Grand Total</b>	<b>76</b>	<b>100.00%</b>	

<b>Disability</b>	<b>Number of Employees</b>	<b>%</b>	<b>Workforce representation</b>
Declined to State / Missing	14	18.42%	13.09%
No	55	72.37%	79.73%
Unaware	1	1.32%	1.30%
Yes	6	7.89%	5.87%
<b>Grand Total</b>	<b>76</b>	<b>100.00%</b>	

<b>Age</b>	<b>Number of Employees</b>	<b>%</b>	<b>Workforce representation</b>
25 - 34	11	14.47%	1.78%
35 - 44	16	21.05%	18.99%
45 - 54	23	30.26%	25.84%
55 - 64	18	23.68%	25.28%
65 - 74	5	6.58%	24.45%
75 - 84	3	3.95%	3.58%
<b>Grand Total</b>	<b>76</b>	<b>100.00%</b>	